



International Convention for the Protection of All Persons from Enforced Disappearance

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Committee on Enforced Disappearances

Views approved by the Committee under article 31 of the Convention for communication No. 1/2013*, **

<i>Submitted by:</i>	Estela Deolinda Yrusta and Alejandra del Valle Yrusta (represented by the Provincial Public Defender of Santa Fe, Argentina, Gabriel Ganón)
<i>Alleged victims:</i>	The authors and their disappeared brother, Roberto Agustín Yrusta
<i>State party:</i>	Argentina
<i>Date of communication:</i>	11 September 2013 (initial submission)
<i>Document references:</i>	Special Rapporteur's decision under article 31 of the Convention, transmitted to the State party on 20 September 2013 (not issued in document form); decision on admissibility adopted on 6 February 2015
<i>Date of Views:</i>	11 March 2016
<i>Subject matter:</i>	Enforced disappearance while in detention
<i>Substantive issues:</i>	Enforced disappearance and participation of family members in related judicial and investigative proceedings
<i>Procedural issues:</i>	Non-exhaustion of domestic remedies; competence <i>ratione materiae</i> ; lack of cooperation by the State party in the consideration of the communication

* Approved by the Committee at its tenth session (7-18 March 2016).

** The following members of the Committee took part in the consideration of the communication: Mohammed Al-Obaidi, Santiago Corcuera Cabezut, Emmanuel Decaux, Daniel Figallo Rivadeneyra, María Clara Galvis Patino, Rainer Huhle, Suela Janina, Juan José López Ortega, Kimio Yakushiji. In accordance with article 47 of the Committee's rules of procedure, Luciano Hazan, member of the Committee, did not take part in the consideration of the communication.

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Articles of the Convention:

Articles 1, 2, 3, 12 (1) and (2), 15, 17 (2) (c)
and (d), 18, 20, 23 and 24

1.1 The authors of the communication are Ms. Estela Deolinda Yrusta and Ms. Alejandra del Valle Yrusta, sisters of Mr. Roberto Agustín Yrusta, an Argentine national born on 29 August 1980. The authors claim to be victims of violations by Argentina of articles 1, 2, 3, 12 (1) and (2), 15, 17 (2) (c) and (d), 18, 20, 23 and 24 of the Convention. The authors are represented by the Provincial Public Defender of Santa Fe, Gabriel Ganón.

1.2 The State party recognized the competence of the Committee to consider individual communications on 11 June 2008, and the Convention entered into force for the State party on 23 December 2010.

A. Summary of information and allegations of the parties

The facts as submitted by the authors

2.1 In December 2005, Mr. Yrusta was sentenced to 8 years' imprisonment for aggravated robbery involving the use of a firearm and possession of a military weapon. He was held in Reverend Father Luchesse Prison Complex No. 1 (Bouwer Prison) in the Province of Córdoba. Over a period of more than three years while he was in prison, Mr. Yrusta was subjected to torture and inhuman and degrading treatment by members of the Córdoba Prison Service. The ill-treatment included long periods in *buzones*, or punishment cells, the use of the "dry submarine" treatment (i.e. suffocation using a plastic bag), beatings, threats, transfers and being shackled to a bed. In November 2012, Mr. Yrusta filed a complaint against members of the Córdoba Prison Service with the Córdoba provincial courts. Towards the end of 2012, Mr. Yrusta was interviewed for a television programme called "ADN" (DNA in Spanish), during which he complained publicly about his ill-treatment and torture. The authors assert that, from that time on, the ill-treatment and torture inflicted on Mr. Yrusta intensified.

2.2 Fearing for his life, Mr. Yrusta asked the Córdoba prison authorities to transfer him to the Province of Santiago del Estero, where some of his family members lived. Despite his request, he was transferred to Coronda Prison Facility No. 1 in the Province of Santa Fe on 16 January 2013. The authors consider that the transfer was carried out in a deceptive manner, since the prison services in these two provinces failed to inform Mr. Yrusta, who could not read, where he was being taken. They consider that Mr. Yrusta agreed to his transfer in the belief that he was being transferred to the Province of Santiago del Estero.

2.3 On his arrival in Coronda, Mr. Yrusta was placed in *buzones* (isolation and punishment cells), where he was again subjected to ill-treatment and torture. Members of his family requested information from the prison services about his whereabouts on a number of occasions but received no reply. This situation lasted for a period of more than seven days, during which the authors consider that Mr. Yrusta was subjected to enforced disappearance. When he was again able to contact his family, Mr. Yrusta told them that he continued to be ill-treated and tortured daily, held in punishment cells, shackled and placed under escort when leaving his cell to make telephone calls, as well as deprived of the health care he needed.

2.4 On 7 February 2013 — 4 months before Mr. Yrusta was due for release on parole and 10 months before the date set for his final release — Santa Fe prison service staff notified his family that Mr. Yrusta had committed suicide by hanging himself in his cell and that he had been found dead at 6 p.m. According to the autopsy report by the Santa Fe Institute of Forensic Medicine, "the most plausible hypothesis is that the death of [Roberto Agustín Yrusta] resulted from asphyxia caused by sudden compression of the neck by an object with elastic properties (which was not furnished along with the body of the deceased)". Mr. Yrusta's body was handed over to his family at 9 p.m. on 8 February 2013. The authors report that the body displayed large blisters, severe swelling of the hands and

feet, open wounds, cuts to the arms, signs of bleeding, multiple bruises, signs that he had been struck violently on the head and other marks that appeared to have been caused by the impact of rubber bullets, while the neck area displayed no signs of hanging. In view of the above, the authors mistrust the version transmitted by the authorities of the State party regarding the causes of Mr. Yrusta's death.

2.5 A few days after the death of Mr. Yrusta, the non-governmental organization Coordinadora Anticarceraria de Córdoba (Córdoba Anti-Prison Coordinating Committee) issued a statement by his next of kin, in which the latter called for a full explanation and an investigation into the case of their son and brother. On 26 February 2013, the relatives of Mr. Yrusta, accompanied by representatives of Coordinadora Anticarceraria de Córdoba, went to the offices of the Santa Fe Provincial Public Criminal Defence Service in order to seek expert advice from the Provincial Public Defender and to ask him to intervene in the case "Yrusta, Roberto Agustín re/his death" (No. 173/2013), which had been referred to the Sixth Bench of the Santa Fe Criminal Investigation Court. By a decree of 22 April 2013, a request to allow the Public Defender to intervene was denied on the grounds that "the legal representative lacked standing to bring an action in the capacity invoked". The Provincial Defender's Office was not notified of the decree until 24 June 2013. On 1 July 2013, the authors filed a petition for recognition as parties to the prosecution (*constitución de querellante*) and for the corresponding statutory hearing to be held. Their petition was denied by a decree dated 3 July 2013. On 25 July 2013, the authors filed a motion for reconsideration (*recurso de queja*) before the Santa Fe Criminal Court of Appeal. On 11 September 2013, the date of the initial submission, the motion was still pending, thus preventing the authors from moving forward with the necessary legal proceedings. The authors point out that none of the required investigative measures has been taken, that no further autopsy on Mr. Yrusta's body has been ordered and that there has been no response from the Córdoba or Santa Fe judicial authorities concerning the circumstances of his death. The authors further state that the Public Defender's Office has not had access to the case file.

The complaint

3.1 The authors claim to be victims of violations by the State party of their rights under articles 1, 2, 3, 12 (1) and (2), 15, 17 (2) (c) and (d), 18, 20, 23 and 24 of the Convention.

3.2 They claim that Mr. Yrusta was disappeared for an approximate period of more than seven days following his transfer to Santa Fe — which he had not been informed about and had not consented to — in violation of articles 1 and 2 of the Convention. They contend that Mr. Yrusta did not know where he had been transferred and that his family received no response from the prison services to their repeated requests for information about his whereabouts.

3.3 The authors consider that the State party has violated article 3 of the Convention inasmuch as the Córdoba and Santa Fe authorities failed to respond to questions concerning the circumstances of Mr. Yrusta's death and the courts refused to admit their complaint "on procedural grounds". The authors further consider that the State party has violated article 12 (1) and (2) of the Convention owing to its failure to initiate the investigation formally requested by them and to grant Mr. Yrusta's family and their legal representative access to the file and documentation relating to the case opened before the Sixth Bench of the Santa Fe Criminal Investigation Court. The authors also draw attention to the failure to carry out a second autopsy on Mr. Yrusta's body.

3.4 The authors claim that the government authorities of Córdoba and Santa Fe failed to provide Mr. Yrusta with the greatest measure of assistance possible. In particular, they point out that the prison services violated article 15 of the Convention by failing to respond to the countless calls and requests for information regarding the fate and whereabouts of Mr.

Yrusta during a period of between 7 and 10 days following his transfer from Córdoba to the Province of Santa Fe.

3.5 The authors also consider that the State party has violated article 17 (2) (c), (d) and (f) and article 17 (3) because, although Mr. Yrusta was held in prison facilities (officially recognized places of detention), his whereabouts during the period of his disappearance are not known. Should it be established that Mr. Yrusta was held solely in officially recognized facilities, the authors consider that State institutions violated his right to communicate with his family, counsel or any other person of his choice and his right to receive visits by holding him totally incommunicado in isolation cells until the day he died. The authors further claim that the prison services acted in violation of article 17 (2) (f) and article 18 (3), inasmuch as they do not know whether or not registers exist in the places where Mr. Yrusta was held that identify the authority that ordered his transfer and that indicate the grounds for that transfer; the date, time and destination of his transfer; the authority responsible for supervising his detention; the time of admission to, and location of, the place of detention during the period of his disappearance; information concerning his state of health; and the circumstances and cause of his death. They further point out that, if such registers exist, they have not had access to them.

3.6 The authors also claim that the State party has violated article 20 of the Convention since, despite requests to the prison services, they were denied access to a prompt and effective judicial remedy as a means of obtaining without delay the information referred to in article 18 of the Convention. Furthermore, they claim that the refusal to grant their request for standing as private criminal plaintiffs (*querellantes*) prevented them from gaining access to information relating to the judicial proceedings initiated following the death of Mr. Yrusta. The authors also claim that the State party has violated their right to ascertain the truth regarding the circumstances of the enforced disappearance of their brother, the progress and results of the related investigation and the fate of the disappeared person, a right that is protected under article 24 of the Convention.

3.7 Lastly, the authors consider that the proliferation of procedural steps connected with their request to act as plaintiffs has entailed an undue and unjustified prolongation of the judicial proceedings, making the latter inaccessible and ineffective in the context of the investigation into their brother's case.

State party's observations on admissibility

4.1 On 22 January and 25 February 2014, the State party submitted its observations on the admissibility of the communication to the Committee and requested that the communication be declared inadmissible under article 31 (2) (d) of the Convention for the reasons set out below.

4.2 The State party recalls that the Convention requires that domestic remedies must have been exhausted in order for an individual communication to be declared admissible. It considers that in the present case the Committee's intervention would clearly be premature, since the judicial investigation initiated following the death of Mr. Yrusta is still ongoing, and it cannot be argued that the proceedings have exceeded a reasonable period of time. In this connection, the State party points out that judicial proceedings have been opened in the case entitled "Yrusta, Roberto Agustín re/his death" before the Sixth Bench of the Santa Fe Criminal Investigation Court. On 26 February 2013, Mr. Yrusta's sisters applied to join the proceedings as plaintiffs; their application was denied by a decision of 22 April 2013 on the grounds that "the [applicants'] legal representative lacked standing to bring an action in the capacity invoked". On 3 June 2013, the authors filed a motion requesting the Santa Fe Criminal Court of Appeal to reconsider the decision of the Sixth Bench of the Santa Fe Criminal Investigation Court. The State party points out that, at the date of submission of its observations, a decision on the motion was still pending.

4.3 The State party further asserts that the proceedings initiated ex officio following the death of Mr. Yrusta are continuing and that it cannot legitimately be claimed that those proceedings — which have been going on for less than one year — have exceeded a reasonable period of time. Accordingly, the State party asks the Committee to declare the present communication inadmissible.

Additional information submitted by the authors

5.1 On 28 March and 30 May 2014, the authors submitted additional information to the Committee. They stated that on 3 February 2014 the Santa Fe Criminal Court of Appeal declared the decree of 22 April 2013 null and void and ordered that a hearing should be held to consider applications for recognition as private criminal plaintiffs, as provided for under article 96 of Provincial Act No. 12.734.¹ On 27 February 2014, the date of the hearing was set for 12 March 2014. However, the hearing did not take place because of the unjustified absence of the prosecutor in charge of the case (Prosecutor No. 5). The authors consider that the prosecutor's absence is a clear demonstration of the State party's efforts to hinder the investigation.

5.2 The authors add that the hearing was then held on 13 March 2014. On 17 March 2014, the request filed by Mr. Yrusta's sisters to act as private criminal plaintiffs and to be represented by Gabriel Ganón was once again denied, on the following grounds:

(a) The Provincial Public Defender lacks legal standing or capacity to act in the proceedings;

(b) The Provincial Public Defender, by conducting the case for the plaintiffs, would assume prosecutorial responsibilities, thereby encroaching on the exclusive material jurisdiction of the Public Prosecutor;

(c) In cases involving the suspicious or unlawful death of a defendant, the active role of the public defender ceases because the person concerned is no longer facing trial. In such circumstances, the responsibility for prosecuting cases lies primarily with the prosecuting authority and/or the private criminal plaintiff, who is advised or represented by a private lawyer or by professional counsel appointed free of charge by the provincial government, the latter having established legal aid centres for this purpose (under the authority of the provincial executive); and

(d) Pursuant to the constitutional reasonableness test, Mr. Yrusta's sisters are not considered to form part of "the limited category of protected heirs to an estate" (arts. 3591 and 3545 of the Argentine Civil Code) established for the purposes of allocating the reserved portion (*porción legítima*) thereof.

5.3 The authors consider that the judge misinterpreted the law because the Provincial Defender was appointed pursuant to Provincial Executive Decree No. 0199/2011, and his role as Public Defender is to guarantee the effective exercise of human rights and to secure the cessation of human rights violations. The authors add that the judge and the provincial authorities have misinterpreted the concept of "victim", which they restrict to those persons who suffer the direct consequences of an offence. The authors claim that this interpretation denies them access to justice and redress and allows the perpetrators to go unpunished.

¹ Article 96 of Provincial Act No. 12.734 states as follows: "Proceedings. The application shall be filed with the district prosecutor handling the case and a copy shall be provided to each defendant. The district prosecutor shall forward it without delay, together with an indication of whether or not the application has been accepted, to the court responsible for preliminary criminal examinations. The court shall summon the parties to a hearing within five days and shall rule on the matter immediately. If the court grants standing to the private criminal plaintiff, it shall order the prosecutor to allow him or her to join the proceedings as appropriate."

They further consider that such an interpretation of the concept of “victim” violates article 75 (22) of the Argentine Constitution, which provides that “treaties and agreements take precedence over laws”.

5.4 The authors note that, according to the State party, the right of the inhabitants of the Province of Santa Fe to have access to justice is ensured by means of legal aid centres. They consider that this right has not been respected, since those centres have on more than one occasion refused to take on cases involving institutional violence, and that the Defender has systematically been denied standing in cases where he is requested to provide representation to victims intervening in proceedings as private criminal plaintiffs.

5.5 The authors consider that Mr. Yrusta was disappeared while in the hands of the Province of Santa Fe Prison Service for a period of more than seven days after he had requested a transfer from Córdoba to the Province of Santiago del Estero and had been taken, without his consent, to Coronda Prison Facility No. 1 in the Province of Santa Fe. They claim that, in this period of more than seven days, Mr. Yrusta was kept incommunicado from his family. The authors further consider that the premeditated disappearance and concealment of Mr. Yrusta by officials of the State party is demonstrated since, in the prison registers, he is identified under three different names (Roberto Agustín Yrusta, Mario Alejandro Ríos and David Salvador Torres), with the effect that the exact location of Mr. Yrusta in the course of the different phases of his detention cannot be clearly determined. The authors conclude that Mr. Yrusta’s whereabouts were deliberately concealed from his family.

5.6 The authors also point out that the State party fails to mention the articles of the Convention that are invoked in the communication and that, in the 12 months since Mr. Yrusta’s death, the only proceedings that have been initiated by the authorities are those concerning his sisters’ application to be recognized as parties to the prosecution, while no progress has been made in the investigation into the case itself. In this regard, the authors point to the failure to carry out the examinations that were requested in the light of the forensic medical report, which documented the following findings: (a) marks on the neck that are not consistent with the prison administration’s account of how the hanging occurred; and (b) signs of rape and foreign objects in Mr. Yrusta’s anus. The authors consider that the prosecutor and the judge in charge of the case received the forensic medical report but ignored it until Mr. Yrusta’s family asked for clarifications. The authors claim that the family’s request was denied by the judge and the defender in order to conceal the truth and their own negligence in the investigation.

5.7 The authors express their concern about the introduction on 10 February 2014 of a new system for closing cases, pursuant to the new Code of Criminal Procedure (Act No. 12.734) and Provincial Act No. 13.004. Under this system, “cases in which there has been no action of record and in which the victims withdraw from the proceedings shall be closed on a preliminary basis within six months”.² Accordingly, the authors consider that, if the

² See the article of the newspaper *La Capital* (Rosario), of 23 March 2014: “Hay unas 260 mil causas pendientes de resolver en el viejo sistema penal” (There are some 260,000 cases pending under the old criminal system). Act No. 13.004 states as follows:

“Article 7: Applicable rules.

The following provisions shall be applicable to all criminal cases initiated prior to the period referred to in article 1 of the present Act, as appropriate:

[...]

(c) With regard to cases in which the accused has not been individually identified, the investigation shall continue for a period not exceeding six months, after which cases shall be closed by a reasoned decision. So far as practicable, the information referred to in the proceedings shall be used as a source of data for criminal analysis.

case of Mr. Yrusta remains before the provincial courts, his family will be denied access to justice, truth and redress. The authors are of the view that their brother's case should be transferred to the federal courts, since the provincial authorities' failure to investigate his enforced disappearance engages the responsibility of the federal government.

Additional observations by the State party

6.1 In the light of the information provided by the parties, the Committee considered it necessary to ask the State party to furnish additional information, in accordance with rule 73 (8) and (9) of the Committee's rules of procedure (CED/C/1). The Committee first asked the State party to specify the effective domestic remedies available to the authors and their family, at both the provincial and federal levels, for the investigation of the alleged enforced disappearance of Mr. Yrusta. The Committee further requested the State party to provide information on: (a) the stage reached in the investigation into the enforced disappearance of Mr. Yrusta; (b) the procedural steps that remain to be taken in that connection; and (c) the authors' participation in the investigative proceedings. Lastly, the Committee asked the State party to indicate the extent to which articles 7 and 8 of Act No. 13.004 relating to cases with no identified defendant are applicable in the case of Mr. Yrusta and, if applicable, the date on which the present case could be or would most likely be closed. It also asked what remedies were available to appeal a closure decision.

6.2 On 8 July 2014, the State party answered the Committee's questions. It states that, by a judicial resolution of 13 March 2014, the request made by Mr. Yrusta's sisters was denied on the grounds that the Provincial Defender of the Santa Fe Public Criminal Defence Service lacked legal standing because the Office of the Defender was established upon the entry into force of the new Criminal Code of Procedure of the Province of Santa Fe (Act No. 12.734) on 10 February 2014. The State party adds that the Defender was granted leave to appeal that decision and that a review hearing was subsequently held by the Court of Appeal of the First Judicial District of Santa Fe. By a resolution of 23 April 2014, the Court decided to overturn the first instance ruling on the grounds that "it fails to fulfil the right of the prospective plaintiffs to have access to justice. Accordingly, in view of the basis in law invoked by the latter, due process of law must be followed in order to allow them the possibility of intervening in the case".³ For these reasons, an order was issued which revoked the appealed decision and stated that the appropriate alternate judge should rule in accordance with the law.

6.3 The State party further contends that the lower court judge decided to recuse himself from further proceedings in the case because of a difference of opinion regarding the criteria used by the Appeal Court and on the understanding that to do otherwise might compromise the guarantee of impartiality. Accordingly, he ordered the case to be transferred to the Seventh Bench of the Santa Fe Court for a decision on the application to act as private criminal plaintiffs made by Mr. Yrusta's sisters. In accordance with the Santa

[...]

Article 8: End of the transitional period. All cases which are still pending a final decision on the day the transitional period ends shall be closed automatically, with the exception of privately actionable offences, which shall proceed in accordance with their status. Thereafter, all personal precautionary measures ordered in cases that are closed shall cease automatically. With regard to publicly actionable offences, up to four months prior to the end of the transitional period, a private criminal plaintiff may request that the case in which he or she is a party proceed in accordance with its status; to this end, victims identified as such shall be notified in order to protect their rights. If the prosecutor's office endorses their request, the case shall proceed under the same procedure. Otherwise, the private criminal complaint procedure provided for in privately actionable offences shall be applied."

³ Case: "Yrusta, Roberto Agustín (his death) re/Appeal" — Decision of 13 March 2014 (petition to act as private criminal plaintiff), p. 27.

Fe Court of Appeal ruling, the Court annulled the refusal to grant the application filed by Mr. Yrusta's sisters and ordered that a different court should issue a new ruling. The matter is still pending before the court in question. The State party considers that the remedies to which the authors have had recourse have been shown to be effective and available.

6.4 The State party also argues that the judicial investigation into the cause of Mr. Yrusta's death is currently being conducted by the Sixth Bench of the Santa Fe Criminal Investigation Court (case entitled "Yrusta, Roberto Agustín re/his death", Case file No. 173/13). The Court is actively pursuing the case and has ordered a number of measures aimed at gathering evidence to establish the circumstances of Mr. Yrusta's death and any criminal responsibility arising therefrom. In this regard, the State party draws attention, among other things, to the taking of testimony from prison officials and from the doctor, psychologist and psychiatrist at the prison facility where Mr. Yrusta was held and the production of expert evidence, such as the autopsy report by the Institute of Forensic Medicine and other forensic evidence.

6.5 With regard to the measures requested by the Prosecutor's Office, a hearing has been scheduled for the confrontation of witnesses. The Office has instructed that testimony should be taken from other inmates in Wing No. 8, where Mr. Yrusta was held, and other prison officials who were on duty in that wing. It has also ordered that the mesh covering the window of Mr. Yrusta's cell be examined in order to determine how the hanging took place. The State party considers that the above shows that the court case is being actively pursued and that the collection of the evidence requested by the prosecutor and considered relevant by the court in order to establish the truth is being performed.

6.6 The State party continues to emphasize that a decision is expected shortly in the pending proceedings concerning the authors' petition for recognition as parties to the prosecution. It states that, if the authors are able to act in that capacity in the case, they will be entitled to: (a) provide evidence during the preparatory criminal investigation and request specific inquiries aimed at establishing the facts of the case; (b) request precautionary measures in order to ensure the payment of civil damages and costs; (c) attend the taking of statements from witnesses during the preparatory criminal investigation and pose questions and request clarifications; (d) take part in the proceedings within the limits laid down in the Code of Criminal Procedure; (e) introduce measures as they consider appropriate in order to expedite the proceedings; (f) request prompt action; (g) press charges; and (h) file motions to the court by the means and in the manner established for representatives of the Public Prosecution Service.

6.7 The State party concludes that the involvement of the alleged victims in the judicial investigation relating to the causes of the death of their brother Roberto Agustín Yrusta has revolved around the proceedings relating to their request to appear as plaintiffs described above.

Additional information submitted by the authors

7.1 On 20 August 2014 and 21 November 2014, the authors submitted additional comments in response to the State party's observations. They question the accuracy of its statements and express the view that the explanations provided are insufficient.

7.2 The authors confirm that, by a ruling of 23 April 2014, the Santa Fe Criminal Court of Appeal decided to annul the first instance decision on the grounds that "it fails to fulfil the right of the prospective plaintiffs to have access to justice. Accordingly, in view of the basis in law invoked by the latter, due process of law must be followed in order to allow them the possibility of intervening in the case". It further considered that "the circumstances relating to the alleged irregularity and/or validity of the standing of the legal representative can in the present case be resolved by complying fully with the court order".

On 4 June 2014, the Seventh Bench of the Santa Fe Criminal Investigation Court decided “not to grant the application to appear as private criminal plaintiff made by Ms. Estela Deolinda Yrusta, who is represented by Dr. Gabriel Ganón”, on the grounds that, “in accordance with article 67 II of the Code of Criminal Procedure of the Province of Santa Fe, legal standing is granted to alleged victims of a criminal offence or their protected heirs, categories to which the prospective plaintiff, Estela Deolinda Yrusta, does not belong. Accordingly, in view of her lack of standing to act in the capacity claimed, her application must be rejected as inadmissible”.

7.3 On 13 June 2014, the authors lodged a further appeal, reiterating their request to join the proceedings as plaintiffs. On 16 June 2014, the appeal was admitted without suspensive effect and was referred to a higher court. On 30 June 2014, the authors were notified of the composition of the court. On 14 November 2014, more than one year and a half after the authors’ first request for recognition as parties to the prosecution, the Santa Fe Appeal Court denied the appeal filed by the Provincial Defender on behalf of the authors. The court, presided over by a single judge, considered that, in application of articles 1, 2 and 21 of Act No. 13.014, the Provincial Defender does not have standing to represent the authors in the Province of Santa Fe. It further considered that “persons seeking recognition as private criminal plaintiffs must be provided with legal representation at government expense if they lack the financial resources needed to pursue a criminal trial, [...] but it is not the responsibility of the Provincial Public Criminal Defence Service to provide such representation”.⁴ The authors contend that they turned to the Provincial Defender’s Office because it is the only independent body with legal capacity to represent them in Santa Fe. They add that the Appeal Court and the other judicial authorities have not specified which body would, in fact, be the appropriate forum to give them effective access to justice. They consider that the Court’s interpretation is inconsistent with international standards and the legal representation services offered by the federal public defender system. The authors also consider that the Court’s interpretation impedes their access to justice and precludes the proper investigation of the disappearance and death of their brother.

7.4 The authors submit that, in more than a year and a half, they have lodged three appeals and one motion for reconsideration for denial of appeal concerning the application of Mr. Yrusta’s relatives to appear as plaintiffs, which was resolved in the negative. They consider that the remedies that are available to them are not effective and that the corresponding proceedings have exceeded all reasonable time limits. They contend that they have been subjected to ongoing revictimization by those who should ensure that they have access to their rights.

7.5 The authors express surprise at the State party’s failure to address the issue of the torture inflicted on Mr. Yrusta and the question of his enforced disappearance for a number of days following his transfer from the Province of Córdoba to a different jurisdiction from that which had been agreed upon with his family. The authors point out that the State party has also failed to address these facts in the context of the present communication and that it has violated article 17 of the Convention.

7.6 The authors further consider that the steps taken to gather evidence in the proceedings relating to the death of their brother were aimed at confirming the version of events given by the prison administration and that the authorities in charge of the investigation are deliberately delaying the investigation into the facts of the case. For instance, witness statements were taken from the personnel on duty on the night of the death, who are those likely to have been involved in the death of Mr. Yrusta, but no medical examination was performed to record the injuries sustained elsewhere on the body,

⁴ Case file No. 279, 2014, “Yrusta, Roberto Agustín (his death) re/Appeal”, Santa Fe, 14 November 2014, p. 2.

which showed that he had again been beaten and tortured while in custody in the Province of Santa Fe. Similarly, the authors consider that the investigations requested by them on 8 March 2013 and 8 October 2013 have never been undertaken. They refer in particular to requests relating to a second autopsy on their brother's body; handwriting tests; the seizure of the prison logbooks covering the days leading up to and including the day of his death; an examination of the objects found in the anus and stomach of Mr. Yrusta; and the seizure of his medical file and entry and exit logs of the prison staff of the Coronda Prison Facility No. 1 in the Province of Santa Fe.

7.7 The authors also claim that they continue to be denied the opportunity to participate in the investigative proceedings, which constitutes a violation of their right to justice and truth. They consider that the federal government could take a proactive role in the proceedings and refer the investigation to the Office of the Special Prosecutor for Institutional Violence (PROCUVIN) in view of the complex nature of the case, which involves events occurring in different provinces with different jurisdictions. However, the proceedings remain before the Santa Fe provincial courts, while the complaints of torture filed previously remain in the Córdoba provincial courts, with no real progress being made in either case.

7.8 Furthermore, Santa Fe legislation establishes a procedure for the closure of cases that can be reviewed only following specific requests to that effect by private criminal plaintiffs. The authors state that, because they have been denied standing as private criminal plaintiffs since March 2013, they do not know whether the case has been closed on the grounds that the time limit prescribed by Provincial Act No. 13.004 has passed. The authors recall that, in accordance with the Brasilia Regulations Regarding Access to Justice for Vulnerable People and article 25 of the American Convention on Human Rights, "the persons must be offered the real possibility of filing a simple and prompt recourse. Any law or measure that obstructs or prevents persons from availing themselves of the recourse in question is a violation of the right of access to the courts ...".⁵ In the light of the foregoing, the authors request that the Committee declare the present communication admissible.

B. Committee's consideration of admissibility

8.1 On 6 February 2015, during its eighth session, the Committee considered the question of the admissibility of the communication.

8.2 As required under article 31 (2) (c) of the Convention, the Committee ascertained that the same matter was not being examined under another procedure of international investigation or settlement.

8.3 The Committee noted that the authors allege a violation of articles 1, 2, 3, 12 (1) and (2), 15, 17 (2) (c) and (d), 18, 20, 23 and 24 of the Convention on the basis of the facts presented in the communication, namely: (a) the alleged enforced disappearance of Mr. Yrusta in January 2013; (b) his transfer in January 2013 to a prison facility other than the one requested by him; (c) the acts of torture and inhuman and degrading treatment to which the authors claim Mr. Yrusta was subjected for three years of the years he was in prison; (d) the lack of information on the whereabouts of Mr. Yrusta when he was transferred to another prison facility without his family being informed; (e) the impossibility of communicating with Mr. Yrusta during a period of more than seven days until he was finally allowed to establish telephone contact with his family; (f) the inability of the authors and Mr. Yrusta's mother to gain access to a court that would reach a decision without delay

⁵ See Inter-American Court of Human Rights, the case of *Cantos v. Argentina*, judgment of 28 November 2002 (Merits, Reparations and Costs), para. 52.

as to the lawfulness of his situation; (g) the death of Mr. Yrusta in the prison facility to which he was transferred; (h) the investigation of the cause and circumstances of his death; and (i) the failure to recognize Estela Deolinda Yrusta and Alejandra del Valle Yrusta, Mr. Yrusta's sisters, as parties to the prosecution in the judicial and investigative proceedings undertaken in his case.

8.4 In accordance with article 31 (2) (b) of the Convention, the Committee proceeded to determine which of the violations cited by the authors fall within the scope of the Convention. In this regard, the Committee found that the authors' claims relating to the transfer of Mr. Yrusta without his consent, the acts of torture and inhuman and degrading treatment, his death and the investigation thereof do not fall within the competence *ratione materiae* of the Committee. However, the following claims presented by the authors in the present communication do fall within the Committee's competence: the alleged enforced disappearance of Mr. Yrusta for a period of more than seven days following his transfer from Córdoba to Santa Fe; the failure to provide information to his family about that transfer; the impossibility of communicating with Mr. Yrusta for a period of more than seven days; the impossibility of gaining access to a court that would reach a decision without delay as to the lawfulness of Mr. Yrusta's situation following his prison transfer; the inability of the authors to take an active part in the investigation into their brother's case, including his enforced disappearance, because they have been refused legal standing as private criminal plaintiffs; and the absence of any investigation into that enforced disappearance.

8.5 The Committee recalled that, in accordance with article 31 (2) (d) of the Convention, a communication must be declared inadmissible when all effective available remedies have not been exhausted, unless the application of the remedies has been unreasonably prolonged. The Committee noted that, according to the State party, the judicial investigation into the cause of the death of Mr. Yrusta is currently before the Sixth Bench of the Santa Fe Criminal Investigation Court and that the proceedings are ongoing. However, it noted that the State party failed to make any reference to the investigation into the alleged enforced disappearance of Mr. Yrusta in its observations or its reply to the Committee's specific questions on this point. Nor did it provide information on the effective domestic remedies available to the authors in this regard. The Committee considered that an investigation of the circumstances surrounding the death of the authors' brother, which occurred when the authors knew his whereabouts in Coronda prison and had already spoken to him by telephone, is not a remedy that can provide redress for a violation of the right not to be subjected to enforced disappearance.

8.6 The Committee took note of the authors' allegations that, during the period of over seven days during which they claim Mr. Yrusta was disappeared, his family repeatedly asked the prison services for information regarding his whereabouts but received no reply. It also noted that, according to the authors, no remedy was available during this period to allow Mr. Yrusta's family to gain access to a court that would reach a decision without delay as to the lawfulness of his situation when he was transferred from a prison in Córdoba to one in Santa Fe. The Committee noted that the State party had provided no information on the remedies available in such circumstances.

8.7 The Committee further noted that more than one and a half years had elapsed between 26 February 2013, when the authors submitted their first request to join the proceedings as plaintiffs, and the decision of the Appeal Court to deny the appeal lodged in that connection. The State party failed to provide convincing arguments to justify the delay in reaching that decision. The State party also failed to provide any information on the State organ that would have competence to represent the authors⁶ or on the progress made in the

⁶ Case file No. 279 (see footnote 4 above), para. 7.3.

investigation of the alleged enforced disappearance of Mr. Yrusta for more than seven days. In the meantime, the authors were denied standing as private criminal plaintiffs, which prevented them from taking part in the judicial and investigative proceedings relating to their brother's case and from giving effect to the available domestic remedies, including by ensuring that his alleged enforced disappearance was properly investigated. Lastly, the Committee noted that the State party failed to provide any information on the remedies available to the authors in relation to the investigation of the enforced disappearance of Mr. Yrusta or to indicate whether his case had been closed pursuant to Santa Fe Provincial Act No. 13.004.

8.8 The Committee therefore considered that the domestic remedies in respect of the authors' request to be granted standing as parties to the prosecution had been unreasonably prolonged and that no other remedies had been available to them.

8.9 As no other obstacles to the admissibility of the communication existed, the Committee considered those portions of the communication to be admissible that raise issues under articles 1, 2, 12 (1) and (2), 17, 18, 20 and 24 of the Convention in relation to: the alleged enforced disappearance of Roberto Agustín Yrusta for a period of over seven days following his transfer from Córdoba to Santa Fe; the failure to provide information to his family regarding that transfer; the impossibility of communicating with Mr. Yrusta for a period of over seven days; the impossibility of gaining access to a court that would reach a decision without delay as to the lawfulness of Mr. Yrusta's situation following his transfer from one prison to another; the inability of the authors to take an active part in the investigation of their brother's case, including his enforced disappearance, because they have been refused legal standing as private criminal plaintiffs; and the lack of any investigation into that enforced disappearance. The Committee then proceeded to invite the State party to submit its observations on the merit of the authors' claims.

8.10 The Committee notes that it has received no such information despite the fact that it has granted the State party five extensions for that purpose.⁷

C. Additional comments by the authors

9.1 On 20 July 2015, the authors submitted additional comments. They state that nothing has changed since the Committee decided on the communication's admissibility and they continue to be unable to have an investigation opened into the enforced disappearance of Mr. Yrusta. They also report that, on the strength of the Committee's finding of admissibility, they petitioned the provincial court to decline jurisdiction so that the events in question could be investigated by a federal court. Their petition for a refusal of jurisdiction was denied by the provincial court judge, however, and their appeal against that decision has been pending for three months. The authors claim that no progress has been made in the investigation into the events that prompted them to submit the communication.

⁷ On 16 February 2015, the State party was invited to submit its observations on the merit of the communication by 16 June 2015 at the latest. On 17 June, 14 September, 21 September, 24 November and 18 December 2015, the State party requested extensions of the deadline for submission of its observations. The Committee granted the requested extensions. On 1 December 2015, a further extension was granted, at which time the State party was invited to submit its observations before 18 December 2015. At that time, the Committee indicated that if it did not receive such information, it would proceed to consider the communication on the basis of the documentation that it already possessed. On 18 December, the State party requested another extension. On 28 December, the State party was informed that, as indicated in the Committee's note of 1 December 2015, the communication would be included in the programme of the next session of the Committee for its consideration.

9.2 On 11 November, the authors asked the Committee for information on the procedural status of their communication and emphasized that nothing had changed since the time that they had submitted their latest comments.

D. Committee's consideration of the merits

10.1 The Committee has considered the complaint in the light of all the information made available to it by the parties. Since the State party has not submitted any observations on the merits of the communication, due weight must be given to the authors' claims insofar as they have been substantiated.

10.2 Before proceeding to examine the authors' claims as they relate to the articles of the Convention which they have invoked, the Committee must determine whether the acts to which Mr. Yrusta was subject constitute an enforced disappearance within the meaning of article 2 of the Convention. The Committee takes note of the authors' claims that Mr. Yrusta was disappeared when he was being transferred from Córdoba to Santa Fe because neither he nor his family knew where he was being transferred and, for over seven days, his family members had no access to information concerning his whereabouts despite their repeated requests for information from the prison authorities. The Committee also notes that the prison registers to which the family members and the representative of Mr. Yrusta had access did not identify Mr. Yrusta correctly but instead gave three different names for him, which prevented the location of Mr. Yrusta during the different phases of his detention from being determined. Nor do the registers contain information regarding the authority who ordered his transfer, the reasons for it, the day or time of his transfer or the place to which he was transferred. The Committee observes that the State party has not provided any explanations on this point to the authors or the Committee.

10.3 The Committee recalls that, according to article 2 of the Convention, an enforced disappearance commences upon the arrest, detention, abduction or any other form of deprivation of liberty. Therefore, an enforced disappearance may be initiated by an illegal detention or by an initially legal arrest or detention,⁸ as in the present case on the occasion of a transfer. The Committee further recalls that, in order to constitute an enforced disappearance, the deprivation of liberty must be followed by a refusal to acknowledge such deprivation of liberty or by concealment of the fate or whereabouts of the disappeared person, which places such a person outside the protection of the law, regardless of the duration of the said deprivation of liberty or concealment.⁹

10.4 In the present case, the Committee considers that the prison authorities' failure to respond to Mr. Yrusta's family members' requests for information as to his whereabouts and the lack of information about what happened during the period of more than days for which Mr. Yrusta's whereabouts remained unknown constitute a concealment of his fate or whereabouts. The Committee considers that the lack of information or the refusal to acknowledge a deprivation of liberty constitute a form of concealment for the effects of article 2 of the Convention. In addition, throughout that time period, Mr. Yrusta was unable to communicate with anyone or to receive visits, and neither he nor his family had access to a court that would reach a decision without delay as to the lawfulness of Mr. Yrusta's situation when he was transferred from the prison where he had been held. The Committee considers that the placement of a person outside the protection of the law is the consequence of the concealment of the arrested or detained person's whereabouts. In such instances, detained persons are placed outside the protection of the law when, as a result of

⁸ See the general comment of the Working Group on Enforced or Involuntary Disappearances on the definition of enforced disappearances (A/HRC/7/2, para. 26), para. 7.

⁹ *Ibid.*, paras. 8 and 9.

the disappearance, they are prevented from availing themselves of the remedies which the laws of the State party place at their disposal¹⁰ in order to ensure that a court can reach a decision as to the lawfulness of their deprivation of liberty, as occurred in this case. In the light of the foregoing, the Committee concludes that the acts to which Mr. Yrusta was subject over the period of more than seven days following his transfer to Santa Fe constitute an enforced disappearance, in violation of articles 1 and 2 of the Convention.

10.5 As for the authors' claims under articles 17 and 18 of the Convention, the Committee recalls that, at the time of the events that gave rise to the present communication, Mr. Yrusta was serving a custodial sentence. In such a situation, the Committee emphasizes that States parties are in a special position to safeguard the rights of persons deprived of their liberty owing to the extent of the control that they exercise over such persons.¹¹ States parties are therefore under a special obligation to safeguard rights established in the Convention of persons deprived of their liberty and to take effective measures to ensure, inter alia, that the deprivation of liberty will not at any time become secret detention or an enforced disappearance. In this respect, the Committee notes that, according to the authors, Mr. Yrusta was transferred to Santa Fe, while under the impression that he was being transferred to Santiago del Estero Province, as he had requested, in order to be nearer to his family. The Committee notes that no agent of the State party provided any information whatsoever to the representatives or family members of Mr. Yrusta, or to himself, regarding his transfer. It further notes that Mr. Yrusta was held in isolation and was unable to communicate with anyone for more than seven days. The Committee recalls that, pursuant to article 17 of the Convention, "no one shall be held in secret detention" and that States parties are under an obligation to ensure that the relevant information concerning a person's deprivation of liberty and his or her detention is available in detailed, accessible registers. Furthermore, pursuant to article 18 of the Convention, States parties shall "guarantee to any person with a legitimate interest [...], such as relatives of the person deprived of liberty, their representative or their counsel, access to at least the following information: [...] The whereabouts of the person deprived of liberty, including, in the event of a transfer to another place of deprivation of liberty, the destination and the authority responsible for the transfer".

10.6 The Committee notes that Mr. Yrusta's family members did not receive any information about his whereabouts and were not even told that he had been transferred to another prison. Although the right of family members to obtain information about a person's arrest and place of detention may be restricted, such restriction is subject to very strict conditions as set out in article 20 (1) of the Convention, which, judging from the available information, do not apply in the present case. In this respect, the Committee notes that the State party has not made any allegation, nor has provided any explanation regarding the status of its national legislation on such restrictions. In view of the foregoing, the Committee considers that the fact that Mr. Yrusta and his family, including the authors, were deprived of information for a period of over seven days constitutes in and of itself a violation of articles 17 (1), 18 and 20 (1) of the Convention.

10.7 Similarly, the Committee recalls that, pursuant to article 20 (2) of the Convention: "Without prejudice to consideration of the lawfulness of the deprivation of a person's liberty, States Parties shall guarantee to the persons referred to in article 18, paragraph 1, the right to a prompt and effective judicial remedy as a means of obtaining without delay the information referred to in article 18, paragraph 1. This right to a remedy may not be suspended or restricted in any circumstances." In the light of the information contained in the case file and in the absence of observations from the State party in this respect, the

¹⁰ See article II of the Inter-American Convention on Forced Disappearance of Persons.

¹¹ See Committee against Torture, communication No. 456/2011, *Guerrero Larez v. Bolivarian Republic of Venezuela*, decision adopted on 15 May 2015, paragraph 6.4.

Committee considers that the State party failed to fulfil its obligations under article 20 (2) of the Convention.

10.8 With regard to the authors' claims that they have not been able to play an active part in the investigation of their brother's case, including his enforced disappearance, because they have been refused legal standing as private criminal plaintiffs, the Committee recalls that, in accordance with article 24 of the Convention, the term "victim" is understood to mean the disappeared person and any individual who has suffered harm as the direct result of an enforced disappearance. The Committee notes that the State party has not advanced any arguments that would lead to the conclusion that Mr. Yrusta's sisters do not fall into that category. Moreover, the Committee considers that the anguish and suffering experienced by the authors owing to the lack of information that would allow clarification of what happened to their brother have been exacerbated by the de facto failure to acknowledge their status as victims, which thus becomes a cause of revictimization that is incompatible with the principles enshrined in the Convention.

10.9 The Committee also notes that, according to the information before it, the investigations that have been opened into the case of Mr. Yrusta have been based on the causes and circumstances of his death and the criminal liability that might arise therefrom. Meanwhile, his alleged disappearance during a period of over seven days is not referred to in any of the files made available in connection with the present communication. Pursuant to article 12 (1) of the Convention: "Each State Party shall ensure that any individual who alleges that a person has been subjected to enforced disappearance has the right to report the facts to the competent authorities, which shall examine the allegation promptly and impartially and, where necessary, undertake without delay a thorough and impartial investigation." In the same vein, article 24 of the Convention stipulates that: "1. For the purposes of this Convention, "victim" means the disappeared person and any individual who has suffered harm as the direct result of an enforced disappearance. 2. Each victim has the right to know the truth regarding the circumstances of the enforced disappearance, the progress and results of the investigation and the fate of the disappeared person. Each State Party shall take appropriate measures in this regard. 3. Each State Party shall take all appropriate measures to search for, locate and release disappeared persons and, in the event of death, to locate, respect and return their remains." The Committee considers that, in the present case, the mere fact that it took over a year for a decision to be issued regarding the right of Mr. Yrusta's family members to take part in the investigative proceedings entails, in and of itself, a violation of articles 12 (1) and 24 (1), (2) and (3) of the Convention. After such a long period has passed, the possibility of playing an active and effective part in the proceedings is lessened to such an extent that the impairment of the right in question becomes irreversible, in violation of the victims' right to know the truth. In the absence of a satisfactory explanation from the State party, the Committee considers that the facts before it disclose a violation of articles 12 (1) and 24 (1), (2) and (3) of the Convention.

E. Conclusion and recommendations

11. The Committee, acting under article 31 (5) of the Convention, finds that the facts before it reveal a violation of articles 1, 2, 12 (1), 17, 18, 20 and 24 (1), (2) and (3), of the Convention in relation to Mr. Yrusta; and of articles 12 (1), 18, 20 and 24 (1), (2) and (3), in relation to the authors.

12. In accordance with article 31 (5) of the Convention, the Committee urges the State party to:

(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;

(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;

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

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

(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.

13. The State party is further urged to 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.

14. The Committee hereby requests the State party to provide it with information, within six months of the date of transmission of these Views, on the action that it has taken to implement all previous recommendations.
