



HAUT-COMMISSARIAT AUX DROITS DE L'HOMME • OFFICE OF THE HIGH COMMISSIONER FOR HUMAN RIGHTS
PALAIS DES NATIONS • 1211 GENEVA 10, SWITZERLAND
www.ohchr.org • TEL: +41 22 917 9192 • FAX: +41 22 917 9022 • E-MAIL: petitions@ohchr.org

24 July 2020

Excellencies,

On behalf of the Committee on Enforced Disappearances, I wish to congratulate you for your appointment to serve as co-facilitators of the process of review of the human rights treaty body system, pursuant to Resolution 68/268 (2014).

I am writing to you in order to bring to your attention some specificities of the procedures of the Committee on Enforced Disappearances that should be taken into account when reconsidering certain aspects of the formula for allocation of meeting time and human resources adopted in Resolution 68/268.

The Committee on Enforced Disappearances currently has four weeks of session per year allocated on the basis of the number of incoming initial reports and individual communications under the formula in resolution 68/268. Despite all the efforts carried out, this meeting time has clearly become insufficient to enable the Committee to fulfil its mandate.

As compared to other human rights treaties, the Convention for the Protection of all Persons against Enforced Disappearances presents two specificities in terms of procedure. First, the Convention does not set up a system of periodic report, but rather a system of review based on an initial report (article 29(1)) and on subsequent request by the Committee for “additional information” (article 29(4)) to the State parties. The Committee has in this regard devised a flexible and nimble procedure in order to review all “additional information” along a predictable calendar.

Second, the Convention provides for an “Urgent Action procedure” which is aiming at locating and protecting disappeared persons. The number of Urgent Action requests registered by the Committee in compliance with article 30 of the Convention has passed from 11 at the end of 2014 to 906 at the date of the present document; yet the formula set out in resolution 68/268 does not take into account the workload related to the urgent action procedure.

H.E. Mr. Omar Hilale
Permanent Representative of Morocco
to the United Nations
New York

H.E. Mrs. Pascale Baeriswyl
Permanent Representative of Switzerland
to the United Nations
New York

These elements require an increase of the meeting time and human resources of the Secretariat allocated to the Committee. For this to be possible, it is key that the 2020 Review ensure that the specificities of the CED procedure are taken into account in the formula established to calculate the allocated resources.

It is to be noted that on the basis of the second report of the Secretary-General under resolution 68-268, a fifth week of session was granted to the Committee, but without the human resources necessary to support the workload that this additional week entailed. The Committee therefore never benefited from this additional week of session.

Through this note, we want to share with you the Committee's proposals to ensure a reporting procedure that is compatible with the overall aim of Treaty Bodies to promote a predictable calendar. It also provides information on the elements to be taken into account with regard to the Urgent Action procedure.

1. CED reporting procedure:

At the time of drafting the Convention from 2003 to 2006, there was already a debate on the "proliferation of treaty bodies" and on the "reporting fatigue". Many states expressed concern at the creation of a new committee and wanted to entrust the Human Rights Committee or the Committee against Torture with the supervision of the future convention. Many were also reluctant at the idea of having a "system of periodic reports".¹

At the same time, most of the participants conceived the future Committee as an effective and reactive protection mechanism, combining the flexibility of the Working Group on Enforced Disappearances, and the more legalistic feature of the traditional treaty bodies. The reporting procedure was thus meant to become a flexible tool to promote the implementation of the Convention, in addition to the more "protective" measures like the urgent appeals (so called "urgent actions") (article 30), the visits (article 33), the referral to the General Assembly (article 34), or the more quasi-judicial functions like the individual and state complaints procedures (articles 31 and 32).

It was clear to the drafters that, contrary to other issues such as disability (the Convention on that topic was being drafted in the same period of time), enforced disappearances was not of the same level of concern for all States, although all States had to cooperate to put an end to it.

As a result, the Chair's proposal to combine "initial report" and "additional information on request of the Committee" was supported by the great majority of States participating to the negotiation.²

¹ Report of the Intersessional Open-ended Working Group to elaborate a draft legally binding normative instrument for the protection of all persons from enforced disappearance, doc. E/CN.4/2005/66, §123: "Many participants indicated that they did not favour a system of periodic reports, which they considered to be too unwieldy. They did, however, agree that States parties might submit additional reports to the monitoring body whenever that body so requested."

² Report of the Intersessional Open-ended Working Group to elaborate a draft legally binding normative instrument for the protection of all persons from enforced disappearance, doc. E/CN.4/2004/59, § 149: "Most delegations supported the Chairperson's proposal for the establishment of a procedure under which each State party would be required to present an initial report on the action it had

It was also clear during the drafting of the Convention that the future Committee would have to operate in a pre-existing institutional environment on the issue of enforced disappearance. A specific article (article 28) is therefore dedicated to the necessary cooperation of the Committee with “all relevant organs [...] working towards the protection of all persons against enforced disappearances.” In this perspective, the Committee is particularly aware of the need to coordinate with other UN Treaty bodies and regional human rights mechanisms.

The objective of these working methods is to ensure compliance with these background considerations, aiming at better assisting States parties in the implementation of the Convention.

1.1 The current reporting procedure under article 29 of the Convention

The current CED procedure includes the following steps:

- Examination of States parties’ initial reports under article 29(1) of the Convention.
- Follow-up to three recommendations prioritized by the Committee, within one year of the adoption of the concluding observations.
- Examination of additional information report, under which all States parties have to provide additional information on all the recommendations adopted upon the examination of the initial report, within a deadline determined by the Committee in its concluding observations.

Under the new additional information procedure, the Committee will review initial reports under article 29(1) through the same procedure as today. The examination of additional information provided under article 29(4) will however be carried out according to different modalities, aiming at ensuring a flexible and nimble procedure.

1.2 Requests for additional information under article 29(4)

At the outset of the review of the initial report, the Committee will determine the member or members (rapporteur or working group) in charge of monitoring the implementation of the adopted recommendations.

The nominated rapporteur or working group will have the following responsibilities:

- Review the implementation of all the recommendations adopted by the Committee for the State party.
- Recommend to the Plenary whether the Committee should request the State party to provide additional information under art. 29(4), depending on the status

taken in fulfilment of its obligations under the new instrument within one year of the instrument’s entry into force in respect of the State concerned, followed by supplementary reports at the request of the monitoring body (art. II-A). One delegation suggested that initial reports should be due two years after ratification.”

of implementation of the recommendations and the evolution of the situation of the State party with regard to enforced disappearances.

If the Committee decides to request additional information, the Committee's decision will be transmitted to the State party in a document that will include:

- A list of topics of discussion to which the State party will have to reply to within a deadline determined by the Committee depending on the nature of the subject matter and urgency of the situation;
- The modalities for the review of additional information that will be applied (see below).

The information submitted by the State party will be posted on the Committee's website, inviting Civil Society Organizations, and National Human Rights Institutions to comment on the information provided.

1.3 Review of additional information under article 29(4)

One of the main objectives of the procedure under article 29(4) is to enable the Committee to ensure a thorough monitoring of the implementation of its recommendations and of the principles of the Convention by all States parties, with the frequency and to the extent required depending on the specific situation of enforced disappearances in the country. It also aims at ensuring that available resources are mainly dedicated to the most urgent situations. To this end, the Committee will apply different modalities of examination of the additional information submitted under article 29(4), including the following:

- Desk review of the information provided under art. 29(4);
- Dialogue with the State party, in presence, and/or through video-link, depending on the specific circumstances of the situation at stake and the stakeholders involved. Such dialogue will last between one and six hours depending on the number of issues that the Committee decided to address with the State party concerned at one given session. For the effect of the calculation of the required meeting time, it is estimated that the average duration of such dialogue would be three (3) hours.

1.4 Periodicity

By definition, there is no fixed periodicity of the reporting procedure under article 29(4): the request for additional information will only be made if and when the Committee deems it necessary, depending on the level of implementation of the Committee's recommendations and conventional obligations by the State party, and on the evolution of the situation related to enforced disappearance in that country. The same elements will be taken into account by the Committee to determine the delay within which it might request further additional information, varying from 1 to 8 years. Based on the total number of States parties as of today (63) and on the estimated number of requests currently pending under article 29 (4), it is predictable that the Committee will have to review additional information from an average of 20 States parties every year, combining the different modalities referred to before.

1.5 Required session time and human resources

Each review of additional information will take place during the Committee's sessions and will last between one to six hours. It is estimated that most of the reviews will take an average of 3 hours.

In an average, under the current formula, a Committee can review 2.5 reports a week (assuming a full review of 6 hours). As reviews of the additional information will take on average of 3 hours, the Committee will be able to review the additional information of five States parties a week, namely 20 States parties in four weeks of session.

To review article 29(4) additional information, the Committee therefore needs:

- Four additional weeks of session time
- In compliance with the formula in GA resolution 68/268, this additional meeting time will have to be provided together with an additional 1.4 staff members at the P3 level (see note on resources in annex of this document).

2. Urgent Actions procedure

Through the Urgent Actions procedure, the Committee can request the State party in which a person was disappeared, or the State party of his or her nationality, to take immediate action to search for a disappeared person and investigate his or her disappearance. Such disappearance must have occurred after the entry into force of the Convention. Victims frequently highlight the importance of the support received from the Committee through this procedure for the search for their disappeared loved ones.

At the time of adoption of Resolution 68-268, the Committee had only registered 11 Urgent Actions. It was then estimated that the available resources of the Secretariat of OHCHR Petitions and Urgent Actions Section were sufficient to provide the necessary support. And Urgent Actions were not included in the adopted formula. Since then, the number of Urgent Actions has thoroughly increased. At the time of this submission, the Committee had registered a total of 906 registered Urgent Actions, and the work required has increased proportionately.

Most of this work is carried out inter-sessionally by the Committee's Secretariat and the Committee's Working Group on Urgent Actions. The support of the Secretariat is key for the success and relevance of the procedure. Delays in replying to an Urgent Action request or to follow-up on the information provided by the State party and authors of the request prejudice the efficiency of the procedure and question the legitimacy of the Committee's work.

The Committee therefore wishes to bring to the attention of the co-facilitators the need to ensure that the Urgent Actions are taken into account in the formula applied to determine the Committee's resources. A proposed formula is included in the annex of this document ("Resource implications for CED Work under article 29(4) and Urgent Actions").

In view of the work required at the different steps of the procedure, the Committee needs the following additional resources to process the Urgent Actions request:

- 2.9 staff members at the P3 level
- 1.4 staff at GS level (see note on resources in annex of this document).

Together with the Committee, I remain fully available to provide you with any information you may require about the Committee's working methods and needs, and wish you success in your important task as co-facilitators of the treaty body system review process.

Sincerely,



Mohamed Ayat
Chair
Committee on Enforced Disappearances

Annex: - Resource implications for work under Article 29(4) and urgent Actions

cc: High Commissioner for Human Rights
Chairs of Treaty Bodies
Members, Committee on Enforced Disappearances

ANNEX:

**RESOURCE IMPLICATIONS FOR WORK UNDER ARTICLE 29(4)
AND URGENT ACTIONS
24 JULY 2020**

This note sets out the resource implications for the work of the Committee on Enforced Disappearances in relation to its procedures: request for additional information under article 29(4); and, urgent actions (article 30). Information in relation to the resourcing of the procedure for visits (article 33) appears in a consolidated document related to the resourcing of inquiries and visits under all relevant treaties.

The note is prepared as part of the 2020 review of resolution 68/268. That resolution did not treat the additional information and urgent actions procedures under the ICCPED as the Committee's workload under the procedures was minimal at the time. Since then, the workload has increased exponentially and therefore requires proper funding. In addition, relation to the procedure under article 29(4), the Committee had not devised its methods of work, on the basis of which a viable resourcing could be prepared.

In relation to the additional information procedure under article 29(4), this note supplements information explaining the procedure, which appears in another note.

1. CALCULATION FOR ADDITIONAL INFORMATION PROCEDURE UNDER ARTICLE 29(4)

Basis for meeting time

The current calculation for meeting time, according to resolution 68/268, is as follows :

- The average number of State party reports received per year in the previous four years (2015–2018)
- An assumed rate of 2.5 State party reviews per week (5 under CRC optional protocols)
- The average number of individual communications registered per year (2017–2018, since several communications procedures only recently entered into force)
- A rate of 1.3 hours of meeting time to examine one communication
- Two weeks of standard meeting time per treaty body for other mandated activities
- The non-reduction of the number of weeks allocated to a treaty body on a permanent basis prior to the adoption of resolution 68/268 (paragraph 27).

Current projection for CED under the third report of the Secretary-General

- Five initial reports a year for 2021
- Less than one communication a year for 2021
- Four weeks of meeting time, including two weeks for reporting and communications and two weeks for 'other mandated activities'

Calculated additional time for reporting under article 29(4) – predictable review cycle calendar

It should be noted that the calculation in this section is done **in addition** to the calculation referred to above for the reporting and individual communications procedures. The Committee will continue considering initial reports. However, as noted above, the General Assembly has never provided the Committee with the resources to support the procedure under article 29(4). The obvious reason for this lack of support was that at the time of adoption of resolution 68/268 the Committee had not yet had the opportunity to use the article 29.4 procedure and therefore had not yet developed the working methods related to it.

The Committee has adopted a ‘nimble’ procedure for additional information under article 29(4) which avoids replicating the periodic reporting procedure. For the purpose of resourcing, it will be recalled that the Committee will review the additional information in a shortened format of only three hours per State party. The calculation is done on the basis of CED adopting a predictable review cycle (PRC) calendar for considering additional information under article 29(4). Note that initial reports (five per year) do not fall within the PRC calendar. Once the Committee reviews the initial report, the country would then be placed in the PRC calendar.

- Reviews of 20 additional States a year according to a predictable review cycle – group 1 (5), group 2 (10), group 3 (5).
- Dialogues take place over three hours not six – consequently 1 week of meeting time allow for reviews of 5 States under art 29(4) procedure
- The Committee needs four additional weeks of meeting time for reviewing additional information under article 29(4)
- In total, the Committee would require eight weeks of annual meeting time - the current two weeks for initial reports plus four weeks for review of additional information under article 29(4) plus two weeks for ‘other mandated activities’.

Human resources

The current calculation for LOIs is 15 days work and for COBs is 15 days work. One country review is therefore 30 days of work. For art 29(4) reviews, the preparation of the LOIs would therefore be 7.5 days of work and for COBs it would be 7.5 days of work, amounting to 15 days for one country review under art 29(4).

To support the additional 20 reviews under art 29(4), this would require 300 days or 60 weeks of work.

According to the formula, one P3 staff member works for 44 weeks a year. In practical terms, the Committee would require additional support of **1.4 P3 staff members**.

2. URGENT ACTIONS

Urgent actions and resolution 68/268

Resolution 68/268 does not take into account a proper resourcing of urgent actions given that the level of incoming urgent actions in 2014 was still very low compared to the subsequent years. The incoming urgent actions have increased exponentially since then, passing from 11 registered cases in January 2014 to 906 as of 20 July 2020.

Consequently, the 2020 review presents an opportunity to calculate meeting time and human resources needed to support the Committee’s work under this procedure.

Calculation of human resources to support the urgent action procedure

Since most of the work to support the urgent actions procedure is undertaken inter-sessionally, human resources required for this procedure should not be calculated on the basis of the Committee’s meeting time but rather on the time required to process an urgent action request.

The formula is based on the average number of days required per urgent action multiplied by the number of urgent actions dealt with annually (averaged over a two-year period) divided by the average working year for a P3 staff member (44 weeks). The formula has to take into account the following elements:

- An Urgent Action remains open “as long as the fate of the person sought remains unresolved”. An Urgent Action will therefore be considered as a “living case” until it is closed, namely after the disappeared person is located, and Interim Measures of protection are not necessary anymore.
- Some Urgent Actions are dealt with jointly. This occurs whenever a request for Urgent Action is submitted to the Committee with regard to the simultaneous disappearance of various people, or when the requests relate to facts occurred in a same region, over a similar period of time. In such cases, the Committee follows the procedure by group, thereby spending less time on each individual case, but highlighting the specific information related to each of the cases whenever it is necessary.
- The proposed calculation relies on a two-year period rather than a four-year period (for reporting). This is due to the exponential increase in UAs over time – a four-year period might lead to an unrealistically lower average of incoming UAs.

Annual work load of urgent actions

In 2018, the Committee dealt with:

- 521 “living” requests for urgent actions, out of which 284 were gathered in 64 “Groups”. As a result, the reference number of Urgent Actions for 2018 is $521 - 281 + 64 = 301$

In 2019, the Committee dealt with:

- 765 “living” requests for urgent actions, out of which 476 were gathered in 58 “Groups”. As a result, the reference number of Urgent Actions for 2019 is $765 - 476 + 58 = 347$
- Average cases processed annually is $301 + 347$ divided by $2 = 324$

Staff workload

Professional staff members working on urgent actions perform the following functions:

1. Drafting of a registration note for the State party and letter of information to the author (prepared by the Secretariat and reviewed by the CED Working Group on Urgent Actions);

2. Follow-up to each of the registered Urgent Actions, consisting of the case management (sending of reminders to the parties; management of Interim Measures possibly granted); analysis of the information provided by the authorities of the State party, victims and other stakeholders; drafting of follow-up notes, with specific recommendations related to the development of the search and investigation in each of the cases; support to the Working Group of the Committee for the review and adoption of the follow-up notes and letters.
3. Drafting of the reports on urgent actions (that are examined by the plenary every session)

Case workload differs from case-to-case as the frequency of the follow-up actions (and therefore the working time that is required from the Secretariat) mainly depends on the frequency of the inputs provided by the parties. Moreover, work on urgent actions will usually span various years as Urgent Actions must remain open “as long as the fate of the person sought remains unresolved” (see art. 30(4) of the Convention).

The first and second reports of the Secretary-General on implementation of resolution 68/268 estimated that one urgent action amounted to an average of two days of working time per year for a P3 staff member.

General service staff members working on urgent actions perform the following actions:

1. Registration of urgent actions (creating electronic and physical files) and registration in the Petitions database
2. Preparation and sending of reminders to the parties and updating the Petitions database
3. Transmittal of registration and follow-up notes to the State party, creating and updating electronic and physical files, and updating the Petitions database.

The second report of the Secretary-General on implementation of resolution 68/268 estimated that one urgent action amounted to one day of working time per year for a G5 staff member.

Calculation of human resources

For Professional staff:

301 + 347 divided by 2 = 324 living cases, corresponding to 648 days of work or 129.6 weeks

129.6 weeks of work divided by 44 weeks equals 2.9 P3 Staff.

For General services staff:

301 + 347 divided by 2 = 324 living cases, corresponding to 324 days of work or 64.8 weeks

64.8 weeks of work divided by 44 weeks equals 1.47 G5 Staff.

Calculation of meeting time

The Committee deals with urgent actions inter-sessionally. During session, the Committee meets at each session to consider its report on Urgent Actions. Irrespective of the number of cases, the Committee uses an average of 3 hours of meeting time to consider this report. This time could be included within the two weeks provided annually for 'other mandated work'.

4. SUMMARY

In summary, the Committee would require the following additional resources to support the additional information procedure under article 29(4) and the urgent action procedure:

- Additional four weeks of meeting time to consider additional information under art 29(4) (beyond the four weeks currently allocated to the Committee for 2021)
- Additional 1.4 professional staff members at the P3 level to support the Committee's procedure under art 29(4)
- Additional 2.9 professional staff members at the P3 level to support the Committee's urgent action procedure
- Additional 1.4 general service staff at the G5 level to support the Committee's urgent action procedure.