

General comment on enforced disappearance in the context of migration

United Nations Committee on Enforced Disappearances

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General Comment No1(2023) on enforced disappearance in the context of Migration

Committee On Enforced Disappearances of the United Nations



Adopted by the Committee at its 25th session (September 11-29, 2023).



I. Enforced disappearances in the context of migration

1. For the purposes of the present general comment, the term "migrants" is used to refer to persons who move away from their place of usual residence, whether within a country or across an international border, temporarily or permanently, and for a variety of reasons,[1] such as family reunification or moving away from international or non-international armed conflicts, persecution, discrimination, natural disasters, environmental degradation, the effects of climate change, difficult economic situations or high crime rates. Numbers of migrants worldwide remain high.[2]

2. Migrants are in situations of particular vulnerability, which may arise from their personal characteristics or socioeconomic status, the circumstances in which they travel – including their undocumented status and language barriers – or the treatment or conditions that they face in countries of origin, transit and destination, including border areas.[3] The universal human rights and fundamental freedoms of migrants must be respected, protected and fulfilled at all times.[4] Although States have a sovereign prerogative to manage their borders and regulate access to their territories, they must do so in full compliance with their obligations under international law,[5] in particular human rights law, international humanitarian law, international refugee law and the law of the sea.

3. Already in a situation of vulnerability and faced with restrictive immigration policies and dehumanizing border governance tactics,[6] thousands of migrants die, disappear or go missing each year, leading to humanitarian crises in many regions of the world.[7] The issue is a high priority at the international level. In its resolution 74/148 on the protection of migrants, the General Assembly called for international cooperation to save lives, prevent the deaths of and injuries to migrants and identify migrants who have died or gone missing. The objectives of the Global Compact for Safe, Orderly and Regular Migration, adopted in 2018, include addressing and reducing vulnerabilities in migration, saving lives and establishing coordinated efforts on missing migrants, and countering trafficking in persons in the context of international migration (objectives 7, 8 and 10).

4. Missing persons, as understood by the International Committee of the Red Cross (ICRC) for the purposes of its operations, are persons whose whereabouts are unknown to their relatives and/or who, on the basis of reliable information, have been reported missing in accordance with national legislation in connection with an international or non-international armed conflict, a situation of internal violence or disturbances, natural catastrophes or any other situation that may require the intervention of a competent State authority.[8] The International Organization for Migration (IOM), as part of its Missing Migrants Project, collects data on migrants who have died at the external borders of States or in the process of migrating towards an international destination, including as a result of transport accidents, shipwrecks or violent attacks or owing to medical complications during their journeys.[9] Some missing migrants could be victims of disappearance, including enforced disappearance. The principal

1 International Organization for Migration (IOM), "IOM definition of 'migrant'".

2 A/76/642, para. 11. See also IOM, Global Migration Data Analysis Centre, "International migrant stocks", Migration Data Portal. Available at https://www.migrationdataportal.org/themes/international-migrant-stocks.

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

4 Global Compact for Safe, Orderly and Regular Migration, para. 4.

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

6 A/HRC/50/31, para. 24. See also CED/C/GRC/CO/1, para. 28; CED/C/MEX/VR/1 (Findings), para. 20; and CED/C/MEX/VR/1 (Recommendations), paras. 39–42.

7 A/72/335, para. 1.

8 ICRC, Guiding Principles/Model Law on the Missing: Principles for Legislating the Situation of Persons Missing as a Result of Armed Conflict or International Violence – Measures to Prevent Persons from Going Missing and to Protect the Rights and Interests of the Missing and Their Families (Geneva, 2009), art. 2 (1).

9 The project data also include corpses found at border crossings that are categorized as the bodies of migrants on the basis of belongings and/or the characteristics of the death.



distinctive element between a migrant going missing and a migrant becoming a victim of disappearance is the commission of a crime against a migrant, as provided in articles 2, 3 and 5 of the Convention.

5. The Committee notes with great concern that deaths and cases of disappearance are widely reported along various migration routes.[10] The issue was first addressed by the Working Group on Enforced or Involuntary Disappearances in 2017, in its report on enforced disappearance in the context of migration,[11] and has not improved since. However, accurate data on the number of victims of disappearance among missing migrants are not available or are inaccurate,[12] owing to a lack of systematic data collection and shared databases, insufficient cooperation among States and lack of political will, barriers (linked, inter alia, to the situation of vulnerability of migrants and their relatives) to reporting cases of disappearance falling under articles 2 and 3 of the Convention, and the failure of authorities to conduct serious, effective and diligent searches and investigations. This lack of accurate and disaggregated data hinders the adoption of policies and strategies to prevent the enforced disappearance of migrants and increases the vulnerability of migrants to becoming victims of this crime.

6. Different factors contribute directly or indirectly to the disappearance of migrants (falling under articles 2 and 3 of the Convention), or the risk thereof. Various practices by some States and their agents in the context of restrictive and dehumanizing border governance directly contribute to the disappearance of migrants. These practices include immigration detention, "pushbacks" and "chain pushbacks" on land or at sea, the systematic failure of search and rescue,[13] and collusion between State agents and organized criminal groups engaged in trafficking in persons.[14]

7. Furthermore, other factors – including rigid, securitized and increasingly militarized migration and border governance policies of States, which are often grounded in deterrence, coupled with discriminatory attitudes and practices against and a general trend of criminalization of migrants and those who assist them, and widespread impunity of those who violate the rights of migrants[15] – 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 and to turn to criminal networks of smugglers or traffickers, which expose them to human rights violations and exploitation, including becoming victims of enforced disappearance. This phenomenon affects all regions of the world, without exception.

8. Among the factors that contribute to the enforced disappearance of migrants, the issue of discrimination is of specific concern:[16]

(a) Discrimination may trigger migration among those exposed to structural or direct discrimination in their country of origin or residence;

(b) Migration policies may contain discriminatory elements, such as restrictions on visas or residence permits for persons from certain countries or regions or for persons of certain nationalities;

(c) Certain groups of migrants may face discrimination during the migration process on the basis of migratory or socioeconomic status or other personal characteristics, such as religion, race, colour, ethnic or national origin, age, sex, sexual orientation or gender identity, which makes them even more vulnerable to becoming victims of enforced disappearance;[17]

10 A/76/642, para. 74. Current efforts to record data are mainly carried out by non-governmental and international organizations. According to the IOM Missing Migrants Project, more than 50,000 migrants have gone missing since 2014. See also Julia Black, Global Migration Indicators 2021: Insights from the Global Migration Data Portal (Geneva, IOM, 2021), pp. 38 and 39.

11 A/HRC/36/39/Add.2.

12 A/72/335, para. 2; and A/HRC/36/39/Add.2, para. 56.

13 Office of the United Nations High Commissioner for Human Rights (OHCHR), "'Lethal disregard': search and rescue and the protection of migrants in the central Mediterranean Sea" (Geneva, 2021); and Noemi Magugliani and Jean-Pierre Gauci, "Migrant crossings in the Channel: non-assistance, securitisation, and accountability under international law", Opinio Juris, 21 December 2021.

14 A/HRC/36/39/Add.2, paras. 34–43. See also Human Rights Commission of Malaysia and Fortify Rights, "Sold like Fish": Crimes against Humanity, Mass Graves, and Human Trafficking from Myanmar and Bangladesh to Malaysia from 2012 to 2015 (2019).

15 A/HRC/36/39/Add.2, paras. 50 and 51.

16 CED/C/BRA/CO/1, para. 23 (c); and CED/C/MEX/VR/1 (Recommendations), para. 39.

17 Border Violence Monitoring Network, "EU member States' use of new technologies in enforced disappearances: input for the thematic study by



(d) Discrimination may also affect the enjoyment by victims and their relatives of their rights concerning access to justice, including, but not limited to, participation in the investigation and search, access to legal aid, information in a language that they understand, protection and support, and presence during court proceedings.

9. The Committee emphasizes that the principle of non-discrimination is fundamental in international human rights instruments, being regarded as a jus cogens norm.[18] It must be adhered to at all times by States parties in the implementation of their obligations under the Convention relating to the prevention of and response to cases of disappearance. Indeed, as set out in article 1 of the Convention, no one shall be subjected to enforced disappearance and no exceptional circumstances may be invoked as a justification for enforced disappearance. Consequently, the obligations of States parties under the Convention apply regardless of the nationality, origin or migratory status of the victims.

10. As the contexts and modalities of enforced disappearance evolve over time, the Committee aims to ensure a prompt and proactive response to present-day realities. Considering the serious and highly worrying developments in enforced disappearance in the context of migration, and given the inherently preventive character of the Convention, the Committee decided to focus its first general comment on assisting States parties to fulfil their relevant obligations under the Convention with regard to preventing and responding to this crime. The Committee is thereby addressing one aspect of the ongoing human rights concerns and humanitarian crisis in the context of migration, building upon the existing universal and regional legal and policy instruments applicable to the multiple human rights violations that migrants face throughout their journeys,[19] through the lens of the obligations established under the Convention. The Committee is also further developing its standards in this regard, including through its Guiding Principles for the Search for Disappeared Persons (2019) and its statement on non-State actors in the context of the Convention (2023),[20] which provide a clear, authoritative and interpretative position on how to prevent and react to enforced disappearance in the context of migration.

11. In the present general comment, the Committee draws on its experience in reviewing States parties' reports, the jurisprudence of human rights treaty bodies, the recommendations of the Human Rights Council and its special procedures, two rounds of consultations with States, experts and other stakeholders on the concept note and a preliminary draft, and regional consultations held in Latin America and the Caribbean, Asia and the Pacific, Europe, and Africa, including the Middle East and North Africa.

the UN Working Group in Enforced or Involuntary Disappearances on 'new technologies and enforced disappearances'" (2023), para. 9.

18 Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families, general comment No. 5 (2021) on migrants' rights to liberty and freedom from arbitrary detention and their connection with other human rights, para. 32.

19 The Global Compact for Safe, Orderly and Regular Migration contains several objectives that are of direct relevance to States parties' obligations to prevent and respond to the disappearance of migrants and are directly related to the risk of disappearance during the process of migration. The following should be used as guidance for the development of prevention policies and strategies: objective 5 (Enhance availability and flexibility of pathways for regular migration), objective 7 (Address and reduce vulnerabilities in migration), objective 8 (Save lives and establish coordinated international efforts on missing migrants), objective 9 (Strengthen the transnational response to smuggling of migrants), objective 10 (Prevent, combat and eradicate trafficking in persons in the context of international migration) and objective 13 (Use immigration detention only as a measure of last resort and work towards alternatives). See also the joint statement on illegal intercountry adoption (CED/C/9); African Commission on Human and Peoples' Rights, Guidelines on the Protection of All Persons from Enforced Disappearances in Africa; the Inter-American Principles on the Human Rights of All Migrants, Refugees, Stateless Persons, and Victims of Trafficking in Persons; and ICRC, "Declaration for the Dignified Treatment of all Missing and Deceased Persons and their Families as a Consequence of Migrant Journeys (the Mytilini Declaration)".

20 CED/C/10.



II. Objectives and scope of the general comment

12. The Committee is deeply concerned about the growing trend of enforced disappearance in the context of migration. It appeals to States parties to take urgent measures to prevent and respond to this phenomenon, guided by the present general comment, to ensure full compliance with their legal obligations. The Committee intends, in the present general comment, to clarify possible legal uncertainties under the Convention and to encourage future States parties by providing clear positions on an issue of global concern.

13. Given the preventive character of the Convention, the present general comment is also aimed at assisting States parties in developing and implementing national policies to protect migrants from becoming victims of enforced disappearance and to combat impunity.

14. The Committee recognizes the particular situation of vulnerability of migrants themselves, and of their relatives, who are frequently also migrants and often encounter obstacles and discrimination when searching for their disappeared loved ones. A further objective of the general comment is thus to assist States in their efforts to ensure access to justice for victims, with a view to contributing to international efforts to improve the often dire human rights situation of migrants.

15. 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.



III. Preventive mechanisms

A. Prohibition of the secret detention of migrants

16. To prevent migrants from becoming victims of enforced disappearance in the context of immigration detention,[21] they must always be able, from the outset of their detention and regardless of its duration, to communicate with their relatives, consular authorities, legal representatives or any other person whom they could inform about their fate or whereabouts.[22] Deprivation of liberty for immigration-related reasons should always be a measure of last resort, and migrants should be deprived of their liberty only if there are no alternatives to detention.[23] Moreover, in view of the non-derogability of the prohibition of enforced disappearances under article 1 (2) of the Convention, emergency situations must not be used to justify any form of deprivation of liberty of migrants that could amount to enforced disappearance.[24] Children should never be deprived of their liberty for reasons related to their or their parents' migratory or residence status, or lack thereof, or solely on the basis of being unaccompanied or separated,[25] and unaccompanied minors who are apprehended in the course of migration should be referred to child protection authorities.[26] The prohibition of secret detention under article 17 of the Convention is especially important for the prevention of cases of disappearance, and extends to situations in which migrants are deprived of their liberty by non-State actors acting with the support, authorization or acquiescence of the State.[27]

17. The absolute prohibition, under article 17 (1) of the Convention, of the secret detention of any person,[28] including migrants, encompasses any form of deprivation of liberty, including incommunicado detention and transfer to a secret location,[29] regardless of the pretext used to justify it and of its duration.[30] States parties must ensure that, if migrants are deprived of their liberty, they are afforded, without exception and irrespective of the place of deprivation of liberty, de jure and de facto, all the fundamental legal safeguards provided for under article 17 (2) of the

21 "Immigration detention" is understood to comprise any form of deprivation of liberty that relates to a person's migration status, encompassing the person's migratory or residence status, or lack thereof, whether relating to irregular entry or stay or not. Immigration detention refers to any situation in which a person is deprived of liberty on grounds related to that person's migration status, regardless of the name or reason given for carrying out the deprivation of liberty, or the name of the facility or place where the person is being held while deprived of liberty. Accordingly, immigration detention includes the detention of migrants in prisons, police stations, immigration detention centres, closed reception facilities, health-care facilities and any other enclosed spaces, such as international or transit areas at air, land and maritime ports. "Reasons related to migration status" is understood by the Committee on Migrant Workers to be a person's migratory or residence status, or the lack thereof, relating to irregular entry, stay or exit (general comment No. 5 (2021), para. 14).

22 CED/C/MEX/VR/1 (Findings), para. 18.

23 Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families, general comment No. 5 (2021), para. 38; and A/HRC/36/39/Add.2, para. 22.

24 Key guidelines on enforced disappearance in the context of the coronavirus disease (COVID-19), issued by the Committee and the Working Group on Enforced or Involuntary Disappearances, paras. 23 and 24.

25 Committee on the Rights of the Child, general comment No. 6 (2005) on treatment of unaccompanied and separated children outside of their country of origin, para. 61; joint general comment No. 4 of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families/No. 23 of the Committee on the Rights of the Child (2017) on State obligations regarding the human rights of children in the context of international migration in countries of origin, transit, destination and return, paras. 5 and 8; Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families, general comment No. 5 (2021), paras. 39–44; and A/75/183.

26 Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families, general comment No. 5 (2021), para. 44; Committee on the Rights of the Child, general comment No. 6 (2005), paras. 40 and 61–63; joint general comment No. 3 of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families/No. 22 of the Committee on the Rights of the Child (2017) on the general principles regarding the human rights of children in the context of international migration, para. 32; and joint general comment No. 4 of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families/No. 23 of the Committee on the Rights of the Child (2017), paras. 12 and 13.

27 CED/C/10, paras. 2–8; A/HRC/13/42; A/HRC/36/39/Add.2, paras. 21–24; Human Rights Committee, general comment No. 36 (2018) on the right to life, paras. 57 and 58; Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families, general comment No. 5 (2021), para. 17; and Inter-American Commission on Human Rights, Human Rights of Migrants and Other Persons in the Context of Human Mobility in Mexico (2013), paras. 175–240.

28 E/CN.4/2003/71, para. 67.

29 Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families, general comment No. 5 (2021), paras. 12 and 13; and joint general comment No. 4 of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families/No. 23 of the Committee on the Rights of the Child (2017), para. 6.

30 Yrusta and Yrusta v. Argentina (CED/C/10/D/1/2013), para. 10.3.



Convention and other human rights treaties.[31] This includes the following measures:

(a) Establishing in legislation the conditions under which migrants may be deprived of their liberty;

(b) Specifying which authorities are competent to order the deprivation of liberty;

(c) Guaranteeing that migrants deprived of their liberty are held solely in officially recognized and supervised places of deprivation of liberty;

(d) Guaranteeing that migrants deprived of their liberty are informed about their rights from the very outset, in a language that they understand, have effective access to counsel and, where necessary, a professional interpreter, and are authorized to communicate without delay with their relatives or any person of their choice, and with their consular or other diplomatic authorities, if they so wish, including the right to be visited;

(e) Guaranteeing, without restriction under any circumstances and irrespective of the place of deprivation of liberty or of migratory status, the right of persons deprived of their liberty, or any persons with a legitimate interest, to take proceedings before a court in order to challenge the lawfulness of the deprivation of liberty.[32]

18. States parties should also ensure that allegations of secret detention are effectively, thoroughly, promptly and impartially investigated and that those responsible are prosecuted and, if found guilty, punished in accordance with the gravity of their acts.[33]

19. States parties must guarantee that migrants deprived of their liberty are able to contact and be contacted locally by the Office of the United Nations High Commissioner for Refugees (UNHCR), national refugee bodies or other competent agencies and to communicate with them in private. Information on such contact and the means for making it should be made available.[34]

20. In accordance with article 17 (3) of the Convention, States parties must keep up-to-date official registers and records of all migrants deprived of their liberty, transferred and released, without exception and irrespective of the place or duration of the deprivation of liberty.[35] These registers and records must, at a minimum, contain the information listed in article 17 (3) and must be filled out and maintained diligently and without delay. In addition to the information listed in article 17 (3), and while ensuring full respect for the principles governing individual data protection in accordance with article 19, States parties are invited to consider the inclusion of photographs of persons deprived of their liberty, because some migrants may not carry identity documents or may use a false identity. Registers and records must be made promptly available, upon request, to any judicial or other competent authority or institution authorized for that purpose by the law of the State party concerned or any relevant international legal instrument to which the State concerned is a party.

21. The State party must provide without delay information about migrants who have been deprived of their liberty to any person with a legitimate interest, such as relatives, their representatives or their counsel. At a minimum, such information should include the information listed in article 18 (1) of the Convention, and States must ensure that persons with a legitimate interest have a real possibility of gaining access to it.[36] The right of persons with a legitimate interest to have access to and to receive information may be restricted only in accordance with the provisions of article 20 (1).[37] States parties should ensure that regulations on data protection or privacy are not used

31 For example, the International Covenant on Civil and Political Rights, the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, the Convention on the Rights of the Child and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (see Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families, general comments No. 2 (2013) on the rights of migrant workers in an irregular situation and members of their families, paras. 27–33, and No. 5 (2021), paras. 53, 58 and 65–67. See also CED/C/GRC/CO/1, para. 31 (c) and (d); CED/C/FRA/CO/1, paras. 30 and 31; and A/HRC/37/50, paras. 73 and 74).

32 CED/C/GRC/CO/1, para. 31 (d).

33 Ibid., para. 31 (a).

34 UNHCR, Guidelines on the Applicable Criteria and Standards relating to the Detention of Asylum-Seekers and Alternatives to Detention (Geneva, 2012), para. 47 (vii).

35 CED/C/MEX/VR/1 (Recommendations), para. 111; CED/C/ITA/CO/1, paras. 28 and 29; CED/C/JPN/CO/1, paras. 35 and 36; A/HRC/36/39/Add.2, paras. 23, 24 and 62; and E/CN.4/1997/34, paras. 22–30.

36 CED/C/NLD/CO/1, para. 29.

37 Yrusta and Yrusta v. Argentina, paras. 10.5 and 10.6.



as grounds for withholding information.[38]

22. States parties should also compile and make publicly available exhaustive lists of all places of deprivation of liberty[39] and ensure that independent and impartial monitors, such as national human rights institutions, national preventive mechanisms, civil society organizations and international organizations, have full access to any location where migrants are deprived of their liberty, whether run by the State party or run privately.[40] Access to sites of deprivation of liberty must be guaranteed in law, in accordance with article 17 (2) (e) of the Convention, and in practice. States parties should therefore establish independent and impartial monitoring and accountability mechanisms in places of deprivation of liberty.[41] Moreover, States parties should ensure that persons deprived of their liberty have access to appropriate mechanisms to report violations of their rights to the relevant authorities.[42]

B. Data collection

23. The lack of reliable data and statistics on disappeared and deceased migrants is one of the main obstacles to preventing and responding to their disappearances.[43] The Committee emphasizes that the regular and systematic collection of disaggregated data and the generation of accurate statistics are crucial to understanding the scale of the problem of the disappearance of migrants and to devising policies for effective prevention, search, investigation, punishment and elimination, with a differential approach. States parties should create and regularly update a single, nationwide database of disappeared persons that includes basic information about migrants who may be victims of a disappearance, including the following: 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 the status of relevant search and investigation procedures and of procedures for the exhumation, identification and return of remains.[44] States parties that are countries of origin should create a register of their nationals who have disappeared abroad[45] and States parties that are countries of origin, transit, destination or return should ensure that the registration of migrants at border control points involves the individual examination of all applications for entry so as to allow for an effective search in the event of a person's disappearance.[46] The authorities responsible for entering the relevant data must do so in a consistent and exhaustive manner, immediately after being informed of a case of disappearance.[47] States parties must ensure that such data are not shared or used for the purposes of immigration enforcement.[48]

24. The Committee recommends the standardization of data collection in order to facilitate data-sharing between countries of origin, transit, destination and return.[49] Furthermore, States parties should ensure that databases on disappeared and missing migrants are interconnected and interoperable at the national and international levels

38 CED/C/NLD/CO/1, paras. 28 and 29.

39 CED/C/ITA/CO/1, para. 29.

40 A/HRC/36/39/Add.2, para. 88 (d); and Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families, general comment No. 5 (2021), paras. 84–89. See also Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families, general comment No. 2 (2013), paras. 39 and 48; A/HRC/37/50, para. 73; and Association for the Prevention of Torture, International Detention Coalition and UNHCR, Monitoring Immigration Detention: Practical Manual (Geneva, Association for the Prevention of Torture and UNHCR, 2014).

41 Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families, general comment No. 5 (2021), para. 89.

42 CED/C/GRC/CO/1, para. 31 (e).

43 A/HRC/36/39/Add.2, para. 56; and OHCHR and Global Migration Group, Principles and Guidelines, Supported by Practical Guidance, on the Human Rights Protection of Migrants in Vulnerable Situations (Geneva, 2018), pp. 60 and 61.

44 CED/C/COL/OAI/1, para. 17; CED/C/IRQ/OAI/1, para. 5; CED/C/BRA/CO/1, para. 13; and CED/C/NER/CO/1, para. 15.

45 CED/C/HND/CO/1, para. 29.

46 Guiding Principles for the Search for Disappeared Persons, principle 9 (3); and CED/C/19/2, para. 14.

47 CED/C/MEX/CO/1, para. 18.

48 Joint general comment No. 3 of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families/No. 22 of the Committee on the Rights of the Child (2017), para. 17.

49 See ICRC, "Core dataset for the search for missing migrants" (Geneva, 2021). See also Global Compact for Safe, Orderly and Regular Migration, objective 8.



in order to facilitate the cross-checking of information. Any exchange of personal data, both nationally and across borders or jurisdictions, should meet internationally accepted standards on data and privacy.[50] Moreover, personal data, in particular biometric data, should be used only for the purposes of searching for disappeared migrants, in accordance with article 19 (1) of the Convention, and of providing information to persons with a legitimate interest, in accordance with article 18.

25. The absence of record-keeping throughout the handling of persons in the context of irregular border crossings further increases the risk of their becoming victims of human rights violations, including enforced disappearance.[51] It also renders any accountability impossible, including effective inquiries and investigations.[52] Consequently, States parties must keep records of their handling of persons in the context of irregular border crossings,[53] and footage from border surveillance equipment should be preserved and made accessible to those mandated with overseeing border operations, as well as to authorities in charge of the search for disappeared migrants and the investigations into their disappearances.[54]

26. In addition to collecting data, States parties should conduct contextual analyses to identify possible patterns in cases of the disappearance of migrants and the underlying structural failures that enable these crimes,[55] and possible ties between authorities and criminal networks involved in trafficking in persons and the smuggling of migrants. For this purpose, the Committee recommends the collection of qualitative data.[56] In order to identify trends and patterns in cases of the disappearance of migrants in the context of trafficking in persons, States parties should cooperate with a broad range of actors, including anti trafficking and migration professionals.[57]

C. Policies and non-criminalization

27. Policies that criminalize migrants, and migration itself, lack the mechanisms necessary to allow for the prior assessment of the risks and circumstances in each individual case. Instead, such policies focus on deterring entry and heighten the risk of migrants becoming victims of human rights violations, including enforced disappearance. Consequently, the Committee urges States parties to adopt evidence-based policies to foster access to regular, safe and orderly migration, in accordance with the objectives of and commitments made in the Global Compact for Safe, Orderly and Regular Migration. Specifically, States parties should work towards enhancing pathways for regular migration, addressing and reducing vulnerabilities in migration, saving lives, countering trafficking in persons and the smuggling of migrants, training and adequately equipping border authorities, finding alternatives to detention, facilitating consular assistance and, if appropriate, consular access to relevant information about disappeared persons, and eliminating discrimination.[58] In addition, States parties must guarantee the rights of every person to seek legal protection based on an individual risk assessment and of access to justice through legal remedies, including in situations where military forces are involved in border control. States parties must end,

50 ICRC, "Guidelines on coordination and information-exchange mechanisms for the search for missing migrants" (Geneva, 2021), p. 18. See also A/77/196; and Christopher Kuner and Massimo Marelli, eds., Handbook on Data Protection in Humanitarian Action, 2nd ed. (Geneva, ICRC, 2020).

51 A/HRC/36/39/Add.2, paras. 54 and 88; CED/C/GRC/CO/1, para. 30; CED/C/MEX/VR/1 (Findings), paras. 18–20; and European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, "12th General Report on the CPT's activities", 3 September 2002, paras. 32–50; and report to the Government of Greece on the visit to Greece from 17 to 29 September 2009, 17 November 2010, paras. 39 and 40.

52 European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, report to the Government of Croatia on the visit to Croatia from 10 to 14 August 2020, 3 December 2021, para. 22. On the need to keep and review registers, see CED/C/GRC/CO/1, para. 31 (f) and (g); CED/C/MEX/CO/1, paras. 34 and 35; and CED/C/MEX/VR/1 (Recommendations), paras. 105–107.

53 European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, report to the Government of Greece on the visit to Greece from 13 to 17 March 2020, 19 November 2020, para. 57; and report to the Government of Croatia on the visit to Croatia from 10 to 14 August 2020, paras. 14 and 22.

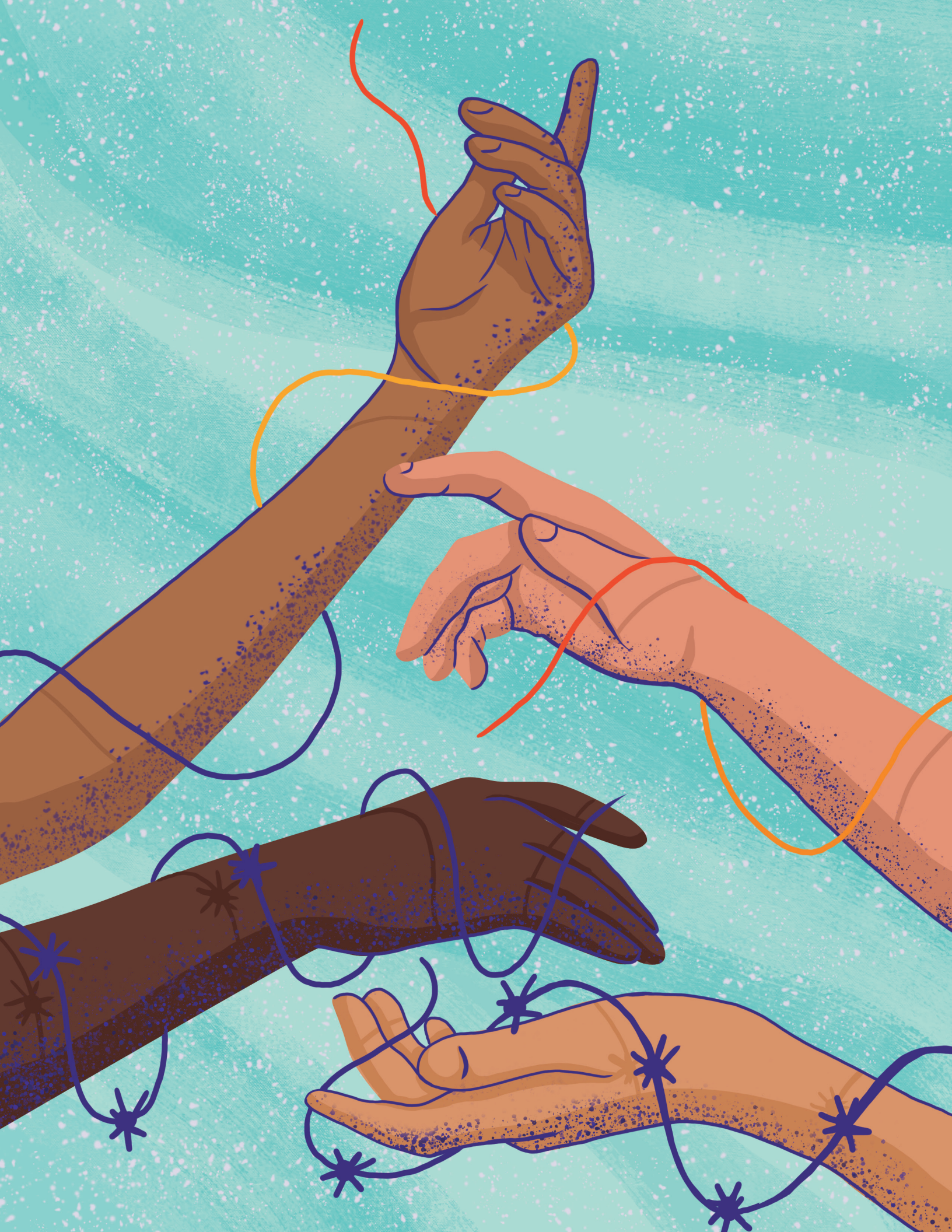
54 European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, report to the Government of Croatia on the visit to Croatia from 10 to 14 August 2020, paras. 5, 9 and 22. On the use of technology as a tool to document cases of enforced disappearance, see Border Violence Monitoring Network, "EU Member States' use of new technologies", paras. 16–28.

55 CED/C/MEX/VR/1 (Recommendations), paras. 16 and 17.

56 See also Committee on the Rights of the Child, general comment No. 6 (2005), para. 100.

57 Committee on the Elimination of Discrimination against Women, general recommendation No. 38 (2020), para. 109.

58 Global Compact for Safe, Orderly and Regular Migration, objectives 5, 7–11, 13, 14 and 17. See also Committee on the Elimination of Discrimination against Women, general recommendation No. 38 (2020), paras. 56–60.



investigate and punish practices of collective expulsions and pushbacks at borders or failure to act diligently to rescue migrants who are at sea, in the desert, in impassable forests, exposed to extreme temperatures or in other life-threatening situations.

28. Given the role played by non-State actors in many cases of the disappearance of migrants,[59] States parties should, in cooperation with countries of origin, transit, destination and return, increase efforts to counter any form of exploitation or trafficking in persons and address the abuses and rights violations occurring in the context of smuggling and corruption.[60] States parties are encouraged to accede to and implement international instruments for the suppression of transnational organized crime, such as the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, the Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime, and the United Nations Convention against Corruption, and other relevant international and regional instruments, as part of their efforts to prevent the disappearance of migrants.

29. Special consideration must be given to the rights of migrant children, in particular unaccompanied minors.[61] The separation of children from their families increases the risk of enforced disappearance and should be avoided, unless it is determined to be in the best interests of the child in compliance with international standards.[62] States parties should take effective measures to ensure the protection of unaccompanied or separated migrant children housed in reception centres, or other places of accommodation, from becoming victims of human rights violations, including disappearance falling under articles 2 and 3 of the Convention.[63] Children born on migrant routes or in places of deprivation of liberty are at additional risk of wrongful removal (art. 25) and it is therefore paramount to ensure their registration at birth.[64] To respect their best interests, States parties should grant children at international borders the right to access to the territory, regardless of the documentation that they have or lack, and to be referred to authorities in charge of evaluating their needs in terms of protection of their rights, ensuring their procedural safeguards.[65] Respect for the best interests of the child and family unity should be prioritized by, for example, promptly identifying migrant children at border controls or in other circumstances, assigning a guardian to unaccompanied children and putting in place best interests determination procedures.[66]

30. The criminalization of both migration and the provision of assistance to migrants directly contributes to the heightened risk of disappearance faced by migrants, as it places them in a situation of vulnerability. The Committee urges States parties to avoid criminalizing migration, both in law and in practice, and to facilitate a supportive environment for persons or organizations providing humanitarian or legal assistance to migrants.[67] States parties

59 A/HRC/36/39/Add.2, para. 35; and Human Rights Commission of Malaysia and Fortify Rights, "Sold like Fish".

60 A/HRC/40/59; and CED/C/GAB/CO/1, para. 20.

61 CED/C/MEX/CO/1, para. 23. See also Committee on the Rights of the Child, general comment No. 6 (2005); joint general comment No. 3 of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families/No. 22 of the Committee on the Rights of the Child (2017); and joint general comment No. 4 of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families/No. 23 of the Committee on the Rights of the Child (2017).

62 Convention on the Rights of the Child, art. 9; Committee on the Rights of the Child, general comment No. 14 (2013); joint general comment No. 3 of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families/No. 22 of the Committee on the Rights of the Child (2017), paras. 31 and 32; joint general comment No. 4 of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families/No. 23 of the Committee on the Rights of the Child (2017), paras. 27–31; and OHCHR, "Recommended principles to guide actions concerning children on the move and other children affected by migration", June 2016, principle 5.

63 Convention of the Rights of the Child, art. 20; Committee on the Rights of the Child, general comment No. 6 (2005), paras. 50–53; joint general comment No. 4 of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families/No. 23 of the Committee on the Rights of the Child (2017), paras. 43 and 44; and CED/C/GRC/CO/1, para. 27 (b).

64 Joint general comment No. 4 of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families/No. 23 of the Committee on the Rights of the Child (2017), paras. 20–22. See also CED/C/ITA/CO/1, paras. 34 and 35; and CED/C/NLD/CO/1, paras. 32–39.

65 Joint general comment No. 4 of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families/No. 23 of the Committee on the Rights of the Child (2017), para. 17 (a).

66 Committee on the Rights of the Child, general comment No. 6 (2005), paras. 19–22 and 81–83; joint general comment No. 3 of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families/No. 22 of the Committee on the Rights of the Child (2017), paras. 27–33; and joint general comment No. 4 of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families/No. 23 of the Committee on the Rights of the Child (2017), paras. 27–38.

67 CED/C/HND/CO/1, para. 27.



must ensure that human rights defenders, civil society actors, journalists and anyone providing such assistance are not exposed to reprisals or intimidation and are not criminalized or prosecuted for their involvement in search and rescue operations concerning migrants, in monitoring and documenting violations or in providing any other form of assistance to migrants.[68] To this end, States parties should review the terminology used in certain types of legislation, such as legislation on countering trafficking, smuggling and terrorism.[69]

D. Non-refoulement and the prohibition of pushbacks

31. Article 16 (1) of the Convention enshrines the non-derogable principle of non-refoulement of any persons to another State where there are substantial grounds for believing that they would be in danger of being subjected to enforced disappearance. States parties should explicitly incorporate this principle into national legislation[70] and refrain from creating legal exceptions aimed at its circumvention.[71] The prohibition of refoulement applies wherever the State party exercises jurisdiction or effective control over the persons concerned, including at sea and on vessels.[72] It also applies whenever States parties decide to externalize migration management to third countries.[73]

32. The principle of non-refoulement requires States parties to ensure that each person's case is examined individually, impartially and independently by competent administrative and judicial authorities, in conformity with international due process standards.[74] This process should include an assessment of whether there is a risk of the person being transferred on to a third country where they may be subjected to enforced disappearance ("chain refoulement").[75] Lists of "safe countries" must not be used as an alternative to individual assessments of risk.[76] Moreover, any diplomatic assurances must be evaluated with the utmost care.[77] A decision to return any individuals after such an assessment must be communicated to the migrants in a language that they understand, and in writing if requested,[78] and must be subject to an appeal, with suspensive effect, before an independent and impartial authority.[79]

33. To ensure respect for the principle of non-refoulement in practice, States parties should build the institutional capacity necessary to conduct individual assessments, with duly trained personnel and adequate funding, and consider establishing national independent border monitoring mechanisms.[80] Furthermore, States parties should provide training to border officials and staff involved in asylum, return, surrender or extradition procedures and to law enforcement officials, in general, on the concept of enforced disappearance and on the assessment of the related risks.[81]

68 CED/C/GRC/CO/1, para. 25 (b). See also OHCHR, "'Lethal disregard'", p. 28.

69 A/73/314, paras. 58–75; and Martha Gionco and Jyothi Kanics, Resilience and Resistance: The Criminalisation of Solidarity across Europe (Brussels, The Greens/EFA in the European Parliament, 2022).

70 A/AC.96/951, para. 16; CED/C/NER/CO/1, para. 27 (a); CED/C/MNG/CO/1, paras. 30 and 31; CED/C/SVK/CO/1, paras. 14 and 15; CED/C/PER/CO/1, paras. 22 and 23; CED/C/AUT/CO/1, paras. 20 and 21; CED/C/GAB/CO/1, paras. 30 and 31; and European Court of Human Rights, Hirsi Jamaa and others v. Italy, Application No. 27765/09, Judgment, 23 February 2012, para. 23.

71 A/HRC/50/31, para. 27.

72 Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families, general comment No. 2 (2013), para. 51; Human Rights Committee, general comment No. 31 (2004) on the nature of the general legal obligation imposed on States parties to the International Covenant on Civil and Political Rights, para. 10; and European Court of Human Rights, Hirsi Jamaa and others v. Italy, paras. 76–82.

73 A/HRC/37/50, para. 57; and European Court of Human Rights, Hirsi Jamaa and others v. Italy, para. 129.

74 See E.L.A. v. France (CED/C/19/D/3/2019); CED/C/NER/CO/1, para. 27 (b); CED/C/CHE/CO/1, paras. 23 and 24; CED/C/ITA/CO/1, paras. 26 and 27; CED/C/PER/CO/1, paras. 22 and 23; CED/C/AUT/CO/1, paras. 20 and 21; CED/C/GAB/CO/1, paras. 30 and 31; and European Court of Human Rights, K.I. v. France, Application No. 5560/19, Judgment, 15 April 2021.

75 CED/C/GRC/CO/1, para. 29 (d); CED/C/CHE/CO/1, paras. 23 and 24; and European Court of Human Rights, M.A. and others v. Bulgaria, Application No. 5115/18, Judgment, 20 February 2020, paras. 79–84. For examples of chain refoulement, see A/HRC/47/30, paras. 56–66.

76 CED/C/GRC/CO/1, para. 29 (d).

77 Committee against Torture, general comment No. 4 (2017) on the implementation of article 3 in the context of article 22, paras. 19 and 20; CED/C/PAN/CO/1, paras. 22 and 23; and CED/C/KAZ/CO/1, paras. 17 and 18.

78 Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families, general comment No. 2 (2013), para. 52.

79 Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families, general comment No. 5 (2021), para. 64; CED/C/NER/CO/1, para. 27 (c); CED/C/FRA/CO/1, para. 27; CED/C/MNG/CO/1, paras. 30 and 31; CED/C/SVK/CO/1, paras. 14 and 15; CED/C/PER/CO/1, paras. 22 and 23; and CED/C/GRC/CO/1, para. 29 (c).

80 See Recommended Principles and Guidelines on Human Rights at International Borders; A/HRC/47/30; A/HRC/50/31; and CRC/C/GRC/CO/4-6.

81 A/HRC/37/50, para. 77; and CED/C/GRC/CO/1, para. 29 (e).


MIGRANTS RIGHTS
MIGRATION IS NOT A CRIME

34. The Committee calls upon States parties to avoid indirect refoulement resulting from the creation of conditions that leave migrants no option but to return to a country where there are substantial grounds to believe that they would be in danger of being subjected to enforced disappearance or transferred to another country where they would face such a risk.[82]

35. Pushbacks, and any other form of collective expulsion that do not allow for an individual assessment, constitute a flagrant violation of article 16 of the Convention.[83] In the absence of an internationally agreed legal definition of the term, the Committee considers that pushbacks constitute measures taken by States, sometimes involving third countries or non-State actors, which result in migrants being summarily forced back, without an individual assessment of their human rights protection needs, to the country or territory, or to sea, whether it be territorial waters or international waters, from where they attempted to cross or crossed an international border.[84] The Committee is of the view that, when pushbacks involve the deprivation of liberty of migrants and the concealment of their fate or whereabouts, they amount to enforced disappearance within the meaning of article 2 of the Convention, regardless of the duration of the deprivation of liberty. They may also constitute a violation of articles 17 and 18, which prohibit secret detention and guarantee the right of access to information about persons deprived of their liberty, and of other articles of the Convention, depending on the circumstances. The same applies to cases where pushbacks are carried out by non-State actors or intergovernmental organizations that act with the support, authorization or acquiescence of the State party. In addition, the seizure and destruction of individuals' personal belongings, identity documents or mobile phones after their apprehension may lead to enforced disappearance, given that individuals are left without any means to communicate their whereabouts to relatives or prove their identity.[85]

36. By obstructing access to applicable legal frameworks and procedural safeguards, pushbacks place migrants outside the protection of the law, make them vulnerable and may result in human rights violations incompatible with States' obligations under international human rights law.[86] Such obligations concern not only the prohibition of refoulement and collective expulsion,[87] but also the prohibition of torture and other cruel, inhuman or degrading treatment or punishment,[88] the right to liberty[89] and the right to life.[90] Pushbacks that do not involve the deprivation of liberty also raise grave concerns because they effectively remove the persons subjected to them from any protection of the law and contribute to a risk of disappearance. The Committee strongly urges States parties to refrain from such practices, including chain pushbacks, and from indirect pushbacks that result from a deliberate failure to search and rescue at sea or on land.[91] 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.[92]

82 A/HRC/37/50, para. 43.

83 CED/C/CRI/CO/1, paras. 28 and 29.

84 A/HRC/47/30, para. 34. See also Council of Europe, Pushed Beyond the Limits: Four Areas for Urgent Action to End Human Rights Violations at Europe's Borders – Recommendation by the Council of Europe Commissioner for Human Rights (Strasbourg, 2022), p. 16.

85 CED/C/GRC/CO/1, para. 28 (a); CED/C/MEX/VR/1 (Findings), paras. 19 and 20; and European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, report to the Government of Greece on the visit to Greece from 13 to 17 March 2020, para. 56.

86 Article 4 of Protocol No. 4 to the Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights), securing certain rights and freedoms other than those already included in the Convention and in the first Protocol thereto as amended by Protocol No. 11; article 22 (9) of the American Convention on Human Rights; article 12 (5) of the African Charter on Human and Peoples' Rights; and article 26 (2) of the Arab Charter on Human Rights.

87 European Court of Human Rights, Hirsi Jamaa and others v. Italy, paras. 185 and 186; N.D. and N.T. v. Spain, Applications No. 8675/15 and No. 8697/15, Judgment, 13 February 2020; and Shahzad v. Hungary, Application No. 12625/17, Judgment, 8 July 2021.

88 A/HRC/37/50, paras. 52 and 53; and European Court of Human Rights, Hirsi Jamaa and others v. Italy.

89 Inter-American Commission on Human Rights, Haitian Centre for Human Rights and others v. United States of America, Case No. 10.675, Decision on the Merits, 13 March 1997, para. 169.

90 European Court of Human Rights, Safi and others v. Greece, Application No. 5418/15, Judgment, 7 July 2022.

91 A/HRC/47/30, paras. 72–75. See also OHCHR, "'Lethal disregard'"; and Human Rights Committee, A.S. et al. v. Italy (CCPR/C/130/D/3042/2017).

92 CED/C/GRC/CO/1, para. 29 (a).


WE SEARCH FOR YOU

IV. Obligations to search and investigate

37. The Committee recalls that the obligations to search for disappeared persons, conduct effective investigations into cases of alleged disappearance, including those falling within article 3 of the Convention, and prosecute and punish perpetrators are fundamental to ending this heinous crime and preventing its reoccurrence. In migration contexts, cases of disappearance are often not reported, for example, owing to obstacles faced by relatives living in another country, language, cultural or knowledge barriers and fear among relatives or witnesses who may themselves have an irregular migratory status.[93] 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.[94] The burden of proof should not be on the victims or relatives.[95]

38. All individuals, irrespective of their migratory status, must be guaranteed the right to report an enforced disappearance (art. 12 (1)). For the right to report to be effective, States parties should endeavour to raise awareness about existing reporting mechanisms and provide professional interpreters whenever necessary.[96] Moreover, witnesses or relatives must be able to report disappearance without fear of reprisals, including deportation or deprivation of liberty. States parties should therefore create functional and accessible mechanisms to enable the reporting of a disappearance from another country, and promptly alert the competent authorities of the country in which the alleged disappearance took place.[97]

39. To ensure the effectiveness of the search, States parties should implement the Committee's Guiding Principles for the Search for Disappeared Persons and other international standards.[98] The search should be conducted under the presumption that the person is alive; respect human dignity at every stage; be governed by a public policy; follow a differential approach; respect the right to participation; begin without delay; continue until the disappeared person's fate and whereabouts have been determined with certainty; be conducted on the basis of a comprehensive strategy; take into account the particular vulnerability of migrants; be organized efficiently; use information in an appropriate manner; be coordinated; reinforce the criminal investigation; be carried out safely; be independent and impartial; and be governed by public protocols. Investigations of cases of the disappearance of migrants must be transparent, thorough and impartial and must adopt a differential approach that considers the structural vulnerability of migrants and the intersectional vulnerability of particular groups of migrants, such as women, children, members of LGBTQI+ communities and those belonging to certain ethnic or racial groups.[99]

40. When investigating cases of the disappearance of migrants, States should have a clear and comprehensive investigation strategy that guarantees the exhaustiveness and impartiality of the investigation and includes contextual analysis. Once the perpetrators have been identified, they should be prosecuted and punished in accordance with the gravity of the crime, and the situation of vulnerability of migrants should be considered an aggravating circumstance. States parties applying a statute of limitations must take into account the fact that enforced disappearance is a continuous crime and that the term of limitation for criminal proceedings commences from the moment when the offence of enforced disappearance ceases. States parties must also take all the measures necessary to establish their competence to exercise jurisdiction over the offence of enforced disappearance occurring outside their territory, as provided for in article 9 of the Convention.

41. To facilitate search and investigation, States parties should ensure effective inter-institutional cooperation and coordination at the national level and among institutions from countries of origin, transit, destination and re-

93 CED/C/MEX/VR/1 (Recommendations), para. 36.
94 Guiding Principles for the Search for Disappeared Persons, principles 6 and 9; A/HRC/36/39/Add.2, paras. 67 and 70; Human Rights Committee, general comment No. 36 (2018), para. 58; and CED/C/ITA/CO/1, para. 23.
95 Inter-American Court of Human Rights, Gómez Palomino v. Peru, Judgment on Merits, Reparations and Costs, 22 November 2005, para. 106.
96 CED/C/MEX/VR/1 (Recommendations), para. 52.
97 Guiding Principles for the Search for Disappeared Persons, principles 5 and 9; A/HRC/36/39/Add.2, paras. 51, 54, 67–69, 77 and 78; and Human Rights Committee, general comment No. 36 (2018), para. 58.
98 For example, the Minnesota Protocol on the Investigation of Potentially Unlawful Death.
99 A/HRC/45/13/Add.3, paras. 87–89.



turn.[100] Moreover, States parties should strive to create standardized protocols for search and investigation in cases of disappeared migrants across States[101] and enable the exchange of all relevant information, including national registers of disappeared persons and DNA databases, while respecting international standards on data protection and privacy and not exposing migrants to further risk. States parties must ensure that all competent institutions are adequately funded and equipped and have the necessary properly trained personnel.

42. States parties must ensure that the relatives of disappeared migrants, their representatives and any other person with a legitimate interest, irrespective of where they reside, are able and supported to gain access to information without delay and to take part in all stages of the search and investigation if they so wish.[102] In the course of the search and investigation process, States parties should use information provided by relatives, civil society organizations, international organizations and other States that has been gathered through the innovative use of information and communications technology.[103]

43. States parties should take all appropriate measures to search for, identify and return the remains of migrants who are found dead along migratory routes. To this end, States parties should investigate allegations of deaths along migratory routes and the existence of clandestine mass graves and establish a register of remains found. Exhumations of such sites must be conducted in full compliance with international standards.[104] To facilitate the search for and the identification of remains, States parties should establish centralized DNA databases that contain the necessary genetic data, as well as ante-mortem and post-mortem information, and should promote the establishment of agreements, mechanisms and practices with all relevant countries – of possible origin, transit, destination and return – to multiply the options for DNA data matches concerning unidentified human remains. [105]

100 CED/C/GRC/CO/1, para. 27 (c).

101 See, for example, ICRC, "Core dataset for the search for missing migrants".

102 CED/C/GRC/CO/1, para. 27 (e); and CED/C/HND/CO/1, para. 25 (c)

103 Border Violence Monitoring Network, "EU Member States' use of new technologies", paras. 16–28.

104 A/HRC/36/39/Add.2, para. 69; Melanie Klinkner and Ellie Smith, The Bournemouth Protocol on Mass Grave Protection and Investigation (Bournemouth, Bournemouth University, 2020); and International Commission on Missing Persons, "Investigatory standards".

105 CED/C/GRC/CO/1, para. 27 (d). See also International Commission on Missing Persons, The Missing: An Agenda for the Future – Conference Report (The Hague, 2014).



V. Victims' rights

44. States parties have an obligation to ensure that all victims of enforced disappearance have access to their rights to truth and justice, reparation and guarantees of non-repetition, including when such disappearance occurs in the context of migration. Reparation should be understood in a broad sense that includes restitution, rehabilitation, satisfaction, including restoration of dignity and reputation, and guarantees of non-repetition. In addition, all victims have a right to prompt, fair and adequate compensation (art. 24 (2)–(5)).[106]

45. In ensuring access to compensation and reparation, States parties must be sensitive to the specific needs of victims, taking into account, inter alia, their sex, sexual orientation, gender identity, age, nationality, ethnic origin, social status, disability, migratory status and other characteristics of the person or their relatives. Such access must be guaranteed for those in any form of union comparable to marriage, even when not recognized under the law of the State party or the country in which relatives are located.

46. Specific attention should be given to ensuring the necessary psychosocial and logistical support for relatives of disappeared persons. Relatives should be provided with effective and quick access to humanitarian visas and temporary residence permits, and other measures should be taken to facilitate their participation in the search and investigation and their access to information about their loved ones.[107] States parties should ensure that disappeared migrants found alive and their relatives are not deported or expelled because of their irregular migratory status prior to the final decision in criminal proceedings, given that such action may impede access to justice. The right of relatives to take part or be represented in the trial and in the search and investigation must be guaranteed. State authorities must maintain effective communication with relatives, including through the use of new technologies or, where appropriate, diplomatic and consular representation.[108]

47. 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. To achieve this, the creation of emergency funds aimed at covering the immediate economic expenses of relatives in the search process is fundamental, as is the ongoing training of civil servants in public institutions, including consular authorities, on issues of psychosocial approach, intersectional, intercultural and gender perspectives and the context of forced migration, in order to ensure that relatives are treated in a dignified manner and to avoid their revictimization. Training should also include addressing the specific needs of migrants who disappeared as a result of trafficking in persons[109] or illegal adoption.[110] State bodies should also have a specialized system of care in place to provide relatives with social and psychological support, legal advice and medical care in a language that they understand.[111]

48. States parties should use inter-State cooperation mechanisms to ensure continuity in the enjoyment of victims' rights as they migrate from one State party to another, but also after they arrive in their country of destination or return to their country of origin.[112] Cooperation instruments should not be limited to the search, but should include all processes derived from the investigation, including locating and releasing disappeared persons from deprivation of liberty and exhuming, identifying and returning remains, ensuring their repatriation where necessary.[113] The repatriation of bodies must be timely and without cost to relatives and must follow strict protocols

106 See also Declaration on the Protection of all Persons from Enforced Disappearance, art. 19; E/CN.4/1998/43, paras. 68–75; CED/C/JPN/CO/1, paras. 25, 26 and 40; CCPR/C/MEX/CO/5, para. 12; and CCPR/C/MEX/CO/6, paras. 29 and 33.

107 CED/C/MEX/VR/1 (Recommendations), para. 47.

108 CED/C/HND/CO/1, para. 29; CED/C/PAN/CO/1, para. 13; and CED/C/15/3, para. 12. See also A/HRC/54/22/Add.5.

109 CED/C/GAB/CO/1, para. 19. See also the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime; and Committee on the Elimination of Discrimination against Women, general recommendation No. 38 (2020).

110 See CED/C/9.

111 Equipo de Estudios Comunitarios y Acción Psicosocial, Normas Mínimas desde la Perspectiva Psicosocial para los Procesos de Búsqueda de Personas Migrantes Desaparecidas: Mesa de Discusión en Centroamérica y México 2016–2019 (Guatemala City, 2019), p. 20.

112 A/73/178/Rev.1, para. 51; CED/C/MEX/CO/1, paras. 23 and 24; and CED/C/HND/CO/1, paras. 28 and 29.

113 See articles 14 and 15 of the Convention. See also CED/C/19/2, para. 14; CED/C/AUT/CO/1, para. 17; and CED/C/JPN/CO/1, paras. 27 and 28.



with regard to notification in order to avoid revictimization.[114] Whenever requested, consular offices or embassies should play a crucial role in facilitating communication with relatives based abroad. Efficient communication channels should be established between consular authorities in the country in which the person disappeared and all the national authorities of that country that may be able to provide information about the disappeared person, including prosecution authorities, places of deprivation of liberty, shelters, other consular missions, hospitals and communities of migrants abroad.[115]

49. Considering the situation of special vulnerability of relatives of disappeared persons, States parties must eliminate any harmful practices that limit or hamper their right to form and participate freely in organizations 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.

114 Guiding Principles for the Search for Disappeared Persons, principle 2 (4).

115 Regional Conference on Migration, "Recommendations on regional coordination and information exchange mechanisms in the search for missing persons in the context of migration" (2022), p. 18: "Consular missions, together with relevant authorities from the country where the person disappeared, are responsible for conducting a search for the person reported as missing. To this end, they should establish a network for immediate communication with prosecution authorities, detention centers, shelters, other consular missions, hospitals, communities of migrants abroad, etc. in order to activate the search. In addition, it is important to continue with the proactive practice of maintaining contact with the instances described above to be able to identify cases that have not been reported at their consular offices." Available at: https://temas.crmsv.org/sites/default/files/Documentos%20Files/chld8_recomendaciones_busqueda_de_personas_desaparecidas_en_el_contexto_migratorio_eng_0.pdf.


DISAPPEARED

VI. Training and cooperation

50. States parties should ensure that the programmes that they implement in compliance with article 23 of the Convention include specific elements relating to the prevention, investigation, prosecution and punishment of enforced disappearance in the context of migration. In this context, particular attention should be paid to the concepts of enforced disappearance and non-discrimination,[116] to the particular situation of vulnerability and needs of migrants and their relatives and to international cooperation mechanisms. Such 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 their liberty.

51. Given the often transnational nature of migration processes, cooperation and mutual legal assistance among States parties are crucial if they are to comply fully with their obligations under the Convention to prevent and investigate disappearance, search for disappeared persons and ensure the rights of victims. To facilitate cooperation and assistance, States parties should adopt and implement bilateral and multilateral cooperation agreements, enhance existing institutional capacities or establish competent authorities and strengthen their capacities as necessary to ensure the effective coordination of search and investigation efforts, including the prompt and secure exchange of information and documentation that may help to locate persons disappeared during migration.[117] Such agreements should be subject to regular review and updated to reflect the requirements of the current circumstances.

52. The Committee calls upon States of origin, transit, destination and return to establish transnational and regional or subregional 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.To facilitate the cross-border exchange of information, the Committee recommends the establishment of notification mechanisms and national contact points in charge of sharing information and communicating with counterparts and relatives.[118] In creating such information-exchange mechanisms, States parties should take into account existing mechanisms, protocols and guidelines.[119]

53. Given the often transnational nature of migration and the focus of articles 15, 24 and 25 (2) and (3) of the Convention on assisting victims, States parties should take all the measures necessary to ensure mutual assistance among all States, in particular in the context of searching for and gathering information contained in the registers and databases of other States, notwithstanding their ratification status.[120] In addition, States parties should seek and provide assistance in the collection of data relevant to the disappearance of migrants and to the efforts to pro-

116 CED/C/MEX/VR/1 (Recommendations), para. 52.

117 Guiding Principles for the Search for Disappeared Persons, principles 9 (3) and (4), 11 and 12; CED/C/MNE/CO/1, paras. 12–15; and CED/C/ITA/CO/1, paras. 24 and 25.

118 Global Compact for Safe, Orderly and Regular Migration, objective 8 (d). See also, for example, ICRC, "Guidelines on coordination and information-exchange mechanisms for the search for missing migrants".

119 ICRC, "Guidelines on coordination and information-exchange mechanisms for the search for missing migrants"; and Regional Conference on Migration, "Recommendations on regional coordination and information exchange mechanisms in the search for missing persons in the context of migration". The latter recommendations are aimed at supporting States members of the Regional Conference on Migration to optimize existing mechanisms for information exchange as a means of facilitating the search for disappeared migrants. They include a set of criteria for the exchange of information and standardization of processes, including criteria on the collection of data from relatives of disappeared persons, the forensic documentation of unidentified deceased persons, national databases, and data protection (pp. 8–10). Specific recommendations relate to existing information-exchange mechanisms in the region (Mexico, United States of America and Central America; pp. 11–17) and to the role of consular authorities and ministries of foreign affairs in the search for disappeared migrants.

120 Working Group on Enforced or Involuntary Disappearances, general comment on the right to the truth in relation to enforced disappearance (2010), para. 9; updated set of principles for the protection and promotion of human rights through action to combat impunity, principles 16 and 17; Guiding Principles for the Search for Disappeared Persons, principles 11 and 12; and CED/C/GAB/CO/1, paras. 19 and 20.

tect the human rights of migrants by the United Nations, regional mechanisms and international organizations with special expertise in this area.

54. In some regions, specialized mechanisms have been created to facilitate transnational communication between victims or relatives and the authorities of the State where the disappearance is thought to have occurred.[121] The Committee encourages States parties to share good practices and lessons learned, with each other and with non-signatory States, in relation to prevention, search and investigation concerning the disappearance of migrants and to accountability of perpetrators.

55. The present general comment should be translated into all national languages and disseminated widely to international, regional and national stakeholders, in particular all branches of government, security forces, migration and border authorities and personnel, medical personnel and social-care professionals, and to organizations of relatives of disappeared migrants, other civil society actors, academia and the media.

V. Ratification

56. The Committee encourages all States that have not yet done so to ratify the Convention and to recognize the competence of the Committee under articles 31 and 32.

121 For example, the Mecanismo de Apoyo Exterior, the mechanism for Mexican support abroad in search and investigation activities, between Mexico and States in Central America.


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