

## Key Guidelines on COVID-19 and Enforced Disappearances

18 September 2020

1. The Working Group on Enforced or Involuntary Disappearances and the Committee on Enforced Disappearances recall that enforced disappearance is prohibited in all circumstances, and call on member States to continue, during the COVID-19 pandemic, to respect their international obligations.
2. In the context of COVID-19, it is of concern that related measures have reduced the capacity of all actors to take the necessary action to search for disappeared persons and to investigate their alleged enforced disappearance. The measures adopted to fight against the pandemic such as confinement, or the re-deployment of security forces to control their implementation, obviously affect the capacity for action and reaction by the relatives of disappeared persons and the organizations that accompany them, but also of the State authorities in charge of search and investigation. In that context, it is of utmost importance that all actors involved follow best practices in relation to the search for disappeared persons and the investigation of enforced disappearances.
3. The current circumstances are particularly concerning in relation to recent disappearances in which the immediate intervention of State authorities is required to search for the disappeared person. These circumstances also amount to an additional factor of victimization for the relatives of persons who have been disappeared for years, as authorities de facto suspend all measures to search for them and investigate their disappearance. Particular attention is also necessary to ensure that COVID-19 does not become an excuse for committing enforced disappearances.
4. The Working Group on Enforced or Involuntary Disappearances and the Committee on Enforced Disappearances wish to call the attention of States to eight key guidelines to be taken into account by States in the COVID-19 context:

### **Guideline 1 – Enforced disappearances remain strictly prohibited in all circumstances.**

5. *Enforced disappearances are continuing to occur and there is an additional risk of States using the pandemic and associated states of emergency as cover for enforced disappearances.*
6. The International Convention for the Protection of All Persons from Enforced Disappearance ([the Convention](#), article 1) and the Declaration on the Protection of all Persons from Enforced Disappearance ([the Declaration](#), articles 2 and 7) are clear to the effect that enforced disappearance is strictly prohibited in all circumstances. States thus should not practise, permit or tolerate enforced disappearances at any time, including during the pandemic.

### **Guideline 2 – Search and investigation into enforced disappearances cannot be discontinued and must be carried out without delay.**

7. *The COVID-19 context poses additional challenges to the abilities of State authorities to take action immediately and to visit relevant sites. In particular, specific health protection measures need to be taken for State agents as well as for victims and civil society organizations who should be able to take part to the search and investigation.<sup>1</sup> However, the COVID-19 context cannot justify the authorities' failure to take immediate action to search for disappeared persons: every day that passes puts the victim at further risk of mistreatment and death.*

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<sup>1</sup> CED, Guiding Principles for the Search for Disappeared Persons, CED/C/7, Principle 14: "The Search should be carried out safely"

8. In compliance with articles 12 and 24 of the Convention and article 13 of the Declaration, the search for disappeared persons and the investigation of cases of enforced disappearances are continuing obligations that cannot be suspended, even in the context of the pandemic. In all activities developed, States are urged to follow the [Guiding principles for the search for disappeared persons](#) produced by the Committee and implement the recommendations contained in the Working Group's report on [standards and public policies for an effective investigation of enforced disappearances](#).
9. As soon as the competent authorities become aware, through any means, or have any indications that a person has been subjected to enforced disappearance, they should begin the search immediately and promptly, even when no formal complaint or request has been made (article 9(1) of the Declaration, article 12(1) and 2 of the Convention).<sup>2</sup> Whenever necessary, adapted health precautions must be taken for all actors involved to enable them to carry out all required search and investigation activities, such as visits to the relevant sites (article 9(2) of the Declaration, art. 12(3)b of the Convention).<sup>3</sup>
10. Throughout the process of search and investigation, channels to report cases and to follow-up on any developments should remain accessible to relatives and the organisations supporting them. They should be kept periodically informed of the activities being undertaken in their respective cases.

**Guideline 3 – Information on individuals deprived of their liberty including those subjected to compulsory quarantine should be provided to their families and monitoring should continue.**

11. *The COVID-19 pandemic has created new contexts where enforced disappearances may occur. This includes during compulsory quarantine in places of deprivation of liberty such as quarantine centres or medical facilities where individuals may, intentionally or unintentionally, be deprived of contact with their relatives.*
12. *At the same time, the suspension of visits to regular places of detention has, in some cases, led to a complete absence of contact between detainees and the outside world. This is conducive to incommunicado detention and may lead to enforced disappearances.*
13. Procedural guarantees contained in articles 12 and 17 to 21 of the Convention and 9 to 13 of the Declaration apply at all times and to all places in which persons are deprived of their liberty, including compulsory quarantine centres. Whatever the circumstances, all individuals deprived of their liberty must be held only in officially recognized and supervised places of deprivation of liberty, and any form of secret detention must be excluded. States should also proactively ensure that the authorities in charge of the search for the disappeared person have access to all places of detention. States must also take all necessary measures to ensure that persons deprived of liberty are able to communicate with their relatives, counsel or any other person of their choice, and with consular authorities,<sup>4</sup> including when visits have to be limited.

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<sup>2</sup> CED, Concluding observations on Colombia, CED/C/COL/CO/1 (2016), paras. 20(a) and 26(a); Iraq, CED/C/IRQ/CO/1 (2015), para. 20; Mexico CED/C/MEX/CO/1Vi (2015), paras. 28(a) and 41(a); Bolivia CED/C/BOL/CO/1 (2019), para. 21

<sup>3</sup> CED, Guiding Principles for the Search for Disappeared Persons, CED/C/7, Principle 6: "The Search should begin without Delay", and Principle 10: "The Search should be organized efficiently", paras. 2 and 3

<sup>4</sup> CED, Concluding observations on Colombia CED/C/COL/CO/1 (2016), paras. 29-31, Iraq CED/C/IRQ/CO/1 (2015), paras. 28-29; Tunisia CED/C/TUN/CO/1 (2016), para.30

14. Releases from places of deprivation of liberty should be done in a manner permitting verification of the release and States should take necessary measures to assure the physical integrity and ability of individuals to exercise fully their rights at the time of release. Monitoring of places of detention, which is an important tool to prevent enforced disappearances, should also continue with health precautions taken as appropriate.

**Guideline 4 – Bodies of the deceased should be dealt with in a manner permitting identification by relatives and remains should be treated in line with their tradition, religion and culture.**

15. *In some contexts the treatment of the bodies of individuals deceased through COVID-19 has led to a risk of disappearances. This includes the lack of proper registration of remains, and the loss of bodies before relatives can identify them. In countries where enforced disappearances are prevalent, specific situations have been brought to the attention of the Committee and Working Group demonstrating a risk that such practices are being used to conceal cases.*
16. States have the obligation to ensure that the recovery, identification, reporting and return of the remains of deceased persons to their families is carried out in a scientifically rigorous, dignified and respectful manner, in conformity with the highest standards (articles 15, 17(3) and 24(3) of the Convention, article 19 of the Declaration).<sup>5</sup> Dead bodies must be consistently registered and stored in a way permitting identification and the performance of autopsies. The relatives of persons who have died as a result of COVID-19, or other causes, must systematically be given the opportunity to identify the remains, and all remains must be dealt with in line with their tradition, religion or culture, despite the various challenges that may be raised by the COVID-19 context (such as, for example, the lack of access to bodies for health reasons; the lack of capacity of the competent authorities to reply to requests for the return of remains; the unavailability of forensic experts as a consequence of the COVID-19 confinement measures, etc.).

**Guideline 5 – Access to information should be assured.**

17. *For many victims of enforced disappearances, access to information on the progress of the search or investigation is only possible through physical visits to the premises of the competent authorities. Such visits may be significantly limited in the current circumstances. Even when contact is possible through other means such as telephone or the internet, victims have indicated that, in many instances, no replies are being received.*
18. Any person with a legitimate interest should have access to the information related to an individual's deprivation of liberty (articles 18 and 19 of the Convention and 10 of the Declaration).<sup>6</sup> Where access to that information is denied, any persons with a legitimate interest is entitled to take proceedings before a court as a means of obtaining without delay this information. This right may not be suspended or restricted in any circumstances (article 20(2) of the Convention).<sup>7</sup> The COVID-19 context should not extend the delays in terms of access to such remedies, which remain particularly urgent in cases of unlawful detention and disappearance.

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<sup>5</sup> WGEID, General comment on the right to the truth, A/HRC/16/48, para 6, CED, Follow up to Concluding observations on Mexico, CED/C/MEX/CO/1/Add.1 (2019), para.21; Concluding Observations on Ecuador CED/C/EQU/CO/1 (2017), para. 10(b)

<sup>6</sup> CED, Concluding observations on Iraq CED/C/IRQ/CO/1 (2015), para. 29; Mexico CED/C/MEX/CO/1 (2015), para. 35; Honduras, CED/C/HND/CO/1 (2018), para. 33; Slovakia CED/C/SVK/CO/1 (2019), paras. 16-17

<sup>7</sup> CED, Concluding observations on Iraq (2015), CED/C/IRQ/CO/1 para. 30; Burkina Faso CED/C/BFA/CO/1 (2016), para. 32; Japan CED/C/JPN/CO/1 (2018), para. 34; Slovakia CED/C/SVK/CO/1 (2019), para. 21

**Guideline 6 – Relatives of disappeared persons, their representatives and surviving victims of enforced disappearances should be supported and empowered, and protected from harassment or reprisals.**

19. *The relatives of forcibly disappeared persons, their representatives, and surviving victims of enforced disappearances may be in an additionally precarious position during this period of crisis. Enforced disappearances always put relatives in very challenging position. Their victimization becomes even greater when the head of household is disappeared. As the family structure is disrupted, spouses and children are affected economically, socially and psychologically and have specific needs. Taking into account that men are usually the main target of enforced disappearances, the Committee and the Working Group underline the particular gravity of the situation for women in that context.<sup>8</sup> The COVID-19 pandemic has often led to additional difficulties for victims to find interlocutors and support for their needs.*
20. *In some contexts, relatives, human rights defenders and organizations working on disappearances have also continued to face harassment and intimidation.*
21. States must take appropriate steps to support disappeared persons and their relatives in fields such as social welfare, financial matters, family law and property rights (article 24(6) of the Convention), even more so in the context of the economic crisis resulting from the COVID-19 pandemic. In this connection, the specific position of relatives and victims of enforced disappearance should be considered in any programmes to mitigate the impact of the pandemic. This is in addition to the States' obligation to ensure the right of victims to obtain reparation and prompt, fair and adequate compensation (article 24(4) of the Convention and article 19 of the Declaration).
22. States must also ensure that all those involved in the search and investigation of enforced disappearances are protected from reprisals, and that all acts of intimidation or reprisals are investigated and punished without delay (articles 12 and 24(7) of the Convention and 13 of the Declaration).

**Guideline 7 – Enforced disappearance of migrants should be prevented and terminated.**

23. *COVID-19 has created additional risks for migrants. Those who may have decided to migrate due to a risk of enforced disappearance face the closure of borders and the suspension of asylum procedures. Migrants also continue to risk enforced disappearance during their journey or upon arrival in their country of destination and forced returns have continued despite the pandemic, in violation of the principle of non-refoulement.*
24. States remain strictly prohibited from expelling, returning or extraditing a person to another state where there are substantial grounds for believing that he or she would be in danger of being subjected to enforced disappearance (article 16 of the Convention and article 8 of the Declaration). The search and investigation into disappearances of migrants should continue without delay, with appropriate health precautions taken as required. Where migrants are deprived of their liberty, they should be registered and be able to communicate with their relatives, lawyers or representatives as well as be informed about their right to communicate with the consular authorities of their country of origin. States are urged to implement the recommendations contained in the Working Group's report on [enforced disappearances in the context of migration](#). States should also continue to cooperate with each other to assist victims of enforced disappearance to search for, locate and release disappeared persons, and to return remains in case of death (article 15 of the Convention and article 2 of the Declaration).

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<sup>8</sup> WGEID, General comment on women affected by enforced disappearances, A/HRC/WGEID/98/2, para 12

**Guideline 8 – Enforced disappearance of women and of children born in detention should be prevented and terminated.**

25. *In the context of the pandemic, women are at a heightened risk of suffering gender-based violence, as well as being subjected to enforced disappearance, especially when deprived of their liberty for health reasons. The enforced disappearance of women is a form of gender-based violence when women are specifically targeted because of their sex or gender.<sup>9</sup> In certain countries, women from minority groups and women affected by poverty and social inequalities are particularly exposed to enforced disappearances.<sup>10</sup> These pre-existing vulnerabilities may be exacerbated by the COVID-19 pandemic. COVID-19 also heightens the risk that children born to mothers who are deprived of liberty will not be registered or recognised by the law and may be subjected to appropriation.*
26. No gender-based violence, including as related to cases of enforced disappearance, can be justified. States should ensure that the pandemic does not result in a limitation to the measures taken to prevent such violations. In this context, strict compliance with international standards in relation to detained women is essential to the prevention of enforced disappearances. Holding women in detention in unofficial or secret places of detention is strictly prohibited in all circumstances.<sup>11</sup>
27. States that have not already done so should establish specific protection measures for pregnant women who are detained.<sup>12</sup> In particular, the birth of their children should be immediately registered, guaranteeing their true identity, and information should be provided to the relatives or other persons with a legitimate interest.<sup>13</sup>

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<sup>9</sup> Ibid, para 4

<sup>10</sup> Ibid para 7

<sup>11</sup> Ibid, paras 3, 20

<sup>12</sup> Ibid. paras. 9 and 10, WGEID, General comment on children and enforced disappearances, A/HRC/WGEID/98/1, para 15

<sup>13</sup> Ibid