

ARTÍCULOS

The right to the truth under the International Convention for the Protection of All Persons from enforced Disappearance: meaning and State obligations

El derecho a la verdad bajo la Convención Internacional para la Protección de todas las Personas contra las Desapariciones Forzadas: significado y obligaciones del Estado

Tania Bañuelos Mejía

Faculty of Law and Criminology, KU Leuven

ABSTRACT Truth as a right has been enshrined in treaty law for the first time under the International Convention for the Protection of All Persons from Enforced Disappearance (ICPPED). The right to the truth in this context has very specific objectives given the nature and elements of the crime of enforced disappearance. However, its meaning and the precise obligations that it creates for States parties are not well known, allowing a normative gap for States to elude its implementation and undermining efforts towards its realization. This article seeks to narrow that gap by analyzing both the ICPPED and the work of the Committee on Enforced Disappearances in interpreting the right. It finds that the right to the truth under the ICPPED is central for clarifying cases of enforced disappearance as it has the objective of establishing the fate and whereabouts of a disappeared person and triggers the State's obligations to search and investigate. It concludes that the effective implementation of the right is also fundamental for combatting impunity for enforced disappearance, as it seeks to compel the State to end its denial of the truth.

KEYWORDS Enforced disappearance, right to the truth, ICPPED, Committee on Enforced Disappearances

RESUMEN La verdad como derecho ha sido consagrada dentro del derecho de los tratados por primera vez en la Convención Internacional para la Protección de todas las Personas contra las Desapariciones Forzadas (ICPPED). El derecho a la verdad en este contexto tiene objetivos muy específicos dada la naturaleza y elementos del delito de desaparición forzada. Sin embargo, su significado y las obligaciones precisas que crea para los Estados partes no son muy conocidas, lo cual crea una brecha normativa que permite a los Estados eludir su implementación y socava los esfuerzos hacia su realización. Este artículo busca reducir esa brecha analizando tanto la ICPPED como el trabajo del Comité contra la Desaparición Forzada en la interpretación de este derecho. Encuentra que el derecho a la verdad bajo la ICPPED es central para esclarecer los casos de desaparición forzada ya que tiene el objetivo de establecer la suerte y el paradero de una persona desaparecida y activa las obligaciones del Estado de buscar e investigar. Concluye que la implementación efectiva del derecho también es fundamental para combatir la impunidad por desaparición forzada, ya que busca obligar al Estado a poner fin a su negación de la verdad.

PALABRAS CLAVE Desaparición forzada, derecho a la verdad, ICPPED, Comité contra la Desaparición Forzada

Introduction

The right to the truth¹ in relation to enforced disappearance is an autonomous human right enshrined in Article 24 (2) of the International Convention for the Protection of All Persons from Enforced Disappearance (ICPPED), adopted in 2006 by the United Nations (UN) General Assembly and entering into force in 2010. Originating from the right to know the fate of missing persons under Article 32 of Additional Protocol I to the Geneva Conventions,² the right to the truth specifically in relation to enforced disappearance set the foundation for the recognition of the right to the truth about all gross human rights violations under international human rights law and has become the first type of right to the truth to obtain explicit recognition in a legally binding international human rights law instrument.³

Article 24 (2) of the ICPPED states that:

[E]ach victim has the right to know the truth regarding the circumstances of the enforced disappearance, the progress and results of the investigation and the fate of the disappeared person. Each State Party shall take appropriate measures in this regard.

The drafting and adoption of the International Convention, and the express inclusion of the right to the truth therein, are vital steps that respond to the most pressing demand of the next of kin of disappeared persons (Scovazzi and Citroni, 2007: 348), contribute to the elimination of the practice of enforced disappearance and are significant for the development of human rights law in general (Ott, 2011: 189). Prior to the adoption of the ICPPED, the right to the truth in relation to enforced disappearance remained a «fairly vague concept»⁴ in international human rights law, namely because its elements were scattered across a variety of sources of

¹ This article uses the term «right to the truth, » which is sometimes referred to in varying ways in academic literature, official United Nations documents, legal and normative instruments, and international jurisprudence. Variations of the term include the «right to know, » «right to know the truth» and «right to truth. » In this article, these terms are deemed to be interchangeable and to convey the same meaning as «right to the truth. »

² «Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol 1) », opened for signature on 08 June 1977, Treaty Series, vol.1125, p.3.

³ The other «type» of right to the truth being that related to all human rights violations, for example under Principle II of the Updated Set of Principles for the Protection and Promotion of Human Rights through Action to Combat Impunity, which describes the «right to know the truth about past events concerning the perpetration of heinous crimes [...] ». It has also been discussed in relation to torture; see, for instance, Vesna Stefanovska, «The Importance of the ‘Right to the Truth’ in El-Masri Case: Lessons Learned from the Extraordinary Rendition. » *Torture* 31, no. 3 (2021): 59–69.

⁴ Report submitted by Mr. Manfred Nowak, independent expert charged with examining the existing international criminal and human rights framework for the protection of persons from enforced or involuntary disappearances, UN Doc E/CN.4/2002/71, 8 January 2002: 33.

international law, which undermined its proper implementation and monitoring, despite the general recognition of its existence.

This was recognized by Manfred Nowak in his report examining the existing international criminal and human rights framework for the protection of persons from enforced or involuntary disappearances, in preparation for the drafting of the ICPPED, in which he emphasized that the future instrument should contain a clear provision on the right to the truth in relation to enforced disappearance, given that the right had thus far not been coherently and clearly ascertained under international human rights law. He accordingly recommended that «[a]ny future binding instrument on enforced disappearances should precisely define the concept and the legal consequences of the right of family members of disappeared persons to the truth.»⁵

States drafting the ICPPED heeded the advice to incorporate the right to the truth in the Convention, albeit without much precision on its definition and legal consequences. Indeed, to date the right to the truth under the Convention remains a relatively unknown and underexplored right in terms of its meaning and content, the State obligations that it triggers and the appropriate measures for its implementation. The reply of one State party to the concluding observations of the Committee on Enforced Disappearances (CED) on its implementation report, which signaled a need for the State party to improve the implementation of the right to the truth, serves to illustrate the point: «[r]egarding the right of victims to know the truth concerning the circumstances of an enforced disappearance, under article 24, paragraph 2, of the Convention, States are bound to ‘take appropriate measures in this regard’, but are left free to make their own arrangements regarding the exercise of that right.»⁶

The lack of knowledge and awareness regarding the meaning and content of this right and the related State obligations creates a gap in its overall and common understanding, which allows States excessive leeway in interpreting the right and in choosing how to implement it, and can undermine efforts geared towards its implementation. Knowing its meaning, content and the State’s obligations is also vital for the right to be used to its full potential to compel the State to resolve cases of enforced disappearance, as well as to combat impunity for this practice.

As is well known, United Nations (UN) human rights treaty bodies play a central role in developing guidance on the effective implementation of human rights, the related State obligations, and the appropriate measures to give them effect. In this regard, the work of the CED has been essential in developing the understanding of the right to the truth in relation to enforced disappearance under the ICPPED. Since beginning its work, the Committee has examined implementation reports and emitted follow-up recommendations to States parties, responded to requests for urgent action in relation to reports of enforced disappearances and emitted views on individual

⁵ Report submitted by Mr. Nowak, para. 34. Emphasis added.

⁶ Report on follow-up to concluding observations of the Committee on Enforced Disappearances, UN Doc CED/C/7/2, 28 October 2014: 6. Emphasis added. In its latest report on Concluding observations on the additional information submitted by France (UN Doc CED/C/FRA/OAI/1, 19 October 2021), the CED noted that the State party still did not fully guarantee the victims’ right to know the truth (paras. 21-22, 26).

complaints regarding violations of the Convention, among others. Through those means, the Committee has considered the right to the truth from different angles and to varying degrees, producing a significant, yet somewhat scattered, corpus of information on this right. Explicit and structured guidance regarding the right to the truth under the ICPPED is absent, and efforts to raise awareness on the implementation of this right could be strengthened.

This article seeks to contribute to the overall and common understanding of the right to the truth under the ICPPED, by both analyzing the Convention and identifying and discussing the relevant work of the CED in interpreting and providing guidance on the right. The aspects of the right that are analyzed are 1) the content of the right to the truth under the ICPPED, meaning the material scope of the right (*ratione materiae*), the right holders (*ratione personae*), the objectives, other significant characteristics of the right and the rights to which it is closely related, and 2) the core State obligations triggered by the right and the corresponding appropriate measures for its effective implementation.

The article first provides an overview of the development of the right to the truth in relation to enforced disappearance under international human rights law and particularly in the context of the UN, as the ICPPED was negotiated in that framework and the CED is part of the UN human rights machinery. This offers the basis for understanding the need for the recognition of such a right and its inextricable link to the crime of enforced disappearance, which in essence seeks to negate the truth and leaves the victims in a state of agony from not knowing what happened to their loved ones.

It then identifies and analyzes the applicable provisions of the Convention and guidance emitted by the CED to determine the meaning and content of the right to the truth and the related core obligations of the State. Relevant comments, views, analyses and interpretations of the Committee are examined to extract the meaning and content of the right and to identify more precisely what the State needs to do in order to comply with its obligation to guarantee this right. The information analyzed includes instances where the CED has considered the right to the truth in its examination of State party reports and related recommendations, responses to requests for urgent actions and adoption of views under the individual complaints procedure, among the main.

The article finds that the right to the truth goes to the core of clarifying enforced disappearances as it has the objective of establishing the location of the disappeared person and the circumstances of the disappearance. Furthermore, the right triggers the procedural obligations of the State to search and to investigate, as well as to keep victims well apprised of the related investigation. The article discusses what these obligations entail and how they should be fulfilled to contribute to the right to the truth.

It is concluded that the right to the truth is an overarching right within the Convention as, aside from having its own, clear objectives, this right enables the attainment of other victims' rights and triggers specific State obligations under the ICPPED that are designed to respond to the commission of an enforced disappearance. As such, it is also a powerful tool for combatting impunity, as it targets one of the essential

elements of an enforced disappearance – the intentional negation of the truth by the State. Some reflections are offered on how the CED and the States parties can further enhance the understanding and awareness of the content and adequate implementation of the right to the truth under the ICPPED.

To frame the analysis, the elements of the crime of enforced disappearance are discussed in the remainder of this introduction.

The crime of enforced disappearance

At the core of this analysis is the crime⁷ of enforced disappearance. Enforced disappearance is one of the most serious types of human rights violations, causing irreparable physical and/or psychological harm to victims. It is a heinous practice by the State that can be carried out at any time and place and for various purposes,⁸ and is often perpetrated concurrently with torture and arbitrary execution (Naftali and Commaille, 2017: 36).⁹ Depending on how and under which circumstances it is carried out, it can be considered a human rights violation, a crime against humanity,¹⁰ and/or a war crime.¹¹ Enforced disappearance is not only a violation committed against individuals and their next of kin, but also a strategy used by the State to terrorize and suppress its population (Aguilar and Kovras, 2019). As such, its widespread practice also affects societies as a whole (Medina Quiroga, 2022: 111).

As per Article 2 of the ICPPED, an enforced disappearance consists of

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.¹²

⁷ Preamble to the ICPPED, paragraphs 5 and 6.

⁸ For an overview of the purposes of enforced disappearance, see Tullio Scovazzi and Gabriella Citroni, *The Struggle against Enforced Disappearance and the 2007 United Nations Convention* (Nijhoff 2007): 1-61.

⁹ As regards the commission of arbitrary executions in conjunction with enforced disappearances, see, for instance, Natasha Stamenkovikj, *The Right to Know the Truth in Transitional Justice Processes: Perspectives from International Law and European Governance*. Leiden; Brill, 2022. On the commission of torture on victims of enforced disappearance during their detention, see Scovazzi and Citroni, 2007: 8-9, among others.

¹⁰ As per ICPPED Article 5 and Article 7 (i) of the Rome Statute of the International Criminal Court, 1998.

¹¹ Although enforced disappearance is not explicitly defined as a war crime under any treaty, its absolute prohibition could be considered a norm of customary international law during international and non-international armed conflicts; see *Enforced Disappearance and Extrajudicial Execution: Investigation and Sanction - A Practitioners Guide*, International Commission of Jurists, 2015: 114-115.

¹² ICPPED Article 2.

While an autonomous and specific human rights violation, the crime of enforced disappearance impacts many human rights, specifically the rights to security of the person and protection under the law, the right not to be arbitrarily detained, the right of recognition as a person before the law and the right not to be subjected to torture or to other cruel, inhuman or degrading treatment or punishment (Scovazzi and Citroni, 2007: 1). These rights are directly violated in respect of the material victim of an enforced disappearance through the commission of the different components of the act. In addition, the other victims of the crime, who include «any individual who has suffered harm as the direct result of an enforced disappearance,»¹³ are subjected to violations of, inter alia, their rights to freedom from torture, to privacy and family life, to an effective remedy, and, not least, of the right to the truth.¹⁴ Indeed, the latter «has found its most fervent expression» in the context of enforced disappearance (Davis and Klinkner, 2022: 683).

The right to the truth under the ICPPED arises when an enforced disappearance has been committed. Conceptually, this right is quite logically linked to enforced disappearance, as one of the key elements of the crime – namely the refusal to acknowledge the deprivation of liberty or the concealment of the fate or whereabouts of the disappeared person – is an intentional negation of the truth. Considering the lack of information on the fate and/or whereabouts of the disappeared person, the right to the truth becomes a «particularly compelling norm»¹⁵ in the context of this crime. To be sure, enforced disappearance is «the only context under which the right to the truth is never something less than an absolute right» (Vangelova, 2018: 4).

The need for truth as a right in relation to the commission of enforced disappearances can be observed in the rise of its recognition under international human rights law, as discussed below.

A «basic need to know» - the recognition of the right to the truth in relation to enforced disappearance

From its inception, the right to know the fate of missing persons, under international humanitarian law, was recognized as arising from the suffering of the families of the missing, caused by a «basic need» to know their fate and whereabouts.¹⁶ In 1974, in its resolution 3220 (XXIX), the UN General Assembly recognized that «one of the tragic

¹³ ICPPED Article 24 (1).

¹⁴ Concerning the various rights violated by an enforced disappearance, see Lisa Ott, *Enforced Disappearance in International Law*. Antwerpen: Intersentia, 2011, pp. 43-130 and *Report submitted by Mr. Manfred Nowak*, paras. 75-80.

¹⁵ Third-party comments by the United Nations Office of the High Commissioner for Human Rights (OHCHR) in the case of *El-Masri v. FYRM*, para. 175. European Court of Human Rights, Application no. 39630/09, Judgment of 13 December 2012.

¹⁶ As stated in the Commentary to Additional Protocol I, the drafters «[...] were concerned with drawing attention to the suffering inflicted on families by armed conflict, and in particular the anxiety resulting from the absence of information.»

results of armed conflicts is the lack of information on [missing] persons» and considered that «the desire to know the fate of loved ones lost in armed conflicts is a basic human need which should be satisfied to the greatest extent possible.»¹⁷ While a basic human need does not equate to a human right (Scovazzi and Citroni, 2007: 348), the recognition of this need facilitated the subsequent realization that a human right to respond to such a need existed.

The first recognition of a similar right to know the fate and whereabouts of a missing person, but in relation to enforced disappearance, came about in the context of the emerging widespread practice of enforced disappearances in Latin America. The Ad Hoc Working Group established under Resolution 8 (XXXI) of the Commission on Human Rights to inquire into the situation of human rights in Chile was instrumental in calling attention to the importance for relatives of disappeared persons of «clear and truthful answers in the cases of missing persons»¹⁸ in its 1978 report to the Commission.

Following this report, the General Assembly adopted Resolution 33/173, entitled «Disappeared persons» – the first time that it used this term – and stated that it was «deeply moved by the anguish and sorrow which such circumstances cause to the relatives of disappeared persons.»¹⁹ For the first time, it considered the topic of disappearances from the perspective of international human rights law, recalling the Universal Declaration of Human Rights and International Covenant on Civil and Political Rights (ICCPR) Articles 6 (right to life), 7 (freedom from torture or cruel, inhuman or degrading treatment or punishment), 9 (right to liberty and security of person) and 10 (humane treatment of persons deprived of their liberty), which safeguarded against the practice of enforced or involuntary disappearances (preambular paragraph 1).

In the same resolution, the General Assembly also expressed concern about «reports of difficulties in obtaining reliable information from competent authorities as to the circumstances of such persons, including reports of the persistent refusal of such authorities or organizations to acknowledge that they hold such persons in their custody or otherwise account for them» (preambular paragraph 3). It called upon governments to undertake effective investigations into these cases, and requested the Commission on Human Rights to «consider the question of disappeared persons with a view to making appropriate recommendations» (operative paragraphs 1-2). This request to the Commission eventually led to the creation of the Working Group on Enforced or Involuntary Disappearances (WGEID), which became the first special procedure of the UN with a thematic mandate.²⁰

In 1981, in its first report, the WGEID identified specific human rights denied by

¹⁷ General Assembly resolution 3220 (XXIX), 6 November 1974. Emphasis added.

¹⁸ Report of the Economic and Social Council, Protection of Human Rights in Chile, UN Doc A/33/331, 25 October 1978, para. 418.

¹⁹ General Assembly resolution 33/173, UN Doc A/RES/33/173, 20 December 1978, preambular para. 5.

²⁰ UN Human Rights Commission, Question of enforced or involuntary disappearances, UN Doc E/CN.4/RES/1980/20 (1980).

enforced or involuntary disappearances, including «the rights of families to know the fate of their relatives,» citing Additional Protocol I to the Geneva Conventions as the source of this right.²¹ Shortly thereafter, in 1983, the Human Rights Committee, tasked with monitoring the implementation by States parties of the ICCPR, adjudicated in the case of *Quinteros v. Uruguay*, pinpointing the right of the author of the communication to know the fate and whereabouts of her disappeared daughter, derived from the anguish and stress caused by the disappearance.²² The views adopted by the Human Rights Committee in this case thus brought the right to the truth in relation to enforced disappearance firmly into the realm of international human rights law, as linked to other rights and obligations under the ICCPR.

A general consensus was hence established in the framework of the UN that the practice of enforced disappearance had, as one direct result, the suffering of families and loved ones of the disappeared person, caused by not knowing their fate or whereabouts. An emerging right to the truth in relation to enforced disappearance therefore sought to address this unique consequence of the crime and to establish a corresponding duty or duties for the State.

In subsequent years, the normative aspects of the right to the truth in relation to enforced disappearance continued to be developed, principally through the work of the WGEID;²³ but it was not until 2006, with the adoption of the ICPPED, that the right to the truth in relation to enforced disappearance was recognized as an autonomous human right, thus filling a void in the area of essential rights of victims of enforced disappearances.

But what exactly does the right mean, and what obligations does it create for the State?

Definition and elements of the right to the truth under the ICPPED

Analyzing the text of the ICPPED and the work of the CED, the discussion now moves to the exploration and identification of the definition of the right to the truth under the ICPPED, as well as its material scope (*ratione materiae*), right holders (*ratione personae*), objectives and other significant characteristics.

Definition

Under ICPPED Article 24 (2), the right to the truth means the right of each victim to know 1) the circumstances of the enforced disappearance, 2) the fate of the disappeared person and 3) the progress and results of the investigation. There are thus three matters to which the right to know the truth pertains, and the State cannot be selective about

²¹ Report of the Working Group on Enforced or Involuntary Disappearances, UN Doc E/CN.4/1435, 26 January 1981, para. 187.

²² *Almeida de Quinteros v. Uruguay*, Human Rights Committee, UN Doc CCPR/C/19/D/107/1981, 25 March 1982, para. 14.

²³ Notably, the WGEID has adopted a General Comment on the Right to the Truth (A/HRC/16/48, 26 January 2011, para. 39), in the context of the Declaration on the Protection of All Persons from Enforced Disappearance.

which of these elements to fulfill, as evidenced by the use of «and» in the provision rather than «or», meaning that it would only be in compliance if it takes appropriate measures with regard to all three elements. To understand the content of each of these, it is necessary to first clarify the meaning of the terms «circumstances» of an enforced disappearance and «fate» in relation to the disappeared person.

As posited by Rainer Huhle, the words «fate» and «whereabouts» that are part of the definition of an enforced disappearance under ICPPED Article 2 encompass the two principal elements of the uncertainty faced by the families of a disappeared person, which are: not knowing what happened to them or where they are. Huhle observes that, in normative texts dealing with enforced disappearances, «whereabouts» normally refers to the location of the disappeared person, whereas «fate» primarily refers to knowing what happened to the disappeared person, including the circumstances of the disappearance (Huhle, 2022: 162). However, if the term «fate» appears by itself and without the accompanying «whereabouts,» which is the case in ICPPED Article 24 (2), it usually refers to the physical location of the disappeared person (Huhle, 2022: 162); this can also be inferred from the supporting right of victims to search, appearing under ICPPED Article 24 (7). Accordingly, under Article 24 (2), the «circumstances» of an enforced disappearance would refer to the details of the crime, while «fate» refers to the physical location of the person.

The third matter to which the right to know the truth under Article 24 (2) pertains is the progress and results of the investigation. This refers to the criminal investigation of the enforced disappeared as, per ICPPED Article 2, the State party must ensure that enforced disappearance is criminalized in its domestic law.²⁴

Objectives

In view of the foregoing definition, it can be stated that the core objectives of the right to the truth in relation to enforced disappearance are to ascertain the fate and whereabouts of the disappeared person. Additionally, the right has the objective of ensuring that each victim is kept duly apprised of the progress and results of the related investigation.

Right holders

As regards the right holders, Article 24 (2) grants the right to the truth to «each victim.» As per Article 24 (1) of the ICPPED, a «victim» is «the disappeared person and any individual who has suffered harm as the direct result of an enforced disappearance.»²⁵ The use of the term «as the direct result of [...]» refers, on the face of it, to the disappeared person, the family or next of kin and/or other individuals closely associated to the disappeared person. From this view, it is clear that these individuals are the primary

²⁴ Additionally, as per Article 12 (1) and (2), an investigation must be undertaken if there is a complaint of a suspected enforced disappearance or where there are reasonable grounds to suspect such an act has been committed.

²⁵ ICPPED Article 24 (1).

holders of the right, as they are the ones to directly suffer harm from the disappearance (Stamenkovikj, 2022: 113).

The CED has also clarified that, under the Convention, the right to the truth belongs to individuals. In particular, it has stressed that domestic legislation should clearly define a victim of enforced disappearance in accordance with ICPPED Article 24 (1), in order «to ensure the full enjoyment, by any individual who has suffered harm as the direct result of an enforced disappearance, of the rights set forth in the Convention»²⁶ and so that «all persons who have suffered harm [...] can fully exercise the rights enshrined in the Convention, in particular the rights to justice, truth and reparation.»²⁷ More specifically, the Committee has stated that the relatives of a disappeared person are entitled, *inter alia*, to know the truth about the fate of their loved ones.²⁸ Additionally, in relation to the competence of the Committee to receive and consider communications, under ICPPED Article 31, such communications can be «from or on behalf of *individuals* subject to [the State party] jurisdiction claiming to be victims of a violation,»²⁹ which speaks to the individual justiciability of the right.

Notwithstanding the clear individual dimension of the right, it has been argued that the use of the term «and any individual who has suffered harm» could also be seen as broad and encompassing, ensuring as wide a coverage as possible of right holders, thereby not discarding a collective dimension of the right.³⁰ The recent adoption of views by the CED in the case of *Berrospe Medina v. Mexico*,³¹ in which the collective dimension of this right was considered, sheds additional light on this matter and thus merits some discussion here.

In its first adoption of views on an individual communication relating to Mexico, the CED found that the State party was responsible for the 2013 enforced disappearance of Yonathan Isaac Mendoza Berrospe. The author of the communication, Angélica María Berrospe Medina, Yonathan's mother, also claimed a violation of her and her son's right

²⁶ Concluding observations on the report submitted by Albania, UN Doc CED/C/ALB/CO/1, 3 July 2018, para. 33. Emphasis added.

²⁷ Concluding observations on the report submitted by Chile, UN Doc CED/C/CHL/CO/1, 8 May 2019, para. 23; Concluding observations on the report submitted by France, UN Doc CED/C/FRA/CO/1, 8 May 2013, para. 35; Concluding observations on the report submitted by Italy, UN Doc CED/C/ITA/CO/1, 10 May 2019, para. 33; Concluding observations on the report submitted by Japan, UN Doc CED/C/JPN/CO/1, 5 December 2018, para. 39; Concluding observations on the report submitted by Montenegro, UN Doc CED/C/MNE/CO/1, 16 October 2015, para. 29; Concluding observations on the report submitted by Serbia, UN Doc CED/C/SRB/CO/1, 16 March 2015, para. 24. Emphasis added.

²⁸ Concluding observations on the report submitted by Spain, UN Doc CED/C/ESP/CO/1, 12 December 2013, para. 32.

²⁹ ICPPED Article 31 (1). Emphasis added.

³⁰ On this point, see also Scovazzi and Citroni: «Article 24.2 of the 2007 Convention does not specifically address the collective dimension of the right to truth. However, it does not deny it either. [...] it can be inferred that a State which provides for public forms of disclosure of the truth [...] can only comply with the spirit of the 2007 Convention, » p. 359.

³¹ *Berrospe Medina v. Mexico*, Committee on Enforced Disappearances, UN Doc CED/C/24/D/4/2021, 24 May 2023.

to the truth, under ICPPED Article 24 (2), as Yonathan's relatives did not yet know the truth regarding the circumstances of his enforced disappearance and had not received any information regarding his fate or whereabouts. In addition, she claimed that the search for Yonathan had not been initiated promptly nor were any later search procedures carried out in a timely and exhaustive manner (para. 3.4).

The CED was of the view that, after more than nine years since the enforced disappearance of Yonathan, the author of the communication and Mexican society did not yet know the truth about what happened to him nor the names of those responsible for the disappearance, and they had not been informed in a timely manner nor sufficiently about the circumstances of the disappearance (para. 7.11). In this portion of its views, it would seem that the CED considered «the Mexican society» to be entitled to the truth about these matters. However, it found a violation of Article 24 (2) only in respect of Yonathan and of the author, based on its finding that the State had failed in its obligations to search for Yonathan and to investigate his disappearance promptly and effectively (para. 7.11 and in reference to para. 7.7). The Committee was thus of the view that the State had not taken the appropriate measures to guarantee Yonathan and the author's right to know the truth about the circumstances of the disappearance (para. 7.11).

Notably, CED member Juan Pablo Albán Alencastro wrote a partially concurring opinion in this case to further reflect on the right to the truth. Among others, he stated that, in reaching its conclusion on the violation of Article 24 (2), the Committee took into account not only the individual but also the collective dimension of the right to the truth and explained that such a reference to the collective dimension was both relevant and necessary, «since, in the current state of development of International Human Rights Law, the existence of a collective right of society to the truth is indisputable, and is as significant as that of the victims. The Committee could not remain oblivious to this reality.»³²

It can thus be said that the right to the truth under the ICPPED has what could be termed a «collective dimension,» though it is not a collective right, meaning that the right holders are only individuals. Notwithstanding, it can be said that fulfilling the right to the truth of each victim also enables society as a whole to know the truth about each enforced disappearance, as well as about the overall situation of enforced disappearances in a given country.

Other characteristics and related rights

As embodied in ICPPED Article 24 (2), the right to the truth in relation to enforced disappearance is an autonomous right and there is a positive obligation for the State party to «take appropriate measures» to fulfill it. It is a non-derogable right, as the provision does not allow for any exceptions.³³ Furthermore, it is «imprescriptible» in view of the obligation of the State, under subparagraph 6 of Article 24, to investigate until the fate of the disappeared person has been clarified.

³² *Berrospe Medina v. Mexico*, Annex, para. 8. Author's translation.

³³ See also Scovazzi and Citroni, 359.

To further understand the autonomous nature and material scope of the right to the truth, it is helpful to understand the difference between this right and other rights under the Convention that could be considered as closely associated, namely the rights to information, justice, effective remedy and reparation. By observing how these rights relate to each other, it is also possible to observe that the right to the truth enables the attainment of other victims' rights.

Given the refusal by authorities to acknowledge the deprivation of liberty or the concealment of the fate and whereabouts of the disappeared person that is part of the elements of the crime of enforced disappearance, the right to the truth is closely related to the right to information, as those elements constitute a deliberate denial of information. However, the right to the truth should be differentiated from the right to information; based on the text of ICPPED preambular paragraph 8 and Article 18, while the right to information grants the victims access to the required information on the circumstances of an enforced disappearance and the fate of the disappeared person, the right to the truth compels the State to cease its denial of information surrounding an enforced disappearance and to take action to clarify it by launching an investigation and the search for the disappeared person, thus acknowledging at least the probable commission of the act.

The right to the truth is also linked to the right to justice of the families of the disappeared, stemming from the State's obligation to investigate until the fate and whereabouts of the disappeared person are known, under Article 24 (6) of the Convention. This is because, ordinarily, an effective criminal investigation – which is needed to establish the fate and whereabouts of a disappeared persons – would lead to identifying possible perpetrators and bringing them to justice.³⁴

Furthermore, the right to an effective remedy is connected to the right to the truth. In a basic manner, the right to the truth contributes to guaranteeing the right to justice, as discussed above, which itself should constitute an effective remedy³⁵ if effectively fulfilled. Additionally, and significantly in the case of enforced disappearance, the right to the truth compels the State to provide information on the whereabouts of the disappeared person, which can be demanded through a procedure of habeas corpus, itself constituting a form of remedy, as reflected in Article 20 (2) of the Convention.³⁶

Last but not least, under Article 24, subparagraphs 4 and 5 of the ICPPED, victims of enforced disappearance also have the right to obtain reparation, which includes, among other forms, «satisfaction, including restoration of dignity and reputation» and guarantees of non-repetition.³⁷ There is a connection between the right to the truth and

³⁴ The right of the victims to justice in the ICPPED is captured explicitly in preambular paragraph 7 and Article 3, regarding disappearances committed by private individuals.

³⁵ See also Human Rights Committee General Comment No. 31 on The Nature of the General Legal Obligation Imposed on States Parties to the Covenant, para. 15.

³⁶ ICPPED Article 20 (2) obliges States parties to guarantee to persons with a legitimate interest in information relating to the detention of a person – including their whereabouts – such as relatives of the person deprived of liberty, their representatives or their counsel, the right to a prompt and effective judicial remedy as a means of obtaining without delay such information.

³⁷ ICPPED Article 24 (4) and (5).

the right to reparation, whereby the former can lead to the attainment of the latter, as once a disappearance has been clarified, the victims should in theory obtain reparation and prompt, fair and adequate compensation.

Through these links, the right to the truth enables the attainment of related rights that are contained in different provisions of the ICPPED. The right to the truth can therefore be conceptualized as an overarching right that connects related rights and triggers the obligations of the State owed to victims of enforced disappearance.

State obligations and appropriate measures to give effect to the right to the truth

As has been noted, the right to the truth means the right of each victim to know the circumstances of the enforced disappearance, the fate of the disappeared person and the progress and results of the investigation. Consequently, the obligations of the State to guarantee these different aspects of the right are to investigate the enforced disappearance, to search for the disappeared person and to ensure that victims are informed of the investigation³⁸ These obligations must comply with certain characteristics and accompanying measures to be properly fulfilled and to give effect to the right to the truth, as discussed below.

The core obligations under the right to the truth

To establish the circumstances of an enforced disappearance and the fate of the disappeared person, the State must investigate and ensure the location of a disappeared person. This encompasses two separate obligations – to search and investigate, which each have their own provisions under the ICPPED.

Under Article 24 (3) of the Convention, the State is under an obligation to search for, locate and release disappeared persons and, in the event of death, to locate, respect and return their remains. As regards the duty to investigate, in accordance with Articles 12 and 24 (6), the State must promptly and effectively investigate until the fate of the disappeared person has been clarified.

In relation to the obligation of the State to guarantee the right of each victim to know the progress and results of the investigation, this is a procedural obligation and part of the investigative and criminal justice process. ICPPED Article 24 (7) on victims associations and organizations, among other Convention provisions, supports the attainment of this aspect of the right.

Each of these obligations is discussed in turn below.

³⁸ Guidelines on the form and content of reports under article 29 to be submitted by States parties to the Convention (Reporting Guidelines), para. 35. Also as affirmed by the CED in *Berrospe Medina v. Mexico*, para. 7.11 and in reference to 7.7, discussed in the section on «Right holders» in this article.

The obligation to search

As indicated by the CED,³⁹ to guarantee the right of each victim to know the fate of a disappeared person, the State must investigate and ensure their location, including locating, respecting, and returning the remains in case of death, and must guarantee the right of the relatives to form and participate in associations concerned with clarifying enforced disappearances.⁴⁰ The Reporting Guidelines emitted by the Committee indicate that the State should also establish mechanisms to ensure the right to know the truth about the fate of the disappeared person and to conduct the investigations.⁴¹

Significantly, the Committee has developed and adopted Guiding Principles for the Search for Disappeared Persons, which present good practices in the effective search, stemming from the obligation of States to search⁴² and which can be viewed as resulting from ICPPED Article 24 (2), as they «respond to the primary concern expressed by most families of disappeared persons – the desire to know the whereabouts and the fate of their loved ones» (Frey, 2021: 57). In total there are sixteen principles, including that an effective search should be governed by a public policy, follow a differential approach, begin without delay, be conducted on the basis of a comprehensive strategy, take into account the particular vulnerability of migrants, be organized efficiently, use information in an appropriate manner, be coordinated, carried out safely, independent and impartial and governed by public protocols.

While the Guiding Principles do not contain an express reference to the right to the truth, several of them are directly relevant to this right, such as Principle 5, which explains that the search should respect the right to participation; Principle 7, which asserts that the search is a continuing obligation; and Principle 13, which affirms that the search and the criminal investigation should be interrelated.

The CED has also specified that the State should allocate sufficient resources to determine the whereabouts of a disappeared person⁴³ and that it should consider setting up specialized search bodies responsible for searching for the disappeared persons, which should be endowed with sufficient powers and resources to effectively perform their role.⁴⁴

In essence, the search for a disappeared person should be effective, which may be achieved by, at minimum, applying the Guiding Principles for the Search, which are based on a well-coordinated, information-based, safe, and participatory approach. The search should also be well-resourced and conducted by specialized bodies that have the

³⁹ Reporting Guidelines, para. 35.

⁴⁰ In line with ICPPED Article 24 (7).

⁴¹ Reporting Guidelines, para. 35.

⁴² Guiding Principles for the Search, para. 2.

⁴³ Concluding observations on the report submitted by Spain, para. 32; Concluding observations on the report submitted by Bosnia and Herzegovina, UN Doc CED/C/BIH/CO/1, 3 November 2016, para. 18 (a).

⁴⁴ Concluding observations on the report submitted by Spain, para. 32.

necessary legal powers to carry out their functions.

The obligation to investigate

As previously noted, the right to the truth under Article 24 (2) triggers the obligation of the State to conduct investigations, which are regulated under Article 12 of the Convention. Though the obligation to investigate an enforced disappearance exists independently of the right to the truth, the latter seeks to oblige the State to immediately investigate in order to establish the circumstances of an enforced disappearance and the fate of the disappeared person, as Article 24 (2) indicates that each State party «shall take appropriate measures in this regard. » As discussed below, such appropriate measures include effective investigations. Moreover, the right to the truth obliges the State to inform victims of the progress and results of the investigation, which necessitates that an investigation be carried out in the first place. In this manner, the right to the truth presents an additional layer of the obligation of the State to conduct investigations.

In regard to the obligation to investigate, the CED has highlighted in particular that the investigations must be prompt and conducted *ex officio*. It has recalled that States parties have the obligation to commence the search for forcibly disappeared persons and investigations into establishing their fate even if no formal complaint has been made,⁴⁵ and has expressed concern that, in some cases, investigations are not started *ex officio*, but rather only when relatives of the disappeared person or other close contacts persuade the authorities to act.⁴⁶

This guidance is also reflected in ICPPED Article 12 (1), according to which authorities must examine allegations «promptly and impartially and, where necessary, undertake without delay a thorough and impartial investigation. »⁴⁷ According to subparagraph 2 of the same article, «[w]here there are reasonable grounds for believing that a person has been subjected to enforced disappearance [authorities] shall undertake an investigation, even if there has been no formal complaint. »⁴⁸

Crucially, investigations should also be impartial.⁴⁹ This is a particularly relevant – and challenging – requirement of investigations into enforced disappearances, as the crime will have been committed by an agent of the State or by persons or groups of persons acting with the authorization, support or acquiescence of the State. For that reason, ICPPED Article 12 also specifies that the State must «ensure in particular that persons suspected of having committed an offence of enforced disappearance are not in a position to influence the progress of an investigation, » as oftentimes the alleged perpetrators are also persons connected with criminal investigations.⁵⁰

⁴⁵ Concluding observations on the report submitted by Spain, para. 32.

⁴⁶ Report of the Committee on Enforced Disappearances, UN Doc, A/73/56, 2018, para. 38 (b).

⁴⁷ ICPPED Article 12. Emphasis added.

⁴⁸ ICPPED Article 12 (1) and (2). Emphasis added.

⁴⁹ ICPPED Article 12 (1).

⁵⁰ These challenges were highlighted in the Human Rights Committee case of *Padilla García et al v. Mexico*, in which the victim was abducted by inter-municipal police officers and the

In addition, States must ensure that the persons reporting a disappearance and participants to an investigation, including relatives of the disappeared person, are protected against all ill-treatment or intimidation.⁵¹

Last but not least, States must ensure that investigative authorities have the required powers under the law and the resources to carry out effective investigations,⁵² and that they can access promptly any place of detention or other places where a disappeared person may be held.⁵³

To summarize, investigations into enforced disappearances must be effective if they are to contribute to fulfilling the right to the truth. This means that they must be prompt, conducted *ex officio*, impartial, thorough and that the State must protect those involved in the investigations. Additionally, to enable investigative authorities to conduct effective investigations, the State must ensure that those authorities have the resources and legal powers to do so.

The obligation to ensure that victims know the progress and results of an investigation

Under Article 24 (2), to ensure the right of victims to know about the progress and results of an investigation, the State is under an obligation to provide them with such information. Under Article 24 (7), which directly supports the attainment of the right to the truth, the State is under an obligation to guarantee the right of victims «to participate freely in organizations and associations concerned with attempting to establish the circumstances of enforced disappearances and the fate of disappeared persons [...]». ⁵⁴

As regards the knowledge of victims about the investigations and other proceedings that seek to clarify an enforced disappearance, the Committee guides States parties to have legislative and administrative procedures that can guarantee the right of victims to participate in investigations, as well as to ensure consultations whereby associations of families of the disappeared can participate in the drafting of the relevant legislation.⁵⁵ The Committee has also highlighted that States parties must create reporting mechanisms to inform the families and relatives of disappeared persons to ensure that they can «participate actively, and in an informed manner, in all stages of the

same authority later refused to record the complaint of the disappearance. In the outcome of this case, the Committee asserted that it «was neither logical nor reasonable to investigate an enforced disappearance and make its clarification dependent on the admission of guilt of the possible perpetrators, given that one of the key elements of the crime is precisely the refusal of the authorities to acknowledge the detention of the victim.» *Padilla et al v. Mexico*, UN Doc CCPR/C/126/D/2750/2016, 15 July 2019, para. 9.3.

⁵¹ ICPPED Article 12 (1).

⁵² ICPPED Article 12 (3)(a).

⁵³ ICPPED Article 12 (3)(b).

⁵⁴ ICPPED Article 24 (7)

⁵⁵ Reporting Guidelines, para. 35

investigative process.»⁵⁶

The CED has further noted that States parties must provide family members and relatives «with adequate guidance on their rights and how to exercise them, and to give them regular information on the measures adopted to find the disappeared persons and investigate their disappearance.»⁵⁷ States should also provide support for victims' participation, including facilitating physical access, format, language and literacy, in order to fully access information.⁵⁸

As can be observed, the obligation to ensure that victims know about the investigation also involves guaranteeing their participation. This is also illustrated in the case of *Yrusta v. Argentina*, concerning the enforced disappearance of Mr. Roberto Agustín Yrusta, in which the CED found that, as the family members of the disappeared person were not allowed to participate in the investigative proceedings into the disappearance, this entailed a violation of, *inter alia*, Article 24 (2) of the Convention.⁵⁹ The Committee also found that «[a]fter such a long period has passed, the possibility of playing an active and effective part in the proceedings is lessened to such an extent that the impairment of the right [to participate] becomes irreversible, in violation of the victims' right to know the truth.» (para. 10.9).

The fulfillment of the obligation to ensure that victims know about the progress and results of the investigation thus necessitates that they are able to participate meaningfully from the start and throughout the investigative process; that they may participate freely and safely in organizations dedicated to locating disappeared persons and establishing the circumstances of the crime; that they are provided information by the State regarding the progress and results of the investigation; and that they be assisted in their participation, including by ensuring that they can access and understand the information provided.

Conclusions and reflections

As can be seen in its evolution under international human rights law and in the context of the UN, the recognition of truth as a right in relation to enforced disappearance was a response to the basic need of the relatives of the disappeared to know what happened to their loved ones and where they are. The right gained recognition through UN General Assembly resolutions, jurisprudence of the Human Rights Committee and the work of the WGEID, but it was not until the adoption of the ICPPED that it became a self-standing human right in treaty law.

As discussed in this article, the right to the truth under the ICPPED has the objective of establishing the fate and whereabouts of a disappeared person, while keeping victims

⁵⁶ Report on requests for urgent action submitted under article 30 of the Convention, UN Doc CED/C/14/2, 17 July 2018, para. 18.

⁵⁷ Report on requests for urgent action, para. 18.

⁵⁸ Reporting under the ICPPED Training Guide, Part I – Manual, 2022: 144.

⁵⁹ *Yrusta v. Argentina*, Committee on Enforced Disappearances, UN Doc CED/C/10/D/1/2013, 12 April 2016, para. 10.9.

well informed of this process. By analyzing the Convention and studying the interpretation and guidance of the CED on the meaning and practical implementation of the right, it has also been established that, in order to fulfil the right, the State must investigate the enforced disappearance, search for the disappeared person, and ensure that victims are involved in and informed of the investigation. These obligations must be carried out effectively and not merely in a perfunctory manner; investigations must be prompt, conducted ex officio, impartial and thorough. The search must be safe, participatory, well-coordinated and use information efficiently, among others. In all cases, victims must be able to participate meaningfully and safely in the investigation and search processes and mechanisms.

These obligations of the State under the right to the truth are essentially procedural⁶⁰ and part of the proper administration of justice. However, in the case of the crime of enforced disappearance, they are of particular importance given that the State is the offender and is actively attempting to deny and hide the truth, provide information, and shield the individual perpetrators. In this scenario, the right to the truth becomes a powerful tool to combat impunity, even beyond its potential to trigger the procedural obligations of the State to respond to and clarify an enforced disappearance. As a whole and as an autonomous human right, it seeks to compel the State to acknowledge that a disappearance has been or may have been committed, to mobilize its apparatus to locate the person and establish the circumstances of the crime, and to interact with and provide information to the relatives of the disappeared, thus breaking down the wall of silence and denial that is the hallmark of an enforced disappearance. The obligation to keep victims involved in the investigation, beyond responding to their «basic need to know,» also serves as a sort of checks and balances in responding to an enforced disappearance; even though the State has the primary responsibility and duty to both prevent enforced disappearances and to resolve them, given the nature of the crime, the right to the truth enables victim participation, which is necessary to put pressure on the State to comply with its obligations.

In addition, if the State complies properly with its obligations under the right to the truth, evidence and information is gathered that may contribute to the full attainment of the right to justice, including through prosecuting alleged perpetrators. Moreover, fulfilling the right to the truth would enable the attainment of the right to information, by granting victims access to information both on the progress and results of an investigation and on the fate and whereabouts of the disappeared person; the right to effective remedy, as the right to the truth contributes towards the provision of effective recourse for victims – including both the disappeared person and those affected by the disappearance; and it also opens a pathway for the right to reparation, be it through the recognition by the State of its role in the crime and/or through monetary or other forms of compensation, among others. By forcing the State to clarify an enforced disappearance, moreover, the individual right to the truth also contributes towards its societal dimension, thus allowing

⁶⁰ On the point of procedural obligations under the right to the truth, see also the General Comment of the WGEID on the right to the truth, para. 5.

society to know about both individual cases and the overall situation of disappearances in the country, both past and present. The right to the truth can, in this manner, be conceptualized as an overarching right within the Convention; if leveraged and implemented correctly, the right can therefore challenge the systemic practice of enforced disappearance in a holistic manner and contribute towards the attainment of victims' rights.

From both normative and practical perspectives, it is thus crucial for ICPPED States parties, the CED, and victims and those that work with them to know precisely what the right entails and how the State should implement it. As this article has shown, both the Convention itself and the CED provide a wealth of information on the content of the right and the obligations of the State. Notwithstanding, the information is not very well-known or, as of yet, systematically organized and presented by the CED. It is important for States to be better aware of the meaning and content of and their obligations under the right, to avoid them reporting on unrelated or insufficient measures and affirming that these are compliant with the right to the truth. Likewise, ensuring a common understanding and awareness of the right will not only further the push for its domestic implementation by States parties, but could also lead to increasing international cooperation among States in the search for, investigation, and prosecution of enforced disappearances, based on a common understanding of obligations and procedures.

It would thus be ideal for the CED to further elaborate, in its Reporting Guidelines, on the precise elements of the right to the truth under Article 24 (2), and/or to elaborate a clearer checklist to facilitate and standardize its monitoring of the right's implementation, which would also allow for better sharing of best practices, challenges and lessons learned among States through their reporting processes. The CED should also consider adopting a General Comment on the right to the truth under the Convention to clarify the elements of the right and associated State obligations. It is encouraging that the CED and its members have increasingly focused on the right to the truth through its jurisprudence, thus producing valuable interpretation and guidance. The central role of the Committee in strengthening the understanding and observance of the right to the truth under the Convention will continue to be essential for its proper and full attainment.

The ICPPED is the only legally binding instrument that enshrines the right to the truth and creates the possibility for victims to attain this crucial right, offering an important tool for right holders to demand from the State an end to its denial of the truth. The right to the truth can also serve as a means and a compass for States wishing to break away from the past to clarify enforced disappearances while ensuring that related victims' rights are met. Hence, it is important for ICPPED States parties to be well aware of their obligations and to strengthen their implementation of the Convention; it is also crucial for more States to become parties to the Convention in order to truly leverage its potential and enhance the international regime for the protection of all persons from this heinous crime.

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About the author

TANIA BAÑUELOS MEJÍA is a doctoral researcher at the Faculty of Law and Criminology of KU Leuven, Belgium. She holds an LL.M in Public International Law from the London School of Economics and a BA in International Relations from the Universidad de las Américas, Puebla. She is a Political Affairs Officer at the United Nations Secretariat, based in Geneva. Her email is: tania.banuelosmejia@kuleuven.be
Address: United Nations Office for Disarmament Affairs (UNODA), Geneva Branch, Palais des Nations, 8-14 Avenue de la Paix, 1211 Geneva, Switzerland. ORCID: <https://orcid.org/0000-0002-6496-0196>.

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