

## RESEARCH BRIEF

# THE COMMITTEE ON ENFORCED DISAPPEARANCES' GENERAL COMMENT ON ENFORCED DISAPPEARANCE IN THE CONTEXT OF MIGRATION

### KEY MESSAGES

- As restrictions to regular and safe migration paths and asylum increase, migrants, including refugees, choose more dangerous routes and risk becoming victims of human rights violations. Thousands go missing en route each year, leaving relatives with the agony of not knowing what happened to their loved ones. The Committee on Enforced Disappearances' (CED) General Comment on Enforced Disappearance in the Context of Migration highlights that among growing numbers of 'missing' migrants, some may be victims of a disappearance or enforced disappearance as defined in the International Convention for the Protection of All Persons from Enforced Disappearance (ICPPED). This represents an important contribution to debates and actions to protect the human rights of migrants in the current migration crisis and complements existing instruments, such as the Global Compact on Migration, which generally only refer to 'missing' migrants.
- General comments or general recommendations are soft law instruments produced by UN treaty bodies. While their exact legal authority is disputed, they provide important guidance on the interpretation of obligations under a treaty and can impact both jurisprudence and policymaking, as well as further develop international human rights law.
- CED's General Comment provides detailed guidance on state obligations to prevent and respond to (enforced) disappearances along migration routes. It can therefore be used by policymakers to review and adapt practices and legislation that are at odds with their obligations under the ICPPED. Equally, civil society organisations can use the General Comment to advocate for legislative and policy changes. International and regional organisations working on migration issues should refer to the General Comment to include the issue of migrant disappearances more explicitly in their work. Finally, judicial and administrative authorities can draw on the General Comment in cases that involve, among others, pushbacks, or deprivation of liberty of migrants, or victims' lack of access to their rights. Political will is crucial to ensure effective implementation of the General Comment.
- According to several paragraphs of the General Comment, pushbacks and the deprivation of liberty of migrants without appropriate registers are incompatible with states' obligations under the ICPPED. This is particularly important considering current tendencies in migration policies by destination countries.
- Transnational migration creates specific challenges when it comes to the search for disappeared migrants and the investigation of their disappearance across several countries. The General Comment emphasises the need for bilateral and multilateral cooperation to facilitate information and data exchange in order to prevent disappearances of migrants and conduct effective searches and investigations. The situation of vulnerability in which migrants often find themselves should always be considered.

DECEMBER 2023 | LENE GUERCKE

THIS PUBLICATION HAS BEEN EXTERNALLY PEER-REVIEWED

## INTRODUCTION

In September 2023, at its 25th session, the Committee on Enforced Disappearances (CED/the Committee) adopted its first General Comment, which focuses on enforced disappearances in the context of migration.<sup>1</sup> Enforced disappearances, defined 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’,<sup>2</sup> are considered as one of the most heinous human rights violations. Not only is the victim deprived of any legal protection, but relatives of the disappeared person are left in an agonising limbo of not knowing what happened to their loved one. If no measures are taken to clarify the fate of the person, this limbo can continue for decades. In the context of migration, the problem of ‘missing migrants’ is a widely known and growing issue, as migrants are forced to choose increasingly dangerous irregular routes.<sup>3</sup> Less attention, however, has been given to the fact that there are also victims of disappearances among ‘missing’ migrants, some of whom may be victims of enforced disappearance. By focusing its General Comment on enforced disappearance in the migration context, CED draws attention to this particular issue and provides specific actions to address it.

As the treaty body to the ICPPED, the Committee is tasked with monitoring compliance with the Convention by states parties. To fulfil its mandate, CED can adopt General Comments as a means of promoting and assisting states in the implementation of Convention obligations. This Research Brief aims to present CED’s first General Comment and discuss its potential impact in light of its content and nature. It provides background information about general comments in general, and CED and its first General Comment in particular, discusses the content of the General Comment and how it contributes to the interpretation of obligations under the ICPPED, as well as its potential impact and implementation. The Brief ends with a series of recommendations oriented towards the successful implementation of the General Comment.

## BACKGROUND TO THE GENERAL COMMENT AND DRAFTING PROCESS

### WHAT ARE GENERAL COMMENTS?

General comments or general recommendations<sup>4</sup> by UN treaty bodies are documents in which the expert members of these bodies express their position on a particular aspect or provision of the treaty they monitor. As soft law instruments they are not legally binding and their legal authority continues to be a matter of discussion among academics and practitioners.<sup>5</sup> Despite such controversies in the legal realm, general comments have had real impact on the development of international human rights law. For example, some general comments have been taken up by regional and domestic tribunals in their jurisprudence.<sup>6</sup> As treaty provisions are often – and sometimes intentionally – broad and open to interpretation, a treaty body’s interpretative stance expressed in a general comment is often necessary to clarify uncertainties. For example, in its General Comment No.36, the Human Rights Committee (HRC) clarified what it means to effectively protect the right to life under article 6 of the International Covenant on Civil and Political Rights (ICCPR).<sup>7</sup> In that way, general comments serve as ‘interpretative tools’<sup>8</sup> that provide guidance to better understand the provisions of a human rights treaty.

General comments are general in the sense that they are directed to all States Parties to a treaty and concern topics that may be of concern to more than one state.<sup>9</sup> They differ from concluding observations made by treaty bodies in response to reports submitted by States Parties, or views adopted in individual cases, both of which are state-specific. Treaty bodies can therefore use general comments to draw attention to an issue that they have observed across several States Parties, or to respond to changing realities. The latter is important because human rights instruments are ‘living instruments’ that should be interpreted in line with current reality.<sup>10</sup>

The process of drafting and adopting general comments is not fully standardised across treaty bodies but has become more transparent in recent years. In general, a set of principles adopted by the HRC in 1980 is taken as a reference to define the scope and possible content of general comments.<sup>11</sup> Ultimately, however, treaty bodies can freely choose the subject and style of their general comments. In practice, research suggests that the content of general comments depends in large part on individual members’ background and networks.<sup>12</sup> Regarding methodology, at the 2015 meeting of Chairs of the human rights treaty bodies, the Chairs agreed

on a list of elements that should be considered during the elaboration process of a general comment, especially in relation to public consultations. Accordingly, a treaty body has to take a plenary decision to draft a general comment and create a working group among treaty body members to be in charge of the drafting (rapporteurs). Furthermore, the consultation process should be made public and involve publishing advance versions of draft general comments for feedback from states and other stakeholders.<sup>13</sup>

#### TAKEAWAY BOX:

- General comments are 'soft law' instruments that provide guidance on interpreting the content of obligations under a human rights treaty applicable to all States Parties.
- The exact legal authority of general comments is a matter of discussion.
- The common elements for the elaboration of general comments were defined by the Chairs of the human rights treaty bodies in 2015.

### CED AND ITS FIRST GENERAL COMMENT

The ICCPED entered into force in 2010, making CED the newest treaty body in the UN human rights system. With ten members, it is one of the smallest Committees alongside the Committee against Torture (CAT).<sup>14</sup> CED has the competence to review reports submitted by States Parties; receive, register and follow-up on urgent actions under which it requests the States Parties concerned to search for disappeared persons; consider individual or inter-state communications (if the state party accepted the Committee's competence<sup>15</sup>), conduct visits to States Parties; refer a situation of widespread or systematic enforced disappearances to the UN General Assembly; and issue general comments.<sup>16</sup> According to CED's Rules of Procedure, the goal of general comments should be to promote implementation of the ICCPED or 'to [assist] States parties in fulfilling their obligations'.<sup>17</sup>

In 2021, CED decided to focus its first General Comment on the issue of enforced disappearances in the context of migration. This is not the most common choice, as most other treaty bodies chose to focus their first general comments on a particular aspect or provision of the treaty<sup>18</sup>, rather than an overarching issue. The Committee's decision was motivated by its overall aim to respond to current realities and be sensitive to the real needs of persons whose rights are violated. Since the adoption of the Convention the contexts and dynamics of enforced disappearances have evolved, and the disappearance of migrants is an urgent contemporary issue that was not envisaged when the Convention was drafted. CED

members therefore found it important to raise awareness about the topic and provide a guiding tool to States Parties and other stakeholders on the obligations under the ICCPED in the context of migration.

Additionally, while the issue of 'missing migrants' has received growing attention in recent years, the fact that some missing migrants may also be victims of a disappearance within the scope of the ICCPED is often omitted in discussions on this topic. This continues to be the case despite a 2017 report on the subject published by the Working Group on Enforced or Involuntary Disappearances (WGEID).<sup>19</sup> At the level of terminology the terms 'missing' and 'disappeared' migrants are often confused or used interchangeably, and not all organisations working on migration or refugee issues are fully aware of the notion of enforced disappearance and of the additional legal protections available in cases where migrants are victims of an (enforced) disappearance. Another aim of CED was thus to highlight and clarify the circumstances in which migrants can be considered victims of a disappearance and in that way contribute to their legal protection.

### DRAFTING AND ADOPTION PROCESS

The drafting process of the General Comment built on practices developed by other treaty bodies and included a consultation process in line with the elements defined by the Chairs of human rights treaty bodies mentioned above (section A). Initially, a concept note was drafted, adopted, and published with an open call for inputs in 2022. During 2022, the assigned rapporteurs also held four virtual regional consultations to further understand the contexts, challenges, and best practices - if any - in different regions (Latin America and the Caribbean, Asia-Pacific, Europe, Africa and MENA) to complement written inputs. Subsequently, the rapporteurs worked on a first full draft, which was discussed in plenary during a special session in Geneva held in March 2023 prior to the Committee's 24th session. Sources used included the Committee's own jurisprudence and findings, the work of other treaty bodies, case law from regional human rights courts, and sources provided during the consultation process. The draft General Comment, published on CED's website for inputs in April 2023, contained footnotes that showed, inter alia, how recommendations and suggestions made in public inputs on the concept note, received during the regional consultations and in writing, were incorporated.<sup>20</sup> After reviewing further inputs made on the draft and integrating additional suggestions, the Committee formally adopted the General Comment during its 25th session in September 2023.

## TAKEAWAY BOX

- CED decided to focus its first General Comment on the subject of enforced disappearances in the context of migration in order to respond to a pressing global human rights issue.
- Most discussions on ‘missing’ migrants insufficiently address (enforced) disappearances and state obligations to prevent and respond to them.
- The General Comment drafting process included two public calls for inputs and four regional consultations with stakeholders.

## CONTENT AND CONTRIBUTION TO THE CONVENTION OF THE GENERAL COMMENT

For CED, general comments are legal instruments that serve to present its interpretation of the Convention and can assist States Parties to better understand and more efficiently implement the Convention. The first General Comment does so with a specific focus on the migration context and its particularities, such as the situation of vulnerability faced by many migrants on irregular routes, the issue of discrimination, the general insufficiency of data, and the many practical obstacles for relatives who are searching for loved ones disappeared in a different country.

The General Comment is structured in seven sections that provide detailed guidelines on what States Parties should do to effectively prevent and respond to disappearances of migrants: the introduction (paragraphs 1-11) provides the background to the General Comment and the issue of disappearances in the migration context; the objectives and scope (paragraphs 12-15) reiterate CED’s aims for the General Comment; the most extensive section (III) focuses on preventive mechanisms (paragraphs 16-36) and is divided in four sub-sections dealing with a) the prohibition of secret detention of migrants, b) data collection, c) policies and non-criminalisation, and d) non-refoulement and the prohibition of “pushbacks”; section IV (paragraphs 37-43) focuses on the obligation to search and investigate; section V (paragraphs 44-49) outlines states’ obligations to ensure victims’ rights; section VI (paragraphs 50-55) is dedicated to training and cooperation and highlights the importance of cooperation and coordination among states to effectively counter disappearances of migrants; finally, section VII encourages non-state parties to ratify the Convention (paragraph 56).<sup>21</sup>

In the Introduction the Committee adopts a broad definition of the term ‘migrants’<sup>22</sup> and clearly distinguishes between migrants who are victims of a disappearance and those that are ‘missing’. The main difference is that migrants who have been disappeared are victims of a crime commit-

ted against them in accordance with the Convention, which can involve both state and non-state actors. Migrants who are ‘missing’ could be victims of a crime but could also be victims of natural disasters or conflicts. Therefore, the term ‘missing’ migrants is broader than that of ‘disappeared’ migrants.<sup>23</sup> The distinction is important because states have specific legal obligations under the ICPPED to prevent and respond to enforced disappearances and disappearances of migrants and to provide reparations to victims of enforced disappearance.

The General Comment makes some important contributions to the Convention: first, the Committee identifies discrimination as a factor that can lead to enforced disappearances of migrants and emphasises the applicability of the Convention to all persons without discrimination, regardless of migratory status (paragraph 8). Since the ICPPED itself does not explicitly mention the principle of non-discrimination, it is welcome that the Committee expresses its unequivocal stance on the subject. Second, the most extensive section of the General Comment focuses on Preventive Mechanisms. These include policy measures to address factors that indirectly contribute to disappearances of migrants, such as data collection (paragraphs 23-26), the adoption of migration policies that enable regular and safe migration (paragraph 27), ending criminalisation of migrants and those who assist them (paragraph 30), and taking measures against non-state actors involved in migrant disappearances, such as human traffickers or smugglers, in compliance with human rights obligations (paragraph 28). Third, the General Comment sends a clear message: states cannot deprive migrants of their liberty without registering the act itself and the persons concerned, and they cannot summarily turn back migrants without violating their obligation not to return a person to a country where they might be at risk of enforced disappearance (‘non-refoulement’) (paragraphs 31-35). Consequently, pushbacks and immigration detention without proper registers and real possibilities for detained migrants to contact their relatives or a legal representative are incompatible with states’ obligations under the ICPPED (paragraphs 16, 35, 36).

Some legal questions connected to migrant disappearances are not addressed in the General Comment. For example, the General Comment mentions non-state actors, such as human traffickers or smugglers, and their – often prominent – role in disappearances of migrants but it does not engage in detail with the issue of non-state actors as perpetrators. On this subject, the General Comment should be read together with the recently adopted ‘Statement on Non-State Actors in the Context of the International Convention

for the Protection of All Persons from Enforced Disappearances' (Statement on Non-State Actors)<sup>24</sup>, which, among others, provides definitions of the attribution criteria 'support, authorisation and acquiescence' contained in article 2 ICPPED. Regarding the search for disappeared migrants, the General Comment refers to CED's 'Guiding Principles for the Search for Disappeared Persons' (Guiding Principles).<sup>25</sup> The Committee's and WGEID's current work on the notion of short-term disappearances<sup>26</sup> will further add to the General Comment because migrants are sometimes only very briefly deprived of their liberty, for example in the context of pushback operations.

### TAKEAWAY BOX

- All disappeared migrants are missing, but not all missing migrants are victims of a disappearance or enforced disappearance.
- States Parties to the ICPPED have obligations to prevent and respond to disappearances of migrants without discrimination, which are outlined in the General Comment.
- States must take into account that many migrants may be in a situation of vulnerability, which increases the risk of becoming victim of a disappearance.
- The General Comment should be read together with other interpretative instruments of the Committee, such as the Statement on Non-State Actors and the Guiding Principles on the Search.

## POTENTIAL IMPACT AND IMPLEMENTATION OF THE GENERAL COMMENT

### IMPACT OF THE GENERAL COMMENT

The uptake of CED's first General Comment and its impact cannot be predicted. However, with growing acceptance of general comments as interpretative documents that further develop international human rights law, and considering the broad interest expressed in the General Comment during the consultation process, it may well become an important reference document for those working on migration issues. The two public calls for inputs and regional consultations during the drafting process increase the final document's legitimacy, which is an important element for adherence to soft-law instruments that lack enforcement mechanisms.<sup>27</sup> Undoubtedly, the General Comment will be used by CED itself, for example when examining or requesting state party reports or adopting views on individual communications. How CED uses the General Comment in the future can also influence its impact on states' practice.

Beyond CED's own work, the General Comments' impact on developments in law and practice will depend on its re-

ception and use by relevant stakeholders. In the legal realm, domestic and regional courts can refer to it in cases concerning migrant disappearances, pushbacks, criminalisation of migrants or defenders, and immigration detention, among others. Other treaty bodies can use the General Comment to develop their own jurisprudence, as CED itself did during the drafting process by referring to General Comments of other treaty bodies.<sup>28</sup> As an interpretative document, the General Comment can also be referred to by non-governmental or international organisations working on relevant topics in their litigation, monitoring, and advocacy work, as well as by associations of relatives. Finally, since the General Comment contains specific policy recommendations, policymakers can utilise it to design policies in line with Convention obligations.

The General Comment's relevance and timeliness is demonstrated by current developments in migration and asylum policies in the Global North, where even more restrictive policies are being negotiated by the EU in its 'Migration Pact'<sup>29</sup> and have recently been adopted by the Biden Administration in the United States (US).<sup>30</sup> Both measures will effectively restrict the right to seek asylum and thereby risk that refugees be returned to countries where they may face human rights violations, including enforced disappearances. While the US is not a state party to the ICPPED, all EU members except for Estonia and Hungary have at least signed the Convention and should therefore take the General Comment into consideration during ongoing policy negotiations. Specifically, the General Comment is explicit about the importance of careful, individualised risk assessments to comply with the obligation of non-refoulement under the ICPPED (paragraph 32). Failure to conduct such assessments will result in a violation of the Convention.

Similarly, increased use of pushbacks clearly contravenes obligations under the ICPPED and other human rights instruments. CED's position regarding pushbacks (paragraph 35) is that they can amount to enforced disappearances if they involve the deprivation of liberty and lack of information about the fate or whereabouts of the migrants concerned. Consequently, the General Comment could be used in practice to facilitate the identification of and argumentation in cases involving migrant disappearances following pushback operations that could fall within the Committee's competence to address urgent action requests (article 30 ICPPED) or receive individual communications (article 31 ICPPED). Victims and accompanying organisations therefore have an additional tool at their disposal to hold states accountable for human rights violations against migrants by utilising the Committee's procedures.



## TAKEAWAY BOX

- The impact of the General Comment will depend on how it is taken up by relevant stakeholders, such as courts, treaty bodies, policymakers, and non-governmental organisations or international organisations working on migration.
- The General Comment is timely given current policy developments in countries of destination, where more restrictive migration and asylum policies are being adopted.
- Urgent action requests and individual communications could be presented to CED in cases of disappearances following pushback operations during which migrants were deprived of liberty.

## IMPLEMENTATION OF THE GENERAL COMMENT'S RECOMMENDATIONS

States will have to take different measures to implement the General Comment, some of which may take time to adopt. However, some can easily be achieved and should be adopted at once to prevent and stop disappearances of migrants. For example, proper registration of migrants deprived of their liberty by authorities (paragraph 20) is a concrete task for immigration authorities, security forces or private companies involved in detaining migrants. Similarly, ensuring rights of persons deprived of their liberty to communicate with relatives, legal representatives, or an agency like UNHCR, and informing them of their rights in a language that they understand, is a clear obligation (paragraphs 17, 19). Reviewing legislation to ensure that it cannot be misused to criminalise persons working with migrants (paragraph 30) is yet another precise and quick measure.

The creation of databases of disappeared persons, including migrants (paragraph 23), and adoption of cooperation agreements with other countries to facilitate information and data exchange (among others, paragraphs 24,51 and 52) are also concrete measures but may require more resources and time to implement. Yet other provisions will require more substantive changes, especially at the policy level. For example, the adoption of policies to promote safe and regular migration (paragraph 27) is a more complex task that requires consulting stakeholders and changing prevailing attitudes and approaches to migration policy. Likewise, effectively countering human trafficking and other forms of organised crime that can lead to migrant disappearances (paragraph 28), is a long-term measure and corresponding policies must be carefully designed to ensure compliance with states' human rights obligations and to avoid criminalisation of those assisting migrants (see above).

Moreover, not all parts of the General Comment are equally relevant for all States Parties because countries of or

igin, transit, destination, and return may well face different challenges. This does not mean, however, that the General Comment is irrelevant for certain States Parties: section VI on Training and cooperation emphasises the role of all states to cooperate and provide mutual legal assistance, especially because migration processes are often transnational and involve multiple countries (paras 51-53). Even states that do not lie directly on migration routes can address factors that indirectly contribute to disappearances of migrants, for example by reviewing migration and asylum policies or supporting states along migration routes in their efforts to handle challenges, such as the identification of bodies.

How exactly States Parties will implement the General Comment's provisions will be at their discretion. The Committee should monitor implementation by systematically including the issue of disappearances in the context of migration in all its procedures, using the General Comment as a baseline. Specifically, it will review and comment on the measures taken to prevent and respond to disappearances of migrants when States Parties include them in their reports or additional information submitted to the Committee.<sup>31</sup> In that context it is important that States Parties report not just on measures taken, but also on the effects these have had in practice, and that such information is efficiently used to identify, assess and share information on best practices and lessons learned. This would be especially useful when it comes to preventive measures or policy changes. Additionally, asking States Parties to report on the challenges encountered when implementing the provisions of the General Comment would allow the Committee to further understand the difficulties states may face in practice.

Challenges to the implementation of the General Comment which could be anticipated might include the following: first, CED will have to include the issue of disappearances in the context of migration in all its procedures whenever this is relevant and ensure that it can monitor both short and long-term measures taken without creating too large of a burden for itself as one of the smallest treaty bodies. Second, as stated in the General Comment itself, many countries along migration routes where large numbers of migrants are disappeared are not States Parties to the Convention, especially in the Asia-Pacific region, but also in Africa and MENA, and the Americas (including the United States and several Central American countries of origin). While states not party to the Convention can also use the General Comment as guidance, CED cannot monitor, or review actions taken by non-States Parties. Third, there are very few examples of best practices to address the issue of disappeared migrants, and

current policy developments indicate little chance of improvement. This will make it difficult for CED to formulate recommendations based on such best practices that would further implementation of the General Comment in a manner that positively impacts the reality which many migrants face. Finally, a challenge indirectly related to implementation is that the distinction in terminology between ‘missing’ and ‘disappeared’ at the beginning of the General Comment can be clearly made in English, where both terms are commonly used, albeit sometimes interchangeably. In other languages, however, the same word is used, which will not only pose a challenge for translation, but also for the application of the distinction in practice. For example, the Spanish term ‘migrantes desaparecidos’ is generally used to refer to both ‘missing’ and ‘disappeared’ migrants.<sup>32</sup> CED will have to ensure to uphold the distinction with clarity in its communications across different languages.

#### **TAKEAWAY BOX**

- Some provisions of the General Comment are very specific and can be implemented quickly by States Parties, while others require greater efforts and time. The Committee should systematically include disappearances of migrants across all of its procedures.
- All States Parties can take measures to fulfil their obligations and follow the recommendations made by CED in the General Comment, regardless of whether they are countries of origin, transit, destination or return.
- CED will be able to monitor implementation of the General Comment through reports and additional information submitted by States Parties and should identify best practices and challenges in this regard.

## RECOMMENDATIONS

- The General Comment should be presented and distributed widely to stakeholders working on migration, including those not currently working on the issue of enforced disappearances of migrants but related topics, such as immigration detention. States have specific obligations regarding the prevention of and response to disappearances of migrants, which are complementary to obligations under other instruments. By viewing the issue of ‘missing migrants’ also through the lens of enforced disappearance, stakeholders, especially human rights defenders and relatives of disappeared persons, have additional tools and legal avenues to protect the rights of migrants and seek accountability for human rights violations.
- International organisations and UN bodies working on migration (such as the UN Network on Migration) should explicitly include enforced disappearances in their work and use the General Comment as an additional resource. For example, they should refer to the General Comment for the distinction between ‘missing’ and ‘disappeared’ migrants and ensure coherence in terminology across publications and activities.
- The General Comment is a guiding tool for both States Parties and states not party to the Convention and is relevant for all states, even though some recommendations mainly apply to certain countries (depending on whether they are countries of origin, transit, destination, or return). The emphasis on cooperation and adoption of bi- and multilateral agreements to this end in the General Comment shows that all states should take measures to prevent enforced disappearances in the migration context. For example, receiving states should review and change restrictive immigration and asylum policies that compel migrants to choose more dangerous routes where they are at risk of becoming victims of enforced disappearance.
- States should adopt evidence-based migration policies and foster access to regular and safe migration, also as a means to prevent enforced disappearances of migrants. The collection of disaggregated data is crucial to prevent, detect, and address migrant disappearances. Moreover, States should refrain from engaging in practices that are incompatible with the ICPPED as outlined in the General Comment, including the deprivation of liberty of migrants without prompt registration and possibilities for migrants to communicate, as well as pushback operations that inevitably violate non-refoulement obligations and can, in certain circumstances, amount to enforced disappearances.
- In order to respond to migrant disappearances effectively, it is key for states to ensure that such disappearances can effectively be reported without negative repercussions, and that reporting avenues are widely known. The migration context makes it especially important for authorities to start the search and investigation immediately once they are aware of an alleged disappearance of a migrant, without the need for an official complaint. Throughout the search and investigation process, effective participation by relatives must be ensured, even if they are located abroad. Countries of origin, transit, destination and return need to cooperate and create effective information exchange and communication channels.
- CED should use its first General Comment as a baseline to assess the information provided by States Parties, for example in their reports, on the measures they are taking to prevent and respond to disappearances of migrants. In this, CED should pay special attention to the practical effects of these measures and aim to identify best practices and lessons learned, especially when it comes to more complex, long-term measures. Best practices and lessons learned should be systematically recorded and shared publicly.



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Zyberi G, 'General Comments of the UN Human Rights Committee', United Nations Audiovisual Library of International Law (2023)

## END NOTES

<sup>1</sup> CEDCtee, General Comment No.1: Enforced Disappearance in the Context of Migration, UN Doc. CED/C/GC/1, 26 October 2023. Available at: [https://tbinternet.ohchr.org/\\_layouts/15/treatybodyexternal/Download.aspx?symbolno=CED%2FC%2FGC%2F1&Lang=en](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CED%2FC%2FGC%2F1&Lang=en).

<sup>2</sup> Art 2, 2006 ICPPED. When non-state actors commit such disappearances without the authorisation, support or acquiescence of state actors, these acts are not enforced disappearances and fall within article 3 ICPPED.

<sup>3</sup> Throughout this Research Brief, the term 'migrants' refers principally to persons in irregular migration contexts and includes persons who migrate for economic reasons and those seeking international protection or fleeing disasters.

<sup>4</sup> The term 'general recommendation' is used by CEDAW and CERD.

<sup>5</sup> See H. Keller and L. Grover, 'General Comments of the Human Rights Committee and Their Legitimacy' in Geir Ulfstein and Helen Keller (eds), *UN Human Rights Treaty Bodies: Law and Legitimacy*, Cambridge University Press, 2012.

<sup>6</sup> See, e.g., K. McCall-Smith, 'Interpreting International Human Rights Standards: Treaty Body General Comments as a Chisel or Hammer?', *Tracing the Role of Soft Law in Human Rights*, Oxford University Press, 2016; G. Zyberi, 'General Comments of the UN Human Rights Committee', *United Nations Audiovisual Library of International Law*, 2023 (forthcoming).

<sup>7</sup> HRCtee, General Comment No.36: Right to Life (Article 6), UN doc CCPR/C/GC/36, 3 September 2019.

<sup>8</sup> McCall-Smith, *supra* n 6, p 27.

<sup>9</sup> P Alston, 'The Historical Origins of the Concept of "General Comments" in Human Rights Law', *The International Legal System in Quest of Equity and Universality*, Brill Nijhoff, 2001, p 771.

<sup>10</sup> McCall-Smith, *supra* n 6.

<sup>11</sup> See Alston, *supra* n 9, p 770.

<sup>12</sup> See M. Lesch and N. Reiners, 'Informal Human Rights Law-Making: How Treaty Bodies Use "General Comments" to Develop International Law', *Global Constitutionalism* (2023).

<sup>13</sup> 'Implementation of Human Rights Instruments: Report of the Chairs of the Human Rights Treaty Bodies on Their Twenty-Seventh Meeting', A/70/302, 7 August 2015, §§ 90–91.

<sup>14</sup> Office of the High Commissioner for Human Rights (OHCHR), 'The United Nations Human Rights Treaty System', Fact Sheet No.30 (Rev. 1), United Nations, 2012.

<sup>15</sup> According to articles 31 and 32 ICPPED, states parties must declare that they recognise the Committee's competence to receive and consider individual or inter-state communications, respectively. So far, 29 out of 72 States Parties to the Convention have accepted the Committee's competence under article 31 and 28 States Parties have accepted the Committee's competence under article 32: [https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtmsg\\_no=IV-16&chapter=4&clang=\\_en](https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtmsg_no=IV-16&chapter=4&clang=_en).

<sup>16</sup> Office of the High Commissioner for Human Rights (OHCHR), 'Enforced Disappearances' (United Nations 2023) Fact Sheet No.6 (Rev.4), United Nations, 2023, p 16.

<sup>17</sup> CED, Rules of Procedure, UN doc CED/C/1, 22 June 2012, Rule 56 (1).

<sup>18</sup> The exception to this is the Committee on the Rights of Migrant Workers and their Families, whose first General Comment focused on 'migrant domestic workers' in order to address the lack of reference to domestic workers in the text of the Convention on the Protection of the Rights of All Migrant Workers and the Members of Their Families (UN doc CMW/C/GC/1, 23 February 2011, § 2).

<sup>19</sup> WGEID, Report of the Working Group on Enforced or Involuntary Disappearances on Enforced Disappearances in the Context of Migration, UN doc A/HRC/36/39/Add.2, 28 July 2017.

<sup>20</sup> Information about the drafting process and calls for input can be found on the following website: <https://www.ohchr.org/en/treaty-bodies/ced/consultation-concept-note-general-comment-no-1-enforced-disappearances-context-migration>.

<sup>21</sup> As of September 2023, the ICPPED had 72 States Parties. A campaign to increase ratification is currently underway. See: <https://www.cedi193.org/>.

<sup>22</sup> CED, *supra* n 1, § 1.

<sup>23</sup> See CED, Report of the Committee on Enforced Disappearances on Its Visit to Iraq: Information on the Visit and Findings, UN doc. CED/C/IRQ/VR/1 (Findings), April 2023, § 51.

<sup>24</sup> CED, Statement on "Non-State Actors in the Context of the International Convention for the Protection of All Persons from Enforced Disappearances", UN doc CED/C/10, 31 March 2023.

<sup>25</sup> CED, Guiding Principles for the Search for Disappeared Persons, UN doc CED/C/7, 8 May 2019.

<sup>26</sup> 'Call for Inputs with a View to Issuing a Joint Statement on the Notion of Short-Term Enforced Disappearance'; <https://www.ohchr.org/en/calls-for-input/2023/call-inputs-view-issuing-joint-statement-notion-short-term-enforced>.

<sup>27</sup> See Keller and Grover, *supra* n 5.

<sup>28</sup> The General Comment draft contained references to general comments or recommendations by the Committee on the Elimination of Discrimination Against Women (CEDAW), the Committee on the Rights of the Child (CRC), the Committee on the Rights of All Migrant Workers (CMW), the Committee Against Torture (CAT), and the Human Rights Committee (HRC).

<sup>29</sup> 'Editorial: Migration Pact Agreement Point by Point', European Council on Refugees and Exiles (ECRE), 9 June 2023, <http://ecre.org/editorial-migration-pact-agreement-point-by-point/>; 'EU: Leaders' Migration Pact Reduces Protections for Asylum-Seekers', Amnesty International, 9 June 2023, <http://www.amnesty.org/en/latest/press-release/2023/06/eu-leaders-migration-pact-reduces-protections-for-asylum-seekers/>.

<sup>30</sup> 'US: Biden "Asylum Ban" Endangers Lives at the Border', Human Rights Watch, 11 May 2023, <http://www.hrw.org/news/2023/05/11/us-biden-asylum-ban-endangers-lives-border>.

<sup>31</sup> In line with the Harmonized guidelines on reporting under the international human rights treaties, including guidelines on a common core document and treaty-specific documents (UN doc HRI/MC/2006/3, 10 May 2006), § 29.

<sup>32</sup> For example, the International Committee of the Red Cross (ICRC) officially uses the term 'missing migrants' in English, and 'migrantes desaparecidos' in Spanish: <https://www.icrc.org/es/migrantes-desaparecidos>.

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