



Lawyers' Rights Watch Canada
NGO in Special Consultative Status with the Economic and Social Council of the United Nations

Contribution to project of joint statement on the notion of short-term enforced disappearance by the UN Committee on Enforced Disappearances and the Working Group on Enforced and Involuntary Disappearances

From

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Short-term enforced disappearances: “Every Minute Counts”

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Short-term enforced disappearances: “Every Minute Counts”

1. Enforced disappearance affects hundreds of thousands of people in at least 85 countries.¹ An unknown number of enforced disappearances are temporary or short-term, in that the victims – or their remains – reappear days, weeks, or months after their disappearance.
2. The planned joint statement by the Committee on Enforced Disappearance (CED) and the Working Group on Enforced and Involuntary Disappearance (WGEID) on short-term disappearances is timely in light of the 2019 Draft Articles for a treaty on Crimes Against Humanity (Draft Articles on CAH)² which sets out State responsibilities to prevent, ensure accountability, and provide reparations for crimes against humanity, including systemic or widespread enforced disappearances.
3. The current draft Articles on CAH define enforced disappearances to include only “prolonged” disappearances, thus excluding “short-term” disappearances. This definition replicates the definition in the *Rome Statute of the International Criminal Court* (Rome Statute)³ which sets out ICC jurisdiction for criminal prosecution of individuals and not State responsibility (see paras 12-18 below).
4. The definition in the 2019 Draft Articles on CAH is at odds with other international law and jurisprudence setting out State responsibility to prevent and ensure accountability for enforced disappearance, regardless of the duration of the disappearance, including the:
 - 1994 *Declaration on the Protection of all Persons from Enforced Disappearance* (Declaration),⁴
 - 2006 *Convention for the Protection of all Persons against Enforced Disappearances* (Convention or ICPPED),⁵
 - *Inter-American Convention on Forced Disappearance of Persons* (Inter-American Convention on FDP),⁶ and

¹ UN, <https://www.un.org/en/observances/victims-enforced-disappearance>

² International Law Commission (ILC), Draft articles on Prevention and Punishment of Crimes Against Humanity, 2019, https://legal.un.org/ilc/texts/instruments/english/draft_articles/7_7_2019.pdf.

³ *Rome Statute of the International Criminal Court* (Rome Statute), <https://www.ohchr.org/en/instruments-mechanisms/instruments/rome-statute-international-criminal-court>.

⁴ *Declaration on the Protection of all Persons from Enforced Disappearance* (Declaration), A/Res/47/133, 18 December 1992, <https://www.ohchr.org/en/instruments-mechanisms/instruments/declaration-protection-all-persons-enforced-disappearance>.

⁵ *Convention for the Protection of all Persons against Enforced Disappearances* (ICPPED), 2010, <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-convention-protection-all-persons-enforced>.

⁶ *Inter-American Convention on Forced Disappearance of Persons* (IACFDP), 1994, <https://www.oas.org/juridico/english/treaties/a-60.html>.

- Jurisprudence or statements of the CED,⁷ WGEID,⁸ Office of the High Commissioner for Human Rights (OHCHR),⁹ and European¹⁰ and Inter-American¹¹ human rights systems.
5. In 2019, the International Law Commission (ILC) recorded recommendations of several States,¹² the Committee on Enforced Disappearances (CED),¹³ the OHCHR,¹⁴ and the WGEID¹⁵ that the definition of “enforced disappearances” in the Draft Articles on CAH maintain the definition set out in the Convention.¹⁶

A continuous crime: “Every minute counts...”

6. The ICPPED defines enforced disappearance as:

...the arrest, detention, abduction or any other form of deprivation of liberty by agents of the State or by persons or groups of persons acting with the authorization, support or acquiescence of the State, followed by a refusal to acknowledge the deprivation of liberty or by concealment of the fate or whereabouts of the disappeared person, which place such a person outside the protection of the law.

7. The Declaration provides that enforced disappearance is a “continuing offence as long as perpetrators continue to conceal the fate and whereabouts of persons who have disappeared.”¹⁷ The Convention also acknowledges the “continuous nature” of the crime.
8. The WGEID has affirmed that an act of enforced disappearance “begins at the time of the abduction and extends for the whole period of time that the crime is not complete, that is to say until the State acknowledges the detention or releases information pertaining to the fate or whereabouts of the individual.”¹⁸

⁷ e.g., Committee on Enforced Disappearances (CED), Communication 1/2013, *Yrusta v. Argentina*, CED/C/10/D/1/2013, para 10.3, <https://undocs.org/CED/C/10/D/1/2013>;

⁸ Working Group on Enforced and Involuntary Disappearances (WGEID), General Comment, A/HRC/16/48, 2011, para 39, <https://www.ohchr.org/Documents/Issues/Disappearances/GC-EDCC.pdf>.

⁹ ILC, Observations on the text of draft articles on crimes against humanity adopted by International Law Commission on first reading 2019 (Draft Articles), https://legal.un.org/ilc/sessions/71/pdfs/english/cah_ohchr.pdf.

¹⁰ e.g., European Court of Human Rights (ECtHR), *El-Masri v. The Former Yugoslav Republic Of Macedonia*, Application no. 39630/09, 13 December 2012, para 240, <https://hudoc.echr.coe.int/eng#%7B%22itemid%22:%5B%22001-115621%22%7D>.

¹¹ e.g., Inter-American Commission on Human Rights, Annual Report, 1987-1988, Chapter V, OEA/Ser.L/V/II.74, doc. 10 rev.1. 16 September 1988, <https://www.cidh.oas.org/annualrep/86.87eng/chap.5.htm>. Also see, Inter-American Court of Human Rights (IACtHR), Also see *Velásquez Rodríguez v. Honduras*, *infra*, note 27.

¹² ILC, A/CN.4/726, 2019, https://legal.un.org/ilc/documentation/english/a_cn4_726.pdf

¹³ CED, 2019, para 2, http://legal.un.org/docs/?path=../ilc/sessions/71/pdfs/english/cah_ced.pdf&lang=E

¹⁴ ILC, Observations on the text of draft articles on crimes against humanity adopted by International Law Commission on first reading, 2019, https://legal.un.org/ilc/sessions/71/pdfs/english/cah_ohchr.pdf.

¹⁵ WGEID, 2019, https://legal.un.org/ilc/sessions/71/pdfs/english/cah_un_wg_disappearances.pdf

¹⁶ WGEID, 2019, *ibid*.

¹⁷ Declaration, *supra* note 4.

¹⁸ WGEID, A/HRC/16/48, 2011, para 39, *supra* note 8.

9. The WGEID and the CED have insisted that:

There is no time limit, no matter how short, for an enforced disappearance to occur. Every minute counts when a person is placed outside the protection of the law. And when a person has disappeared, every minute of anguish spent by his or her relatives without news of him or her is too much [...].¹⁹

10. Another key backdrop for international concern about short-term enforced disappearances includes repeated calls by the Secretary General²⁰ and the General Assembly for universal consideration of ratification of the ICPPED as “a matter of priority.”²¹ Currently, the Convention has only 72 States Parties (98 signatories).²²

11. In 2022, the WGEID has identified obstacles²³ to implementation of the Declaration²⁴ and universal ratification of the ICPPED that are relevant to short-term disappearances, including:

- a. insufficient progress towards domestic “codification of enforced disappearance as a separate criminal offence;”²⁵
- b. domestic laws with definitions that vary from the those in the Declaration or the Convention;
- c. anti-terrorism laws that fail to acknowledge the absolute prohibition on enforced disappearance or which lack procedures for prompt and effective judicial remedies;
- d. lack of prompt, independent, and effective investigations into disappearances;
- e. lack of adequate records and data bases of disappeared persons and investigative progress;
- f. impunity for reprisals against witnesses, relatives, and legal representatives of the disappeared.

The crime of enforced disappearance includes State acquiescence

12. The WGEID has confirmed that impunity for abduction and detention of persons by private actors may in some circumstances be a form of acquiescence.²⁶ The Inter-American Court of Human Rights (IACtHR) has ruled that a systemic climate of impunity may be imputed as State acquiescence in crimes of enforced disappearance when there is a failure of due diligence

¹⁹ CED and WGEID, 30 August 2016, <https://www.ohchr.org/en/press-releases/2016/08/every-minute-counts-un-experts-raise-alarm-over-short-term-enforced>

²⁰ UN Secretary General, 30 August 2021, <https://www.un.org/en/observances/victims-enforced-disappearance/message>

²¹ e.g., General Assembly, A/RES/76/158, 7 January 2022, para. 2, <https://undocs.org/en/A/RES/76/158>.

²² UNTC, ICPPED ratifications, https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-16&chapter=4&clang=en

²³ Human Rights Council, A/HRC/51/31/Add.3, 31 August 2022, paras. 48-58, <http://daccess-ods.un.org/access.nsf/Get?Open&DS=A/HRC/51/31/Add.3&Lang=E>

²⁴ Declaration, *supra* note 4.

²⁵ A/HRC/51/31/Add.3, para. 49, *supra* note 23.

²⁶ Human Rights Council, A/HRC/36/39/Add.2, para. 42, <https://www.undocs.org/en/A/HRC/36/39/Add.2>.

by the State to conduct complete, impartial, and effective investigations of disappearances.²⁷ The European Court of Human Rights (ECtHR) has found continuing violations of the *European Convention of Human Rights* (ECHR)²⁸ when authorities have failed to conduct effective investigations into the fate and whereabouts of missing or abducted persons.²⁹

13. States' laws or policies that either provide for or permit authorities to detain persons in unknown locations without access to lawyers or families, such as some anti-terrorism,³⁰ national security, or immigration laws,³¹ could be imputed as acquiescence to a systematic practice of enforced disappearance.
14. It is crucial to clarify and reiterate the State responsibility for short-term enforced disappearances in order to prevent impunity for temporary enforced disappearances fostered by national laws or policies, e.g., on grounds of anti-terrorism or national security,³² thus becoming systematic or potentially even widespread.

State responsibility and crimes against humanity

15. The 2002 Rome Statute of the ICC³³ narrows the scope of enforced disappearances that are eligible for ICC prosecution of individuals when States are unwilling or unable to exercise their responsibility to do so:³⁴
 - a. The Rome Statute limits ICC jurisdiction to “the most serious crimes of concern to the international community as a whole”³⁵ and includes enforced disappearances as a crime against humanity when it is “when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack.”³⁶
 - b. The scope of permissible ICC prosecutions of individuals for enforced disappearances is limited to cases defined as:

... the arrest, detention or abduction of persons by, or with the authorization, support or acquiescence of, a State or a political organization, followed by a refusal

²⁷ Inter-American Court of Human Rights (IACtHR), *La Cantuta v. Perú*, 2006, https://corteidh.or.cr/docs/casos/articulos/seriec_162_ing.pdf; Also see *Velásquez Rodríguez v. Honduras*, Case No. 7920, Judgment, 29 July 1988, para. 155, 177, 181, http://hrlibrary.umn.edu/iachr/b_11_12d.htm.

²⁸ *European Convention on Human Rights* (ECHR), https://www.echr.coe.int/documents/d/echr/Convention_ENG.

²⁹ Council of Europe (COE), *Missing persons and victims of enforced disappearance in Europe: Issue paper*, 2016, p. 38, 40, <https://rm.coe.int/missing-persons-and-victims-of-enforced-disappearance-in-europe-issue-/16806daa1c>.

³⁰ OHCHR, *Basic Human Rights Reference Guide: Detention in the Context of Countering Terrorism*, 2014, paras. 65-67, <https://www.ohchr.org/en/newyork/Documents/DetentionCounteringTerrorism.pdf>

³¹ B. Duhaime, A. Thibault, *Protection of migrants from enforced disappearance: A human rights perspective*, IRRC 905, 2018, p. 578, https://international-review.icrc.org/sites/default/files/irrc_99_905_7.pdf.

³² ECtHR, *Secret detention sites: Fact sheet*, 2019, https://www.echr.coe.int/documents/d/echr/FS_Secret_detention_ENG.

³³ Rome Statute, *supra* note 3.

³⁴ Rome Statute, *ibid*, article 17

³⁵ Rome Statute, *ibid*, article 4,

³⁶ Rome Statute, *ibid*, article 7.

to acknowledge that deprivation of freedom or to give information on the fate or whereabouts of those persons, with the intention of removing them from the protection of the law for a prolonged period of time" (underlines added).

- c. Thus, prosecutions by the ICC require proof beyond a reasonable doubt of a two-pronged element of mens rea not found in the ICPPED definition of the crime:
 - i. intention to remove the person from the protection of the law, and
 - ii. intention that the removal of the person from the protection of the law be for a prolonged period of time.
- d. The Rome Statute provides no definition of "prolonged."

16. The ICPPED definition differs from that in the Rome Statute in two respects:

- a. The ICPPED indicates no minimum period of time; and
- b. The ICPPED indicates that removal of the victim from protection of the law is a consequence of the crime, rather than an essential element of mens rea.³⁷

17. The Draft Articles on CAH³⁸ provide for State responsibility for "prevention and punishment of crimes against humanity." The 2019 Draft Article 2.2.(i) definition of "enforced disappearance," replicates the Rome Statute definition instead of the ICPPED definition. This is despite the ICPPED's adoption several years after adoption of the Rome Statute and the recommendations of several States and expert international bodies and courts (see para 4 above), and despite the fact that the ICC jurisdiction is to take effect only as a last resort after States have failed to do so.

18. The potential for impunity for short-term enforced disappearance increases when definitions depart from the Declaration, the ICPPED, and the Inter-American Convention on FDP. This necessitates clarification that States are responsible to ensure prevention, accountability and reparations for all enforced disappearances, regardless of duration, to ensure that there can be no justification of or impunity for temporary enforced disappearances through State acquiescence or through practices, policies, or legislation that depart from the definition in the Declaration and the ICPPED.

Examples of short-term enforced disappearances

19. The following eleven examples show the prevalence of temporary enforced disappearances world-wide. Unless otherwise indicated, named countries have not signed or ratified the ICPPED.

³⁷ WGEID, 2019, *supra* note 15.

³⁸ ILC, Draft articles on CAH 2019, *supra* note 2.

Afghanistan

20. Since August 2021, Afghanistan's de facto authorities reportedly have temporarily disappeared numerous persons.³⁹ Persons subjected to short-term enforced disappearances are denied access to lawyers or family and may be subjected to torture and ill-treatment, beaten, tried and sentenced to death in secret, or killed.⁴⁰

Canada

21. Canada has advocated for prevention of enforced disappearances in other countries.⁴¹ Since 2018 the Canadian federal government has indicated it is consulting all levels of government in Canada about possible accession to the ICPPED.⁴² From 2002-2004, Canadian officials provided information to the United States (US) resulting in four incidents in which Canadians were subjected by US officials to "extraordinary rendition" to unknown locations in Syria where they were tortured for varying periods of time (weeks to months). Canada later instituted Commissions of Inquiry,⁴³ after which the government apologized and compensated the victims in the sum of \$10.5 million each. No government officials have been held accountable. Since the 1980s there have been several incidents of undocumented detentions of Indigenous persons by police who have abandoned detainees in unrevealed remote locations without adequate clothing or water.⁴⁴ Canada has no stand-alone crime of enforced disappearance to prevent impunity for short-term or prolonged enforced disappearances.

China

22. In addition to forcible disappearances of large numbers of people in the Uyghur region and Tibet, China's authorities have subjected thousands of persons, including lawyers and human rights defenders, to enforced disappearance for weeks or months through China's system of Residential Surveillance in a Designated Location (RSDL).⁴⁵ RSDL generally entails arbitrary

³⁹ Human Rights Watch (HRW), 30 November 2021, <https://www.hrw.org/report/2021/11/30/no-forgiveness-people-you/executions-and-enforced-disappearances-afghanistan>

⁴⁰ UN Human Rights Council, Special Procedures, 17 January 2023, <https://www.ohchr.org/sites/default/files/documents/issues/ijudiciary/statements/2023-01-17/202301-stm-sr-ijl-sr-afghanistan-day-endangered-lawyer.pdf>; Christopher Lehmann, ILAC Rule of Law Report 2023 http://ilacnet.org/wp-content/uploads/2023/01/ILAC_Afghanistan_Report_2023-2.pdf.

⁴¹ e.g., Lao People's Democratic Republic, Universal Periodic Review (Lao UPR), 2020, https://www.international.gc.ca/world-monde/issues_development-enjeux_developpement/human_rights-droits_homme/upr-epu/lao.aspx?lang=eng; Thailand UPR, 2021, https://www.international.gc.ca/world-monde/issues_development-enjeux_developpement/human_rights-droits_homme/upr-epu/thailande-thailande.aspx?lang=eng

⁴² Canada UPR, p 2, <https://open.canada.ca/data/dataset/41c5548a-600f-45c4-a1af-1ab4267314be/resource/4871648a-4e2b-4bd9-a582-0e02d8068b0e/download/upr3-canada.pdf>

⁴³ Government of Canada, O'Connor Inquiry, 2006 https://publications.gc.ca/collections/collection_2015/bcp-pco/CP32-88-1-1-2006-eng.pdf; Iacobucci Inquiry, 2010, http://epe.lac-bac.gc.ca/100/206/301/pco-bcp/commissions/internal_inquiry/2010-03-09/www.iacobucciinquiry.ca/pdfs/documents/final-report-copy-en.pdf;

⁴⁴ HRW, 2017, pp. 3-4, https://www.hrw.org/sites/default/files/supporting_resources/canada_saskatchewan_submission_june_2017.pdf; Peacemakers Trust, 4 April 2023, paras 36-42, <https://www.peacemakers.ca/publications/PeacemakersTrust.UPR.Canada.EID.4April2023CORRIGENDUM.pdf>

⁴⁵ Statement on Gao Zhisheng and enforced disappearances in China by 35 NGOs, 11 August 2023, <https://www.lrwc.org/china-release-gao-zhisheng/>; LRWC, October 2022, https://www.lrwc.org/wp-content/uploads/2022/10/LRWC.HRC51.Item3_ID_WGEID_F.pdf; Amnesty International et al, 30 August 2022,

detention in undisclosed locations without charges or access to lawyers or family. Reports of torture in RSDL are frequent. China has disregarded Special Procedures⁴⁶ and Treaty Bodies⁴⁷ recommendations to abolish RSDL. China is reportedly involved in enforced disappearances related to refoulement from other countries (e.g., Lao PDR, below).

Colombia

23. Colombia ratified the ICPPED in 2012, including Article 31. In addition to 121,768 enforced disappearances dating from the 1970s and 1980s,⁴⁸ ICPPED violations continued after the 2016 Final Peace Agreement,⁴⁹ among them hundreds of reported short-term and prolonged enforced disappearances since 2016, including during 2021 protests.⁵⁰ Police have reportedly obstructed defenders and lawyers seeking their clients' whereabouts.⁵¹

Iran

24. Iran's longstanding pattern of enforced disappearances has continued since the 1980s.⁵² Dissidents, defenders, and lawyers,⁵³ including women's rights advocates, continue to be subjected to short-term arbitrary detention and enforced disappearances⁵⁴ and denied access to lawyers,⁵⁵ tortured,⁵⁶ ill-treated,⁵⁷ or killed.⁵⁸

https://lawyersforlawyers.org/wp-content/uploads/2022/08/Civil-Society-Call-to-End-Enforced-Disappearances-in-China_EN.pdf; OHCHR, 23 March 2020, <https://www.ohchr.org/en/press-releases/2020/03/china-un-experts-gravely-concerned-enforced-disappearance-three-human-rights>; Safeguard Defenders, 2020, <https://safeguarddefenders.com/en/file/852/download?token=5zxBv50-> and 2021,

<http://safeguarddefenders.com/sites/default/files/pdf/Follow-up%20Submission%20on%20China%E2%80%99s%20mass%20use%20of%20RSDL.pdf>; WGEID, 23 April–2 May 2018, https://www.ohchr.org/sites/default/files/Documents/Issues/Disappearances/Allegations/115_China.pdf;

⁴⁶ Special Procedures Communication: China, AL CHN 4/2021,

<https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=26337>; AL CHN 12/2022, <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=27725>,

⁴⁷ Committee Against Torture: China, CAT/C/CHN/CO/5,

https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CAT%2fC%2fCHN%2fCO%2f5&Lang=en;

⁴⁸ Truth Commission of Colombia, 2022, <https://www.comisiondelaverdad.co/hallazgos-y-recomendaciones-1>

⁴⁹ International Commission of Jurists (ICJ), 2021, <https://www.icj.org/colombia-icj-report-identifies-necessary-measures-to-ensure-victims-of-enforced-disappearance-and-extra-judicial-killings-can-access-justice/>

⁵⁰ Amnesty International, 2021, <https://www.amnesty.org/en/documents/amr23/4405/2021/en/>, citing

<https://defenderlalibertad.com/boletin-informativo-20-paronacional>

⁵¹ Colombian Caravana, 2022, pp. 49, 52-53, 99, 115, <https://www.lrwc.org/wp-content/uploads/2023/05/Colombian-Caravan-Report-Final-EN.pdf>.

⁵² Amnesty International, 13 September 2022, <https://www.amnesty.org/en/latest/news/2022/09/iran-walls-erected-around-graves-of-massacre-victims-show-urgent-need-for-international-investigation/>.

⁵³ OMCT, 16 June 2021, <https://www.omct.org/en/resources/urgent-interventions/enforced-disappearance-of-human-rights-lawyer-mr-payam-derafshan>

⁵⁴ ICJ et al, 17/10/22, <https://www.icj.org/un-human-rights-council-must-hold-a-special-session-on-iran/>

⁵⁵ Iran Human rights, 20 October 2021, <https://iranhumanrights.org/2021/10/detained-lawyer-of-iranian-instagram-star-tortured-bit-off-tongue-after-unidentified-injection/>

⁵⁶ Iran Human Rights, *Ibid.*

⁵⁷ OHCHR, September 2022, <https://www.ohchr.org/en/press-releases/2022/09/iran-un-experts-demand-stay-execution-two-women-including-lgbt-activist>.

⁵⁸ Index on Censorship, October 2022, <https://www.indexoncensorship.org/2022/10/women-pay-ultimate-price-for-iran-protests/>; Iran Human Rights Monitor, 5 December 2022, <https://iran-hrm.com/2022/12/05/neda-bayats-enforced-disappearance-and-secret-murder/?amp>

Lao PDR

25. In 2018, the UN Human Rights Committee expressed concern that Lao PDR lacks a legal framework to define and criminalize enforced disappearance and about “the prevalent pattern of impunity for such acts.”⁵⁹ Lao PDR has failed to disclose the fate and whereabouts of Chinese former lawyer Lu Siwei since his 28 July 2023 arrest, amid concern about refoulement to China.⁶⁰

Russia

26. Russia has engaged in longstanding, systematic practices of enforced disappearances targeting dissidents, journalists, defenders, and opposition politicians in Russia, particularly Chechnya. The ECtHR has found Russia responsible for or acquiescent in a number of enforced disappearances,⁶¹ particularly for failure to investigate, as in the case of short-term abduction and murder on 15 July 2009 of Chechen defender Natalya Estemirova,⁶² who was known for investigating enforced disappearances.⁶³ In 2022, the Human Rights Committee, the WGEID, and the UN Human Rights Monitoring Mission in Ukraine expressed concern about numerous enforced disappearances in Russian-occupied territories of Ukraine⁶⁴ where civilians, including defenders, continue to be detained and taken to unknown locations where they are held for days, weeks, or months without access to family or lawyers.⁶⁵

Sudan

27. In September 2022, the WGEID issued a general allegation letter noting that Sudan’s authorities had engaged in enforced disappearance for decades to silence human rights

⁵⁹ Human Rights Committee, CCPR/C/LAO/CO/1, para.19, <https://www.ohchr.org/en/documents/concluding-observations/ccprclaoco1-concluding-observations-initial-report-lao-peoples>; see also WGEID et al, AL LAO 1/2021, February 2021,

<https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=26000>.

⁶⁰ OHCHR, 11 August 2023, <https://www.ohchr.org/en/press-releases/2023/08/lao-must-immediately-release-chinese-lawyer-lu-siwei-and-prevent-his>; Amnesty International, et al, 1 August 2023,

<https://www.nchrd.org/2023/08/ngos-call-on-governments-lao-authorities-to-ensure-the-immediate-release-of-chinese-human-rights-lawyer-lu-siwei/>.

⁶¹ e.g., ECtHR, *Astamirova v. Russia*, 2003, <https://hudoc.echr.coe.int/eng?i=001-85620>; COE, March 2016,

<https://rm.coe.int/missing-persons-and-victims-of-enforced-disappearance-in-europe-issue-/16806daa1c>.

⁶² ECtHR, *Estemirova v. Russia*, 31 Aug 2021, <https://hudoc.echr.coe.int/eng?i=001-211591>.

⁶³ Amnesty International, 2021, <https://www.amnesty.org/en/latest/news/2021/08/russian-authorities-have-failed-to-properly-investigate-the-murder-of-natalia-estemirova/>.

⁶⁴ Human Rights Committee, CCPR/C/RUS/CO/8, 1 December 2022,

https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CCPR%2FC%2FRUS%2FCO%2F8&Lang=en. WGEID, 2018, <https://www.ohchr.org/en/statements/2018/06/preliminary-observations-working-group-enforced-or-involuntary-disappearances?LangID=E&NewsID=23227>, HRMMU, June 2022,

<https://ukraine.un.org/en/184833-comment-matilda-bogner-head-un-human-rights-monitoring-mission-ukraine-hrmmu-occasion-100>; HRMMU, Briefing Paper, March 2021, <https://ukraine.un.org/sites/default/files/2021-03/BN%20Enforced%20dis%20Crimea%20ENG.pdf>.

⁶⁵ American Bar Association, 2022,

https://www.americanbar.org/content/dam/aba/administrative/human_rights/justice-defenders/chr-hrd-disappearances-ukraine.pdf

defenders, opposition leaders, students, academics, and journalists.⁶⁶ Some enforced disappearances were noted to last from weeks to several months, during which detainees have been tortured but later freed. Since the 25 October 2021 military coup, military authorities have reportedly held hundreds of people in arbitrary, incommunicado detention and subjected many to torture, ill-treatment, enforced disappearance or killing.

Thailand

28. Thailand signed the ICPPED in 2012 but has not yet ratified it due to delays putting legislation into force to criminalize enforced disappearance and torture.⁶⁷ There are numerous unresolved enforced disappearances in Thailand, including the enforced disappearance of human rights lawyer Somchai Neelapaijit in 2004 and several defenders in 2014, 2018, and 2019.⁶⁸ After the 2014 military coup, authorities systematically engaged in short term enforced disappearances of dissidents, journalists, and defenders, holding numerous persons for days for interrogation in incommunicado detention in unknown locations.⁶⁹

Türkiye

29. In 2022, the WGEID noted that at least 1,352 people had disappeared in Türkiye since the 1980 military coup. Since the unsuccessful 2016 coup, authorities are alleged to have systematically subjected dissidents to short-term enforced disappearances on the “pretext of combatting terrorism and protecting national security.”⁷⁰ Disappeared persons may return after periods varying from a month to two years.⁷¹

United States

30. The United States (US) has joined General Assembly consensus resolutions calling for increased assistance for States to consider becoming parties to the ICPPED “as a matter of priority.”⁷² However, the US has taken no such steps. The US was involved, largely with impunity, in instances of alleged enforced disappearance for weeks or months at a time during

⁶⁶ WGEID, September 2022,

<https://www.ohchr.org/sites/default/files/documents/issues/disappearances/allegations/general-allegation-sudan-128.pdf>

⁶⁷ Government of Thailand, 14 February 2023, <https://www.thaigov.go.th/news/contents/details/64935>; HRW, <https://www.hrw.org/news/2023/02/15/thailand-law-torture-disappearance-delayed>.

⁶⁸ LRWC and Asian Legal Resource Centre, 2019, <https://www.lrwc.org/thailand-enforced-disappearance-un-statement/>.

⁶⁹ Special Procedures Communication, THA 6/2014, 28 May 2014, <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=16504>; LRWC, 2014, <https://www.lrwc.org/ws/wp-content/uploads/2014/06/Thailand-Military-Coup-LRWC-Statement-20-June-2014.pdf>.

⁷⁰ OMCT, 2022, https://reliefweb.int/attachments/77ea96a7-d714-4c09-bba1-cb16eb5853d1/Enforced-Disappearances_ENG.pdf; OHCHR, A/HRC/38/57, para. 103, <https://daccess-ods.un.org/access.nsf/Get?OpenAgent&DS=A/HRC/48/57&Lang=E>.

⁷¹ Turkish Minute, 2021, <https://www.turkishminute.com/2021/02/12/enforced-disappearances-in-turkey-an-old-habit-or-a-new-trend/>

⁷² General Assembly, A/RES/76/158, 7 January 2022, <https://undocs.org/en/A/RES/76/158>. See USA’s statement, 2019, <https://usun.usmission.gov/united-states-explanation-of-position-on-enforced-disappearances/>

“extraordinary rendition” of persons suspected of terrorism,⁷³ particularly from 2002 to 2006 (also see Canada above).

Recommendations

31. It is recommended that the forthcoming joint statement of the CED and WGEID reiterate and clarify that:
- a. there can be no minimum time requirement in definitions of enforced disappearance.
 - b. all States should urgently ratify and implement the ICPPED, creating national legislation to criminalize enforced disappearances in accordance with the Convention;
 - c. all States should keep full records and data bases of enforced disappearances as defined in the ICPPED;
 - d. all States should conduct prompt, independent, impartial, and effective investigations of all disappearances pursuant to WGEID standards;⁷⁴
 - e. all States must ensure protection of disappeared persons’ relatives, and lawyers and defenders advocating against enforced disappearances; and
 - f. the Rome Statute definition of enforced disappearance is strictly limited to the scope of prosecutions within the ICC and must not be used to define enforced disappearances in the draft treaty on crimes against humanity.

⁷³ HRW, 2007, <https://www.hrw.org/legacy/backgrounder/usa/ct0607/ct0607web.pdf>; ACLU, 2005, <https://www.aclu.org/documents/fact-sheet-extraordinary-rendition>; ACLU 2011, <https://www.aclu.org/news/national-security/rendition-victims-seek-justice-international-tribunal>.

⁷⁴ WGEID, A/HRC/45/13/Add.3, 2020, <https://daccess-ods.un.org/tmp/1378473.04344177.html>