

WORKING PAPERS

Preventing and Addressing Enforced Disappearances in the Context of International Migration The Contribution of International Human Rights Mechanisms

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KEY MESSAGES

- Enforced disappearances in the context of international migration are a human rights violation that occurs increasingly around the world. While statistical data on the enforced disappearance of migrants is less readily available, the Missing Migrants Project of the International Organization for Migration has counted more than 35,000 migrants who lost their lives or went missing since 2014.
- Enforced disappearances in the context of migration include both the enforced disappearance of migrants on their migration journey or upon arrival in the country of destination, as well as enforced disappearance as a cause for migration and related considerations under the principle of non-refoulement.
- International human rights mechanisms, including the Human Rights Council, Special Procedures, the Universal Periodic Review and international human rights treaty bodies, regularly use their mandated activities to address the topic through replies to urgent action requests and to reports on alleged cases, State party reviews, General Comments/ Recommendations, inquiry procedures, views on individual communications, guidelines, statements and thematic and country reports.
- Within their respective mandates, they provide context-specific recommendations to States parties and follow up on concrete cases and country situations; hereby, the activities of the Working Group on Enforced or Involuntary Disappearances and of the Committee on Enforced Disappearances, as well as of the Special Rapporteur on the Human Rights of Migrants and of the Committee on the Protection of the Rights of All Migrant Workers and Members of their Families are of particular importance.
- International human rights mechanisms should continue to play an important role in providing comprehensive guidance to States on their obligations to prevent and address enforced disappearances in the context of international migration and in highlighting and following up on country-specific contexts and alleged cases.

1. INTRODUCTION

The enforced disappearance of migrants has received increasing international attention over recent years;¹ from the discovery of the bodies of 72 migrants in Tamaulipas, Mexico, in 2010² to regular reports on the disappearance of migrants in Libya and elsewhere.³ Historically, operation ‘Condor’ in some Latin American countries has led to the enforced disappearance of migrants and political refugees in the 1970s and 1980s.⁴ In many of these cases, the involvement of State agents or the short-comings in investigations of disappearances perpetrated by non-State actors have been documented.⁵ Only recently, a group of more than 54 representatives of the Special Procedures of the Human Rights Council, as well

as several international human rights treaty bodies and the UN Voluntary Trust Fund on Contemporary Forms of Slavery expressed their concern about the increase in the exploitation, including disappearance, of native and migrant workers due to the coronavirus disease (COVID-19) pandemic.⁶ Importantly, enforced disappearance is also a cause for migration.⁷

The risks facing those who leave their home countries for various reasons are well documented. Statistical data on the enforced disappearance of migrants is less readily available, not least because of the challenges in investigating such cases, particularly in a cross-border context. The Missing Migrants Project of the International Organization for Migration (IOM) has counted more than 35,000 migrants who lost their lives or went missing since 2014.⁸

¹ See, e.g., United Nations Secretary-General, Report of the Secretary-General: Making migration work for all, UN doc A/72/643, 12 December 2017, §45.

² A. Desmond (ed), *Shining new light on the UN Migrant Workers Convention*, Pretoria University Law Press, 2017, p 233.

³ On the disappearance of migrants in Libya, see, e.g., Committee Against Torture, Concluding observations – Mexico, UN doc CAT/C/MEX/CO/5-6, 11 December 2012, §12; Committee on Migrant Workers, Concluding observations – Libya, UN doc CMW/C/LBY/CO/1, 8 May 2019, §§10, 38(e). On cases of disappearance of Venezuelan migrants, see, e.g., Working Group on Enforced or Involuntary Disappearances, Communications transmitted, cases examined, observations made and other activities conducted by the Working Group on Enforced or Involuntary Disappearances – 122nd session (21–30 September 2020), UN doc A/HRC/WGEID/122/1, 8 December 2020, §172; Special Rapporteur on the Human Rights of Migrants, Comm no TTO 1/2020 (Trinidad and Tobago), 14 September 2020, <https://spcommreports.ohchr.org/Tmsearch/TMDocument.s> (last accessed 26 March 2021); Special Rapporteur on the Human Rights of Migrants, Comm no NLD 2/2020 (Netherlands), 14 September 2020, <https://spcommreports.ohchr.org/Tmsearch/TMDocument.s> (last accessed 26 March 2021); Organization of American States, ‘Inter-American System Rapporteur and United Nations Experts Express Deep Concern Over Disappearance of Venezuelan Migrants Following Caribbean Shipwreck’, Press release, 30 May 2019, https://www.oas.org/en/iachr/media_center/PReleases/2019/131.asp.

⁴ See, e.g., B.L. Touere Elenga, ‘La disparition forcée des migrants: une question de droit international’, *La Revue des droits de l’homme* 18 (2020), §8; B. Duhaime and A. Thibault, ‘Protection of migrants from enforced disappearance: A human rights perspective’, *International Review of the Red Cross* 99 (2) (2017), pp 576-577.

⁵ See, e.g., United Nations Support Mission in Libya and Office of the High Commissioner for Human Rights, *Desperate and Dangerous: Report on the human rights situation of migrants and refugees in Libya*, 20 December 2018, pp 40-41.

⁶ Office of the High Commissioner for Human Rights, ‘Governments must do more to prevent slavery and exploitation during COVID-19 pandemic’, 30 November 2020, <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=26552&LangID=E>.

⁷ See, e.g., Committee on Enforced Disappearances, *E.L.A. v France*, Comm no 3/2019, 25 September 2020, CED/C/19/D/3/2019, 12 November 2020, §§2.1-2.3, 3.1; Human Rights Committee, *Ičić v Bosnia and Herzegovina*, Comm no. 2028/2011, 30 March 2015, CCPR/C/113/D/2028/2011, 20 August 2015, §§2.2-2.4.

⁸ IOM’s Missing Migrants Project counts individuals, regardless of their legal status, who have died or gone missing during migration ‘at the external borders of states, or in the process of migration towards an international destination’. It does neither include migrants who died or went missing in immigration detention facilities or once arrived at their destination, nor internally displaced persons. International Organization for Migration, Missing Migrants Project, <https://missingmigrants.iom.int/about>

This Working Paper will analyse the contribution of international human rights mechanisms in preventing and addressing this human rights violation. First, the Working Paper will introduce the relevant terminology. It will then analyse both the work of the bodies created by the core international human rights treaties (international human rights treaty bodies) and of the bodies created under the Charter of the United Nations (UN Charter-based bodies). Hereby, the Working Paper will go beyond the two bodies mandated specifically to address enforced disappearances, the Working Group on Enforced or Involuntary Disappearances and the Committee on Enforced Disappearances. It will also briefly address other developments on the topic in international fora. Before concluding, the Working Paper looks into the specific example of Mexico.

2. DEFINING ENFORCED DISAPPEARANCE IN THE CONTEXT OF INTERNATIONAL MIGRATION

Migrants go missing for various reasons during their journeys across international borders. Enforced disappearance within the meaning of Article 2 of the International Convention for the Protection of All Persons from Enforced Disappearance adopted on 20 December 2006 (CED Convention) is ‘the arrest, detention, abduction or any other form of

deprivation of liberty by agents of the State or by persons or groups of persons acting with the authorization, support or acquiescence of the State, followed by a refusal to acknowledge the deprivation of liberty or by concealment of the fate or whereabouts of the disappeared person, which place such a person outside the protection of the law’. Concerning acts of non-State actors, States parties also have the obligation to ‘take appropriate measures to investigate acts defined in Article 2 ... and to bring those responsible to justice’ (Article 3 CED Convention). The earlier Declaration on the Protection of All Persons from Enforced Disappearance (1992) provided a definition worded similarly to Article 2 of the CED Convention.⁹

According to a report by the Working Group on Enforced or Involuntary Disappearances (WGEID), ‘there is a direct link between migration and enforced disappearance, either because individuals leave their country as a consequence of a threat or risk of being subjected to enforced disappearances there, or because they disappear during their journey or in the country of destination’.¹⁰ However, there is no internationally accepted definition of a migrant. For instance, the definitions of ‘migrants’ within the meaning of Article 2 of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families adopted on 18 December 1990 (CMW Convention) and of the mandate of the Special Rapporteur on the Human Rights of Migrants focus primarily on the presence of persons outside the territory of a State of which they are nationals. They include migrants who are non-documented or in an irregular situation, but

and <https://missingmigrants.iom.int/methodology> (last accessed 12 March 2021).

⁹ ‘Enforced disappearances occur, in the sense that persons are arrested, detained or abducted against their will or otherwise deprived of their liberty by officials of different branches or levels of Government, or by organized groups or private individuals acting on behalf of, or with the support, direct or indirect, consent or acquiescence of the Government, followed by a refusal to disclose the fate or whereabouts of the persons concerned or a refusal to

acknowledge the deprivation of their liberty, which places such persons outside the protection of the law.’ General Assembly, UNGA 47/133, UN doc A/RES/47/133, 12 February 1993, preamble.

¹⁰ Working Group on Enforced or Involuntary Disappearances, 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, Note by the Secretariat.

exclude refugees from the definition.¹¹ Contrarily, the WGEID and the United Nations High Commissioner for Refugees (UNHCR) include persons seeking or under international refugee protection in their definitions of ‘migrants’ and ‘mixed migration’ respectively.¹² The IOM explicitly includes stateless persons outside their country of birth or habitual residence and smuggled migrants.¹³ Further, international human rights mechanisms have diverging practices in the use of the terms ‘disappeared migrants’ and ‘missing migrants’.¹⁴ The legal concept of ‘missing persons’ under

international humanitarian law is distinct from the latter term.¹⁵

Finally, the enforced disappearance of migrants often takes place in specific contexts, and particular circumstances and factors increase the risk for migrants to become a victim of disappearance by State or non-State actors. A report by the WGEID on enforced disappearances in the context of migration (2017) notes that enforced disappearances of migrants often occur ‘for political purpose, ... during processes of detention or deportation, [as] a consequence of smuggling and/or trafficking’ and ‘in the contexts of conflict and violence ...;

¹¹ International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families adopted on 18 December 1990, Arts. 2(1), 3(d) and 5; Commission on Human Rights, Resolution 1999/44: Human Rights of Migrants, 27 April 1999, §3; Commission on Human Rights, Report of the Special Rapporteur, Ms. Gabriela Rodríguez Pizarro, submitted pursuant to Commission on Human Rights resolution 1999/44, UN doc E/CN.4/2000/82, 6 January 2000, §36.

¹² While UNHCR includes refugees and asylum-seekers in its definition of ‘mixed migration’, it explicitly warns that ‘the tendency to conflate refugees and migrants, or to refer to refugees as a subcategory of migrants, can have serious consequences for the lives and safety of people fleeing persecution or conflict’. Working Group on Enforced or Involuntary Disappearances, UN doc A/HRC/36/39/Add.2, supra fn 10, §5; United Nations High Commissioner for Refugees, ‘Asylum and Migration’, <https://www.unhcr.org/asylum-and-migration.html> (last accessed 12 March 2021).

¹³ International Organization for Migration, ‘Glossary on Migration’, 2019, https://publications.iom.int/system/files/pdf/iml_34_glossary.pdf (last accessed 12 March 2021), p 112 (‘international migrant’); International Organization for Migration, ‘IOM Definition of “Migrant”’, <https://www.iom.int/who-is-a-migrant> (last accessed 12 March 2021). For an analysis on the terminology of a ‘migrant’, see also G. Baranowska, ‘Disappeared Migrants and Refugees - The Relevance of the International Convention on Enforced Disappearance in their search and protection’, German Institute for Human Rights, October 2020, <https://www.institut-fuer-menschenrechte.de/publikationen/detail/disappeared-migrants-and-refugees>, pp 11-12.

¹⁴ See, e.g., the use of the term ‘disappeared’ by the CED Committee in its Report on requests for urgent action submitted under article 30 of the Convention (UN doc CED/C/19/2, 5 October 2020, §14) and in concluding

observations for Mexico (UN doc CED/C/MEX/CO/1, 5 March 2015, §§23-24) and for Honduras (UN doc CED/C/HND/CO/1, 4 July 2018, §§40-41). Equally, the CMW Committee utilized the term ‘disappeared’ in concluding observations for Mexico (UN doc CMW/C/MEX/CO/2, 3 May 2011, §34) and for Nicaragua (UN doc CMW/C/NIC/CO/1, 11 October 2016, §§33-34, 44), as well as the CEDAW Committee for Mexico (UN doc CEDAW/C/MEX/CO/9, 25 July 2018, §§23-24) and the CAT Committee for Greece (UN doc CAT/C/GRC/CO/7, 3 September 2019, §50). The term ‘missing’ was used in concluding observations by the Human Rights Committee for Albania (UN doc CCPR/C/ALB/CO/2, 22 August 2013, §20), by the CAT Committee for Greece (UN doc CAT/C/GRC/CO/5-6, 27 June 2012, §27) and for Albania (UN doc CAT/C/ALB/CO/2, 26 June 2012, §24) and by the CRC Committee for Ecuador (UN doc CRC/C/ECU/CO/5-6, 26 October 2017, §45). Further, the CMW Committee employed the term ‘missing migrants’ in its draft General Comment No. 5 (2020) on migrants’ rights to liberty and freedom from arbitrary detention (<https://www.ohchr.org/EN/HRBodies/CMW/Pages/CFI-GC5-2020.aspx>, last accessed 12 March 2021, §105). Finally, both terms, ‘disappeared’ and ‘missing’, were used by the CED Committee in concluding observations for Italy (UN doc CED/C/ITA/CO/1, 10 May 2019, §25), by the CMW Committee in concluding observations for Libya (UN doc CMW/C/LBY/CO/1, supra fn 3, §56), Guatemala (UN doc CMW/C/GTM/CO/2, 2 May 2019, §§30-31) and Honduras (UN doc CMW/C/HND/CO/1, 3 October 2016, §§10, 28, 29, 33), and by the Human Rights Committee in its General Comment No. 6 (1982): Article 6 (Right to life) (30 April 1982, §4).

¹⁵ For an analysis of missing persons under international humanitarian law and its distinction to ‘enforced disappearance’ under international human rights law, see, e.g., B. Duhaime and A. Thibault, supra fn 4, pp 571-572; G. Baranowska, supra fn 13, pp 12-13.

[of] multiple forms of discrimination and socioeconomic difficulties ...; [of a] lack of remedies; [of] prevailing impunity; [of] the impact of inappropriate migratory, security and counter-terrorism policies; and [of] the lack of available data and statistics thereon'.¹⁶

This Working Paper will analyse State party obligations arising from both enforced disappearances (Article 2 CED Convention) and disappearances perpetrated by non-State actors (Article 3 CED Convention). It adopts a broad definition of a 'migrant' to cover individuals who migrate or cross international borders for various reasons, including refugees, asylum-seekers and economic migrants. Hereby, it uses the terms 'disappeared migrants' and 'missing migrants' interchangeably, noting that under circumstances defined in articles 2 and 3 of the CED Convention obligations of States parties arise. The Working Paper will focus on obligations of States parties to prevent and address enforced disappearances in the context of international migration. It will also draw out selected obligations of States parties with regard to the above described circumstances and factors, in the context of which enforced disappearances of migrants tend to occur and/or the risk thereof increases, as identified by the WGEID in its 2017 report.

3. THE CONTRIBUTION OF INTERNATIONAL HUMAN RIGHTS TREATY BODIES

International human rights treaty bodies regularly highlight the particular vulnerability of migrants. Many of them have formulated specific obligations of States parties to prevent and address enforced disappearances in the context of migration.

A. COMMITTEE ON ENFORCED DISAPPEARANCES

The Committee on Enforced Disappearances (CED) has addressed cases of enforced disappearance in the context of migration through its urgent action procedure under Article 30 of the CED Convention, guiding principles, concluding observations, individual communications and statements. It has also held discussions with other treaty bodies and civil society representatives on this topic.¹⁷

CED adopted Guiding principles for the search for disappeared persons in 2019, whose Principle 9 is dedicated to the particular vulnerability of migrants.¹⁸ Principle 9 lays out a number of recommendations for States parties on the prevention of disappearance, search mechanisms and the participation of the victim's relatives therein, as well as guarantees and safe conditions for witnesses and the registration of migrants at border controls to allow for the effective search of disappeared persons.¹⁹ The guidelines also contain a provision on the

¹⁶ Working Group on Enforced or Involuntary Disappearances, UN doc A/HRC/36/39/Add.2, supra fn 10, §§14, 46.

¹⁷ Such meetings took place with the Committee on Migrant Workers on 8 September 2015 and with representatives of civil society from Honduras on 17 September 2015. Committee on Enforced Disappearances, Report of the Committee on Enforced Disappearances to the General Assembly, UN doc A/71/56, 2016, §§40, 44. For an analysis of

the obligations arising from the International Convention for the Protection of All Persons from Enforced Disappearance with regard to disappeared migrants and refugees, see also G. Baranowska, supra fn 13.

¹⁸ Committee on Enforced Disappearances, Guiding principles for the search for disappeared persons, UN doc CED/C/7, 8 May 2019.

¹⁹ Ibid, Principle 9, §§1-4.

prevention of revictimization, in which migrant women and unaccompanied minors are mentioned specifically.²⁰ The establishment and use of national and international cooperation mechanisms and the exchange of information between countries of origin, transit and destination are stipulated in both Principle 9 and Principle 12 (coordination of the search).²¹

In its reports on requests for urgent action, CED has formulated specific recommendations to States parties, including with reference to the Guiding principles. For instance, the Committee has followed up on 13 urgent action requests related to the alleged disappearance of Honduran migrants.²² Among others, it recommended the adoption of ‘search and investigation strategies suited to the specific circumstances of each case’ and the promotion of international legal assistance between the States concerned.²³ The Committee has also reported on nine requests for urgent action concerning the alleged enforced disappearance of migrants in Mexico, focussing its recommendations on the participation of the victim’s relatives in search and investigation procedures. Among others, it recommended the use of videoconferences, in order to overcome geographic distances and bureaucratic challenges faced by family members from

countries other than Mexico.²⁴

Equally in numerous concluding observations, CED has formulated specific recommendations for States parties in the context of disappeared migrants. The recommendations are often made in the areas of preventing the disappearance of migrants, including from reception centres²⁵ and in the context of large-scale arrivals by sea and expulsion procedures,²⁶ the conduct of searches,²⁷ the establishment of investigation practices,²⁸ prompt and immediate registration at migration reception centres²⁹ and the handling of ante-mortem/post-mortem databases.³⁰ Other recommendations concern the protection of unaccompanied minors and their referral to child protection authorities,³¹ the protection of complainants, witnesses, experts and defence counsels,³² the participation of and the receipt of information by the victim’s relatives,³³ awareness-raising and training for State officials in contact with migrants³⁴ and the return of remains of the deceased.³⁵ As part of the CED Committee’s follow-up procedure for concluding observations, Mexico, Italy, Portugal, Austria and Ecuador, among other States parties, provided replies to recommendations concerning the enforced disappearance of

²⁰ Ibid, Principle 9, §5.

²¹ Ibid, Principle 9, §3, and Principle 12, §3.

²² CED/C/19/2, supra fn 14, §14; Committee on Enforced Disappearances, Report on requests for urgent action submitted under article 30 of the Convention, UN doc CED/C/16/2, 21 May 2019, §22; Committee on Enforced Disappearances, Report on requests for urgent action submitted under article 30 of the Convention, UN doc CED/C/15/3, 30 November 2018, §25; Committee on Enforced Disappearances, Report on requests for urgent action submitted under article 30 of the Convention, UN doc CED/C/14/2, 17 July 2018, §11(f); see also, Committee on Enforced Disappearances, Report of the Committee on Enforced Disappearances to the General Assembly, UN doc A/74/56, 2019, §39(f); Committee on Enforced Disappearances, Report of the Committee on Enforced Disappearances to the General Assembly, UN doc A/73/56, 2018, §41(f).

²³ The States concerned are Honduras, Guatemala, Mexico and the United States. CED/C/19/2, supra fn 14, §14; A/73/56, supra fn 22, §41(f).

²⁴ CED/C/15/3, supra fn 22, §12.

²⁵ CED/C/ITA/CO/1, supra fn 14, §22.

²⁶ CED/C/ITA/CO/1, supra fn 14, §§26-27.

²⁷ CED/C/MEX/CO/1, supra fn 14, §24(a).

²⁸ CED/C/ITA/CO/1, supra fn 14, §23.

²⁹ CED/C/ITA/CO/1, supra fn 14, §29; CED/C/MEX/CO/1, supra fn 14, §35.

³⁰ CED/C/MEX/CO/1, supra fn 14, §24(b).

³¹ CED/C/ITA/CO/1, supra fn 14, §35(a), 35(d); Committee on Enforced Disappearances, Concluding observations – Netherlands, UN doc CED/C/NLD/CO/1, 10 April 2014, §37.

³² CED/C/MEX/CO/1, supra fn 14, §24.

³³ CED/C/MEX/CO/1, supra fn 14, §24(c).

³⁴ CED/C/ITA/CO/1, supra fn 14, §31.

³⁵ CED/C/MEX/CO/1, supra fn 14, §24(a).

migrants and the principle of non-refoulement. In the case of recommendations on search and investigation mechanisms to Mexico, CED followed up in an evaluation of the State party's follow-up report and in follow-up observations on additional information submitted by Mexico under article 29(4) of the Convention. It welcomed progress, mainly in the institutional framework of the State party, but expressed concern about 'the insufficiency of the actions taken to prevent [...] disappearances, to search for missing migrants and to ensure that victims and their families have access to truth, justice and reparation'.³⁶ In other assessments of follow-up information related to the protection of unaccompanied migrant children³⁷ and compliance with the principle of non-refoulement,³⁸ the CED Committee assessed the information submitted by the respective States

³⁶ Committee on Enforced Disappearances, Report on follow-up to the concluding observations of the Committee on Enforced Disappearances, UN doc CED/C/11/2, 23 November 2016, II. Assessment of follow-up information, E. Mexico, Paragraph 24, Committee's evaluation; Committee on Enforced Disappearances, Follow-up observations on the additional information submitted by Mexico under article 29 (4) of the Convention, UN doc CED/C/MEX/FAI/1, 6 September 2019, §22.

³⁷ Committee on Enforced Disappearances, Information received from Italy on follow-up to the concluding observations on its report submitted under article 29 (1) of the Convention, UN doc CED/C/ITA/FCO/1, 11 June 2020, §§12-43; Committee on Enforced Disappearances, Report on follow-up to the concluding observations of the Committee on Enforced Disappearances, UN doc CED/C/19/4, 29 September 2020, II. Assessment of follow-up information, I. Italy, Paragraph 35, Committee's evaluation.

³⁸ Committee on Enforced Disappearances, Information received from Portugal on follow-up to the concluding observations on its report submitted under article 29 (1) of the Convention, UN doc CED/C/PRT/FCO/1, 27 January 2020, §§9-15; Committee on Enforced Disappearances, Report on follow-up to the concluding observations of the Committee on Enforced Disappearances, UN doc CED/C/19/4, 29 September 2020, II. Assessment of follow-up information, G. Portugal, Paragraph 21, Committee's evaluation; Committee on Enforced Disappearances, Report on follow-up to the concluding observations of the Committee on Enforced Disappearances, UN doc CED/C/19/4, 29 September 2020, II. Assessment of follow-up information, D. Austria, Paragraph 21, Committee's evaluation; Committee on Enforced Disappearances, Report

parties as insufficient and reiterated its previous recommendations.

One provision of the CED Convention, the principle of non-refoulement under Article 16, has repeatedly been raised with States parties in numerous concluding observations. Specific recommendations address the harmonization of domestic legislation with Article 16, practical mechanisms to assess and verify risk based on a thorough individual examination and the non-acceptance of diplomatic assurances 'in any case where there are substantial grounds for believing that a person would be in danger of being subjected to enforced disappearance'.³⁹ A violation of Article 16 was found for the first time by the CED Committee in its views on communication no. 3/2019 (E.L.A. v France), adopted on 25 September 2020.⁴⁰

Further, CED has made several public

on follow-up to the concluding observations of the Committee on Enforced Disappearances, UN doc CED/C/15/2, 6 December 2018, II. Assessment of follow-up information, D. Ecuador, Paragraph 16, Committee's evaluation.

³⁹ CED/C/ITA/CO/1, supra fn 14, §§26-27; Committee on Enforced Disappearances, Concluding observations – Portugal, UN doc CED/C/PRT/CO/1, 5 December 2018, §21; Committee on Enforced Disappearances, Concluding observations – Albania, UN doc CED/C/ALB/CO/1, 3 July 2018, §29; Committee on Enforced Disappearances, Concluding observations – Kazakhstan, UN doc CED/C/KAZ/CO/1, 26 May 2016, §18; Committee on Enforced Disappearances, Concluding observations – Tunisia, UN doc CED/C/TUN/CO/1, 25 May 2016, §28; Committee on Enforced Disappearances, Concluding observations – Iraq, UN doc CED/C/IRQ/CO/1, 13 October 2015, §27; Committee on Enforced Disappearances, Concluding observations – Serbia, UN doc CED/C/SRB/CO/1, 16 March 2015, §20; Committee on Enforced Disappearances, Concluding observations – Armenia, UN doc CED/C/ARM/CO/1, 13 March 2015, §17; CED/C/NLD/CO/1, supra fn 31, §23; Committee on Enforced Disappearances, Concluding observations – Germany, UN doc CED/C/DEU/CO/1, 10 April 2014, §§15, 17; Committee on Enforced Disappearances, Concluding observations – France, UN doc CED/C/FRA/CO/1, 8 May 2013, §27; Committee on Enforced Disappearances, Concluding observations – Spain, UN doc CED/C/ESP/CO/1, 12 December 2013, §22.

⁴⁰ CED/C/19/D/3/2019, supra fn 7.

statements jointly with the WGEID, highlighting the risk of enforced disappearance in the context of international migration, particularly during detention or deportation processes, including ‘push-backs’, or as a consequence of smuggling and/or trafficking.⁴¹ Among others, the statements remind States parties of their obligations to search for missing migrants and to investigate such cases. It also calls on them to increase international, regional and bilateral cooperation, to ratify the CED Convention and to accept the competence of CED to receive and examine individual complaints.

Lastly, in September 2020, CED published Key Guidelines on COVID-19 and Enforced Disappearances.⁴² Its Guideline 7 on the prevention and termination of enforced disappearance of migrants underlines that ‘those who may have decided to migrate due to a risk of enforced disappearance face the closure of borders and the suspension of asylum procedures’ due to the pandemic. It also warns that migrants continue to face risks during their migration journeys and upon arrival, as well as forced returns.⁴³ Among others, the Key Guidelines interpret obligations of States parties in the context of the coronavirus disease

(COVID-19) pandemic in the areas of non-refoulement, search and investigation and related international cooperation, as well as in the context of the deprivation of liberty of migrants.⁴⁴

B. COMMITTEE ON MIGRANT WORKERS

The Committee on the Protection of the Rights of All Migrant Workers and Members of their Families (CMW) made recommendations on enforced disappearances in the context of migration in its General Comments, concluding observations and statements.

On the enforced disappearance of migrants, CMW included specific references in its Joint General Comments No. 3 and 4 on the human rights of children in the context of international migration. These were adopted jointly by the CMW and CRC Committees in 2017 and will be discussed below in the chapter on the CRC Committee.⁴⁵ In its draft General Comment No. 5 (2020) on migrants rights to liberty and freedom from arbitrary detention, the CMW Committee recommended to establish ‘information systems [on] whether and where a migrant is detained, which is also conducive to strengthen efforts to search for missing migrants’.⁴⁶ In its concluding

⁴¹ Committee on Enforced Disappearances and Working Group on Enforced or Involuntary Disappearances, ‘Despite pandemic, countries must search for people who have been forcibly disappeared, say UN Experts’, Statement - International Day of the Victims of Enforced Disappearances, 29 August 2020, <https://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=26189&LangID=E>; Committee on Enforced Disappearances and Working Group on Enforced or Involuntary Disappearances, ‘States must act on “disappearances” of migrants, say UN experts’, Statement - International Day of the Victims of Enforced Disappearances, 29 August 2019, <https://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=24927&LangID=E>.

⁴² Committee on Enforced Disappearances, Key Guidelines on COVID-19 and Enforced Disappearances, 18 September 2020, https://www.ohchr.org/Documents/HRBodies/TB/COVID19/Guidelines_COVID-19_and_Enforced_Disappearance.pdf.

⁴³ Ibid, §11.

⁴⁴ Ibid, §12.

⁴⁵ Committee on the Rights of the Child and Committee on Migrant Workers, *Joint general comment No. 3 (2017) of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families and No. 22 (2017) of the Committee on the Rights of the Child on the general principles regarding the human rights of children in the context of international migration*, UN doc CMW/C/GC/3-CRC/C/GC/22, 16 November 2017; Committee on the Rights of the Child and Committee on Migrant Workers, *Joint general comment No. 4 (2017) of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families and No. 23 (2017) of the Committee on the Rights of the Child on State obligations regarding the human rights of children in the context of international migration in countries of origin, transit, destination and return*, UN doc CMW/C/GC/4-CRC/C/GC/23, 16 November 2017.

⁴⁶ Committee on Migrant Workers, *draft General Comment No. 5 (2020) on migrants’ rights to liberty and freedom from*

observations, the Committee provides further recommendations on the obligations of States parties concerning disappeared migrants. These relate to the incorporation of the Convention into national legislation, preventive measures, ‘serious and diligent’ investigation, the use of forensic information, punishment, and where State officials are involved, disciplinary proceedings. Additionally, the recommendations address the participation of the victim’s relatives in search processes and information-sharing with them, compensation of victims and of members of their families, the exhuming and identification of remains and international cooperation on the disappearance of migrants.⁴⁷ In the follow-up procedure, Mexico and Honduras, among other States parties, replied to the CMW Committee’s recommendations concerning the disappearance of migrants by State and non-State actors.⁴⁸ CMW assessed the implementation of its recommendations to Honduras in a letter in April 2019, stating that ‘the measures taken by the State party [were] positive steps’ and requesting ‘an evaluation of [the] mechanisms [adopted and supported] and statistical data on the number of persons searched and found ... in its next periodic report’.⁴⁹

The CMW Committee further regularly addresses a number of other human rights violations affecting migrant workers and members of their families, including in the context of detention and deportation, which may increase the risk of enforced disappearance,

according to the 2017 report of the WGEID. Recommendations are contained in the Committee’s draft General Comment No. 5 (2020), its General Comment No. 2 (2013) and numerous concluding observations. With regard to deprivation of liberty of migrant workers and members of their families, CMW ‘expresses its serious concern at the criminalization of the irregular entry or stay of migrant workers and members of their families and the practice of punishing such conduct with deprivation of liberty’.⁵⁰ It notes that ‘deprivation of liberty in the immigration context should be an exceptional measure of last resort’ and that ‘any compulsory, automatic, systematic or widespread detention of migrant workers and members of their families is arbitrary’.⁵¹ Migrant children and migrants in vulnerable situations, such as victims of trafficking, refugees and asylum-seekers, should not be detained.⁵² Among others, the Committee recommends States parties to ‘allocat[e] sufficient resources for the implementation of alternatives to detention; ensur[e] that, in exceptional cases where deprivation of liberty is permitted, detention centres have the necessary equipment and conditions to carry out such a measure; supervis[e] security personnel, whether public or private; and provid[e] adequate training on international human rights law for all officials

arbitrary *detention*
<https://www.ohchr.org/EN/HRBodies/CMW/Pages/CFI-GC5-2020.aspx>, last accessed 12 March 2021.

⁴⁷ Committee on Migrant Workers, Concluding observations – Mexico, UN doc CMW/C/MEX/CO/3, 27 September 2017, §§10(c), 34; CMW/C/LBY/CO/1, supra fn 3, §§35, 57; CMW/C/GTM/CO/2, supra fn 14, §31; CMW/C/NIC/CO/1, supra fn 14, §34; CMW/C/HND/CO/1, supra fn 14, §§10(b), 11, 29, 33; CMW/C/MEX/CO/2, supra fn 14, §30.

⁴⁸ Committee on Migrant Workers, Information received from Honduras on follow-up to the concluding observations, UN doc CMW/C/HND/CO/1/Add.1, 6 December 2018; Committee on Migrant Workers, Information received from Mexico on follow-up to the

concluding observations on its third periodic report, UN doc CMW/C/MEX/FCO/3, 29 July 2020.

⁴⁹ Committee on Migrant Workers, Follow-up letter sent to the State party – Honduras, 12 April 2019, https://tbinternet.ohchr.org/Treaties/CMW/Shared%20Documents/HND/INT_CMW_FUL_HND_34691_E.pdf, last accessed 12 March 2021.

⁵⁰ Committee on Migrant Workers, *draft General Comment Na 5 (2020)*, supra fn 46, §18.

⁵¹ Committee on Migrant Workers, *draft General Comment Na 5 (2020)*, supra fn 46, §20.

⁵² Committee on Migrant Workers, *draft General Comment Na 5 (2020)*, supra fn 46, §§46, 52.

who have contact with migrants'.⁵³ States parties should also establish 'independent monitoring and accountability mechanisms in immigration detention centres'⁵⁴ and guarantee access to justice, including a right to legal advice and representation.⁵⁵ Concerning consular protection during deprivation of liberty and in the case of expulsion, States parties 'shall facilitate any communication between the person concerned and the consular or diplomatic authorities of the State of origin'.⁵⁶ However, detained 'migrant workers with potential protection needs shall not be brought to the attention of the said authorities without their knowledge and consent',⁵⁷ which is of particular importance in the case of migrants fearing enforced disappearance in their country of origin. Migrant workers and members of their families have also equal rights to visits by family members and any practical barriers in this regard should be removed, such as detention in a remote location.⁵⁸ Several concluding observations address the detention of migrants and make recommendations with relevance for the prevention of enforced disappearance, such as the establishment of registration systems.⁵⁹

With regard to the prohibition of collective expulsion, CMW has specified in its General Comment No. 2 (2013) that Article 22, Paragraph 1, of the CMW Convention requires 'each case of expulsion to be examined and decided individually', an obligation that 'extends to all spaces over which a State party exercises

effective control, which may include vessels on the high seas'.⁶⁰ The Committee further refers to the principle of non-refoulement under international and regional human rights and refugee law. While not explicitly referring to enforced disappearance, it notes that 'this principle covers the risk of torture and cruel, inhuman or degrading treatment or punishment, including inhumane and degrading conditions of detention for migrants or lack of necessary medical treatment in the country of return, as well as the risk to the right to life'. It states further that 'migrants and members of their families in an irregular situation with international protection needs should also be protected against expulsion' and that expulsions should not 'constitute arbitrary interference with the right to family and private life'.⁶¹ Recommendations with regard to expulsion are made in numerous concluding observations.⁶²

Lastly, CMW has continued to recall relevant international human rights standards, directly or indirectly linked to enforced disappearance in the context of migration, through statements and events. Many of the above-mentioned recommendations were developed into context-specific guidelines in a Joint Guidance Note on the Impacts of the COVID-19 Pandemic on the Human Rights of Migrants, published on 26 May 2020 by CMW and the UN Special Rapporteur on the Human Rights of Migrants.⁶³ Further, in March 2021, the Committee, alongside the CAT

⁵³ Committee on Migrant Workers, *draft General Comment No 5 (2020)*, supra fn 46, §35.

⁵⁴ Committee on Migrant Workers, *draft General Comment No 5 (2020)*, supra fn 46, §104.

⁵⁵ Committee on Migrant Workers, *draft General Comment No 5 (2020)*, supra fn 46, §§65-82.

⁵⁶ Committee on Migrant Workers, *General Comment No 2 on the Rights of Migrant Workers in an Irregular Situation and Members of Their Families*, UN doc CMW/C/GC/2, 28 August 2013, §31.

⁵⁷ CMW/C/GC/2, supra fn 56, §31; Committee on Migrant Workers, *draft General Comment No 5 (2020)*, supra fn 46, §77.

⁵⁸ CMW/C/GC/2, supra fn 56, §41.

⁵⁹ CMW/C/LBY/CO/1, supra fn 3, §§35(e), 39; Committee on Migrant Workers, Concluding observations – Ecuador, UN doc CMW/C/ECU/CO/3, 5 October 2017, §23; CMW/C/NIC/CO/1, supra fn 14, §§38, 44.

⁶⁰ CMW/C/GC/2, supra fn 56, §51.

⁶¹ CMW/C/GC/2, supra fn 56, §50.

⁶² CMW/C/LBY/CO/1, supra fn 3, §35(e); CMW/C/NIC/CO/1, supra fn 14, §44.

⁶³ Committee on Migrant Workers and UN Special Rapporteur on the Human Rights of Migrants, 'Joint Guidance Note on the Impacts of the COVID-19 Pandemic on the Human Rights of Migrants', 26 May 2020, <https://www.ohchr.org/Documents/Issues/Migration/CM>

and CRC Committees, made a public statement, which welcomed changes in Argentina's legislation that had previously allowed expedited expulsion of migrants without due process.⁶⁴ In May 2019, CMW joined the WGEID, the UN Special Rapporteur on the Human Rights of Migrants, the UN Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions and the Inter-American Commission on Human Rights in calling for coordinated efforts to locate Venezuelan migrants who had disappeared on their way to Trinidad and Tobago. They 'urged the states in question to establish mechanisms to strengthen and coordinate search and rescue operations, forensic investigations and protocols, the dignified handling of the remains of the deceased, and the identification and location of their families through secure exchanges of ante-mortem and post-mortem information and DNA test results'.⁶⁵ The Committee also meets with other human rights mechanisms on the issue of enforced disappearances in the context of migration and Committee members participate in related events.⁶⁶

C. HUMAN RIGHTS COMMITTEE

The Human Rights Committee has addressed enforced disappearances in the context of migration in views on individual communications and in concluding

observations. Its General Comments address enforced disappearances from a general perspective.

The Human Rights Committee defines enforced disappearance in its General Comment No. 36 (2018) on Article 6 (right to life) as '... a unique and integrated series of acts and omissions representing a grave threat to life'.⁶⁷ It states that 'the deprivation of liberty, followed by a refusal to acknowledge that deprivation of liberty or by concealment of the fate of the disappeared person, in effect removes that person from the protection of the law and places his or her life at serious and constant risk, for which the State is accountable'.⁶⁸ Enforced disappearance thus results in a violation of Articles 6 (right to life), 7 (prohibition of torture or cruel, inhuman or degrading treatment or punishment), 9 (liberty and security of the person) and 16 (right to recognition as a person before the law) of the International Covenant on Civil and Political Rights adopted on 16 December 1966 (CCPR Covenant).⁶⁹ Concerning the principle of non-refoulement, the Human Rights Committee states that the obligation 'may be broader than the scope of the principle of non-refoulement under international refugee law, since it may also require the protection of aliens not entitled to refugee status'.⁷⁰

With regard to obligations of States parties concerning enforced disappearance generally, the Human Rights Committee recommends 'to ... take specific and effective measures to prevent

WSPMJointGuidanceNoteCOVID-19Migrants.pdf, last accessed 12 March 2021.

⁶⁴ Committee on Migrant Workers, Committee against Torture and Committee on the Rights of the Child, 'Argentina: UN committees welcome decision to repeal deportation decree', Joint statement, 24 March 2021, <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=26942&LangID=E>, last accessed 24 March 2021.

⁶⁵ Organization of American States, 'Inter-American System Rapporteur and United Nations Experts Express Deep Concern Over Disappearance of Venezuelan Migrants Following Caribbean Shipwreck', supra fn 3.

⁶⁶ See, e.g., Committee on Migrant Workers, Report of the Committee on the Protection of the Rights of All Migrant

Workers and Members of Their Families to the General Assembly, UN doc A/75/48, 2019, §42; Committee on Migrant Workers, Report of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families to the General Assembly, UN doc A/72/48, 2017, §§27, 42.

⁶⁷ Human Rights Committee, *General Comment No. 36 - Article 6 (the right to life)*, UN doc CCPR/C/GC/36, 2 November 2018, §58.

⁶⁸ Ibid, §58.

⁶⁹ Ibid, §58.

⁷⁰ Ibid, §31.

the disappearance of individuals' and to 'establish effective facilities and procedures to investigate thoroughly cases of missing and disappeared persons'.⁷¹ It further developed more specific recommendations in its concluding observations concerning prevention, investigation and the prosecution of perpetrators, as well as the rights of the victim's relatives with regard to reparation, information on the outcome of the investigation and the regulation of their own legal status in relation to the disappeared person after an appropriate period of time.⁷² With regard to a case of enforced disappearance, in which the alleged perpetrators were local authorities,⁷³ the Human Rights Committee found that 'the investigation of an enforced disappearance case could not rely on the confession of the authorities possibly involved'. It noted that 'the appropriate procedures were not carried out in time, which led to the loss of important evidence; [and that] the investigations were not independent and impartial; and were ineffective in clarifying the circumstances of the disappearance and in identifying those responsible'.

Enforced disappearances specifically in the context of international migration are addressed by the Human Rights Committee in its concluding observations and views on individual communications. In concluding observations, it makes recommendations in the areas of search procedures, prompt, impartial and thorough

investigations, prosecutions and sentencing, the establishment of records and databases, as well as international cooperation and the involvement of national human rights mechanisms and of civil society organizations.⁷⁴ With regard to the rights of victims, the Committee calls on States parties to 'ensure that victims and members of their families are regularly informed of the progress and results of search and investigation efforts and receive the official administrative documents required pursuant to international standards, and that they are provided with comprehensive reparation, including rehabilitation, compensation, satisfaction and guarantees of non-repetition'.⁷⁵

In its views on individual communications, the Human Rights Committee has addressed, among others, alleged extraterritorial disappearances.⁷⁶ For instance, in Communication No. 52/1979 (*Sergio Rubén López Burgos v Uruguay*), an Uruguayan national, recognized as a political refugee, was allegedly abducted by Uruguayan security and intelligence forces in Argentina and brought back to Uruguay.⁷⁷ With regard to the extraterritorial aspect of the case, the Human Rights Committee noted that '... although the arrest and initial detention and mistreatment of López Burgos allegedly took place on foreign territory, the Committee (was) not barred either by virtue of article 1 of the Optional Protocol ("... individuals subject to its jurisdiction ...") or by

⁷¹ Human Rights Committee, *General Comment No. 6: Article 6 (Right to life)*, 30 April 1982, §4.

⁷² CCPR/C/GC/36, supra fn 67, §58; Human Rights Committee, Concluding observations – Mexico, UN doc CCPR/C/MEX/CO/5, 17 May 2010, §§9, 12; Human Rights Committee, Concluding observations – Libya, UN doc CCPR/C/LBY/CO/4, 15 November 2007, §14.

⁷³ Human Rights Committee, 'Mexico responsible for disappearances involving state authorities allegedly linked to organized crime groups, say UN human rights experts', 7 August 2019, <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=24874&LangID=E>, last accessed 9 March 2021.

⁷⁴ Human Rights Committee, Concluding observations – Mexico, UN doc CCPR/C/MEX/CO/6, 4 December 2019, §§29,

33; CCPR/C/ALB/CO/2, supra fn 14, §20; Human Rights Committee, List of issues prior to submission of the fifth periodic report of Libya, UN doc CCPR/C/LBY/QPR/5, 15 January 2021, §22.

⁷⁵ CCPR/C/MEX/CO/6, supra fn 74, §29(c).

⁷⁶ See, e.g., Human Rights Committee, *Cifuentes Elegeuta v Chile*, Comm no 1536/2006, 28 July 2009, UN doc CCPR/C/96/D/1536/2006, 30 September 2009, §2.3; Human Rights Committee, *S. E. v Argentina*, Comm no 275/1988, 26 March 1990, UN doc CCPR/C/OP/3 at 68 (2002), §2.1.

⁷⁷ Human Rights Committee, *Sergio Rubén López Burgos v Uruguay*, Comm no 52/1979, 29 July 1981, UN doc CCPR/C/OP/1 at 88 (1985), §§2.1-2.3, 10.2.

virtue of article 2(1) of the Covenant ("... individuals within its territory and subject to its jurisdiction ...") from considering these allegations, together with the claim of subsequent abduction into Uruguayan territory, in as much as these acts were perpetrated by Uruguayan agents acting on foreign soil'.⁷⁸ The Human Rights Committee found a violation of Article 7 (prohibition of torture or cruel, inhuman or degrading treatment or punishment) and Article 9, Paragraph 1 (liberty and security of the person) of the CCPR Covenant with regard to 'the treatment (including torture) suffered ... at the hands of Uruguayan military officers ... in Argentina and Uruguay' and 'the act of abduction into Uruguayan territory', together with other violations relevant to the case. It requested the State party to '... provide effective remedies to López Burgos, including immediate release, permission to leave Uruguay and compensation for the violations which he has suffered and to take steps to ensure that similar violations do not occur in the future'.⁷⁹

The Human Rights Committee has equally addressed a case of enforced disappearance perpetrated by foreign State actors, while the victims resided abroad. Communication No. 2006/2010 (*Al-Maqrif and Matar v Libya*) addressed the fate of two Libyan men, who were exiled in Cairo and active in the political opposition against the government of Muammar

Gaddafi. Their whereabouts remained unknown, after they had been detained and interrogated by Egyptian security forces in 1990 and had then been handed over to Libyan authorities.⁸⁰ With regard to the two victims, the Human Rights Committee found their enforced disappearance to be a violation of Article 2, Paragraph 3 (effective remedy), read in conjunction with Articles 6, Paragraph 1 (right to life), 7 (prohibition of torture or cruel, inhuman or degrading treatment or punishment), 9 (liberty and security of the person), 10, Paragraph 1 (humane treatment during deprivation of liberty) and 16 (right to recognition as a person before the law) of the CCPR Covenant.⁸¹ The Committee also confirmed that the lack of information provided to the sons about the whereabouts of their respective fathers over a period of 20 years and the anguish and distress caused to the sons constituted a violation of Article 7 of the CCPR Covenant read alone and in conjunction with Article 2, Paragraph 3.⁸² As one of the sons was still a child, when his father was disappeared, the Committee found an additional violation of Article 24, Paragraph 1 (protection of children), read in conjunction with Article 7.⁸³ With regard to effective remedy, it found an obligation by the State party to conduct an investigation into the disappearances, to provide detailed information to the relatives of the victims on the investigation, to release the

⁷⁸ "The reference in article 1 of the Optional Protocol to "individuals subject to its jurisdiction" does not affect the above conclusion because the reference in that article is not to the place where the violation occurred, but rather to the relationship between the individual and the State in relation to a violation of any of the rights set forth in the Covenant, wherever they occurred. Article 2 (1) of the Covenant places an obligation upon a State party to respect and to ensure rights "to all individuals within its territory and subject to its jurisdiction", but it does not imply that the State party concerned cannot be held accountable for violations of rights under the Covenant which its agents commit upon the territory of another State, whether with the acquiescence of the Government of that State or in opposition to it. According to article 5 (1) of the Covenant: Nothing in the present Covenant may be interpreted as implying for any State, group or person any right to engage in any activity or perform any act aimed at the destruction of any of the rights and freedoms recognized herein or at

their limitation to a greater extent than is provided for in the present Covenant. In line with this, it would be unconscionable to so interpret the responsibility under article 2 of the Covenant as to permit a State party to perpetrate violations of the Covenant on the territory of another State, which violations it could not perpetrate on its own territory.' Ibid, §§12.1-12.3.

⁷⁹ Ibid, §13.

⁸⁰ Human Rights Committee, *Al-Maqrif and Matar v Libya*, Comm no 2006/2010, 21 March 2014, UN doc CCPR/C/110/D/2006/2010, 29 April 2014, §§2.1-2.4.

⁸¹ Ibid, §8.

⁸² Ibid, §7.10.

⁸³ Ibid, §7.10.

victims (if still held in incommunicado detention) or to hand over their remains (if the victims are deceased), to prosecute, try and punish those responsible for the violations committed and to provide adequate compensation to the victims (if still alive) and to the authors.⁸⁴

While not directly in the context of migration, the Human Rights Committee has dealt with a number of cases of enforced disappearances, in which the State party had not undertaken a thorough inquiry into the circumstances of a person's disappearance. The Committee has found that 'in cases where the author has submitted to the Committee allegations supported by substantial witness testimony ... and where further clarification of the case depends on information exclusively in the hands of the State party, the Committee may consider such allegations as substantiated in the absence of satisfactory evidence and explanations to the contrary submitted by the State party'.⁸⁵ In the same manner, the Committee has referred in other cases to its general comment 6 (16) on Article 6, noting that 'States parties should take specific and effective measures to prevent the disappearance of individuals and establish effective facilities and procedures to investigate thoroughly, by an appropriate impartial body, cases of missing and

disappeared persons in circumstances that may involve a violation of the right to life'. Additionally, the Committee has referred to the definition of enforced disappearance contained in Article 7, Paragraph (2)(i), of the Rome Statute of the International Criminal Court done on 17 July 1998 and stated that 'any act of such disappearance constitutes a violation of many of the rights enshrined in the Covenant, including the right to liberty and security of person (article 9), the right not to be subjected to torture or to cruel, inhuman or degrading treatment or punishment (article 7), and the right of all persons deprived of their liberty to be treated with humanity and with respect for the inherent dignity of the human person (article 10). It also violates or constitutes a grave threat to the right to life (article 6)'.⁸⁶ It has consequently found in several cases that 'the right to life enshrined in article 6 has not been effectively protected' by a State party, when the State party could not deny the disappearance of a person and the involvement of State actors; for example, by undertaking an investigation and sharing such information with the Committee.⁸⁷

Concerning remedies, the Human Rights Committee often requests States parties to clarify the events, to bring those responsible to justice, to pay compensation and to ensure non-repetition.⁸⁸ In Communication No. 612/1995

⁸⁴ Ibid, §9.

⁸⁵ See, e.g., Human Rights Committee, *Eduardo Bleier v Uruguay*, Comm no 30/1978, 29 March 1982, UN doc CCPR/C/OP/1 at 109 (1985), §§13.2-13.3; Human Rights Committee, *María del Carmen Almeida de Quinteros v Uruguay*, Comm no 107/1981, 21 July 1983, UN doc CCPR/C/OP/2 at 138 (1990), §11; Human Rights Committee, *Joaquín David Herrera Rubio v Colombia*, Comm no 161/1983, 2 November 1987, UN doc CCPR/C/OP/2 at 192 (1990), §10.5; Human Rights Committee, *Hugo Gilmet Dermit v Uruguay*, Comm no 84/1981, 21 October 1982, UN doc CCPR/C/OP/2 at 112 (1990), §9.6; Human Rights Committee, *Louisa Bousroual v Algeria*, Comm no 992/2001, 30 March 2006, UN doc CCPR/C/OP/9 at 59 (2008), §9.4; Human Rights Committee, *Messaouda Grioua, née Atamna v Algeria*, Comm no 1327/2004, 10 July 2007, UN doc CCPR/C/OP/9 at 229 (2008), §7.4.

⁸⁶ See, e.g., Human Rights Committee, *S. Jegatheeswara Sarma v Sri Lanka*, Comm no 950/2000, 16 July 2003, UN doc

CCPR/C/OP/8 in 210 (2007), §9.3; Human Rights Committee, *Louisa Bousroual v Algeria*, Comm no 992/2001, supra fn 85, §9.2; Human Rights Committee, *Messaouda Grioua, née Atamna v Algeria*, Comm no 1327/2004, supra fn 85, §7.2.

⁸⁷ See, e.g., Human Rights Committee, *Barbarín Mojica v Dominican Republic*, Comm no 449/1991, 15 July 1994, UN doc CCPR/C/OP/5 at 70 (2005), §§5.2, 5.5-5.6; Human Rights Committee, *Basilio Laureano Atachahua v Peru*, Comm no 540/1993, 25 March 1996, UN doc CCPR/C/OP/6 at 63 (2005), §§8.2- 8.4; Human Rights Committee, *Louisa Bousroual v Algeria*, Comm no 992/2001, supra fn 85, §9.11.

⁸⁸ See, e.g., Human Rights Committee, *Eduardo Bleier v Uruguay*, Comm no 30/1978, supra fn 85, §15; Human Rights Committee, *Joaquín David Herrera Rubio v Colombia*, Comm no 161/1983, supra fn 85, §12; Human Rights Committee, *Barbarín Mojica v Dominican Republic*, Comm no 449/1991, supra fn 87, §7; Human Rights Committee, *Basilio Laureano Atachahua v Peru*, Comm no 540/1993, supra fn 87, §10; Human Rights Committee, *S. Jegatheeswara Sarma v Sri*

(José Vicente and Amado Villafañe Chaparro, Dioselina Torres Crespo, Hermes Enrique Torres Solis and Vicencio Chaparro Izquierdo v Colombia) concerning the disappearance and subsequent death of three indigenous leaders, it specifies that ‘purely disciplinary and administrative remedies cannot be deemed to constitute adequate and effective remedies within the meaning of article 2, paragraph 3, of the Covenant, in the event of particularly serious violations of human rights’.⁸⁹

Further, the Human Rights Committee has considered the rights of relatives of victims of enforced disappearance in the context of migration. In Communication No. 107/1981 (Maria del Carmen Almeida de Quinteros v Uruguay), the Human Rights Committee addressed the enforced disappearance of a Uruguayan national from the grounds of the Embassy of Venezuela in Montevideo by Uruguayan police forces, where the victim had fled to claim asylum.⁹⁰ The Committee found violations of Articles 7, 9 and 10, Paragraph 1 of the CCPR Covenant and requested an investigation and prosecution of those responsible, as well as compensation and non-repetition.⁹¹ Importantly, the Human Rights Committee also established the right of the author, the mother of the disappeared person, ‘to know what [had] happened to her daughter’ and found that she was a victim of violations of article 7 of the CCPR Covenant due to ‘the anguish and stress caused ... by the disappearance of her daughter and by the continuing

uncertainty concerning her fate and whereabouts’.⁹² Including in Communication No. 2006/2010 (Al-Maqrif and Matar v Libya), as discussed above, the Human Rights Committee has found violations of Article 7 with regard to the suffering of family members of disappeared persons in a number of individual communications.⁹³

Albeit not directly in the context of international migration, the Human Rights Committee has also addressed the rights of a disappeared child, as well as of a child of disappeared parents in individual communications. In a case on a disappeared child (Basilio Laureano Atachahua v Peru, Comm no 540/1993), the Committee found a violation of Article 24, Paragraph 1 (protection of children) of the CCPR Covenant, stating that the disappeared child did not benefit from the special measures of protection to which she was entitled to on account of her status as a minor, as ‘the State party did not adopt any particular measures to investigate her disappearance and locate her whereabouts to ensure her security and welfare’.⁹⁴ In Communication No. 400/1990 (Darwinia Rosa Mónaco de Gallicchio v Argentina), the Human Rights Committee addressed the rights of a child of disappeared parents and the rights of the grandmother of the child. The Committee found violations of Article 24, Paragraphs 1 and 2 (protection of children) of the CCPR Covenant, indicating that the initial denial by the State party for the grandmother to represent her granddaughter in judicial

Lanka, Comm no 950/2000, supra fn 86, §11; Human Rights Committee, *Louisa Bousroual v Algeria*, Comm no 992/2001, supra fn 85, §11; Human Rights Committee, *Messaouda Grioua, née Atamna v Algeria*, Comm no 1327/2004, supra fn 85, §9.

⁸⁹ Human Rights Committee, *José Vicente and Amado Villafañe Chaparro, Dioselina Torres Crespo, Hermes Enrique Torres Solis and Vicencio Chaparro Izquierdo v Colombia*, Comm no 612/1995, 29 July 1997, UN doc CCPR/C/OP/6 at 135 (2005), §§8.2-8.3.

⁹⁰ Human Rights Committee, *Maria del Carmen Almeida de Quinteros v Uruguay*, Comm no 107/1981, supra fn 85, §§1.2-1.4, 1.6, 10.4, 12.3.

⁹¹ Human Rights Committee, *Maria del Carmen Almeida de Quinteros v Uruguay*, Comm no 107/1981, supra fn 85, §§13, 15, 16.

⁹² Human Rights Committee, *Maria del Carmen Almeida de Quinteros v Uruguay*, Comm no 107/1981, supra fn 85, §14.

⁹³ See, e.g., Human Rights Committee, *S. Jegatheeswara Sarma v Sri Lanka*, Comm no 950/2000, supra fn 86, §9.5; Human Rights Committee, *Louisa Bousroual v Algeria*, Comm no 992/2001, supra fn 85, §9.8; Human Rights Committee, *Messaouda Grioua, née Atamna v Algeria*, Comm no 1327/2004, supra fn 85, §7.7.

⁹⁴ Human Rights Committee, *Basilio Laureano Atachahua v Peru*, Comm no 540/1993, supra fn 87, §8.7.

proceedings and the long duration of these proceedings over ten years, including the delay to establish the granddaughter's real name and issuing identity papers, deprived the granddaughter, a child of disappeared parents, of the protection to which she was entitled as a minor.⁹⁵ The Committee established an obligation of the State party to 'provide the author and her granddaughter with an effective remedy, including compensation ...' and to 'investigate the disappearance of children, determine their true identity, issue to them identity papers and passports under their real names, and grant appropriate redress to them and their families in an expeditious manner'.⁹⁶

Finally, the Human Rights Committee has addressed a number of cases, in which individuals choose to migrate due to the disappearance by State or non-State actors or the risk thereof for themselves or family members.⁹⁷ Recently, the Committee has also received cases concerning push-backs in the Mediterranean Sea. One case concerns the alleged enforced disappearance of a migrant in the context of his deportation from Greece to Turkey⁹⁸ and one concerns the refoulement of a migrant back to Libya, where he was kidnapped by non-State actors.⁹⁹ The Human Rights Committee has yet to publish views on these communications.

Lastly, the Human Rights Committee established international human rights standards with regard to circumstances and factors that have been identified by the WGEID in its 2017 report as increasing the risk of

enforced disappearance of migrants. Concerning immigration detention, the Human Rights Committee states that 'detention in the course of proceedings for the control of immigration is not per se arbitrary, but [that] the detention must be justified as reasonable, necessary and proportionate in the light of the circumstances and reassessed as it extends in time'.¹⁰⁰ Among others, detention facilities have to be officially recognized, a centralized official register should be kept updated and made 'accessible to those concerned, including relatives' and detained foreign nationals should have access to a lawyer, consular authorities, UNHCR and family members.¹⁰¹ In concluding observations, the Human Rights Committee recommends to 'avoid the administrative detention of asylum seekers and migrants', including as a deterrent to unlawful entry, and to 'implement training programmes covering the Covenant, international asylum standards and human rights for the staff of migration institutions and border personnel'.¹⁰² The Human Rights Committee has also addressed racial profiling of migrants and asylum seekers by law enforcement personnel in its concluding observations.¹⁰³

D. COMMITTEE ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS

The Committee on Economic, Social and Cultural Rights (CESCR) has formulated

⁹⁵ Human Rights Committee, *Darwinia Rosa Mónaco de Gallicchio v Argentina*, Comm no 400/1990, 3 April 1995, UN doc CCPR/C/OP/5 at 47 (2005), §§10.3, 10.5, 11.1.

⁹⁶ *Ibid.*, §§11.2, 12.

⁹⁷ See, e.g., Human Rights Committee, *Hamulić et al. v Bosnia and Herzegovina*, Comm no 2022/2011, 30 March 2015, CCPR/C/113/D/2022/2011, 20 August 2015, §2.3; CCPR/C/113/D/2028/2011, *supra* fn 7, §2.4.

⁹⁸ Global Legal Action Network (GLAN), 'Communication to the United Nations Human Rights Committee in the case of FAJ against Greece', <https://www.glanlaw.org/enforced-disappearance-greece>, last accessed 25 March 2021.

⁹⁹ Global Legal Action Network (GLAN), 'Communication to the United Nations Human Rights Committee in the case of

SDG against Italy', <https://www.glanlaw.org/nivincase>, last accessed 25 March 2021.

¹⁰⁰ Human Rights Committee, *General Comment No 35: Liberty and Security (Article 9)*, UN doc CCPR/C/GC/35, 16 December 2014, §18.

¹⁰¹ *Ibid.*, §58.

¹⁰² CCPR/C/MEX/CO/6, *supra* fn 74, §33(b), (f); Human Rights Committee, Concluding observations – Australia, UN doc CCPR/C/AUS/CO/6, 1 December 2017, §37.

¹⁰³ Committee on the Elimination of Racial Discrimination, *General Recommendation No. 36 (2020) on Preventing and Combating Racial Profiling by Law Enforcement Officials*, UN doc CERD/C/GC/36, 24 November 2020, §6, fn 4.

recommendations on the rights of relatives of disappeared persons in a General Comment, concluding observations and its follow-up procedure, albeit not explicitly in the context of international migration.

Concerning the rights of family members of disappeared persons, CESCR has expressed concern about ‘the daily challenges faced by the families and loved ones of disappeared persons in the effective enjoyment of their economic, social and cultural rights’.¹⁰⁴ It has recommended to ‘ensure access to, and the implementation of, support programmes for the families and loved ones of disappeared persons in order to avoid their revictimization’.¹⁰⁵ The Committee also recommended for ‘support and protection measures [to] be developed and implemented in consultation with their beneficiaries so as to ensure that the measures meet their needs’ and to ‘ensure those persons’ effective enjoyment of their economic, social and cultural rights, especially the rights to an adequate standard of living, health and education’.¹⁰⁶ CESCR has followed up on these recommendations in the case of Mexico through its follow-up procedure to concluding observations, welcoming progress in the legislative and institutional framework, but requesting further information on the impact of these measures on assistance provided to relatives of disappeared persons.¹⁰⁷

More specifically, the Committee has underlined the rights of relatives of disappeared persons with regard to social security benefits. Referring to Article 9 of the International Covenant on Economic, Social and Cultural

Rights adopted on 16 December 1966 (CESCR Covenant) on social security, the Committee’s General Comment No. 19 states that ‘States parties must ... ensure the provision of benefits to survivors and orphans on the death of a breadwinner’.¹⁰⁸ Concerning the relatives of disappeared persons, albeit not explicitly in the context of migration, CESCR recommends States parties to ensure that ‘families of disappeared persons have unconditional access to social security, in particular pension and survivor benefits and child benefits’, which should not be ‘made conditional upon the family obtaining a court declaration that the disappeared relative has died’.¹⁰⁹

In addition to the rights of family members of disappeared persons, CESCR has also addressed discrimination of migrants, a factor identified by the WGEID in its 2017 report that increases the risk of enforced disappearance of migrants. In concluding observations, it has recommended States parties ‘to prevent and combat persistent discrimination, in particular against ... migrants, asylum seekers and refugees ..., including by carrying out awareness-raising campaigns’ and to ‘adopt specific policies, in consultation with the affected groups, to combat the multiple discrimination faced by some persons’.¹¹⁰ The Committee has also pointed out instances, in which such discrimination led to acts of violence against migrants.¹¹¹

¹⁰⁴ Committee on Economic, Social and Cultural Rights, Concluding observations – Mexico, UN doc E/C.12/MEX/CO/5-6, 17 April 2018, §43.

¹⁰⁵ *Ibid.*, §44.

¹⁰⁶ *Ibid.*, §44.

¹⁰⁷ Committee on Economic, Social and Cultural Rights, Follow-up letter sent to the State party – Mexico, 15 June 2020, p 2, §44.

¹⁰⁸ Committee on Economic, Social and Cultural Rights, *General Comment No. 19 - The right to social security (art. 9)*, UN doc E/C.12/GC/19, 4 February 2008, §21.

¹⁰⁹ Committee on Economic, Social and Cultural Rights, Concluding observations – Algeria, UN doc E/C.12/DZA/CO/4, 7 June 2010, §13; see also, B. Saul, D. Kinley and J. Mowbray (eds), *The International Covenant on Economic, Social and Cultural Rights: Commentary, Cases, and Materials*, Oxford Scholarly Authorities on International Law, 2014, pp 653-654, 659-660, 702-703.

¹¹⁰ E/C.12/MEX/CO/5-6, *supra* fn 104, §19(b)-(c).

¹¹¹ Committee on Economic, Social and Cultural Rights, Concluding observations – Libya, UN doc E/C.12/LYB/CO/2, 25 January 2006, §12.

G. COMMITTEE AGAINST TORTURE

The Committee Against Torture (CAT) has addressed enforced disappearances in the context of migration in views to individual communications, General Comments and concluding observations.

Frequently, CAT has addressed the topic with regard to the principle of non-refoulement. In its General Comment No. 4 (2017) on the implementation of Article 3 of the Convention in the context of Article 22, the Committee provides examples of ‘human rights situations that may constitute an indication of risk of torture, to which [States parties] should give consideration in their decisions on the removal of a person from their territory ...’.¹¹² These examples include situations ‘where the inherent right to life is denied, including the exposure of the person to ... enforced disappearance’.¹¹³ It equally includes contexts where ‘the person concerned would be deported to a State where reprisals amounting to torture have been or would be committed against the person, members of the person’s family or witnesses of the person’s arrest and detention, such as ... the disappearance of those family members or witnesses ...’.¹¹⁴ Further, Article 3 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment adopted on 10 December 1984 (CAT Convention) is interpreted as including onward refoulement.¹¹⁵

In line with its interpretation in General Comment No. 4, CAT has analysed the risk of

enforced disappearance in a number of views to individual communications concerning non-refoulement. It has considered enforced disappearance as part of its assessment of both the personal risk of the author and of ‘a consistent pattern of gross, flagrant or mass violations of human rights’ in the country to which the author would be returned (Art. 3 (2) CAT Convention). It should be noted that such ‘a consistent pattern ... refers only to violations by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity’; thus, excludes disappearances perpetrated by non-State actors.¹¹⁶ CAT has assessed the general human rights situation in countries to which authors would be returned, including with regard to enforced disappearances, based on reports by the WGEID and other special procedures mandate holders,¹¹⁷ international and national human rights organizations¹¹⁸ and its own State party reviews.¹¹⁹

In assessing the personal risk of an author to become a victim of enforced disappearance upon return to the country of origin, CAT has considered various factors, such as the author’s participation in activities for the political opposition of the States party. In previous communications, authors have referred to past political activities in the territory of the State party,¹²⁰ current activities in the state of

¹¹² Committee against Torture, *General Comment No. 4 (2017) on the implementation of article 3 of the Convention in the context of article 22*, UN doc CAT/C/GC/4, 4 September 2018, §29.

¹¹³ *Ibid.*, §29(k).

¹¹⁴ *Ibid.*, §29(m).

¹¹⁵ Committee against Torture, *General Comment No. 01: Implementation of article 3 of the Convention in the context of article 22*, UN doc A/53/44 at 52 (1997), §2.

¹¹⁶ *Ibid.*, §3.

¹¹⁷ Committee against Torture, *Mr. V.N.I.M. v Canada*, Comm no 119/1998, 12 November 2002, UN doc A/58/44 at Annex VI (2003), §7.6.

¹¹⁸ Committee against Torture, *Alp v Denmark*, Comm no 466/2011, 14 May 2014, UN doc A/69/44 at 398 (2014), §5.2, fn 8; Committee against Torture, *Mr. V.N.I.M. v Canada*, Comm no 119/1998, supra fn 117, §3.6.

¹¹⁹ Committee against Torture, *M.B., A.B., D.M.B. and D.B. v. Denmark*, Comm no 634/2014, 25 November 2016, UN doc CAT/C/59/D/634/2014, 24 January 2017, §9.7; Committee against Torture, *S.S. v The Netherlands*, Comm no 191/2001, 5 May 2003, UN doc A/58/44 at Annex VI (2003), §6.3.

¹²⁰ Committee against Torture, *Alp v Denmark*, Comm no 466/2011, supra fn 118, §2.10; Committee against Torture, *A.A. v The Netherlands*, Comm no 198/2002, 30 April 2003, UN doc A/58/44 in Annex VI (2003), §§2.1, 4.5.

residence¹²¹ or the mere suspicion of such activities by the State party.¹²² In another case, the political activities were carried out by a close family member.¹²³ Further, the Committee has considered the risk of enforced disappearance based on the religious beliefs of the author¹²⁴ and based on the author being a witness to other human rights violations committed by officials of the State party.¹²⁵ The Committee has also considered human rights violations, including enforced disappearances, perpetrated against family members of an author.¹²⁶ In addition to views to individual communications, CAT has recalled the principle of non-refoulement, including the need for individual review and the prohibition of collective returns, in its concluding observations.¹²⁷

Beyond the principle of non-refoulement, CAT has formulated recommendations on State party obligations concerning other rights in connection to enforced disappearances of migrants. For instance, in the context of the disappearance of Albanian children from a Greek State-run care home and the enforced disappearance of a human rights defender from Myanmar in Thailand, the Committee has made recommendations in the area of prevention, protection, investigations, penalization of

enforced disappearance in national law and support to victims.¹²⁸ It has also recommended cooperation with the WGEID and the ratification of the CED Convention.¹²⁹ With regard to the right to redress of victims, CAT specifies in its General Comment No. 3 (2012) on the implementation of Article 14 by States parties, that redress should include the ‘search for the whereabouts of the disappeared [and] for the identities of the children abducted’.¹³⁰ Although not in the context of migration, CAT has specified that this could include an obligation by States parties to ‘provide access to all civilian and military files that may contain documentation relevant to ongoing investigations and documentation that could be of assistance in determining the fate and discovering the whereabouts of disappeared persons’.¹³¹ In its concluding observations, the Committee has also recommended to provide adequate resources to search and identification mechanisms¹³² and to ‘ensur[e] that any individual who has suffered harm as the direct result of an enforced disappearance has access to information about the fate of the disappeared person as well as to fair and adequate compensation, including any necessary psychological, social and financial support’.¹³³ It

¹²¹ Committee against Torture, *Alp v Denmark*, Comm no 466/2011, supra fn 118, §5.2.

¹²² Committee against Torture, *U.S. v Finland*, Comm no 197/2002, 1 May 2003, UN doc A/58/44 at Annex VI (2003), §3.2.

¹²³ Committee against Torture, *Alp v Denmark*, Comm no 466/2011, supra fn 118, §5.2; Committee against Torture, *A.A. v The Netherlands*, Comm no 198/2002, supra fn 120, §§2.1, 4.5.

¹²⁴ Committee against Torture, *Ke v Australia*, Comm no 416/2010, 5 November 2012, UN doc A/68/44 at Annex XVII (2013), §5.3.

¹²⁵ Committee against Torture, *Mr. V.N.I.M. v Canada*, Comm no 119/1998, supra fn 117, §§3.1, 3.4.

¹²⁶ Committee against Torture, *M.B. v Switzerland*, Comm no 439/2010, 31 May 2013, UN doc A/68/44 at Annex XVII (2013), §2.3.

¹²⁷ CAT/C/GRC/CO/7, supra fn 14, §§16-17; Committee against Torture, Concluding observations – Mexico, UN doc CAT/C/MEX/CO/7, 24 July 2019, §§50-51.

¹²⁸ CAT/C/GRC/CO/7, supra fn 14, §§50-51; Committee against Torture, Concluding observations – Bulgaria, UN doc CAT/C/BGR/CO/6, 15 December 2017, §§23, 24 (a)-(c); Committee against Torture, Concluding observations – Thailand, UN doc CAT/C/THA/CO/1, 20 June 2014, §§14, 15(a)-(c).

¹²⁹ CAT/C/THA/CO/1, supra fn 128, §§14, 15(d)-(e).

¹³⁰ Committee against Torture, *General Comment No. 3 (2012) - Implementation of article 14 by States parties*, UN doc CAT/C/GC/3, 13 December 2012, §16.

¹³¹ Committee against Torture, Concluding observations – Plurinational State of Bolivia, UN doc CAT/C/BOL/CO/2, 14 June 2013, §§13, 14(c).

¹³² CAT/C/MEX/CO/7, supra fn 127, §§28, 29(b)-(c).

¹³³ CAT/C/THA/CO/1, supra fn 128, §§14, 15(c); CAT/C/MEX/CO/7, supra fn 127, §§28, 29(a).

also reminds that ‘for the family members of a disappeared person, enforced disappearance may constitute a breach of the Convention’.¹³⁴

Further, the Committee has addressed circumstances and factors that, in line with the 2017 report by the WGEID, could increase the risk of disappearance of migrants by State or non-State actors. Among others, CAT has made recommendations in the area of forced returns of migrants, including interception at land borders and at sea,¹³⁵ immigration detention,¹³⁶ trafficking in migrants,¹³⁷ discrimination and violence, including on the basis of race,¹³⁸ racial profiling¹³⁹ and the protection of (unaccompanied) minors.¹⁴⁰ Albeit not explicitly referring to a migration context, CAT states that incommunicado detention is ‘a practice that is conducive to torture and enforced disappearances’.¹⁴¹

F. COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION

The Committee on the Elimination of Racial Discrimination (CERD) has included recommendations on enforced disappearances of migrants and on circumstances increasing the risk thereof in General Recommendations, in statements under its early warning and urgent

action procedure and in concluding observations.

In a statement under its early warning and urgent action procedure, the Committee expressed concern about the kidnapping of migrants in Libya, among other human rights violations committed against them, and called for effective investigation, prosecution, sanctions commensurate with the gravity of crimes and full reparation for victims.¹⁴² In its concluding observations, CERD underlined ‘the vulnerability of [migrant workers and migrants in transit, especially with regard to women] to kidnapping, torture and murder’ and pointed out ‘that their fear of being subjected to discrimination and xenophobia prevent[ed] them from seeking assistance and protection when needed’.¹⁴³ The Committee also made recommendations in the context of ‘abductions of refugees and asylum-seekers for ... trafficking’.¹⁴⁴ It underlined the need for protection, including in refugee camps, to ‘ensure that programmes and measures to protect migrants and their rights are properly implemented in practice’, to ‘effectively and firmly apply ... anti-trafficking legislation’ and to investigate all cases.¹⁴⁵ Equally, CERD addressed cases of unaccompanied children disappearing from reception facilities.¹⁴⁶ Its recommendations focused on the search and identification of the

¹³⁴ CAT/C/THA/CO/1, supra fn 128, §§14, 15(c).

¹³⁵ CAT/C/BGR/CO/6, supra fn 128, §§23, 24(f).

¹³⁶ CAT/C/GRC/CO/7, supra fn 14, §§20-21; CAT/C/MEX/CO/7, supra fn 127, §§48, 49(a)-(c), 49(e)-(j).

¹³⁷ CAT/C/GRC/CO/7, supra fn 14, §§50-51.

¹³⁸ CAT/C/GRC/CO/7, supra fn 14, §§46-47; CAT/C/BGR/CO/6, supra fn 128, §§23, 24(g).

¹³⁹ CERD/C/GC/36, supra fn 103, §6, fn 5.

¹⁴⁰ CAT/C/GRC/CO/7, supra fn 14, §§22-23; CAT/C/MEX/CO/7, supra fn 127, §§48, 49(d).

¹⁴¹ Committee against Torture, Concluding observations – Mauritania, UN doc CAT/C/MRT/CO/1, 18 June 2013, §11.

¹⁴² Committee on the Elimination of Racial Discrimination, ‘Prevention of Racial Discrimination, including early

warning and urgent action procedures: Statement - Racial discrimination and enslavement of migrants in Libya’, 7 December 2017, https://tbinternet.ohchr.org/Treaties/CERD/Shared%20Documents/LBY/INT_CERD_SWA_LBY_8609_E.pdf, last accessed 15 May 2021, preamble, §3.

¹⁴³ Committee on the Elimination of Racial Discrimination, Concluding observations – Mexico, UN doc CERD/C/MEX/CO/16-17, 4 April 2012, §20.

¹⁴⁴ Committee on the Elimination of Racial Discrimination, Concluding observations – Sudan, UN doc CERD/C/SDN/CO/12-16, 12 June 2015, §20.

¹⁴⁵ Ibid, §20; CERD/C/MEX/CO/16-17, supra fn 143, §20.

¹⁴⁶ Committee on the Elimination of Racial Discrimination, Concluding observations – Netherlands, UN doc CERD/C/NLD/CO/19-21, 24 September 2015, §33(c).

children, thorough investigations and increased protection of children in such facilities.¹⁴⁷

Further, CERD regularly addresses discrimination against migrants, including racial profiling, which increases the risk of enforced disappearance of migrants, as stated by the WGEID in its 2017 report.¹⁴⁸ In its General Recommendation No. 36 (2020) on Preventing and Combating Racial Profiling by Law Enforcement Officials, the Committee recognizes that ‘specific groups, such as migrants, refugees and asylum seekers, ... are the most vulnerable to racial profiling’.¹⁴⁹ In several other General Recommendations, the Committee also addressed the particularly vulnerability of migrants to discrimination in the context of racist hate speech,¹⁵⁰ xenophobia against non-nationals,¹⁵¹ the administration and functioning of criminal justice systems,¹⁵² a rise in racism related to financial and economic crisis and increasing poverty¹⁵³ and discrimination against Roma.¹⁵⁴ In its concluding observations, CERD recommends to ‘eliminate racial profiling in migration management and operations’, including by distributing related guidance, and to ‘take effective measures to prevent and combat incitement to racial discrimination and expressions of racism against migrants in the media’.¹⁵⁵ Further, it calls on States parties to ‘develop public education programmes and [to]

promote positive images of ethnic minorities, asylum seekers and migrants, and [to] develop awareness-raising campaigns to inform the public of the current and historical reasons for migration’.¹⁵⁶ It additionally has asked for increased reporting on the situation of migrants in States parties, including with regard to non-discrimination.¹⁵⁷ Further, the Committee has also addressed incidences, in which racial discrimination led to violence against migrants. Among others, it recommends to prevent such incidences and ‘to study all manifestations of xenophobia’.¹⁵⁸

In addition to discrimination and racial profiling, CERD also frequently addresses immigration detention, excessive use of force against migrants in that context and lack of access to remedies. For instance, it recommends States parties to ‘develop alternatives to the detention of asylum seekers and migrants in an irregular situation’, to use the detention of asylum seekers only as a measure of last resort, to avoid arbitrary detention and to investigate and prosecute ‘any acts of discrimination, excessive use of force and abuse of authority committed against migrants’ and to ensure their access to effective remedies.¹⁵⁹ Further, ‘conditions in centres for refugees and asylum-seekers [should]

¹⁴⁷ Ibid, §34(d).

¹⁴⁸ Working Group on Enforced or Involuntary Disappearances, A/HRC/36/39/Add.2, supra fn 10, §§52-53.

¹⁴⁹ CERD/C/GC/36, supra fn 103, §11.

¹⁵⁰ CERD/C/GC/36, supra fn 103, §6.

¹⁵¹ Committee on the Elimination of Racial Discrimination, *General Recommendation No. 30 on discrimination against non-citizens*, 2005, preamble.

¹⁵² Committee on the Elimination of Racial Discrimination, *General Recommendation XXXI on the prevention of racial discrimination in the administration and functioning of the criminal justice system*, 2005, preamble.

¹⁵³ Committee on the Elimination of Racial Discrimination, *General Recommendation No. 33 - Follow-up to the Durban Review Conference*, UN doc CERD/C/GC/33, 29 September 2009, §1(f).

¹⁵⁴ Committee on the Elimination of Racial Discrimination, *General Recommendation XXVII on discrimination against Roma*, 2000, §5.

¹⁵⁵ Committee on the Elimination of Racial Discrimination, Concluding observations – Mexico, UN doc CERD/C/MEX/CO/18-21, 19 September 2019, §§34, 35(e), 35(g).

¹⁵⁶ CERD/C/NLD/CO/19-21, supra fn 146, §34.

¹⁵⁷ Committee on the Elimination of Racial Discrimination, Concluding observations – Libya, UN doc CERD/C/64/CO/4, 10 May 2004, §§7, 12, 13.

¹⁵⁸ Ibid, §10.

¹⁵⁹ Committee on the Elimination of Racial Discrimination, *General Recommendation No. 30 on discrimination against non-citizens*, supra fn 151, §19; CERD/C/MEX/CO/18-21, supra fn 155, §34, 35(b), 35(f); CERD/C/NLD/CO/19-21, supra fn 146, §34(a).

meet international standards'.¹⁶⁰ In its General Recommendation No. 31 on the prevention of racial discrimination in the administration and functioning of the criminal justice system, CERD further formulates recommendations on the rights of accused persons, including 'the right not to be arbitrarily arrested or detained, the right to be informed of the reasons for their arrest, the right to the assistance of an interpreter, the right to the assistance of counsel, the right to be brought promptly before a judge or an authority empowered by the law to perform judicial functions, the right to consular protection guaranteed by article 36 of the Vienna Convention on Consular Relations and, in the case of refugees, the right to contact the Office of the United Nations High Commissioner for Refugees'.¹⁶¹ With regard to migrant children, the Committee calls on States parties to ensure that 'no migrant child is detained on account of their migration status', 'to establish alternative living arrangements for ... children' and to provide adequate care and protection.¹⁶² Further, CERD has reminded States parties of the principle of non-refoulement in its General Recommendations¹⁶³ and concluding observations.¹⁶⁴

Finally, CERD has made recommendations on trafficking and smuggling of migrants, another context, which the WGEID has identified as

increasing the risk of enforced disappearance of migrants. In concluding observations, the Committee called on States parties to increase protection, investigation and prosecution in the area of smuggling and trafficking of migrants.¹⁶⁵ It made similar recommendations in statements that were part of the Committee's early warning and urgent action procedure, namely in a statement on the 'Current Migrant Crises' in the Mediterranean and in the Andaman seas in 2015 and in another statement on 'Racial discrimination and enslavement of migrants in Libya' in 2017.¹⁶⁶

G. COMMITTEE ON THE ELIMINATION OF DISCRIMINATION AGAINST WOMEN

The Committee on the Elimination of Discrimination against Women (CEDAW) has addressed the enforced disappearance of migrant women and girls and other human rights violations that increase the risk of enforced disappearance of migrants in its concluding observations, General Recommendations, a Day of General Discussion and inquiry reports.

In the context of enforced disappearances of migrant women, CEDAW calls on States parties to 'ensure that all cases ... are effectively investigated and that perpetrators are prosecuted

¹⁶⁰ Committee on the Elimination of Racial Discrimination, *General Recommendation No. 30 on discrimination against non-citizens*, supra fn 151, §19.

¹⁶¹ Committee on the Elimination of Racial Discrimination, *General Recommendation XXXI on the prevention of racial discrimination in the administration and functioning of the criminal justice system*, supra fn 152, §23.

¹⁶² CERD/C/MEX/CO/18-21, supra fn 155, §§34, 35(c); Committee on the Elimination of Racial Discrimination, *Concluding observations – Netherlands*, UN doc CERD/C/NLD/CO/17-18, 25 March 2010, §11.

¹⁶³ Committee on the Elimination of Racial Discrimination, *General Recommendation XXXI on the prevention of racial discrimination in the administration and functioning of the criminal justice system*, supra fn 152, §40; Committee on the Elimination of Racial Discrimination, *General Recommendation XXII on article 5 of the Convention on refugees and displaced persons*, 1996, §2(b).

¹⁶⁴ CERD/C/MEX/CO/18-21, supra fn 155, §§34, 35(a); CERD/C/64/CO/4, supra fn 157, §11.

¹⁶⁵ Committee on the Elimination of Racial Discrimination, *Concluding observations – Bolivarian Republic of Venezuela*, UN doc CERD/C/VEN/CO/19-21, 23 September 2013, §22; Committee on the Elimination of Racial Discrimination, *Concluding observations – Kazakhstan*, UN doc CERD/C/KAZ/CO/6-7, 14 March 2014, §16(c).

¹⁶⁶ Committee on the Elimination of Racial Discrimination, 'Prevention of Racial Discrimination, including early warning and urgent action procedures, Statement on Current Migrant Crises', 15 May 2015, <https://www.ohchr.org/Documents/HRBodies/CERD/EarlyWarning/Statements/RecentMigrantCrises.pdf>, last accessed 15 May 2021, §1(c); Committee on the Elimination of Racial Discrimination, 'Prevention of Racial Discrimination, including early warning and urgent action procedures, Statement - Racial discrimination and enslavement of migrants in Libya', supra fn 142, §1.

and punished, to a degree commensurate with the gravity of the crime committed'.¹⁶⁷ It further specified the obligations of States parties in its inquiry reports on Mexico and Canada,¹⁶⁸ which addressed cases of disappeared women and girls, although not in the context of migration.¹⁶⁹

Among others, CEDAW made recommendations in the areas of investigation and prosecution of cases of missing women,¹⁷⁰ the coordination of responses by different State actors,¹⁷¹ the establishment of early warning and emergency search mechanisms¹⁷² and the cooperation with neighbouring States.¹⁷³ It also noted the importance of increasing the number of female police officers.¹⁷⁴

CEDAW further referred to support to families of missing women, including their treatment with respect,¹⁷⁵ their protection,¹⁷⁶ access to justice, legal aid and complaint procedures to challenge police conduct,¹⁷⁷ as well as the disclosure of truth, public apologies and commemoration of victims.¹⁷⁸ It also recommended facilitating adoption procedures and access to social security benefits for family members taking care of children of disappeared women.¹⁷⁹ Importantly, the Committee places

the disappearance of women into the broader context of 'systematic violations of women's rights, founded in a culture of violence and discrimination that is based on women's alleged inferiority, [which] has resulted in impunity'.¹⁸⁰ It recommends 'transforming existing sociocultural patterns', 'eliminating discrimination' and 'restor[ing] the social fabric and creat[ing] conditions to guarantee that women ... are able to exercise the rights established in the Convention ...'.¹⁸¹ Similar recommendations to those included in the inquiry reports on Mexico and Canada have been made by CEDAW in concluding observations, equally not explicitly in the context of migration.¹⁸²

Finally, CEDAW has formulated numerous recommendations to States parties concerning human rights violations that the WGEID has identified as increasing the risk of enforced disappearance in the context of migration. For instance, Article 6 of the Convention on the Elimination of All Forms of Discrimination against Women adopted on 18 December 1979 (CEDAW Convention) refers directly to trafficking in women and the Committee has

¹⁶⁷ CEDAW/C/MEX/CO/9, supra fn 14, §§47, 48(e).

¹⁶⁸ Committee on the Elimination of Discrimination against Women, Report on Mexico produced by the Committee on the Elimination of Discrimination against Women under article 8 of the Optional Protocol to the Convention, and reply from the Government of Mexico, UN doc CEDAW/C/2005/OP.8/MEXICO, 27 January 2005; Committee on the Elimination of Discrimination against Women, Report of the inquiry concerning Canada of the Committee of the Elimination of Discrimination against Women under article 8 of the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women, UN doc CEDAW/C/OP.8/CAN/1, 30 March 2015.

¹⁶⁹ In the case of Mexico, the inquiry took place in a region of the State party that borders the United States of America and is characterized by substantial migration flows and criminal activity around migration. However, the inquiry did not focus on the enforced disappearance of migrant women and girls, even though such cases had been addressed in previous concluding observations by the CEDAW Committee. CEDAW/C/2005/OP.8/MEXICO, supra fn 168, §22, Observations by the State party, pp 49-50; CEDAW/C/MEX/CO/9, supra fn 14, §§47, 48(e).

¹⁷⁰ CEDAW/C/OP.8/CAN/1, supra fn 168, §217(a)-(d).

¹⁷¹ CEDAW/C/OP.8/CAN/1, supra fn 168, §217(e), (h).

¹⁷² CEDAW/C/2005/OP.8/MEXICO, supra fn 168, §276.

¹⁷³ CEDAW/C/2005/OP.8/MEXICO, supra fn 168, §284.

¹⁷⁴ CEDAW/C/OP.8/CAN/1, supra fn 168, §217(i).

¹⁷⁵ CEDAW/C/2005/OP.8/MEXICO, supra fn 168, §280.

¹⁷⁶ CEDAW/C/2005/OP.8/MEXICO, supra fn 168, §282.

¹⁷⁷ CEDAW/C/OP.8/CAN/1, supra fn 168, §217(l)-(n).

¹⁷⁸ CEDAW/C/OP.8/CAN/1, supra fn 168, §217(f).

¹⁷⁹ CEDAW/C/2005/OP.8/MEXICO, supra fn 168, §292.

¹⁸⁰ CEDAW/C/2005/OP.8/MEXICO, supra fn 168, §261.

¹⁸¹ CEDAW/C/2005/OP.8/MEXICO, supra fn 168, §§264, 287, 290.

¹⁸² Committee on the Elimination of Discrimination against Women, Concluding observations – Mexico, UN doc CEDAW/C/MEX/CO/7-8, 7 August 2012, §§11, 12(b), 13, 14(b), 18(a), 19(b).

recently published its General Recommendation No. 38 (2020) on trafficking in women and girls in the context of global migration,¹⁸³ as well as addressed the issue on a Day of General Discussion in 2019¹⁸⁴ and in concluding observations.¹⁸⁵ Among others, it recommends States parties to ‘conduct studies and surveys on the prevalence and forms of trafficking of ... women and girls ... and on the possible links with cases of missing ... women’.¹⁸⁶ The CEDAW Committee also underlines the importance of systematic data collection on cases of disappeared and trafficked women¹⁸⁷ and on the situation of migrant women generally.¹⁸⁸ It further refers to the risks of stereotyping based on race and sex, including institutionalized stereotyping,¹⁸⁹ and to the need of improving the socioeconomic conditions of women living in communities, where disappearances have taken place.¹⁹⁰

H. COMMITTEE ON THE RIGHTS OF THE CHILD

The Committee on the Rights of the Child (CRC) has addressed the disappearance of

children in the context of migration by State and non-State actors, and related circumstances and factors increasing such a risk, in its General Comments, concluding observations and a Day of General Discussion.

In their Joint General Comments No. 3 and 4 and No. 22 and 23 on human rights of children in the context of international migration, the CMW and CRC Committees refer to the increased vulnerability of ‘children in the context of international migration, in particular those who are undocumented, stateless, unaccompanied or separated from their families, ... throughout the migratory process, to different forms of violence, including ... kidnapping [and] abduction ...’.¹⁹¹ They ‘acknowledge that the lack of regular and safe channels for children and families to migrate contribute to children taking life-threatening and extremely dangerous migration journeys’.¹⁹² Specifically, in its concluding observations, CRC has addressed the disappearance of children from refugee camps or in transit.¹⁹³ The Committee recommended investigations, the search for the disappeared

¹⁸³ 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*, UN doc CEDAW/C/GC/38, 6 November 2020.

¹⁸⁴ Committee on the Elimination of Discrimination against Women, Half-day general discussion on trafficking in women and girls in the context of global migration, <https://www.ohchr.org/EN/HRBodies/CEDAW/Pages/DiscussionOnTrafficking.aspx>, last accessed 13 March 2021.

¹⁸⁵ Committee on the Elimination of Discrimination against Women, Concluding observations – Italy, UN doc CEDAW/C/ITA/CO/7, 24 July 2017, §§29-30; Committee on the Elimination of Discrimination against Women, Concluding observations – Canada, UN doc CEDAW/C/CAN/CO/8-9, 25 November 2016, §§32(d), 33.

¹⁸⁶ CEDAW/C/OP.8/CAN/1, supra fn 168, §217(w); CEDAW/C/MEX/CO/7-8, supra fn 182, §§20, 21(b).

¹⁸⁷ CEDAW/C/OP.8/CAN/1, supra fn 168, §217(g); CEDAW/C/MEX/CO/7-8, supra fn 182, §§11, 12(d).

¹⁸⁸ Committee on the Elimination of Discrimination against Women, Concluding observations – Libya, UN doc CEDAW/C/LBY/CO/5, 6 February 2009, §§26, 44.

¹⁸⁹ CEDAW/C/OP.8/CAN/1, supra fn 168, §217(s)-(t).

¹⁹⁰ CEDAW/C/OP.8/CAN/1, supra fn 168, §218.

¹⁹¹ CMW/C/GC/4-CRC/C/GC/23, supra fn 45, §39.

¹⁹² CMW/C/GC/3-CRC/C/GC/22, supra fn 45, §41.

¹⁹³ Committee on the Rights of the Child, Concluding observations – Rwanda, UN doc CRC/C/RWA/CO/5-6, 28 February 2020, §41(b); Committee on the Rights of the Child, Concluding observations – Belgium, UN doc CRC/C/BEL/CO/5-6, 28 February 2019, §§41(c), 42(c); Committee on the Rights of the Child, Concluding observations – Mexico, UN doc CRC/C/MEX/CO/4-5, 3 July 2015, §59(b); Committee on the Rights of the Child, Concluding observations – Ethiopia, UN doc CRC/C/ETH/CO/4-5, 10 July 2015, §§67, 68(c); Committee on the Rights of the Child, Concluding observations submitted under article 12 of the Optional Protocol to the Convention the sale of children, child prostitution and child pornography – Rwanda, UN doc CRC/C/OPSC/RWA/CO/1, 8 July 2013, §23; Committee on the Rights of the Child, Concluding observations submitted under article 12 of the Optional Protocol to the Convention the sale of children, child prostitution and child pornography – Mexico, UN doc CRC/C/OPSC/MEX/CO/1, 7 April 2011, §§23(c), 24(c).

and the prosecution of those responsible,¹⁹⁴ as well as preventive measures, such as protection measures and guardianship services for unaccompanied migrant children.¹⁹⁵ It specifically refers to investigations, prosecutions and punishment ‘including when the perpetrator is an agent of the State’.¹⁹⁶ On the Committee’s Day of General Discussion on the rights of all children in the context of international migration in 2012, participants emphasized the phenomenon of ‘child migrants going missing or unaccounted for from reception centres in various countries’.¹⁹⁷ The Committee concluded that ‘States should ensure concrete guidelines for reception centre procedures and conditions which are in full accordance with the Convention and the United Nations Guidelines for the Alternative Care of Children’.¹⁹⁸ Further, in its General Comment No. 6 on children outside their country of origin, the CRC Committee recommends States parties to ‘consider collecting qualitative data that would allow them to analyse issues that remain insufficiently addressed, such as for instance, disappearances of unaccompanied and separated [migrant] children ...’.¹⁹⁹

Concerning circumstances and factors increasing the risk of enforced disappearances as per the 2017 report of the WGEID, the CRC Committee frequently makes recommendations on immigration detention and trafficking in

children and has also addressed xenophobia and discrimination against migrants. CRC notes that ‘unaccompanied and separated children are routinely denied entry to or detained by border or immigration officials’.²⁰⁰ It has explicitly established that ‘children should not be deprived of their liberty and that detention cannot be justified solely on the basis of the child being unaccompanied or separated, or on their migratory or residence status or lack thereof’.²⁰¹ CRC maintains that ‘all efforts, including acceleration of relevant processes, should be made to allow for the immediate release of unaccompanied or separated children from detention and their placement in other forms of appropriate accommodation’.²⁰² Further, in the exceptional case of detention, children should be able to stay in contact with legal representatives, guardians, relatives and friends.²⁰³

Trafficking in children is addressed in Article 35 of the Convention on the Rights of the Child adopted on 20 November 1989 (CRC Convention) and the preamble of its Optional Protocol on the sale of children, child prostitution and child pornography adopted on 25 May 2000. CRC regularly comments on the specific context of trafficking of migrant children, including on the need to ensure that ‘trafficked children are regarded and protected as victims and not criminalized’²⁰⁴ and to strengthen identification efforts, awareness-raising measures²⁰⁵ and cross-

¹⁹⁴ CRC/C/RWA/CO/5-6, supra fn 193, §41(b); CRC/C/ETH/CO/4-5, supra fn 193, §68(c); CRC/C/OPSC/RWA/CO/1, supra fn 193, §24(a); CRC/C/OPSC/MEX/CO/1, supra fn 193, §§23(c), 24(c).

¹⁹⁵ CRC/C/BEL/CO/5-6, supra fn 193, §§41(c), 42(c).

¹⁹⁶ CRC/C/MEX/CO/4-5, supra fn 193, §60(b).

¹⁹⁷ Committee on the Rights of the Child, Report of the 2012 Day of General Discussion on the rights of all children in the context of international migration, <https://www.ohchr.org/Documents/HRBodies/CRC/Discussions/2012/DGD2012ReportAndRecommendations.pdf>, last accessed 11 March 2021, §38.

¹⁹⁸ Ibid, §81.

¹⁹⁹ Committee on the Rights of the Child, *General Comment No. 6 (2005): Treatment of Unaccompanied and Separated*

Children Outside Their Country of Origin, UN doc CRC/GC/2005/6, 1 September 2005, §100.

²⁰⁰ Ibid, §3.

²⁰¹ CMW/C/GC/4-CRC/C/GC/23, supra fn 45, §8.

²⁰² CRC/GC/2005/6, supra fn 199, §61.

²⁰³ CRC/GC/2005/6, supra fn 199, §63.

²⁰⁴ Committee on the Rights of the Child, Concluding observations - Democratic People’s Republic of Korea, UN doc CRC/C/PRK/CO/5, 23 October 2017, §57; Committee on the Rights of the Child, Concluding observations - Democratic People’s Republic of Korea, UN doc CRC/C/PRK/CO/4, 27 March 2009, §68.

²⁰⁵ CMW/C/GC/4-CRC/C/GC/23, supra fn 45, §43; CRC/C/ECU/CO/5-6, supra fn 14, §45(a), (b), (e); CRC/C/OPSC/MEX/CO/1, supra fn 193, §§23(b), 24(b).

border cooperation.²⁰⁶ Child victims should also be provided with ‘adequate recovery and social reintegration services and programmes’.²⁰⁷ CRC has also warned that the lack of birth registration of children in the context of international migration increases their vulnerability to trafficking.²⁰⁸ The Committee’s General Comment No. 25 (2021) on children’s rights in relation to the digital environment draws a link between the risk of trafficking and abduction of children and digital technology. It notes that ‘children should be protected from all forms of exploitation ... in relation to the digital environment’, including trafficking and abduction of children, and warns that ‘digital technologies bring additional complexity to the investigation and prosecution of crimes against children, which may cross national borders’.²⁰⁹ It recommends States parties to ‘address the ways in which uses of digital technologies may facilitate or impede the investigation and prosecution of crimes against children and take all available preventative, enforcement and remedial measures, including in cooperation with international partners’.²¹⁰

In addition to immigration detention and trafficking in children, the CRC Committee has also addressed discrimination, another factor identified by the WGEID in its 2017 report as increasing the risk of enforced disappearance in the context of migration. The Committee expressed concern about ‘xenophobia, particularly towards migrant workers’²¹¹ and has recommended to ‘take all appropriate measures,

including comprehensive public education campaigns, to prevent and combat negative societal attitudes towards migrant workers’.²¹²

Although in the context of internal migration, the CRC Committee has also addressed the displacement of children and their families as a result of enforced disappearance of children.²¹³ It called on States parties to prevent such disappearances, conduct prompt, impartial and thorough investigations and to ‘officially recognize violence as a root cause of internal displacement’.²¹⁴ More generally, the Committee also confirms the principle of non-refoulement and the prohibition of collective expulsion of migrant children and families,²¹⁵ which could return children and their families to situations of risk.

Lastly, the rights of children under Articles 8 and 9 of the CRC Convention, namely the right to preservation of a child’s identity and the right not to be separated from his or her parents, have been discussed with regard to enforced disappearance of parents in a national context.²¹⁶ Similar questions on obligations of States parties could arise with regard to children of parents who are victims of enforced disappearance or disappearance by non-State actors in the context of international migration.

²⁰⁶ Committee on the Rights of the Child, *General Comment No. 13 (2011) - The right of the child to freedom from all forms of violence*, UN doc CRC/C/GC/13, 18 April 2011, §76; CRC/C/OPSC/RWA/CO/1, supra fn 193, §24(b).

²⁰⁷ CRC/C/PRK/CO/5, supra fn 204, §§57, 59; CRC/C/PRK/CO/4, supra fn 204, §68.

²⁰⁸ CMW/C/GC/4-CRC/C/GC/23, supra fn 45, §20.

²⁰⁹ Committee on the Rights of the Child, *General Comment No. 25 (2021) on children’s rights in relation to the digital environment*, UN doc CRC/C/GC/25, 2 March 2021, §47, 112.

²¹⁰ Ibid, §47.

²¹¹ Committee on the Rights of the Child, Concluding observations – Libya, UN doc CRC/C/15/Add.209, (4 July 2003, CRC/C/15/Add.209), para. §25.

²¹² Ibid, §26(a).

²¹³ Committee on the Rights of the Child, Concluding observations - El Salvador, UN doc CRC/C/SLV/CO/5-6, 29 November 2018, §§22(a)-(c), 23(a)-(c).

²¹⁴ Ibid, §23(a)-(c).

²¹⁵ CMW/C/GC/3-CRC/C/GC/22, supra fn 45, §§45-47.

²¹⁶ J. Tobin (ed), *The UN Convention on the Rights of the Child: A Commentary*, Oxford Commentaries on International Law, 2019, pp 297-298, 305-306, 338-339.

4. THE CONTRIBUTION OF UN CHARTER-BASED HUMAN RIGHTS BODIES

The UN Human Rights Council and its subsidiary bodies and Special Procedures have addressed the enforced disappearance of migrants and migration as a consequence of enforced disappearance in response to communications on alleged cases and in various reports, guidelines and other substantive documents. They also regularly address circumstances and factors, which increase the risk of enforced disappearance of migrants, as identified by the WGEID in its 2017 report.

²¹⁷ Based on its mandate stipulated in Commission on Human Rights resolution 20 (XXXVI) of 29 February 1980, the WGEID's methods of work (UN doc A/HRC/WGEID/102/2, 2 May 2014, §8), state that '[t]he Working Group operates for purposes of its work on the basis that, in accordance with the definition contained in the preamble of the Declaration, enforced disappearances are only considered such when the act in question is perpetrated by State actors or by private individuals or organized groups (for example, paramilitary groups) acting on behalf of, or with the support, direct or indirect, consent or acquiescence of, the State. Based on the above, the Working Group does not intervene in cases that are attributed to persons or groups not acting on behalf of, or with the support, direct or indirect, consent or acquiescence of, the Government, such as terrorist or insurgent movements fighting the Government on its own territory.' In 2019, 'the Working Group has decided to document cases concerning enforced or involuntary disappearances allegedly perpetrated by non-State actors that exercise effective control and/or government-like functions over a territory [in light of its humanitarian mandate and the fact that the victims of these acts do not have any remedy to address their plight]' (UN doc A/HRC/42/40, 30 July 2019, §94).

²¹⁸ See, e.g., A/HRC/WGEID/122/1, supra fn 3, §172.

A. SPECIAL PROCEDURES OF THE HUMAN RIGHTS COUNCIL

The UN Special Procedures have addressed the enforced disappearance of migrants based on reports and communications on alleged enforced disappearances and through a number of reports, often following missions and exchanges of information with victims, human rights institutions, states and other stakeholders.

The Working Group on Enforced or Involuntary Disappearances (WGEID) acts upon reports on enforced disappearances submitted by relatives and human rights organizations acting on their behalf.²¹⁷ These regularly include cases of alleged enforced disappearances of migrants, such as cases of alleged enforced disappearances during transit²¹⁸ and in countries of destination,²¹⁹ as well as in the realm of arrests and deprivation of liberty by foreign State actors,²²⁰ deportations and forced returns to countries of origin, including at times extraterritorial abductions,²²¹ rendition

²¹⁹ See, e.g., A/HRC/WGEID/122/1, supra fn 3, §§35, 146; Working Group on Enforced or Involuntary Disappearances, Communications transmitted, cases examined, observations made and other activities conducted by the Working Group on Enforced or Involuntary Disappearances - 120th session (10–14 February 2020), UN doc A/HRC/WGEID/120/1, 27 April 2020, §151.

²²⁰ See, e.g., A/HRC/WGEID/122/1, supra fn 3, §§102, 125, 131 and Annex I, §10(a)-(c); Working Group on Enforced or Involuntary Disappearances, Communications transmitted, cases examined, observations made and other activities conducted by the Working Group on Enforced or Involuntary Disappearances - 121st session (11–15 May 2020), UN doc A/HRC/WGEID/121/1, 28 July 2020, §§13, 126, Annex II, §3(dd)-(ee); A/HRC/WGEID/120/1, supra fn 219, §157(c), Annex II, Syrian Arab Republic, §1(q), 1(s).

²²¹ A/HRC/WGEID/122/1, supra fn 3, §173; Working Group on Enforced or Involuntary Disappearances, Report of the Working Group on Enforced or Involuntary Disappearances, UN doc A/HRC/45/13, 7 August 2020, §46; A/HRC/WGEID/121/1, supra fn 220, §§19-21, 108, 128-129, 131; A/HRC/WGEID/120/1, supra fn 219, §91, 101, 118, 131, 136, 171; and as a less recent example, Working Group on Enforced or Involuntary Disappearances, Report of the Working Group on Enforced or Involuntary Disappearances, UN doc E/CN.4/1996/38, 15 January 1996, §280.

programmes and counter-terrorism measures,²²² acts by non-State actors,²²³ including in detention centres²²⁴ and in refugee camps,²²⁵ and acts committed based on some form of cooperation between States or between a State and a non-State actor.²²⁶ Other cases relate to work of human rights defenders²²⁷ and intimidation of relatives and their rights.²²⁸ Importantly, the WGEID published a detailed report on Enforced disappearances in the context of migration in 2017,²²⁹ which was preceded by preliminary observations in the 2016 report on its activities.²³⁰ In addition to these specific reports, the WGEID has highlighted the challenges arising in investigating the enforced disappearance of migrants and the specific vulnerability of undocumented migrants and of

migrant and refugee children in its General Comment on children and enforced disappearances (2013)²³¹ and in several thematic reports.²³² Cases of enforced disappearances of migrants are also reported after country missions, such as the working group's missions to Turkey²³³ and Mexico²³⁴ and the subsequent assessments of follow-up, in which the WGEID reiterated respective previous recommendations and positively noted progress in the institutional framework of Mexico.²³⁵ References are equally made to contexts where returns of migrants might place them at risk of enforced disappearance in violation of the principle of non-refoulement.²³⁶

The UN Special Rapporteur on the Human Rights of Migrants addressed the enforced

²²² See, e.g., A/HRC/WGEID/122/1, supra fn 3, §§66, 135, 162, 168.

²²³ See, e.g., A/HRC/WGEID/122/1, supra fn 3, Annex I, §9(p); A/HRC/WGEID/121/1, supra fn 220, §109(k).

²²⁴ See, e.g., A/HRC/WGEID/121/1, supra fn 220, §88.

²²⁵ See, e.g., A/HRC/45/13, supra fn 221, §50; A/HRC/WGEID/121/1, supra fn 220, Annex I, §§1-5, 9-14 (concerning a general allegation).

²²⁶ See, e.g., A/HRC/WGEID/120/1, supra fn 219, §144; E/CN.4/1996/38, supra fn 221, §§331-334.

²²⁷ See, e.g., A/HRC/WGEID/122/1, supra fn 3, §150.

²²⁸ See, e.g., A/HRC/45/13, supra fn 221, §§71-72.

²²⁹ Working Group on Enforced or Involuntary Disappearances, A/HRC/36/39/Add.2., supra fn 10.

²³⁰ Working Group on Enforced or Involuntary Disappearances, Report of the Working Group on Enforced or Involuntary Disappearances, UN doc A/HRC/33/51, 28 July 2016, §§46-80.

²³¹ Working Group on Enforced or Involuntary Disappearances, General comment on children and enforced disappearances adopted by the Working Group on Enforced or Involuntary Disappearances at its ninety-eighth session (31 October – 9 November 2012), UN doc A/HRC/WGEID/98/1, 14 February 2013, §§3, 8.

²³² Working Group on Enforced or Involuntary Disappearances, Report of the Working Group on Enforced or Involuntary Disappearances on standards and public policies for an effective investigation of enforced disappearances, UN doc A/HRC/45/13/Add.3, 7 August 2020, §§87-89; Working Group on Enforced or Involuntary

Disappearances, Report of the Working Group on Enforced or Involuntary Disappearances, Addendum - Study on enforced or involuntary disappearances and economic, social and cultural rights, UN doc A/HRC/30/38/Add.5, 9 July 2015, §15; Working Group on Enforced or Involuntary Disappearances, Report of the Working Group on Enforced or Involuntary Disappearances, Section on Children and enforced disappearances, UN doc A/HRC/22/45, 28 January 2013, §94.

²³³ Working Group on Enforced or Involuntary Disappearances, Report of the Working Group on Enforced or Involuntary Disappearances on its mission to Turkey, UN doc A/HRC/33/51/Add.1, 27 July 2016, §§14, 55-56, 67.

²³⁴ Working Group on Enforced or Involuntary Disappearances, Report of the Working Group on Enforced or Involuntary Disappearances, Addendum - Mission to Mexico, UN doc A/HRC/19/58/Add.2, 20 December 2011, §§18, 66, 69-70, 110.

²³⁵ Working Group on Enforced or Involuntary Disappearances, Follow-up to the recommendations made by the Working Group on Enforced or Involuntary Disappearances in its report on its visit to Turkey from 14 to 18 March 2016 (A/HRC/33/51/Add.1), UN doc A/HRC/45/13/Add.4, 28 August 2020, p 15; Working Group on Enforced or Involuntary Disappearances, Follow-up report to the recommendations made by the Working Group – Missions to Mexico and Timor Leste, UN doc A/HRC/30/38/Add.4, 11 September 2015, §31.

²³⁶ A/HRC/33/51/Add.1, supra fn 233, §§55-56; Working Group on Enforced or Involuntary Disappearances, Report of the Working Group on Enforced or Involuntary Disappearances on its mission to Kyrgyzstan, UN doc A/HRC/45/13/Add.2, 24 August 2020, §§38-39.

disappearance of migrants in numerous communications, thematic reports and reports on country visits. With regard to communications, the situations concerned the enforced disappearance of migrants, or the risk thereof, during migration journeys²³⁷ and in the context of alleged extraterritorial enforced disappearances and/or disappearances of

political opposition members in foreign countries,²³⁸ arrests by foreign State actors,²³⁹ acts by private sector actors in countries of destination,²⁴⁰ (forcible) returns to countries of origin,²⁴¹ the work of human rights defenders for migrants' rights²⁴² and in the context of trafficking in women and girls.²⁴³ Further, thematic reports underline, among others, the

²³⁷ Special Rapporteur on the Human Rights of Migrants, Comm no TTO 1/2020, supra fn 3; Special Rapporteur on the Human Rights of Migrants, Comm no NLD 2/2020 (Netherlands), supra fn 3; Special Rapporteur on the Human Rights of Migrants, Comm no OTH 66/2018 (Other actors), 30 October 2018, <https://spcommreports.ohchr.org/Tmsearch/TMDocuments> (last accessed 26 March 2021); Special Rapporteur on the Human Rights of Migrants, Comm no OTH 67/2018 (Other actors), 30 October 2018, <https://spcommreports.ohchr.org/Tmsearch/TMDocuments> (last accessed 26 March 2021); Special Rapporteur on the Human Rights of Migrants, Comm no GHA 1/2018 (Ghana), 30 October 2018, <https://spcommreports.ohchr.org/Tmsearch/TMDocuments> (last accessed 26 March 2021); Special Rapporteur on the Human Rights of Migrants, Comm no GMB 1/2018 (Gambia), 30 October 2018, <https://spcommreports.ohchr.org/Tmsearch/TMDocuments> (last accessed 26 March 2021); Special Rapporteur on the Human Rights of Migrants, Report of the Special Rapporteur, Ms. Gabriela Rodríguez Pizarro, submitted pursuant to Commission on Human Rights resolution 2001/52, Addendum - Communications sent to Governments and replies received, UN doc E/CN.4/2002/94, 15 February 2002, §76.

²³⁸ Special Rapporteur on the Human Rights of Migrants, Comm no THA 8/2020 (Thailand), 11 December 2020, <https://spcommreports.ohchr.org/Tmsearch/TMDocuments> (last accessed 26 March 2021); Special Rapporteur on the Human Rights of Migrants, Comm no LAO 4/2020 (Lao People's Democratic Republic), 11 December 2020, <https://spcommreports.ohchr.org/Tmsearch/TMDocuments> (last accessed 26 March 2021); Special Rapporteur on the Human Rights of Migrants, Comm no KHM 7/2020 (Cambodia), 11 December 2020, <https://spcommreports.ohchr.org/Tmsearch/TMDocuments> (last accessed 26 March 2021).

²³⁹ Special Rapporteur on the Human Rights of Migrants, Comm no VNM 4/2020 (Viet Nam), 11 December 2020, <https://spcommreports.ohchr.org/Tmsearch/TMDocuments> (last accessed 26 March 2021); Special Rapporteur on the Human Rights of Migrants, Report submitted by the Special Rapporteur on the human rights of migrants, Addendum – Communications sent to Governments and Replies

received, UN doc A/HRC/11/7/Add.1, 20 May 2009, §§355-362.

²⁴⁰ Special Rapporteur on the Human Rights of Migrants, Report of the Special Rapporteur, Ms. Gabriela Rodríguez Pizarro, submitted pursuant to Commission on Human Rights resolution 2002/62, Addendum - Communications sent to Governments and replies received, UN doc E/CN.4/2003/85/Add.1, 30 January 2003, §§90-91; Special Rapporteur on the Human Rights of Migrants, Report of the Special Rapporteur, Ms. Gabriela Rodríguez Pizarro, submitted pursuant to Commission on Human Rights resolution 2003/46, UN doc E/CN.4/2004/76, 12 January 2004, §25.

²⁴¹ Special Rapporteur on the Human Rights of Migrants, Comm no ALB 2/2020 (Albania), 30 December 2020, <https://spcommreports.ohchr.org/Tmsearch/TMDocuments> (last accessed 26 March 2021); Special Rapporteur on the Human Rights of Migrants, Comm no UZB 1/2020 (Uzbekistan), 11 November 2020, <https://spcommreports.ohchr.org/Tmsearch/TMDocuments> (last accessed 26 March 2021); Special Rapporteur on the Human Rights of Migrants, Comm no UKR 3/2020 (Ukraine), 11 November 2020, <https://spcommreports.ohchr.org/Tmsearch/TMDocuments> (last accessed 26 March 2021); Special Rapporteur on the Human Rights of Migrants, Comm no ALB 1/2020 (Albania), 20 March 2020, <https://spcommreports.ohchr.org/Tmsearch/TMDocuments> (last accessed 26 March 2021); Special Rapporteur on the Human Rights of Migrants, Comm no VNM 1/2019 (Viet Nam), 18 April 2019, <https://spcommreports.ohchr.org/Tmsearch/TMDocuments> (last accessed 26 March 2021); Special Rapporteur on the Human Rights of Migrants, Comm no KSV 1/2018 (Kosovo), 18 May 2018, <https://spcommreports.ohchr.org/Tmsearch/TMDocuments> (last accessed 26 March 2021).

²⁴² Special Rapporteur on the Human Rights of Migrants, Comm no QAT 2/2014 (Qatar), 2 October 2014, <https://spcommreports.ohchr.org/Tmsearch/TMDocuments> (last accessed 26 March 2021).

²⁴³ Special Rapporteur on the Human Rights of Migrants, Report submitted by Ms. Gabriela Rodríguez Pizarro, Special Rapporteur on the human rights of migrants, Specific Groups and Individuals – Migrant workers,

difficulties in tracing the whereabouts of migrants going missing, when using illegal migration channels,²⁴⁴ and the challenges faced by relatives of disappeared migrants with regard to access to justice, reparation and truth.²⁴⁵ Additionally, the Special Rapporteur on the Human Rights of Migrants drew attention to the disappearance of migrants in reports on country missions, including to Tunisia,²⁴⁶ Mexico,²⁴⁷ Morocco²⁴⁸ and Ecuador.²⁴⁹ Lastly, reference is made systematically to circumstances and factors, which, according to the 2017 report of the WGEID, increase the risk of enforced disappearances in the context of migration, such as immigration detention, denial of the right to consular protection, forcible returns, collective expulsions, smuggling and trafficking, impunity for crimes committed against migrants and gender-based and sexual violence.²⁵⁰

Also, other special procedures mandate holders with thematic mandates have addressed the topic. For instance, the UN Special

Rapporteur on Extrajudicial, Summary or Arbitrary Executions has formulated recommendations on the enforced disappearance of migrants in her report on Unlawful death of refugees and migrants (2017).²⁵¹ Among others, States are called to ‘carry out all investigative efforts into the death or disappearance of refugees and migrants with the cooperation of all States involved, and [to] prioritize investigations into “aggravated smuggling”’.²⁵² States should equally ‘ensure that all refugees and migrants and their families have effective access to justice [and are] encouraged, to report arbitrary killings and disappearances, file charges and access witness protection, if needed’.²⁵³ Further, States ‘should monitor and record, at borders, points of arrival or disembarkation, all allegations of suspicious death or disappearances for investigation and trend analysis’.²⁵⁴

Finally, special procedures mandate holders with country-specific mandates, such as the UN

Addendum - Communications sent to Governments and replies received, UN doc E/CN.4/2005/85/Add.1, 4 February 2005, §335.

²⁴⁴ E/CN.4/2002/94, supra fn 237, §33.

²⁴⁵ Special Rapporteur on the Human Rights of Migrants, Human rights of migrants - Access to justice for migrant persons, UN doc A/73/178/Rev.1, 25 September 2018, §51.

²⁴⁶ Special Rapporteur on the Human Rights of Migrants, Report of the Special Rapporteur on the human rights of migrants, François Crépeau – Mission to Tunisia, UN doc A/HRC/23/46/Add.1, 3 May 2013, §§14, 91(e).

²⁴⁷ Special Rapporteur on the Human Rights of Migrants, Report of the Special Rapporteur on the human rights of migrants, Jorge Bustamante – Mission to Mexico (9-15 March 2008), UN doc A/HRC/11/7/Add.2, 24 March 2009, §68.

²⁴⁸ Special Rapporteur on the Human Rights of Migrants, Report submitted by Ms. Gabriela Rodríguez Pizarro, Special Rapporteur on the human rights of migrants - Visit to Morocco, UN doc E/CN.4/2004/76/Add.3, 15 January 2004, §25.

²⁴⁹ Special Rapporteur on the Human Rights of Migrants, Report prepared by Ms. Gabriela Rodríguez Pizarro, Special Rapporteur, in pursuance of resolution 2001/52 - Mission to Ecuador, UN doc E/CN.4/2002/94/Add.1, 18 February 2002, p 4.

²⁵⁰ See, e.g., Special Rapporteur on the Human Rights of Migrants, Human rights of migrants - Return and reintegration of migrants, UN doc A/HRC/38/41, 4 May 2018, §§9, 27, 30; Special Rapporteur on the Human Rights of Migrants, Human rights of migrants – The protection of children in the context of migration, UN doc A/64/213, 3 August 2009, §7; A/HRC/11/7/Add.1, supra fn 239, p 13; Special Rapporteur on the Human Rights of Migrants, Report on the human rights of migrants submitted by the Special Rapporteur of the Commission on Human Rights, UN doc A/59/377, 22 September 2004, §15; E/CN.4/2002/94, supra fn 237, §§31-32; Special Rapporteur on the Human Rights of Migrants, Report of the Special Rapporteur on the human rights of migrants - Visit to Bosnia and Herzegovina, UN doc A/HRC/44/42/Add.2, 12 May 2020, §47; Special Rapporteur on the Human Rights of Migrants, Report of the Special Rapporteur on the human rights of migrants on his mission to Greece, UN doc A/HRC/35/25/Add.2, 24 April 2017, §§47, 81-82; A/HRC/11/7/Add.2, supra fn 247, §§65-68.

²⁵¹ Special Rapporteur of the Human Rights Council on Extrajudicial, Summary or Arbitrary Executions, Unlawful death of refugees and migrants, UN doc A/72/335, 15 August 2017.

²⁵² *Ibid*, §98.

²⁵³ *Ibid*, §102.

²⁵⁴ *Ibid*, §106.

Special Rapporteur on the Situation of Human Rights in Eritrea, have referred to human rights violations that increase the risk of enforced disappearances of migrants, according to the 2017 report of the WGEID; for example, smuggling and trafficking in migrants.²⁵⁵

B. UNIVERSAL PERIODIC REVIEW

Recommendations on preventing and addressing enforced disappearances in the context of migration are included in a number of Universal Periodic Review (UPR) reports. They call on States to protect migrants, including migrant children, from enforced disappearance, to search for victims, to investigate any cases, to punish those responsible and to create databases on disappeared and missing migrants.²⁵⁶ Further, they address a number of other circumstances, identified by the WGEID in its 2017 report as increasing the risk of enforced disappearances in the context of migration. These include, for instance, refoulement and interception at land borders and at sea,²⁵⁷ immigration detention,²⁵⁸ smuggling and trafficking in migrants²⁵⁹ and

²⁵⁵ Special Rapporteur on the Situation of Human Rights in Eritrea, Human rights situation in Eritrea, UN doc A/HRC/44/23, 11 May 2020, §§69-77.

²⁵⁶ Human Rights Council, Report of the Working Group on the Universal Periodic Review – Libya, UN doc A/HRC/46/17, 5 January 2021, §§148.166, 148.261, 148.283; Human Rights Council, Report of the Working Group on the Universal Periodic Review – Ethiopia, UN doc A/HRC/42/14, 5 July 2019, §163.315; Human Rights Council, Report of the Working Group on the Universal Periodic Review – Netherlands, UN doc A/HRC/36/15, 18 July 2017, §§131.157, 131.159; Human Rights Council, Report of the Working Group on the Universal Periodic Review – Denmark, UN doc A/HRC/32/10, 13 April 2016, §120.170; Human Rights Council, Report of the Working Group on the Universal Periodic Review – Rwanda, UN doc A/HRC/31/8, 18 December 2015, §134.38; Human Rights Council, Report of the Working Group on the Universal Periodic Review – Mexico, UN doc A/HRC/25/7, 11 December 2013, §148.58.

²⁵⁷ Human Rights Council, Report of the Working Group on the Universal Periodic Review – Malta, UN doc A/HRC/40/17, 18 December 2018, §111.38; A/HRC/46/17, supra fn 256, §148.277.

discrimination and racism.²⁶⁰ Many UPR reports also include recommendations to ratify the CED Convention, the CMW Convention and other international human rights treaties.²⁶¹

C. INDEPENDENT INVESTIGATIONS OF THE HUMAN RIGHTS COUNCIL, OTHER SUBSIDIARY BODIES AND OHCHR REPORTS

International Commissions of Inquiry and Fact-Finding missions frequently mention human rights violations that have been identified by the WGEID in its 2017 report as factors increasing the risk of enforced disappearance of migrants. For example, the Group of Eminent International and Regional Experts on Yemen described the dire situation of migrants in Yemen in its report of September 2020; a situation which is characterized by the ongoing conflict in Yemen, racial discrimination, arbitrary arrest, as well as abuse and ill-treatment, including sexual violence, perpetrated by various actors.²⁶² The

²⁵⁸ Human Rights Council, Report of the Working Group on the Universal Periodic Review - United Kingdom of Great Britain and Northern Ireland, UN doc A/HRC/36/9, 14 July 2017, §134.224; A/HRC/46/17, supra fn 256, §§148.255, 148.257, 148.281.

²⁵⁹ A/HRC/31/8, supra fn 256, §134.38; Human Rights Council, Report of the Working Group on the Universal Periodic Review – Malaysia, UN doc A/HRC/11/30, 5 October 2009, §21(a); A/HRC/46/17, supra fn 256, §§148.197, 148.200, 148.201, 148.202, 148.278, 148.285.

²⁶⁰ A/HRC/46/17, supra fn 256, §§148.266, 148.282.

²⁶¹ See, e.g., Human Rights Council, Report of the Working Group on the Universal Periodic Review – Mexico, UN doc A/HRC/40/8, 27 December 2018, §122.23; Human Rights Council, Report of the Working Group on the Universal Periodic Review – Libya, UN doc A/HRC/30/16, 22 July 2015, §137.17.

²⁶² Human Rights Council, Report of the Group of Eminent International and Regional Experts on Yemen: Situation of human rights in Yemen, including violations and abuses since September 2014, UN doc A/HRC/45/6, 28 September 2020, §§69, 80, 83-84.

Investigation by the Office of the United Nations High Commissioner for Human Rights on Libya noted in its 2016 report that migrants in Libya are ‘subject to exploitation and abuse by authorities, armed groups and smugglers’, such as abuse and violence, including sexual violence, racial discrimination, trafficking and detention without access to judicial review.²⁶³ Similarly, trafficking and sexual exploitation of refugees was reported by the Independent International Commission of Inquiry on the Syrian Arab Republic in its report of 2013.²⁶⁴

Apart from that, reports of the Advisory Committee and of the Office of the High Commissioner for Human Rights (OHCHR) have highlighted enforced disappearances in the context of migration. A report by the Advisory Committee on the Global issue of unaccompanied migrant children and human rights (2017) noted that ‘in some European countries, large numbers of children go missing from reception centres or disappear from the care of child protection facilities or immigration authorities’.²⁶⁵

While not addressing the enforced disappearance of migrants directly, two reports on migration submitted by OHCHR upon request by the Human Rights Council have discussed human rights violations in circumstances, identified by the WGEID as increasing the risk of enforced disappearances of migrants. In the two reports, one on the Situation

of migrants in transit (2016)²⁶⁶ and one on Challenges and best practices in the implementation of the international framework for the protection of the rights of the child in the context of migration (2010),²⁶⁷ OHCHR addressed collective expulsions, immigration detention, and abuse and exploitation, including trafficking.

5. OTHER REFERENCES TO ENFORCED DISAPPEARANCES IN THE CONTEXT OF MIGRATION

International human rights mechanisms frequently refer to the 2030 Agenda for Sustainable Development and its Sustainable Development Goals (SDGs), which are ‘unequivocally anchored in human rights’.²⁶⁸ Target 10.7 on the orderly, safe, regular and responsible migration and mobility of people includes indicator 10.7.3, which refers directly to ‘people who died or disappeared in the process of migration towards an international destination’.²⁶⁹ Equally, the Global Compact for Safe, Orderly and Regular Migration (2018) is

²⁶³ Human Rights Council, Report of the Office of the United Nations High Commissioner for Human Rights: Investigation by the Office of the United Nations High Commissioner for Human Rights on Libya, UN doc A/HRC/31/47, 15 February 2016, §§51-54, 61, 83.

²⁶⁴ Human Rights Council, Report of the independent international commission of inquiry on the Syrian Arab Republic, UN doc A/HRC/24/46, 16 August 2013, §36.

²⁶⁵ Human Rights Council, Final report of the Human Rights Council Advisory Committee: Global issue of unaccompanied migrant children and human rights, UN doc A/HRC/36/51, 24 July 2017, §32.

²⁶⁶ Human Rights Council, Report of the Office of the United Nations High Commissioner for Human Rights: Situation of migrants in transit, UN doc A/HRC/31/35, 27 January 2016.

²⁶⁷ Human Rights Council, Study of the Office of the United Nations High Commissioner for Human Rights on challenges and best practices in the implementation of the international framework for the protection of the rights of the child in the context of migration, UN doc A/HRC/15/29, 5 July 2010.

²⁶⁸ Office of the High Commissioner for Human Rights, Transforming Our World: Human Rights in the 2030 Agenda for Sustainable Development, <https://www.ohchr.org/Documents/Issues/MDGs/Post2015/HRAndPost2015.pdf>, last accessed 12 March 2021.

²⁶⁹ Global indicator framework for the Sustainable Development Goals and targets of the 2030 Agenda for Sustainable Development, UN doc A/RES/71/313, E/CN.3/2018/2, E/CN.3/2019/2, E/CN.3/2020/2, Indicator 10.7.3.

‘based on international human rights law’.²⁷⁰ Its objective 8 commits Member States to a number of collaborative actions to ‘save lives and establish coordinated international efforts on missing migrants’. These cover the areas of search and rescue operations, policies and laws to protect the right to life of migrants and prevent them from going missing, contact between migrants and their families, data collection and the repatriation of remains of deceased migrants.

6. CASE STUDY - MEXICO

In August 2010, the bodies of 72 migrants from Central America and South America were discovered in Tamaulipas, Mexico, followed by the kidnapping of 40 migrant workers in the State of Oaxaca in December 2010.²⁷¹ These and other cases of enforced disappearance of migrants in Mexico were subsequently addressed by a number of international human rights mechanisms.

Significantly, the CED Committee followed up on requests for urgent action under Article 30 of the CED Convention concerning alleged cases of disappeared migrants in Mexico.²⁷² Equally important, the WGEID undertook a mission to

Mexico in December 2011,²⁷³ and continued to engage on the issue through its follow-up procedure²⁷⁴ and by monitoring the legislative and institutional framework in Mexico with relevance to the enforced disappearance of migrants.²⁷⁵ Following a mission in 2008, the UN Special Rapporteur on the Human Rights of Migrants had already highlighted the human rights violations committed against migrants, including smuggling and trafficking, as well as kidnapping.²⁷⁶ The mission report had also underlined the ‘impunity for human rights abuses against migrants ... with the pervasiveness of corruption at all levels of government and the close relationship that many authorities have with gang networks’.²⁷⁷ In a later report on access to justice for migrant persons, the Special Rapporteur assessed the situation in Mexico with regard to the rights of relatives of missing migrants.²⁷⁸

As part of regular State party reviews, the Human Rights Committee (2010,²⁷⁹ 2019),²⁸⁰ the CMW Committee (2011,²⁸¹ 2017),²⁸² the CRC Committee (2011,²⁸³ 2015),²⁸⁴ the CAT Committee (2012,²⁸⁵ 2019),²⁸⁶ the CEDAW Committee (2012,²⁸⁷ 2018),²⁸⁸ the CERD Committee (2012,²⁸⁹ 2019),²⁹⁰ the Committee on the Rights of Persons with Disabilities (CRPD) Committee (2014),²⁹¹ the CED Committee

²⁷⁰ Global Compact for Safe, Orderly and Regular Migration, annexed to United Nations General Assembly, Resolution adopted by the General Assembly on 19 December 2018, UN doc A/RES/73/195, 11 January 2019, §15(f).

²⁷¹ CMW/C/MEX/CO/2, supra fn 14, §29; A. Desmond (ed), supra fn 2, p 233.

²⁷² CED/C/15/3, supra fn 22, §12; CED/C/19/2, supra fn 14, §14; A/73/56, supra fn 22, §41(f).

²⁷³ A/HRC/19/58/Add.2, supra fn 234, §§18, 66, 69-70, 110.

²⁷⁴ A/HRC/30/38/Add.4, supra fn 235, §31.

²⁷⁵ A/HRC/45/13/Add.3, supra fn 232, §124; A/HRC/45/13, supra fn 221, §72.

²⁷⁶ A/HRC/11/7/Add.2, supra fn 247, §§65, 68-70.

²⁷⁷ A/HRC/11/7/Add.2, supra fn 247, §65.

²⁷⁸ A/73/178/Rev.1, supra fn 245, §51.

²⁷⁹ CCPR/C/MEX/CO/5, supra fn 72, §§9, 12.

²⁸⁰ CCPR/C/MEX/CO/6, supra fn 74, §32.

²⁸¹ CMW/C/MEX/CO/2, supra fn 14, §29.

²⁸² CMW/C/MEX/CO/3, supra fn 47, §§10, 33, 34.

²⁸³ CRC/C/OPSC/MEX/CO/1, supra fn 193, §§23(c), 24(c).

²⁸⁴ CRC/C/MEX/CO/4-5, supra fn 193, §§59(b), 60(b).

²⁸⁵ CAT/C/MEX/CO/5-6, supra fn 3, §21.

²⁸⁶ CAT/C/MEX/CO/7, supra fn 127, §§28-29, 48-51.

²⁸⁷ CEDAW/C/MEX/CO/7-8, supra fn 182, §§11-14, 18-19.

²⁸⁸ CEDAW/C/MEX/CO/9, supra fn 14, §§47, 48(e).

²⁸⁹ CERD/C/MEX/CO/16-17, supra fn 143, §20.

²⁹⁰ CERD/C/MEX/CO/18-21, supra fn 155, §§34, 35(e), (g).

²⁹¹ Committee on the Rights of Persons with Disabilities, Concluding observations – Mexico, UN doc CRPD/C/MEX/CO/1, 27 October 2014, §§39, 40(a).

(2015)²⁹² and the CESC Committee (2018)²⁹³ held constructive dialogues with the Government of Mexico. They often directly focussed on the enforced disappearance of migrants,²⁹⁴ but also addressed factors and circumstances increasing the risk of the disappearance of migrants, as identified by the WGEID in its 2017 report (such as immigration detention, trafficking and discrimination)²⁹⁵ or discussed the legal and institutional framework in Mexico on enforced disappearances generally.²⁹⁶ Within their respective mandates, international human rights treaty bodies then formulated context-specific recommendations on the enforced disappearance of migrants. For instance, recommendations by the CED and CMW Committees, in line with the WGEID, all addressed the implementation of the Mexican External Support Mechanism for Search and Investigation.²⁹⁷ They recommended that the mechanism should guarantee transnational search and identification processes and databases²⁹⁸ and allow relatives of disappeared migrants to ‘have easy access to state and federal institutions, [to be] kept informed of investigations and [to be] able to participate in the process, including by setting up permanent units in the State party’s embassies and

consulates [in the various countries of Central America]’.²⁹⁹ Further, the mechanism’s functioning should be ensured through independence and specialization,³⁰⁰ as well as ‘sufficient qualified personnel and material resources’, including ‘the specific and permanent assignment of specialized personnel to the State party’s diplomatic missions in the relevant countries’ and ‘the participation and coordination ... of all the institutions necessary’.³⁰¹ Interestingly, the CMW Committee also used its concluding observations for Honduras to recommend a state of origin of missing migrants to cooperate with the Mexican External Support Mechanism for Search and Investigation.³⁰² Additionally, the international human rights treaty bodies also highlight State party obligations with regard to the protection of specific groups of rights holders in their concluding observations to Mexico, such as the importance of eliminating racial discrimination and profiling from migration management and operations and the protection needs of migrant women and children.

Both, the follow-up procedures to concluding observations of the CED, CMW and CESC Committees,³⁰³ as well as recommendations on the issue in different State party reviews allowed

²⁹² CED/C/MEX/CO/1, supra fn 14, §§23-24, 34-35.

²⁹³ E/C.12/MEX/CO/5-6, supra fn 104, §§18-19, 43-44.

²⁹⁴ CCPR/C/MEX/CO/6, supra fn 74, §§32, 33(a); CEDAW/C/MEX/CO/9, supra fn 14, §§47, 48(e); CMW/C/MEX/CO/3, supra fn 47, §§10(c), 33, 34; CRC/C/MEX/CO/4-5, supra fn 193, §§59(b), 60(b), (g); CED/C/MEX/CO/1, supra fn 14, §§23-24; CERD/C/MEX/CO/16-17, supra fn 143, §20; CAT/C/MEX/CO/5-6, supra fn 3, §21(a); CRC/C/OPSC/MEX/CO/1, supra fn 193, §§23(c), 24(c); CMW/C/MEX/CO/2, supra fn 14, §§29-30.

²⁹⁵ CCPR/C/MEX/CO/6, supra fn 74, §§32, 33(b)-(f); CERD/C/MEX/CO/18-21, supra fn 155, §§34-35; CAT/C/MEX/CO/7, supra fn 127, §§48-49; E/C.12/MEX/CO/5-6, supra fn 104, §§18-19; CEDAW/C/MEX/CO/9, supra fn 14, §§47-48; CRC/C/MEX/CO/4-5, supra fn 193, §§59-60; CED/C/MEX/CO/1, supra fn 14, §§34-35; CRPD/C/MEX/CO/1, supra fn 291, §§39, 40(a); CAT/C/MEX/CO/5-6, supra fn 3, §21(b); CEDAW/C/MEX/CO/7-8, supra fn 182, §§20-21; CRC/C/OPSC/MEX/CO/1, supra fn 193, §§23(b), 24(b).

²⁹⁶ CCPR/C/MEX/CO/6, supra fn 74, §29; CAT/C/MEX/CO/7, supra fn 127, §§28-29; E/C.12/MEX/CO/5-6, supra fn 104, §§43-44; CEDAW/C/MEX/CO/9, supra fn 14, §§23-24; CAT/C/MEX/CO/5-6, supra fn 3, §§12-14; CEDAW/C/MEX/CO/7-8, supra fn 182, §§11-14, 18-19; CCPR/C/MEX/CO/5, supra fn 72, §§9, 12.

²⁹⁷ CMW/C/MEX/CO/3, supra fn 48, §24. Equally, the Special Rapporteur on the Human Rights of Migrants highlights the need for cooperation mechanisms between Mexico and the countries of origin of disappeared migrants. A/73/178/Rev.1, supra fn 245, §51.

²⁹⁸ CED/C/MEX/CO/1, supra fn 14, §24(a)-(b).

²⁹⁹ CMW/C/MEX/CO/3, supra fn 47, §34(d); see also, CED/C/MEX/CO/1, supra fn 14, §24(c).

³⁰⁰ A/HRC/30/38/Add.4, supra fn 235, §31, p 171.

³⁰¹ CED/C/MEX/FAI/1, supra fn 36, §23(d)-(e).

³⁰² CMW/C/HND/CO/1, supra fn 14, §§32, 33(a).

³⁰³ CMW/C/MEX/CO/3, supra fn 48; CED/C/MEX/FAI/1, supra fn 36, §§22-23; Committee on Economic, Social and

for a continued dialogue by international human rights treaty bodies with Mexico on aspects of particular importance for each treaty body. Concerning follow-up to their respective recommendations, the CED and CESCR Committees noted positively a number of measures taken by the Government of Mexico, related to ‘the Criminal Investigation Unit for Migrants, the creation of a legal mandate for the Mechanism for Mexican Support Abroad in Search and Investigation Activities, good practices regarding the Forensic Commission and some reparation measures undertaken in certain cases involving missing migrants’,³⁰⁴ as well as with regard to the General Act on Enforced Disappearance and search and investigation mechanisms.³⁰⁵ However, the CED Committee also expressed concern about ‘the insufficiency of the actions taken to prevent [the] disappearances [of migrants], to search for missing migrants and to ensure that victims and their families have access to truth, justice and reparation’.³⁰⁶ The CESCR Committee requested additional information in order to assess the implementation of the General Act on Forced Disappearance and of support and protection programmes for family members of disappeared persons.³⁰⁷ The follow-up procedure of the CMW Committee is ongoing, with the Government of Mexico having shared a follow-up report with the Committee.³⁰⁸

Even though an inquiry by the CEDAW Committee in 2003³⁰⁹ did not directly address the enforced disappearance of migrants, it offered detailed recommendations on preventing and combatting enforced disappearances in Mexico generally. Finally, the Universal Periodic Review of Mexico in 2013 allowed monitoring of the issue in an inter-governmental forum.³¹⁰

Cultural Rights, Follow-up letter sent to the State party – Mexico, supra fn 107, p 2, §44.

³⁰⁴ CED/C/MEX/FAI/1, supra fn 36, §22.

³⁰⁵ Committee on Economic, Social and Cultural Rights, Follow-up letter sent to the State party – Mexico, supra fn 107, p 2, §44.

³⁰⁶ CED/C/MEX/FAI/1, supra fn 36, §§22-23.

While a detailed analysis of the interaction of the international human rights mechanisms, of the current situation and of the follow-up by Mexico to the different recommendations is beyond the scope of this Working Paper, the example of Mexico demonstrates how international human rights mechanisms integrate the monitoring of enforced disappearances in the context of migration into their respective mandates.

7. CONCLUSION

International human rights mechanisms regularly use their mandated activities to address enforced disappearances in the context of international migration. The international human rights treaty bodies formulate related obligations of States parties in their General Comments/ Recommendations, concluding observations, inquiry reports, views on individual communications, guidelines and statements, including under the early warning and urgent action procedure of the CERD Committee. Importantly, the CED Committee responds to requests for urgent action on alleged cases of enforced disappearances of migrants under Article 30 of the Convention. Many international human rights treaty bodies have also made use of their follow-up mechanisms to concluding observations and to individual communications. The CED Committee has an additional follow-up mechanism under its urgent action procedure, addressing concrete cases of enforced disappearances of migrants. A number of individual communications concerning enforced disappearances in the

³⁰⁷ Committee on Economic, Social and Cultural Rights, Follow-up letter sent to the State party – Mexico, supra fn 107, p 2, §44.

³⁰⁸ CMW/C/MEX/FCO/3, supra fn 48, §§11-33.

³⁰⁹ CEDAW/C/2005/OP.8/MEXICO, supra fn 168.

³¹⁰ A/HRC/25/7, supra fn 256, §148.58.

context of migration were also received by the treaty bodies.

The UN Charter-based human rights bodies have equally used various mechanisms to support States in preventing and combatting enforced disappearances in the context of migration. They have addressed the issue in various reports, guidelines and other substantive documents in the context of the work of the Human Rights Council, its Advisory Committee, the Universal Periodic Review and the Special Procedures, as well as in thematic and country-specific reports after missions and country visits. Importantly, the WGEID and the UN Special Rapporteur on the Human Rights of Migrants regularly follow up on alleged cases of enforced disappearances of migrants reported to them.

From a substantive point of view, international human rights mechanisms offer a complementary set of recommendations and guidelines to States, based on their respective mandates. The recommendations address both obligations in cases of enforced disappearance by agents of the State or by persons or groups of persons acting with the authorization, support or acquiescence of the State, as well as obligations to investigate disappearances perpetrated by non-State actors. The recommendations cover areas, such as search and rescue mechanisms, investigation, prosecution and punishment, cooperation on the national and international level, as well as preventive measures, such as the management of databases.

Importantly, international human rights mechanisms have formulated recommendations with regard to specific groups of rights holders, such as disappeared women and girls, disappeared children and children of disappeared parents. They have also recommended measures to include the victim's relatives in the search and investigation and to ensure their right to justice and truth. Equally significant, the CED Committee, the WGEID and other international human rights mechanisms confirm that enforced disappearance constitutes a form of prosecution that falls within the

principle of non-refoulement and they monitor the practice of States in this regard.

Beyond direct references to enforced disappearances in the context of migration, international human rights mechanisms have developed comprehensive and differentiated recommendations and guidelines on human rights violations that may increase the risk of enforced disappearance in the context of migration, as pointed out in the 2017 report of the WGEID. These include, for example, recommendations concerning arbitrary detention of migrants, deportations and expulsion procedures, trafficking and/or smuggling of migrants, discrimination, racial profiling and the lack of centralized databases and statistical data on missing migrants.

Overall, international human rights mechanisms play an important role in providing comprehensive guidance to States on their obligations related to enforced disappearances in the context of international migration and in highlighting country-specific contexts and importantly, in following up on alleged cases.

8. RECOMMENDATIONS

- International human rights mechanisms should continue to use the broad array of their mandated activities to address enforced disappearances in the context of migration, such as the disappearance of migrants by State and non-State actors and migration as a consequence of enforced disappearance, including in relation to the principle of non-refoulement.
- To address alleged cases of enforced disappearance of migrants and to ensure continued improvement of the legislative and policy framework of States parties, UN Special Procedures, international human rights treaty bodies and the UPR should carry on in systematically including the monitoring of enforced disappearances in the context of migration in their thematic and country visit reports, constructive dialogues and reviews, in addition to the important role of the CED Committee, the WGEID, the UN Special Rapporteur on the Human Rights of Migrants and other treaty bodies in responding to urgent action requests, reports on alleged cases and/or individual communications.
- Those mechanisms with follow-up procedures for urgent action requests, for reports on alleged cases of enforced disappearance, for concluding observations, for individual communications and for country visits, including importantly, the CED and CMW Committees, the WGEID and the Special Rapporteur on the Human Rights of Migrants, should uphold their practice to regularly review State practice in this manner and to continuously assess the implementation of recommendations and the clarification of specific cases of enforced disappearance of migrants.
- International human rights mechanisms should equally maintain their calls for ratification of key international human rights instruments, including the CED and CMW Conventions, and for declarations to recognize the competence of the CED and CMW Committees to receive and consider communications from States parties and individuals; they should also carry on in including explicit references to the Global Compact for Safe, Orderly and Regular Migration and the SDGs as complementary mechanisms in their various documents.
- In the context of new challenges, international human rights mechanisms should continue to recall international human rights standards and provide updated and adapted guidelines to States; for instance, the CED and CMW Committees, as many other mechanisms, published guidelines and statements following the outbreak of the coronavirus disease (COVID-19) pandemic.
- Further, international human rights mechanisms should carry on in their cooperation to provide context-specific recommendations to States parties on their obligations under international human rights law, such as the regular joint statements by the CED Committee and the WGEID and the joint statement in November 2020 by a group of more than 54 representatives of the Special Procedures, as well as several international human rights treaty bodies and the UN Voluntary Trust Fund on Contemporary Forms of Slavery, expressing concern about the increase in the exploitation, including disappearance, of native and migrant workers due to the coronavirus disease (COVID-19) pandemic.
- Finally, international human rights mechanisms should uphold their efforts to seek and strengthen cooperation with regional human rights mechanisms to highlight urgent human rights situations. A good example is the joint statement of 30 May 2019 by the Inter-American Commission on Human Rights (IACHR), the CMW Committee, the UN Special Rapporteur on the Human Rights of Migrants, the UN Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions and the UN Working Group on Enforced or Involuntary Disappearances in response to the disappearance of Venezuelan migrants on their way to Trinidad and Tobago.

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