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**Call for inputs with a view
to issuing a joint
statement on the notion of
short-term enforced
disappearance.**

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This work was carried out under the coordination of members of the Doctoral Clinic for International Human Rights Law and with the assistance of law students.

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ABBREVIATIONS

CED	United Nations Committee on Enforced Disappearances
ECHR	European Court of Human Rights
ED	Enforced disappearance
ICPPED	Convention for the Protection of All Persons from Enforced Disappearance
STED	Short-term enforced disappearance
UN	United Nations
WGEID	United Nations Working Group on Enforced or Involuntary Disappearances

Questions:

Question 1. How is the notion of ‘short-term enforced disappearances’ understood and in which contexts do they occur?

Question 2. Which are the legal frameworks and practices that may lead to ‘short-term enforced disappearances’, and which are the legal frameworks and practices that might prevent them?

Question 3. Which are the main procedural questions that may arise for domestic authorities, the Committee and the Working Group when dealing with ‘short-term enforced disappearances’?

Introduction

Enforced disappearances (ED) are a human rights violation recognized and condemned by numerous international instruments, such as the International Covenant for the Protection of All Persons from Enforced Disappearances (ICPPED) or the Inter-American Convention on Forced Disappearance of Persons. And yet, a growing phenomenon remains little to not addressed at all by texts and experts: short-term enforced disappearances (STED). There is no universally accepted definition, particularly as regards the minimum length of time required to be considered as short-term, which leads to a variety of interpretations. It is therefore necessary to agree on the meaning of this notion in order to protect the numerous victims of STEDs.

I. Question 1:

Although it is accepted that the criteria for an ED defined by the ICPPED¹ must be met, there is no consensus on the interpretation of the specific notion of STED. While the United Nations Working Group on Enforced or Involuntary Disappearances (WGEID) has ruled that an ED occurs from the very first minute², opinions are very broad. For the International Criminal Court, an ED must extend over a prolonged period of time to constitute a crime against humanity³. It is also sometimes considered that an ED begins after 48 hours, as this is the legal delay available to law enforcement to bring a person under arrest before a judge in some States⁴. According to the United Nations Committee on Enforced Disappearances (CED), a disappearance lasting a week also falls within the definition of a STED⁵. Olivier de Frouville, member of the CED and former member of the WGEID, goes even further by referring to STEDs for people released "weeks or months later"⁶. Furthermore, according to the United Nations High Commissioner for Human Rights, a person who has been subjected to a STED reappears shortly after having disappeared, dead or alive⁷. Therefore, it seems that the reappearance of the person, after a period that can range from a few minutes⁸ to several months depending on the interpretation, is the main marker for STEDs. Thus, the lack of an international consensus leads to very broad interpretations, which can hinder the protection of victims.

¹ Article 2, International Convention For the Protection of All Persons from Enforced Disappearance, available [here](#).

² “‘Every minute counts’ – UN experts raise alarm over short-term enforced disappearances” (WGEID, 26 August 2016), available [here](#), accessed 04 July 2023.

³ Article 7, Rome Statute, available [here](#).

⁴ “Enforced disappearance as a tool of political repression in Venezuela” (*Foro Penal & Robert F. Kennedy Human Rights*, 2020), available [here](#), accessed 04 July 2023.

⁵ CED/C/10/D/1/2013 (CED, 12 April 2016), available [here](#).

⁶ Reema Omer, “‘Short-term’ disappearances” (*Dawn*, 18 December 2017), available [here](#), accessed 04 July 2023.

⁷ “Fact Sheet No. 6 (Rev. 4): Enforced Disappearances” (*Office of the UN High Commissioner for Human Rights*, 2023), available [here](#), accessed 4 July 2023.

⁸ Rosa Arista, “Naciones Unidas aborda caso de desaparición forzada durante las protestas en el Perú” (*EarthRights International*, 6 March 2023), available [here](#), accessed 04 July 2023.

In spite of the WGEID reiterating in its reports that no circumstances can justify EDs, certain contexts are recurrent when it comes to them, particularly those of short duration. The fight against terrorism and organized crime is one of the most frequently used justifications by states' authorities, especially in the context of international cross-border cooperation⁹. The aim is to gather as much information as possible from a person suspected of belonging to a terrorist or organized network, often under torture, but in most cases with no evidence to justify the arrest warrant or detention¹⁰. STEDs are also frequently used against political opponents, notably in Venezuela¹¹. There, people are arrested, often during peaceful demonstrations, and arbitrarily held incommunicado for a few hours or days. During such detentions, torture is sometimes used and many human rights are violated. The aim here is to intimidate opponents of the government and send them a message. This climate of fear is also sometimes instilled more generally against all critics of the state, as it can be witnessed in Pakistan for example¹².

However, this situation could also be rooted in a lack of judicial capacity. Taking Venezuela as an example, it has been observed that STEDs most often occur during mass arrests. This could reveal the inability of the authorities to respect the 48-hour time limit for bringing an arrested person before a judge¹³. Nevertheless, this does not justify the refusal to communicate information regarding the location of detention to the victims' relatives.

Lastly, STEDs can also occur in the context of an initially legal detention, which becomes illegal following the transfer of the detainee without informing them and their family of their future whereabouts¹⁴.

II. Question 2:

There are many contexts, practices and legal frameworks that encourage or lead to EDs, particularly those of short duration. The latter often take place in the context of the fight against terrorism, states of emergency, armed conflicts or the repression of legitimate civil conflicts calling for democracy or freedom of expression. STEDs result mainly from three practices: the regime wishes to make a person disappear, the security forces hide evidence of torture, or the authorities

⁹ A/HRC/13/42 (*UN General Assembly*, 20 May 2010), available [here](#) ; “Missing persons and victims of enforced disappearance in Europe” (*Council of Europe & Commissioner for Human Rights*, March 2016), available [here](#), accessed 04 July 2023.

¹⁰ “El Salvador: Evidence of Serious Abuse in State of Emergency” (*Human Rights Watch*, 2 May 2022), available [here](#), accessed 04 July 2023.

¹¹ “Enforced disappearance as a tool of political repression in Venezuela” (*Foro Penal & Robert F. Kennedy Human Rights*), *Op. Cit.* ; Juliana Cano Nieto, “Enforced Disappearances: A Pending Challenge for Latin-American Democracies” (*Human Rights in Context*, 30 August 2021), available [here](#), accessed 04 July 2023.

¹² Reema Omer, “‘Short-term’ disappearances”, *Op. Cit.*

¹³ “Enforced disappearance as a tool of political repression in Venezuela” (*Foro Penal & Robert F. Kennedy Human Rights*), *Op. Cit.*

¹⁴ CED/C/10/D/1/2013 (*CED*), *Op. Cit.*

are unable to deal with the person within the timeframe stipulated by the constitutions of the ICCPED's State parties¹⁵.

Firstly, STEDs in counter-terrorism operations represent a significant problem worldwide, through the use of secret detention centers, the declaration of a state of emergency that allows prolonged secret detention, or forms of "administrative detention" that also allow prolonged secret detention¹⁶. STEDs are used as a counter-terrorism technique and as a tool of repression. The practice of secret detention is assimilated to EDs by the United Nations (UN)¹⁷. In the case *El-Masri v. the Former Yugoslav Republic of Macedonia*, regarding an ED and an "extraordinary rendition", the European Court of Human Rights (ECHR) has ruled that the uncertainty and lack of explanations and information that persist throughout the victim's 5-month long captivity make it an ED¹⁸.

STEDs are also used by state authorities to justify the maintenance of public order and security, especially during demonstrations. Numerous practices resembling EDs have been documented by the UN and non-governmental organizations working on the case of China for example¹⁹. "Residential surveillance at a designated location" is a legal procedure for incommunicado detention used on a large scale in China²⁰. In 2011, the WGEID was already warning the international community of waves of STEDs - often lasting 6 months - which at the time targeted individuals who had only peacefully exercised their freedom of expression²¹. This was notably the case in the context of the Covid-19 epidemic between 2020 and 2022, or in the context of the #MeToo movement²². In the latter, a striking example is the disappearance of Huang Xueqin, whose entourage has been deprived of news for months after she has been arbitrarily arrested and detained²³.

To ensure greater prevention in this area, there is a need to further develop international human rights legislation on the definition of EDs. The various prevention methods applicable to EDs in general concern all cases of STEDs. In addition, national legislations present a number of pitfalls when it comes to EDs, particularly STEDs. The criminalization of STEDs in national law would enable better prevention of the commission of these crimes. Although significant obstacles would

¹⁵ "Human Rights Law Must Recognize Short-Term Enforced Disappearances" (*Robert F. Kennedy Human Rights*, 04 August 2020), available [here](#), accessed 04 July 2023.

¹⁶ A/HRC/13/42 (*UN General Assembly*, 19 February 2010), pp. 26-34, available [here](#), accessed 04 July 2023.

¹⁷ Gabriella Citroni, "Short-term Enforced Disappearances as a Tool for Repression", (*SIDIBlog*, 13 June 2016), available [here](#), accessed 04 July 2023.

¹⁸ *El-Masri v. The former Yugoslav Republic of Macedonia* (ECHR, 13 December 2012), available [here](#), accessed 04 July 2023.

¹⁹ « Huang Xueqin : déjà 500 jours de détention arbitraire » (*ACAT France*, 31 January 2023), available [here](#), accessed 04 July 2023.

²⁰ *Ibid.*

²¹ *Ibid.*

²² *Ibid.*

²³ *Ibid.*

certainly remain, the recognition of STEDs as an existing practice, with a precise objective and specific characteristics, is an indispensable first step in ensuring that they can no longer be used as an effective tool of repression.

In this regard, articles 2 and 4 of the ICPPED imply that each State party must take the necessary measures to ensure that EDs are considered as autonomous offenses under its criminal law. In addition, the Committee recommended that State parties adopt legislative measures expressly prohibiting the invocation of superior orders or instructions to justify EDs. It also stressed the need to align the penal code with the prohibition laid down in Article 6§2 of the ICPPED²⁴. Some states prohibit measures and mechanisms that could lead to EDs. For example, Germany ensures that there is no risk of EDs when exchanging information with other states. Indeed, the State cannot provide any support where there is this type of risk²⁵.

Finally, the International Committee of the Red Cross also provides legal and technical support to States to adopt laws and regulatory frameworks to implement their international obligations, including those to prevent EDs²⁶.

Due to the current lack of research on STEDs' prevention, these recommendations regarding EDs can all be applied in cases of STEDs.

III. Question 3:

The issue of STED presents a complex web of legal and procedural challenges, both domestically and internationally. One particular obstacle lies in ensuring the non-refoulement principle, which prevents individuals from being returned to countries where they may face persecution or harm. This principle poses a legal and procedural challenge, as domestic authorities must carefully assess the risk of ED before extraditing or repatriating individuals. To overcome this obstacle, it is necessary to establish clear criteria, conduct thorough assessments, and potentially amend extradition and asylum laws²⁷.

Another significant hurdle in addressing STEDs arises from the need for more alignment between the domestic laws of certain countries and the definition outlined in the ICPPED. This misalignment leads to inconsistent interpretations of ED at the state level, creating further

²⁴ Maria Clara Galvis Patiño, "The work of the CED" (*Geneva Academy*, August 2021), pp. 22-23, available [here](#), accessed 04 July 2023.

²⁵ "In Dialogue with Germany, Experts of the Committee on Enforced Disappearances Commend the State's Prosecution of International Crimes, Ask About Integration of Law on Enforced Disappearance and Protections from Non-Refoulement" (*Office of the UN High Commissioner for Human Rights*, 22 March 2023), available [here](#), accessed 04 July 2023.

²⁶ Ximena Londoño & Helen Obregón Gieseken, "Sustaining the momentum: working to prevent and address enforced disappearances" (*Humanitarian Law and Policy*, 26 August 2021), available [here](#), accessed 04 July 2023.

²⁷ Maria Clara Galvis Patiño, "The Work of the CED", *Op. Cit.*, pp. 46-48.

difficulties in effectively addressing and responding to such cases²⁸. Furthermore, related offenses often lack sufficient coverage in criminal legislation, making recognizing and handling STEDs as distinct offenses challenging²⁹.

Ensuring the right to reparation for victims requires a broad definition of the victim. However, the lack of involvement of victims and their organizations in decision-making creates a procedural obstacle and hinders the effective implementation of reparations measures³⁰. Additionally, the ICPPED does not explicitly address amnesty and pardons, which can impede the prosecution and punishment of those responsible for STEDs³¹. To ensure effective accountability mechanisms and justice for victims, it is crucial to have appropriate enforcement powers. Unfortunately, the current enforcement powers of the CED are limited, and there is no mechanism for individual aggrieved persons to seek redress³².

Attributing responsibility and ensuring accountability in STEDs is further complicated by multiple perpetrators and blurred perpetrator-victim lines³³. The necessity to eradicate impunity for such disappearances faces obstacles such as limited resources, prosecution delays, a weak judiciary, and amnesty laws³⁴. Encouraging more State parties to accept the competence of the CED is a crucial step in effectively addressing this problem³⁵.

In the specific case of Cyprus, the search for missing persons was hindered by a lack of cooperation and trust between communities and denial of access to relevant archives. Accessing military archives and classified documentation presents a significant challenge in establishing the truth and pursuing justice in cases of STEDs³⁶. Furthermore, the competence of the CED is limited to disappearances occurring after the Convention enters into force, creating challenges in addressing past cases³⁷. Urgent actions and individual communications regarding such cases also face

²⁸ *Ibid.*, pp. 16-17.

²⁹ *Ibid.*

³⁰ *Ibid.*, pp. 69-70.

³¹ *Ibid.*

³² Diane Webber & Kaola Sherani, “Addressing the Continuing Phenomenon of Enforced Disappearances” (*Center for Strategic and International Studies*, 18 August 2022), available [here](#), accessed 30 June 2023.

³³ “Missing persons and victims of enforced disappearance in Europe” (*Council of Europe & Commissioner for Human Rights*), *Op. Cit.*, p. 45.

³⁴ *Ibid.*, pp. 46-47.

³⁵ Emmanuel Decaux & 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” (*Paris Human Rights Center*, 2021), available [here](#), accessed 30 June 2023.

³⁶ “Missing persons and victims of enforced disappearance in Europe” (*Council of Europe & Commissioner for Human Rights*), *Op. Cit.*, pp. 43-44.

³⁷ “Fact Sheet No. 6 (Rev. 4): Enforced Disappearances” (*Office of the UN High Commissioner for Human Rights*), *Op. Cit.*

uncertainties and inconsistencies due to the issue of military jurisdiction in the investigation and trial processes³⁸.

³⁸ Emmanuel Decaux & 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” (*Paris Human Rights Center*, 2021), *Op. Cit.*

Bibliography

- A/HRC/13/42 (*UN General Assembly*, 19 February 2010), pp. 26-34, accessed 04 July 2023.
- Arista R., “Naciones Unidas aborda caso de desaparición forzada durante las protestas en el Perú” (*EarthRights International*, 6 March 2023), accessed 04 July 2023.
- Cano Nieto J., “Enforced Disappearances: A Pending Challenge for Latin-American Democracies” (*Human Rights in Context*, 30 August 2021), accessed 04 July 2023.
- Citroni G., “Short-term Enforced Disappearances as a Tool for Repression”, (*SIDIBlog*, 13 June 2016), accessed 04 July 2023.
- Decaux E. & Janina S., “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” (*Paris Human Rights Center*, 2021), accessed 30 June 2023.
- “El Salvador: Evidence of Serious Abuse in State of Emergency” (*Human Rights Watch*, 2 May 2022), accessed 04 July 2023.
- “Enforced disappearance as a tool of political repression in Venezuela” (*Foro Penal & Robert F. Kennedy Human Rights*, 2020), accessed 04 July 2023.
- European Court of Human Rights, *El-Masri v. The former Yugoslav Republic of Macedonia*, application no. 39630/09, 13 December 2012, accessed 04 July 2023.
- “‘Every minute counts’– UN experts raise alarm over short-term enforced disappearances” (*WGEID*, 26 August 2016), accessed 04 July 2023.
- “Fact Sheet No. 6 (Rev. 4): Enforced Disappearances” (*Office of the UN High Commissioner for Human Rights*, 2023), accessed 4 July 2023.
- Galvis Patiño M.C. , “The work of the CED” (*Geneva Academy*, August 2021), accessed 04 July 2023.
- « Huang Xueqin : déjà 500 jours de détention arbitraire » (*ACAT France*, 31 January 2023), accessed 04 July 2023.
- “Human Rights Law Must Recognize Short-Term Enforced Disappearances” (*Robert F. Kennedy Human Rights*, 04 August 2020), accessed 04 July 2023.
- “In Dialogue with Germany, Experts of the Committee on Enforced Disappearances Commend the State’s Prosecution of International Crimes, Ask About Integration of Law on Enforced Disappearance and Protections from Non-Refoulement” (*Office of the UN High Commissioner for Human Rights*, 22 March 2023), accessed 04 July 2023.
- International Convention For the Protection of All Persons from Enforced Disappearance, 2010.
- Londoño X. & Obregón Gieseken H., “Sustaining the momentum: working to prevent and address enforced disappearances” (*Humanitarian Law and Policy*, 26 August 2021), accessed 04 July 2023.

“Missing persons and victims of enforced disappearance in Europe” (*Council of Europe & Commissioner for Human Rights*, March 2016), accessed 04 July 2023.

Omer R., “‘Short-term’ disappearances” (*Dawn*, 18 December 2017), accessed 04 July 2023.

Rome Statute, 1998.

Webber D. & Sherani K., “Addressing the Continuing Phenomenon of Enforced Disappearances” (*Center for Strategic and International Studies*, 18 August 2022), accessed 30 June 2023.

Yrusta v. Argentina, Committee on Enforced Disappearances, CED/C/10/D/1/2013, 12 April 2016.