



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

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## Meeting of the States Parties to the International Convention for the Protection of All Persons from Enforced Disappearance

### Summary record of the 1st meeting

Held at Headquarters, New York, on Tuesday, 31 May 2011, at 10 a.m.

*Temporary Chairperson:* Mr. Radcliffe ..... (Representative of the Secretary-General)  
*Chairperson:* Mr. Argüello ..... (Argentina)

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*The meeting was called to order at 10.15 a.m.*

### **Opening of the Meeting by the representative of the Secretary-General**

1. **The Temporary Chairperson**, speaking on behalf of the Secretary-General, said that the First Meeting of States parties to the International Convention for the Protection of All Persons from Enforced Disappearance would be electing the first members of the Committee on Enforced Disappearances, the body established to monitor compliance with the Convention.

2. The relatives of persons who had disappeared deserved tribute. In their determination to expose the truth and obtain a measure of justice, many had been harassed by the authorities in their countries, and even risked disappearance themselves. Their tenacity had contributed directly to the elaboration of the Convention, which had entered into force on 23 December 2010.

3. Enforced disappearances had been used as a tool of political repression throughout time, to varying degrees, in all regions, often falsely justified in the name of “stability”, or, more recently, “counter-terrorism”. Enforced disappearances were also the result of isolated criminal acts fostered by a climate of corruption and impunity. It was estimated that millions of people had been direct victims of enforced disappearance, and many more, notably relatives of victims, still suffered the consequences. The Convention was a much-needed instrument and the Committee’s monitoring role would be of crucial importance to victims and their families.

4. By adopting the Convention in the General Assembly four years ago, the international community had unanimously recognized, for the first time, the need to guarantee individuals the non-derogable right not to be subject to enforced disappearance. The Convention addressed impunity by requiring States parties to criminalize the practice and also defined enforced disappearance as a crime against humanity when practised in a widespread and systematic manner. Preventive measures in the Convention included a requirement for States to establish stringent safeguards regarding detention and the prohibition of secret detention. The Convention’s landmark article 24 guaranteed the right to truth and established that enforced disappearances created many more victims in

addition to the person deprived of his or her liberty, including relatives and any other person who suffered harm as a direct result of an enforced disappearance.

5. Given that locating a victim of enforced disappearance was a time-sensitive matter that could not await the exhaustion of domestic remedies, the Committee had a unique humanitarian mandate allowing it to ask authorities to search for victims upon the request of a victim’s relative. The Committee was also entitled to receive and consider individual complaints and had the extraordinary power to bring the widespread and systematic practice of enforced disappearance to the attention of the General Assembly. He encouraged future members of the Committee to apply a gender perspective in exercise of their mandate, recognizing that women, both as victims of disappearance and as relatives of victims, stood at the forefront of the fight against that crime.

6. The Convention called on the Committee to cooperate with other relevant organs working to protect all persons against enforced disappearance. In that regard, he noted that the Committee’s roles and functions complemented those of the Working Group on Enforced or Involuntary Disappearances, the first United Nations human rights special procedure, which had more than 30 years of experience on the issue. Cooperation between the two bodies to maximize efficiency and avoid duplication would increase the scope of protection and determine the extent to which the rights of victims of enforced disappearance would be realized. He looked forward to welcoming the members of the Committee for their first session, to be held in Geneva in early November.

### **Election of the Chairperson**

7. **The Temporary Chairperson** recalled that, following informal consultations, the Group of Latin American and Caribbean States had nominated Mr. Argüello, the Permanent Representative of Argentina to the United Nations, for the post of Chairperson of the First Meeting of States parties to the Convention.

8. *Mr. Argüello (Argentina) was elected Chairperson of the Meeting by acclamation.*

9. *Mr. Argüello took the Chair.*

**Adoption of the agenda (CED/SP/1/1)**

10. *The agenda was adopted.*

**Adoption of the rules of procedure for the Meeting (CED/SP/1/L.1)**

11. **The Chairperson** drew attention to draft rules 16 and 17 of the provisional rules of procedure of the meetings of the States parties to the Convention submitted by the Secretary-General, contained in document CED/SP/1/L.1, which established Arabic, English, French, Russian and Spanish as the official and the working languages of the Meeting. He proposed adoption of the text of the draft rules as a whole, on the understanding that, in accordance with rule 20, any procedural matter not covered by the rules would be dealt with by the Chairperson in light of the relevant rules of procedure of the General Assembly.

12. *It was so decided.*

13. **The Chairperson**, drawing attention to rules 2 and 3 of the rules of procedure, noted that the Secretary-General had yet to receive proper credentials for some of the States parties represented at the Meeting. He urged those States parties to submit the credentials of their representatives as soon as possible, and proposed that, in accordance with rule 3, such representatives should be entitled provisionally to participate in the Meeting.

14. *It was so decided.*

**Election of other officers of the Meeting**

15. **The Chairperson** said that, in accordance with rule 4 of the rules of procedure, the Meeting would elect one to four Vice-Chairpersons. He had been informed that the Group of Asian States had nominated Mr. Hamid Al Bayati (Iraq), the Group of Eastern European States had nominated Ms. Admira Jorgji (Albania) and the Group of Western European and Other States had nominated Ms. Béatrice Le Fraper du Hellen (France).

16. *Mr. Al Bayati (Iraq), Ms. Jorgji (Albania) and Ms. Le Fraper du Hellen (France) were elected Vice-Chairpersons.*

**Establishment of the Committee on Enforced Disappearances (CED/SP/1/2 and Add.1)****(a) Election of the members of the Committee under article 26 of the International Convention for the Protection of All Persons from Enforced Disappearance**

17. **The Chairperson**, drawing attention to paragraphs 1 and 2 of article 26 of the Convention, recalled that in accordance with article 26, 10 Committee members were to be elected by secret ballot for a term of four years from a list of persons nominated by States parties. That list was contained in documents CED/SP/1/2 and Add.1. Mali had also submitted a candidature by a Note Verbale.

18. He invited representatives to elect the members of the Committee, taking into account the relevant provisions of the Convention and rules of procedure of the Meeting.

19. *At the invitation of the Chairperson, Ms. Kocharyan (Armenia), Mr. Viktorov (Kazakhstan) and Mr. Mijnarends (Netherlands) acted as tellers.*

*The meeting was suspended at 10.40 a.m. and resumed at 11.15 a.m.*

20. *A vote was taken by secret ballot.*

*Number of ballot papers:* 25

*Number of valid ballots:* 25

*Number of representatives voting:* 25

*Required majority:* 13

*Number of votes obtained:*

Mr. Garcé García y Santos (Uruguay)	25
Mr. Yakushiji (Japan)	24
Mr. Decaux (France)	23
Ms. Janina (Albania)	23
Mr. López Ortega (Spain)	23
Mr. Hazan (Argentina)	22
Mr. Huhle (Germany)	22
Mr. Camara (Senegal)	21
Mr. Mulembe (Zambia)	20
Mr. Al-Obaidi (Iraq)	19
Mr. Dembele (Mali)	10

21. *Having obtained the required majority, Mr. Al-Obaidi (Iraq), Mr. Camara (Senegal), Mr. Decaux (France), Mr. Garcé García y Santos (Uruguay), Mr. Hazan (Argentina), Mr. Huhle (Germany), Ms. Janina (Albania), Mr. López Ortega (Spain), Mr. Mulembe (Zambia) and Mr. Yakushiji*

(Japan) were elected members of the Committee on Enforced Disappearances.

**(b) Choice by lot by the Chairperson of the Meeting of the five members of the Committee whose terms shall expire at the end of two years, as provided in article 26, paragraph 4, of the Convention**

22. **The Chairperson**, having drawn names by lot, announced that the five members of the Committee whose terms would expire after two years were Mr. Al-Obaidi (Iraq), Mr. Hazan (Argentina), Mr. López Ortega (Spain), Mr. Mulembe (Zambia) and Mr. Yakushiji (Japan).

**(c) Confirmation of the date on which the members of the Committee are to assume office**

23. **The Chairperson** proposed that, in accordance with the practice of elections to other human rights treaty bodies, the term of office of the members of the Committee should begin on 1 July 2011.

24. *It was so decided.*

#### Other matters

25. **Ms. Le Fraper du Hellen** (France), said that the Permanent Mission of France, together with the Permanent Mission of Argentina and the United Nations Office of the High Commissioner for Human Rights had organized a panel on the topic of ending impunity and preventing new victims under the Convention. Several high-level experts had agreed to participate and all Member States and members of the United Nations Secretariat and civil society had been invited. She proposed that the panel should be included under the agenda item “Other matters”.

26. *It was so decided.*

*Panel discussion on the theme “International Convention for the Protection of All Persons from Enforced Disappearance: Ending impunity and preventing new victims”*

27. **Ms. Le Fraper du Hellen** (France) said that much remained to be done if the Convention was to become an effective universal instrument. The panel discussion provided an opportunity to examine how the Convention could help put an end to the impunity of

perpetrators of enforced disappearances and prevent such crimes from recurring.

28. **Ms. Carlotto** (Abuelas de Plaza de Mayo (Association of Grandmothers of Plaza de Mayo)) said that, having systematically undergone the most execrable human rights violations under military dictatorships, many Latin American countries, including Argentina, had joined forces to save the lives of disappeared persons. The Abuelas de Plaza de Mayo (Association of Grandmothers of Plaza de Mayo) was a founding member of the Federación Latinoamericana de Asociaciones de Familiares de Detenidos Desaparecidos (Latin American Federation of Associations of Relatives of Disappeared Detainees) (FEDEFAM), which had been established in 1981 as a non-governmental organization to function independently of all political and religious affiliations and inspired by the profound democratic conviction of the peoples of Latin America.

29. After coming to the painful conclusion that impunity was a basic characteristic of enforced disappearances, the relatives of victims had approached international authorities with the objective of creating an appropriate international instrument, based on the understanding that the crime constituted a violation of basic rights, including the right to security, the right to integrity, the right to recognition before the law, the right to freedom, the right not to be subjected to torture or cruel, inhuman or degrading treatment, and, in the case of the death of a victim, the right not to be subjected to arbitrary deprivation of life. Those efforts had led to general condemnation of the practice at the international level in the 1980s, notably by the Organization of American States and the Council of Europe, as well as to a call for accountability in particular cases.

30. In 1981, in the same year that the Working Group on Enforced or Involuntary Disappearances had been established, an international instrument had first been proposed at an international colloquium hosted by the French Government, in which Julio Cortázar and representatives of Argentine and other Latin American organizations had participated. Subsequent drafts had been developed, culminating in the adoption of the United Nations Declaration on the Protection of All Persons from Enforced Disappearance in 1992. Those initiatives, however, while important, had not been enough. Past cases of enforced disappearance remained unresolved and, in the absence of State initiatives to

take the necessary prevention, protection and control measures, the practice of enforced disappearance continued in Latin America and all over the world. Legal and de facto impunity for the practice was clearly one of the major factors enabling its continued existence, representing a violation of many of the rights recognized by the United Nations system, including the right to effective remedy, the right to the truth and the right to timely, impartial and independent justice.

31. An international convention was the only means by which States could be obligated to criminalize enforced disappearance in their national legislation, establish effective mechanisms for intervention and investigation, prosecute and punish perpetrators, and refuse asylum and refuge to perpetrators, among other preventive measures.

32. Despite many setbacks and delays, the members of FEDEFAM had not lost hope, and had eventually begun to see their efforts take effect — from the draft international convention (the product of years of effort and consultations with United Nations experts such as Louis Joinet) adopted by the Subcommission for the Promotion and Protection of Human Rights of the United Nations Commission on Human Rights in 1998 to the Commission appointment in 2001 of an independent expert to examine the existing human rights legal framework in order to identify gaps in ensuring full protection against forced disappearances; to the establishment of an intersessional open-ended working group to elaborate a draft legally binding instrument on the issue. FEDEFAM and other non-governmental organizations had participated in that Working Group, led by the former French Ambassador Bernard Kessedjian, which had met for three years to elaborate the International Convention for the Protection of All Persons from Enforced Disappearance, approved unanimously by the Human Rights Council and the General Assembly in 2006.

33. She wished to highlight the kidnapping of children born to parents under detention, a practice that was in violation of basic principles of humanity. In Argentina, hundreds of children had been systematically taken from their parents and their identities erased. The Grandmothers of Plaza de Mayo considered those youth, now in their thirties, to be “the living disappeared” and continued to search for them. Although 104 had now been found, hundreds remained missing.

34. The entry into force of the Convention and its ratification by 26 countries thus far was cause for celebration. The new international instrument would ensure full protection against enforced disappearances and was the first convention to establish the requisite State obligations, thus promoting peace and sounding the cry “never again”.

35. **Mr. Díaz** (Amnesty International) said that the entry into force of the Convention and the election of the members of the Committee that would monitor its implementation were exciting steps. Amnesty International intended to work towards the ratification of the Convention by as many States as possible. Noting with concern that only nine States parties had declared, under article 31 of the Convention, that they recognized the competence of the Committee to receive and consider communications filed against them by individuals and only 10 had declared, under article 32, that they recognized the competence of the Committee to receive and consider communications filed against them by other States parties, he called on all States parties to make such declarations under both articles. States ratifying or acceding to the Convention were also urged not to make any reservations or interpretative declarations that could defeat the object and purpose of the treaty. While the Convention did not contain a general prohibition of reservations, States should not feel free to restrict or limit their obligations under the treaty.

36. Amnesty International would explore how the universal periodic review of the Human Rights Council could be used to encourage States to ratify and implement the Convention. It would also promote the effective implementation of the Convention through a checklist it had developed, urging States parties to criminalize acts of enforced disappearance and hold perpetrators criminally responsible; enact legislation providing that enforced disappearances could not be justified by an order from a public authority; establish the absolute non-applicability of the statute of limitations with regard to random or isolated acts of enforced disappearances, irrespective of the provisions of article 8 of the Convention; establish States parties’ competence to exercise jurisdiction over the offence of enforced disappearance perpetrated by their nationals or those present in their territory, as set out in article 9; enact legislation vesting national courts with universal jurisdiction over enforced disappearances; enact legislation providing for reparations to victims and

their relatives; eliminate all obstacles to extradition and mutual legal assistance between States; prohibit secret detentions; and provide for full cooperation with the Committee and ensure that it received sufficient resources.

37. **Ms. Reidy** (Human Rights Watch/International Coalition against Enforced Disappearances) said that the phenomenon of enforced disappearances was not merely one of historical significance but continued to affect thousands of people around the globe. The Human Rights Watch *World Report 2011* documented disappearances that had taken place in China, in the Middle East during the democratic uprisings, and in conflict areas such as Sri Lanka and Chechnya.

38. Noting that the process of ratification had been very slow, she asked those States that had ratified the Convention and those that had signed the declarations recognizing the competence of the Committee under article 31 to show regional and international leadership by encouraging other signatories to ratify the Convention.

39. The crime of enforced disappearances was unacceptable in any circumstances. It was in violation of many of the international human rights treaties by which States were already bound, and the International Criminal Court had the jurisdiction to prosecute it. The Coalition would work with Governments to identify and help overcome any barriers to ratification that might be posed by the Amnesty International checklist for implementing the Convention.

40. **Mr. Young** (Observer for the International Committee of the Red Cross (ICRC)) said that the issue of enforced disappearance was of vital humanitarian concern. It was directly related to the humanitarian work of the International Committee of the Red Cross in situations of armed conflict and violence, and to international humanitarian law. ICRC had engaged in efforts around the world both to prevent people from going missing during armed conflicts and help provide answers with respect to those people who had gone missing. The preventive work of ICRC included reminding parties to armed conflict of their obligations to the civilian population; conducting visits to places of detention (where possible, early enough to prevent enforced disappearances); and proposing various humanitarian activities, including, in recent decades, on the issue of the missing and enforced disappearances.

41. Regardless of nationality, language or culture, the need to know what had happened to a loved one was a universal human need. The hardest part of his work was meeting the relatives of missing persons, who often lived in fear that the public authorities in their countries had been responsible for the disappearances or were not doing enough to help. Welcoming the fact that the rules and protections against enforced disappearance were becoming universal in response to that need, he cited the *Customary International Humanitarian Law* study conducted by the International Committee of the Red Cross, which included customary rule 98, prohibiting enforced disappearances, and customary rule 117, setting out the obligations of States with respect to missing persons in both international and non-international armed conflicts. The Convention added more detail to those core customary rules.

42. The International Committee of the Red Cross joined in calling on States to accede to the Convention and move forward with its implementation, which included taking the necessary legislative steps to criminalize enforced disappearances and the non-legislative measures to empower public authorities to prevent enforced disappearances. The International Committee of the Red Cross publication entitled *Guiding principles/Model Law on the Missing* could be used by States seeking to meet their obligations under the Convention, and the ICRC network of legal experts provided free and confidential legal advice on ratifying and implementing treaties. Legal resources and tools were also available on the ICRC website.

43. **Ms. Peyro** (Spain) said that her country had made the necessary changes to its criminal code prior to ratifying the Convention and abided by a number of instruments to assist the victims of enforced disappearances. In addition, the historical memory law adopted in 2007 placed a special emphasis on reparations to the victims of the Spanish Civil War and Franco's dictatorship. Direct descendants of those victims had access to information on investigations carried out to establish individual identities, including through exhumations and the mapping of mass grave sites. A number of abduction cases had come to light, and genetic testing had been made available to victims. Since the crimes had been committed mostly by private and religious institutions, they did not conform to the definition of enforced disappearance set out in article 2 of the Convention. She wished to know what measures

could be taken in such cases and whether other countries were faced with similar problems.

44. **Mr. Kimura** (Japan) said that concrete actions were needed to meet the objectives of the Convention. He asked how the Working Group on Enforced or Involuntary Disappearances, which had been active in investigating cases that had occurred in the past, and the newly established Committee planned to coordinate their efforts.

45. **Mr. Tagle** (Chile) said that human rights education in schools, communities and in the military was important, particularly for countries where such violations had taken place in the past. Speaking from personal experience, he noted that public meetings on human rights issues had an impressive impact on communities. Education was fundamental in putting an end to violations and enabling countries to look to the future without becoming blocked by the past. He asked panellists to comment on the importance of education in the prevention of human rights violations.

46. **Ms. Carlotto** (Abuelas de Plaza de Mayo (Association of Grandmothers of Plaza de Mayo)) said that the creation of human rights organizations in Argentina had been a response to years of dictatorship. After the 1976 military coup, in a systematic campaign that could only be described as State terrorism, the regime had kidnapped children and even pregnant mothers who were subsequently killed after giving birth. The Abuelas were working with the current Government to discover what had happened to those children, or the “living disappeared”.

47. Something similar had happened in Spain on a much larger scale. Children who had been separated from their families during the Franco dictatorship in Spain would now be senior citizens. In some cases, bodies had been exhumed in order to identify lost grandparents.

48. In Latin America, organized crime networks stole babies and sold them abroad, sometimes with the complicity of the authorities. Children should not be forced to live in a country other than their own.

49. The Abuelas de Plaza de Mayo had been instrumental in having what were known as “the Argentine provisions” inserted into the Convention on the Rights of the Child. Articles 7, 8 and 11 of that Convention protected the right of children to preserve their identities and promoted the conclusion of bilateral

and multinational agreements to combat the illicit transfer of children out of their home countries.

50. **Mr. Díaz** (Amnesty International) said that there was a history of new bodies created by conventions working harmoniously with previously existing bodies. The Working Group on Enforced or Involuntary Disappearances was in a position to make an invaluable contribution to the work of the Committee on Enforced Disappearances; whereas the Committee was restricted to operating within the countries that signed the Convention, the Working Group was mandated to monitor the situation globally.

51. **Ms. Reidy** (Human Rights Watch/International Coalition against Enforced Disappearances) said that article 25 of the Convention, which called for the criminalization of the enforced disappearance of children and measures to search for and identify such children, echoed the Convention on the Rights of the Child in stating the general principle that the best interests of the child should be the primary consideration. On that basis, cases involving children that might technically not fall under the definition of enforced disappearances in article 2 would be treated no differently.

52. She noted that the Working Group on Enforced or Involuntary Disappearances had already issued a statement expressing its eagerness to work with the Committee, and that there was indeed good precedent for United Nations bodies cooperating productively with treaty bodies. Education and awareness-raising were of the utmost importance, because many people associated the phenomenon of enforced disappearance with World War II and defunct juntas, and did not realize that it still occurred in the present day. It was worrying that so many countries had not yet ratified the Convention.

53. **Mr. Young** (Observer for the International Committee of the Red Cross) said that it required courage on the part of a State to address a past history of enforced disappearances. It was important to depoliticize the process and maintain the focus on the victims and their families. Healing, justice, accountability and prevention required that States put into place a multifaceted, consultative and participatory approach that addressed humanitarian concerns, judicial and non-judicial measures, and political processes such as the negotiation of peace agreements.

54. **Ms. Tixeire** (Observer for the International Federation for Human Rights) said there had been instances of activists on behalf of victims of enforced disappearances being themselves “disappeared”, and many more cases of harassment. In Turkey, for example, some human rights defenders attempting to assist the families of disappeared persons were being charged with anti-State propaganda, and in Morocco, a demonstration by families of disappeared persons had been violently suppressed. She noted that the Convention’s guarantee of protection not only for victims of enforced disappearance but also for organizations and associations concerned with identifying and assisting them was a breakthrough provision and a new and important aspect of treaty law.

55. **Mr. Mynarends** (Netherlands) noted that the Rome Statute defined enforced disappearances as crimes against humanity, thereby establishing the jurisdiction of the International Criminal Court over such crimes. He would be interested in hearing panellists’ views on the potential complementarity between the International Criminal Court and the newly established Committee.

56. **Ms. Mosoti** (Observer for the International Criminal Court) said that one difference between the Rome Statute and the Convention was that the Rome Statute limited the jurisdiction of the International Criminal Court to crimes that were part of a widespread or systematic attack. While the Convention echoed the Rome Statute’s definition by using the phrase “widespread and systematic” in its article 5, it also broadened the scope by including the words “or any other form of deprivation of liberty” in its definition of enforced disappearance in article 2. That allowed for prosecution of instances of enforced disappearance that did not necessarily meet the Rome Statute’s criteria for crimes against humanity.

57. It was also important to note that the Convention would be applicable to all signatories, regardless of whether or not they were signatory to the Rome Statute. Historically, the International Criminal Court had handled very few cases involving enforced disappearances, the most notable being its recent and ongoing case involving the situation in the Libyan Arab Jamahiriya. There was a lot of room for complementarity between the Committee and the International Criminal Court.

58. **Ms. Carlotto** (Abuelas de Plaza de Mayo (Grandmothers of Plaza de Mayo)) said that her organization was contributing to democratic education in Argentina in order to ensure that the most recent dictatorship would be the last. Truth, justice and memory were its watchwords. While it was important to look towards the future, it was equally important to ensure that past perpetrators of enforced disappearances were brought to justice and that their crimes were not forgotten. It was essential for the State to continue to extend protection to witnesses. Even recently, there had been cases of witnesses disappearing after testifying, and much information about past disappearances remained to be uncovered.

59. **Ms. Kang Kyung-wha** (Deputy High Commissioner for Human Rights) said that as a representative of the United Nations Office of the High Commissioner for Human Rights, she could state with assurance that the Working Group on Enforced or Involuntary Disappearances would enthusiastically place its resources at the service of the Committee. A large number of the enforced disappearance cases taken up by the Working Group remained unresolved, and there was clearly a need for a new and stronger international mechanism.

60. By stating in no uncertain terms that “no one shall be subjected to enforced disappearance”, the International Convention for the Protection of All Persons from Enforced Disappearance established a non-derogable right that States could not violate under any pretext whatsoever. In addition, for the first time, the families of victims of enforced disappearance would be considered victims themselves. Among the steps taken by the Convention to combat impunity were the establishment of the obligation of States to prosecute or extradite perpetrators of enforced disappearances, rejection of obedience to orders as a defence for such crimes, and extension of the statute of limitations on such crimes for as long as possible.

61. The existence of the Convention by itself would not be enough to solve the problem in the absence of political will. States were typically reluctant to prosecute acts of enforced disappearance carried out by their own institutions. The Convention provided a solid framework for both national and international prosecution of the crime of enforced disappearance. It provided, for the first time in international human rights law, a clear formulation of the right to know the truth about the circumstances of the crime, and

provided for reparations not only in the form of pecuniary compensation, but also in the form of rehabilitation, social and legal services, tributes to memory, public apologies of the State and guarantees of non-repetition.

62. With its clear commitments to justice, truth and reparation, the Convention would become a powerful instrument against impunity. She congratulated the States that had already become party to the Convention, and urged all other States to follow their example.

63. **The Chairperson** declared closed the First Meeting of the States Parties to the International Convention for the Protection of All Persons from Enforced Disappearance.

*The meeting rose at 1.15 p.m.*