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# becoming a Party to the International Convention for the Protection of All Persons from Enforced Disappearance

Practical Guide



# **Becoming a Party to the International Convention for the Protection of All Persons from Enforced Disappearance**

Practical Guide

**Professional Training Series No. 27**



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## About this practical guide

## A. WHAT IS THIS PRACTICAL GUIDE?

This practical guide aims to promote the universal ratification of the [International Convention for the Protection of All Persons from Enforced Disappearance](#) and to assist States as they move towards becoming parties to the Convention. Its objective is to provide answers to questions commonly raised by States when considering this commitment. Its purpose is also to offer practical guidance to States regarding the process of becoming a party to the Convention and what that entails.

## B. WHO IS THE PRACTICAL GUIDE FOR?

The guide has been developed as a practical tool for States to encourage and support them in joining the community of parties to the Convention. It includes the information needed by relevant national authorities for a State to become a party to the Convention and fully recognize the competence of the Committee on Enforced Disappearances.

## C. HOW TO USE THE PRACTICAL GUIDE

This guide complements the manual on *Reporting under the International Convention for the Protection of All Persons from Enforced Disappearance*.<sup>1</sup> While the reporting manual provides States parties with detailed information about the provisions of the Convention and how to engage with the Committee on Enforced Disappearances, the present tool presents key arguments for States to become parties to the Convention, explains what this decision involves and guides States through the process.

The guide begins with a reminder of the important achievement that the Convention represents in the fight against enforced disappearance ([section II](#)). [Section III](#) outlines arguments for universal ratification. Having listed the many reasons why States should become parties to the Convention, the guide then provides information on when to start the process ([section IV](#)). [Section V](#) introduces the Committee on Enforced Disappearances and its functions as a toolkit to address enforced disappearance. [Section VI](#) provides practical guidance on priorities and the first steps to take upon becoming a party to the Convention. Throughout the process of becoming parties to and implementing the Convention, States can count on the support of various international and national partners ([section VII](#)). The final section presents procedural options for a State to become a party to the Convention ([section VIII](#)).

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<sup>1</sup> OHCHR, *Reporting under the International Convention for the Protection of All Persons from Enforced Disappearance: Training Guide*, part I – manual (New York and Geneva, 2022) (hereafter referred to as the “reporting manual”).





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



## A. THE RESULT OF LONG-TERM JOINT EFFORTS

The Convention is the result of the tireless joint efforts of States, associations of victims, human rights non-governmental organizations and experts. Developed on the basis of the Declaration on the Protection of All Persons from Enforced Disappearance,<sup>2</sup> the Convention represents a milestone in the long fight against enforced disappearance.<sup>3</sup> The Convention was the first legally binding instrument adopted by the then newly established Human Rights Council in its first resolution (resolution 1/1) on 29 June 2006. The Convention was subsequently adopted by the General Assembly in its resolution 61/177 of 20 December 2006 and entered into force on 23 December 2010.

## B. THE ONLY UNIVERSAL TREATY SPECIFICALLY DEDICATED TO ENFORCED DISAPPEARANCE

Enforced disappearance is recognized as a crime under international law in other international instruments<sup>4</sup> and violates multiple human rights enshrined in various universal and regional treaties.<sup>5</sup> However, the Convention is the only comprehensive and universal treaty specifically dedicated to enforced disappearance. It fills a gap in international law by establishing the absolute prohibition of enforced disappearance and recognizing its extreme seriousness. It further states that, in certain circumstances defined in international law, enforced disappearance may constitute a crime against humanity.<sup>6</sup> The Convention is also the only universal treaty that details States' obligations in terms of criminal action, preventive measures, remedies and reparation in relation to this heinous crime. Finally, the Convention has its own monitoring body, the Committee on Enforced Disappearances,<sup>7</sup> which States parties can rely on as a partner to address this issue.

## C. A TOOLKIT TO ADDRESS ENFORCED DISAPPEARANCE

The structure of the Convention reflects the objectives of its drafters, namely the prevention and eradication of enforced disappearance and the fight against impunity.<sup>8</sup> It is divided into three main sections:

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<sup>2</sup> The Declaration on the Protection of All Persons from Enforced Disappearance was adopted by the General Assembly in its resolution 47/133 of 18 December 1992. In its preamble, the Declaration provides the first internationally agreed definition of enforced disappearance, which was retained in article 2 of the Convention. See the report of the Working Group on Enforced or Involuntary Disappearances on the thirtieth anniversary of the Declaration ([A/HRC/51/31/Add.3](#)).

<sup>3</sup> See Office of the United Nations High Commissioner for Human Rights (OHCHR), Fact Sheet No. 6, Rev. 4, *Enforced Disappearances* (New York and Geneva, 2023), available at [www.ohchr.org/sites/default/files/documents/publications/Fact-sheet6-Rev4.pdf](http://www.ohchr.org/sites/default/files/documents/publications/Fact-sheet6-Rev4.pdf).

<sup>4</sup> Such instruments include the Declaration on the Protection of All Persons from Enforced Disappearance, the Geneva Conventions of 12 August 1949 and the Protocols Additional thereto, and the Rome Statute of the International Criminal Court.

<sup>5</sup> Such treaties include the International Covenant on Civil and Political Rights, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the International Covenant on Economic, Social and Cultural Rights, the Convention on the Elimination of All Forms of Discrimination against Women, the Convention on the Rights of the Child, the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, the African Charter on Human and Peoples' Rights, the American Convention on Human Rights, the Inter-American Convention on Forced Disappearance of Persons and the Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights).

<sup>6</sup> See [reporting manual](#), pp. 50–53.

<sup>7</sup> See section V.

<sup>8</sup> For detailed information on the provisions of the Convention, see the [reporting manual](#). See, in particular, section II.A of the manual, "Content and structure", available at [www.ohchr.org/en/publications/professional-training-series/reporting-under-international-convention-protection-all](http://www.ohchr.org/en/publications/professional-training-series/reporting-under-international-convention-protection-all).

- **Part I** mostly outlines States parties' substantive obligations to prevent, criminalize and investigate enforced disappearances, to bring those responsible to justice and to ensure the rights of victims to the truth, justice and full reparation.
- **Part II** establishes the Committee on Enforced Disappearances as the monitoring body of the Convention.
- **Part III** addresses how States can become parties to the Convention, how States parties can present amendments to the Convention and the relationship between the Convention and international humanitarian law.

To carry out its work, the Committee has a mandate to implement six procedures: the reporting procedure, country visits, requests for urgent action, individual communications, inter-State communications and referrals to the General Assembly.<sup>9</sup>

In defining these procedures, the drafters of the Convention aimed to build on the experience of previously established arrangements to develop efficient and nimble mechanisms. This objective is reflected in the reporting mechanism of the Committee in that, unlike other treaties, the Convention does not set out a fixed periodicity for States parties to submit their reports. Rather, the Committee can request States parties to submit additional information with variable frequencies and in a variety of formats, with the aim of focusing on the most concerning situations. In the same perspective, the urgent action procedure was established as a form of international habeas corpus, allowing the Committee to intervene immediately upon receipt of an allegation of disappearance (see section V.B).

OHCHR campaign image, featuring OHCHR Mexico photo/Prometeo Lucero



<sup>9</sup> See articles 30 to 34 of the Convention, and details on the procedures of the Committee on Enforced Disappearances as set out in section V of this guide.







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**Why should all States become parties to the Convention?**



Universal ratification of the Convention remains a goal to be achieved.<sup>10</sup> At the date of publication of the present guide, 72 States Members of the United Nations had become parties to the Convention, through either ratification or accession. Twenty-nine (29) States parties have recognized the competence of the Committee on Enforced Disappearances to examine individual communications, and 28 have accepted the inter-State communication procedure. Forty-two (42) States have signed but not yet ratified the Convention.

As the only universal treaty specifically dedicated to enforced disappearance, the Convention remains the best tool to fight this crime, and all States should hence become parties, for many reasons.

## ✓ TO TACKLE A CONTEMPORARY GLOBAL ISSUE

Enforced disappearance is not solely an issue of the past. While this scourge is often associated with the dictatorships of the 1970s and 1980s in Latin America, it is still perpetrated today in all regions of the world, with new modalities and in different contexts, such as migration, human trafficking and illegal detentions.<sup>11</sup>

The cases that are reported to the Committee on Enforced Disappearances and to the Working Group on Enforced or Involuntary Disappearances,<sup>12</sup> the two United Nations bodies dealing with enforced disappearance, demonstrate this tragic reality. As at 25 May 2023, the Committee has registered 1,596 requests for urgent action to locate disappeared persons concerning incidents that occurred in or are related to 28 States parties to the Convention (see [section V.B](#)). For its part, between its inception in 1980 and May 2022, the Working Group transmitted over 59,000 cases to 112 States, with 46,751 cases from 97 States still open.

Many more victims lie behind these figures. Additional cases have been reported to other United Nations and regional bodies, including the Human Rights Committee, the Committee against Torture, the Inter-American Court of Human Rights and the European Court of Human Rights. The vast majority of cases are not reported at all. Moreover, it is essential to bear in mind the fact that victims of enforced disappearances include not only the disappeared persons themselves but also “any individual who has suffered harm as the direct result of an enforced disappearance.”<sup>13</sup> The actual number of victims is therefore much higher than the number of disappeared persons reported to the Committee or the Working Group.

## ✓ TO ENABLE THE CONVENTION TO BE FULLY OPERATIONAL

The Convention protects universal rights and values that should guide the actions of all States to prevent and eradicate enforced disappearances. The Committee on Enforced Disappearances cannot

<sup>10</sup> As recalled in the General Assembly resolutions on the issue. See, inter alia, resolution 74/161 of 18 December 2019 and resolution 72/183 of 19 December 2017, para. 4.

<sup>11</sup> See OHCHR, Fact Sheet No. 6, Rev. 4, *Enforced Disappearances*. The Committee on Enforced Disappearances aims to tackle the issue through its draft general comment No. 1. See [www.ohchr.org/en/treaty-bodies/ced/consultation-concept-note-general-comment-no-1-enforced-disappearances-context-migration](http://www.ohchr.org/en/treaty-bodies/ced/consultation-concept-note-general-comment-no-1-enforced-disappearances-context-migration). See also the report of the Working Group on Enforced or Involuntary Disappearances on enforced disappearances in the context of migration (A/HRC/36/39/Add.2).

<sup>12</sup> The Working Group is a special procedure of the Human Rights Council with competence to monitor the implementation of the Declaration on the Protection of All Persons from Enforced Disappearance. To find out more about the differences between and complementarities of the two mechanisms, see the leaflet “Working Group on Enforced and Involuntary Disappearances (WGEID) ‘in a nutshell’ / Committee on Enforced Disappearances (CED) ‘in a nutshell’”, available at [www.oacnudh.org/wp-content/uploads/2022/09/WGEID-CED-InglesWEB.pdf](http://www.oacnudh.org/wp-content/uploads/2022/09/WGEID-CED-InglesWEB.pdf).

<sup>13</sup> Article 24 of the Convention. For more on how the Committee has interpreted this provision, see the examples provided in the [reporting manual](#), at p. 138.

do anything to provide guidance on the implementation of the Convention to a State that has not ratified it. The universal ratification of the Convention is the best guarantee that all States will abide by the principles and rights that it enshrines and that they are ready to cooperate for its effective implementation, with the support of the Committee.

### ✓ TO FORMALLY ENGAGE AGAINST ENFORCED DISAPPEARANCE

In a State where enforced disappearance is practised, becoming a party to the Convention constitutes the best way for that State to demonstrate its **commitment to putting an end to this heinous crime**. In all States, even those that do not have a history or practice of enforced disappearance, becoming a party to the Convention sends a clear message that, whatever the circumstances, **this crime is never acceptable, and it must be eradicated and prevented worldwide**. In this respect, the large number of recommendations presented in the context of the universal periodic review of the Human Rights Council to encourage other States to become parties to the Convention indicates a **firm expectation from the international community that all States should express their commitment to end enforced disappearances by adhering to the Convention**.

### ✓ TO ENABLE VICTIMS TO CLAIM THEIR RIGHTS

By becoming parties to the Convention, States demonstrate their **support to all the victims of enforced disappearance** across the world, acknowledging the outcome of their long and hard-fought struggle to have their rights protected and recognized. The Convention is also an essential tool to **identify the rights** of individuals who have been disappeared or who were disappeared at some point in the past, as well as those of their families, relatives and the civil society organizations supporting them, and it provides ways to **contribute to the prevention and eradication of enforced disappearances**.

### ✓ TO STRENGTHEN THE RULE OF LAW

The Convention provides guidance on how to prevent and punish enforced disappearance. States parties are invited to enhance their domestic legal and institutional framework in compliance with the rights and obligations enshrined in the Convention, thereby strengthening the rule of law, in line with Sustainable Development Goal 16 (on peace, justice and strong institutions).

### ✓ TO BUILD TRUST BETWEEN THE STATE AND SOCIETY AT LARGE

The process of becoming a party to and then implementing the Convention represents an **opportunity to build trust** between the State and society at large through national dialogue and interaction with all actors involved in the fight against enforced disappearances, including victims and those supporting them. In transitional justice contexts, the Convention also provides a tool to address issues related to truth, justice, memory, reconciliation and reparation.

## ✓ TO ACKNOWLEDGE THE REALITY OF ENFORCED DISAPPEARANCES AND RAISE AWARENESS ABOUT THIS CRIME

By becoming parties to the Convention, States acknowledge the reality of enforced disappearances, raising the awareness of the population about the ongoing practice of this crime and about its consequences.

## ✓ TO BENEFIT FROM THE EXPERIENCE OF OTHER STATES

By joining the community of States parties, States join a community of practice and can learn from each other's experience to prevent and eradicate enforced disappearances and to fight against the impunity of this crime, in compliance with the Convention.

## ✓ TO PROMOTE COOPERATION BETWEEN STATES

States parties become part of a “community of support”, as the Convention encourages mutual legal assistance between States regarding criminal proceedings as well as international cooperation to assist and search for victims.

## ✓ TO IDENTIFY PATTERNS AND TAILOR STRATEGIES AT THE NATIONAL LEVEL

Implementation of the Convention enables States parties to identify the various dimensions of disappearances and to recognize their patterns and frequency. Thus, the Convention constitutes a practical tool for States to tailor strategic action plans to tackle enforced disappearances, as defined in article 2, and acts defined in the same article that have been committed by persons or groups of persons acting without the authorization, support or acquiescence of the State.

## ✓ TO BENEFIT FROM THE SUPPORT OF A GUIDING TOOL AND A COMMITTEE OF EXPERTS

The Committee on Enforced Disappearances guides States parties in implementing the Convention at the national level through its recommendations in the context of the reporting mechanism, country visits, the urgent action procedure and individual complaints procedures, and through its general comments, guidelines and statements.<sup>14</sup> More precisely, States parties are helped to identify the measures they should take, in compliance with international standards, to **prevent, combat and eradicate enforced disappearance**, to **combat impunity** for perpetrators and to **protect and guarantee the rights of victims**, including the rights to **truth and reparation**.

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<sup>14</sup> So far, the Committee has adopted the Guiding Principles for the Search for Disappeared Persons (CED/C/7) and statements on “the *ratione temporis* element in the review of reports submitted by States parties under the International Convention for the Protection of All Persons from Enforced Disappearance” (A/69/56, annex V); on “enforced disappearances and military jurisdiction” (A/70/56, annex III); on “illegal intercountry adoption” (CED/C/9); and on “non-State actors in the context of the International Convention for the Protection of All Persons from Enforced Disappearances” (CED/C/10). In March 2023 the Committee adopted the first draft of its first general comment, on enforced disappearances in the context of migration. See [www.ohchr.org/en/treaty-bodies/ced/consultation-concept-note-general-comment-no-1-enforced-disappearances-context-migration](http://www.ohchr.org/en/treaty-bodies/ced/consultation-concept-note-general-comment-no-1-enforced-disappearances-context-migration).

## ✓ TO BENEFIT FROM THE GUIDANCE OF A PREVENTION TOOL

Prevention of enforced disappearance is a central feature of the Convention. Relevant provisions include:

- The **prohibition of secret detention**
- The right of persons deprived of liberty to **communicate with and be visited** by any person of their choice, and/or by representatives of their country's consular authorities in the case of foreign nationals
- The **non-refoulement principle**
- The obligation to compile and maintain **official registers and/or records of persons deprived of liberty**, “which shall be made promptly available, upon request, to any judicial or other competent authority”, and to give access to such information to any person with a legitimate interest.

More broadly, the Convention enables States parties to **future-proof** the ability of their domestic legal framework to prevent enforced disappearance.



OHCHR Committee on Enforced Disappearances Secretariat photo









# When to become a party to the Convention

All States that still have not become parties to the Convention should take immediate action to ratify or accede to it. Enforced disappearance is indeed a heinous, unacceptable crime that affects the daily lives of thousands of people. It can happen to anyone. Becoming a party to the Convention is therefore an urgent duty towards humanity as a whole.

A common misconception is that, before States can become parties to the Convention, they must first undertake legal and policy reforms to fully comply with their obligations.

**Full compliance is not a prerequisite to becoming a party to the Convention; rather, it is an objective to be pursued progressively.**

**To ratify or accede to the Convention is an important step in this direction.**

In practice, the process of becoming a party to the Convention represents the perfect opportunity for States to take stock of their domestic legal framework and practice and to identify challenges and ways forward to ensure compliance with the Convention (see also [section VI](#)).



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OHCHR Committee on Enforced Disappearance, Secretariat photo



# The Committee on Enforced Disappearances and its functions

The International Convention for the Protection of All Persons from Enforced Disappearance was conceived as a tool for working together to find solutions to the scourge of enforced disappearance. To this end, the Convention created a specialized treaty body in charge of monitoring the implementation of the rights and obligations enshrined in it: the Committee on Enforced Disappearances.

The Committee brings together 10 independent experts, who are nominated and elected by States parties. They fulfil their monitoring mandate through a review of States parties' reports, requests for urgent action, individual communications, inter-State communications and country visits, and by bringing widespread or systematic enforced disappearances to the attention of the General Assembly. These procedures have been implemented in line with the aim of the drafters of the Convention: to provide an instrument that can be adapted to different country situations without becoming an additional burden on States parties.

## **A. EXAMINATION OF STATES PARTIES' REPORTS (ART. 29)<sup>15</sup>**

Some States are reluctant to become parties to international conventions due to the reporting requirements. They see the reporting procedure as a burden that requires time and resources for the preparation and discussion of the reports that must be submitted to the relevant committee, and for the implementation of the committee's recommendations. However, the reporting process constitutes a unique opportunity to reflect, to assess the reality of the situation in the State party concerned, and to identify positive steps that have been taken as well as challenges that remain.<sup>16</sup> The reporting process also represents an opportunity for States parties to benefit from the recommendations of experts, and from the experience of other countries that may have faced similar challenges. Through this process, States parties can seek guidance from the Committee, as well as from partners, other States parties, the Office of the United Nations High Commissioner for Human Rights (OHCHR) and specialized civil society organizations.

The reporting procedure before the Committee on Enforced Disappearances follows these steps:

### **1. FIRST REPORT**

Upon ratification of the Convention, a new State party commits to submit a report within two years of entry into force (the first report) on measures taken at the national level to implement the rights and obligations enshrined in the Convention, in consultation with all relevant actors.

### **2. REPORTS ON ADDITIONAL INFORMATION**

Unlike other treaty bodies, the Committee on Enforced Disappearances does not have a system of periodic reports. With the aim of thoroughly monitoring the implementation of the Committee's recommendations and of the Convention by all States parties, the Committee requests States to submit reports (called "reports on additional information", under art. 29 (4) of the Convention)

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<sup>15</sup> For detailed information on the reporting procedure, its various phases, the form and content of States parties' reports and the interaction of the Committee with other actors in this context, see [reporting manual](#), section IV.A, pp. 180–187.

<sup>16</sup> See also the Committee's guidelines on the form and content of reports under article 29 to be submitted by States parties to the Convention (CED/C/2), para. 3.

at intervals of two, four or eight years, depending on the State's degree of implementation of the Committee's recommendations and of the Convention and on developments in the situation of enforced disappearances in the country under review. This procedure only applies for as long as the Committee considers it necessary.

## B. URGENT ACTION PROCEDURE (ART. 30)<sup>17</sup>

The drafters of the Convention established the urgent action procedure<sup>18</sup> to allow the Committee on Enforced Disappearances to intervene quickly by requesting the State party concerned to take immediate action to search for a disappeared person, investigate his or her alleged disappearance and determine the person's fate and whereabouts.

This innovative procedure was inspired by the urgent action procedure of the Working Group on Enforced or Involuntary Disappearances, and it has been referred to as a form of international habeas corpus.<sup>19</sup> The procedure applies to all States parties to the Convention.

Requests for urgent action can be submitted by the relatives of the disappeared person or their legal representatives, their counsel or anyone authorized by them, as well as by any person with a legitimate interest.

This procedure has had a significant impact: as at 28 August 2023, 1,625 requests for urgent action had been registered. Out of these cases, 475 disappeared persons had been located, 445 of whom alive. Other advantages of this procedure include:

- Informing the State party concerned of cases that the relevant authorities may not have been aware of, so that they can take immediate action to address them
- Providing the competent State authorities with information and guidance as to the measures they should take to search for the disappeared person, investigate the alleged disappearance and protect the victims, in compliance with the Convention
- Avoiding duplication of procedures by ensuring that cases of enforced disappearance relating to States parties to the Convention are not simultaneously registered by the Working Group and the Committee.

The Committee is competent if the alleged enforced disappearance commenced after the entry into force of the Convention for that State party and it took place in the territory of a State party to the Convention or was perpetrated by agents of a State party to the Convention. In principle, the Committee is also competent whenever the disappeared person has the nationality of a State party. In all other instances, only the Working Group is competent.

The two mechanisms are in constant communication to coordinate their interventions and facilitate the transmission of information whenever necessary to ensure the immediate treatment of all the requests received.

<sup>17</sup> For detailed information on the urgent action procedure, see [reporting manual](#), section IV.B, pp. 188–195.

<sup>18</sup> See also the guidance for the submission of a request for urgent action to the Committee ([CED/C/4/Rev.1](#)).

<sup>19</sup> Suela Janina and Emmanuel Decaux, "The International Convention for the Protection of All Persons from Enforced Disappearance, a human rights instrument of the 21st century: reflections on its 10th anniversary of the entry into force", *Droits Fondamentaux*, No. 19 (2021), available at [www.crdh.fr/revue/n-19-2021/the-international-convention-for-the-protection-of-all-persons-from-enforced-disappearance-a-human-rights-instrument-of-the-21st-century-reflections-on-its-10th-anniversary-of-the-entry-into-force/](http://www.crdh.fr/revue/n-19-2021/the-international-convention-for-the-protection-of-all-persons-from-enforced-disappearance-a-human-rights-instrument-of-the-21st-century-reflections-on-its-10th-anniversary-of-the-entry-into-force/).



For more information about the respective competences of the Committee and the Working Group as they relate to the urgent action procedure, please consult the fact sheet on enforced disappearances<sup>20</sup> and the leaflet on the differences between the two bodies.<sup>21</sup>

## C. INDIVIDUAL COMPLAINTS/COMMUNICATIONS (ART. 31)<sup>22</sup>

As at 24 March 2023, 30 States parties had made the necessary declaration to recognize the competence of the Committee to examine individual communications. This procedure is only applicable if all domestic remedies have been exhausted (art. 31 (2) (d)); it is not meant to replace domestic judicial procedures.

The individual communications procedure represents an opportunity for the State party concerned to receive guidance from the Committee on how to address implementation issues revealed in an individual case on the basis of the relevant provisions of the Convention. Therefore, the “Views” adopted by the Committee and the corresponding recommendations are anchored in the legal obligations that States parties commit to when ratifying the Convention.<sup>23</sup>

This procedure represents a wider preventive role for the Committee, as the recommended adjustments of laws and practice are expected to prevent the recurrence of violations that have been identified. Examples of measures of reparation that may be recommended to the State party concerned by the Committee in its Views in relation to the authors of the communication include conducting a thorough and impartial investigation of a disappearance and prosecuting, judging and punishing those responsible for the violations.<sup>24</sup> As regards guarantees of non-repetition, the Committee has recommended that the



<sup>20</sup> See [www.ohchr.org/sites/default/files/documents/publications/Fact-sheet6-Rev4.pdf](http://www.ohchr.org/sites/default/files/documents/publications/Fact-sheet6-Rev4.pdf).

<sup>21</sup> See [www.oacnudh.org/wp-content/uploads/2022/09/WGEID-CED-InglesWEB.pdf](http://www.oacnudh.org/wp-content/uploads/2022/09/WGEID-CED-InglesWEB.pdf).

<sup>22</sup> For detailed information on the individual communications procedure, see [reporting manual](#), section IV.C, pp. 196–199.

<sup>23</sup> The legal basis for setting out measures of reparation in the Views adopted by the Committee lies in article 31 (5) of the Convention.

<sup>24</sup> See, for example, *Yrusta v. Argentina* (CED/C/10/D/1/2013), para. 12 (b)–(c).

State party concerned compile and maintain registers that meet the requirements of the Convention, ensuring that the relevant information is accessible to all persons with a legitimate interest.<sup>25</sup>

## D. INTER-STATE COMMUNICATIONS (ART. 32)<sup>26</sup>

The inter-State communications procedure only applies to States parties that have made the optional declaration accepting such competence. As at 30 May 2023, 28 States parties had made the required declaration, although the procedure has not yet been applied.

## E. COUNTRY VISITS (ART. 33)<sup>27</sup>

Article 33 can apply to any State party to the Convention when the Committee receives information indicating that the State has seriously violated the provisions of the Convention. In such cases, the Committee may, after consultation with the State party concerned, request one or more of its members to undertake a visit and report back to it without delay. Following the visit, the delegation in charge presents a report to the plenary, which considers, discusses and adopts it. The Committee then communicates its report to the State party concerned and makes it public. The State has four months to provide observations on the report, and such observations are made public on the Committee's website.

The Committee conducted its first visit, to [Mexico](#), in November 2021<sup>28</sup> and its second, to [Iraq](#), in November 2022.<sup>29</sup> At the time of publication, the Committee had also requested a visit to Colombia.<sup>30</sup>

As exemplified in these first two cases, visits allow the Committee, in cooperation with the States parties concerned and with the participation of victims of enforced disappearance and other civil society actors, to analyse in depth the situation of enforced disappearances in the country. In Mexico<sup>31</sup> and then in Iraq,<sup>32</sup> the Committee identified various patterns in the commission of acts of enforced disappearance, as well as good practices and challenges in addressing them. It then formulated specific recommendations on the concerns raised in relation to the situations in the two countries.

Visits provide a good opportunity to inform the population about the rights and obligations enshrined in the Convention and about the situation that the country as a whole is facing; they also clarify the notion of enforced disappearance itself. As reflected in the reports on the visits to Iraq and Mexico, the lack of awareness about this crime remains a reality that must be tackled urgently in order to prevent and eradicate it.<sup>33</sup>

<sup>25</sup> CED/C/10/D/1/2013, para. 12 (e).

<sup>26</sup> For detailed information on the inter-State communication procedure, see [reporting manual](#), section IV.D, pp. 200–201.

<sup>27</sup> For detailed information on country visits, see [reporting manual](#), section IV.E, pp. 201–202.

<sup>28</sup> See the report of the Committee on Enforced Disappearances on its visit to Mexico under article 33 of the Convention (CED/C/MEX/VR/1 (Findings) and CEC/D/MEX/VR/1 (Recommendations)).

<sup>29</sup> See the report of the Committee on Enforced Disappearances on its visit to Iraq under article 33 of the Convention (CED/C/IRQ/VR/1 (Findings) and CED/C/IRQ/VR/1 (Recommendations)).

<sup>30</sup> The Committee made its first request for a visit to Colombia at its nineteenth session, in September 2020. Related exchanges are ongoing between the State party and the Committee. See the report of the Committee on Enforced Disappearances on its twenty-first and twenty-second sessions, A/77/56, para. 83.

<sup>31</sup> CED/C/MEX/VR/1 (Findings), paras. 10–24.

<sup>32</sup> CED/C/IRQ/VR/1 (Findings), paras. 9–34.

<sup>33</sup> CED/C/MEX/VR/1 (Findings), para. 51; CED/C/IRQ/VR/1 (Findings), paras. 49–51.

## F. BRINGING WIDESPREAD OR SYSTEMATIC ENFORCED DISAPPEARANCES TO THE ATTENTION OF THE GENERAL ASSEMBLY (ART. 34)<sup>34</sup>

Article 34 establishes a referral procedure that is unique to the Committee. The aim of this procedure, which is applicable to all States parties, is to urgently bring to the attention of the General Assembly, through the Secretary-General, situations where enforced disappearance is practised on a widespread or systematic basis in the territory under the jurisdiction of a State party.

At the time of publication, the referral procedure had not yet been activated by the Committee.



OHCHR Committee on Enforced Disappearances Secretariat photo

<sup>34</sup> For detailed information on country visits, see [reporting manual](#), section IV.F, p. 203.





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**How should a State prepare to become a party to the Convention, and what are the priorities upon accession or ratification?**



Before becoming parties to the Convention, States may wish to undertake certain steps to set up a mechanism and strategies to begin implementation. However, these steps are not necessary to become a State party, and such plans may be pursued following the entry into force of the Convention in the country.

To prepare for the effective implementation of the obligations set out in the Convention, the State may wish to take the following steps:

- Review the domestic legal framework to check its compatibility with the Convention (see [annex I](#))
- Develop a plan for progressive and full implementation of the Convention
- Mainstream training for all relevant actors
- Prepare for the submission of the first report to the Committee on Enforced Disappearances within two years of becoming a party to the Convention, in consultation with all relevant actors.

When becoming parties to the Convention, States can benefit from the expertise of the Committee to guide them throughout these processes.

## **A. REVIEW THE DOMESTIC LEGAL FRAMEWORK TO CHECK ITS COMPATIBILITY WITH THE CONVENTION**

The domestic legal framework should provide effective remedies and full reparation to victims of enforced disappearance.

There are a number of effective remedies to address enforced disappearances. For instance, a State party may search for disappeared persons, investigate alleged enforced disappearances, prosecute and punish perpetrators and provide full reparation to victims. Adequate reparation may consist of measures of rehabilitation, restoration, compensation, satisfaction or guarantees of non-repetition, in compliance with article 24 (5) of the Convention.<sup>35</sup>

With regard to the relevant constitutional, legal and jurisprudential frameworks, the Committee has recommended that States parties ensure the uniform direct applicability of all the provisions of the Convention, including those that require incorporation into domestic legislation.<sup>36</sup>

To effectively fulfil their obligations, States parties may need to review and amend or adopt a number of legal instruments.<sup>37</sup> In particular:

- The Constitution should ideally provide for the absolute prohibition of enforced disappearance, and it should guarantee protection of the human rights violated or threatened by the offence of enforced disappearance, including the rights to life, to freedom from torture or cruel, inhuman or degrading treatment or punishment, to recognition as a person before the law, to liberty and security of the person, to an identity, to a fair trial and judicial guarantees, to an effective remedy and to know the truth regarding the circumstances of disappearances, as well as relevant economic, social and cultural rights.

<sup>35</sup> For examples of measures of reparation recommended by the Committee, see *Yrusta v. Argentina* (CEC/C/10/D/1/2013), para. 12. For more details and examples of what each category entails, see the Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law (A/RES/60/147, annex, paras 19–23).

<sup>36</sup> See, inter alia, the Committee's concluding observations on the reports submitted by Czechia (CED/C/CZE/CO/1), para. 10; and the Netherlands (CED/C/NLD/CO/1), para. 13.

<sup>37</sup> See also annex I.



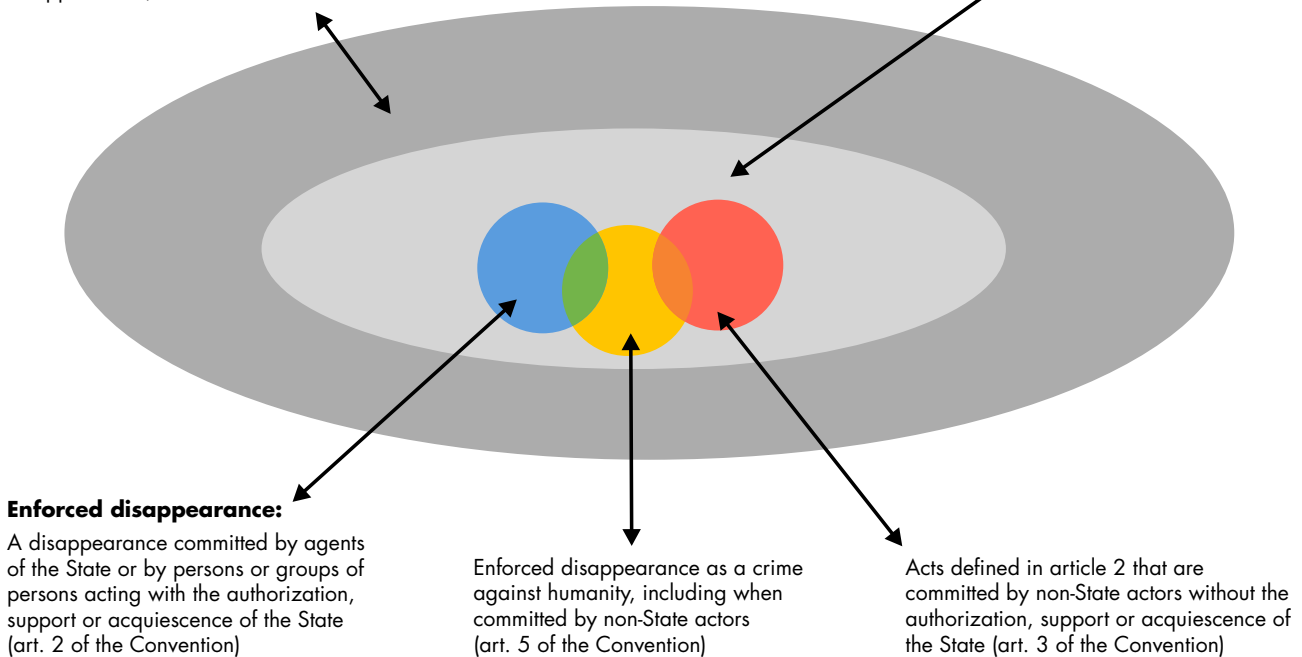
- The Criminal Code should criminalize enforced disappearance as a separate offence, making a clear distinction from other concepts such as abduction, kidnapping, disappearance and missing persons,<sup>38</sup> taking into account the elements below:

**Missing persons:**

Persons who have disappeared for various reasons, for example a natural disaster, armed conflict, trafficking, enforced disappearance, or other reasons

**Disappeared persons:**

Persons who have been the victim of an act committed by human beings



Clarification of the notions of “missing persons”, “disappearance” and “enforced disappearance”.

- The definition of enforced disappearances should be in line with article 2 of the Convention, and penalties should reflect the extreme seriousness of the offence.<sup>39</sup>
- As per article 5 of the Convention, national Criminal Codes should specify that enforced disappearance may amount to a crime against humanity, in line with applicable international law.<sup>40</sup>
- National criminal legislation should provide for the prosecution of perpetrators, ensuring that superior responsibility is recognized whenever the conditions of article 6 are met, and it should specify that no order or instruction from any public authority, civilian, military or other, may be invoked to justify an offence of enforced disappearance.
- Criminal and civil law procedures should be in place to effectively investigate and prosecute the offence of enforced disappearance and to ensure that all victims receive support and full and adequate reparation.<sup>41</sup>

<sup>38</sup> See CED/C/IRQ/VR/1 (Findings), para. 51.

<sup>39</sup> See, inter alia, the Committee’s concluding observations on the additional information submitted by Spain (CED/C/ESP/OAI/1), para. 6; and by Uruguay (CED/C/URY/OAI/1), para. 7.

<sup>40</sup> See, inter alia, the Committee’s concluding observations on the additional information submitted by Iraq (CED/C/IRQ/OAI/1), para. 7; and its concluding observations on the reports submitted by Brazil (CED/C/BRA/CO/1), para. 17; Czechia (CED/C/CZE/CO/1), para. 18; and Mongolia (CED/C/MNG/CO/1), para. 19. See also the references provided in María Clara Galvis Patiño, *The Work of the Committee on Enforced Disappearances: Achievements and Jurisprudence Ten Years after the Entry into Force of the International Convention for the Protection of All Persons from Enforced Disappearance* (Geneva, Geneva Academy, August 2021), p. 18, footnote 92.

<sup>41</sup> See, inter alia, the Committee’s concluding observations on the report submitted by Greece (CED/C/GRC/CO/1), para. 21; and its observations on the additional information submitted by Iraq (CED/C/IRQ/OAI/1), para. 15.

- Legislation should address the legal situation of disappeared persons whose fate has not been clarified and that of their relatives in fields such as social welfare, financial matters, family law and property rights.<sup>42</sup> In this regard, national legislation should repeal any presumption of death, recognizing the right of the families of disappeared persons to request a declaration of absence by reason of enforced disappearance,<sup>43</sup> or States should adopt specific legal provisions establishing a legal procedure to obtain such a declaration, irrespective of the date of the disappearance.<sup>44</sup>
- National legislation should systematically exclude the investigation and prosecution of enforced disappearances from military jurisdiction.<sup>45</sup>
- Legislation on non-refoulement, including for extradition procedures, should ensure that States parties have an effective mechanism in place to examine individual situations to prevent individuals from being returned to States whenever they could be subjected to enforced disappearance.<sup>46</sup>
- Data protection legislation should control the collection, processing, use and storage of personal information, including medical and genetic data, that is collected or transmitted in the course of the search for a disappeared person or the investigation of an alleged enforced disappearance.<sup>47</sup>
- Agreements between States parties should set up a framework of mutual legal assistance on criminal proceedings regarding enforced disappearance. International cooperation should enhance efforts to assist and search for victims of enforced disappearance, to locate and release the individual or, in case of death, to exhume the body, identify the person and return the body.<sup>48</sup>

## B. DEVELOP A PLAN FOR FULL IMPLEMENTATION OF THE CONVENTION

States parties should adopt a road map for effective implementation of the Convention that sets out realistic, practical and achievable goals within a precise time frame.

A road map for implementation of the Convention at the national level should include the following steps:

- Adopt or amend policies, rules and regulations and design and provide training courses, ensuring that the persons who interact with or who may have to interact with victims of disappearance attend them, in full compliance with the Convention
- Develop or improve technical expertise and skills to ensure immediate, effective searches to locate disappeared persons and to investigate and prosecute those responsible for disappearances,

<sup>42</sup> See, inter alia, the Committee's concluding observations on the reports submitted by Ecuador (CED/C/ECU/CO/1), para. 22; Senegal (CED/C/SEN/CO/1), para. 40; and Slovakia (CED/C/SVK/CO/1), para. 27.

<sup>43</sup> See, inter alia, the Committee's concluding observations on Bosnia and Herzegovina (CED/C/BIH/CO/1), para. 37; Cuba (CED/C/CUB/CO/1), para. 34; Honduras (CED/C/HND/CO/1), para. 39; Lithuania (CED/C/LTU/CO/1), para. 32; Mexico (CED/C/MEX/CO/1), para. 16; and Serbia (CED/C/SRB/CO/1), para. 30.

<sup>44</sup> See, inter alia, the Committee's concluding observations on the reports submitted by Costa Rica (CED/C/CRI/CO/1), para. 39; and Mali (CED/C/MLI/CO/1), para. 51. See also the references provided in Galvis Patiño, *The Work of the Committee on Enforced Disappearances*, pp. 36–37, footnotes 434–444.

<sup>45</sup> See, inter alia, the Committee's concluding observations on the reports submitted by Niger (CED/C/NER/CO/1), para. 21; and Switzerland (CED/C/CHE/CO/1), para. 20. See also the Committee's statement on enforced disappearances and military jurisdiction (A/70/56, annex III).

<sup>46</sup> See, inter alia, CED/C/NER/CO/1, para. 27(a); CED/C/MNG/CO/1, para. 31(a).

<sup>47</sup> This is in line with the Guiding Principles for the Search for Disappeared Persons (CED/C/7), in particular principle 11: "The search should use information in an appropriate manner".

<sup>48</sup> See, for example, CED/C/GRC/CO/1, para. 27 (c).

including the physical perpetrators and superiors, as well as investigating State authorities that fail to carry out their responsibilities

- Develop or strengthen national forensic capacity to search for disappeared persons, to identify bodies or remains that have been located, in the event of death, and to ensure the effective storage and chain of custody of any evidence related to a case of enforced disappearance
- Develop reparation programmes for all victims of enforced disappearance using a differential approach, ensuring the adaptation of the measures taken to the specific needs of the persons concerned
- Develop advocacy and public awareness campaigns on the crime of enforced disappearance at the national and international levels, on the rights of victims and on the obligations of States parties.

## **C. MAINSTREAM TRAINING ON ENFORCED DISAPPEARANCES FOR ALL RELEVANT ACTORS**

Enforced disappearance is a complex crime, and its eradication, prevention and punishment require strong coordination between several State institutions. Awareness-raising and the provision of streamlined education on enforced disappearances are essential to combat this heinous crime. According to article 23 of the Convention, relevant State actors include law enforcement personnel, whether civil or military, medical personnel, public officials and other persons,<sup>49</sup> who should receive training that includes a strong focus on international human rights standards.

## **D. PREPARE FOR THE SUBMISSION OF THE FIRST REPORT TO THE COMMITTEE**

As soon as States become parties to the Convention, they are encouraged to identify the national institutions that should take part in the reporting process, as well as all partners and actors who should be consulted. The Committee encourages States parties to hold broad consultations, including within the Government, with national human rights institutions, victims organizations, human rights defenders and non-governmental organizations working on enforced disappearances and related issues.<sup>50</sup>

States should ensure that adequate time is allocated to provide the most comprehensive, detailed and accurate information possible to the Committee and to allow for a constructive dialogue.

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<sup>49</sup> For more details on article 23 of the Convention, including examples of good practices, see [reporting manual](#), pp. 133–136. See also, *inter alia*, the Committee's concluding observations on the reports submitted by Czechia ([CED/C/CZE/CO/1](#)), para. 40; and Panama ([CED/C/PAN/CO/1](#)), para. 31.

<sup>50</sup> [CED/C/2](#), para. 9.









UN Photo/Marrine Perret



**How can international and national partners assist States in becoming parties to the Convention and in implementing it?**



States can rely on the support of various international partners at every stage of becoming a party to the Convention and implementing it.

## A. THE COMMITTEE ON ENFORCED DISAPPEARANCES

Within the United Nations system, the Committee on Enforced Disappearances, as the guardian of the Convention, is the natural partner for States. Both before and after ratification or accession, the Committee can provide technical training and guidance to interested States about what being a party to the Convention involves, what the rights of victims are and how to use the procedures established by the Convention.

The Committee also provides training tools that may be used by all interested actors, such as the training guide on *Reporting under the International Convention for the Protection of All Persons from Enforced Disappearance* – both part I, the manual,<sup>51</sup> and part II, the training package.<sup>52</sup> Other useful tools include the revised fact sheet on enforced disappearances<sup>53</sup> and [the leaflet](#) on the Working Group and the Committee “in a nutshell”.<sup>54</sup> The Committee can answer States’ concerns and requests regarding specific issues in relation to the Convention and its implementation.

The Committee may support States parties through the identification of experts who can provide technical assistance and legal advice on the implementation of the Convention and of the Committee’s recommendations.

## B. OHCHR TREATY BODY CAPACITY-BUILDING PROGRAMME

The treaty body capacity-building programme devised by OHCHR offers assistance related to ratification and accession processes and to the implementation by States of their procedural obligations under the Convention, including reporting, implementation, follow-up, requests for urgent action and the individual communications procedure.

## C. UNITED NATIONS AGENCIES

At the national level, in line with the Secretary-General’s 2020 [Call to Action for Human Rights](#), the Committee’s recommendations must be taken into account by entities of the United Nations system in their respective agendas and programmes of work. OHCHR field presences are a key partner in this regard. As part of the United Nations efforts to mainstream human rights through all agencies and at the local level, human rights advisers who operate in United Nations country teams can provide assistance in the 55 countries concerned.<sup>55</sup>

<sup>51</sup> See [www.ohchr.org/en/publications/training-and-education-publications/ohchr-training-guide-reporting-under-international](http://www.ohchr.org/en/publications/training-and-education-publications/ohchr-training-guide-reporting-under-international).

<sup>52</sup> See [www.ohchr.org/en/publications/training-and-education-publications/reporting-under-international-convention](http://www.ohchr.org/en/publications/training-and-education-publications/reporting-under-international-convention).

<sup>53</sup> See [www.ohchr.org/sites/default/files/documents/publications/Fact-sheet6-Rev4.pdf](http://www.ohchr.org/sites/default/files/documents/publications/Fact-sheet6-Rev4.pdf).

<sup>54</sup> See [www.oacnudh.org/wp-content/uploads/2022/09/WGEID-CED-InglesWEB.pdf](http://www.oacnudh.org/wp-content/uploads/2022/09/WGEID-CED-InglesWEB.pdf).

<sup>55</sup> See [www.ohchr.org/en/about-us/where-we-work](http://www.ohchr.org/en/about-us/where-we-work).



## D. NATIONAL AND INTERNATIONAL CIVIL SOCIETY ORGANIZATIONS

The contribution of national and international civil society organizations, including associations of victims, is key. Their daily living of the reality of enforced disappearances and the experience they have acquired throughout their struggles must be put at the core of the agenda of States parties. These organizations can assist States in identifying actions to be taken to attend to the needs of victims of enforced disappearance. Some organizations also provide legal expertise and help victims to exercise their rights and access the procedures established by the Convention, such as the urgent action procedure. Under the reporting procedure, the Committee encourages States parties to consult victims and other civil society actors, including non-governmental organizations, as well as national human rights institutions. The participation of these actors should be ensured at the various stages of the procedure, from the preparation of State party reports<sup>56</sup> to the implementation of the recommendations issued by the Committee.<sup>57</sup>

## E. OTHER STATES PARTIES

In ratifying the Convention, States join a community of practice and can learn from one another's experience to prevent and eradicate enforced disappearances, support victims and fight against the impunity of this crime, in compliance with the Convention.



<sup>56</sup> CED/C/2, para. 9.

<sup>57</sup> See, inter alia, the Committee's concluding observations on the reports submitted by Brazil (CED/C/BRA/CO/1), paras. 38 and 40; and Italy (CED/C/ITA/CO/1), para. 7.







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# VIII

## Ratification, accession reservations and declarations to the Convention



States can become parties to the Convention through either ratification or accession. Ratification and accession are official expressions of the State of its willingness to be bound by the treaty and its obligations and of its commitment to implement the treaty through a formal process before the Secretary-General. Ratification and accession can include declarations and reservations.<sup>58</sup>

## **A. SIGNATURE AND RATIFICATION**

Ratification of the Convention is a two-step process: first comes signature, followed by ratification. The Head of State or Government or the Minister for Foreign Affairs signs the instrument. By signing the Convention, States indicate their intention to be bound by its provisions at a later stage through ratification. Moreover, once a State has signed the Convention, it is obliged to refrain from acts which would defeat its object and purposes.<sup>59</sup> The second step requires the State to ratify the Convention by depositing an instrument of ratification with the Secretary-General through the Treaty Section of the Office of Legal Affairs in New York. The Convention becomes fully applicable in the State party on the thirtieth day after the date of the deposit of the instrument of ratification.

## **B. ACCESSION**

Accession is a more direct procedure to adhere to the Convention. Through accession, a State that has not signed the treaty formally declares its consent to be bound by the Convention and deposits the instrument of accession with the Secretary-General through the Treaty Section of the Office of Legal Affairs. The Convention becomes fully applicable on the thirtieth day after the date of the deposit of the instrument of accession.

## **C. RESERVATIONS AND INTERPRETATIVE DECLARATIONS**

At the time when the State decides to become a party to the Convention, it can make declarations and/or reservations. A reservation is defined as “a unilateral statement, however phrased or named, made by a State, when signing, ratifying, accepting, approving or acceding to a treaty, whereby it purports to exclude or to modify the legal effect of certain provisions of the treaty in their application to that State”.<sup>60</sup> Reservations can be withdrawn at any time.

Interpretative declarations are usually statements that spell out the State’s understanding of a certain matter or its interpretation of particular provisions.

Reservations and declarations must be compatible with the object and purpose of the treaty, and cannot prevent the Committee from carrying out its mandate, under all the modalities that are included in the Convention.

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<sup>58</sup> See examples in the annexes to this guide.

<sup>59</sup> Vienna Convention on the Law of Treaties, articles 12 and 18. This Convention codifies customary international law and State practice regarding treaties.

<sup>60</sup> Vienna Convention on the Law of Treaties, article 2 (1) (d).

## D. DECLARATIONS TO RECOGNIZE THE COMPETENCE OF THE COMMITTEE TO EXAMINE INDIVIDUAL AND/OR INTER-STATE COMMUNICATIONS

Under articles 31 and 32 of the Convention, States parties can make a declaration at the time of ratification or at any time afterwards to recognize the competence of the Committee on Enforced Disappearances to receive and consider individual communications (article 31) and inter-State communications (article 32).<sup>61</sup>



OHCHR Committee on Enforced Disappearances Secretariat photo

<sup>61</sup> See sections V.C and V.D.







HARPO ANTONIO ZALAS



LUIS ALBERTO DE LOS SANTOS



DESAPARECIDO



JUAN LUIS VILLA LOPEZ

Probablemente se encuentra desorientado ya que sufre ataques epilépticos.

Avúdanos a encontrarlo!!!

Jaime Aceves Muñoz "Tito"



Lorenzo Sánchez Vázquez



SE BUSCA



Se busca a la Sra. [Name] de mayo la Sra.



Vaja de sus relaciones Mentales y cobivida

SE BUSCA



YASNAIA ONTIVEROS FUENTES APODO (YAS)

edad: 33 Años - Cabello Negro A Los Hombros  
Complexion delgada 1.60 mts de estatura.  
Sus ojos color verde fuerte y pantalón Levis azul.  
Se extravió el día 6 de junio del 2014 a medio  
día. domicilio: AV. ALBA ROJA HIPÓDROMO 2



SE BUSCA!



"Luis Alejandro Salazar Vargas"  
Fue visto por ultima vez el día 10 de abril del 2014



Se busca Marlon Cruz Ramirez,  
hijo de Marlon Cruz Rodriguez  
deportado de La Corca de Santa Clara  
Cuba el día 9 de noviembre 2002

ANTANA RUIZ

Annexes

## ANNEX I: ELEMENTS TO TAKE INTO ACCOUNT IN HARMONIZING NATIONAL LEGAL AND INSTITUTIONAL FRAMEWORKS WITH THE CONVENTION

The following list is provided as guidance, without pretention of exhaustivity, to highlight elements to be taken into account by States when considering reviews of their national legislative framework in compliance with the International Convention for the Protection of All Persons from Enforced Disappearance.

Harmonization of national legislation with the Convention is a progressive process: it is not necessary for States to finalize it before ratifying or acceding to the Convention. Once the State becomes a party to the Convention, it commits to ensure such harmonization and to implement all the provisions of the Convention at the national level, with the support and guidance of the Committee.

### Define and criminalize enforced disappearance

Domestic legislation bans and criminalizes enforced disappearance as a separate and specific offence.

- The definition of enforced disappearance complies with the definition contained in article 2 of the Convention and includes the following elements:
  - (a) arrest, detention, abduction or any other form of deprivation of liberty;
  - (b) by agents of the State or by persons or groups of persons acting with the authorization, support or acquiescence of the State;
  - (c) followed by a refusal to acknowledge the deprivation of liberty or by concealment of the fate or whereabouts of the disappeared person, which, as a result, places the disappeared person outside the protection of the law;
- As per article 1, national legislation provides for an absolute prohibition of enforced disappearance;
- The punishment or penalty for the offence of enforced disappearance reflects and is proportionate to the extreme seriousness of the crime (article 7);
- National legislation qualifies enforced disappearance as a crime against humanity when committed as part of a widespread or systematic practice directed against a civilian population (article 5);
- There is no statute of limitation in respect of the crime of enforced disappearance. If a term of limitations exists, it is of long duration, proportionate to the seriousness of the offence, and commences when the offence ceases, taking into account its continuous nature (article 8).

### Ensure a proper register of all disappearances, including enforced disappearances

An official register is set up to enable the systematic registration and identification of:

- Enforced disappearances, being disappearances committed by agents of the State or by persons or groups of persons acting with the authorization, support or acquiescence of the State (article 2 of the Convention);
- Disappearances that correspond to acts defined in article 2 of the Convention that are committed by non-State actors without the authorization, support or acquiescence of the State. Such acts may include disappearances that have occurred in the context of human trafficking, smuggling, illegal adoptions etc. (article 3);
- Enforced disappearance as a crime against humanity, including when committed by non-State actors (article 5).



## Identify all possible circumstances of liability for enforced disappearances

The State's legislative and institutional frameworks provide for specific modes of liability to investigate, prosecute and criminalize:

- The commission of an enforced disappearance;
- The attempt to commit an enforced disappearance;
- Complicity to commit an enforced disappearance;
- Instigation of an enforced disappearance;
- The authorization of, acquiescence to or support for the commission of an enforced disappearance by a non-State actor;
- The commission of disappearances amounting to a crime against humanity, whoever the perpetrator may be;
- Other forms of participation.

National legislation provides for the prosecution of perpetrators and ensures that superior responsibility is recognized whenever the superior:

- Knew or consciously disregarded information that the subordinates were committing a crime of enforced disappearance;
- Exercised effective responsibility for and control over activities that allowed for the commission of a crime of enforced disappearance; or
- Failed to take the necessary measures to prevent or repress the commission of an enforced disappearance.

## Reporting, investigation and prosecution of all cases of enforced disappearance

The legislative and institutional framework should include provisions and mechanisms to ensure that:

- Any individual can report all disappearances, including enforced disappearances, to the competent authorities;
- All allegations are examined promptly and impartially;
- When news of a person's disappearance is received, a search is initiated ex officio without delay in order to increase the chances of finding the person alive;
- All alleged enforced disappearances are investigated by autonomous and independent authorities;
- All victims, complainants and those supporting them are protected against potential intimidation, reprisal or ill treatment;
- States parties provide each other with mutual assistance in criminal proceedings related to enforced disappearance, including the supply of all evidence at their disposal;
- States parties cooperate to search for, locate and release disappeared persons or, in the event of death, to exhume and identify the body and return the remains.

## Extradition and non-refoulement

National legislation should include:

- The offence of enforced disappearance as an extraditable offence;
- The applicability of the principle of non-refoulement to all cases where there are substantial grounds for believing that a person would be in danger of being subjected to enforced disappearance. To determine whether there is such risk, "the competent authorities shall take into account all relevant considerations, including, where applicable, the existence in the State concerned of a consistent pattern of gross, flagrant or mass violations of human rights or of serious violations of international humanitarian law" (article 16 of the Convention).



## Prohibition of secret detention and conditions of deprivation of liberty

National legislation should include the following elements:

- The absolute prohibition of secret detention;
- A clear outline of the conditions under which deprivation of liberty may take place and of which authorities can order such deprivation of liberty;
- Guarantees that persons deprived of their liberty are held only in authorized facilities, have access to competent judicial authorities and are able to communicate with their family, legal counsel or any other person of their choice or, in the case of foreigners, with their consular authorities;
- The compilation and maintenance of at least one up-to-date official registry of persons deprived of liberty to facilitate the central collection of relevant information on such persons;
- Provisions allowing access to information on persons deprived of their liberty to any person with a legitimate interest;
- The establishment of relevant mechanisms of accountability.

## Adequate definition of “victim”

National legislation should contain a definition of “victim” that is in line with the definition in article 24 of the Convention, which includes the disappeared person and any person who has suffered harm as the direct result of an enforced disappearance.

## Search

The legislative and institutional framework should provide for:

- Measures to search for, locate and release disappeared persons and, in the event of death, to locate, respect and return their remains;
- Systems that facilitate immediate and urgent action to search for disappeared persons in cases where there is reason to believe that they may be alive.

## Access to reparation and information on procedures related to an alleged enforced disappearance

The legislative and institutional framework should encompass:

- The right to reparation;
- The inclusion of rehabilitation, restitution, compensation, guarantees of non-repetition and satisfaction as forms of reparation;
- The right to know the truth regarding the circumstances of the enforced disappearance and the fate and whereabouts of the disappeared person;
- The right of victims to access information about the progress and results of the search for the disappeared person and about the investigation of the alleged enforced disappearance, and to participate in the different phases of the relevant procedures if they so wish.

## Legal situation of disappeared persons and their relatives

National legislation should include procedures to recognize the legal status of a disappeared person and the issuance of legal documents, preferably declarations of absence rather than declarations of death, to allow the relatives to resolve issues relating to social welfare, financial matters, family law or property rights.

## Right to form and participate freely in organizations dealing with enforced disappearance

The national framework should include:

- Administrative procedures that guarantee the right to form and participate freely in organizations and associations concerned with establishing the circumstances of enforced disappearances, the fate of disappeared persons and assisting victims;
- Processes to ensure that associations of victims are consulted and their views taken into account in the drafting of relevant legislation.

## Wrongful removal of children

The national framework should include the following elements:

- Provisions to prevent and punish the wrongful removal of children subjected to enforced disappearance, children whose father, mother or legal guardian has been subjected to enforced disappearance or children born during the captivity of a mother who has been subjected to enforced disappearance;
- Provisions to prevent and punish the falsification, concealment or destruction of documents attesting to the true identity of those children;
- A legislative and institutional framework to search for and identify the child victims of wrongful removal;
- Provisions to protect the best interests of the children involved and their right to preserve or re-establish their identity, including their nationality, name and family relations;
- Legal procedures to review adoption or placement procedures and, where appropriate, to annul any adoption or placement of children that originated in an enforced disappearance.



## **ANNEX II: INSTRUMENTS**

### **MODEL INSTRUMENT OF RATIFICATION OF THE INTERNATIONAL CONVENTION FOR THE PROTECTION OF ALL PERSONS FROM ENFORCED DISAPPEARANCE**

(To be signed by the Head of State, Head of Government or Minister for Foreign Affairs)

[RATIFICATION / ACCEPTANCE / APPROVAL]

---

**WHEREAS** the International Convention for the Protection of All Persons from Enforced Disappearance was [concluded, adopted, opened for signature, etc.] at [place] on [date],

**AND WHEREAS** the said International Convention for the Protection of All Persons from Enforced Disappearance has been signed on behalf of the Government of [name of State] on [date],

**NOW THEREFORE I**, [name and title of the Head of State, Head of Government or Minister for Foreign Affairs] declare that the Government of [name of State], having considered the above-mentioned convention, [ratifies, accepts, approves] the same and undertakes faithfully to perform and carry out the stipulations therein contained.

**IN WITNESS WHEREOF**, I have signed this instrument of [ratification, acceptance, approval] at [place] on [date].

[Signature]

**MODEL INSTRUMENT OF ACCESSION TO THE INTERNATIONAL CONVENTION FOR  
THE PROTECTION OF ALL PERSONS FROM ENFORCED DISAPPEARANCE**

(To be signed by the Head of State, Head of Government or Minister for Foreign Affairs)

**ACCESSION**

---

**WHEREAS** the International Convention for the Protection of All Persons from Enforced Disappearance was [concluded, adopted, opened for signature, etc.] at [place] on [date],

**NOW THEREFORE I**, [name and title of the Head of State, Head of Government or Minister for Foreign Affairs] declare that the Government of [name of State], having considered the above-mentioned convention, accedes to the same and undertakes faithfully to perform and carry out the stipulations therein contained.

**IN WITNESS WHEREOF**, I have signed this instrument of accession at [place] on [date].

[Signature]



**MODEL INSTRUMENT OF DECLARATION RECOGNIZING THE COMPETENCE OF THE  
COMMITTEE TO EXAMINE INDIVIDUAL COMMUNICATIONS AND/OR INTER-STATE  
COMMUNICATIONS**

(To be signed by the Head of State, Head of Government or Minister for Foreign Affairs)

**DECLARATION**

I, [name and title of the Head of State, Head of Government or Minister for Foreign Affairs],

**HEREBY DECLARE** that the Government of [name of State] makes the following declaration in relation to article(s) [---] of the International Convention for the Protection of All Persons from Enforced Disappearance:

**NOW THEREFORE I**, [name and title of the Head of State, Head of Government or Minister for Foreign Affairs] declare that the Government of [name of State]

*INDIVIDUAL COMMUNICATIONS (ART. 31)*

recognizes the competence of the Committee on Enforced Disappearances to receive and consider communications from or on behalf of persons subject to its jurisdiction claiming to be victims of a violation by [name of the State] of the provisions of the Convention, in accordance with article 31 of the Convention.

*INTER-STATE COMMUNICATIONS (ART. 32)*

recognizes the competence of the Committee on Enforced Disappearances to receive and consider communications in which a State Party claims that another State Party is not fulfilling its obligations under this Convention, in accordance with article 32 of the Convention.

**IN WITNESS WHEREOF**, I have hereunto set my hand and seal.

[Place and date]

[Signature]





UNITED NATIONS  
**HUMAN RIGHTS**  
OFFICE OF THE HIGH COMMISSIONER

Office of the United Nations  
High Commissioner  
for Human Rights (OHCHR)  
Palais des Nations  
CH 1211 Geneva 10, Switzerland  
Telephone: +41 (0) 22 917 92 20  
Email: [ohchr-infodesk@un.org](mailto:ohchr-infodesk@un.org)  
Website: [www.ohchr.org](http://www.ohchr.org)

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