CHAPTER 24

The Committee on Enforced Disappearances

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The Committee on Enforced Disappearances (CED) is the newest human rights treaty body. The CED was created by the International Convention for the Protection of All Persons from Enforced Disappearance (Convention) and started to function in 2011. Its birth and operations during its first decade offer a great opportunity to assess the needs of new treaty bodies, the complementarity among different United Nations (UN) and regional human rights organs, and the effectiveness of old and new tools given to the Committee. This chapter will critically analyze both the structure and the functions of the Committee, but it does not delve into the substantive interpretation of the Convention as developed by the CED.[1]

I. The Committee

A. The Debate over the Need for a New Committee

The Committee is the result of negotiations that took place within the working group responsible for drafting what would later become the Convention. In fact, the working group was charged with preparing a "draft legally binding normative instrument."[2] The discussions were particularly contentious on two interrelated issues. The first issue was whether there was a need for a new convention that specifically dealt with enforced disappearances or if there could be alternatives, such as the adoption of a protocol to the International Covenant on Civil and Political Rights (ICCPR) or to the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment (CAT). Connected with this discussion, there was also the question of whether a new committee on enforced disappearances was needed or whether the monitoring of the new instrument could be assigned to the Human Rights Committee

[1] On the substantive interpretations of the Convention, *see* Maria Clara Galvis, *The Work of the Committee on Enforced Disappearances: Achievements and Jurisprudence Ten Years after the Entry into Force of the Convention* (Geneva: The Geneva Academy of International Humanitarian Law and Human Rights, 2021); Emmanuel Decaux and Suela Janina, "The International Convention for the Protection of All Persons from Enforced Disappearance, a Human Rights Instrument of the 21st Century: Reflections on Its 10th Anniversary of the Entry into Force," *Droits Fondamentaux* 18, no. 36 (2021): 20–46; Gabriella Citroni, "The First Years of the United Nations Committee on Enforced Disappearances: Achievements and Future Challenges," in *Réciprocité et universalité: sources et régimes du droit international des droits de l'homme: mélanges en l'honneur du professeur Emmanuel Decaux* (Éditions Pedone, 2017), at 403. This chapter was finalized in 2023.

[2] Olivier de Frouville, "The Committee on Enforced Disappearances," in Frédéric Mégret and Philip, Alston (eds.), *The United Nations and Human Rights: A Critical Appraisal* (Oxford: Oxford University Press, 2nd ed. 2014), at 579–600.

(HRCttee), the UN Working Group on Enforced or Involuntary Disappearances (WGEID), or other more creative (and dangerous) options.[3]

On the latter topic, some States took a strong position against the creation of a new Convention and Committee. Those States raised two main arguments: a specialized mandate dealing with enforced disappearances already existed—the WGEID—and there had already been a proliferation of too many treaties and treaty bodies.

The "WGEID argument" had an easy response. There are jurisdictional and functional differences between a Special Procedure of the Human Rights Council such as the WGEID and a treaty body. The former has a universal geographic mandate, while the Committee, as long as the Convention was not universally ratified, would cover only States Parties to the treaty.[4] The WGEID has a humanitarian mandate, serving as a channel of communication between families and States, aiming at determining the fate or whereabouts of disappeared persons.[5] Meanwhile, a Committee would have a wider mandate of monitoring and supervising the implementation of a legally binding instrument, as is explained throughout this chapter. The coexistence of treaty bodies and Special Procedures dealing with the same topic is not unusual in the UN with respect to situations such as torture, racial discrimination, or discrimination against women. Those overlapping mechanisms enhance the protection of individuals and call for better complementarity of treaty and non-treaty bodies. Finally, and connected to the first argument, the WGEID would have a more extended temporal jurisdiction covering all enforced disappearances, while the obligations of States Parties and the mandate of the CED would be limited to the disappearances that took place after the Convention was in force.

The "proliferation argument" was more challenging, as it was put forward in the context of the debate on the overall reform of the treaty bodies system, which had revealed a need to streamline procedures.[6] There was a generalized consensus among States that there were too many treaties and treaty bodies and burdensome reporting obligations for States Parties. To support this perspective, some of them argued that enforced disappearances violate rights already protected by the ICCPR and that the HRCttee already had an extensive jurisprudence on disappearances. Additionally, some argued that it would be disproportionate to create a specialized committee, as only a few States had enforced disappearances.[7]

This debate posed a serious risk to the negotiation and could have derailed it as a whole. Thus, the French ambassador and Chair of the Drafting Working Group, Bernard Kessedjian, proposed to postpone the discussion on the supervisory body until the rest of the draft was discussed and approved. Consequently, no final decision was taken on the nature of the supervision body until the last session.[8] In that session, Ambassador Kessedjian presented a "package" proposing a new Committee as the most "realistic" solution. However, the

[3] For instance, the delegation of China proposed delegating the supervision of the Convention to the Assembly of the State Parties.

[4] At the time of this writing, there are 71 State Parties to the Convention and 98 signatories. In comparison, since its inception in 1980, the WGEID has transmitted cases to 110 States. The WGEID's active cases involve a total of 95 States. *Report of the Working Group on Enforced or Involuntary Disappearances*, Human Rights Council, U.N. Doc. A/HRC/48/57, Aug. 4, 2021, at ¶ 5.

[5] *Methods of Work of the Working Group on Enforced or Involuntary Disappearances*, Human Rights Council, U.N. Doc. A/HRC/WGEID/102/2, May 2, 2014, at ¶ 2.

[6] Olivier de Frouville, "The Committee on Enforced Disappearances," in Frédéric Mégret and Philip Alston (eds.), *The United Nations and Human Rights: A Critical Appraisal* (Oxford: Oxford University Press, 2nd ed. 2014), at 579–600.

[7] *Id.*

[8] *Id.*

"package" also included some compromise provisions. There were three main constraints: (1) a sunset clause requiring revisiting the issue of the need for an autonomous committee at a later stage; (2) an instruction to the Committee to cooperate closely with other relevant mechanisms; and (3) a clear and limited *ratione temporis* jurisdiction clarifying that the competence of the Committee extends to "enforced disappearances which commenced after the entry into force of this Convention" (see Art. 35(1)).

B. The Membership of the Committee

As a result of these negotiations, the Convention created an autonomous Committee similar to other human rights treaty bodies. The Convention provides that "[t]he Committee shall consist of ten experts" (Article 26(1)). The number of experts is less than the 14 members of the Committee on the Protection of the Rights of Migrant Workers and Members of Their Families (CMW), the 18 experts of the HRCttee, the Committee on Economic, Social, and Cultural Rights (CESCR), the Committee on the Rights of the Child (CRC Committee), the Committee on the Elimination of Racial Discrimination (CERD), the Committee on the Rights of Persons with Disabilities (CRPD Committee), and the Committee on the Elimination of Discrimination Against Women (CEDAW Committee) (which has 23 experts). The only other treaty body with 10 members is the Committee Against Torture.[9]

The members are elected to a four-year term (Article 26(4)), the standard term for treaty bodies. However, following the CRPD model, members can only be re-elected once. Regrettably, a twisted interpretation of the Convention allowed Suela Janina and Juan Jose López Ortega to be re-elected twice, exceeding the one-term conventional limit.[10]

The Convention promotes a fair representation of the international community in the Committee's composition[11] through its instruction to consider "equitable geographical distribution" and "balanced gender representation," and it is one of the only three treaty bodies that is required to pay due account of the usefulness of persons with relevant legal experience.[12] In 2011, the first election respected the geographical criteria, with two members from the Asia-Pacific (Iraq and Japan), two members from the African States (Senegal and Zambia), one member from the Eastern European States (Albania), two members from the Latin America and Caribbean Group (GRULAC) (Argentina and Uruguay), and three members from the Western Europe and Others Group (WEOG) (France, Germany, and Spain). Currently, however, there are no members from the Asia-Pacific States. As for "gender balance," in the first group there was only one woman among nine men. In the current membership, the "gender balance" is slightly better, as there are three women, including the Chair of the Committee, but it is still not sufficient.

The experts "shall serve in their personal capacity and be independent and impartial" (Article 26(1)). In addition, the Rules of Procedure spell out the meaning of impartiality

[9] The Subcommittee on Prevention of Torture (SPT) is composed of 25 independent experts from the various fields relevant to the administration of justice or detention, including legal professionals and forensic scientists.

[10] Janina was elected in 2011 and reelected in 2015 and 2021. Lopez Ortega was elected in 2011 and re-elected in 2013 and 2019.

[11] Ricardo A. Sunga, "The Committee on Enforced Disappearances and Its Monitoring Procedures," *Deakin Law Review* 17, no. 1 (2012): 151–190.

[12] Emmanuel Decaux and Suela Janina, "The International Convention for the Protection of All Persons from Enforced Disappearance, a Human Rights Instrument of the 21st Century: Reflections on Its 10th Anniversary of the Entry into Force," *Droits Fondamentaux* 18, no. 36 (2021): 1–55.

and the grounds for excluding a member from the consideration of a particular topic. The Committee has also adopted the so-called Addis Ababa Guidelines on the independence and impartiality of members of the human rights treaty bodies.

However, there are some challenges to the composition and independence of the membership of the CED. One problem is that one of the current members of the Committee is an active diplomat (Suela Janina of Albania), which requires her to be representing her country in dealing with issues covered by the CED's mandate. Another problem, not unique to the CED, is that there appears to be a preference to recruit members who previously worked for the UN (currently Matar Diop of Senegal and Carmen Rosa Villa Quintana of Peru) or who were already members of the Special Procedures or treaty bodies (e.g., Ayat Mohammed of Morocco). More challenging is what appears to be a revolving door between the CED and the WGEID. Two former members of the WGEID (Santiago Corcuera of Mexico and Olivier de Frouville of France) went on to serve at the CED, and one former Committee member (Luciano Hazan of Argentina) was later appointed to the WGEID. While these developments may show the specialization, expertise, and experience of these members, it may also mean that the pool of candidates is quite limited and that some sectors exploit their inner knowledge of the UN and their election, selection, and appointment procedures. Improving the processes to make them more democratic and transparent, along with stricter rules on perpetuating mandate holders, could provide benefits to the system, such as increasing the pool of candidates, including candidates with diverse real-world experience and from a variety of backgrounds, and promoting innovative approaches.

Like other treaty bodies, the Committee has the right to establish its own rules of procedure (Article 26(6)) and is to be provided by the Secretary-General "with the necessary means, staff and facilities for the effective performance of its functions" (Article 26 (7)). The Committee adopted its own rules of procedure at its first and second sessions, drawing from the innovations of the Convention and from the experience of other Committees. One particular rule that represents the unique approach taken by the CED is the requirement that members "proceed in a victim-oriented and timely manner." No other human rights treaty body's set of rules includes such an explicit pro-victim approach.

C. The Restrictions Imposed on the Committee

The Committee started in a precarious place because of the sunset clause in Article 27, which required the Conference of States Parties "to evaluate the functioning of the Committee and to decide . . . whether it is appropriate to transfer to another body—without excluding any possibility—the monitoring of this Convention." The Conference was to take place between four and six years from the date of the Convention's entry into force.

The CED is the only committee in the system of the human rights treaty bodies to have had the proverbial "sword of Damocles" over its head since its creation.[13] The compromise clause should not, however, be interpreted as creating a temporary monitoring system, as the Convention itself provided that if it is decided to dissolve the Committee, its function should be transferred to a different body.[14] As a result of this review process and the Committee "under probation"[15] in a state of "apparent

[13] *Id.*, 7–8.

[14] Lisa Ott, *Enforced Disappearance in International Law* (Cambridge-Antwerp-Portland: Intersentia, 2011), at 283.

[15] Gabriella Citroni, "The First Years of the United Nations Committee on Enforced Disappearances: Achievements and Future Challenges," in *Réciprocité et universalité: sources et*

precariousness,"[16] it is not surprising that during its first years, the Committee was especially cautious, because its very existence depended on its performance during such timespan.[17] However, the Committee exercised all its functions in a very diplomatic and effective manner. For instance, to establish its legitimacy, the first several reports that the Committee analyzed were of States that strongly supported the CED's work. Similarly, rather than adopting strong general comments, the Committee adopted an incremental interpretative approach to the Convention. As two of its former Chairs explained, during those years, the CED proved that an organ dedicated to monitoring the innovative Convention is essential for effectively addressing the specific crime of enforced disappearances, demonstrated its efficiency, gained the appreciation of both civil society and States, and proved to be a valuable tool in the struggle against disappearances.[18] The Conference of States Parties took place six years after the Convention entered into force, and it decided by consensus to maintain the Committee.[19]

Article 28 is the second provision representing the compromise achieved during the negotiations, and it is also unique among the treaty bodies. The first section of the article requires the Committee to "cooperate" with "all relevant organs, offices and specialized agencies and funds of the United Nations, with the treaty bodies instituted by international instruments, with the special procedures of the United Nations and with the relevant regional intergovernmental organizations or bodies, as well as with all relevant state institutions, agencies or offices." The second section requires the Committee to consult other treaty bodies, particularly the HRCttee, to ensure consistency of their respective observations and recommendations. This is a distinctive element of the Convention. In other treaty bodies, this cooperation is built on good will and good practices, while here, the Committee has a legal duty to cooperate and consult.[20] In fact, there is a dual legal duty to cooperate with a broad range of UN, regional, and State organizations and to consult other treaty bodies, particularly the HRCttee. The CED's Rules of Procedure explain the duty of cooperation, referring specifically to not only the HRCttee but also the Committee Against Torture and its Sub-Committee, and to the WGEID in a separate paragraph.

From its very first session, the CED took active initiatives to implement these provisions through multilateral and bilateral meetings, adoption of guidelines, and other concrete activities. During its second session, the Committee held a general public meeting with a wide

régimes du droit international des droits de l'homme: mélanges en l'honneur du professeur Emmanuel Decaux (Éditions Pedone, Paris, 2017), at 393.

[16] Javier Chinchón Álvarez, "El Comité contra la Desaparición Forzada: primeros pasos, retos y solución," *Anuario Hispano-Luso-Americano de Derecho Internacional* 21 (2013): 228.

[17] Gabriella Citroni, "The First Years of the United Nations Committee on Enforced Disappearances: Achievements and Future Challenges," in *Réciprocité et universalité: sources et régimes du droit international des droits de l'homme: mélanges en l'honneur du professeur Emmanuel Decaux* (Éditions Pedone, Paris, 2017), at 394.

[18] Emmanuel Decaux and Suela Janina, "The International Convention for the Protection of All Persons from Enforced Disappearance, a Human Rights Instrument of the 21st Century: Reflections on Its 10th Anniversary of the Entry into Force," *Droits Fondamentaux* 18, no. 36 (2021): 7–8.

[19] *Report of the Conference of the States Parties to the International Convention for the Protection of All Persons from Enforced Disappearance on Its First Session*, Conference of the States Parties, U.N. Doc. CED/CSP/2016/4, Jan. 18, 2017.

[20] Olivier de Frouville, "The Committee on Enforced Disappearances," in Frédéric Mégret and Philip Alston (eds.), *The United Nations and Human Rights: A Critical Appraisal* (Oxford: Oxford University Press, 2nd ed. 2014), at 579–600.

range of UN bodies.[21] These meetings continued over the years, including with the CRC Committee and the Special Rapporteur on the Promotion of Truth, Justice, Reparation, and Guarantees of Non-Recurrence, as well as with the Voluntary Fund for Victims of Torture.[22] The cooperation with the WGEID has been ongoing since the very first year of the Committee.[23] An annual meeting is scheduled, and measures have been taken so that the sessions of the two bodies overlap at least once a year to facilitate exchanges and joint events. The cooperation and consultations cover both substantial[24] and procedural issues.[25] While the level of cooperation between the CED and the WGEID is satisfactory, it could be more ambitious: they could go beyond the established practice of exchanges and deepen their coordination.[26] For instance, it is hard to explain why the CED never signed a roadmap of cooperation with the WGEID, as it has with another body. This will be explained further.

Specifically, the Committee formalized the relationship between the CED and NGOs and with national human rights institutions by adopting two specific agreements outlining the process of implementing such cooperation.[27] The adoption of these agreements may seem a trivial matter, but they have no precedent among other treaty bodies and are indicative of a truly victim-centered perspective.[28] Another remarkable and innovative approach that the CED has taken is the execution of a Roadmap on the Coordination Between the United Nations Committee on Enforced Disappearances and the Inter-American Commission on Human Rights (IACHR).[29] The Roadmap defined a practical framework for enhancing

[21] *Report of the Committee on Enforced Disappearances, First Session (8–11 November 2011), Second Session (26–30 March 2012)*, Committee on Enforced Disappearances, U.N. Doc. A/67/56, 2012.

[22] *Report of the Committee on Enforced Disappearances, Seventh Session (15–26 September 2014), Eighth Session (2–13 February 2015)*, Committee on Enforced Disappearances, U.N. Doc. A/70/56, 2015.

[23] The first meeting was held during the first session of the Committee in November 2011, during which it was decided that the two bodies will hold an annual meeting, *see* the first annual report. *Report of the Committee on Enforced Disappearances, First Session (8–11 November 2011), Second Session (26–30 March 2012)*, Committee on Enforced Disappearances, U.N. Doc. A/67/56, 2012, at ¶¶ 25–26.

[24] *See, e.g.*, *Key Guidelines on Enforced Disappearances in the Context of COVID-19*, Office of the High Commissioner for Human Rights, Sep. 18, 2020, https://www.ohchr.org/en/documents/legal-standards-and-guidelines/key-guidelines-enforced-disappearances-context-covid-19.

[25] *Joint Statement: 4th Annual Meeting of the Committee on Enforced Disappearances and the Working Group on Enforced or Involuntary Disappearances*, Office of the High Commissioner for Human Rights, Sep. 17, 2014, https://www.ohchr.org/en/press-releases/2014/09/joint-statement-4thannual-meeting-committee-enforced-disappearances-and?LangID=E&NewsID=15087.

[26] Olivier de Frouville, "The Committee on Enforced Disappearances," in Frédéric Mégret and Philip (eds.), *The United Nations and Human Rights: A Critical Appraisal* (Oxford: Oxford University Press, 2nd ed., 2014), 579–600.

[27] *The Relationship of the Committee on Enforced Disappearances with Civil Society Actors*, Committee on Enforced Disappearances, U.N. Doc. CED/C/3, Dec. 30, 2013; *The Relationship of the Committee on Enforced Disappearances with National Human Rights Institutions*, Committee on Enforced Disappearances, U.N. Doc. CED/C/6, Oct. 28, 2014.

[28] Gabriella Citroni, "The First Years of the United Nations Committee on Enforced Disappearances: Achievements and Future Challenges," in *Réciprocité et universalité: sources et régimes du droit international des droits de l'homme: mélanges en l'honneur du professeur Emmanuel Decaux* (Éditions Pedone, Paris, 2017), 391–410 at 395.

[29] *Roadmap on the Coordination Between the United Nations Committee on Enforced Disappearances and the Inter-American Commission on Human Rights*, Committee on Enforced Disappearances and Inter-American Commission on Human Rights, Dec. 16, 2021, https://www.ohchr.org/sites/default/files/2022-01/Roadmap-CED-IACHR-Rev10.pdf.

cooperation between the CED and the IACHR in several areas: identification of thematic issues, participation of experts in each other's activities, exchange of information, joint activities, and coordination among secretariats. Regrettably, such roadmaps do not exist for other active regional bodies like the European Court of Human Rights, the African Commission on Human and Peoples' Rights (ACHPR), the African Court on Human Peoples' Rights, the African Committee of Experts on the Rights and Welfare of the Child (ACERWC), or the European Union Agency for Fundamental Rights, nor for less effective mechanisms such as the ASEAN Intergovernmental Commission on Human Rights or the Independent Permanent Human Rights Commission (IPHRC) of the Organization of Islamic Cooperation.

Of course, the existence of roadmaps or other concrete mechanisms does not mean that actual cooperation and consultation takes place in practice. In his individual dissenting opinion in *E.L.A. v. France*, Juan José López Ortega hinted at the lack of substantive coordination between the CED and regional human rights systems. He noted that the European Court of Human Rights had dismissed similar cases against France. López Ortega drew attention to the disagreement between the CED and the European Court, "which is all the more regrettable as it concerns an area of protection in which the regional system is particularly active."[30]

The final provision attempting to limit the Committee's power was the inclusion of a specific norm on the *ratione temporis* competence. Despite recognizing the continuous nature of enforced disappearances (in Article 8(1)(b) and implicitly in Articles 24(6) and 30(6)) and the clear provisions of Article 28 of the Vienna Convention on the Law of Treaties (which says that unless otherwise indicated, treaties are non-retroactive and do not bind parties until the day a treaty enters into force), the drafters felt the need to include Article 35, giving the Committee "competence solely in respect of enforced disappearances which commenced after the entry into force of this Convention."

The CED was required to interpret this provision from the very beginning of its work, as seen in its review of the reports of Uruguay in April 2013[31] and of Spain in November of 2013.[32] In its concluding observations on both countries, the CED made specific references to past disappearances, despite the strong objections of the Spanish delegation. Given the disputed nature of Article 35, the Committee adopted a "Statement on the *ratione temporis* element in the review of reports submitted by States parties." The Committee distinguished the individual complaint procedure from the review of reports by States Parties, clarifying that it is precluded from examining individual cases of disappearances that commenced before the entry into force of the Convention. However, the CED considered that Article 29 deals with the obligations under the Convention, and Article 37 says that "nothing in this Convention

[30] *E.L.A. v. France*, Communication No. 3/2019, U.N. Doc. CED/C/19/D/3/2019, Committee on Enforced Disappearances, Sep. 25, 2020, at Annex II, ¶¶ 12–13 (dissenting opinion of Juan José López Ortega).

[31] *Concluding Observations on the Report Submitted by Uruguay Under Article 29, Paragraph 1, of the Convention, Adopted by the Committee at Its Fourth Session (8–19 April 2013)*, Committee on Enforced Disappearances, U.N. Doc. CED/C/URY/CO/1, May 8, 2013, at ¶¶ 13–14 (regarding enforced disappearances that occurred during the dictatorship prior to the adoption of the Convention).

[32] *Concluding Observations on the Report Submitted by Spain Under Article 29, Paragraph 1 of the Convention*, Committee on Enforced Disappearances, U.N. Doc. CED/C/ESP/CO/1, Dec. 12, 2013, at ¶¶ 31–32 (regarding enforced disappearances committed during the Spanish Civil War and the Franco regime).

shall affect any provisions which are more conducive to the protection of all persons from enforced disappearance and which may be contained in . . . (b) international law in force for that State." Thus, the Committee needs to discharge its duties on the reporting process due to the international law being in force for each State Party, and "requests that the reporting process take into consideration the full range of [a State's] obligations today." In particular, "if information related to the past is useful during the reporting process as a means to understand fully the challenges of the present, the Committee ought to direct its attention in its concluding observations to the current obligations of the State concerned."[33] This progressive interpretation has allowed the CED to refer to past disappearances on many occasions.[34] It is particularly important that in the report on the Committee's first inquiry country visit, it made references to disappearances that took place in Mexico from the 1960s to the 1990s.[35]

II. The Functions and Functioning of the Committee

The Committee possesses the usual powers of other treaty bodies. Some of the traditional tools assigned to the CED contain improvements in the functions of other treaty bodies, which partly reflect upon the lessons learned from those organs. In addition, several new functions were given to the CED that account for the specificities of enforced disappearances and the experience of the WGEID.

The mandate and powers of the Committee are described in Articles 29 to 33 of the Convention and include: the examination of States Parties' reports, the Urgent Action procedure, individual complaints, inter-State communications, inquiry visits to a State Party, referral of a State situation to the General Assembly, and Annual Reports to the General Assembly. The procedures for individual and inter-State communications require that States Parties both separately and expressly recognize the Committee's competence to receive such complaints.[36] It is unclear if the Committee takes a holistic and integrated approach in the use of all its mechanisms, and whether there is reinforcement among the different mandates fulfilled by the CED. For instance, in his individual dissenting opinion in *E.L.A. v. France*, Moncef Baati considered that if the Committee did not agree with France's analysis of the risk the victim could face in Sri Lanka, the CED "should make its own assessment by

[33] *Statement on the Ratione Temporis Element in the Review of Reports Submitted by States Parties Under the International Convention for the Protection of All Persons from Enforced Disappearance, Committee on Enforced Disappearances*, Committee on Enforced Disappearances, U.N. Doc. A/69/56 at Annex V, Nov. 15, 2013.

[34] For instance, its Concluding Observations on Germany refers to reparation for past atrocities including those perpetrated during the Holocaust by the Nazi regime. *Concluding Observations on the Report Submitted by Germany Under Article 29, Paragraph 1 of the Convention*, Committee on Enforced Disappearances, U.N. Doc. CED/C/DEU/CO/1, Apr. 10, 2014, at ¶¶ 24–25. The Concluding Observations on Japan refer to the so-called comfort women during World War II. *Concluding Observations on the Report Submitted by Japan Under Article 29 (1) of the Convention*, Committee on Enforced Disappearances, U.N. Doc. CED/C/JPN/CO/1, Dec. 5, 2018, at ¶¶ 25–26.

[35] *Report of the Committee on Enforced Disappearances on Its Visit to Mexico Under Article 33 of the Convention: Information on the Visit and Findings (Art. 33, Para. 1)*, Committee on Enforced Disappearances, U.N. Doc. CED/C/MEX/VR/1 (Findings), May 18, 2022, at ¶ 36.

[36] Albane Prophette-Pallasco and Anna Batalla Trilla, *The Committee on Enforced Disappearances: How to Reconcile Procedural Timelines with the Urgency of Enforced Disappearance?*, Völkerrechtsblog, Dec. 16, 2020, https://voelkerrechtsblog.org/the-committee-on-enforced-disappearances-how-to-reconcile-procedural-timelines-with-the-urgency-of-enforced-disappearance/.

requesting Sri Lanka to submit its initial report and scheduling its consideration as soon as possible." He also asked the Committee to consider that since Sri Lanka's ratification of the Convention, only one request for Urgent Action concerning Sri Lanka has been registered.[37]

A. State Party Reports (Article 29)

The State Party reporting procedure defined in the Convention was drafted to incorporate lessons from pre-existing treaty bodies and reflects some of the States' concerns related to the "overburdened" reporting system. States are required to report to the Committee "the measures taken to give effect to its obligations under this Convention, within two years after the entry into force of this Convention for the State Party concerned." The Committee, like other treaty bodies, "shall issue such comments, observations or recommendations as it may deem appropriate," to which the State "may respond . . . on its own initiative or at the request of the Committee." However, the Convention departs from previous treaties and does not include the practice of "periodic reports." Rather, the Convention gives discretion to the CED to request States to "provide additional information on the implementation of this Convention" (Article 29(4)).

In implementing these norms, the Committee adopted a practice that lies between a follow-up procedure, which is frequently used in other committees, and a quasi-periodic reporting procedure. This practice allows the CED to request that a State Party provide the Committee with follow-up information on concluding observations by a specified date when it appears that some of its obligations under the Convention have not been discharged or that sufficient information has not been provided. Usually, the CED selects three recommendations for this follow-up, and the State is instructed in the concluding observations to provide "relevant information" within one year. The Committee via rapporteurs conducts a follow-up assessment, based on the State's response and information from other sources, and determines whether and to what extent the State has complied with the selected recommendations. In parallel, and more like a periodic reporting procedure, the CED requests additional information from the States on the implementation of all recommendations. Generally, the Committee stipulates six years, which for the most serious situations can be shortened to three years.[38]

In general terms, the rules and practice of the CED in analyzing the States' reports follow the experience of the other treaty bodies. However, there are some innovations worth mentioning. The rules deal with the challenging problem that all treaty bodies face regarding non-reporting States. The rules provide a three-step approach for States that fail to submit reports and additional information. First, a reminder is sent to the concerned State; second, the CED includes a reference of the State's failure in its Annual Report; and third, the Committee proceeds to review the State's implementation of the Convention in the absence of a report or when the State fails to send a delegation despite the CED's invitation to do so.

The rules also innovate by officially recognizing "alternative reports" (shadow reports) to the State report. Rule 52 considers that these alternative reports contribute "to build up a more comprehensive picture of how a state party is implementing the Convention." The

[37] *E.L.A. v. France*, Communication No. 3/2019, U.N. Doc. CED/C/19/D/3/2019, Committee on Enforced Disappearances, Sep. 25, 2020, at Annex I, ¶¶ 12–13 (dissenting opinion of Moncef Baati).

[38] *See, e.g., Concluding Observations on the Report Submitted by Iraq Under Article 29 (1) of the Convention*, Committee on Enforced Disappearances, U.N. Doc. CED/C/IRQ/CO/1, Oct. 13, 2015, at ¶ 43.

reports are publicly available online. The Committee additionally holds informal and private meetings with NGOs and other civil society representatives.

B. Complaints (Articles 31 and 32)

Both individual and inter-State complaint procedures are optional under the Convention.[39] So far, 23 States recognize the competence of the CED to receive individual and inter-State complaints.[40] However, States such as Japan and Sri Lanka have made declarations recognizing only the inter-State mechanism, while States like Mexico and Peru have made declarations only recognizing the individual complaint procedure.

The individual complaint procedure, as defined in the Convention (Article 31) and explained in the rules, is somewhat comparable to other treaty bodies' complaint procedures. However, it is important to highlight that the intervention of the CED via its Urgent Actions does not preclude the filing of an individual complaint on the same matter.[41] Despite the fact that the Convention recognizes the particularities of enforced disappearances in many provisions,[42] it fails to do so in the section on complaints. The procedure does not regulate the burden of proof, which is a critical aspect of any case dealing with disappearances.[43] In following the newest complaint systems,[44] the Convention expressly attributes the power to request a State Party to take interim measures to the Committee. In its rules, the CED created a follow-up procedure on views adopted on individual cases.

So far, the CED has decided on three individual complaints. On March 11, 2016, the Committee rendered its first views on an individual communication in the case *Estela Deolinda Yrusta and Alejandra del Valle Yrusta v. Argentina*.[45] The Committee found that Argentina violated the Convention as a result of the short-term disappearance of Mr. Yrusta. A second case by the CED against the Czech Republic was declared moot, due to the presumed victim's location.[46] Finally, in *E.L.A. v. France*, a divided Committee found that the deportation of the victim to Sri Lanka would constitute a violation of the non-refoulement principle included in the Convention.[47] While this chapter does not analyze the substantive decisions of the CED, there is one procedural aspect that is concerning: delays in

[39] Ricardo A. Sunga, "The Committee on Enforced Disappearances and Its Monitoring Procedures," *Deakin Law Review* 17, no. 1 (2012): 161.

[40] Albania, Argentina, Austria, Belgium, Bosnia and Herzegovina, Chile, Croatia, Czech Republic, Ecuador, France, Germany, Lithuania, Mali, Montenegro, Netherlands, Portugal, Serbia, Slovakia, Slovenia, Spain, Switzerland, Ukraine, and Uruguay.

[41] Grazyna Baranowska, *Rights of Families of Disappeared Persons: How International Bodies Address the Needs of Families of Disappeared Persons in Europe* (Cambridge/Antwerp/Chicago: Intersentia, 2021), at 181.

[42] *Id.*, at 174.

[43] Lisa Ott, *Enforced Disappearance in International Law* (Cambridge/Antwerp/Portland: Intersentia, 2011), at 292.

[44] Optional Protocol to the Convention on the Rights of the Child on a Communications Procedure, G.A. Res. 66/138, 2983 U.N.T.S. 135, *adopted* Dec. 19, 2011, *entered into force* Apr. 14, 2014, at Art. 6; Optional Protocol to the International Covenant on Economic, Social and Cultural Rights, G.A. Res. 63/117, *adopted* Dec. 10, 2008, *entered into force* May 5, 2013, at Art. 5.

[45] *Estela Deolinda Yrusta and Alejandra del Valle Yrusta* v. *Argentina*, Communication No. 1/2013, U.N. Doc. CED/C/10/D/1/2013, Committee on Enforced Disappearances, Mar. 11, 2016.

[46] *M.I. v. Czechia*, Communication No. 2/2017, U.N. Doc. CED/C/14/D/2/2017, Committee on Enforced Disappearances, May 30, 2018.

[47] *E.L.A. v. France*, Communication No. 3/2019, U.N. Doc. CED/C/19/D/3/2019, Committee on Enforced Disappearances, Sep. 25, 2020.

the processing of cases. In the two cases with decisions on the merits, the CED needed two years and five months and two years and two months, respectively, to arrive at a decision. When time is of the essence in enforced disappearances, especially for a Committee with very few cases, there is no justification for such delay.

Article 32 briefly delineates the inter-State procedure: "A State Party to this Convention may at any time declare that it recognizes the competence of the Committee to receive and consider communications in which a State Party claims that another State Party is not fulfilling its obligations under this Convention." This simple article contrasts with most other treaties that spell out clear procedures for inter-State complaints.[48] Article 32, unlike in other treaties, does not clearly define the inter-State mechanism as conciliatory.[49] Unfortunately, the CED's Rules of Procedure only adopted a narrow reading of its powers under the Convention, offering its good offices to assist in resolving disagreements between States. Nothing in the text of the Convention precluded the Committee from taking a more quasi-judicial approach to the inter-State complaints, as is the case of regional human rights bodies, which is more consistent with the collective approach taken by the Convention. The rules make clear the distinction between the individual and inter-State procedures by distinguishing between "views" for individual complaints (Rule 76(6)) and "reports" for inter-State ones (Rule 87).

C. Inquiries and Actions Regarding Potential Crimes Against Humanity (Articles 33 and 34)

The procedure of inquiry is an updated and improved mechanism as compared to previous treaties. The CED can activate the mechanism if it receives reliable information that a State is "seriously violating" the Convention. Previous inquiry mechanisms were more restricted in scope, as they allowed the treaty bodies to initiate the inquiry procedure only if they received reliable information indicating grave or systematic violations of the conventions which they monitored (Article 20 of the CAT, Article 8 of the Optional Protocol to CEDAW, Article 6 of the Optional Protocol to the CRPD, Article 11 of the Optional Protocol to the International Covenant on Economic, Social, and Cultural Rights (ICESCR), and Article 13 of the Optional Protocol to the CRC on a communications procedure). In fact, in the following article, the Convention regulates situations where the CED receives information that "enforced disappearance is being practised on a widespread or systematic basis" (Article 34).

A crucial difference from previous treaties is that the inquiry procedure is not optional, as States are not required to make a special declaration and are not provided with the possibility of opting out. States Parties can opt out of the CAT, CRPD, and CRC inquiry procedures pursuant to a simple declaration. This is not the case for the CED's inquiry mechanism.

[48] *See, e.g.*, International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, G.A. Res. 45/158, 2220 U.N.T.C. 3, *adopted* Dec. 18, 1990, *entered into force* Jul. 1, 2003, at Art. 76.

[49] Decision of the Ad Hoc Conciliation Commission on the Request for Suspension Submitted by Qatar Concerning the Interstate Communication Qatar v. the Kingdom of Saudi Arabia, *Qatar v. Kingdom of Saudi Arabia*, Committee on the Elimination of Racial Discrimination, U.N. Doc. INT/CERD/ISC/9381, Mar. 15, 2021; Decision on the Admissibility of the Inter-State Communication Submitted by the State of Palestine Against Israel, *State of Palestine v. Israel*, Committee on the Elimination Racial Discrimination, U.N. Doc. CERD/C/103/R.6, May 20, 2021.

States should give consent prior to the Committee's visit (Article 33(4): "If the State Party agrees to the visit . . . .") However, and different from the other treaties, Article 33(3) appears to indicate that the refusal of a visit is the exception, rather than the rule: "Upon a substantiated request by the State Party, the Committee may decide to postpone or cancel its visit."[50] Article 33 suggests that the State must give reasonable grounds to refuse a visit. Additionally, the Convention codifies the practice developed by the Special Procedures.[51] The treaty provides that "the Committee and the State Party concerned shall work together to define the modalities of the visit and the State Party shall provide the Committee with all the facilities needed for the successful completion of the visit." This provision is crucial to guarantee the Committee access to all locations, security, and independence. One interesting development is that the Rules of Procedure make it possible for the Committee to hold hearings during the visit. Another improvement is that while Article 20 of the Convention Against Torture characterizes the inquiry procedure as "confidential," Article 33 of the CED makes no reference to confidentiality.

After receiving multiple requests, the CED triggered the formal procedure for an inquiry visit to Mexico during its tenth session in 2013. On August 30, 2021, after eight years of exchanges, the State accepted the visit, and a delegation of four members of the Committee visited the country from November 15, 2021, to November 26, 2021. As a sign of the CED's understanding of the public character of the inquiry mechanism, at the end of the visit, the delegation held a press conference to highlight some issues that it verified during its stay, and it later adopted a report.[52] The inquiry delegation conducted very thorough work, including visits to 13 states; meetings with more than 85 institutions of the executive, legislative, and judicial branches, as well as with autonomous bodies at the federal and state levels; meetings with dozens of victim groups and hundreds of victims and civil society organizations from 31 of the 32 states; and the accompaniment of exhumations and search days in the states of Coahuila, Mexico, and Morelos. The delegation also visited the Regional Center for Human Identification of Coahuila and several federal and state detention centers and immigration stations.[53]

Another important element to take into consideration for future inquiry visits is that the report of the visit was prepared and published very quickly (in contrast to how individual complaints are dealt with). The CED published its report only five months after its visit. In

[50] Olivier de Frouville, "The Committee on Enforced Disappearances," in Frédéric Mégret and Philip Alston (eds.), *The United Nations and Human Rights: A Critical Appraisal* (Oxford: Oxford University Press, 2nd ed. 2014), at 579–600.

[51] *See, e.g.*, *Manual of Operations of the Special Procedures of the Human Rights Council*, Human Rights Council, Aug. 2008, at § C and Annex III; *Terms of Reference for Fact-Finding Missions by Special Rapporteurs/Representatives of the Commission on Human Rights*, Commission on Human Rights, U.N. Doc. E/CN.4/1998/45 at App. V, Nov. 20, 1997.

[52] *Report of the Committee on Enforced Disappearances on Its Visit to Mexico Under Article 33 of the Convention: Information on the Visit and Findings (Art. 33, Para. 1)*, Committee on Enforced Disappearances, U.N. Doc. CED/C/MEX/VR/1 (Findings), May 18, 2022; *Report of the Committee on Enforced Disappearances on Its Visit to Mexico Under Article 33 of the Convention: Observations and Recommendations (Art. 33, Para. 5)*, Committee on Enforced Disappearances, U.N. Doc. CED/C/MEX/VR/1 (Recommendations), May 16, 2022.

[53] *Report of the Committee on Enforced Disappearances on Its Visit to Mexico Under Article 33 of the Convention: Information on the Visit and Findings (Art. 33, Para. 1)*, Committee on Enforced Disappearances, U.N. Doc. CED/C/MEX/VR/1 (Findings), May 18, 2022, at ¶ 3.

comparison, the CEDAW Committee's report of its inquiry mission to Mexico (the first report of any treaty body inquiry mission to Mexico) took more than a year to be published.[54]

However, there is reason for skepticism about the effectiveness of the CED's sustained efforts over most of its existence to conduct the inquiry visits. From 2013, the year of the visit request, to 2021, the year of the visit, there were more than 48,000 new disappearances in Mexico.[55] Even more concerning is what happened during and after the visit. According to the CED, the official figures available on November 26, 2021, showed 95,121 missing persons were registered, of whom 112 were reported missing during the Committee's visit.[56] Sadly, on May 17, 2022, only six months after its visit and a few weeks after the publication of its inquiry findings, the CED reported that Mexico had reached 100,000 officially registered disappearances.[57] While it is too early to assess the effectiveness of the visit and the CED report, it is clear that the activation of the inquiry procedure and the Committee activities prior to, during, and after the visit were unable to immediately halt disappearances.[58]

Article 34 of the Convention establishes that if the CED receives "well-founded indications that enforced disappearance is being practised on a widespread or systematic basis in the territory under the jurisdiction of a State Party, it may, after seeking from the State Party concerned all relevant information on the situation, urgently bring the matter to the attention of the General Assembly." This is another unique stipulation among human rights treaty bodies. The drafters modeled this provision following the Convention on the Prevention and Punishment of the Crime of Genocide (Article VIII) and the International Convention on the Suppression and Punishment of the Crime of Apartheid (Article VIII), which allow States Parties to bring matters before the pertinent UN bodies. Article 34 should be read in conjunction with Article 5, which considers that "the widespread or systematic practice of enforced disappearance constitutes a crime against humanity as defined in applicable international law and shall attract the consequences provided for under such applicable international law." The Convention left the question of what the General Assembly should do with the CED's information and assessment of widespread or systematic disappearances in a State unanswered. Some have argued that Article 34 provides the opportunity to refer the matter to the International Criminal Court through the channels established in Article 13 of the Rome Statute.[59]

[54] *Report on Mexico Produced by the Committee on the Elimination of Discrimination Against Women Under Article 8 of the Optional Protocol to the Convention, and Reply from the Government of Mexico*, Committee on the Elimination of Discrimination Against Women, U.N. Doc. CEDAW/C/2005/OP.8/MEXICO, Jan. 27, 2005.

[55] *Búsqueda e Identificación de Personas Desaparecidas Reporte Semestral 1 de enero al 30 junio, 2021*, Subsecretaría de Derechos Humanos, Población y Migración, at 9, https://www.gob.mx/cms/uploads/attachment/file/650901/CNB_7_julio_2021_DEF.pdf.

[56] *Report of the Committee on Enforced Disappearances on Its Visit to Mexico Under Article 33 of the Convention: Information on the Visit and Findings (Art. 33, Para. 1)*, Committee on Enforced Disappearances, U.N. Doc. CED/C/MEX/VR/1 (Findings), May 18, 2022, at ¶ 10.

[57] *Mexico: Dark Landmark of 100,000 Disappearances Reflects Pattern of Impunity, UN Experts Warn*, Office of the High Commissioner for Human Rights, May 17, 2022, https://www.ohchr.org/en/statements/2022/05/mexico-dark-landmark-100000-disappearances-reflects-pattern-impunity-un-experts.

[58] I have in mind the 1979 visit of the IACHR to Argentina during the dictatorship. After the visit, almost no enforced disappearances were registered in the country. David Weissbrodt and Maria Luisa Bartolomei, "The Effectiveness of International Human Rights Pressures: The Case of Argentina, 1976–1983," *Minnesota Law Review* 75 (1991): 1009, https://scholarship.law.umn.edu/faculty_articles/264.

[59] Tullio Scovazzi and Gabriella Citroni, *The Struggle Against Enforced Disappearance and the 2007 United Nations Convention* (Leiden/Boston: Martinus Nijhoff Publishers, 2007), at 395.

The Rules of Procedure and the Methods of Work of the Committee do not offer much more guidance on how the Committee will implement this crucial article. The CED reported that during different sessions, the Committee discussed its Methods of Work related to Article 34 of the Convention.[60] In more than 10 years of existence, the Committee has not provided any indication of willingness to use this article. For instance, on at least three different occasions, the CED referred to a situation of widespread and/or generalized disappearances in much of Mexico's territory.[61] However, the Committee never discussed whether it should invoke Article 34 with regard to Mexico and whether "generalized" disappearances could be equated with the term "widespread." The CED has also not publicly explained the relationship between Articles 33 on inquiry visits and Article 34 on widespread and systematic disappearances.

D. Urgent Actions and Interim Measures

Article 30 of the Convention defines the new procedure of "Urgent Actions" as creating a new form of an international "habeas corpus."[62] This procedure, which is unique among treaty bodies, gives the Committee the mandate to request that a State Party take all necessary measures, including interim measures, to immediately seek and locate a disappeared person (Article 30(1)). Such a request can be submitted as a matter of urgency by any person having a legitimate interest, such as the relatives of the disappeared person or their legal representatives. Though the urgent procedure has no precedent in a human rights treaty, it happens to be modeled on the existing Urgent Action procedures of the working group.[63] The mechanism intends to prevent the violation of rights[64] of the disappeared victim and any other potential victim, which is defined in Article 24 of the Convention as any person who suffers a direct harm due to an enforced disappearance.

The Committee can proceed with an Urgent Action request if the request: (1) is not manifestly unfounded; (2) does not constitute an abuse of the right of submission of such requests; (3) has already been duly presented to the competent bodies of the State Party concerned, such as those authorized to undertake investigations, where such a possibility exists; (4) is not incompatible with the provisions of the Convention; and (5) the same matter is not

[60] *See, e.g.*, *Report of the Committee on Enforced Disappearances, Seventeenth Session (30 September–11 October 2019), Eighteenth Session (4 May (online) and 7 September 2020)*, Committee on Enforced Disappearances, U.N. Doc. A/75/56, 2020, at ¶ 13(a).

[61] *Report of the Committee on Enforced Disappearances on Its Visit to Mexico Under Article 33 of the Convention: Information on the Visit and Findings (Art. 33, Para. 1)*, Committee on Enforced Disappearances, U.N. Doc. CED/C/MEX/VR/1 (Findings), May 18, 2022, at ¶ 24; *Concluding Observations on the Report Submitted by Mexico Under Article 29, Paragraph 1, of the Convention*, Committee on Enforced Disappearances, U.N. Doc. CED/C/MEX/CO/1, Mar. 5, 2016, at ¶ 10; *Follow-up Observations on the Additional Information Submitted by Mexico Under Article 29 (4) of the Convention*, Committee on Enforced Disappearances, U.N. Doc. CED/C/MEX/FAI/1, Sep. 6, 2019, at ¶ 3.

[62] Emmanuel Decaux and Suela Janina, "The International Convention for the Protection of All Persons from Enforced Disappearance, a Human Rights Instrument of the 21st Century: Reflections on Its 10th Anniversary of the Entry into Force," *Droits Fondamentaux* 18, no. 36 (2021): 2.

[63] Ricardo A. Sunga, "The Committee on Enforced Disappearances and Its Monitoring Procedures," *Deakin Law Review* 17, no. 1 (2012): 167.

[64] Grazyna Baranowska, *Rights of Families of Disappeared Persons: How International Bodies Address the Needs of Families of Disappeared Persons in Europe* (Cambridge/Antwerp/Chicago: Intersentia, 2021), at 177.

being examined under another procedure of international investigation or settlement of the same nature. When those conditions are met, the Committee "shall request the State Party concerned to provide it with information on the situation of the persons sought, within a time limit set by the Committee." Article 30(3) provides the Committee with a strong power to "transmit recommendations to the State Party, including a request that the State Party should take all the necessary measures, including interim measures, to locate and protect the person concerned in accordance with this Convention." The State Party also has "to inform the Committee, within a specified period of time, of measures taken, taking into account the urgency of the situation." The Committee should inform the author of the communication. The Committee "shall continue its efforts to work with the State Party concerned for as long as the fate of the person sought remains unresolved. The person presenting the request shall be kept informed."

Urgent Actions are registered throughout the year by the Committee, within 24 to 48 hours after receipt of the Urgent Action request.[65] The CED did not follow the WGEID practice of defining the concept of urgency by setting up a temporal limit. On the contrary, in a more liberal and protective interpretation, it registers all requests it receives from cases that took place after the Convention's entry into force.[66] Once registered, there is an intensive and tailored follow-up process designed by the Committee. First (usually within 24–48 hours), the Committee communicates the alleged facts to the State—without disclosing the identity of the source—and includes specific recommendations of measures that State authorities should take to search for the disappeared person and investigate the disappearance. In addition, the CED asks the State to inform the Committee about actions taken in that regard within a deadline of two weeks (for recent disappearances) or one month (for those that are older than a year). Upon receipt of the State's observations, the Committee shares them with the authors of the Urgent Action in a request for comments. Taking the comments into account, the Committee addresses specific follow-up recommendations to the State and requests the competent authorities to inform them about any further actions. If a State does not reply, the Committee sends reminders.[67] Importantly and to its credit, the Committee describes the requests, their status, and compliance with its Urgent Actions in its Annual Report and in an independent document. Those reports provide very detailed information on its activities and results, and in particular, they highlight the trends that the CED observes in the processing of such requests and provides excellent analysis and recommendations to States. The CED understands that it has a conventional obligation, under Article 30(4), to follow up on Urgent Actions. Additionally, the Committee follows up out of respect for the

[65] Albane Prophette-Pallasco and Anna Batalla Trilla, *The Committee on Enforced Disappearances: How to Reconcile Procedural Timelines with the Urgency of Enforced Disappearance?*, Völkerrechtsblog, Dec. 16, 2020, https://voelkerrechtsblog.org/the-committee-on-enforced-disappearances-how-to-reconcile-procedural-timelines-with-the-urgency-of-enforced-disappearance/.

[66] Rainer Huhle, "'Urgent Actions' for the Search for Disappeared Persons in the Specialised Bodies of the United Nations," in Karina Ansolabehere, Barbara A. Frey, and Leigh A. Payne (eds.), *Disappearances in the Post-Transition Era in Latin America* (Oxford: Oxford University Press, 2021), at 238.

[67] Albane Prophette-Pallasco and Anna Batalla Trilla, *The Committee on Enforced Disappearances: How to Reconcile Procedural Timelines with the Urgency of Enforced Disappearance?*, Völkerrechtsblog, Dec. 16, 2020, https://voelkerrechtsblog.org/the-committee-on-enforced-disappearances-how-to-reconcile-procedural-timelines-with-the-urgency-of-enforced-disappearance/.

relatives of the victims.[68] The procedure continues "as long as the fate of the person sought remains unresolved" (Article 30(4)). The practice follows that a case is considered solved if the disappeared person is found, either dead with proper identification or alive, including if they are in detention.

The numbers demonstrate the importance of the Urgent Actions. As of September 15, 2021, the Committee had registered a total of 1,410 requests for Urgent Action.[69] Two countries, Iraq (with 522 cases or 37 percent of the total) and Mexico (with 437 or 31 percent of cases), represent the vast majority of Urgent Actions.[70] The Committee registered 151 disappearance cases in the context of social protests in several cities in Colombia since April 28, 2021, and 187 cases related to the social protests that began in Cuba on July 11, 2021.[71] As of September 15, 2021, the Committee had closed 89 Urgent Action cases, discontinued 16 cases, and suspended 97 cases. A total of 1,208 cases remained open.[72] Sadly, Iraq failed to reply to the majority of registered requests for Urgent Action. The Committee has reported Iraq's lack of compliance with its obligations under Article 30 of the Convention to the General Assembly.[73] The potential effectiveness of these mechanisms is exhibited by the fact that 107 disappeared persons, including 83 alive, have been located so far.[74] Regrettably, it should be noted that most of the Urgent Actions remain active, because even after several years, the persons have not been found. The increase in the number of cases under Article 30 hints at the scope of the phenomenon of enforced disappearance—an ongoing and global problem.[75]

A study conducted by the Human Rights Clinic of the University of Texas at Austin School of Law demonstrated that, in the case of Mexico, the Urgent Actions in cases of enforced disappearances were much more utilized than the precautionary measures of the IACHR. The study attributes the preference of the CED mechanism to the speediness of the

[68] Rainer Huhle, "'Urgent Actions' for the Search for Disappeared Persons in the Specialised Bodies of the United Nations," in Karina Ansolabehere, Barbara A. Frey, and Leigh A. Payne (eds.), *Disappearances in the Post-Transition Era in Latin America* (Oxford: Oxford University Press, 2021), at 239.

[69] *Report on Requests for Urgent Action Submitted Under Article 30 of the Convention*, Committee on Enforced Disappearances, U.N. Doc. CED/C/21/2, Oct. 20, 2021, at ¶ 3.

[70] *Id.*

[71] *Id.*, at ¶ 27.

[72] *Id.*, at ¶ 31.

[73] *Report of the Committee on Enforced Disappearances, Thirteenth Session (4–15 September 2017), Fourteenth Session (22 May–1 June 2018)*, Committee on Enforced Disappearances, U.N. Doc. A/73/56, 2018, at ¶ 39; *Report of the Committee on Enforced Disappearances, Fifteenth Session (5–16 November 2018), Sixteenth Session (8–18 April 2019)*, Committee on Enforced Disappearances, U.N. Doc. A/74/56, 2019, at ¶ 37; *Report of the Committee on Enforced Disappearances, Seventeenth Session (30 September–11 October 2019), Eighteenth Session (4 May (Online) and 7 September 2020)*, Committee on Enforced Disappearances, U.N. Doc. A/75/56, 2020, at ¶ 49; *Report of the Committee on Enforced Disappearances, Nineteenth Session (7 September–25 November 2020), Twentieth Session (12 April–7 May 2021)*, Committee on Enforced Disappearances, U.N. Doc. A/76/56, 2021, at ¶ 60.

[74] *Report on Requests for Urgent Action Submitted Under Article 30 of the Convention*, Committee on Enforced Disappearances, U.N. Doc. CED/C/21/2, Oct. 20, 2021, at ¶ 33.

[75] Gabriella Citroni, "The First Years of the United Nations Committee on Enforced Disappearances: Achievements and Future Challenges," in *Réciprocité et universalité: sources et régimes du droit international des droits de l'homme: mélanges en l'honneur du professeur Emmanuel Decaux* (Éditions Pedone, Paris, 2017), at 398.

Committee's reaction and the clear, strict, and precise follow-up developed by the CED.[76] On the situation in Mexico, the Supreme Court of Justice recently ruled that the Urgent Actions requested by the CED are binding on all Mexican authorities.[77]

There is one critique of the CED's approach to Urgent Actions. It is unfortunate that the Committee has decided that requests for Urgent Action will not normally be considered by the CED if the same matter is being examined under another procedure of international investigation or settlement of the same nature, most especially the Urgent Actions of the Working Group on Enforced or Involuntary Disappearances.[78] With regard to Urgent Actions that have already been submitted to the WGEID, the Committee has specified that they cannot normally be admitted,[79] which leaves a margin of appreciation in exceptional circumstances.[80] The CED should and could have taken a different approach. For example, the IACHR, the Human Rights Committee, and the European Court of Human Rights have ruled that the WGEID's proceedings do not constitute a procedure of similar nature.[81] The CED could follow the WGEID and intervene, regardless of the Special Procedure actions. It is very clear that the Urgent Actions of the CED and WGEID derive from different legal obligations. The WGEID is not a mechanism of investigation or settlement, but rather a body with a humanitarian mandate. Moreover, the WGEID's Methods of Work do not establish a follow-up mechanism as the CED has.[82] So the Committee could have decided that it would be precluded in the case of intervention by another treaty body or regional human rights organ, but not by the intervention of the WGEID. Alternatively, the CED could have promoted the use of joint requests by the CED and WGEID with joint or separate follow-up mechanisms.

Finally, interim measures are designed to address urgent requests for protection, in the context of both the Urgent Actions (Article 30(3)) and the individual complaints procedure

[76] Human Rights Clinic of the University of Texas School of Law, *Prevenir Daños Irreparable: Fortalecer las Medidas Cautelares de la Comisión Interamericana de Derechos Humanos* (Nov. 2018), at 121–124.

[77] Press Release, *Compliance with the Urgent Measures and Actions Issued by the UN Committee Against Forced Disappearances Is Mandatory for the Authorities of the Mexican State*, Supreme Court of Mexico, Jun. 17, 2021, https://www.internet2.scjn.gob.mx/red2/comunicados/noticia.asp?id=6479 (in Spanish).

[78] Emmanuel Decaux and Suela Janina, "The International Convention for the Protection of All Persons from Enforced Disappearance, a Human Rights Instrument of the 21st Century: Reflections on Its 10th Anniversary of the Entry into Force," *Droits Fondamentaux* 18, no. 36 (2021): 18.

[79] *Report of the Committee on Enforced Disappearances, Third Session (29 October–9 November 2012), Fourth Session (8–19 April 2013)*, Committee on Enforced Disappearances, U.N. Doc. A/68/56, 2013, at Annex IV(A) ¶ 2.

[80] Gabriella Citroni, "The First Years of the United Nations Committee on Enforced Disappearances: Achievements and Future Challenges," in *Réciprocité et universalité: sources et régimes du droit international des droits de l'homme: mélanges en l'honneur du professeur Emmanuel Decaux* (Éditions Pedone, Paris, 2017), at 398.

[81] *Resolution No. 7/88 Case 9504*, Inter-American Commission on Human Rights, *adopted* Mar. 24, 1988, https://cidh.org/annualrep/87.88eng/Peru9504.htm; *Celis Laureano v. Peru*, Communication No. 540/1993, U.N. Doc. CCPR/C/56/D/540/1993, Human Rights Committee, Apr. 16, 1996, at ¶ 7.1; *Malsagova and Others v. Russia*, App. No. 27244/03, European Court of Human Rights, Mar. 6, 2008, https://hudoc.echr.coe.int/eng?i=001-85506.

[82] On the differences between the CED and the WGEID, *see* Jeremy Sarkin, "Dealing with Enforced Disappearances in South Africa (With a Focus on the Nokuthula Simelane Case) and Around the World: The Need to Ensure Progress on the Rights to Truth, Justice and Reparations in Practice," *Speculum Juris* 29, no. 1 (2015): 22–48.

(Article 31(4)). When the Committee receives information that a person has been subjected to acts of intimidation or reprisal for seeking to cooperate, cooperating, or having cooperated with the Committee, it analyzes these allegations immediately. In doing so, it assesses whether the submitted information is reliable, meaning whether it appears that the individual concerned has been victim of, or is at risk of, acts of intimidation or reprisal for cooperating with the Committee. If so, the Rapporteur of the Committee on reprisals will adopt protection measures in favor of the alleged victim. These measures are determined on a case-by-case basis, duly adhering to the "do no harm" principle, and in close consultation with the individuals concerned or their representatives.[83] For example, in *E.L.A. v. France,* the Committee adopted interim measures requesting that the State cancel the deportation of the complainant to a country where he would face a risk of being subjected to enforced disappearance while the CED reviewed the communication.

III. Conclusion

The CED is certainly a "new generation" committee.[84] The Committee's design and powers, as established by the Convention and the practice of the CED itself, have benefited from the past experiences of other treaty bodies and Special Procedures. At the same time, the Convention and the functioning of the Committee show a positive degree of innovation and commitment to the development of an effective mechanism to address enforced disappearances. Particularly noteworthy is the active and creative use of the Urgent Action procedure, strong engagement with civil society actors, and the pro-victim approach taken by the Committee.

There are certainly many legal and procedural challenges that the Committee will face in its second decade. One issue is the slow pace of ratifications (as of June 2022, only 71 States had ratified or acceded to the Convention). Additionally, there is a geographic imbalance in the States Parties to the Convention, with a clear underrepresentation of ratifying States from Asia and Africa. In addition, States Parties have been slow to authorize the CED to receive individual and inter-State complaints. The Committee has also shown a restrictive interpretation of some of its mandates, such as the *litis pendentia*, with respect to declining to take up cases pending with the WGEID. And the CED has not used other innovations in its toolkit to address situations of generalized disappearances that could amount to crimes against humanity.

At the end of the day, however, as the CED's own numbers demonstrate, enforced disappearances continue to exist and, in fact, have increased since the establishment of the Committee. It is therefore incumbent upon the international community, scholars, practitioners, activists, Committee members, and the WGEID to assess if this new treaty, even with its innovative tools, has been effective in responding to the suffering of victims of enforced disappearance, and, if not, what further measures could be undertaken to improve the impact of both the Convention and other international mechanisms to address disappearances.

[83] Albane Prophette-Pallasco and Anna Batalla Trilla, *The Committee on Enforced Disappearances: How to Reconcile Procedural Timelines with the Urgency of Enforced Disappearance?*, Völkerrechtsblog, Dec. 16, 2020, https://voelkerrechtsblog.org/the-committee-on-enforced-disappearances-how-to-reconcile-procedural-timelines-with-the-urgency-of-enforced-disappearance/.

[84] Olivier de Frouville, "The Committee on Enforced Disappearances," in Frédéric Mégret and Philip Alston (eds.), *The United Nations and Human Rights: A Critical Appraisal* (Oxford: Oxford University Press, 2nd ed. 2014), 579–600.

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