



# Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

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## Committee against Torture

### Decision adopted by the Committee under article 22 of the Convention, concerning communication No. 778/2016\*, \*\*

<i>Communication submitted by:</i>	Estela Deolinda Yrusta and Alejandra del Valle Yrusta (represented by the Provincial Public Defender of Santa Fe, Gabriel Ganon)
<i>Alleged victims:</i>	The complainants and their disappeared brother, Roberto Agustín Yrusta
<i>State party:</i>	Argentina
<i>Date of communication:</i>	10 November 2015 (initial submission)
<i>Date of adoption of Views:</i>	23 November 2018
<i>Subject matter:</i>	Torture and other cruel, inhuman or degrading treatment or punishment; lack of effective investigation and redress
<i>Procedural issues:</i>	Exhaustion of domestic remedies; competence <i>ratione materiae</i> ; examination of the same case by another international settlement procedure
<i>Substantive issues:</i>	Torture and other cruel, inhuman or degrading treatment or punishment; obligation of the State party to ensure that the competent authorities conduct a prompt and impartial investigation; right to file a complaint; right to redress
<i>Articles of the Convention:</i>	1, 2, 11, 12, 13 and 14

1.1 The complainants 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 complainants claim to be victims of violations by the State party of articles 2, 6, 11, 12, 13 and 14 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. The complainants are represented by the Provincial Public Defender of Santa Fe, Gabriel Ganon.

1.2 Argentina declared that it recognized the competence of the Committee to receive and consider individual communications under article 22 of the Convention on 24 September 1986.

\* Adopted by the Committee at its sixty-fifth session (12 November–7 December 2018).

\*\* The following members of the Committee participated in the examination of the communication: Essadia Belmir, Felice Gaer, Abdelwahab Hani, Claude Heller Rouassant, Jens Modvig, Ana Racu, Diego Rodríguez-Pinzón, Sébastien Touzé, Bakhtiyar Tuzmukhamedov and Honghong Zhang.



### The facts as submitted by the complainants

2.1 In December 2005, Mr. Yrusta was sentenced to 8 years' imprisonment. He was deprived of his liberty in Bouwer Prison, in the Province of Córdoba, where he was subjected to torture and inhuman and degrading treatment by members of the Córdoba Prison Service. The ill-treatment included long periods in *buzones* (isolation or punishment cells), the use of the "dry submarine" treatment, involving suffocation using a plastic bag, beatings, threats, transfers and being shackled to a bed. The complainants assert that, after Mr. Yrusta complained publicly about these acts while being interviewed for a television programme, the ill-treatment and torture inflicted on him 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, in January 2013. The complainants 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, of where he was being taken. They consider that Mr. Yrusta agreed to his transfer in the belief that he was being moved to the Province of Santiago del Estero.

2.3 On his arrival at the Coronda Prison Facility, Mr. Yrusta was placed in *buzones* 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 complainants 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, and 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 he had committed suicide by hanging himself in his cell. According to the autopsy report by the Santa Fe Forensic Medicine Service, "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)".<sup>1</sup> The complainants report that, when Mr. Yrusta's body was handed over to his family, it 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 complainants mistrust the version transmitted by the authorities of the State party regarding the causes of Mr. Yrusta's death.

### The complaint

3.1 The complainants claim to be victims of violations by the State party of their rights under articles 2, 6, 11, 12, 13 and 14 of the Convention.

3.2 The complainants contend that the State party has breached its obligations under article 2 of the Convention by failing to adopt prompt measures to prevent the acts of torture committed against Mr. Yrusta. They submit that there is no record of the State party engaging in prevention activities or taking steps to protect their rights or those of Mr. Yrusta, and that their requests were ignored by the Argentine Prison Service. In addition, the lack of judicial oversight of transfers of persons deprived of their liberty between different prison facilities ended up being detrimental to Mr. Yrusta, who died as a result of a transfer carried out in retaliation for his public complaints.

3.3 The complainants consider that the State party has violated article 6 (2) of the Convention by failing to launch a formal and timely investigation into the allegations of torture made by Mr. Yrusta and by them.

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<sup>1</sup> Sixth Bench of the Criminal Investigation Court, Province of Santa Fe, case file No. 173-2013, pp. 62-64.

3.4 The complainants also claim that the State party has violated article 11 of the Convention, since it has not reviewed the arrangements for the custody and treatment of persons that made it possible for Mr. Yrusta to be disappeared following his complaints of torture. They further contend that the lack of effective judicial control over the rights and interests of persons deprived of their liberty makes it possible for transfers and other administrative measures or practices to be carried out in various provinces of the State party in a manner that escapes public scrutiny, as in Mr. Yrusta's case.

3.5 The complainants also consider that the State party has violated article 12 of the Convention, in that, once the allegations of torture made by Mr. Yrusta and by them were known, it did not launch, *ex officio*, the investigations required to guarantee the right to truth and the prosecution of those responsible. This claim is supported by the fact that the State party later disregarded Mr. Yrusta's autopsy report, which recommended that an investigation should be conducted into signs of torture and ill-treatment. These facts have still not been duly investigated.

3.6 The complainants also claim that the State party has violated article 13 of the Convention, since, despite their requests to the prison services, they did not have access to an effective remedy through which to channel their complaints. In other words, the victim was denied the opportunity to submit a complaint and, furthermore, there was no prospect of any complaints made being dealt with impartially by the State party's competent authorities.

3.7 Lastly, the complainants claim that the refusal to grant their request for standing as private criminal plaintiffs prevented them from gaining access to information relating to the judicial proceedings initiated following the death of Mr. Yrusta, in violation of article 14 of the Convention. The complainants further claim that the State party has violated their right to ascertain the truth regarding the torture and other ill-treatment that ultimately resulted in the death of Mr. Yrusta and has denied them the right to redress.

#### **State party's observations on admissibility and on the merits**

4.1 On 21 June 2017, the State party submitted its observations on the admissibility and merits of the communication to the Committee and requested that the complaint should be declared inadmissible under article 22 (5) (b) of the Convention or, in the event that it was declared admissible, that it should be rejected on the merits.

4.2 The State party recalls that, under the Convention, domestic remedies must have been exhausted in order for a complaint 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. 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.<sup>2</sup> Consequently, until the judiciary issues a ruling, it is impossible for either the State party or the Committee to determine whether Mr. Yrusta was indeed subjected to torture, so it would be premature for the Committee to adopt any kind of decision on the matter.

4.3 Regarding the allegations of torture of Mr. Yrusta relating to events that occurred in Reverend Father Lucchese Prison Complex No. 1, the State party attaches a report from the Córdoba Prison Service, which comes under the Ministry of Justice and Human Rights. The report contains no complaints or other claims from Mr. Yrusta concerning ill-treatment or torture of any kind. Moreover, it rejects the allegations that Mr. Yrusta was placed in *buzones*, or punishment cells, and that he was subjected to practices such as the dry submarine treatment, beatings, threats or other ill-treatment, and argues that Mr. Yrusta himself had asked to be placed in isolation because he was experiencing problems with

<sup>2</sup> The State party refers to the decision of the Human Rights Committee in *T.K. v. France* (CCPR/C/37/D/220/1987), para. 8.3.

other prisoners and that all such matters were brought to the attention of the competent judicial authorities.

4.4 The State party also provides a copy of the file in the case entitled *Yrusta, Roberto Agustín re/his death* (case file No. 173/13), which was referred to the Sixth Bench of the Santa Fe Criminal Investigation Court. In the context of this case, the State party notes that, on 26 February 2013, Mr. Yrusta's sisters submitted a request for standing as private criminal plaintiffs, which was rejected by a decision of 22 April 2013 on the grounds that "the legal representative lacked standing to bring an action in the capacity invoked". On 1 July 2013, the complainants filed a motion requesting the Santa Fe Criminal Court of Appeal to reconsider the decision of the Criminal Investigation Court. The motion was dismissed on 3 July 2013 on the grounds 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 so as to prevent the impairment of their right to seek and obtain justice (in this case, the right to have a punishment imposed), but it is not the responsibility of the Provincial Public Criminal Defence Service to provide such representation, and, furthermore, the task of doing so was not legally entrusted to the Service and is incompatible with the very essence of the Service's role". Subsequently, on 13 July 2013, the complainants filed a protest motion before the Santa Fe Criminal Court of Appeal. The motion was resolved on 27 December 2013 by Criminal Chamber No. 2 of the Court, which overturned the lower court's ruling on the grounds, mainly, that the argument concerning the legal representative's lack of standing to bring an action in the case did not imply that the prospective plaintiffs – in this case, the authors of the present complaint – had no right to bring an action. Pursuant to the Court's decision, on 13 March 2014, a hearing was held to consider the application for recognition as private criminal plaintiffs with the participation of the Provincial Public Defender and the public prosecutor involved in the investigation into the causes of Mr. Yrusta's death. On 17 March 2014, on the basis of the background material submitted at the hearing, the trial judge of the Sixth Bench of the Santa Fe Criminal Investigation Court of Judicial District No. 1 issued a new judgment rejecting the petition for recognition as a party to the prosecution filed by Ms. Estela Deolinda Yrusta because of the lack of standing of her legal representative Mr. Ganon, the Provincial Public Defender of Santa Fe. Among other arguments, the judgment noted that Mr. Ganon had not taken office at the time of Mr. Yrusta's death and that, even more importantly, it would be contrary to the role of the Public Defence Service to intervene in the case as a plaintiff, as the bodies responsible for providing representation are the legal aid centres for vulnerable victims who are unable to engage a lawyer because of their financial situation. There is no record of the authors submitting a request to one of these centres. On 30 March 2014, Mr. Ganon appealed the judgment, claiming, inter alia, that Mr. Yrusta's family were unable to engage a lawyer, that they lived in a different province, which meant that they would incur various travel and logistical costs, that the law establishing the powers of the Provincial Public Criminal Defence Service did not prevent the Service from representing, assisting and collaborating with the families of victims defended by the Public Defender Service, that the Public Legal Service was doing nothing to shed light on the case, leaving the victims defenceless, that what was at stake was the right of victims, in the broad sense of the word, to have access to justice, and that the possible intervention of lawyers from provincial legal aid centres would not provide guarantees of impartiality, since such lawyers belonged to the same administration as the officials accused of committing the offences of torture and ill-treatment against Mr. Yrusta. On 23 April 2014, the higher court overturned the ruling of the trial judge of 13 March 2014 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". The court further considered that the violation of the right to due process could have been resolved by a "court order", without necessarily having to reject the request from Mr. Yrusta's sisters for standing as private criminal plaintiffs in the case in question. For these reasons, an order was issued that revoked the appealed decision and stated that the trial judge should rule in accordance with the law. Accordingly, on 4 June 2014, the trial judge of the Seventh Bench issued a new decision, rejecting the request for standing as private criminal plaintiffs on the grounds that, under provincial law, legal standing is granted only to protected heirs. On 13 June 2014, the

Provincial Public Defender, Mr. Ganon, appealed the decision, arguing that a harmonious interpretation of Argentine legislation required that victims' rights should be interpreted in such a way as to protect the right to due process, and that the term "victim" should be defined broadly, in accordance with international human rights standards. On 12 November 2014, the higher court rejected the appeal on the basis of previous jurisprudence that prohibited the Provincial Public Criminal Defence Service from intervening as a plaintiff, but declared that there was a need to remedy the lack of legal representation of the plaintiffs, who had the right to bring an action. On 3 December 2014, Mr. Ganon submitted a constitutional complaint to the Court of Appeal, alleging that the rights of Mr. Yrusta's sisters to access to justice and to be considered as victims had been violated through the denial of their request to be represented by the Provincial Public Criminal Defence Service, which was constitutionally empowered to provide legal representation to the victims of human rights violations committed by public officials, particularly bearing in mind the institutional inability of other legal aid services to offer assistance in that regard and the complete lack of progress in the investigation carried out by the Public Legal Service into the causes of Mr. Yrusta's death. On 24 June 2015, the Court of Appeal rejected the constitutional complaint on the grounds that it merely reiterated arguments put forward before lower-instance courts, that the decision being appealed was not constitutionally flawed and that the complaint was not an appropriate third-instance remedy for reviewing facts and questions of evidence analysed by lower-instance courts.

4.5 The State party adds that the complainants have refused to avail themselves of the legal aid services available in the Province of Santa Fe, which are provided by victim assistance offices and independent lawyers hired by the provincial authorities on a case-by-case basis, preferably within the framework of agreements with bar associations. In connection with the complainants' claim that the lawyers providing the legal aid services made available by the provincial authorities might not be independent and impartial, the State party refers to article 27 of Provincial Executive Decree No. 1326, which states that where there is a clear conflict of interest involving the provincial government or where the alleged perpetrator is a provincial official who has acted in his or her official capacity, the legal aid due should be provided within the framework of agreements with bar associations, never by a lawyer who answers to the provincial government, thereby ensuring the fullest protection of the right to a defence of the beneficiary of aid and the provincial government. It is thus clear that, given the availability of the legal aid and representation regulated by Decree No. 1326, the complainants have alternative means of exercising their rights. Thus, even if it is not possible for them to be represented in court by Mr. Ganon, the Province of Santa Fe has mechanisms with which to ensure that they are provided with legal representation and safeguard their right of access to justice.

4.6 In addition, the State party asserts that, on 25 February 2014, the complainants filed an objection to jurisdiction, calling on the provincial courts to decline jurisdiction and to refer the case to the federal courts, in the light of the allegations of enforced disappearance made in the communication that they had submitted to the Committee on Enforced Disappearances on 11 September 2013. On 13 April 2014, the trial judge dismissed the objection filed by the complainants, stating that the allegations of enforced disappearance made by the complainants were groundless, since Mr. Yrusta was being detained pursuant to a lawfully imposed sentence. The Provincial Public Defender, Mr. Ganon, appealed that decision arguing that no records of Mr. Yrusta's transfers existed, that his family had been provided with no information and that international human rights standards for custodial sentences had not been met. The appeal was rejected, at which point Mr. Ganon filed another appeal, which was found inadmissible by the Court of Appeal on 3 July 2015. The complainants, represented by Mr. Ganon, filed an application challenging the constitutionality of the Court's inadmissibility decision. The application was rejected. On 12 April 2016, Mr. Ganon filed a motion for reconsideration with the Supreme Court of the Province of Santa Fe on the grounds that the previous court proceedings were unconstitutional. On 18 October 2016, the Supreme Court rejected the motion, but decided to refer the allegations relating to the investigation of the enforced disappearance to the federal courts. The State party submits that it is clear from that decision that the Supreme Court was aware of the importance of the recommendations made by the Committee on Enforced Disappearances in the Views it adopted on 11 March 2016 and that it considered

those recommendations as a supervening circumstance. Accordingly, and above and beyond Mr. Ganon's standing to represent the complainants in court, the Supreme Court decided to refer the investigation of the enforced disappearance of Mr. Yrusta to the federal courts with a view to safeguarding the complainants' right to the effective protection of the courts, avoiding undue delays and thus preventing Argentina from incurring responsibility under international law. In the State party's view, all the complainants' allegations about what happened to Mr. Yrusta reveal two facts: first, they reveal acts that could constitute the crime of enforced disappearance – acts that ceased when Mr. Yrusta was found dead in his cell – and that are currently being investigated by the federal courts; and, second, they reveal allegations of torture and other investigations relating to the causes of Mr. Yrusta's death that will remain the responsibility of the provincial courts.

### **Complainants' comments on the State party's observations**

5.1 On 18 June 2018, the complainants submitted their comments on the State party's observations. They contend that the State party has failed to conduct a serious investigation of the allegations that Mr. Yrusta was subjected to torture and that this has been clear from the outset, since the Argentine courts classified the death as suicide and the current case file is entitled *Yrusta, Roberto Agustín re/his death*. The complainants also contend that the evidence produced by the investigation as reflected in the case file, such as the presence of objects in the victim's anus and stomach, the marks on his body and statements by some officials, who had confessed before Mr. Yrusta's death that they had used their anti-riot guns on him, constitutes sufficient grounds for an investigation of torture or other forms of ill-treatment. The complainants add that the prison officers who were responsible for Mr. Yrusta when the torture was committed were heard only as witnesses by the provincial police force, which answers to the same authority as the prison service, and that this brings into question the impartiality and effectiveness of the investigation. They also claim that the State party has not provided the technical or financial resources needed for an impartial and effective investigation. In the complainants' view, the allegations concern serious matters – especially in the light of the recommendations that the Committee on Enforced Disappearances made with regard to the same facts<sup>3</sup> – that have an impact on the investigations into the causes of Mr. Yrusta's death.

5.2 In addition, the complainants allege that, as a result of the State party's unwillingness to conduct a serious investigation of their allegations of torture and an inadequate framework for the administration of justice, they are still unable to exercise their right of access to a judicial process that would enable them to know what happened to Mr. Yrusta. The complainants maintain that the State party has consistently refused to conduct the investigative proceedings they have requested, prolonging the investigation, with more than five years having passed since the events in question. They also maintain that the State party has not undertaken the investigation requested by them on 8 March and 8 October 2013. They refer in particular to requests relating to a second autopsy by the Supreme Court's Forensic Medicine Service or other credible institutions; the seizure of the duty logbooks for the days preceding Mr. Yrusta's death in the Coronda Prison Facility; the report on the operations conducted in that period by the Coronda prison's special operations unit; reports by the health personnel working in the prison in that period; an examination of the objects found in Mr. Yrusta's anus and stomach at the time of his death; the seizure of Mr. Yrusta's medical records and of the entry and exit logs for prison staff members on duty on the days on which Mr. Yrusta was allegedly tortured and the day on which he later died; the results of the X-rays taken during the autopsy; and the taking of additional witness statements and handwriting tests. In addition, the complainants' inability to intervene as plaintiffs in the case in which the causes of Mr. Yrusta's death is being investigated has meant that they have been unable to request investigative measures, provide evidence or prevent the case from being closed in accordance with the time frames established in provincial criminal procedure laws on the closure of cases with no known suspect. On the date on which their additional comments were submitted, the complainants did not know whether the investigation into the causes of Mr. Yrusta's death had been closed. The complainants also stress that, since Mr. Yrusta's death, the only proceedings that have been

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<sup>3</sup> Committee on Enforced Disappearances, *Yrusta v. Argentina* (CED/C/10/D/1/2013).

initiated by the authorities are those concerning their application to be recognized as parties to the prosecution, while no significant progress has been made in the investigation of the case, in particular with regard to the torture Mr. Yrusta allegedly endured before his death. In this respect, the complainants 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 were not consistent with the prison administration's description of what was used for the hanging ("an object with elastic properties"); and (b) foreign objects in Mr. Yrusta's anus that, according to witness statements from other inmates held in the punishment cells, were supplied by members of the provincial police force or prison staff.<sup>4</sup> The complainants are of the view that the prosecutor and the judge responsible for the case received the forensic medical report but did not consider it until Mr. Yrusta's family requested a clarification of the situation. The complainants claim that the family's request was rejected by the judge and the prosecutor in order to hide the truth and conceal the negligence with which they had conducted the investigation.

5.3 The complainants 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 are of the view that this right has not been respected, because those centres have refused on more than one occasion to take on cases involving institutional violence and because the State party has systematically denied the Provincial Public Defender standing in cases where he is requested to provide representation to victims intervening in proceedings as private criminal plaintiffs. In addition, the complainants question the existence of the agreements mentioned by the State party that apparently allow the legal aid centres run by the Province of Santa Fe to hire private lawyers in cases where the impartiality of persons providing legal aid on behalf of the provincial authorities could be called into question, such as when crimes committed by provincial officials are being investigated. The complainants claim that they have asked to see those agreements but have not received a satisfactory response. Lastly, the complainants add that what is important is not the identity of the lawyer representing them before the State party's courts but their need to be recognized as plaintiffs and to exercise their right of access to justice. The complainants contend that, at the date they submitted their additional comments, they were still waiting to meet the lawyer whose services the provincial authorities had offered with a view to representing them in their request to appear as complainants, in accordance with the ruling of 23 April 2014 of the Santa Fe Criminal Court of Appeal. In that ruling, the Court stated 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". Nevertheless, 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 Estela Deolinda Yrusta, who is represented by Dr. Gabriel Ganon" 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." On 13 June 2014, the complainants 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 complainants were notified of the composition of the court. On 14 November 2014, more than one year and a half after the complainants' first request for recognition as parties to the prosecution, the Santa Fe Appeal Court denied the appeal filed by the Provincial Defender on their behalf. The Court, presided over by a single judge, held that, in application of articles 1, 2 and 21 of Act No. 13.014, the Provincial Defender did not have standing to represent the complainants in the Province of Santa Fe. It further held 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 take part in a criminal trial ... but that it is not the responsibility of the Provincial Public Criminal Defence Service to provide such

<sup>4</sup> Sixth Bench of the Criminal Investigation Court, Province of Santa Fe, case file No. 173-2013, pp. 569–571.

representation". The complainants add that the Appeal Court and the other judicial authorities have not specified which body would, in fact, be the appropriate forum to provide them with effective access to justice. They are of the view that the Court's interpretation is inconsistent with international standards and the legal representation services offered by the federal public defender system. The complainants are also of the view that the Court's interpretation impedes their access to justice and precludes the proper investigation of the disappearance and death of their brother.

5.4 The complainants note that, in accordance with the Brasilia Regulations Regarding Access to Justice for Vulnerable People and article 25 of the American Convention on Human Rights, everyone must have the right to simple and prompt recourse and that any law or measure that obstructs or prevents persons from availing themselves of such recourse is a violation of the right of access to the courts. They believe 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. The complainants therefore request that the Committee find the present communication admissible.

### **Issues and proceedings before the Committee**

#### *Consideration of admissibility*

6.1 Before considering any claims contained in a complaint, the Committee must decide whether or not it is admissible under article 22 of the Convention.

6.2 With regard to the provisions of article 22 (5) (a) of the Convention, namely the requirement to ascertain that the same matter has not been and is not being examined under another procedure of international investigation or settlement, the Committee notes that the same facts were the subject of a communication submitted by the same complainants to the Committee on Enforced Disappearances. That communication resulted in Views, adopted on 11 March 2016, in which it was found that the State party had violated the rights set out in articles 1, 2, 12 (1), 17, 18, 20 and 24 (1)–(3) of the International Convention for the Protection of All Persons from Enforced Disappearance in relation to Mr. Yrusta; and of articles 12 (1), 18, 20 and 24 (1)–(3) in relation to the complainants. The Committee observes that, in the Views, the Committee on Enforced Disappearances found that the complainants' 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 did not fall within the competence *ratione materiae* of the Committee.<sup>5</sup> Accordingly, the Committee on Enforced Disappearances did not consider those claims. The Committee has ascertained, as it is required to do under article 22 (5) (a) of the Convention, that the same matter has not been and is not being examined under another procedure of international investigation or settlement, insofar as the same facts, the same parties and the same substantive rights have not been examined under such procedures.<sup>6</sup> In view of the foregoing, the Committee considers itself competent to examine the communication.

6.3 The Committee also takes note of the State party's arguments regarding the possibility for the complainants to act as private criminal plaintiffs, by being represented by legal aid centres of the Province of Santa Fe or by independent lawyers retained under agreements between the provincial authorities and each of the bar associations. However, the Committee takes note of the complainants' claim that domestic remedies have been exhausted, in accordance with article 22 (5) (b) of the Convention. In particular, the complainants state that they have exhausted all judicial remedies available to seek standing as private criminal plaintiffs in the investigation into the causes of Mr. Yrusta's death being conducted by the Sixth Bench of the Santa Fe Criminal Investigation Court. The Committee notes that the complainants' inability to take part in the proceedings has prevented them from requesting investigative measures that could be effective and from adducing specific evidence that could contribute to the investigation. In addition, the Committee notes that the

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<sup>5</sup> Committee on Enforced Disappearances, *Yrusta v. Argentina* (CED/C/10/D/1/2013), para. 8.4.

<sup>6</sup> Committee against Torture, *N.B. v. Russian Federation* (CAT/C/56/D/577/2013), para. 8.2.



legislation of the Province of Santa Fe establishes a procedure for the closure of cases that can be reviewed only following specific requests to that effect by private criminal plaintiffs, which means that the investigation conducted by the State party's provincial judicial authorities may be closed without further action.

6.4 In the same vein, the Committee notes that the available information does not show that there has been any communication between the provincial authorities and the legal aid centres aimed at resolving the problems relating to the legal standing and the legal representation of the complainants with a view to enabling them to take part in the proceedings before the provincial courts. The Committee also notes that more than five years have passed since the complainants submitted their first request to join the proceedings as plaintiffs, in February 2013, and that after such a long period the impairment of the right to have effective access to justice and to know the truth about what happened becomes irreversible. The State party has failed to provide a satisfactory resolution of the matter, either by allowing the complainants to join the proceedings as plaintiffs or by recognizing their rights as victims. Furthermore, the State party has failed to provide convincing arguments to justify the delay in responding to the complainants' request to play an effective part in the criminal investigation. As a result of the complainants' inability to act as private criminal plaintiffs and to take part in the judicial and investigative proceedings relating to their brother's case and to give effect to the available domestic remedies, the case entitled *Yrusta, Roberto Agustín re/his death* (case file No. 356/14) was closed by a decision, dated 20 October 2017, of the Seventh Bench of the Criminal Investigation Court. Furthermore, according to the information provided to the Committee, the provincial prosecutor filed an appeal against the above-mentioned decision to close the case, on the grounds that the present complainants' application had not been given serious consideration. Indeed, according to the appeal, the present complainants' statements appear only on pages 72 and 73 of the case file and their specific requests for investigative measures were not examined. The Committee considers that the investigation into the causes of Mr. Yrusta's death has been unduly prolonged, casting doubt on the effectiveness of the domestic judicial remedies available to the complainants.

6.5 The Committee therefore considers that the domestic remedies in respect of the complainants' request to be granted standing as parties to the prosecution have been unreasonably prolonged and that no other remedies have been available to them. In view of the foregoing, the Committee concludes that the requirement regarding the exhaustion of domestic remedies is not an obstacle to the admissibility of the complainants' allegations in the present case, owing to the excessive delay and the lack of access to certain domestic remedies.

6.6 The Committee takes note of the complainants' allegations concerning the absence of a prompt and impartial investigation into the torture and ill-treatment allegedly suffered by Mr. Yrusta prior to his death and the lack of access to the truth about what happened in his case. The Committee also takes note of the State party's arguments that it would be premature for the Committee to reach a conclusion while an investigation is still ongoing into the causes of Mr. Yrusta's death, since, until such time as the State party's courts have issued a decision, it is not possible to determine whether or not Mr. Yrusta was subjected to torture. However, the Committee notes that, according to information provided by the State party under the follow-up procedure to the Views of the Committee on Enforced Disappearances, on 20 October 2017, the Seventh Bench of the Criminal Investigation Court closed the case because of the lack of procedural activity in a case with no known suspect.

6.7 The Committee therefore considers that reasonably available domestic remedies have been exhausted with respect to the complainants' allegations concerning the lack of a prompt and impartial investigation, given that the case has been closed by the provincial courts, and with respect to their claims concerning the right to redress, including access to the truth, the opportunity to participate in the investigation and any claim for fair and adequate compensation.

6.8 With regard to the complainants' allegations of a violation of article 6 of the Convention, the Committee notes that the complaint does not contain sufficient argumentation or information in this regard. However, the Committee considers that the

complaint is sufficiently substantiated for the purposes of admissibility with respect to a violation of the complainants' rights guaranteed by articles 2, 11, 12, 13 and 14 of the Convention. Accordingly, the Committee finds the complaint admissible and proceeds to its consideration on the merits.

*Consideration on the merits*

7.1 The Committee has examined the complaint in the light of all the information submitted to it by the parties, in accordance with article 22 (4) of the Convention.

7.2 Before considering the allegations made by the complainants, the Committee must determine whether the acts to which Mr. Yrusta was subjected constitute acts of torture within the meaning of article 1 of the Convention. In this connection, the Committee takes note of the complainants' allegations concerning the acts of torture and other cruel, inhuman or degrading treatment suffered by Mr. Yrusta in prisons in the provinces of Córdoba and Santa Fe. According to the complainants, Mr. Yrusta's transfer to the Coronda Prison Facility in Santa Fe was in retaliation for complaints he had made against members of the Córdoba Prison Service, and the ill-treatment and torture inflicted on him intensified after his complaints were made public in a television programme. The acts of torture reported by Mr. Yrusta, and which were the subject of complaints and allegations by the complainants, include long periods in *buzones*, or punishment cells, the use of the dry submarine treatment, beatings, threats, transfers and being shackled to a bed. The Committee notes that Mr. Yrusta spent more than 20 days, between 16 January 2013 and the date of his death, 7 February 2013, in an isolation cell, without contact with other detainees in Córdoba prison, and that, according to various statements in the case file, Mr. Yrusta was stripped naked and rubber bullets were fired at him as part of disciplinary measures ordered by the prison authorities in the days prior to his death. The Committee also takes note of the State party's claims regarding the absence of any complaints of torture or other ill-treatment by Mr. Yrusta while he was serving his custodial sentence in Bouwer prison in the Province of Córdoba. However, the Committee notes that the State party has provided no information indicating that the failure to file a complaint could be interpreted as sufficient to conclude that the alleged acts of torture and inhuman and degrading treatment did not take place. The Committee further considers that the allegations made by the complainants could, in the alternative, relate to acts constituting cruel, inhuman and degrading treatment or punishment within the meaning of article 16 of the Convention.

7.3 As for the complainants' claims under articles 2 and 11 of the Convention, the Committee recalls that, at the time of the events that gave rise to the present complaint, Mr. Yrusta was serving a custodial sentence. In such a situation, the Committee emphasizes that States parties bear a special responsibility to safeguard the rights of persons deprived of their liberty owing to the extent of the control that prison authorities exercise over such persons.<sup>7</sup> Therefore, States parties are under a special obligation to ensure that persons deprived of their liberty can exercise the rights enshrined in the Convention 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 or facilitate the commission of acts of torture or other ill-treatment against persons deprived of their liberty. In this regard, the Committee notes that according to the complainants, Mr. Yrusta was transferred to Santa Fe, while under the impression that he was being transferred to the Province of Santiago del Estero, 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, especially in view of the fact that the prison authorities were unsure as to Mr. Yrusta's identity. It also notes that Mr. Yrusta was held in isolation, unable to communicate with any of the other detainees for more than 20 days. Furthermore, the fact that Mr. Yrusta was forcibly disappeared for more than a week means that the allegations of possible acts of torture or other ill-treatment

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<sup>7</sup> Committee against Torture, *Guerrero Larez v. Bolivarian Republic of Venezuela* (CAT/C/54/D/456/2011), para. 6.4.

against Mr. Yrusta must be given serious consideration.<sup>8</sup> The Committee therefore considers that the State party has violated article 2 of the Convention by failing to take effective steps to prevent the commission of possible acts of torture against Mr. Yrusta. The Committee also notes the complainants' argument that article 11 was violated because of the failure of the State party to conduct the necessary oversight of Mr. Yrusta's treatment at the time of his transfers between prisons and during his detention, and the lack of judicial oversight and of properly kept registers during his time in prison. In the absence of compelling information from the State party that provision was made for oversight of the conditions of detention of Mr. Yrusta, the Committee concludes that there has been a violation of article 11 of the Convention by the State party.

7.4 The Committee must decide, in accordance with article 12 of the Convention, whether there is reasonable ground to believe that an act of torture was committed against the complainants' brother prior to his death and, if so, whether the State party's authorities complied with their obligation to proceed to a prompt and impartial investigation.

7.5 The Committee notes that, according to the case file *Yrusta, Roberto Agustín re/his death*, provided by the State party, the Forensic Medicine Service report on the autopsy carried out on Mr. Yrusta documented the existence of multiple, large, open wounds on the abdomen and the anterior and posterior sides of his left forearm, which appeared to have been "self-inflicted". However, the report contains no description of the objects found in Mr. Yrusta's anus and stomach or of the item found next to the body that had supposedly been used for the alleged suicide. The Committee further notes that the report takes no account of the various allegations of torture that were made prior to Mr. Yrusta's death.

7.6 The Committee also notes that the prison registers and official documents issued by the Coronda Prison Facility do not identify Mr. Yrusta correctly: in the registers, he is identified under three different names, which makes it difficult to ascertain with any certainty what actions the prison authorities took concerning him. In the police report which launched the proceedings and in various communications made by the director of the Coronda Model Correctional Institute (U1) that are in the case file provided by the State party, Mr. Yrusta continues to be identified under three different names. The Committee notes that the State party has not provided any explanations regarding these points to the complainants or the Committee.

7.7 The Committee also notes that pages 92 and 93 of the case file provided by the State party show that the prison authorities were unaware of Mr. Yrusta's criminal record, since there is no information that would have enabled prison staff to address the prisoner's needs in an appropriate manner. The Committee further notes that the prison authorities, as evidenced by their statements in the case file, were unclear as to the identity of the judicial authority that had ordered Mr. Yrusta's transfer from Córdoba to Santa Fe or the reasons for it. In addition, the Committee notes that Mr. Yrusta's cell changes prior to his death were not recorded in the Coronda Prison Facility duty logbook.

7.8 The Committee also takes note of the statements in the case file according to which Mr. Yrusta was stripped naked by the authorities at Coronda prison and that rubber bullets were fired at him as a disciplinary measure when he was being removed from his cell and when he was taken for medical treatment in the days leading up to his death. Furthermore, according to statements by other prisoners, Mr. Yrusta, performed prison duties, taking food and water to the rest of the inmates, which contradicts the statements made by prison staff at Coronda Correctional Unit No. 1.

7.9 With regard to the complainants' allegations concerning their right to redress, which is guaranteed under article 14 of the Convention, the Committee recalls its general comment No. 3 (2012) on implementation of article 14 by States parties. In this context, the Committee further recalls that, when investigating allegations of torture, the State party is required to verify the facts and to disclose the truth publicly and fully, to the extent that

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<sup>8</sup> Committee on Enforced Disappearances, *Yrusta v. Argentina* (CED/C/10/D/1/2013), para. 10.4.

such disclosure does not cause further harm or threaten the safety and interests of the complainants.<sup>9</sup> Similarly, the Committee recalls that:

a State's failure to investigate, criminally prosecute, or to allow civil proceedings related to allegations of acts of torture in a prompt manner, may constitute a de facto denial of redress and thus constitute a violation of the State's obligations under article 14.<sup>10</sup>

Furthermore, "to give effect to article 14, States parties shall enact legislation specifically providing a victim of torture and ill-treatment with an effective remedy and the right to obtain adequate and appropriate redress".<sup>11</sup> Likewise:

undue delays in initiating or concluding legal investigations into complaints of torture or ill-treatment compromise victims' rights under article 14 to obtain redress, including fair and adequate compensation and the means for as full rehabilitation as possible.<sup>12</sup>

The Committee further recalls:

the importance of the State party affirmatively ensuring that victims and their families are adequately informed of their right to pursue redress. In this regard, the procedures for seeking reparation should be transparent. The State party should moreover provide assistance and support to minimize the hardship to complainants and their representatives.<sup>13</sup>

Lastly, the Committee recalls that:

States parties shall ensure that access to justice and to mechanisms for seeking and obtaining redress are readily available and that positive measures ensure that redress is equally accessible to all persons regardless of ... economic ... status ... or any other status or adverse distinction.<sup>14</sup>

Therefore, in accordance with the above, the right to the truth entails the right to a prompt, effective and impartial investigation.

7.10 With regard to the complainants' allegations that they were unable to play an active part in the investigation of their brother's death, including his enforced disappearance and the alleged acts of torture and inhuman and degrading treatment, because they were refused legal standing as private criminal plaintiffs, the Committee recalls that, in accordance with article 14 of the Convention, the concept of "victim" includes persons who have individually or collectively suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights, through acts or omissions that constitute violations of the Convention.<sup>15</sup> This concept of victim also encompasses the immediate family, such as Mr. Yrusta's sisters, the authors of the present complaint. 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 complainants 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.<sup>16</sup> The Committee considers that, in the present case, the mere fact that it took more than five years for the complainants to be allowed to act as plaintiffs in the investigative proceedings entails, in and of itself, a violation of articles 12, 13 and 14 (1) of the Convention. After such a long period has passed, the possibility of playing an active and effective part in the proceedings is lessened

<sup>9</sup> General comment No. 3, para. 16.

<sup>10</sup> Ibid., para. 17.

<sup>11</sup> Ibid., para. 20.

<sup>12</sup> Ibid., para. 25.

<sup>13</sup> Ibid., para. 29.

<sup>14</sup> Ibid., para. 32.

<sup>15</sup> Ibid., para. 3.

<sup>16</sup> Committee on Enforced Disappearances, *Yrusta v. Argentina* (CED/C/10/D/1/2013), para. 10.8.

to such an extent that the impairment of the right in question becomes irreversible, in violation of the victims' right to know the truth and to obtain redress.

7.11 The Committee takes note of the provisions of article 93 of the Code of Criminal Procedure of the Province of Santa Fe, under which only persons alleging to be the victims of a publicly prosecutable offence or their compulsory heirs may participate in the proceedings as plaintiffs. The Committee also takes note of the State party's arguments that, in order to request investigative measures, there is no requirement for the complainants to be plaintiffs, since as victims they may participate in the investigation, in accordance with article 80 of the Code. However, in the information provided to the Committee, the State party does not explain how the complainants, as victims, have played a meaningful part in the investigations carried out by the provincial courts. 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, 13 and 14 (1) of the Convention.

7.12 The Committee notes from the information provided to the Committee that the complainants' right to redress has not been guaranteed by the State party, in view of the amount of time that has passed and the difficulties encountered by the complainants in participating meaningfully as victims or complainants in the investigation into the allegations of torture.

8. The Committee, acting under article 22 (7) of the Convention, concludes that the facts before it disclose a violation of article 2 (1), read in conjunction with article 1, and of articles 11, 12, 13 and 14 of the Convention.

9. The Committee urges the State party to:

(a) Conduct a prompt, impartial and independent investigation into all allegations of torture made by Mr. Yrusta and by the authors of the present complaint, including, where appropriate, the filing of specific torture charges against perpetrators, and the application of the corresponding penalties under domestic law;

(b) Grant the complainants the status of victims, together with all associated rights, and allow them to act as private criminal plaintiffs in the investigative proceedings into the allegations of torture and the causes of Mr. Yrusta's death;

(c) Provide the complainants with appropriate redress, including fair compensation and access to the truth;

(d) Take the necessary steps to provide guarantees of non-repetition in connection with the facts in the present complaint. To this end, the Committee urges the State party to amend its criminal procedural legislation and to report, within 180 days, on the steps or initiatives taken to allow persons having the status of victims to participate in criminal investigative proceedings into allegations of torture or other cruel, inhuman or degrading treatment, whether as private criminal plaintiffs or in any other special capacity; similarly, the Committee invites the State party to consider, in cases involving allegations of acts constituting torture or other cruel, inhuman or degrading punishment resulting in death, the possibility of conducting forensic medical examinations that meet standards of impartiality and independence and that take account of such allegations in reports;

(e) Make public the present decision and disseminate its 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.

In accordance with rule 118 (5) of its rules of procedure, the Committee requests the State party to inform it, within 90 days of the date of transmission of this decision, of the steps it has taken in response to the above findings.