

## MIGRANTS AS VICTIMS OF ENFORCED DISAPPEARANCES

*Triggered by various factors, migrations change people's destinies, social, economic, and cultural fibre and patterns of the states and regions, but also the geo-political map of the world. In their attempts to find a better life conditions or environment, migrants are frequently faced with insecurity, serious human rights violation and violence, including exposure and additional vulnerability to be subjected to smuggling and trafficking and other forms of exploitation. Rigid migration policies of States such as refusal of entry, pushbacks often accompanied by violence, expulsion or detention, and the increasingly perilous journeys of migrants cause a particular risk to become victims of enforced disappearances. This paper explores and presents the reasons behind the decision of the UN Committee on Enforced Disappearances to adopt the First General Comment on Enforced Disappearances in the Context of Migration, but also elaborates on the process preceded the adoption as well as the content of the document itself. It also discusses the forthcoming steps in dissemination and implementation of the General Comment focusing on the specific roles of other universal, regional and national human rights mechanisms, including the UN Working Group on Enforced and Involuntary Disappearances.*

Key words: migrants, enforced disappearances, migrant rights, missing migrants.

### 1. ENFORCED DISAPPEARANCES IN THE CONTEXT OF MIGRATION

We are witnessing the massive migration movements around the World, caused by international or internal conflicts, persecution, natural disasters, difficult economic situation, discrimination, high crime rate or even by the risk of being subjected to enforced disappearance. Regardless of the reasons that trigger the migration, a large number of migrants are at risk of disappearing en route to reach their destination country or even in the destination or a country of their return.

Much attention has indeed been brought in recent years to the thousands of migrants who go “missing” *en route* to reach their destination country, or in the destination country itself. Among missing migrants are persons who have been subject to enforced disappearances.<sup>1</sup>

Considering the variety of factors that can cause migrants go missing en route, it is important to underline the clear terminological distinction between a few related concepts: go miss-

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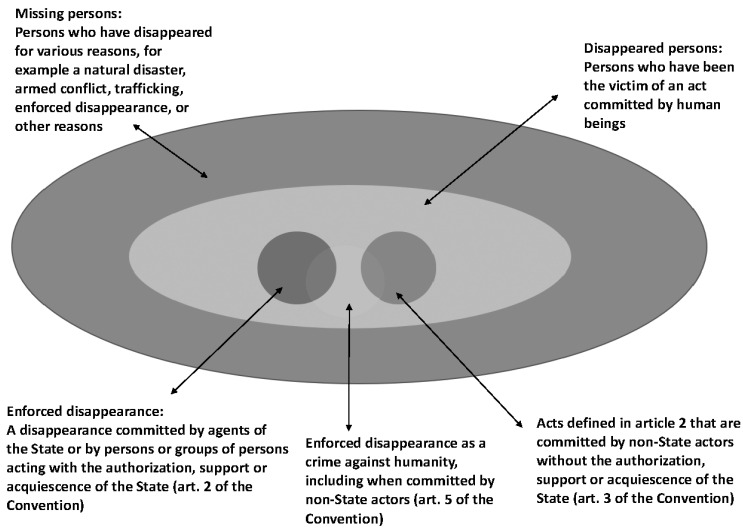
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<sup>1</sup> For more see: <https://www.ohchr.org/en/treaty-bodies/ced/general-comment-no-1-enforced-disappearances-context-migration>, last accessed on April 29th 2024.

ing, disappear and be subjected to enforced disappearance. Therefore, the precise distinction between those notions is given in the chart below:

Chart 1: Terminological distinction of enforced disappearances from related terms<sup>2</sup>



## 2. EFFORTS TO ADDRESS ENFORCED DISAPPEARANCES IN THE CONTEXT OF MIGRATION

The initial attempt to address the phenomenon of enforced disappearances of migrants was initially made by UN Working Group on Enforced or Involuntary Disappearances (hereinafter: WGEID), followed by the more comprehensive approach of the UN Committee on Enforced Disappearances (hereinafter: CED, Committee).

### 2.1. The WGEID and migration

WGEID was created in 1980 and has since dealt with enforced disappearances through the monitoring of the implementation of the Declaration. The instances of enforced disappearances that reached the WGEID show different patterns and occur in various contexts, one of them being migration. The WGEID has addressed enforced disappearances in migration through several means, including under its humanitarian mandate, in General Allegations, when conducting country visits, as well as in its thematic studies. In the crucial thematic study on enforced disappearances in the context of migration in 2017, the WGEID called them a ‘moder-day reality that should urgently be given adequate attention’.<sup>3</sup>

#### a. Humanitarian mandate

The WGEID’s primary task is its ‘humanitarian mandate.’ This means providing assistance to families in determining the fate and whereabouts of family members who are reportedly

<sup>2</sup> Committee on Enforced Disappearances, Report of the Committee on Enforced Disappearances on its visit to Iraq under article 33 of the Convention, CED/C/IRQ/VR/1 (Findings), p. 11.

<sup>3</sup> See: [1712900 \(un.org\)](https://www.un.org/1712900).

forcibly disappeared. It essentially acts as a channel of communication between families and states. Invoking the humanitarian mandate is not a confirmation that the act is indeed an enforced disappearance, but the WGEID can only consider cases that allege the occurrence of an enforced disappearance.<sup>4</sup>

Over the years, the WGEID has received many requests from families of disappeared migrants. For example, in 2017, the WGEID received cases from ten families of persons who disappeared in the territorial waters of Tunisia on their way to Italy. The WGEID accepted those cases and transmitted them to Tunisia, Italy and Frontex, as at the time of the disappearance the three conducted joint measures in the region.<sup>5</sup>

## b. General Allegations

The WGEID regularly transmits to states allegations on encountering the implementation of the Declaration. Those are reflected in the post-session documents of the WGEID<sup>6</sup> and often concern disappearances of migrants.<sup>7</sup>

## c. Country visits

The WGEID, just like all other special procedures of the Human Rights Council, carries out two country visits a year. The visits provide WGEID with a first-hand account of the situation concerning enforced disappearances. They also allow the WGEID to provide the state with conclusions and recommendations that are intended to assist governments and provide them with practical solutions to implement international standards. During such visits, the WGEID has also address enforced disappearances in migration, including in separate sections in the report.<sup>8</sup>

## d. 2017 Thematic study on enforced disappearances in migration<sup>9</sup>

In 2017 WGEID adopted the Report of the Working Group on Enforced or Involuntary Disappearances on enforced disappearances in the context of migration.<sup>10</sup> Using the extensive

<sup>4</sup> Additionally, since 2019, – if concerning acts tantamount to enforced disappearances – to a non-State actors exercising *de facto* control or government like functions over territory or a population; WGEID Methods of Work. However, this is not relevant for the described case concerning the disappearance within the territorial waters of Tunisia, which was processed within the regular state-centered procedure.

<sup>5</sup> WGEID: Communications, cases examined, observations and other activities conducted by the WGEID. UN Doc A/HRC/ WGEID/112/1; para. 93–94. The communication did not seek to attribute responsibility to either Italy or Frontex but only asked them for available information. Frontex authorities responded to the WGEID's letter yet without clarifying the case, see WGEID Communications, cases examined, observations and other activities conducted by the Working Group on Enforced or Involuntary Disappearances. UN Doc. A/HRC/ WGEID/113/1, par. 122–123.

<sup>6</sup> See: [General allegations | OHCHR](#).

<sup>7</sup> For example [GA-Annex-II-Maroc.pdf \(ohchr.org\)](#).

<sup>8</sup> For example <https://www.ohchr.org/en/documents/country-reports/ahrc5422add2-visit-honduras-report-working-group-enforced-or-involuntary>.

<sup>9</sup> Why this contributions highlights that thematic study, there are also other thematic studies that address enforced disappearances in the context of migration, most notably the study on enforced disappearances in the context of transnational transfers, [g2121521.pdf \(un.org\)](#).

<sup>10</sup> Working Group on Enforced or Involuntary Disappearances, Report of the Working Group on En-

experience of the WGEID on the topic, the report pointed out that there is a direct link between migration and enforced disappearances. First, people get forcibly disappeared in migration. Second, people migrate to escape threats of being subjected to enforced disappearances. Thirdly, families migrate to establish the fate and whereabouts of their loved ones.<sup>11</sup>

The WGEID found that migrants get forcibly disappeared for various reasons. Just as with all other disappearances, this can happen as a result of a deprivation of liberty for political or other reasons. The report pointed to the “Operation Condor” as an example of cooperation between states to forcibly disappear political opponents. In this cooperation military regimes in South American coordinated their actions in the 1970s and 1980s to capture their nationals who have fled to escape persecution.<sup>12</sup> At the same time migrants are also forcibly disappeared in procedures that are specific to migrants, namely immigration detention and deportation proceedings. The report mentions several instances of such detentions throughout the world, pointing also to the fact that enforced disappearances also occur during arbitrary expulsions and pushbacks.

Enforced disappearances in the understanding of the WGEID are only acts conducted by, ‘on behalf of, or with the support, direct or indirect, consent of acquiescence’ of the state.<sup>13</sup> However, the report also addressed the fact that migrants disappeared as a result of criminal conduct of non-state actors, notably smugglers and traffickers. As the WGEID points out, such acts constitute enforced disappearances, if official authorities are involved in them – at least by acquiescence.

Importantly, the report also mentioned factors which contribute to the enforced disappearances of migrants, singling out conflict and violence, socioeconomic factors, impunity, discrimination, state migratory and counter-terrorism policies and lack of statistical data. It provides examples of those and explains how those factors could be addressed to prevent enforced disappearances.<sup>14</sup> Finally, the report points out state obligations, focusing on prevention, search for disappeared migrants, obligation to investigate, criminalize and prosecute. It also contains a section specifically on families of forcibly disappeared persons<sup>15</sup> and the need to protect them and provide them with remedies.<sup>16</sup>

### 3. THE ROLE OF THE COMMITTEE IN PROTECTING MIGRANTS

#### 3.1. The Committee’s role in overseeing implementation of the Convention

International Convention for the Protection of all Persons from Enforced Disappearance, (hereinafter: ICCPED, Convention) was adopted in 2006 and entered into the force in 2010.

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forced or Involuntary Disappearances on enforced disappearances in the context of migration, 2017, available at [www.ohchr.org/en/enforced-disappearances-context-migration-report](http://www.ohchr.org/en/enforced-disappearances-context-migration-report).

<sup>11</sup> Thematic study, par 7-14.

<sup>12</sup> Thematic study, par 17; [The Condor Trials: Transnational Repression and Human Rights in South America : Lessa, Francesca: Amazon.de: Books](#).

<sup>13</sup> Preamble [Declaration on the Protection of all Persons from Enforced Disappearance | OHCHR](#).

<sup>14</sup> Thematic study, 46-56.

<sup>15</sup> For more info. on the rights of families of missing persons see: Baranowska, G. (2022) ‘The Rights of the Families of Missing Persons: Going Beyond International Humanitarian Law’, *Israel Law Review*, 55(1), pp. 25–49.

<sup>16</sup> Thematic study, 57-76.

Its implementation is being overseen by the Committee on Enforced Disappearances composed of 10 independent experts proposed by the States Parties to the Convention and elected by the Assembly of the States Parties. Therefore, they are not representatives of the State Parties but serve in individual expert capacity.<sup>17</sup>

The main mechanisms used by CED to monitor implementation of the Convention are:

- a) Country Reports, follow-up reports and additional information submitted in line with Art. 29 of the Convention and discussed in the country dialogues with the States Parties.
- b) Urgent Actions- the mechanism allowing the Committee to request the States Parties to provide as soon as possible information on the disappeared person and on the measures taken to find him/her.
- c) Individual and Interstate Communications (arts. 31 and 32 of the Convention).
- d) Country Visits (art. 33 of the Convention)

Just like other UN Treaty Bodies, CED is allowed to develop additional, non-binding instruments to interpret certain provisions of the Convention or to in depth explore certain aspects or contexts of the phenomenon addressed by the Convention. This mechanism allows the UN Treaty Body System to stay sensitive to the real needs of people whose human rights are being violated worldwide. These needs evolving through the time, the same as contexts in which human rights violations occur, but also the same as changing the modalities of human rights violation. For UN Treaty Bodies, this means that they need to take into account not only the context in which a treaty has been developed, but also the present one.

For CED, as one of the youngest committees, this should be an easy task. But, in practice, the situation is quite different. Namely, this Convention was created due to the need to react to a great number of enforced disappearances during the second half of the 20th century. At the time the Convention was created, the largest number of enforced disappearances was related to the context of dictatorship regimes. Over time, the contexts of enforced disappearances evolved, they have got new forms, so nowadays, the thousands of victims around the world facing enforced disappearances associated to armed conflicts, organized crime, or migrations.

Some initial efforts to tackle the issue of enforced disappearances in the context of migration was made by the Committee through the Guiding Principles for the Search for Disappeared Persons<sup>18</sup> adopted in 2019 emphasizing the particular vulnerability of migrants and call upon States to pay attention to the risks of enforced disappearance, which increase as a result of migration, and ask for specific coordinated search and protection measures taking into account the difficulties linked to migration situations.<sup>19</sup>

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<sup>17</sup> For more info. on development of universal response to enforced disappearances see: Baranowska, G. & Kolaković-Bojović, M. (2024) Dealing with Uncertainty: On Addressing Enforced Disappearances Universally, In: Baranowska, G. & Kolaković-Bojović, M. (eds.) *Enforced Disappearances: On Universal Responses to a Worldwide Phenomenon*. Cambridge University Press (in publishing).

<sup>18</sup> Committee on Enforced Disappearances. (2019). Guiding Principles for the Search for Disappeared Persons. CED/C/17, available at [www.ohchr.org/en/documents/legal-standards-and-guidelines/guiding-principles-search-disappeared-persons](http://www.ohchr.org/en/documents/legal-standards-and-guidelines/guiding-principles-search-disappeared-persons), last accessed on April 21, 2024.

<sup>19</sup> For more info. on the content of the Guiding Principles, the process of development and the impact they made so far, see: Galvis Patiño, M.C. & Huhle, R. (2024) The Guiding Principles on the Search for Disappeared Persons – Origins and Impact, In: Baranowska, G. & Kolaković-Bojović, M. (eds.) *Enforced Disappearances: On Universal Responses to a Worldwide Phenomenon*. Cambridge University Press (in publishing).

Despite the identification of the issue of enforced disappearances of migrants, it remains marginalised in the political and legal discourse, including the specificities of the legal obligations of States in these cases. Rigid migration policies of States such as refusal of entry, push-backs often accompanied by violence, expulsion or detention, and the increasingly perilous journeys of migrants cause a particular risk to become victims of enforced disappearances. This is by no means a problem of certain states only. Deaths and disappearances on various migration routes are widely reported. However, there is a lack of statistical data, and it is not possible to establish the exact number of migrant victims of enforced disappearances. 20

In addition to the general objective of ensure improved level of the protection of migrant victims of enforced disappearances, by its decision to develop and adopt the General Comment on Enforced Disappearances in the Context of Migration, CED tried to achieve the following operational goals:

- To shed light on one of the most burning contexts of enforced disappearances in detail.
- To provide the State Parties detailed guidelines on how to act to prevent enforced disappearances in the context of migration, but also on how to react upon them as well as how to protect and support victims.
- To provide the victims, their associations, NGOs, human rights defenders, international organisations and academic community a kind of the additional instrument in their hands to fight for the protection of migrants from enforced disappearances.
- To ensure for the Committee itself an additional instrument to oversee the implementation of the Convention in this specific context and to make it more efficient.
- Finally, the Committee counted on the fact that through the process of developing the General Comment, but also through its content later on, a general public will learn about what happening to migrants around the world, with the focus on the risk to be subjected to enforced disappearances.

### 3.2. The process of developing the General Comment

Almost three years long process (from the presentation of the initial concept to the adoption) was led by two rapporteurs Ms. Barbara Lochbihler and Ms. Milica Kolaković-Bojović, Committee members.

The consultative process itself included:

a) Two rounds of internal consultations aimed at developing and finalization of the draft concept note to be presented to the public together with the public call for contributions. The same was repeated to discuss the draft General Comment before making it public. This draft has been shared with member States, civil society actors, national human rights institutions (NIHRIs) and United Nations actors for inputs and comments.

b) Two rounds of public consultations, including both modalities: written contributions and online round tables organized for four regions: in Latin America and the Caribbean (16 and 17 August 2022); Asia Pacific (18 August 2022); Europe (5th December 2022) and Africa: (12 and 13 December 2022).

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<sup>20</sup> See: <https://www.ohchr.org/en/treaty-bodies/ced/general-comment-no-1-enforced-disappearances-context-migration>, last accessed on April 21, 2024.



Within this period, more than 100 of written contributions were received together with oral statements of the UN agencies, international organisations, regional organisations (including CoE), NGOs, academia, associations of victims and family members.<sup>21</sup>

During its 25th session, on September 18th 2023, the Committee adopted the General Comment<sup>22</sup>. With the aim to disseminate and promote the content of the adopted general comment and foster its implementation, the Committee held a launching event on 28th September 2023.

Through such comprehensive and long-lasting process, the Committee has proved its commitment the “quality before speed” principle.

### 3.3. The main novelties brought by the General Comment

Bearing in mind the comprehensiveness of this document, by this occasion we will try to present the main novelties included in it through the following 10 points:

1) The General Comment brings a clear determination of the notion of migrant used for the purpose of this document as well as elaboration of reasons or triggers of migration. It takes into account various reasons, but it deals in depth with discrimination as a triggering factor of migration.

Namely, for the purposes of the General Comment, “the term “migrants” is used to refer to persons who move away from their place of usual residence, whether within a country or across an international border, temporarily or permanently, and for a variety of reasons,<sup>23</sup> such as family reunification or moving away from international or non-international armed conflicts, persecution, discrimination, natural disasters, environmental degradation, the effects of climate change, difficult economic situations or high crime rates.” (par. 1)

2) This document also reflects upon migrants’ exposure to various risks, including reasons that causing such risks. The special attention was given to the strict border and migration policies as a factor of risk.

The General Comment elaborates that “migrants are in situations of particular vulnerability, which may arise from their personal characteristics or socioeconomic status, the circumstances in which they travel – including their undocumented status and language barriers – or the treatment or conditions that they face in countries of origin, transit and destination, including border areas.<sup>24</sup> The universal human rights and fundamental freedoms of migrants must be respected, protected and fulfilled at all times.<sup>25</sup> Although States have a sovereign prerogative to manage their borders and regulate access to their territories, they must

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<sup>21</sup> See more on: <https://www.ohchr.org/en/calls-for-input/2023/call-inputs-first-draft-enforced-disappearances-context-migration-ced-general>, last accessed on April 29th 2024.

<sup>22</sup> Committee on Enforced Disappearances, General comment No. 1 (2023) on enforced disappearance in the context of migration Available at: <https://www.ohchr.org/en/treaty-bodies/ced/general-comment-no-1-enforced-disappearances-context-migration>, 21.4.2024.

<sup>23</sup> International Organization for Migration (IOM), “IOM definition of ‘migrant’”.

<sup>24</sup> Global Compact for Safe, Orderly and Regular Migration, objective 7. See also the Guiding Principles for the Search for Disappeared Persons (CED/C/7, annex), principle 9; and African Commission on Human and Peoples’ Rights, Guidelines on the Protection of *All Persons from Enforced Disappearances in Africa* (2022), para. 1.3.2.

<sup>25</sup> Global Compact for Safe, Orderly and Regular Migration, para. 4.

do so in full compliance with their obligations under international law,<sup>26</sup> in particular human rights law, international humanitarian law, international refugee law and the law of the sea.” (par. 2) Already in a situation of vulnerability and faced with restrictive immigration policies and dehumanizing border governance tactics,<sup>27</sup> thousands of migrants die, disappear or go missing each year, leading to humanitarian crises in many regions of the world.<sup>28</sup> (par. 3)

3) The point of this document which we perceive to be very important is a clear distinction between migrants going missing, disappeared or being subjected to enforced disappearances.

As it is underlined in the General Comment, “some missing migrants could be victims of disappearance, including enforced disappearance. The principal distinctive element between a migrant going missing and a migrant becoming a victim of disappearance is the commission of a crime against a migrant, as provided in articles 2, 3 and 5 of the Convention.” (par. 4)

4) The GC provides a set of measures aimed at preventing enforced disappearances of migrants, including a prohibition of a secret detention as well as set of the procedural guarantees aimed to prevent it. In that regard, a special attention was also given to the registries of persons deprived of liberty (keeping those registries up to date, their interconnection and interoperability. This is especially important taking into account that in many SPs there is no interconnection and interoperability between registries established in prison administration, migrant reception centres, medical institutions, etc.) (par. 16-20)

5) The General comment also in many points deals with data collection/statistics on enforced disappearances. Namely, collecting statistical, properly disaggregated data on disappeared and deceased migrants is crucial. “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 becoming victims of this crime”. (par. 5) Frequently, it is difficult to get data on enforced disappearances from the general databases of missing persons, and even more difficult to identify migrant victims of enforced disappearances as a subcategory. In that regard, the GC brings precise guidelines on how to collect, preserve, analyse and protect personal data. This last point was very important to us having in mind that improper handling the personal data can expose migrants and their family members to additional risks. (par. 23-26)

6) Additional reason to focus on the personal data protection is connected to the fact that this document addresses to the great extent a use of new technologies in combating enforced disappearances of migrants which also corresponds in time and content the newly adopted Study on New Technologies and Enforced Disappearances adopted by the Working Group on Enforced and Involuntary Disappearances (WGEID).<sup>29</sup>

Namely, in the 54th session of the Human Rights Council, the Working Group on Enforced or Involuntary Disappearances presented this thematic study which analyses how new technologies:

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<sup>26</sup> Committee on the Elimination of Discrimination against Women, general recommendation No. 38 (2020) on trafficking in women and girls in the context of global migration, para. 23.

<sup>27</sup> [A/HRC/50/31](#), para. 24. See also [CED/C/GRC/CO/1](#), para. 28; [CED/C/MEX/VR/1](#) (Findings), para. 20; and [CED/C/MEX/VR/1](#) (Recommendations), paras. 39–42.

<sup>28</sup> [A/72/335](#), para. 1.

<sup>29</sup> See more on: <https://www.ohchr.org/en/press-releases/2023/09/un-experts-study-new-technologies-and-enforced-disappearances-exposes-risks>, last accessed on April 29th 2024.



(a) are being used against relatives of disappeared persons, their representatives, human rights defenders and CSOs and which protective strategies are – or can be put – in place;

(b) can be effectively applied to facilitate the search for disappeared persons, ensuring that their fate and whereabouts are established promptly and in a reliable and secure manner; and

(c) can be used to obtain evidence of the commission of enforced disappearance, bearing in mind that this international crime is by its own nature shrouded in secrecy and, as such, poses substantial evidentiary obstacles to identify and bring to justice perpetrators.

The study is complemented by annexes containing a non-comprehensive mapping of publicly available tools, contacts and resources that may assist in putting in place protective strategies vis-à-vis online threats, facilitate the search for disappeared persons and the corresponding criminal investigations. The Working Group also aims at developing in the near future the presentation of a hypothetical case study illustrating the step-by-step process to investigate a case of enforced disappearance through the use of new technologies, with the objective of showing the implications, both in terms of advantages and existing obstacles.

The Working Group offers several recommendations to States, corporations, civil society organisations, NHRIs, academic institutions, donors, international courts, as well as other human rights mechanisms and the Office of the High Commissioner for Human Rights.<sup>30</sup>

7) This General Comment also approaches comprehensively to the state policies, following the principle of non-criminalization of migrants and human rights defenders assisting them.

8) The document establishes a clear connection between trafficking and smuggling of migrants and enforced disappearances of them, providing for a set of measures to additionally protect children. (par. 26)<sup>31</sup>

9) A very important section of the GC is dedicated to the non-refoulement and pushbacks. Namely, the General Comment deals in detail with the need to ensure individual risk assessment in order to prevent refoulements that may lead to enforced disappearances. The pushbacks were recognized as a one of the riskiest environments for migrants to be subjected to enforced disappearances. Namely, a various harmful practices were recognised in that regard, such as destroying their mobile phones and other personal belongings e.g. biometric documents which prevents them from keeping communication and/or receiving assistance, leaving them in extreme weather conditions or other life-threatening environments.

10) When it comes to search<sup>32</sup> and investigation of enforced disappearances of migrants, the General Comment addresses several subtopics:

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<sup>30</sup> See more in: Citroni, G. (2024) *New Technologies and Enforced Disappearances- The Working Group on Enforced or Involuntary Disappearances Exploring a New World Between Opportunities and Challenges*, In: Baranowska, G. & Kolaković-Bojović, M. (eds.) *Enforced Disappearances: On Universal Responses to a Worldwide Phenomenon*. Cambridge University Press (in publishing).

<sup>31</sup> For more info. on the protection of children from enforce disappearances see: Kolaković-Bojović, M. (2019) [Wrongful Removal of Children](#). In: Yearbook. No. 2, *Human rights protection: protection of the right's of the child: 30 years after the adoption of The Convention on the Rights of the Child*. Provincial Protector of Citizens - Ombudsman; Institute of Criminological and Sociological Research, Novi Sad; Belgrade, pp. 429-450.

<sup>32</sup> For more info. on the application of conducting search under the presumption that a person is still alive see: Kolaković-Bojović, M. (2021) *Disappeared Persons and the Right to be Considered Alive - The current State of Play in the Western Balkans*. In: Yearbook. No. 4, *Human rights protection: right to life*.

- a) Initiation of investigation ex officio, and obligation to provide mechanisms to report e.d., including using modern technologies.
- b) Use and preserving the border surveillance footage for the purpose of search and investigation.
- c) We also recognised the role of the creation of centralised DNA databases with ante- and post-mortem information and DNA cross-matching.
- d) Also, we have underlined the need for the SP to use for the purpose of search and investigation, information provided by relatives, civil society organisations, international organisations also through innovative use of information and communication technology.

11) The General Comment includes also a detailed section on victims' rights, where the Committee especially addressed the participation in the search and investigation, and the right to obtain information about disappeared persons from two perspectives:

- a) Provision of humanitarian visas or temporary residence permits to relatives to facilitate their participation in the search and investigation (para 46).
- b) Remote participation and communication including through the use of new technologies or, where appropriate, diplomatic and consular representation. (par. 46)

The General Comment underlines that the States parties have an obligation to ensure that all victims of enforced disappearance have access to their rights to truth and justice, reparation and guarantees of non-repetition, including when such disappearance occurs in the context of migration. It further clarifies that the "reparation should be understood in a broad sense that includes restitution, rehabilitation, satisfaction, including restoration of dignity and reputation, and guarantees of non-repetition. In addition, all victims have a right to prompt, fair and adequate compensation" (art. 24 (2)–(5) ICPPED). (par. 44)<sup>33</sup>

The General Comment emphasises that "in ensuring access to compensation and reparation, States parties must 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, migratory status and other characteristics of the person or their relatives. Such access must be guaranteed for those in any form of union comparable to marriage, even when not recognized under the law of the State party or the country in which relatives are located. (par. 45)

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Provincial Protector of Citizens - Ombudsman; Institute of Criminological and Sociological Research, Novi Sad; Belgrade.

<sup>33</sup> For more on the concept of reparation for victims of enforced disappearances see: Kolaković-Bojović, M. & Džumhur, J. (2024) Enforced Disappearances and the Right to Reparation in Western Balkans, In: Baranowska, G. & Kolaković-Bojović, M. (eds.) *Enforced Disappearances: On Universal Responses to a Worldwide Phenomenon*. Cambridge University Press (in publishing); Kolaković-Bojović, M. (2023) *Víctimas de desaparición forzada y derecho a la reparación*. In: *Desaparición forzada: Colección en temas de derechos humanos*, Tomo I. Centro Internacional para la Promoción de los Derechos Humanos bajo los auspicios de UNESCO (CIPDH), Buenos Aires, Argentina, pp. 196-226; Kolaković-Bojović, M. and Grujić, Z. (2020) *Crime Victims and the Right to Human Dignity - Challenges and Attitudes in Serbia*. In: Yearbook. No. 3, *Human rights protection: the right to human dignity*. Provincial Protector of Citizens - Ombudsman; Institute of Criminological and Sociological Research, Novi Sad; Belgrade, pp. 239-269. ISBN 978-86-80756-36-3

In addition to this, the General Comment addressed the victims' right to be protected and supported. "Specific attention should be given to ensuring the necessary psychosocial and logistical support for relatives of disappeared persons." (par. 46)

12) The final section of the GC is dedicated to the regional and international cooperation, but also to dissemination of this document.

#### 4. NEXT STEPS: DISSEMINATION AND IMPLEMENTATION

Despite the fact that comprehensive efforts were made to draft and adopt the General Comment, the main steps are yet to be made to ensure its effective dissemination and implementation.

An important role in that regard can play establishing a clear connection between that process and the promotion of the further ratification of ICPPED. Namely, adoption of the General Comment can bring the new perspective also to the issue of ratification process which can be fostered if we take into account all the specificities of the particular regions, but also particular states. This General Comment provides us with the opportunity to look into the states and regions that, beyond the migration context may not be interested in enforced disappearances.

In that process, the Committee should count on the existing networks and resources/infrastructure around the World, such as:

- a) UN agencies and regional offices
- b) National human rights institutions
- c) International Committee of Red Cross network of legal advisers
- d) UNHCR
- e) NGOs who have expertise in enforced disappearances, continuous interaction with victims, but also rich networks of contacts. Their human rights monitoring and advisory role should be also taken into account.
- f) Various regional organisations and institutions, such as Council of Europe whose Parliamentary Assembly currently works on the preparation of the special report dedicated to the issue of missing migrants through the mechanism of its Committee on Migration, Refugees and Displaced Persons.<sup>34</sup>

Finally, a valuable mechanism that could and should be used to connect the ratification of the Convention and the promotion of the General Comment is sharing good practices between potential State Parties and the State Parties that are so-called "old State Parties". Namely, those States can play significant role in convincing the new states to ratify the Convention by sharing their experiences and benefits arising from the implementation of the Convention and the interaction with the Committee.

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<sup>34</sup> CoE mechanisms are of the particular importance having in mind that so far out of 72 states have ratified the ICPPED 27 of them are CoE Member States, while 39 of CoE Member States have signed the Convention (plus Mexico and Japan as CoE Observer States).

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