****

**Committee on Enforced Disappearances**

**General comment on enforced disappearances in the context of migration**

***- Draft 1 –***

**Table of Contents**

[I. Introduction 1](#_Toc130394609)

[II. Objectives and Scope of the General Comment 5](#_Toc130394610)

[III. Preventive Mechanisms 6](#_Toc130394611)

[a. Prohibition of secret detention of migrants 6](#_Toc130394612)

[b. Data collection 9](#_Toc130394613)

[c. Policies and non-criminalisation 11](#_Toc130394614)

[d. Non-refoulement and the prohibition of pushbacks 13](#_Toc130394615)

[IV. The obligation to search and investigate 16](#_Toc130394616)

[V. Victims’ rights 18](#_Toc130394617)

[VI. Training and cooperation 19](#_Toc130394618)

[VII. Ratification 21](#_Toc130394619)

1. Introduction
2. For the purpose of this General Comment, the term “migrant” encompasses “a person who moves away from his or her place of usual residence, whether within a country or across an international border, temporarily or permanently, and for a variety of reasons”[[1]](#footnote-2), such as international or internal conflicts, persecution[[2]](#footnote-3), natural disasters, the effects of climate change, difficult economic situations, or high crime rates. Numbers of migrants worldwide remain high.[[3]](#footnote-4)
3. A number of migrants are in a situation of particular vulnerability, “which may arise from the circumstances in which they travel, [as well as, often, due to their undocumented status and language barriers,] or the conditions they face in countries of origin, transit and destination”.[[4]](#footnote-5) It is thus especially important that the universal human rights and fundamental freedoms of migrants remain respected, protected and fulfilled at all times.[[5]](#footnote-6) Although States have a sovereign prerogative to manage their borders and regulate migration, they must do so in full compliance with their obligations under international law, in particular human rights law, international humanitarian law, international refugee law, and the law of the sea.[[6]](#footnote-7)
4. Being already in a situation of vulnerability, faced with restrictive immigration policies and “dehumanizing border governance tactics”[[7]](#footnote-8), thousands of migrants die, disappear, or go missing each year, which has led to a humanitarian crisis in certain regions of the world.[[8]](#footnote-9) The issue is of high priority at the international level, as shown by the 2019 UN General Assembly Resolution on the protection of migrants[[9]](#footnote-10) that called for international cooperation in cases of migrants who have died or gone missing, as well as the 2018 *Global Compact for Safe, Orderly and Regular Migration* (Global Compact on Migration), whose objectives include addressing and reducing vulnerabilities in migration, saving lives and establishing coordinated efforts on missing migrants, and countering smuggling and trafficking.[[10]](#footnote-11)
5. AA “missing person”, as defined by the International Committee of the Red Cross (ICRC) in the context of International Humanitarian Law, is “a person whose whereabouts are unknown to his/her relatives and/or who, on the basis of reliable information, has been reported missing in accordance with the national legislation in connection with an international or non-international armed conflict, a situation of internal violence or disturbances, natural catastrophes or any other situation that may require the intervention of a competent State authority.”[[11]](#footnote-12) The International Organisation for Migration (IOM) further defines that the expression “missing migrants” includes, *inter alia,* migrants who have died “*in transportation accidents, shipwrecks, violent attacks, or due to medical complications during their journeys.”*[[12]](#footnote-13) Some missing migrants could be victims of disappearance. The principal distinctive element between a migrant going missing and being a victim of disappearance is the *commission of a crime* against a migrant, as provided in articles 2, 3, and 5 of the Convention on the Protection of All Persons from Enforced Disappearance (“the Convention”).[[13]](#footnote-14)
6. The Committee notes with high concern that deaths and disappearances along various migration routes are widely reported.[[14]](#footnote-15) The issue was first addressed by the UN Working Group on Enforced or Involuntary Disappearances (WGEID) in its 2017 *Report on Enforced disappearances in the context of migration* and has not improved since. However, accurate data on the number of victims of disappearances amongst missing migrants are not available[[15]](#footnote-16) due to a lack of systematic data collection and shared databases, insufficient cooperation and lack of political will of States, barriers to reporting such disappearances (articles 2 and 3), linked, *inter alia*, to the situation of vulnerability of migrants and their relatives, as well as failure by authorities to conduct serious, effective, and diligent searches and investigations. This lack of accurate and disaggregated data hinders the adoption of policies and strategies to prevent the enforced disappearance of migrants and increases the vulnerability of migrants to become victims of this crime.
7. Different factors directly or indirectly contribute to the disappearance of migrants (articles 2 and 3) or risk thereof. Various practices by States and their agents in the context of restrictive and dehumanising border governance *directly* contribute to the disappearance of migrants. These practices include immigration detention, pushbacks and chain-pushbacks at land or sea, systematic failure to search and rescue[[16]](#footnote-17), as well as collusion between state agents and organised criminal groups engaged in human trafficking.[[17]](#footnote-18)
8. In addition to this, rigid, securitised, and increasingly militarised migration and border governance policies of States, coupled with discriminatory attitudes and practices and a general trend of criminalisation of migrants and those who assist them,and widespread impunity of those who violate the rights of migrants,[[18]](#footnote-19) *indirectly* contribute to disappearances of migrants by forcing them to choose increasingly dangerous routes, turn to criminal networks of smugglers or traffickers, and exposing them to different human rights violations and exploitation, including becoming victims of enforced disappearance.[[19]](#footnote-20) This phenomenon affects all regions of the world, without exceptions.
9. Among the factors which contribute to enforced disappearances of migrants, the issue of discrimination is of specific concern[[20]](#footnote-21):

a) Discrimination can be the trigger of migration when a person is exposed to structural or direct discrimination in the country of origin or residence.

b) Migration policies can contain discriminatory elements, such as visa or residence permission restrictions for persons from certain countries or regions or for persons of certain nationalities.

c) Certain groups of migrants may face discrimination during the migration process, such as selective deprivation of liberty or ill-treatment of migrants, or certain categories of migrants, based on racial, religious, or ethnic profiling, age, sex, gender, sexual orientation, or other personal characteristics, which makes them even more vulnerable to becoming victims of enforced disappearance.[[21]](#footnote-22)

d) Discrimination can also affect the rights of victims and their relatives to access to justice, including, but not limited to, participation in the investigation and search, access to legal aid, protection, and support, as well as presence during court procedures.

The Committee emphasises the *jus cogens* principle of non-discrimination in international human rights law[[22]](#footnote-23)that must be adhered to at all times by States parties when implementing their obligations relating to the prevention and response to disappearances under the Convention. This reflects article 1 of the Convention, which stipulates that “no one shall be subjected to enforced disappearance” (1) and affirms that no exceptional circumstances may be invoked to justify enforced disappearances (2). Consequently, the obligations of States parties under the Convention apply regardless of the nationality, origin, or migratory status of the victims.

1. As the contexts and modalities of enforced disappearances evolve over time, the Committee aims to ensure prompt and proactive reaction and responsiveness to present-day realities. Considering the serious and highly worrying developments of enforced disappearances in the context of migration, and the inherently preventive character of the Convention, the Committee felt committed and decided to focus its first General Comment on assisting States parties in implementing relevant obligations arising from the Convention to prevent and respond to these crimes. Thereby, it addresses one aspect of the ongoing human rights and humanitarian crisis in the context of migration and builds on existing universal[[23]](#footnote-24) or regional[[24]](#footnote-25) legal and policy instruments applicable to the multiple human rights violations migrants face throughout their journeys, through the lens of the obligations established under the Convention. It also further develops the Committee’s standards in this regard, based on its 2019 *Guiding Principles for the Search for Disappeared Persons* (Guiding Principles),[[25]](#footnote-26)providing a clear, authoritative, and interpretative position on how to prevent and react to enforced disappearances in the context of migration.[[26]](#footnote-27)
2. This General Comment draws on the Committee’s experience in reviewing States parties’ reports, (its day of general discussion on enforced disappearances in the context of migration), the jurisprudence of human rights treaty bodies, the recommendations of the Human Rights Council and its special procedures, two rounds of consultations with States, experts and other stakeholders on the concept note and advanced draft, and regional consultations in Latin America and the Caribbean, Asia-Pacific, Europe, and Africa, including the MENA region.
3. Objectives and Scope of the General Comment
4. Deeply concerned by the growing trends of enforced disappearances in the context of migration, the Committee appeals to States parties to take urgent measures to prevent and respond to this development, guided by this General Comment to ensure full compliance with their legal obligations. It further intends to clarify possible legal uncertainties arising under the Convention and to encourage future States parties by providing clear positions on an issue of global concern.
5. Recalling the preventive character of the Convention, this General Comment further aims to assist States parties in developing and implementing national policies to protect migrants from becoming victims of enforced disappearance and combat impunity.
6. Recognising the particular situation of vulnerability of migrants themselves, as well as of their relatives, who are frequently also migrants and often encounter obstacles and discrimination when searching for their disappeared loved ones, the General Comment aims to assist States in their efforts to ensure access to justice for victims contribute to international efforts to improve the often dire human rights situation of migrants.
7. Recognising the often cross-border character of enforced disappearances in the context of migration, the General Comment aims at fostering international cooperation with regards to the prevention, search, and investigation of disappearances of migrants in compliance with the obligations under the Convention.
8. Preventive Mechanisms
	1. Prohibition of secret detention of migrants
9. To prevent the risk of migrants’ becoming victims of enforced disappearance in the context of immigration detention[[27]](#footnote-28), it must be ensured that they are always able to communicatewith their relatives, consular authorities, legal representatives, or any other person whom they could inform about their fate or whereabouts.[[28]](#footnote-29) Deprivation of liberty for immigration-related reasons should always be a measure of last resort and migrants should only be deprived of liberty if there are no alternatives to detention.[[29]](#footnote-30) Moreover, in view of the non-derogability of the prohibition of enforced disappearances (article 1(2) of the Convention), emergency situations must not be used to justify any form of deprivation of liberty of migrants that could amount to enforced disappearance.[[30]](#footnote-31) Children should never be deprived of their liberty only for reasons only related to their or their parents’ migration status[[31]](#footnote-32), “on the basis of the child being unaccompanied or separated, or on their migratory or residence status or lack thereof”[[32]](#footnote-33), and unaccompanied minors who are apprehended in the course of migration should be referred to child protection authorities.[[33]](#footnote-34) The prohibition of secret detention contained in article 17 of the Convention is especially important to prevent disappearances and extends to situations where migrants are deprived of their liberty by non-State actors acting with the support, authorisation, or acquiescence of the State.[[34]](#footnote-35)
10. The absolute prohibition of secret detention of any person, including migrants, under article 17(1)[[35]](#footnote-36) encompasses any form of deprivation of liberty, regardless of the pretext used to justify incommunicado detention or transfer to a secret location[[36]](#footnote-37) or the duration of the deprivation of liberty.[[37]](#footnote-38) States parties must ensure that if migrants are deprived of liberty, without exception and irrespective of the place of deprivation of liberty, they are afforded, *de jure* and *de facto*, all fundamental legal safeguards provided for under article 17 (2) of the Convention and other human rights treaties.[[38]](#footnote-39) This includes:
	* + 1. establishing in legislation the conditions under which migrants may be deprived of liberty;
			2. specifying authorities competent to order the deprivation of liberty;
			3. guaranteeing that migrants deprived of their liberty are held solely in officially recognised and supervised places of deprivation of liberty;
			4. guaranteeing that migrants deprived of their liberty are informed about their rights from the very outset, in a language that they understand, and have effective access to counsel and, where necessary, a professional interpreter, and can communicate without delay with their relatives or any person of their choice and with their consular or other diplomatic authorities if they so wish. The right to communicate also encompasses a right to be visited[[39]](#footnote-40);
			5. guaranteeing the right of the person deprived of liberty, or any person with a legitimate interest to take proceedings before a court in order to challenge the lawfulness of the deprivation of liberty. This right should not be restricted under any circumstances and should be guaranteed irrespective of the place of deprivation of liberty and the person’s migratory status.[[40]](#footnote-41)
			6. recognising that de facto detention operations undertaken as part of border control measures is deprivation of liberty that requires the same safeguards, oversight, and regulations of other forms of detention.

States parties should also ensure that allegations of secret detention are duly investigated and that those responsible are prosecuted and punished in accordance with the gravity of their acts if found guilty.[[41]](#footnote-42)

1. States parties must guarantee that migrants deprived of their liberty are able to contact and be contacted by the local UNHCR Office, available national refugee bodies, or other competent agencies and communicate with them in private. “[T]he means to make such contact should be made available”.[[42]](#footnote-43)
2. In accordance with article 17(3) of the Convention, States parties must keep up-to-date official registers and records of all deprivations of liberty, transfers, and releases of migrants, without exception and irrespective of the place or duration of the deprivation of liberty.[[43]](#footnote-44) These registers and records must, at a minimum, contain the information established in article 17(3) of the Convention and be filled out diligently and without delay. In addition to the information listed in article 17 (3), and while ensuring full respect for the principles governing individual data protection in accordance with article 19 of the Convention, States parties are invited to consider the inclusion of a photograph of the person deprived of liberty because some migrants may not carry identity documents or use a false identity.[[44]](#footnote-45) Registers and records should be subject to regular reviews.
3. or their counsel.The State party shall provide without delay information about migrants who have been deprived of liberty to any person with a legitimate interest, such as relatives, their representatives, or their counsel. At a minimum, such information should include the information listed in article 18(1) of the Convention and States must ensure that persons with a legitimate interest have a real possibility of accessing it.[[45]](#footnote-46) The right of persons with a legitimate interest to access and receive information may only be restricted in accordance with the provisions of article 20(1) of the Convention.[[46]](#footnote-47) States parties should ensure that data protection or privacy regulations are not used as a ground for withholding information.[[47]](#footnote-48)
4. States parties should also make exhaustive lists of all places of deprivation of liberty and make them publicly available[[48]](#footnote-49) and ensure that any location where migrants are deprived of liberty, whether run by the State party or privately, can be accessed by independent and impartial monitors, such as national human rights institutions, civil society organisations, or international organisations.[[49]](#footnote-50) Access to sites of deprivation of liberty must be guaranteed in law, in accordance with article 17(2)(e) of the Convention, and in practice. Therefore, States parties should establish independent and impartial monitoring and accountability mechanisms in places of deprivation of liberty.[[50]](#footnote-51) Moreover, States parties should ensure that any person deprived of liberty has access to appropriate mechanisms to report violations of their rights to the relevant authorities.[[51]](#footnote-52)
	1. Data collection
5. The lack of reliable data and statistics on disappeared migrants is one of the major obstacles to preventing and responding to disappearances of migrants.[[52]](#footnote-53) The Committee emphasises that the regular and systematic collection of disaggregated data and the generation of accurate statistics are crucial to understanding the scale of the problem and devising policies to effectively prevent, search, investigate, punish, and eliminate disappearances of migrants with a differential approach States parties should create and regularly update single, nationwide databases of disappeared persons that include basic information about migrants who may be victims of a disappearance (such as sex, gender identity, age, nationality, ethnic group or religious affiliation, sexual orientation, place, date, context and circumstances of the person’s disappearance, including all evidence relevant to determining whether it was an enforced disappearance, and information about the status of exhumations, identification, and return of remains).[[53]](#footnote-54) States parties that are countries of origin should create registers of disappeared persons abroad[[54]](#footnote-55) and, to allow for an effective search in the event of a disappearance, States of origin, transit, and destination should ensure registration of migrants at border controls.[[55]](#footnote-56) Authorities responsible for entering the relevant data must do so in a consistent and exhaustive manner, immediately after being informed of a disappearance.[[56]](#footnote-57) States parties must ensure that such data are not shared or used for immigration enforcement purposes.[[57]](#footnote-58)
6. The Committee further recommends standardising data collection in order to facilitate data-sharing between countries of origin, transit, and destination.[[58]](#footnote-59) Furthermore, States parties should ensure interconnection and interoperability of databases on disappeared and missing migrants at national level and internationally in order to facilitate the cross-checking of information. Any exchange of personal data, both nationally and across borders or jurisdictions, should meet internationally accepted data and privacy standards.[[59]](#footnote-60) Moreover, personal data, especially biometric data, should only be used for the purpose of searching for disappeared migrants (article 19(1)) and providing information to persons with a legitimate interest in line with article 18 of the Convention.
7. The absence of any record-keeping throughout the handling of persons in relation to irregular border crossings further increases the possibility that they become victims of human rights violations.[[60]](#footnote-61) It also renders any accountability impossible, including effective inquiries and investigations.[[61]](#footnote-62) Consequently, States parties must keep record of their handling of persons in the context of irregular border crossings.[[62]](#footnote-63) Furthermore, footage from border surveillance equipment should be preserved and made accessible to those mandated with overseeing such operations.[[63]](#footnote-64)
8. In addition to collecting data, States parties should conduct contextual analysis to identify possible patterns in disappearances of migrants and underlying structural failures that enable these crimes, as well as possible ties between authorities and criminal networks involved in human trafficking and smuggling of migrants.[[64]](#footnote-65) For this purpose, the Committee also recommends the collection of qualitative data.[[65]](#footnote-66) In order to identify trends and patterns in migrant disappearances in the context of human trafficking, States parties should cooperate with a broad range of migration and anti-trafficking professionals.[[66]](#footnote-67)
	1. Policies and non-criminalisation
9. Policies that criminalise migrants and migration itself, lack mechanisms that allow for prior assessment of the risks and circumstances in each individual case, and focus on deterring entry, heighten the risk of migrants’ becoming victims of human rights violations, including disappearances. Consequently, the Committee urges States parties to adopt evidence-based policies to foster access to regular and safe migration in line with the objectives of the Global Compact on Migration.[[67]](#footnote-68) Specifically, States parties should work towards enhancing pathways for regular migration, reducing vulnerabilities, saving lives, countering smuggling and trafficking, training and adequately equipping border authorities, finding alternatives to detention, facilitating consular assistance, and, if appropriate, consular access to relevant information about the disappeared, and eliminating discrimination.[[68]](#footnote-69) Additionally, States parties must guarantee the right of every person to seek legal protection based on an individual risk assessment as well as access to justice through legal remedies. States parties must end, investigate, and punish practices of collective expulsions and pushbacks at borders or intentionally failing to act diligently to rescue migrants at sea, in the desert, in impassable forests, exposed to extreme temperatures[[69]](#footnote-70), or in other life-threatening conditions.
10. Due to the role played by non-State actors in many cases of disappearance of migrants[[70]](#footnote-71), States parties should, in cooperation with countries of origin, transit, and destination, increase efforts to counter any form of exploitation or trafficking in human beings, smuggling and corruption.[[71]](#footnote-72) States parties are encouraged to accede to and implement international instruments for the suppression of transnational organised crime, such as the United Nations Convention against Transnational Organised Crime (UNTOC) Protocols to Prevent Human Trafficking and Migrant Smuggling,[[72]](#footnote-73) the UN Convention against Corruption[[73]](#footnote-74), and other relevant international and regional instruments, as part of their efforts to prevent disappearances of migrants.
11. Special consideration must be given to the rights of migrant children, especially unaccompanied minors.[[74]](#footnote-75) The separation of children from their families increases risk of enforced disappearance and should be avoided, unless it is determined to be in the best interests of the child in compliance with international standards.[[75]](#footnote-76) States parties should take effective measures to ensure the protection of unaccompanied or separated migrant children housed in reception centres, or other places of accommodation, from becoming victims of human rights violations, including disappearances (articles 2 and 3).[[76]](#footnote-77) Children born to mothers on migrant routes or in places of deprivation of liberty, are under additional risk to be wrongfully removed (article 25) and it is therefore paramount to ensure their registration at birth.[[77]](#footnote-78) Respect for the best interests of the child and family unity should be prioritised, for example by promptly identifying child migrants at border controls or in other circumstances, assigning a guardian to unaccompanied children, and putting in place best-interest determination procedures.[[78]](#footnote-79)
12. The criminalisation of both migrants and persons who assist them directly contributes to the heightened risk of disappearance of migrants by placing them in a situation of vulnerability. The Committee urges States parties to avoid criminalising migrants both in rhetoric and practice and to facilitate a supportive environment for persons or organisations providing humanitarian or legal assistance to migrants.[[79]](#footnote-80) This means that States parties must ensure that human rights defenders, civil society actors, journalists, or anyone providing such assistance, are not exposed to reprisals or intimidation, criminalised or prosecuted for their involvement in search and rescue operations, monitoring and documenting violations, or providing any other form of assistance to migrants.[[80]](#footnote-81) To this end, States parties should review the terminology used in certain types of legislation, such as anti-trafficking, anti-smuggling, and anti-terrorism legislation.[[81]](#footnote-82)
	1. Non-refoulement and the prohibition of pushbacks
13. Article 16 (1) of the Convention enshrines the non-derogable principle of non-refoulement of any person to a country where there are substantial grounds for believing that they would be in danger of being subjected to an enforced disappearance. States parties should explicitly incorporate this principle into national legislation[[82]](#footnote-83) and refrain from creating legal exceptions aimed at its circumvention.[[83]](#footnote-84) The prohibition of refoulement applies wherever the State party exercises effective control over the persons concerned, including at sea and on vessels.[[84]](#footnote-85) It also applies whenever States parties decide to externalize migration management to third countries.[[85]](#footnote-86)
14. Adherence to the principle of non-refoulement requires States parties to ensure that each person’s case is examined individually, impartially, and independently by competent administrative and judicial authorities, in conformity with international due process standards.[[86]](#footnote-87) This should also include an assessment of whether there is a risk of the person being further transferred to a third country where they may be subjected to enforced disappearance (“chain-refoulement”).[[87]](#footnote-88) Lists of “safe countries” must not be used as an alternative to individual assessments of risk.[[88]](#footnote-89) Moreover, any diplomatic assurances must be evaluated with utmost care.[[89]](#footnote-90) A decision to return any individual after such an assessment must be communicated to the migrant in a language they understand[[90]](#footnote-91) and be subject to an appeal before an impartial authority, with suspensive effect.[[91]](#footnote-92)
15. To ensure respect for the principle of non-refoulement in practice, States parties should build the necessary institutional capacity to carry out individual assessments, such as duly trained human resources and adequate funding. Furthermore, States parties should provide training to border officials and staff involved in asylum, return, surrender or extradition procedures and to law enforcement officials, in general, on the concept of “enforced disappearance” and on the assessment of the related risks.[[92]](#footnote-93)
16. The Committee further calls on States parties to avoid indirect refoulement resulting from the creation of conditions that leave migrants no option but to return to a country where they may be at risk of being subjected to enforced disappearance or transferred to another country where they face such risk.[[93]](#footnote-94)
17. Pushbacks, and any other forms of collective expulsion that do not allow for an individual assessment, constitute a flagrant violation of article 16 of the Convention. In the absence of an internationally agreed legal definition of the term “pushbacks”, the Committee considers that they constitute “*measures taken by States, sometimes involving third countries or non-State actors, which result in migrants […] being summarily forced back, without an individual assessment of their human rights protection needs, to the country or territory, or to sea, whether it be territorial waters or international waters, from where they attempted to cross or crossed an international border*.”[[94]](#footnote-95) The Committee is of the view that when pushbacks involve the deprivation of liberty of migrants and the concealment of their fate or whereabouts, they amount to enforced disappearances within the meaning of article 2 of the Convention, regardless of the duration of the deprivation of liberty. They can also constitute a violation of articles 17 and 18 of the Convention that prohibit secret detention and guarantee the right to information on persons deprived of liberty, as well as other articles of the Convention, depending on the relevant circumstances. The same applies to cases where pushbacks are carried out by non-State actors or intergovernmental organisations who act with the support, authorisation, or acquiescence of the State party. Additionally, the seizure and destruction of individuals’ personal belongings, identity documents, or mobile phones after their apprehension, can lead to an enforced disappearance by leaving individuals without any means to communicate their whereabouts to relatives or prove their identity.[[95]](#footnote-96)
18. Pushbacks place migrants outside the protection of the law, make them vulnerable, and can result in human rights violations incompatible with States’ obligations under international human rights law, such as the prohibition of collective expulsion[[96]](#footnote-97) and refoulement, but also the prohibition of torture, cruel, inhuman or degrading treatment or punishment[[97]](#footnote-98), the right to liberty,[[98]](#footnote-99) and the right to life.[[99]](#footnote-100) Pushbacks that do not involve deprivation of liberty also raise grave concern because they effectively remove the persons subjected to this treatment from any protection of the law[[100]](#footnote-101) and contribute to a risk of disappearance. The Committee strongly urges States parties to refrain from such practices, including chain pushbacks or indirect pushbacks that result from a deliberate failure to search and rescue at sea or on land.[[101]](#footnote-102) States parties therefore must refrain from conducting pushbacks, effectively investigate, prosecute, and punish any allegations of such practices, and not deny their occurrence.[[102]](#footnote-103)
19. The obligation to search and investigate
20. The Committee recalls that the obligations to search for disappeared persons, conduct an effective investigation into alleged disappearances, including those falling within article 3 of the Convention, and prosecute and punish the perpetrators, are fundamental to ending this heinous crime and preventing its re-occurrence. In migration contexts, disappearances are often not reported, due to obstacles faced by relatives living in another country, language, cultural or knowledge barriers, as well as fear to report by relatives or witnesses who may themselves have an irregular migratory status.[[103]](#footnote-104) Authorities should initiate the search and investigation *ex officio* as soon as they become aware of or have indications that a person has been subjected to a disappearance.**[[104]](#footnote-105)** The burden of proof should not be on the victims or relatives.[[105]](#footnote-106)
21. Any individual must be guaranteed the right to report an enforced disappearance (article 12.1) irrespective of his or her migratory status. For the right to report to be effective, States parties should make efforts to raise awareness about existing reporting mechanisms and provide professional interpreters whenever necessary.[[106]](#footnote-107) Moreover, witnesses or relatives must be able to report a disappearance without fear of deportation or deprivation of liberty. Therefore, States parties should create mechanisms to enable the reporting of disappearances from another country and promptly alert the competent authorities of the country where the alleged disappearance took place.[[107]](#footnote-108)
22. To ensure effectiveness of the search, States parties should implement the Committee’s *Guiding Principles* and other international standards.[[108]](#footnote-109) Therefore, the search should be conducted under the presumption that the person is alive; respect human dignity at every stage; be governed by a public policy; follow a differential approach; respect the right to participation; begin without delay; continue until the disappeared person’s fate and whereabouts have been determined with certainty; be conducted on the basis of a comprehensive strategy; take into account the particular vulnerability of migrants; be organised efficiently; use information in an appropriate manner; be coordinated; reinforce the criminal investigation; be carried out safely; be independent and impartial; and be governed by public protocols.[[109]](#footnote-110)
23. When investigating disappearances of migrants, States should have a clear and comprehensive investigation strategy that guarantees exhaustiveness and impartiality of the investigation and includes contextual analysis.[[110]](#footnote-111) Once the perpetrators have been identified, they should be prosecuted and punished in accordance with the gravity of the crime and considering the situation of vulnerability of migrants as an aggravating circumstance. States parties applying a statute of limitations shall take into account the fact that enforced disappearance is a continuous crime and that the term of limitation for criminal proceedings commences from the moment when the offence of enforced disappearance ceases. States parties shall also take all necessary measures to establish their competence to exercise jurisdiction over enforced disappearances that occurred outside their territories, as provided for in article 9 of the Convention.

1. To facilitate search and investigations, States parties should ensure effective inter-institutional cooperation and coordination at national level and among institutions from countries of origin, transit, or destination.[[111]](#footnote-112) Moreover, they should strive to create standardised protocols for the search and investigation of disappeared migrants across States[[112]](#footnote-113) and enable the exchange of all relevant information, including, but not limited to, (national) registers of disappeared persons and DNA databases, while respecting international standards for data protection and privacy. Finally, States parties must ensure that all competent institutions are adequately funded, equipped, and have the necessary, properly trained human resources.
2. Additionally, States parties must ensure that relatives of disappeared migrants, their representatives, and any other person with a legitimate interest, irrespective of where they reside, are able to access information without delay and take part in all stages of the search and investigation if they so wish.[[113]](#footnote-114) In the course of the search and investigation process, States parties should use information provided by relatives, civil society organisations, international organisations or other States that was gathered through innovative uses of information and communication technology.[[114]](#footnote-115)
3. States parties should take all appropriate measures to search for, identify, and return the remains of migrants who are found dead along migration routes. To this end, States parties should investigate allegations about the existence of clandestine mass graves along migratory routes and establish a register of found corpses. Exhumations of such sites must be conducted with full respect of international standards.[[115]](#footnote-116) To facilitate the search and the identification of remains, States parties should establish centralised DNA databases that contain the necessary genetic data, as well as ante-mortem and post-mortem information, and promote the establishment of agreements, mechanisms and practices with all relevant countries (of possible origin, transit, and destination) to multiply the options for DNA data cross-matching for unidentified human remains.[[116]](#footnote-117)
4. Victims’ rights
5. States parties have an obligation to ensure that all victims of enforced disappearance have access to their right to truth and justice, reparation and guarantees of non-repetition, including when such disappearances occur in the context of migration. Reparation should be understood in a broad sense that includes restitution, rehabilitation, satisfaction, including restoration of dignity and reputation, and guarantees of non-repetition. Additionally, all victims have a right to prompt, fair and adequate compensation (article 24, 2-5).[[117]](#footnote-118)
6. Access to compensation and reparation shall be sensitive to the specific needs of victims, taking into account, *inter alia*, their sex, sexual orientation, gender identity, age, nationality, ethnic origin, social status, disability, migration status or other characteristics of the person or their relatives. Among others, this should also apply to marriages, or any other form of unions outside of marriage not recognised under the law of the State party or in the country where relatives are located.
7. Specific attention should be given to ensuring necessary psychosocial and logistical support to relatives of disappeared persons. They must be provided with effective and quick access to humanitarian visas and temporary residence permits, as well as other measures to facilitate their participation in the search and investigation, and to obtain information about their loved ones.[[118]](#footnote-119) States parties shall ensure that disappeared migrants found alive and their relatives are not deported or expelled because of their irregular migratory status prior to the final decision in the criminal proceeding, as this can be an impediment to access to justice.[[119]](#footnote-120) Their right to take part or be represented in the trial and in the search and investigation must be guaranteed. Additionally, State authorities must maintain effective communication with them, including through the use of new technologies.[[120]](#footnote-121)
8. States parties should remove or simplify administrative procedures for migrant victims of enforced disappearance found alive and for the relatives of forcibly disappeared persons to access appropriate victim support services before, during, and, for an appropriate time, after proceedings. To achieve this, the creation of emergency funds aimed at covering the immediate economic expenses of relatives in the search process is fundamental, as well as the constant training of civil servants belonging to public institutions on issues of psychosocial approach, intersectional and gender perspectives, and the context of forced migration, in order to provide dignified treatment to relatives and avoid their re-victimisation. Training should also include addressing the specific needs of migrants who disappeared as a result of human trafficking[[121]](#footnote-122) and illegal adoption.[[122]](#footnote-123) Finally, State bodies should have a specialised system of care for relatives to provide social and psychological support, legal advice, and medical care in a language they understand.[[123]](#footnote-124)
9. States parties should use interstate cooperation mechanisms to ensure continuity in the enjoyment of victims' rights on their way from one State party to another, but also after arriving in the country of destination or upon return to the country of origin.[[124]](#footnote-125) Cooperation instruments should not be limited to the search, but include all processes derived from the investigation, including locating and releasing disappeared persons from deprivation of liberty, as well as exhuming, identifying, and returning remains, ensuring repatriation where necessary.[[125]](#footnote-126) Repatriations of bodies need to be timely, without costs to relatives, and follow strict protocols on notification to avoid revictimization. Whenever requested, consular c offices or embassies should play a crucial role in facilitating communication with relatives based abroad. Efficient communication channels should be established between consular authorities in the country where the person disappeared and all national authorities of that country that may deliver information about the disappeared person, including prosecution authorities, places of deprivation of liberty, shelters, other consular missions, hospitals, or communities of migrants abroad.[[126]](#footnote-127)
10. Considering the situation of special vulnerability of relatives of disappeared persons, States parties must eliminate any harmful practices that limit or hamper their right to form and participate freely in organizations and associations focused on attempting to establish the circumstances of enforced disappearances and the fate of disappeared persons in the context of migration, and to assist migrant victims of enforced disappearance.
11. Training and cooperation
12. **States parties shall ensure that the programmes they implement in compliance with article 23 of the Convention include specific elements relating to the prevention, investigation, prosecution, and punishment of enforced disappearances in the context of migration. In this context, particular attention should be paid to the concepts of “enforced disappearance” and non-discrimination**[[127]](#footnote-128)**, as well as on the particular situation of vulnerability and needs of migrants and their relatives, and international cooperation mechanisms. Such training shall be provided to law enforcement and civil or military security personnel, medical personnel, public officials, border officials and any other persons involved in border control measures and the apprehension or deprivation of liberty of migrants, and any other persons who may be involved in the custody or treatment of migrants deprived of liberty.**
13. **Due to the often transnational nature of migration processes, cooperation and mutual legal assistance among States parties is crucial to fully comply with the obligations under the Convention to prevent and investigate disappearances and search for the disappeared, and to ensure the rights of victims.** To facilitate cooperation and assistance, States parties should adopt and implement bilateral and multilateral cooperation agreements, enhance existing institutional capacities[[128]](#footnote-129), or establish competent authorities, and strengthen their capacities necessary to ensure effective coordination of search and investigation efforts, including prompt and secure exchange of information and documentation that may help in locating persons disappeared during migration.[[129]](#footnote-130) Such agreements should be subject to regular review and updated to reflect the requirements of current circumstances.
14. **The Committee calls on States of origin, transit, and destination to establish transnational and regional or subregional mechanisms for the search of disappeared migrants to further facilitate the exchange of information and to guarantee access to justice to the victims and their relatives.** To facilitate cross-border exchange of information, the Committee recommends the establishment of notification mechanisms and national contact points in charge of sharing information and communicating with counterparts and relatives.[[130]](#footnote-131) For the creation of mechanisms to exchange information, States parties should take into account existing mechanisms, protocols, and guidelines.[[131]](#footnote-132)
15. **Given the often transnational nature of migration and the focus of articles 15, 24, and 25 (2-3) of the Convention on assisting victims, States parties should take all necessary measures to ensure mutual assistance from all States, especially in the context of searching and gathering information contained in registers and databases of other States, notwithstanding the ratification status.**[[132]](#footnote-133) **In addition, States parties should seek and provide assistance in the collection of data relevant to the disappearance of migrants and efforts to protect their human rights by United Nations and regional mechanisms, as well as international organisations with special expertise in this area.**
16. In some regions, specialised mechanisms have been created to facilitate transnational communication between victims/relatives and authorities of the State where the disappearance (presumably) took place.[[133]](#footnote-134) The Committee encourages States parties to share good practices and lessons learned in relation to the prevention, search, and investigation of disappearances of migrants, as well as accountability of perpetrators, with each other and with non-signatory States.
17. The present General Comment should be translated into local languages and disseminated widely to all relevant international, regional, and national stakeholders, especially all branches of government, security forces, migration and border authorities and personnel, medical personnel, and social care professionals, as well as organisations of relatives of disappeared migrants and other civil society actors, academia, and the media.

1. Ratification
2. Finally, the Committee encourages States who have not yet done so, to ratify the Convention and to accept the competence of the Committee under articles 31 and 32.
1. IOM, “Who is a Migrant?”, <https://www.iom.int/about-migration>. [↑](#footnote-ref-2)
2. Persecution can entail a risk to be subject to enforced disappearance in a person’s country of origin. [↑](#footnote-ref-3)
3. UNSG Report on the Global Compact for Safe, Orderly and Regular Migration, A/76/642, 27 December 2021, para 11. According to the United Nations, the total number of international migrants worldwide has increased between 2000 and 2020. See <https://www.migrationdataportal.org/themes/international-migrant-stocks> (accessed 20 March 2023). Additionally, the global number of forcibly displaced persons, internally and across borders, has increased to more than twofold between 2010 and 2020. See Black, J. (2021) *Global Migration Indicators 2021*. International Organization for Migration (IOM), <https://publications.iom.int/system/files/pdf/Global-Migration-Indicators-2021_0.pdf>, p.34. [↑](#footnote-ref-4)
4. CED, 2019, “Guiding Principles for the Search for Disappeared Persons” <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G19/134/11/PDF/G1913411.pdf?OpenElement>; *Global Compact for Safe, Orderly and Regular Migration*, (A/RES/73/195), <https://undocs.org/A/RES/73/195>, para 23. See also African Commission on Human and Peoples’ Rights, Guidelines on the Protection of All Persons from Enforced Disappearances in Africa, para 1.3.2, <https://achpr.au.int/en/documents/2022-10-25/guidelines-protection-persons-enforced-disappearances-africa>. [↑](#footnote-ref-5)
5. *Global Compact for Safe, Orderly and Regular Migration*, (A/RES/73/195), <https://undocs.org/A/RES/73/195>, para 4. [↑](#footnote-ref-6)
6. See CEDAW, General Recommendation No.38 on trafficking in women and girls in the context of global migration, CEDAW/C/GC/38, 20 November 2020, para 23. [↑](#footnote-ref-7)
7. Report of the Special Rapporteur on the human rights of migrants, Felipe González Morales, on human rights violations at international borders: trends, prevention and accountability, A/HRC/50/31, 26 April 2022, para 24. See also CED COB on Greece, CED/C/GRC/CO/1, 12 May 2022, para 28; CED Report on Visit to Mexico: Information on the visit and findings, CED/C/MEX/VR/1 (Findings), 18 May 2022, para 20; CED Report on Visit to Mexico: Observations and recommendations, CED/C/MEX/VR/1 (Recommendations), 16 May 2022, para 39-42. [↑](#footnote-ref-8)
8. See for example Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Agnes Callamard on unlawful death of refugees and migrants, A/72/335, 15 August 2017, para 1. [↑](#footnote-ref-9)
9. General Assembly Resolution on the Protection of migrants, A/RES/74/148, 18 December 2019, <https://digitallibrary.un.org/record/3848625>. [↑](#footnote-ref-10)
10. *Global Compact for Safe, Orderly and Regular Migration*, (A/RES/73/195), [https://undocs.org/A/RES/73/195. See specifically objectives 7](https://undocs.org/A/RES/73/195.%20See%20specifically%20objectives%207), 8, 9, and 10. [↑](#footnote-ref-11)
11. ICRC, *Guiding Principles/Model Law on the Missing. Principles for Legislating the Situation of Persons Missing as a result of Armed Conflict or International Violence: Measures to prevent persons from going missing and to protect the rights and interests of the missing and their families*, article 2, par. 1, <https://www.icrc.org/en/doc/assets/files/other/model-law-missing-0209-eng-.pdf>. [↑](#footnote-ref-12)
12. <https://missingmigrants.iom.int/methodology>.“*It also includes the number of corpses found at border crossings that are categorised as the bodies of migrants, on the basis of belongings and/or the characteristics of the death.”*  [↑](#footnote-ref-13)
13. Article 2 of the Convention defines enforced disappearances as “the arrest, detention, abduction or any other form of deprivation of liberty by agents of the State or by persons or groups of persons acting with the authorization, support or acquiescence of the State, followed by a refusal to acknowledge the deprivation of liberty or by concealment of the fate or whereabouts of the disappeared person, which place such a person outside the protection of the law.”Article 3 of the Convention, which concerns disappearances committed by non-State actors, refers to “acts defined in article 2 committed by persons or groups of persons acting without the authorization, support or acquiescence of the State”. [↑](#footnote-ref-14)
14. According to the UN Secretary General, more than 8,436 migrant deaths were recorded worldwide between 1 January 2019 and 24 November 2021; additionally, at least 5,534 migrants have gone missing and are presumed dead. See: UNSG Report on the Global Compact for Safe, Orderly and Regular Migration, A/76/642, 27 December 2021, para 74. Current efforts to record data are mainly carried out by non-governmental and international organisations, such as the Missing Migrants Project of the IOM, according to whom over 50,000 migrants have gone missing since 2014. Nonetheless, this count is based on bodies of dead migrants and therefore does not provide an accurate representation of the scale of the problem. See <https://missingmigrants.iom.int/>. See also Black, J. (2021) *Global Migration Indicators 2021*. International Organization for Migration (IOM), <https://publications.iom.int/system/files/pdf/Global-Migration-Indicators-2021_0.pdf>, pp.37-39. [↑](#footnote-ref-15)
15. Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Agnes Callamard on unlawful death of refugees and migrants, A/72/335, 15 August 2017, para 2; WGEID, “Report on enforced disappearances in the context of migration”, A/HRC/36/39/Add.2, 28 July 2017, <https://www.ohchr.org/EN/Issues/Disappearances/Pages/Migration.aspx>, para 56. [↑](#footnote-ref-16)
16. See for example OHCHR (2021), “Lethal Disregard: Search and rescue and the protection of migrants in the central Mediterranean Sea”, HR/PUB/18/4, <https://www.ohchr.org/en/documents/reports/lethal-disregard-search-and-rescue-and-protection-migrants-central-mediterranean>; inputs from de:border migration justice collective and Caminando Fronteras; Noemi Magugliani and Jean-Pierre Gauci (2021) Migrant Crossings in the Channel: Non-Assistance, Securitisation, and Accountability Under International Law, *OpinioJuris,* 21 December, <http://opiniojuris.org/2021/12/21/migrant-crossings-in-the-channel-non-assistance-securitisation-and-accountability-under-international-law/>. [↑](#footnote-ref-17)
17. WGEID, “Report on enforced disappearances in the context of migration”, A/HRC/36/39/Add.2, 28 July 2017, paras 36-37; input received during Regional Consultations; Human Rights Commission of Malaysia (SUHAKAM) and Fortify Rights (2019), “’Sold like Fish’ Crimes Against Humanity, Mass Graves, and Human Trafficking from Myanmar and Bangladesh to Malaysia from 2012 to 2015, <https://www.fortifyrights.org/reg-inv-rep-2019-03-27/>. [↑](#footnote-ref-18)
18. WGEID, “Report on enforced disappearances in the context of migration”, A/HRC/36/39/Add.2, 28 July 2017, paras 50-51; input by Fischer, Duhaime, and Guercke, paras 9, 17; input by Comisión de Derechos Humanos de la Ciudad de México; input received during Regional Consultations. [↑](#footnote-ref-19)
19. Input received during Regional Consultations; inputs from Mexican Commission for the protection and defense of Human Rights (CMDPDH), ICRC, Centro de Derechos Humanos UCAB, The International Team for the Study of Security Verona (ITSS) - Verona's Research Programme, de:border migration justice collective, Elementa DDHH and Alma Migrante, CEJIL, MENAMI, ECAP, Fundación para la Justicia y el Estado Democrático de Derecho, A.C. and others, Ca-minando Fronteras, , Maat for Peace. [↑](#footnote-ref-20)
20. Inputs received during Regional Consultations; input received from de:border migration justice collective, paras 6-8; CED COB on Brazil, CED/C/BRA/CO/1, 24 September 2021, para 23 (c), CED, Report on visit to Mexico: Observations and recommendations, CED/C/MEX/VR/1 (Recommendations), 16 May 2022, para 39. [↑](#footnote-ref-21)
21. This type of discrimination may also be an issue when it comes to the use of AI in surveillance technologies, which can be based on discriminatory datasets. See Border Violence Monitoring Network (2023), “EU Member States' use of new technologies in enforced disappearances”, Input for the thematic study by the UN Working Group on Enforced or Involuntary Disappearances on “new technologies and enforced disappearances", <https://www.borderviolence.eu/eu-member-states-use-of-new-technologies-in-enforced-disappearances/>, para 9. [↑](#footnote-ref-22)
22. Committee on the Rights of Migrant Workers (CMW), General Comment No.5 on migrants’ rights to liberty and freedom from arbitrary detention and their connection with other human rights, CMW/C/GC/5, 21 July 2022, para 32. [↑](#footnote-ref-23)
23. At the policy level, for example, the *Global Compact for Safe, Orderly and Regular Migration* contains several Objectives of direct relevance to States parties’ obligations to prevent and respond to disappearances of migrants, which should be used as guidance for the development of prevention policies and strategies: Objectives 5 (Enhance availability and flexibility of pathways for regular migration), 7 (Address and reduce vulnerabilities in migration), 8 (Save lives and establish coordinated international efforts on missing migrants), 9 (Strengthen the transnational response to smuggling of migrants), 10 (Prevent, combat and eradicate trafficking in persons in the context of international migration), and 13 (Use immigration detention only as a measure of last resort and work towards alternatives) of the GCM are directly related to the risk of disappearance during the process of migration. *Global Compact for Safe, Orderly and Regular Migration,* A/RES/73/195, <https://undocs.org/A/RES/73/195>. See also the 2022 *Joint Statement on illegal intercountry adoptions* <https://www.ohchr.org/sites/default/files/documents/hrbodies/ced/2022-09-29/JointstatementICA_HR_28September2022.pdf>. [↑](#footnote-ref-24)
24. African Commission on Human and Peoples’ Rights, *Guidelines on the Protection of All Persons from Enforced Disappearances in Africa*, 25 October 2022, <https://achpr.au.int/en/documents/2022-10-25/guidelines-protection-persons-enforced-disappearances-africa>; Inter-American Commission on Human Rights, *Inter-American Principles on the Human Rights of All Migrants, Refugees, Stateless Persons, and Victims of Human Trafficking*, Resolution 04/19, 7 December 2019, <https://www.oas.org/en/iachr/decisions/pdf/Resolution-4-19-en.pdf>; and the 2018 *Mytilini Declaration for the Dignified Treatment of all Missing and Deceased Persons and their Families as a Consequence of Migrant Journeys,* <https://missingpersons.icrc.org/library/mytilini-declaration-dignified-treatment-all-missing-and-deceased-persons-and-their>*.*  [↑](#footnote-ref-25)
25. CED, *Guiding Principles for the Search for Disappeared Persons*, CED/C/7, 8 May 2019. [↑](#footnote-ref-26)
26. Additionally, the Committee invites States parties to ratify the following legal instruments that are of particular relevance: the International Convention on the Protection of the Rights of all Migrant Workers and their Families; the Convention and Protocol relating to the Status of Refugees; the International Convention for the Elimination of all Forms of Racial Discrimination; the International Convention for the Elimination of all Forms of Discrimination against Women; the Convention on the Rights of the Child; the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention against Transnational Organized Crime; and the Protocol against the Smuggling of Migrants by Land, Sea and Air, Supplementing the United Nations Convention against Transnational Organized Crime.

If migrants disappear in a country that is party to an international or non-international armed conflict, the rules of International Humanitarian Law concerning the “missing” are also applicable and provide complementary protection. See Ximena Londoño and Helen Obregón Gieseken (2021) Sustaining the momentum: working to prevent and address enforced disappearances, *Humanitarian Law & Policy Blog*, 26 August, <https://blogs.icrc.org/law-and-policy/2021/08/26/sustaining-momentum-enforced-disappearances/>; Helen Obregón Gieseken (2017)“The Protection of Migrants under International Humanitarian Law”, *International Review of the Red Cross*, 99 (1), pp. 121–152, https://international-review.icrc.org/sites/default/files/irrc\_99\_10.pdf (input from ICRC). [↑](#footnote-ref-27)
27. Immigration detention is understood as any form of deprivation of liberty that relates to a person’s migration status, which encompasses the person’s migratory or residence status, or lack thereof, whether relating to irregular entry or stay or not. Committee on the Protection of the Rights of All Migrant Workers (CMW), General Comment No.5 on migrants’ right to liberty, freedom of arbitrary detention and their connection with other human rights, CMW/C/G/5CED, 21 July 2022, para 14: “”immigration detention” refers to any situation in which a person is deprived of liberty on grounds related to his or her migration status, regardless of the name or reason given for carrying out the deprivation of liberty, or the name of the facility or place where the person is being held while deprived of liberty. Accordingly, immigration detention includes, at a minimum, the detention of migrants in prisons, police stations, immigration detention centres, closed reception facilities, healthcare facilities and any other enclosed spaces, such as international or transit areas at air, land and maritime ports. “Reasons related to migration status” is understood by the Committee to be a person’s migratory or residence status, or the lack thereof, whether relating to irregular entry, stay or exit.” [↑](#footnote-ref-28)
28. CED, Report on Mexico Visit, CED/C/MEX/VR/1 (Findings), 18 May 2022, para 18. [↑](#footnote-ref-29)
29. Input from ICRC, p. 5; input received during Regional Consultations; CMW, General Comment No. 5 on migrants’ right to liberty, freedom of arbitrary detention and their connection with other human rights, CMW/C/G/5, 21 July 2022, para 38; WGEID, “Report of the Working Group on Enforced or Involuntary Disappearances on enforced disappearances in the context of migration”, A/HRC/36/39/Add.2, 28 July 2017, para 22 and sources cited in note 24. [↑](#footnote-ref-30)
30. See WGEID and CED, *Key Guidelines on COVID-19 and Enforced Disappearances*, paras 23-24. <https://www.ohchr.org/sites/default/files/Documents/Issues/Disappearances/Guidelines-COVID19-EnforcedDisappearance.pdf> [↑](#footnote-ref-31)
31. Joint General Comment No.4 (2017) of the Committee on the Protection of the Rights of All Migrant Workers and Members of their Families and No.23 (2017) of the Committee on the Rights of the Child on State obligations regarding the human rights of children in the context of international migration in countries of origin, transit, destination and return, CMW/C/GC/4-CRC/C/GC/23, 16 November 2017, para 5. [↑](#footnote-ref-32)
32. Committee on the Rights of the Child (CRC), General Comment No.6 on Treatment of Unaccompanied and Separated Children outside of their Country of Origin, CRC/GC/2005/6, 1 September 2005, para 61; Joint General Comment No.4 (2017) of the Committee on the Protection of the Rights of All Migrant Workers and Members of their Families and No.23 (2017) of the Committee on the Rights of the Child on State obligations regarding the human rights of children in the context of international migration in countries of origin, transit, destination and return, CMW/C/GC/4-CRC/C/GC/23, 16 November 2017, para 8; CMW, General Comment No. 5 on migrants’ right to liberty, freedom of arbitrary detention and their connection with other human rights, CMW/C/G/5, 21 July 2022, paras 39-44; Report of the Special Rapporteur on the human rights of migrants, Felipe González Morales on *Ending immigration detention of children and providing adequate care and reception for them*, A/75/183, 20 July 2020. [↑](#footnote-ref-33)
33. CMW, General Comment No. 5 (2021) on migrants’ right to liberty, freedom of arbitrary detention and their connection with other human rights, CMW/C/G/5, para 44, Committee on the Rights of the Child, General Comment No.6 (2005) on Treatment of Unaccompanied and Separated Children outside of their Country of Origin, CRC/GC/2005/6, paras 40 and 61ff, Joint General Comment No.3 (2017) of the Committee on the Protection of the Rights of All Migrant Workers and Members of their Families and No.22 (2017) of the Committee on the Rights of the Child on *the general principles regarding the human rights of children in the context of international migration,* CMW/C/GC/3-CRC/C/GC/22,16 November 2017, para 32, Joint General Comment No.4 (2017) of the Committee on the Protection of the Rights of All Migrant Workers and Members of their Families and No.23 (2017) of the Committee on the Rights of the Child on State obligations regarding the human rights of children in the context of international migration in countries of origin, transit, destination and return, CMW/C/GC/4-CRC/C/GC/23, 16 November 2017, paras 12-13. [↑](#footnote-ref-34)
34. See input from de:border migration justice collective; WGEID, ”Report on enforced disappearances in the context of migration”, A/HRC/36/39/Add.2, 28 July 2017, para 21-24; CMW, General Comment No. 5 on migrants’ right to liberty, freedom of arbitrary detention and their connection with other human rights, CMW/C/G/5, 21 July 2022, para 17; Inter-American Commission on Human Rights, Human Rights of Migrants and Other Persons in the Context of Human Mobility in Mexico, OEA/Ser.L/V/II., Doc 48/13, para 175-240; Joint study on global practices in relation to secret detention in the context of countering terrorism, (2010) A/HRC/13/42; HRC, General Comment Nr 36 on Article 6: right to life, CCPR/C/GC/36, 3 September 2019, par. 57-58. [↑](#footnote-ref-35)
35. On the absolute nature of this prohibition, see Report of the Intersessional Open-Ended Working Group to Elaborate a Draft Legally Binding Normative Instrument for the Protection of All Persons from Enforced Disappearance’, E/CN.4/2003/71, 12 February 2003, para 67. [↑](#footnote-ref-36)
36. See CMW, General Comment No. 5 on migrants’ right to liberty, freedom of arbitrary detention and their connection with other human rights, CMW/C/G/5, 21 July 2022, paras 12-13. Joint General Comment No.4 (2017) of the Committee on the Protection of the Rights of All Migrant Workers and Members of their Families and No.23 (2017) of the Committee on the Rights of the Child on State obligations regarding the human rights of children in the context of international migration in countries of origin, transit, destination and return, CMW/C/GC/4-CRC/C/GC/23, 16 November 2017, para 6. [↑](#footnote-ref-37)
37. CED Views of 11 March 2016 in Case 001/2013, *Yrusta v. Argentina*, para 10.3; input from PICUM [↑](#footnote-ref-38)
38. Such as the International Covenant on Civil and Political Rights, the Convention for the Protection of Rights of all Migrant Workers and their Families, the Convention on the Rights of the Child, and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. See also CMW, General comment No. 2 on the rights of migrant workers in an irregular situation and members of their families, CMW/C/GC/2, 28 August 2013, paras 27-33; CMW, General Comment No.5 on migrants’ right to liberty, freedom of arbitrary detention and their connection with other human rights, CMW/C/G/5CED, 21 July 2022, paras 54-59 (on access to justice, judicial guarantees, and judicial review), 65-67 (on consular assistance); CED, COB on Greece, CED/C/GRC/CO/1, 12 May 2022, para 31 (b-c); CED COB on France, CED/C/FRA/CO/1, 19 April 2013, paras 29-30; Report of the Special Rapporteur on Torture and other Cruel, Inhuman or Degrading Treatment or punishment, Nils Melzer, on *Migration-related torture and other cruel, inhuman or degrading treatment*, A/HRC/37/50, 23 November 2018, paras 73-74. [↑](#footnote-ref-39)
39. INPUT from PICUM, p. 3. [↑](#footnote-ref-40)
40. CED, COB on Greece, CED/C/GRC/CO/1, 12 May 2022, para 31 (d) [↑](#footnote-ref-41)
41. CED, COB on Greece, CED/C/GRC/CO/1, 12 May 2022, para 31 (a) [↑](#footnote-ref-42)
42. Guideline No.7 (vii), UN High Commissioner for Refugees (UNHCR), *Guidelines on the Applicable Criteria and Standards relating to the Detention of Asylum-Seekers and Alternatives to Detention*, 2012, available at: https://www.refworld.org/docid/503489533b8.html (accessed 21 March 2023). [↑](#footnote-ref-43)
43. CED, Report on Visit to Mexico: Observations and recommendations, CED/C/MEX/VR/1 (Recommendations), 16 May 2022, para 111; CED COB on Italy, CED/C/ITA/CO/1, 17 April 2019, paras 28-29; CED COB on Japan, CED/C/JPN//CO/1, 14 November 2018, para 33; UN Working Group on Enforced or Involuntary Disappearances, “ Report on enforced disappearances in the context of migration”, A/HRC/36/39/Add.2, 28 July 2017, para 23-24, 62; WGEID, General Comment on article 10 of the Declaration on the Protection of All Persons from Enforced Disappearance, E/CN.4/1997/34, 31 December 1996, paras 22-30. [↑](#footnote-ref-44)
44. Input received during Regional Consultations. [↑](#footnote-ref-45)
45. CED COB on The Netherlands, CED/C/NLD/CO/1, 10 April 2014, para 29. [↑](#footnote-ref-46)
46. CED Views of 11 March 2016 in Case 001/2013, *Yrusta v. Argentina*, paras 10.5-10.6. [↑](#footnote-ref-47)
47. COB on The Netherlands, CED/C/NLD/CO/1, 10 April 2014, paras 28-29. [↑](#footnote-ref-48)
48. See CED, COB on Italy, 2019, CED/C/ITA/CO/1, para 29. [↑](#footnote-ref-49)
49. WGEID, “Report on enforced disappearances in the context of migration”, A/HRC/36/39/Add.2, 28 July 2017, para 88(d); CMW, General Comment No. 5 on migrants’ right to liberty, freedom of arbitrary detention and their connection with other human rights, CMW/C/G/5, 21 July 2022, paras 84-89. See also CMW, General Comment No.2 on the rights of migrant workers in an irregular situation and members of their families, CMW/C/GC/2, 28 August 2013, paras 39 and 48, addressing the general issues of privately-run detention facilities for migrants and States’ continuing obligations even if private actors run such facilities, as well as monitoring of detention facilities; Report of the Special Rapporteur on Torture and other Cruel, Inhuman or Degrading Treatment or punishment, Nils Melzer, on *Migration-related torture and other cruel, inhuman or degrading treatment*, A/HRC/37/50, 23 November 2018, para 73; APT, IDC, UNHCR (2014) “Monitoring Immigration Detention: A practical manual”, <https://idcoalition.org/wp-content/uploads/2015/06/Monitoring-Immigration-Detention-Practical-Manual.pdf>. [↑](#footnote-ref-50)
50. CMW, General Comment No. 5 on migrants’ right to liberty, freedom of arbitrary detention and their connection with other human rights, CMW/C/G/5, 21 July 2022, para 89. [↑](#footnote-ref-51)
51. CED, COB on Greece, CED/C/GRC/CO/1, 12 May 2022, para 31 (e). [↑](#footnote-ref-52)
52. See also WGEID, “Report on enforced disappearances in the context of migration”, A/HRC/36/39/Add.2, 28 July 2017, para 56. The lack of data was highlighted in written inputs and during the Regional Consultations. See also OHCHR and Global Migration Group (2018), *Principles and Guidelines, supported by practical guidance, on the human rights protection of migrants in vulnerable situations*, pp. 60-61, <https://www.ohchr.org/sites/default/files/Documents/Issues/Migration/PrinciplesAndGuidelines.pdf>. [↑](#footnote-ref-53)
53. CED, COB on Brazil, CED/C/BRA/CO/1, 24 September 2021, para 13; CED COB on Niger, CED/C/NER/CO/1, 5 May 2022, para 15; CED, COB on Colombia (Additional Information), CED/C/COL/OAI/1, 7 May 2021, para 17; CED, COB on Iraq (Additional Information), CED/C/IRQ/OAI/1, 25 November 2020, para 5. See also input from Centro de Derechos Humanos UCAB, p.5. [↑](#footnote-ref-54)
54. CED, COB on Honduras, CED/C/HND/CO/1, 4 July 2018, para 29. [↑](#footnote-ref-55)
55. CED, Guiding Principles for the Search for Disappeared Persons (2019), CED/C/7, Principle 9, para 3; CED, Report on requests for urgent action submitted under article 30 of the Convention CED/C/19/2, para 14. [↑](#footnote-ref-56)
56. CED, COB on Mexico, CED/C/MEX/CO/1, 5 March 2015, para 18. [↑](#footnote-ref-57)
57. Joint General Comment No.3 (2017) of the Committee on the Protection of the Rights of All Migrant Workers and Members of their Families and No.22 (2017) of the Committee on the Rights of the Child on *the general principles regarding the human rights of children in the context of international migration,* CMW/C/GC/3-CRC/C/GC/22,16 November 2017, para 17. [↑](#footnote-ref-58)
58. ICRC *Core Dataset for the Search for Missing Migrants*, which is aimed at harmonizing data collection efforts. Available at: <https://www.icrc.org/en/publication/4585-core-dataset-search-missing-migrants>; see also *Global Compact for Safe, Orderly and Regular Migration,* (A/RES/73/195), <https://undocs.org/A/RES/73/195>, Objective 8, para 24. [↑](#footnote-ref-59)
59. ICRC (2021) *Guidelines on Coordination and Information-Exchange Mechanisms for the Search for Missing Migrants*, p.18; ICRC (2020) Handbook on Data Protection in Humanitarian Action, <https://www.icrc.org/en/data-protection-humanitarian-action-handbook>; Report of the Special Rapporteur on the right to privacy, Ana Brian Nougrères, on Principles underpinning privacy and the protection of personal data, A/77/196, 20 July 2022. Note also the WGEID’s current call for inputs for a thematic study by the WGEID on “new technologies and enforced disappearances”: <https://www.ohchr.org/en/calls-for-input/2023/call-inputs-thematic-study-working-group-enforced-or-involuntary>. [↑](#footnote-ref-60)
60. Input received on Concept Note; WGEID, “Report on enforced disappearances in the context of migration”, A/HRC/36/39/Add.2, 28 July 2017, paras 54 and 88; CED COB on Greece, CED/C/GRC/CO/1, 12 May 2022, para 30; CED Report on Visit to Mexico: Information on the visit and findings, CED/C/MEX/VR/1 (Findings), 18 May 2022, paras 18-20; Committee on the Prevention of Torture (CPT), [Developments concerning CPT standards in respect of police custody](https://rm.coe.int/16806cd1ed), 2002; CPT, [Report to the Government of Greece on the visit to Greece from 17 to 29 September 2009](https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016806965ee), 17 November 2010, paras 39-40. [↑](#footnote-ref-61)
61. Input received on Concept Note; CPT, [Report on the visit to Croatia carried out from 10 to 14 August 2020](https://rm.coe.int/1680a4c199), 03 December 2021, para 22. On the need to keep and review registers, see CED COB on Greece, CED/C/GRC/CO/1, 12 May 2022, para 31 (f) and (g); CED COB on Mexico, CED/C/MEX/CO/1, 5 March 2015, paras 34-35. CED, Report on visit to Mexico: Observations and recommendations, CED/C/MEX/VR/1 (Recommendations), 16 May 2022, paras 105-107. [↑](#footnote-ref-62)
62. Input received on Concept Note; CPT, [Report to the Government of Greece on the *ad hoc* visit to Greece from 13 to 17 March 2020](https://rm.coe.int/1680a06a86), 19 November 2020, para 57; CPT, [Report on the visit to Croatia carried out from 10 to 14 August 2020](https://rm.coe.int/1680a4c199), 03 December 2021, paras 14 22. [↑](#footnote-ref-63)
63. Input received on Concept Note; CPT, [Report on the visit to Croatia carried out from 14 to 14 August 2020](https://rm.coe.int/1680a4c199), 03 December 2021, paras 5, 9, 22; on the use of technologies as a tool to document enforced disappearances, see also Border Violence Monitoring Network (2023), “EU Member States' use of new technologies in enforced disappearances”, Input for the thematic study by the UN Working Group on Enforced or Involuntary Disappearances on “new technologies and enforced disappearances", <https://www.borderviolence.eu/eu-member-states-use-of-new-technologies-in-enforced-disappearances/>, paras 16ff. [↑](#footnote-ref-64)
64. Input received during Regional Consultations; input received on Concept Note; CED, Report on visit to Mexico: Observations and recommendations, CED/C/MEX/VR/1 (Recommendations), 16 May 2022, paras 16-17. [↑](#footnote-ref-65)
65. See CRC, General Comment No. 6 on the Treatment of Unaccompanied and Separated Children outside their Country of Origin, CRC/GC/2005/6, 1 September 2005, para 100. [↑](#footnote-ref-66)
66. See CEDAW, General Recommendation No.38 on trafficking in women and girls in the context of global migration, CEDAW/C/GC/38, 20 November 2020, para 109. [↑](#footnote-ref-67)
67. *Global Compact for Safe, Orderly and Regular Migration,* (A/RES/73/195), <https://undocs.org/A/RES/73/195>; see also CEDAW, General Recommendation No.38 on trafficking in women and girls in the context of global migration, CEDAW/C/GC/38, 20 November 2020, paras 56-60. [↑](#footnote-ref-68)
68. See *Global Compact for Safe, Orderly and Regular Migration,* (A/RES/73/195), <https://undocs.org/A/RES/73/195>, Objectives 5, 7, 8, 9, 10, 11, 13, 14, and 17. [↑](#footnote-ref-69)
69. Input received during Regional Consultations. [↑](#footnote-ref-70)
70. Input received during Regional Consultations; input by Fischer, Duhaime, and Guercke; Human Rights Commission of Malaysia (SUHAKAM) and Fortify Rights (2019), “’Sold like Fish’ Crimes Against Humanity, Mass Graves, and Human Trafficking from Myanmar and Bangladesh to Malaysia from 2012 to 2015, <https://www.fortifyrights.org/reg-inv-rep-2019-03-27/>; WGEID, “Report on enforced disappearances in the context of migration”, A/HRC/36/39/Add.2, 28 July 2017, para 35. [↑](#footnote-ref-71)
71. See for example CED, COB on Gabon, CED/C/GAB/CO/1 10 October 2017, para 20. See also Report by the Special Rapporteur on Torture and other cruel, inhuman or degrading treatment or punishment, Nils Melzer, on the relationship between corruption and torture or ill-treatment, A/HRC/40/59, 16 January 2019. [↑](#footnote-ref-72)
72. Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention against Transnational Organized Crime, 15 November 2000 (2237 UNTS 319); Protocol against the Smuggling of Migrants by Land, Sea and Air, Supplementing the United Nations Convention against Transnational Organized Crime, 15 November 2000 (2241 UNTS 507). [↑](#footnote-ref-73)
73. United Nations Convention against Corruption 2003 (2349 UNTS 41). [↑](#footnote-ref-74)
74. CED COB on Mexico CED/C/MEX/CO/1, 5 March 2015, para. 23; Committee on the Rights of the Child, General Comment No. 6 on the Treatment of Unaccompanied and Separated Children outside their Country of Origin, CRC/GC/2005/6, 1 September 2005; Joint General Comment No.3 (2017) of the Committee on the Protection of the Rights of All Migrant Workers and Members of their Families and No.22 (2017) of the Committee on the Rights of the Child on *the general principles regarding the human rights of children in the context of international migration,* CMW/C/GC/3-CRC/C/GC/22,16 November 2017; Joint General Comment No.4 (2017) of the Committee on the Protection of the Rights of All Migrant Workers and Members of their Families and No.23 (2017) of the Committee on the Rights of the Child on *State obligations regarding the human rights of children in the context of international migration in countries of origin, transit, destination and return*, CMW/C/GC/4-CRC/C/GC/23, 16 November 2017. [↑](#footnote-ref-75)
75. Article 9, Convention on the Rights of the Child; CRC, General comment No. 14 (2013) on the right of the child to have his

or her best interests taken as a primary consideration (art. 3, para 1), CRC/C/GC/14, 29 May 2013; Joint General Comment No.3 (2017) of the Committee on the Protection of the Rights of All Migrant Workers and Members of their Families and No.22 (2017) of the Committee on the Rights of the Child on *the general principles regarding the human rights of children in the context of international migration*, CMW/C/GC/3-CRC/C/GC/22, 16 November 2017, paras 31-32; Joint General Comment No.4 (2017) of the Committee on the Protection of the Rights of All Migrant Workers and Members of their Families and No.23 (2017) of the Committee on the Rights of the Child on *State obligations regarding the human rights of children in the context of international migration in countries of origin, transit, destination and return*, CMW/C/GC/4-CRC/C/GC/23, 16 November 2017, paras 27-31; Principle 5, OHCHR (2016) Recommended principles to guide actions concerning children on the move and other children affected by migration, <https://www.ohchr.org/sites/default/files/2021-12/Recommended-principle_EN.pdf>. [↑](#footnote-ref-76)
76. Article 20, Convention of the Rights of the Child; CRC, General Comment No.6 on Treatment of Unaccompanied and Separated Children outside of their Country of Origin, CRC/GC/2005/6, 1 September 2005, paras 50-53; Joint General Comment No.4 (2017) of the Committee on the Protection of the Rights of All Migrant Workers and Members of their Families and No.23 (2017) of the Committee on the Rights of the Child on *State obligations regarding the human rights of children in the context of international migration in countries of origin, transit, destination and return*, CMW/C/GC/4-CRC/C/GC/23, 16 November 2017, paras 43-44; CED COB on Greece, CED/C/GRC/CO/1, 12 May 2022, para 27 (b). [↑](#footnote-ref-77)
77. CED COB on Italy, CED/C/ITA/CO/1, 17 April 2019, para 34-35; CED COB on Netherlands, CED/C/NLD/CO/1, 26 March 2014, para 32-39; Joint General Comment No.4 (2017) of the Committee on the Protection of the Rights of All Migrant Workers and Members of their Families and No.23 (2017) of the Committee on the Rights of the Child on *State obligations regarding the human rights of children in the context of international migration in countries of origin, transit, destination and return*, CMW/C/GC/4-CRC/C/GC/23, 16 November 2017, paras 20-22. [↑](#footnote-ref-78)
78. CRC, General Comment No. 6 on the Treatment of Unaccompanied and Separated Children outside their Country of Origin, CRC/GC/2005/6, 1 September 2005, paras 19-22 and 81-83; Committee on the Rights of the Child, General Comment No. 6 on the Treatment of Unaccompanied and Separated Children outside their Country of Origin, CRC/GC/2005/6, 1 September 2005; Joint General Comment No.3 (2017) of the Committee on the Protection of the Rights of All Migrant Workers and Members of their Families and No.22 (2017) of the Committee on the Rights of the Child on *the general principles regarding the human rights of children in the context of international migration*, CMW/C/GC/3-CRC/C/GC/22, 16 November 2017, paras 27-33 (best interests of the child); Joint General Comment No.4 (2017) of the Committee on the Protection of the Rights of All Migrant Workers and Members of their Families and No.23 (2017) of the Committee on the Rights of the Child on *State obligations regarding the human rights of children in the context of international migration in countries of origin, transit, destination and return*, CMW/C/GC/4-CRC/C/GC/23, 16 November 2017, paras 27-38 (family reunification). [↑](#footnote-ref-79)
79. CED, COB on Honduras, CED/C/HND/CO/1, 4 July 2018, para 27. [↑](#footnote-ref-80)
80. CED COB on Greece, CED/C/GRC/CO/1, 12 May 2022, para 25 (b). See also OHCHR (2021), “Lethal Disregard: Search and rescue and the protection of migrants in the central Mediterranean Sea”, HR/PUB/18/4, <https://www.ohchr.org/en/documents/reports/lethal-disregard-search-and-rescue-and-protection-migrants-central-mediterranean>, p.28. [↑](#footnote-ref-81)
81. Input received during Regional Consultations; Martha Gionco and Jyothi Kanics (2022), “Resilience and resistance: the criminalisation of solidarity across Europe”, The Greens/EFA, <https://www.greens-efa.eu/files/assets/docs/criminalizationstudy_en_68_pages_1.pdf>; Report by the Special Rapporteur on extrajudicial, summary or arbitrary executions, Agnes Callamard, “Saving Lives is not a crime”, A/73/314, 7 August 2018, paras 58-75. [↑](#footnote-ref-82)
82. UNHCR, Note on International Protection of 13 September 2001 (A/AC.96/951), para 16; European Court of Human Rights, *Hirsi Jamaa and others v. Italy*, Application no. 27765/09 (23 February 2012), para 23; CED COB on Niger, CED/C/NER/CO/1, 5 May 2022, para 27(a); CED COB on Mongolia CED/C/MNG/CO/1, 07 May 2021, para 30-31; CED COB on Slovakia CED/C/SVK/CO/1. 11 October 2019, para 14-15; CED COB on Peru, CED/C/PER/CO/1, 17 April 2019, para 22-23; CED COB on Austria CED/C/AUT/CO/1, 31 May 2018, para 20-2; CED, Concluding Observations on Gabon, CED/C/GAB/CO/1 10 October 2017, para 31. [↑](#footnote-ref-83)
83. Input from Ca-minando Fronteras; see also Report of the Special Rapporteur on the human rights of migrants, Felipe González Morales on *Human rights violations at international borders: trends, prevention and accountability*, A/HRC/50/31, 26 April 2022, para 27. [↑](#footnote-ref-84)
84. ECtHR, *Hirsi Jamaa and Others* v. *Italy*, Application No. 27765/09 (23 February 2012), paras 76-82; CMW, General comment No. 2 on the rights of migrant workers in an irregular situation and members of their families, CMW/C/GC/2, 28 August 2013, para 51; HRC, General Comment No.31 on the Nature of the General Legal Obligation Imposed on States Parties to the Covenant, CCPR/C/21/Rev.1/Add. 13, 26 May 2004, para 10. [↑](#footnote-ref-85)
85. UNSR on Torture, Report on Migration, A/HRC/37/50, 23 November 2018, para 57; ECtHR, *Hirsi Jamaa and Others* v. *Italy*, Application No. 27765/09 (23 February 2012), para 129. [↑](#footnote-ref-86)
86. CED, Views adopted concerning communication No. 3/2019 (E.L.A. vs France) CED/C/19/D/3/2019; ECtHR, *K.I. v. France*, Application no. 5560/19 (15 April 2021); CED COB on Niger, CED/C/NER/CO/1, 5 May 2022, para 27(b); CED COB on Switzerland CED/C/CHE/CO/1, 07 May 2021, para 23-24; CED COB on Italy, CED/C/ITA/CO/1, 17 April 2019, para 26-27; CED COB on Peru, CED/C/PER/CO/1, 17 April 2019, para 22-23; CED COB on Austria CED/C/AUT/CO/1, 31 May 2018, para 20-21; CED COB on Gabon, CED/C/GAB/CO/1 10 October 2017, para 31. [↑](#footnote-ref-87)
87. ECtHR, *M.A. and others v. Bulgaria*, Application no. 5115/18 (20 February 2020), paras 79-84; CED COB on Greece, CED/C/GRC/CO/1, 12 May 2022, para 29(d); CED COB on Switzerland CED/C/CHE/CO/1, 07 May 2021, para 23-24. See also input from Border Violence Monitoring Network. For examples of chain refoulement, see Report of the Special Rapporteur on the human rights of migrants, Felipe González Morales on the means to address the human rights impact of pushbacks of migrants on land and at sea, 12 May 2021, A/HRC/47/30, paras 56-66. [↑](#footnote-ref-88)
88. See CED, COB on Greece, CED/C/GRC/CO/1, 12 May 2022, para 29 (d). [↑](#footnote-ref-89)
89. CAT, General comment No. 4 (2017) on the implementation of article 3 of the Convention in the context of article 22, para. 19-20; CED COB on Panama CED/C/PAN/CO/1, 24 September 2021, para 22-23; CED COB on Kazakhstan CED/C/KAZ/CO/1, 16 March 2016, para 17-18. [↑](#footnote-ref-90)
90. See CMW GC 2, para 53 [↑](#footnote-ref-91)
91. CMW, General Comment No. 5 (2021) on migrants’ right to liberty, freedom of arbitrary detention and their connection with other human rights, CMW/C/G/5 para 64; CED COB on Niger, CED/C/NER/CO/1, 5 May 2022, para 27(c); CED COB on France, CED/C/FRA/CO/1, 8 May 2013, para 27; CED COB on Mongolia CED/C/MNG/CO/1, 07 May 2021, para 30-31; CED COB on Slovakia CED/C/SVK/CO/1. 11 October 2019, para 14-15; CED COB on Peru, CED/C/PER/CO/1, 17 April 2019, para 22-23, CED COB on Greece, CED/C/GRC/CO/1, 12 May 2022, para 29 (c). [↑](#footnote-ref-92)
92. CED COB on Greece, CED/C/GRC/CO/1, 12 May 2022, para 29 (e); Report of the Special Rapporteur on Torture and other Cruel, Inhuman or Degrading Treatment or punishment, Nils Melzer, on *Migration-related torture and other cruel, inhuman or degrading treatment*, A/HRC/37/50, 23 November 2018, paras 45-48. [↑](#footnote-ref-93)
93. Input from ICRC, p.4; Report of the Special Rapporteur on Torture and other Cruel, Inhuman or Degrading Treatment or punishment, Nils Melzer, on *Migration-related torture and other cruel, inhuman or degrading treatment*, A/HRC/37/50, 23 November 2018, para 43. [↑](#footnote-ref-94)
94. Report of the Special Rapporteur on the human rights of migrants, Felipe González Morales on the means to address the human rights impact of pushbacks of migrants on land and at sea, A/HRC/47/30, 12 May 2021, para 34. See also Recommendation by the Council of Europe Commissioner for Human Rights, “Pushed beyond the Limit: Four areas for urgent action to end human rights violations at Europe’s borders”, April 2022, page 16, <https://rm.coe.int/pushed-beyond-the-limits-urgent-action-needed-to-end-human-rights-viol/1680a5a14d>. [↑](#footnote-ref-95)
95. Input received on Concept Note; See CPT, Report to the Greek Government on the visit to Greece carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment from 13 to 17 of March 2020, CPT/Inf (2020) 35, <https://rm.coe.int/1680a06a86>, para 56; CED COB on Greece, CED/C/GRC/CO/1, 12 May 2022, para 28(a); CED Report on Visit to Mexico: Information on the visit and findings, CED/C/MEX/VR/1 (Findings), 18 May 2022, paras 19-20. [↑](#footnote-ref-96)
96. ECtHR, *Hirsi Jamaa and Others* v. *Italy*, Application No. 27765/09 (23 February 2012), paras 185-186; ECtHR, *N.D. and N.T. v Spain*, Application nos. [8675/15](https://hudoc.echr.coe.int/eng%22%20%5Cl%20%22%7B%22appno%22%3A%5B%228675/15%22%5D%7D%22%20%5Ct%20%22_blank) and [8697/15](https://hudoc.echr.coe.int/eng%22%20%5Cl%20%22%7B%22appno%22%3A%5B%228697/15%22%5D%7D%22%20%5Ct%20%22_blank) (13 February 2020); ECtHR, *Shahzad v Hungary*, Application 12625/17 (8 July 2012). [↑](#footnote-ref-97)
97. Input received on Concept Note; ECtHR, *Hirsi Jamaa and Others* v. *Italy*, Application No. 27765/09 (23 February 2012); Report of the Special Rapporteur on Torture and other Cruel, Inhuman or Degrading Treatment or punishment, Nils Melzer, on *Migration-related torture and other cruel, inhuman or degrading treatment*, A/HRC/37/50, 23 November 2018, para 52-53. [↑](#footnote-ref-98)
98. Input received on Concept Note; IAComHR, *Haitian Centre for Human Rights et al. v. United States,* Judgement of 13 March 1997, Case no. 10.675, para 169. [↑](#footnote-ref-99)
99. Input received on Concept Note; ECtHR, *Safi and Others v. Greece*, Application no. 5418/15, 7 July 2022.. [↑](#footnote-ref-100)
100. See input from de:border migration justice collective*.* [↑](#footnote-ref-101)
101. Report of the Special Rapporteur on the human rights of migrants, Felipe González Morales on the means to address the human rights impact of pushbacks of migrants on land and at sea, A/HRC/47/30, 12 May 2021, paras 72 -75; OHCHR (2021), Lethal Disregard: Search and rescue and the protection of migrants in the central Mediterranean Sea, HR/PUB/18/4, <https://www.ohchr.org/en/documents/reports/lethal-disregard-search-and-rescue-and-protection-migrants-central-mediterranean>; HRC, *A.S., D.I. and G.D. v Italy*, Communication No. 3042/2017 (4 November 2020). [↑](#footnote-ref-102)
102. CED COB on Greece, CED/C/GRC/CO/1, 12 May 2022, para 29 (a). [↑](#footnote-ref-103)
103. CED, Report on visit to Mexico: Observations and recommendations, CED/C/MEX/VR/1 (Recommendations), 16 May 2022, para 36. [↑](#footnote-ref-104)
104. CED, Guiding Principles for the Search for Disappeared Persons, CED/C/7, 8 May 2019, Principle 6, Principle 9; CED, COB on Italy, CED/C/ITA/CO/1, 17 April 2019, para 23; WGEID, “Report on enforced disappearances in the context of migration”, A/HRC/36/39/Add.2, 28 July 2017, para 67, 70; HRC General Comment Nr 36 on Article 6: right to life, 3 September 2019, CCPR/C/GC/36, par. 58. [↑](#footnote-ref-105)
105. IACtHR, *Gómez Palomino v Peru* (Merits, Reparations and Costs), 2005, para 106. [↑](#footnote-ref-106)
106. CED Report on Visit to Mexico: Observations and recommendations, CED/C/MEX/VR/1 (Recommendations), 16 May 2022, para 52. [↑](#footnote-ref-107)
107. CED, Guiding Principles for the Search for Disappeared Persons, CED/C/7, 8 May 2019, Principle 5, Principle 9; WGEID, “Report on enforced disappearances in the context of migration”, A/HRC/36/39/Add.2, 28 July 2017, paras 51, 54, 67-69, 77-78; HRC, General Comment Nr. 36 on Article 6: right to life, CCPR/C/GC/36, 3 September 2019, para 58. [↑](#footnote-ref-108)
108. Such as the United Nations Manual on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions (“Minnesota Protocol”), HR/PUB/17/4, 2017, <https://www.ohchr.org/sites/default/files/Documents/Publications/MinnesotaProtocol.pdf> [↑](#footnote-ref-109)
109. The Committee also invites States to follow the recommendations made in the *Report of the Working Group on Enforced or Involuntary Disappearances on standards and public policies for an effective investigation of enforced disappearances.* Investigations of disappeared migrants must be transparent, thorough, and impartial, and must contain a differential approach that considers the structural vulnerability of migrants, as well as the intersectional vulnerability of particular groups of migrants, such as women, children, members of the LGBTQI+ community, or migrants belonging to certain ethnic or racial groups. See WGEID, “Report of the Working Group on Enforced or Involuntary Disappearances on standards and public policies for an effective investigation of enforced disappearances”, A/HRC/45/13/Add.3, 7 August 2020, paras 87-89. [↑](#footnote-ref-110)
110. Input received during Regional Consultations. [↑](#footnote-ref-111)
111. CED, Concluding Observations on Greece, CED/C/GRC/CO/1, 12 May 2022, para 27 (c). [↑](#footnote-ref-112)
112. See for example the ICRC *Core Dataset for the Search for Missing Migrants*, which is aimed at harmonizing data collection efforts. Available at: <https://www.icrc.org/en/publication/4585-core-dataset-search-missing-migrants>. [↑](#footnote-ref-113)
113. CED, Concluding Observations on Greece, CED/C/GRC/CO/1, 12 May 2022, para 27 (e); CED, Concluding Observations on Honduras, CED/C/HND/CO/1, 4 July 2018, para 25 (c). [↑](#footnote-ref-114)
114. See Border Violence Monitoring Network (2023), “EU Member States' use of new technologies in enforced disappearances”, Input for the thematic study by the UN Working Group on Enforced or Involuntary Disappearances on “new technologies and enforced disappearances", <https://www.borderviolence.eu/eu-member-states-use-of-new-technologies-in-enforced-disappearances/>, paras 17 ff. [↑](#footnote-ref-115)
115. WGEID, “Report on enforced disappearances in the context of migration”, A/HRC/36/39/Add.2, 28 July 2017, para 69; Klinkner, M. and Smith, E. (2020) The Bournemouth Protocol on Mass Grave Protection and Investigation, Bournemouth University, <https://www.icmp.int/wp-content/uploads/2022/02/mass_graves_project_english-4.pdf>; International Commission on Missing Persons (ICMP), Investigatory Standards, <https://www.icmp.int/the-missing/approaches-and-standards/investigatory-standards/>. [↑](#footnote-ref-116)
116. CED COB on Greece, CED/C/GRC/CO/1, 12 May 2022, para 27 (d); input received during Regional Consultations; see also ICMP (2013) *The Missing: An Agenda for the Future* (Conference Report), <https://www.icmp.int/wp-content/uploads/2014/07/ICMP-Conference-Report-1.pdf>. [↑](#footnote-ref-117)
117. International Convention for the Protection of All Persons from Enforced Disappearance, Articles 24-25; Declaration on the Protection of all Persons from Enforced Disappearance adopted by General Assembly resolution 47/133 of 18 December 1992, art. 19.; WGEID, General Comment on article 19 of the Declaration, E/CN.4/1998/43, (paras 68-75).; CED COB on Japan CED/C/JPN/CO/1, 14 November 2018, paras 25, 26, 40.; HRC COB on Mexico, CCPR/C/MEX/CO/5, 17 May 2010, para 12; HRC COB on Mexico, CCPR/C/MEX/CO/6, 4 December 2019, paras 29 and 33. [↑](#footnote-ref-118)
118. CED Report on Visit to Mexico: Observations and recommendations, CED/C/MEX/VR/1 (Recommendations), para 47. [↑](#footnote-ref-119)
119. Issue raised in several inputs, for example inout from PICUM, p.3. [↑](#footnote-ref-120)
120. CED COB on Honduras CED/C/HND/CO/1, 31 May 2018, para. 29.; CED COB on Panama CED/C/PAN/CO/1, 24 September 2021, para 13; CED, Report on requests for urgent action submitted under article 30 of the Convention, CED/C/15/3, 6 December 2018, para 12. Note also that the WGEID is currently working on a thematic study on the topic of new enforced disappearances and new technologies: <https://www.ohchr.org/en/calls-for-input/2023/call-inputs-thematic-study-working-group-enforced-or-involuntary>. [↑](#footnote-ref-121)
121. CED COB on Gabon CED/C/GAB/CO/1, 10 October 2017, para 19; see also CEDAW, General Recommendation No.38 on trafficking in women and girls in the context of global migration, CEDAW/C/GC/38, 20 November 2020; Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention against Transnational Organized Crime. [↑](#footnote-ref-122)
122. See CED et al. (2022), *Joint Statement on illegal intercountry adoptions*, https://www.ohchr.org/sites/default/files/documents/hrbodies/ced/2022-09-29/JointstatementICA\_HR\_28September2022.pdf. [↑](#footnote-ref-123)
123. Input from CEJIL, MENAMI, and ECAP, p.5. See ECAP, Minimum standards from a psychosocial perspective for the process of searching for disappeared migrants. Central America and Mexico 2016 – 2019, p. 20, <https://www.refworld.org.es/pdfid/5d9269bc7.pdf>. [↑](#footnote-ref-124)
124. Special Rapporteur on the human rights of migrants, Human rights of migrants (25 September 2018, A/73/178/Rev.1), para. 51; CED COB on Mexico CED/C/MEX/CO/1, 5 March 2015, para. 23; CED COB on Honduras CED/C/HND/CO/1, 31 May 2018, para 28. [↑](#footnote-ref-125)
125. International Convention for the Protection of All Persons from Enforced Disappearance, Articles 14 -15; CED, Report on requests for urgent action submitted under article 30 of the Convention CED/C/19/2, para 14; CED COB on Austria CED/C/AUT/CO/1, 31 May 2018, para 17; CED COB on Japan CED/C/JPN/CO/1, 14 November 2018, para 27-28. [↑](#footnote-ref-126)
126. Regional Conference on Migration (RCM), 2022, *Recommendations on Regional Coordination and Information Exchange Mechanisms in the search for Missing Persons in the Context of Migration*, p. 18. Available at: <https://temas.crmsv.org/sites/default/files/Documentos%20Files/chld8_recomendaciones_busqueda_de_personas_desaparecidas_en_el_contexto_migratorio_eng_0.pdf> : “Consular missions, together with relevant authorities from the country where the person disappeared, are responsible for conducting a search for the person reported as missing. To this end, they should establish a network for immediate communication with prosecution authorities, detention centers, shelters, other consular missions, hospitals, communities of migrants abroad, etc. in order to activate the search. In addition, it is important to continue with the proactive practice of maintaining contact with the instances described above to be able to identify cases that have not been reported at their consular offices.“ [↑](#footnote-ref-127)
127. CED, Report on Visit to Mexico: Observations and recommendations, CED/C/MEX/VR/1 (Recommendations), para 52. [↑](#footnote-ref-128)
128. Input from PM Lithuania. [↑](#footnote-ref-129)
129. CED, Guiding Principles for the Search for Disappeared Persons (2019), CED/C/7, Principle 9 par. 3. and 4., Principle 11 and Principle 12; CED COB on Montenegro, CED/C/MNE/CO/1, 16 September 2015, paras 12-15; CED COB on Italy, CED/C/ITA/CO/1, 17 April 2019, paras 24-25. [↑](#footnote-ref-130)
130. Global Compact on Migration, Objective 8, para 24 (d). For example, the The ICRC *Guidelines on Coordination and Information-Exchange Mechanisms for the Search for Missing Migrants* ICRC, 2021, *Guidelines on Coordination and Information-Exchange Mechanisms for the Search for Missing Migrants*. Available at: <https://shop.icrc.org/guidelines-on-coordination-and-information-exchange-mechanisms-for-the-search-for-missing-migrants-pdf-en.html>; [↑](#footnote-ref-131)
131. ICRC, 2021, *Guidelines on Coordination and Information-Exchange Mechanisms for the Search for Missing Migrants*. Available at: <https://shop.icrc.org/guidelines-on-coordination-and-information-exchange-mechanisms-for-the-search-for-missing-migrants-pdf-en.html>; Regional Conference on Migration (RCM), 2022, *Recommendations on Regional Coordination and Information Exchange Mechanisms in the search for Missing Persons in the Context of Migration*. Available at: <https://temas.crmsv.org/sites/default/files/Documentos%20Files/chld8_recomendaciones_busqueda_de_personas_desaparecidas_en_el_contexto_migratorio_eng_0.pdf>. The Recommendations are aimed at supporting RCM Member Countries in ‘optimising’ existing mechanisms for information exchange as a means of facilitating the search for disappeared migrants. They contain a set of criteria for the standardization and exchange of information, including criteria for the collection of data from families of disappeared persons, the forensic documentation of unidentified deceased persons, national databases, and data protection (pp.8-10). Furthermore, the document contains specific recommendations for existing mechanisms of information exchange in the region (US, Mexico, Central America, pp.11-17), and clarifies the role of consular authorities and ministries of foreign affairs in the search for disappeared migrants. [↑](#footnote-ref-132)
132. WGEID General Comment on the right to the truth in relation to enforced disappearance. A/HRC/16/48 (para. 39 sub-para 9); Updated Set of principles for the protection and promotion of human rights through action to combat impunity E/CN.4/2005/102/Add.1, Principle 16 and Principle 17; CED COB on Gabon, CED/C/GAB/CO/1, 12 September 2017, para. 19-20; CED, Guiding Principles for the Search for Disappeared Persons (2019), CED/C/7, Principle 11 and Principle 12. [↑](#footnote-ref-133)
133. Such as the “Mecanismo de Apoyo Exterior” (Mechanism for Foreign Support, MAE) between Mexico – Central American countries. See input by Fundación para la Justicia y el Estado Democrático de Derecho and Others, Annex 4. [↑](#footnote-ref-134)