

A decade of victim-centred approaches

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“*¿Dónde están? Vivos se los llevaron, vivos los queremos!*” (lit. Where are they? Alive they were taken, alive we want them!) is the cry of the relatives of disappeared persons. And they are countless: hundreds of thousands of people have been disappeared around the world, and they continue to disappear. People are detained, arrested, or abducted by state agents, who refuse to acknowledge their detention and hide their whereabouts. This reprehensible practice does not only affect a certain country or region of the world, but rather constitutes a wide-spread phenomenon. The persisting impunity for this practice is shameful.

In my experience as an [expert member](#) of the UN Committee on Enforced Disappearances (CED), this crime is particularly frequently committed against human rights defenders, against relatives of disappeared and against those who got involved in their cases. We are made aware of enforced disappearances in the context of the fight against terrorism, migration, and currently in relation with the COVID 19 pandemic that we are experiencing.

Since its first session in May 2011, CED has examined the [initial reports](#) (article 29-1 ICPPED) of 33 States Parties as well as [two follow-up reports](#) on additional information (article 29-4 ICPPED) and made recommendations in the form of [concluding observations](#). It also decided on [three individual communications](#) under article 31 ICPPED. As of 31 August this year, the Committee had registered [968 requests for urgent action](#) (article 30 ICPPED), recommending the responding States in each case concrete actions for the search and investigation of the persons whose disappearance is alleged. The Committee has also adopted [general statements](#) and guiding principles, such as the [2019 Guiding principles for the search for disappeared persons](#) (‘the Guiding Principles’).

Through these mechanisms, the Committee has produced extensive jurisprudence to address impunity and promote victim-centred approaches. In the following I will illustrate how the CED, through the cases submitted, has shaped the rights under the ICPPED by placing the individual at the centre of its considerations.

The obligation to search and investigate

The Convention obliges States to carry out a “thorough and impartial investigation” of alleged cases of enforced disappearance ([article 12 ICPPED](#)) and to “take all appropriate measures to search for, locate and release disappeared persons” ([article 24-3 ICPPED](#)). The obligation to search and investigate has been concretised by the [Guiding Principles](#), which stress particularly that the search should begin without delay ([Guiding Principle 6](#)), be conducted on the basis of a comprehensive strategy ([Principle 8](#)), be organised efficiently ([Guiding Principle 10](#)), be coordinated ([Guiding Principle 12](#)) and be interrelated with the criminal investigation ([Guiding Principle 13](#)).

In its jurisprudence, the Committee has repeatedly highlighted the importance of ensuring that the investigation and the search for disappeared persons are carried out “as soon as possible after the disappearance of the person concerned” (CED [2018 Report on Urgent actions](#), para. 29). It has also stressed that States are to develop comprehensive strategies for the search (*ibid*, para. 29; [Guiding Principle 8](#)).

Furthermore, the Committee has explained the importance of the investigation with its necessity “for the identification of the perpetrators, which can be key to the location of the missing person” (CED [2018 Report on Urgent actions](#), para. 29).

In line with its victim-centred approach, CED has taken into consideration the particular situation of the victim and has deduced consequences for the search and investigation. Thus, in the case of disappeared migrants, it has called for the adoption of “specific search mechanisms that take account of the difficulties associated with migration situations” ([Guiding Principle 9](#), para. 2) and to “strengthen international judicial assistance with a view to tracing the migration route of the victims and clarifying the facts” (e.g. CED [2019 Concluding observations on Italy](#), para. 25).

The Committee has also emphasised the relevance of the needs of relatives in the search and investigation. As a matter of example, CED has stated that “any decision to continue the search to locate and identify the missing remains should take into account the (...) needs expressed by the family members in the context of their cultural norms concerning funerals.” (CED [2019 Report on urgent actions](#), para. 24).

The right of access to information

The Convention also provides for the right of access to information for any person with a legitimate interest, such as the relatives of the disappeared ([article 18 ICPPED](#); [Guiding Principle 5](#), para. 2; [Guiding Principle 11](#), para. 5).

In this context, the Committee has recognized that relatives of disappeared persons may experience “anguish and suffering (...) owing to the lack of information” (CED [2016 Yrusta v. Argentina](#) para. 10.8). Thus, it stressed that the creation of mechanisms which provide information on the search and investigation to relatives of disappeared persons are an integral part of the State party’s responsibilities (CED [2018 Report on urgent actions](#), para. 18). This obligation aims to guarantee that they can “participate actively and in an informed manner, in all stages of the investigative process” (*ibid*) and also includes to “provide family members and relatives with adequate guidance on their rights” (*ibid*).

The right to the truth

Closely linked to the right of relatives to access information is the right to know the truth. According to [article 24-2 ICPPED](#), “each victim has the right to know the truth regarding the circumstances of enforced disappearance, the progress and results of the investigation and the fate of the disappeared person”.

Thus, the Committee encourages the State Parties “to ensure that all victims are able fully and effectively to enjoy that right” (CED [2013 Concluding observations on Spain](#), para. 33). More specifically, the Committee has held that when the “possibility of playing an active and effective part in the proceedings is lessened to such an extent that the impairment of the right in question becomes irreversible”, this amounted to a violation of the victim’s right to the truth (CED [2016 Yrusta v. Argentina](#) para. 10.9).

The right to participation in the investigation and protection of persons

According to the Committee, States should “encourage and facilitate the involvement of the relatives of the disappeared person in the investigations”, which they are obliged to conduct under [article 12 ICPPED](#) (CED [2015 Concluding observations on Mexico](#), para. 28 lit.b).

Under the Committee’s victim-centred approach, State parties are encouraged to consider the difficulties that relatives of disappeared persons may encounter when participating in the investigation. Bearing in mind that they may face particular economic and social hardships, the Committee stressed that the support by State parties in this regard may be essential to enable their participation (CED [2019 Report on urgent actions](#), para. 27). In the case of disappeared migrants, the Committee has considered the “distances involved and the excessively formal nature of international assistance mechanisms” and has thus stressed the “need to facilitate the participation of relatives by such means of communication as videoconferences” (CED [2018 Report on urgent actions](#), para. 12).

The obligation to provide measures of protection

The Committee has repeatedly been made aware that relatives of disappeared persons are “targeted by threats and intimidation when they have pressed for the investigation” or “been subjected to reprisals after reporting incidents to the competent authorities” (CED [2019 Report on urgent actions](#), para. 10).

However, these reports of threats, intimidation and reprisals are in direct conflict with the obligation of State Parties to protect persons that are involved in the investigation ([article 12-1 ICPPED](#)) or in the search ([Guiding Principle 14](#)), or their representatives ([article 18-2 ICPPED](#)).

In these cases, the Committee requests the concerned State party to take interim measures ([article 30-3 ICPPED](#)), including those necessary “to preserving the life and safety of the persons concerned” and “to ensuring that a person can carry out a search for a missing family member without being subjected to violence or harassment” (CED [2019 Report on urgent actions](#), para. 10). In view of the inherent aspect of state involvement in enforced disappearances, the implementation of the interim measures falls to “authorities against whom there are no allegations of possible involvement in the events in question” (CED [2018 Report on urgent actions](#), para. 20). The CED’s victim-centered approach is apparent in its demand that these measures be implemented “in coordination with the beneficiaries” so that “they

have full trust in the persons responsible for their protection and to ensure that the measures fully meet their needs” (*ibid*).

The right to Reparation and Compensation

Finally, I would like to highlight CED’s jurisprudence in the context of reparation and compensation. The ICPPED provides for the right to obtain reparation, fair and adequate compensation, this covers material and moral damages ([article 24-4 ICPPED](#)) as well as to other forms of reparation ([article 24-5 ICPPED](#)). Referring to the latter, the CED has recalled these *other forms* of reparation in situations where the State Party’s legislation was focused on merely financial compensation (e. g. CED [2015 Concluding observations on Iraq](#), para. 31).

Furthermore, the Committee has repeatedly recommended that reparations take “into account the personal circumstances of the victims, such as their sex, sexual orientation, gender identity, age, ethnic origin, social status and disability”, thus placing the individual at the centre of its recommendations (e. g. CED [2019 Concluding observations on Bolivia](#), para. 35 lit. d).

In a broader reflection of these personal circumstances, the Committee has noted the “disproportionate impact of enforced disappearances on women, who are often left to be the sole providers for their families” (CED [2018 Report on urgent actions](#), para. 11). Therefore, it has called for “gender perspectives and child-sensitive approaches” in the implementation of the conventional rights (CED [2019 Concluding observation on Peru](#), para. 37).

Conclusion

In view of these elements, it is safe to say that the personal circumstances of the disappeared persons and their relatives play a significant role in the jurisdiction of the CED. By addressing their needs in a comprehensive and sensitive manner, the Committee seeks to promote the principles enshrined in the Convention to support victims in their quest for justice and search.

As I pointed out several times, “search without justice is impunity, justice without search is inhumanity”.

The author of this contribution expresses her opinions in personal capacity. Any views expressed are not representing the institution or organisation that the author may be associated with.

