



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

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## Committee on Enforced Disappearances

### Follow-up progress 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 the follow-up to its Views on communication No. 1/2013 (*Yrusta v. Argentina*), adopted at its tenth session, as well as the decisions adopted in that regard by the plenary, in accordance with the following assessment criteria.

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#### Assessment criteria

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##### Compliance

A Measures taken are largely satisfactory

Action partially satisfactory

B Substantive measure(s) taken, but additional information and/or measures required

Non-compliance

C Reply received but measures taken do not implement the Views/recommendations

No reply

D No reply to one or more recommendations or parts of recommendations after reminder(s)

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

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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.

Decisions of the Committee: 22 September, 24 October and 15 December 2016.

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\* Adopted by the Committee at its nineteenth session (7–25 September 2020).



The Committee granted two extensions. With the second extension, 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. On 15 December 2016, the State party reiterated its request for an extension. The Committee rejected this request, stating that it would proceed on the basis of available information, as indicated in its note of 24 October 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. They provide information on the actions taken by the victim's relatives to follow up on the Committee's recommendations and to secure their implementation.

Action taken by the Committee:

25 April 2017.

Follow-up letter by the Special Rapporteur sent to the State party, on behalf of the Committee, recalling that, in 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".

The Committee noted that:

(a) More than a year after transmission of the Views concerned, the State party had still not sent the required follow-up information;

(b) 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.

In the light of the foregoing, the Committee informed the State party that it had decided to register the as yet unsatisfactory implementation of its recommendations in its report to the General Assembly, and to re-examine the follow-up to the Views in question at its next session.

Additional comments by the authors:

13 June 2017.

The authors request information on the status of the follow-up process. They report that the Committee's Views have still not been implemented.

They report that they held a meeting with the National Secretariat for Human Rights in Buenos Aires following the Committee's decision. On that occasion, the authorities committed to moving forward with the implementation of the decision, in particular to advance the investigation and ensure its reassignment to the federal court 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 the unresponsiveness of the provincial government has impeded any progress.

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 by the State party:

8 September 2017.

The State party comments on the action taken in respect of each of the Committee's recommendations (Views, para. 12).

(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 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 claiming to be the victims of a publicly prosecutable offence or their compulsory heirs may join the proceedings as plaintiffs. Accordingly, on 24 June 2015, the Criminal Court of Appeal of Santa Fe judicial district No. 1 rejected the constitutional challenge and upheld the decision of the investigating judge to reject the Yrusta sisters' application to act 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 terms of 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 evidentiary measures 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 referral 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 during the proceedings and notes that, according to the Supreme Court of Santa Fe, the offence of enforced disappearance had ceased prior to the time of Mr. Yrusta's death, since he had already resumed contact with his family, and that they knew of his whereabouts. The federal court requested the cooperation of the Office of the Prosecutor for Institutional Violence in the Attorney General's Office, which has competence to bring criminal proceedings and oversee 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, try 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 inquiry into the 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 that they considered relevant in relation to the charges against them. The pretrial proceedings are under way.

(d) Provide the authors with reparation and prompt, fair and adequate compensation, in accordance with article 24 (4) and (5) of the 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 federal registers of cases of institutional violence: The register maintained by the unit responsible for recording, processing and following 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; and that 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 (Views, para. 13).

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

Comments by the authors:

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 does not reflect a balanced interpretation of the law. The wording does not relate to the participation of the victim's family members in establishing the truth. In addition, they report that Mr. Yrusta's mother, his sole heir, is cared for by his 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.

The authors consider that the law gives family members legal authority to act as plaintiffs. Therefore, when compulsory heirs join criminal proceedings as plaintiffs, they do so in their own right and not as successors to a right held by the victim. In the case at hand, the provisions on succession that were used as a 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 procedural law by which individuals may 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 in order 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 evidentiary measures that they requested

were taken. The victims were not able to check the testimonies that were received in the course of the investigation because they do not have any information on its conduct. In the 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: 18 April 2019.

[B]: The State party has taken additional measures, but further measures and more information are needed. The Committee decided to send a follow-up note to the State party.

Action taken by the Committee: 10 May 2019.

While thanking the State party for the follow-up reports of 15 February and 7 March 2018, the Committee sent a note to the State party informing it of its conclusions and recommendations for follow-up.

The Committee emphasized that the measures taken by the State party do not amount to a satisfactory implementation of the recommendations contained in its Views and reiterated in the follow-up procedure of 6 October 2017. In particular, the Committee requested that the State party take the following measures:

(a) Plaintiff status for Mr. Yrusta's two sisters (Views, para. 12 (a)).

The Committee is concerned that:

(i) Mr. Yrusta's two sisters have still not obtained the status of plaintiff, which would allow their full participation in investigations, in accordance with article 24 of the Convention. The Committee noted that, according to the State party, the authors have not exhausted the domestic remedies available to overturn the decision rejecting their application to be recognized as plaintiffs. In particular, it argues that the authors would have had to submit an extraordinary federal appeal against the judgment of the Supreme Court of the Province of Santa Fe by virtue of the federal scope of the question of their right to act as plaintiffs, and because their lack of legal standing under the provincial regulations conflicts with constitutional rights and international instruments. The Committee also noted that, according to the State party, under the Act of 13 July 2017 on the rights and guarantees of victims of crime, the authors, as sisters of the direct victim of a crime that resulted in death, may become plaintiffs and, in that capacity, may take legal proceedings;

(ii) In a letter dated 31 October 2017, Córdoba Federal Prosecutor's Office No. 1 petitioned Córdoba Federal Court No. 1 to recognize the two sisters as plaintiffs. The Committee also notes, however, that, a year and a half later, this request has still not been addressed;

(iii) Despite having the status of victim under the Santa Fe system of criminal procedure, four of the most pressing measures requested by Mr. Yrusta's sisters in the course of the investigation of his death were not acted on by the competent authorities (exhumation of the body; a fresh autopsy by an official not attached to the provincial security forces; re-examination of the objects found in Mr. Yrusta's anus and stomach; and information about the result of X-rays carried out);

(iv) Other investigative measures requested by Mr. Yrusta's sisters have been taken by the State party, but the results have not been communicated to them (analysis of the provincial prison log for the days preceding the death of Mr. Yrusta; analysis of the clinical history and of the record of staff arrivals and

departures; and the content of nursing staff's witness statements);

(v) The authors were not told whether the other investigative measures that they had requested (such as taking witness statements from the prison staff) have been ordered by the State party;

(vi) The authors were not informed that the complaint relating to the death of Mr. Yrusta had been dismissed and have not had access to the case file, as they are not plaintiffs, notwithstanding their rights as victims under the Code of Criminal Procedure.

In view of the above, the Committee recalls paragraph 12 (a) of its Views of 11 March 2016 and again requests that the State party grant the status of plaintiff to Mr. Yrusta's two sisters and allow them, in accordance with their rights as victims and plaintiffs, to initiate proceedings and effectively participate in the investigations into their brother's enforced disappearance and death.

(b) Thorough and impartial investigations into the disappearance and death of Mr. Yrusta (Views, para. 12 (b)).

The Committee noted that, in the investigation into the alleged enforced disappearance of Mr. Yrusta, witness statements were taken from the authors, evidentiary measures were ordered, such as requests for administrative documents from the Córdoba prison service and for information and files on sentence enforcement from the criminal enforcement court responsible for Mr. Yrusta, and information and records on Mr. Yrusta were requested from the judge in Coronda, Santa Fe. However, the Committee regretted that the investigation into the disappearance is still at the preliminary stage.

The Committee also noted that, in the administrative inquiry launched in March 2014 into irregular conduct by the prosecutor and the first judge in charge of the investigation into the causes of the death of Mr. Yrusta, the Attorney General had ordered the suspension of the prosecutor and the first judge for five days, given that they had no previous disciplinary record.

The Committee also noted that Prosecutor S. No. 7 of Public Prosecutor's Office No. 5 applied to have the case concerning Mr. Yrusta's death reopened, by an appeal dated 27 October 2017 contesting the dismissal decision of 20 October 2017 of Bench No. 7 of the lower criminal court, and that the case was referred to Santa Fe Appeals Court in December 2017. The Committee also noted that, on 26 December 2017, the Attorney General of the Supreme Court of Santa Fe asked Santa Fe Appeals Court Prosecutor No. 1 to assess the need for a fresh autopsy "at the Prosecutor's technical discretion", and for verification of the telephone calls made by Mr. Yrusta to his family before his death.

In its note, the Committee welcomed these initiatives and called on the State party to provide additional information on the steps taken to reopen the investigation into the death of Mr. Yrusta, and asked it to conduct thorough and impartial investigations into his disappearance, in accordance with paragraph 12 (b) of its Views of 11 March 2016.

(c) Prosecute, try and punish the persons responsible for the disappearance and death of Mr. Yrusta (Views, para. 12 (c)).

The Committee notes that, since the date of the State party's last report on implementation of the Committee's Views of 11 March 2016, no progress has been made in implementing paragraph 12 (c) of the Views. In the light of the foregoing, the Committee again requests the State party to prosecute, try and punish the persons

responsible for the disappearance and death of Mr. Yrusta.

(d) Reparation and prompt, fair and adequate compensation to the authors of the communication (Views, para. 12 (d)).

The Committee noted that, although the State party had stated in its follow-up report of 8 September 2017 that an agreement had been reached with the authors with regard to reparation and compensation, the latest information provided indicates the opposite to be true.

The Committee also noted that, according to the State party, the authors and their mother would be able to take civil proceedings to obtain financial compensation for the harm suffered. Yet the available information indicates that the right to indemnification or compensation depends on the outcome of the criminal proceedings, and only in the event of a conviction could the authors claim their rights to reparation in a civil court. The Committee also noted that, according to the information available, the estimate of financial damages submitted by the authors at the request of the authorities has had no effect, since, to date, the authors have not had access to any form of reparation or compensation.

Therefore, in accordance with paragraph 12 (d) of its Views of 11 March 2016, the Committee again requests the State party to grant the authors reparation and prompt, fair and adequate compensation.

(e) Compiling and maintaining registers of persons deprived of their liberty that are accessible to all persons with a legitimate interest therein, as set out in articles 17 and 18 of the Convention (Views, para. 12 (e)).

The Committee notes that, according to information provided by the State party, the Federal Prison Service has a digital database that contains the unique personal file of every person admitted and that, although there is not yet a consolidated national register of persons deprived of their liberty, in April 2017, a bill to create a central register of detainees was put forward in the Chamber of Deputies. However, the Committee regrets that, more than three years after the issuance of its Views, the provinces still do not have registers of detainees.

In the light of the foregoing, and in accordance with paragraph 12 (e) of its Views, the Committee reiterates its recommendation that the State party take all necessary measures for the prompt creation of registers of persons deprived of their liberty, accessible to all persons with a legitimate interest therein.

(f) Publication and dissemination of the Views.

The Committee took note of the information provided by the State party to the effect that the Views were referred, by the Directorate for Monitoring the Causes of Institutional Violence and Crimes of Federal Interest of the Ministry of Security, to the federal security forces for dissemination and information. The Committee also noted that, in 2018, the case had been studied as part of two courses run by the virtual campus of the Secretariat for Human Rights and Cultural Pluralism, one of them open to the public and the other for the police and prison services.

The Committee welcomed those measures, but considered them to amount to only a partial implementation of paragraph 13 of its Views. In the light of the foregoing, the Committee again requests the State party to publish its Views and to disseminate their contents widely.

Reply by the State party:

10 September 2019.

The State party commented on the action taken in respect of three of the Committee's recommendations.

With regard to the recommendation to recognize the authors' status as victims and their status as plaintiffs, thereby allowing them to play an effective part in the investigations into the death and enforced disappearance of their brother, the State party reported that a request had been made for the authors' application to act as plaintiffs in the investigation into the causes of Mr. Yrusta's death to be granted.

With regard to the recommendation to 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 reported that, on 16 August 2018, Córdoba Federal Prosecutor's Office No. 1 requested the dismissal of the proceedings on the ground that enforced disappearance could not be proved, since the constituent elements of a lack of information and the refusal to disclose the whereabouts of the disappeared person had not been found to apply. In particular, the Federal Prosecutor's Office confirmed that Mr. Yrusta had been transferred from Córdoba to Santa Fe with the full knowledge of the prison services of both provinces and with the authorization of the competent criminal enforcement judge, and that, shortly after his admission to Santa Fe prison, he had been allowed to communicate with his family, having communicated with his sisters within 24 hours of his arrival at Coronda prison in Santa Fe, and on 16, 22, 24 and 29 January and 4 February 2013. The State party therefore submits that it was not a clandestine transfer as claimed by the authors.

With regard to the investigation into the causes of Mr. Yrusta's death, the State party also reported that the authors had been summoned to appear on 31 July 2019, but that they had not done so as they could not be located. A hearing was also scheduled for 1 August 2019 so that two other inmates from the same wing as Mr. Yrusta could give their testimony. On 7 August 2019, a reconstruction of a scene of the event was also carried out in Coronda Prison No. 1 to determine the height of the cell window and how far up the material found at the scene of the event had been tied. However, when the scene was being reconstructed, the window from which the photograph had originally been taken was found to be positioned at a lesser distance than that observed in the photograph taken on the day of the event, which is why this exercise was carried out a second time and a request was made to reconstruct the image in order to take into account the length of the material in question. The State party concludes that the investigation is under way.

With regard to the administrative inquiry into the irregularities committed by the judicial officials involved, the State party reported that, on 26 June 2019, the Attorney General's Office at the Supreme Court of Justice of the Province of Santa Fe decided to suspend the Santa Fe criminal judge for five days by way of punishment.

Lastly, with regard to the recommendation to publish the Committee's Views and to disseminate their contents widely, the State party reported that a copy of the Views was sent to the federal security forces for dissemination and information, and that the National Directorate of Civic Culture in Human Rights of the Secretariat for Human Rights and Cultural Pluralism included the case as a case study in the courses "Institutional violence, social discourse and human rights" and "Human rights perspective and public security".

Comments by the authors:

24 September 2019.

The authors are of the view that the State party's assertions are inaccurate and incorrect, and that the Committee's recommendations have still not been fully implemented.

The authors make specific mention of the fact that the State party has still not disseminated the Views among the general public, and that it continues to limit such dissemination to the federal security agencies, which is insufficient because those directly responsible were part of the provincial and not the federal forces, and because there is a need to disseminate widely Views recognizing the international responsibility of the State. The authors therefore requested the State party to disseminate the Views through national and provincial media.

The authors also state that they are still unable to join the proceedings as plaintiffs in order to ensure that the facts are properly investigated. While they note that the Federal Prosecutor's Office is making efforts to gather information on the causes of Mr. Yrusta's death, they also state that an overview of responsibilities has not yet been provided and that the investigation remains lacking. They also indicate that the Federal Prosecutor's Office ruled out the possibility of enforced disappearance without their having been allowed to participate in the proceedings.

The authors further argue that the State party's assertion that Mr. Yrusta communicated with them within the 24-hour period following his clandestine transfer to Coronda is untrue, and that it is of little importance whether they learned of the location 24, 48 or 120 hours later.

Lastly, the authors assert that the State party has still not provided them with reparation or drawn up adequate and accessible registers of persons deprived of their liberty.

Decision of the plenary:

18 September 2020.

While thanking the State party for its follow-up report of 10 September 2019, the Committee concluded that the measures taken by the State party do not amount to a satisfactory implementation of the recommendations contained in its Views and reiterated in the follow-up procedure of 6 October 2017 and in its note of 19 May 2019.

In particular, the Committee considers:

(a) Paragraph 12 (a) of the Views: "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 has taken additional measures, but further measures and more information are needed [B];

(b) Paragraph 12 (b) of the Views: "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" [B];

(c) Paragraph 12 (c) of the Views: "Prosecute, try and punish the persons responsible for the violations that have been committed": No reply to one or more recommendations or parts of recommendations after reminder(s) [D];

(d) Paragraph 12 (d) of the Views: "Provide the authors with reparation and prompt, fair and adequate compensation, in accordance with article 24 (4) and (5) of the Convention": No reply to one or more recommendations or parts of recommendations after

reminder(s) [D];

(e) Paragraph 12 (e) of the Views: “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”: Substantive measure(s) taken, but additional information and/or measures required [B].

In the light of the foregoing, the Committee decides to keep the follow-up procedure on the Views open and to send a further follow-up note to the State party.

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