



International Convention for the Protection of All Persons from Enforced Disappearance

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Committee on Enforced Disappearances Twenty-third session

Summary record (partial)* of the 412th meeting

Held at the Palais des Nations, Geneva, on Monday, 19 September 2022, at 10 a.m.

Chair: Ms. Villa Quintana

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* No summary record was prepared for the rest of the meeting.

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The meeting was called to order at 10.05 a.m.

Meeting with States Members of the United Nations

1. **The Chair** said that the presence of States Members and their input into the Committee's work demonstrated their commitment to upholding the rights enshrined in the Convention. Eradicating enforced disappearance required States, civil society and the Committee to join efforts to support victims by ensuring that they uncovered the truth and had access to justice and reparations.

2. **Ms. Kolaković-Bojović** (Rapporteur for the draft general comment) said that actors in the United Nations human rights system recognized the need for sensitivity in dealing with victims of human rights violations. Those needs evolved over time; accordingly, the treaty bodies needed to consider both the context in which a treaty had been drafted and the contemporary reality.

3. The Convention had been conceived in response to the widespread practice of enforced disappearance that had taken place during the second half of the twentieth century, mainly in the context of dictatorships. In the present day, thousands of people were being forcibly disappeared in the context of armed conflict, organized crime perpetrated by non-State actors and migration flows. Large numbers of migrants were disappearing along migration routes or in their destination countries. The emergence of those new trends had prompted the Committee to draft its first general comment, with the aim of providing stakeholders with guidance on how to prevent enforced disappearance in the context of migration and how to support and protect victims. Once adopted, the general comment would serve as an additional instrument to guide States parties' efforts to implement the Convention.

4. **Ms. Lochbihler** (Rapporteur for the draft general comment) said that, while the Committee received many reports of acts of enforced disappearance being committed along migration routes, there had been little discussion of the legal obligations of States in that regard. The aim of the general comment was to provide authoritative guidance to assist States parties in discharging their obligations as best they could, and to encourage other States to ratify the Convention by providing clear positions on issues that were of great concern to many countries.

5. The Committee would be particularly interested in receiving feedback from States on matters such as the obligation to investigate, the prohibition of secret detention, mutual legal assistance and cooperation, non-refoulement, pushbacks and the protection of victims' rights.

6. **Ms. Roque** (Honduras) said that enforced disappearance had been a blight on Honduran society for four decades. Enforced disappearance had been classified as a criminal offence in the 1980s following the judgment of the Inter-American Court of Human Rights in *Velásquez-Rodríguez v. Honduras*, which had marked a significant milestone in Honduran case law.

7. Many Honduran nationals disappeared along the migration route that ran through the Northern Triangle Countries of Central America. In 2007, Honduras had adopted a national policy to strengthen the protection services provided by its consular network and, in 2013, had passed legislation to protect the rights of Honduran migrants outside the country, irrespective of their migration status.

8. With support from the International Committee of the Red Cross, the Directorate General for the Protection of Honduran Migrants and civil society organizations were developing a protocol to improve search procedures. The Public Prosecution Service had submitted a bill on the creation of a forensic laboratory that would oversee DNA databases for criminal investigations and humanitarian purposes. Officials from the Ministry of Foreign Affairs and the Honduran consular network routinely worked with researchers from the University of North Texas to identify the remains of Honduran nationals. Thanks to the help of the Argentine Forensic Anthropology Team, 700 cases of missing Honduran migrants had been registered between 2011 and June 2022, and 57 positive identifications had been carried out so far in 2022. Between 2016 and July 2022, 460 cases of Honduran migrants who had gone missing along the migration route through Mexico towards the United States of America had been registered.

9. **Ms. Borja Hidalgo** (Ecuador) said that Ecuador supported the draft general comment on enforced disappearances in the context of migration, which recognized the need to protect vulnerable migrants. The rights of people on the move should be upheld proactively and violations of those rights prevented. Ecuador wished to call on Member States to ensure that their domestic legislation included protection for the human rights of migrants and included measures to prevent enforced disappearance.

10. International cooperation should serve to complement States parties' individual efforts to implement the Convention and, to that end, should entail the exchange of information and the promotion of inter-institutional collaboration to resolve cases of enforced disappearance. States should likewise take measures to prevent acts of intimidation and reprisals, to protect persons investigating cases of enforced disappearance and to punish perpetrators.

11. Ecuador wished to urge States to ratify regional and international instruments dealing with enforced disappearance and to recognize the Committee's competence to receive and consider individual and inter-State communications under articles 31 and 32 of the Convention, respectively. It also wished to urge the international community to actively support the measures and objectives set out in the Global Compact for Safe, Orderly and Regular Migration.

12. **Ms. Mendoza Carlos** (Mexico) said that Mexico welcomed the draft general comment and its focus on migration. The document would set standards that would assist States in identifying practical measures they could take to address migration-related challenges, taking into account the risks associated with migration and the activities of organized crime groups.

13. Mexico likewise welcomed the Committee's proposed new methodology for considering additional information submitted by States parties under article 29 (4) of the Convention. The Committee had visited Mexico in November 2021 and had issued the corresponding visit reports in April 2022. In August 2022, Mexico had submitted its observations on the Committee's findings and recommendations, in line with rule 97 (2) of the Committee's rules of procedure (CED/C/1). The Committee might consider finding a way to incorporate post-visit observations submitted by States parties into its follow-up procedure.

14. In its decision on *amparo* appeal No. 1077/2019, the Supreme Court had determined that urgent action requests were binding on all authorities involved in investigation and search efforts in connection with cases of enforced disappearance. The enforceability of requests for urgent action and the accompanying judicial and constitutional oversight thus formed an integral part of the right to an effective remedy in the Mexican legal system.

15. With regard to the draft statement on enforced disappearances and non-State actors, she noted that the adoption of an interpretative statement was not provided for in the Convention. The proposal did, however, have merit in that it would help to determine the scope of States parties' obligations under article 2. Mexico wished to urge the Committee to consider reworking its draft statement into a general comment, in concert with States parties, international bodies and civil society.

16. **Ms. Urquiza Olazabal** (Peru) said that the Convention was particularly relevant to Peru owing to the period of violence it had experienced between 1980 and 2000.

17. In recent years, Peru had made great progress in searching for persons who had disappeared during that period. Between 2017 and 2022, 12,000 psychosocial support sessions had been delivered to family members of disappeared persons in Spanish and Quechua. The transportation of remains had been arranged for more than 2,000 families. In June 2021, a national plan to improve the procedures for locating disappeared persons had been adopted with the aim of increasing response rates in cases of enforced disappearance. Under the plan, approximately 9,000 families of persons who had disappeared during the period of violence would receive support by 2030.

18. Peru welcomed the draft general comment, which shed light on the vulnerable situation of migrants and the challenges arising in border areas, as well as States' obligations in that connection. A solid understanding of the Convention was necessary in order for

national bodies involved in search activities and border management to effectively discharge their obligations.

19. **Ms. Nikodijević** (Serbia) said that Serbia had been one of the first countries to ratify the Convention, which had been widely ratified in the Balkan Region. The Government of Serbia supported the initiative to develop a general comment on enforced disappearances in the context of migration and the Committee could count on its continued support. It would be necessary to disseminate the general comment widely to ensure its effective implementation.

20. **Mr. Machuca** (Argentina) said that Argentina had submitted comments and questions in writing regarding the draft statement on enforced disappearances and non-State actors. The Convention had been drafted following consultations with a wide range of stakeholders, during which it had been decided not to include non-State actors as groups to which responsibility for acts of enforced disappearance could be attributed. Under the Convention, States parties bore responsibility for all acts of enforced disappearance that occurred in their territory, even if they were perpetrated by non-State actors.

21. The draft statement did not include an explanation of why the scope of article 2 of the Convention needed to be broadened. The Committee might provide such an explanation and give an example of a country in which non-State actors were perpetrating acts of enforced disappearance without the consent of the State.

22. The adoption of an interpretative statement was not provided for in the Convention. The question of whether to broaden the scope of article 2 could not be dealt with in a draft statement submitted to States parties for comments; instead, it needed to be the subject of an open debate with States parties and dealt with in a protocol to the Convention. Argentina was committed to engaging in open dialogue with the Committee on that issue.

23. **Ms. Lochbihler** said that the cooperation agreement between Honduras and the United States of America was a unique example of the kind of inter-State cooperation that the draft general comment on enforced disappearances in the context of migration would call for.

24. She agreed with the representative of Ecuador regarding the importance of taking into consideration the Global Compact for Safe, Orderly and Regular Migration when drafting the general comment. The written feedback provided by Mexico, which was clear and detailed, would also be taken into account. The issue of border management, which had been raised by the representative of Peru, would likewise be addressed in the general comment.

25. **Ms. Kolaković-Bojović** said that the Committee would analyse the input it had received and set about preparing a first draft of the general comment for the start of its twenty-fourth session, at which it would convene a day of general discussion to allow all relevant stakeholders to suggest improvements. Those improvements would then be incorporated into the draft before the final version of the general comment was adopted.

26. **The Chair** said that, at the thirty-fourth meeting of the Chairs of the human rights treaty bodies, the Chairs had unanimously agreed on the need to operationalize the common position adopted in 2019 and the recommendations of the co-facilitators of the 2020 review of the treaty body system regarding a predictable schedule, harmonized working methods and digital uplift. The conclusions reached by the Chairs on that occasion had been inspired by the Call to Action for Human Rights of the Secretary-General of the United Nations and his report entitled “Our Common Agenda”, which called for the sustainable financing of the treaty body system. The Secretary-General had stressed that the fulfilment of human rights treaty obligations contributed significantly to the promotion of international peace and security and enhanced the objectives and principles of the Charter of the United Nations. The findings and recommendations of the human rights treaty bodies were linked to the relevant Sustainable Development Goals.

27. The Chairs had reached their conclusions after a thorough consultative process involving all treaty body experts and had requested the Office of the United Nations High Commissioner for Human Rights (OHCHR) to cost them. The conclusions were based on the following principles: strengthening the protection of rights holders; preserving the integrity and independence of the treaty body system; enhancing the implementation of treaty

obligations and the related recommendations of the treaty bodies; and the necessity of achieving greater rationalization, simplification and alignment of procedures, on the one hand, while taking into account the mandates and working methods of each treaty body, on the other.

28. All treaty bodies had agreed to establish a predictable schedule of reviews. The Committees that conducted periodic reviews would establish an eight-year review cycle for full reviews with follow-up reviews in between. The instruments founding the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the Committee on Enforced Disappearances did not, however, provide for a periodic reporting system. The Committee would thus continue to request and consider additional information from States parties under article 29 (4) of the Convention at the intervals it deemed appropriate. The conclusions of the Chairs also addressed individual communications, requests for urgent action, inquiries and country visits.

29. The harmonization of working methods and the implementation of a predictable schedule of reviews would require coordination among the treaty bodies and support from the OHCHR secretariat. The Chairs had decided that OHCHR should develop a reasonable accommodation policy to enable experts with disabilities to be fully included in the work of their respective treaty bodies.

30. In terms of digital uplift, while State party reviews should always be held in person, digital tools should be used to streamline certain procedures, including the handling of individual complaints. Hybrid meetings could take place in exceptional circumstances, for example, to reduce costs for small island developing countries and landlocked developing countries. Online outreach activities could be used to strengthen engagement with civil society and other non-State actors. OHCHR would require dedicated resources to develop the online platforms and tools needed for the proposed digital uplift.

31. **Mr. de Frouville** said that the authors of the Convention had not wished for the Committee to take up the system of periodic reporting used by other treaty bodies. Since the situation regarding enforced disappearance varied greatly from country to country, States had insisted on the need for a flexible procedure. Under the current procedure, States parties were required to submit a report within two years of the Convention's entry into force in their territory. Following an interactive dialogue with the State party, the Committee decided whether to request it to submit additional information under article 29 (4) of the Convention. During the first phase of its existence, the Committee had asked all States parties to provide additional information within three or six years. The shorter deadline was for States parties in which enforced disappearance was an issue. However, and despite efforts to improve its working methods, the Committee could not adhere to that timetable and fulfil its mandate without accumulating a large backlog of reviews.

32. The Committee had therefore devised a new procedure for requesting additional information under article 29 (4) of the Convention, taking into account the need to adapt to different situations and to coordinate with the other treaty bodies to achieve a predictable schedule of reviews. The new procedure comprised three phases. In phase one, States parties would still be required to submit an initial report within two years of the Convention's entry into force in their territory under article 29 (1). The Committee, after having held an interactive dialogue with the State party in question, would then request it to submit additional information on the measures taken to give effect to all the recommendations contained in its concluding observations within four or eight years, depending on the prevailing situation in the State party. Phase two entailed the consideration of the additional information submitted during a three-hour interactive dialogue focusing on a maximum of three priority topics in the case of a four-year deadline, or two three-hour interactive dialogues focusing on all the recommendations made in the case of an eight-year deadline. The Committee could then request the State party to submit further information within a deadline of two, four or eight years. In the case of two- or four-year deadlines, further information would be requested on a maximum of three priority topics, whereas, in the case of an eight-year deadline, further information would be requested on the follow-up given to all the recommendations contained in the Committee's first set of concluding observations and on any recommendations made in its observations on the first round of additional information submitted. In phase three, that further information would be considered during a

three-hour meeting in the case of the shorter deadlines, or during two three-hour meetings in the case of an eight-year deadline. The Committee, after having considered that further information, could decide to request still more information on priority topics within two, four or eight years, or to suspend the procedure if it considered that the law and practice in the State party were in line with the Convention. Eight years later, the Committee would re-evaluate the situation on the basis of reliable information and decide whether to re-open the article 29 (4) procedure or to suspend it for a further eight years. However, the Committee would reserve the right to reactivate that procedure at any time if it learned of negative developments in the State party in question.

33. The proposed procedure would serve to reduce the reporting burden on States parties and the amount of meeting time needed to consider reports while enabling the Committee to fulfil its mandate effectively. Additional resources would be necessary to launch the new procedure, especially in the light of the steady increase in ratifications of the Convention. That request for additional resources was part of the overall proposal that was being costed by OHCHR. The proposed procedure would, in the fullness of time, lead to a reduction in the financial and human resources required by the Committee.

34. **The Chair** said that, under the urgent action procedure, the Committee could ask States parties to take immediate action to locate a disappeared person and to investigate their disappearance. That disappearance must have occurred since the entry into force of the Convention for the State party. As at 30 June 2022, the Committee had registered 1,509 requests for urgent action. It had been possible to locate 426 disappeared persons, of whom 400 had been found alive. The support of the secretariat was essential in dealing with urgent action requests. A rapid response was needed to maximize the possibility of locating people alive. Backlogs could lead to harm, sometimes of an irreparable nature, for victims and call into question the legitimacy of the Committee's work. When a request for urgent action was received, it was examined by a legal officer and transmitted to the Committee within 24 hours. A recommendation was drafted, which included the adoption of interim measures, if necessary. Following validation by the members of the working group on urgent action, the request for urgent action and the accompanying recommendations were transmitted to the State party.

35. In cooperation with OHCHR field offices, the secretariat monitored the implementation of the Committee's recommendations in each case, analysing and summarizing the information received from the authorities or author and drafting follow-up notes containing additional recommendations on the search and investigation process. It then presented the notes to the Committee's working group on urgent action for review and approval and provided any necessary support. It also gathered the information needed to prepare the Committee's annual report on the urgent action procedure. Secretariat staff carried out such work during intersessional periods in coordination with the working group on urgent action.

36. Prior to the adoption of General Assembly resolution 68/268 on treaty body strengthening in 2014, the Committee had registered only seven urgent action requests. Such requests had not been incorporated into the formula for the allocation of resources, since it had been assumed that the OHCHR Petitions and Urgent Actions Section would be able to provide the necessary support without additional staff. Since then, the number of urgent action requests had increased considerably, with the secretariat having to follow up on each of the 1,007 cases that were currently open individually.

37. She wished to call on States to recognize the amount of work that the urgent action procedure involved and its life-saving nature and thus the necessity of additional staff to handle urgent action requests. In addition, to ensure timely reviews of additional information submitted under article 29 (4) of the Convention, the Committee required the support of Member States in securing the approval of an additional three weeks of meeting time each year. The aim of the proposals being put forward as part of the 2020 treaty body system review exercise was to, inter alia, ensure adequate funding for all the treaty bodies, in line with United Nations budget processes and in accordance with General Assembly resolution 68/268, taking into account the changed situation faced by the Committee and the Petitions and Urgent Actions Section. An increased budget for the Committee would benefit victims and all humankind.

38. **Mr. Sissoko** (Mali) said that he would like to know whether the information provided by Mr. de Frouville would be transmitted to States parties so that they could update their timetables for the submission of reports.

39. **The Chair** said that the Committee's proposals relating to the additional information procedure under article 29 (4) of the Convention and the urgent action procedure, as well as information on the rationale behind them, had already been sent to Member States.

40. **Mr. Ayat** said he trusted that the information contained in Mr. de Frouville's presentation, which clearly explained how the proposed procedure under article 29 (4) would reduce the reporting burden on States parties without undermining the essential aims of the Convention, could be made available to States Members. However, given that the number of States parties to the Convention had almost doubled since its entry into force, the introduction of a simplified reporting procedure would not lead to a reduced workload for the Committee.

41. The number of dialogues that must be scheduled had increased since the Committee had begun requesting and considering additional information from States parties under article 29 (4). In addition, the number of urgent action requests received by the Committee had multiplied exponentially and it had begun to carry out visits to certain States parties to observe the implementation of the Convention on the ground. The intolerable strain placed on the secretariat and the members of the Committee could not be allowed to continue and should be remedied through the allocation of three additional weeks of meeting time and funding to employ more staff. As a temporary solution, he wished to propose that the Committee should make use of the extra week of meeting time already granted to it by the General Assembly, but which had not been implemented for budgetary reasons.

42. **The Chair** said that the secretariat and the members of the Committee worked throughout the year. For example, the secretariat kept Committee members informed of developments and processed reports submitted by States parties while the members campaigned for universal ratification of the Convention and raised awareness of its provisions. The rapporteurs for the draft general comment were dealing with a heavy workload as they reviewed the valuable contributions submitted by States parties and civil society organizations. The Committee was counting on the support of Member States to help it to overcome the obstacles to improving the effectiveness of its work in support of States parties and the victims of enforced disappearance.

43. The Committee was grateful to all the stakeholders who had provided valuable and constructive oral and written contributions on the draft statement on enforced disappearances and non-State actors, including those who had taken a critical position. It would carefully analyse all the input, including that provided by Argentina and Mexico, with a view to producing a final draft. Lastly, the Committee hoped to adopt a statement on illegal international adoptions jointly with the Committee on the Rights of the Child, the Special Rapporteur on the sale and sexual exploitation of children, including child prostitution, child pornography and other child sexual abuse material, the Working Group on Enforced or Involuntary Disappearances and the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence, before the end of the current session.

44. **Ms. Balijsa** (Croatia) said that the large number of persons who had gone missing or had disappeared as a result of armed conflicts and human rights abuses was a stark reminder of the failure to safeguard individual rights and to uphold the rule of law. Accounting for missing and disappeared persons was a priority for countries that were in the process of recovering from armed conflict and other traumatic events. More than three decades previously, thousands of cases of detention, forced removal and disappearance had taken place as a result of armed aggression in Croatian territory. The forced removal of the remaining Croatian population from previously occupied territories had continued, even during the mandate of the United Nations.

45. The search was still ongoing for 1,832 persons who had gone missing or disappeared during the Croatian Homeland War and whose places of burial remained unknown. The question of their fate was the most significant humanitarian issue yet to be resolved. Locating those persons would not only fulfil the right of their families to know the truth but provide significant legal, political and historical insight into that period.

46. Croatia had been searching for detained, missing and disappeared persons since 1991. In 2019, it had adopted a law on persons who had gone missing or had disappeared during the war with a view to further promoting the rights of their families to know the fate of their loved ones, establishing an effective framework for the search process and determining unambiguously jurisdiction for search activities.

47. Croatia had ratified the Convention in 2022 and had taken steps to strengthen its cooperation with international organizations, its multilateral cooperation, for example through implementing the Framework Plan to Address the Issue of Persons Missing from Conflicts on the Territory of the Former Yugoslavia, and its bilateral cooperation with the competent authorities of Bosnia and Herzegovina and Montenegro. The Government had placed families at the centre of the search process and established a partnership with families' associations.

48. However, the lack of reliable information about the locations of hidden mass and individual graves constituted a fundamental obstacle to the elucidation of the fate of missing or disappeared persons. Serbia retained possession of significant amounts of data and documentation about such persons. The Croatian authorities had repeatedly requested Serbia to provide access to military archives, to gather information from persons with relevant knowledge located in Serbian territory, to take a more proactive approach in investigating cases of mass and individual disappearance in previously occupied areas of Croatia and to ensure that graves could be located as part of war crimes investigations. Croatia would continue to insist on the need for Serbia to fulfil its obligations to assist in finding missing or disappeared persons and to facilitate successful regional cooperation and reconciliation.

The discussion covered in the summary record ended at 11.50 a.m.