

Enforced disappearances in the context of migration: A brief review of General Comment No.1 of the Committee against Forced Disappearances

Karlos Castilla¹

The reasons that lead a person to initiate a migratory movement are manifold. Therefore, the conditions and the way in which this movement is carried out are also diverse and unequal.

Currently, there is not a single country in the world with open borders. This means that each country sets the requirements that a person must meet to enter its territory. This confirms that the “right to migrate” is not fully recognised in any legal system².

Because not everyone can meet these requirements or are denied visas, in many cases people are forced to use forms, routes, and modes of transportation that risk their integrity or lives to make a cross-border migration move. But that’s not all: thousands of migrants disappear on the way to their destination country or in the destination country itself. In many cases, we do not even know whether they have died or whether something

has happened to them. We simply do not know anything more about these people.

Faced with this situation, which has been analyzed, studied, and attempted to be documented for several years as IOM (2013, 2022), Duhaime & Thibault (2017), Castilla (2018), Martinez (2021) and Laakkonen (2022) among many others, the United Nations Committee against Forced Disappearances took a step forward by adopting, on September 18, 2023, its first General Comment dealing specifically with “*enforced disappearance in the migratory context*” (Committee on Enforced Disappearances, 2023). This occurred primarily because the Committee is deeply concerned about the increasing trends of enforced disappearances in the context of migration, and because it notes with great concern that cases of enforced disappearances are frequently reported along various migration routes.

This General Comment (which some States, civil society organisations, academia, and other United Nations agencies participated in drafting) establishes important aspects that must be considered in order to prevent, investigate, address, and punish cases of forced disappearance of migrants. Although there are aspects that could be discussed academically (as some definitions used), we would like to highlight now only some of the most important positive aspects: its purpose and main scope.

1 Research Coordinator at Institut de Drets Humans de Catalunya (IDHC).
Correspondence to: institut@idhc.org

2 Human rights treaties generally recognise the right to enter and leave one’s own country, but not the right to enter another country. Most of what is recognised in the Universal Declaration of Human Rights is that “everyone has the right to seek and to enjoy in other countries asylum from persecution.” See: (Castilla Juárez K. , 2024)

In this way, the Committee first establishes a set of terms that it will use and how it will define them. For example, “migrants” is used to refer to persons who move away from their place of usual residence, whether within a country or across an international border, temporarily or permanently, and for a variety of reasons³. The term “missing persons”, following what was established by the International Committee of the Red Cross for the purposes of its operations, is “a person about whom their family has no news and/or who, on the basis of reliable information, has been reported missing as a result of an international or non-international armed conflict, other situations of violence, disasters or any other situation that may require the intervention of a competent State authority, including in the context of migration.”⁴To clarify, the principal distinctive element between a migrant going missing and a migrant becoming a victim of disappearance is, in the case of the latter, the commission of a crime against a migrant.

Subsequently, the Committee locates the enforced disappearance in these cases using statements such as the following:

- Various practices by some States and their agents in the context of restrictive and dehumanizing border governance directly contribute to the disappearance of migrants (immigration detention, “pushbacks” and “chain pushbacks”⁵ on land or at sea, system-

atic failure of search and rescue, rigid, securitised, and increasingly militarised migration and border governance policies of States).

- Those practices indirectly contribute to the disappearance of migrants by forcing them to choose increasingly dangerous routes that traverse hostile environments or areas affected by armed conflict or other situations of violence, turn to criminal networks of smugglers or traffickers, and exposing them to human rights violations and exploitation, including becoming victims of enforced disappearance.
- The particular vulnerability of the migrants themselves, and of their relatives, who are frequently also migrants and often encounter obstacles and discrimination when searching for their disappeared loved ones, it is a constant situation that must be considered.
- The issue of discrimination is of specific concern in all regulation, governance and management of migration, due to its effects of increasing people’s vulnerability.
- This phenomenon affects all regions of the world, without exception.

On the basis of these general elements, the Committee lays down a series of obligations, mainly addressed to States parties to the Convention for the Protection of all Persons against Enforced Disappearance⁶ (CPED), of which we could highlight the following in summary form⁷:

3 Paragraph 1 of the General Comment.

4 Paragraph 4 of the General Comment.

5 The Committee does not provide a definition of these terms and recognises that there is no “internationally agreed legal definition of the term”. Some of us suggested to the Committee during the drafting process that it should: “although it is a term that has been coined in the media and in social activism to characterise a particular situation, it is necessary to give it a greater unity in

this OG that allows its configuring elements to be clearly identified in order to avoid distorting what it implies. For this reason, we propose: Return at the border without individualised identification.”

6 States bound only in principle to the interpretations of the Committee. Although this interpretation could be followed and implemented by any State wishing to protect the human rights of migrants

7 The complete and detailed document of what is

- *Prohibition of the secret detention of migrants.* They must always be able to communicate with their relatives, consular authorities, legal representatives, or any other person whom they could inform about their fate or whereabouts, from the outset of their detention and regardless of its duration. States parties should also compile and make publicly available exhaustive lists of all places of deprivation of liberty, and ensure that independent and impartial monitors, such as national human rights institutions, national preventive mechanisms, civil society organisations and international organisations, have full access to any location where migrants are deprived of liberty, whether run by the State party or privately.
- *Data collection.* States parties should create and regularly update a single, nationwide database of disappeared persons that include basic information about migrants who may be victims of a disappearance, including the following: information such as age, sex, gender identity, sexual orientation, nationality, ethnic origin and religious affiliation; the place, date, context and circumstances of the person's disappearance, including all evidence relevant to determining whether it was a case of enforced disappearance; and information about the status of relevant search and investigation procedures, and of procedures for exhumation, identification and return of remains.
- *Policies and non-criminalisation.* The Committee urges States parties to adopt evidence-based policies to foster access to regular, safe and orderly migration, in accordance with the objectives and commitments of the Global Compact for Safe, Orderly and Regular Migration. The Committee urges States parties to avoid criminalizing migration, both in law and practice, and to facilitate a supportive environment for persons or organisations providing humanitarian or legal assistance to migrants.
- *Non-refoulement and the prohibition of "pushbacks".* The Committee strongly urges States parties to refrain from such practices, including "chain pushbacks", and indirect pushbacks that result from a deliberate failure to search and rescue at sea or on land. States parties, therefore, must refrain from conducting pushbacks, must effectively investigate, prosecute and punish any allegations of such practices, and must not deny their occurrence.
- *Obligation to search and investigate.* Authorities should initiate the search and investigation ex officio as soon as they become aware of or have indications, through any means, that a person has been subjected to disappearance. States parties should take all appropriate measures to search for, identify and return the remains of migrants who are found dead along migratory routes.
- *Victims' rights.* States parties should remove or simplify the administrative procedures in place for migrant victims of enforced disappearance found alive (and the relatives of forcibly disappeared persons) to obtain access to appropriate victim support services before, during and, for an appropriate time, after proceedings. States parties must eliminate any harmful practices that limit or hamper their right to form and participate freely in organisations and associations focused on attempting to establish the circumstances of cases of enforced disappearance and the fate of disappeared persons in the context of migration, and to assist migrant victims of enforced disappearance.

now summarised here for dissemination purposes can be downloaded at the following link: [CED/C/GC/1](https://www.unhcr.org/refugees-and-migrants/2023/1/cedc-gc1)

- *Training and cooperation.* Training should be provided to law enforcement and civil or military security personnel, medical and forensic personnel, public officials, including border officials and other officials involved in border-control measures and the apprehension or deprivation of liberty of migrants, and other persons who may be involved in the custody or treatment of migrants deprived of liberty. The Committee calls on States of origin, transit, destination and return to establish transnational and regional or sub regional mechanisms for the search for disappeared migrants to further facilitate the exchange of information and to guarantee access to justice for the victims and their relatives.

Given the often cross-border character of enforced disappearance in the context of migration, the General Comment is aimed at fostering international and regional cooperation on prevention, search and investigation with regard to the disappearance of migrants in compliance with States parties' obligations under the Convention for the Protection of all Persons against Enforced Disappearance. In this sense, it seems very important not to impose all the obligations on the destination countries, but the countries of origin also have a lot to do, and the transit countries are an essential part of the whole system that is to be created. All States that are parties to the CPED, regardless of their immigration profile.

Although a large part of the commitments are addressed to States, civil society, victims' organisations, academia, and all those interested in respect for human rights also have work to do. From the dissemination of their

content, the promotion of their implementation or the monitoring of their observance, to the promotion of initiatives from our respective fields, so that these commitments are fulfilled even without the will of all States.

The publication of the General Comment, which we have briefly analyzed, is a new opportunity to re-humanise the management of migrations in all regions of the world. Let us not let it pass.

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