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General comment on children and enforced disappearances adopted by the Working Group on Enforced or Involuntary Disappearances at its ninety-eighth session (31 October – 9 November 2012)

Preamble

The enforced disappearance of a child constitutes an exacerbation of the violation of the multiplicity of rights protected by the Declaration on the Protection of All Persons from Enforced Disappearance and an extreme form of violence against children.¹

Children's evolving stages of physical and mental maturity, as well as their reliance on adults, places them in a situation of particular vulnerability. As such, the specific nature of the rights violations and the specific State obligations in cases of child victims of enforced disappearance must be properly understood and underscored.

The Working Group recognizes that children must be afforded special protections and acknowledges the salience of relevant instruments that specifically address violence against children. These include the Convention on the Rights of the Child (CRC) and its three Optional Protocols on the involvement of children in armed conflict; on the sale of children, child prostitution and child pornography; and on a communications procedure.

The Working Group has followed closely the development of international human rights law on this matter, as reflected in the International Convention for the Protection of All Persons from Enforced Disappearance (hereafter identified as the "International Convention"),

The Working Group also recalls Human Rights Council resolution 7/12 in which the Council requested the Working Group to pay particular attention to cases of enforced disappearance of children.

Based on the foregoing, the Working Group has decided to adopt the following general comment.

¹ See United Nations study on violence against children (A/61/299, 29 August 2006).

General comment

Children as victims of enforced disappearances

1. Article 1 of the Declaration establishes that an enforced disappearance “inflicts severe suffering” on the victims “and their families”. The Working Group recognizes that child victims of enforced disappearance suffer particularly severe harm in these situations.

2. Based on its experience, the Working Group recognizes three particular situations in which children become victims of enforced disappearance. The first involves children who are themselves subjected to enforced disappearance, as it is defined in the Declaration. A second particular situation occurs when children are born during the captivity of a mother subjected to enforced disappearance. In this case, children are born in secret detention centres and, most of the time, documents attesting to their true identity are suppressed or altered. Finally, children are victimized by the fact that their mother, father, legal guardian or other relative is subjected to enforced disappearance. An enforced disappearance creates a network of victims that extends far beyond the individuals that are directly subjected to this human rights violation.

3. In addition to these three situations of enforced disappearance, the Working Group is aware of other situations in which children may become victims of enforced disappearance. If State agents are involved with or support private groups, directly or indirectly, or consent or acquiesce to the activities of criminal organizations in the abduction or kidnapping of child migrants or in child trafficking, notably for the purpose of child labour, sexual exploitation or transfer of organs of the child, this may be considered, in certain circumstances, an enforced disappearance. Children living and/or working on the street and children placed in care institutions may also be in a particularly vulnerable situation, potentially becoming victims of enforced disappearance. The forced recruitment of child soldiers also places them in a potential situation of enforced disappearance, especially when they are recruited by armed groups distinct from the regular armed forces of a State but operating with the support, consent or acquiescence of the State.

4. Given that enforced disappearance is a continuous crime, its specific effects on a child could continue even after he or she reaches majority. Thus, the State obligations that arose when the child was under the age of 18 continue as long as those obligations are not fully complied with.

5. Armed conflicts increase children’s vulnerability, jeopardize their survival and development, and increase their risk of marginalization, abuse, and exploitation and particularly of becoming victims of enforced disappearances. In addition, in the specific case of children separated from their parents or next of kin in the context of armed conflict, their appropriation, with different objectives, is often considered a normal consequence of armed conflict or, in any case, inherent in it. Treating children as objects susceptible of appropriation harms their dignity and personal integrity, and it is the State that should ensure their protection and survival, as well as prioritize measures to promote family reunification. As such, States must establish appropriate measures to prevent enforced disappearance of children or their parents in times of armed conflict and take appropriate steps to aid parents in searching for children disappeared during armed conflict or children searching for their parents disappeared during armed conflict.

Violation of multiple rights

6. The enforced disappearance of children represents in itself a breach of the States’ obligation to prevent violations and the duty to respect and guarantee multiple human rights. The Working Group understands that the enforced disappearance of children and

their separation from their parents or relatives harms in particularly grave ways the mental, physical and moral integrity of children. In all circumstances, as child victims of enforced disappearances or as relatives of a person who disappeared, they experience feelings of loss, abandonment, intense fear, uncertainty, anguish, and pain, all of which could vary or intensify depending on the age and the specific circumstances of the child. The Working Group considers that the separation of children from their families has specific and especially serious effects on their personal integrity that have a lasting impact, and causes great physical and mental harm.

7. In the case of enforced disappearances of the children's parents, many of the child rights, including economic, social and cultural ones, are affected. In many occasions, children are prevented from exercising their rights due to the legal uncertainty created by the absence of the disappeared parent. This uncertainty has many legal consequences, including effects on: the right to identity, the guardianship of underage children, the right to social allowances and management of property of the disappeared person. In those circumstances, many obstacles are created to children with regard to the enjoyment of their rights, including their right to education, health, social security and property. A number of children who are relatives of disappeared persons are also stigmatized for their association with someone who is considered a "subversive" or "terrorist". Retaliation and social stigmatization are particularly grave given the special situation of children, while increasing their psychological and emotional trauma. States must adopt effective measures to combat social stigmatization of child victims of enforced disappearances and ensure their effective protection from discrimination or punishment on the basis of the status, activities, expressed opinions or the child's parents, legal guardians or family members.²

8. The Working Group considers that States should address, in dealing with situation of enforced disappearances, the different challenges and needs faced by girls and boys, adolescents and younger children, refugee and internally displaced children, children recruited into armed forces and groups, children from different religious and ethnic and racial backgrounds and children with disabilities. A gender-sensitive approach should include a focus on protection of the rights of girls and addressing their particular needs.

Enforced disappearances of children as a serious crime

9. Article 4 of the Declaration establishes enforced disappearance as an offence punishable under criminal law by penalties that take into account the extreme seriousness of the crime and all the characteristic of this offence. States need to consider as an aggravating factor that the person who disappeared was a child, taking into consideration that enforced disappearances of children are an extreme form of violence against children.³ In addition, in article 20, paragraph 3, of the Declaration it is added that "the abduction of children of parents subjected to enforced disappearance or of children born during their mother's enforced disappearance, and the act of altering or suppressing documents attesting to their true identity, shall constitute an extremely serious offence, which shall be punished as such".⁴

² Article 2, paragraph 2, of the Convention on the Rights of the Child.

³ Article 7 (b) of the International Convention for the Protection of All Persons from Enforced Disappearance provides that "without prejudice to other criminal procedures, aggravating circumstances, in particular in the event of the death of the disappeared person or the commission of an enforced disappearance in respect of pregnant women, minors, persons with disabilities or other particularly vulnerable persons".

⁴ In its article 25, paragraph 1, the International Convention requests States parties "to prevent and punish under its criminal law:

(a) The wrongful removal of children who are subjected to enforced disappearance, children whose

10. Mitigating circumstances may be appropriate in some cases, given the particular urgency of resolving cases of enforced disappearance involving child victims. Nonetheless, these may only be established as a last resort and only for those who have been instrumental in finding the disappeared child or his or her parent alive. However, criminal sanctions cannot be completely eliminated, as established in article 18 of the Declaration.

Obligation to prevent

11. Enforced disappearance of children is an extreme form of violence and it is not justifiable under any circumstance. All forms of enforced disappearances of children are preventable. States therefore should enhance the legislative, administrative, social, and educational measures to prevent children from becoming victims of enforced disappearance.

12. All State policies, including a comprehensive strategy to prevent and respond to enforced disappearances of children, should recognize children as rights holders, rather than objects of protection, following the guiding principles of the Convention on the Rights of the Child: non-discrimination; the best interests of the child; the right to life, survival and development; and child participation.⁵ Professional, adequate and effective assistance should be mandatory for any child victim of enforced disappearance. This national strategy and policy should be mainstreamed in the national planning process, coordinated by a high-level focal point with leading responsibilities in this area, supported by adequate human and financial resources and effectively evaluated. Further, as part of this comprehensive child-protection strategy against enforced disappearances, a strong legal framework should be established in compliance with international child-rights standards, and respecting the best interest of the child with a view to prohibiting, preventing, and responding to all forms of enforced disappearances of children.

Deprivation of liberty

13. The Declaration, in its articles 10 to 12, establishes that strict compliance with international standards on child detention is essential for the prevention of enforced disappearances. The best interest of the child must be a primary consideration in all actions that affect children in contact with the criminal justice system, in particular those who are deprived of their liberty.⁶ For a child in conflict with the law, this principle requires that the disposition or sentence be individualized, taking into account not only the gravity of the offense but also the child's age, maturity, and all other relevant circumstances. The disposition should focus on rehabilitation rather than punishment. Detention or imprisonment of children should be only a measure of last resort and for the shortest period of time. In order to reduce the likelihood of an enforced disappearance, States should ensure the child has prompt access to legal and other appropriate assistance,⁷ benefits from alternative measures to deprivation of liberty, and is reunited with their families. Every child deprived of liberty should have the right to challenge the legality of the deprivation of his or her liberty before a court or other competent, independent and impartial authority.⁸ Parental and family involvement should be promoted, and accurate information on the detention of children and their place or places of detention, including transfers, shall be made promptly available to their family members, their counsel or to any other persons

father, mother or legal guardian is subjected to enforced disappearance or children born during the captivity of a mother subjected to enforced disappearance”.

⁵ Convention on the Rights of the Child (CRC), articles 2, 3, 6 and 12.

⁶ CRC, art. 3.

⁷ CRC, art. 37 (d).

⁸ CRC article 37 (d) and Declaration, article 10.

having a legitimate interest in the information. In addition, the State should consider the specific needs of the child and ensure his or her right to maintain contact with family members through correspondence and visits.⁹ This deprivation can be limited through an effective system of inspection. In line with international standards, States are required to establish a regular and independent system of inspection of facilities where children are deprived of their liberty.¹⁰

14. States must guarantee that any child deprived of liberty shall be held in an officially recognized place of detention, separated from adults and be brought before a judicial authority promptly after detention.¹¹ An official, up-to-date register of all children deprived of their liberty shall be maintained in every place of detention. Additionally, each State shall take steps to maintain similar but separate centralized registers of children in detention.¹² The information contained in these registers shall be made available to their family members, their counsel or to any other persons having a legitimate interest in the information, unless this would be detrimental to the wellbeing of the child,¹³ to any judicial or other competent and independent national authority and to any other competent authority seeking to trace the whereabouts of a detained person.

15. To prevent enforced disappearances of newborn children in captivity, States should establish special protection measures for pregnant women who are detained, in line with international law. States should also highlight official registries of detained individuals in order to give appropriate monitoring to cases of detained pregnant women. States should guarantee the rights of children born in such circumstances and also to provide them with birth registration immediately.¹⁴

Right to identity and to the recognition as a person in front of the law

16. The experience of the Working Group demonstrates that many of the disappeared children were registered under false information or had their personal data altered. The effects of this are twofold: on the one hand, for the children whom were appropriated, it makes it impossible to find their family and learn their biological identity—and in some cases their own nationality—and, on the other, for the family of origin, whom are prevented from exercising the legal remedies to re-establish the child's biological identity and the family ties and end the deprivation of liberty. That situation only ceases when the truth about the identity is revealed and the child victims are guaranteed the legal and real possibility of re-establishing their true identity and, where appropriate, the family ties, with the pertinent legal consequences.

17. The right to identity is not expressly mentioned in the Declaration, however the Convention on the Rights of the Child expressly recognizes it in its articles 7 and 8, including the right to preserve and re-establish the child's identity. The right to identity encompasses several elements, including nationality, name and family relationships and is

⁹ See, among others, CRC articles 37 and 40.

¹⁰ Rule 72 of the UN Standard Minimum rules for the Protection of Juveniles Deprived of their Liberty provides that "Qualified inspectors or an equivalent duly constituted authority not belonging to the administration of the facility should be empowered to conduct inspections on a regular basis and to undertake unannounced inspections on their own initiative, and should enjoy full guarantees of independence in the exercise of this function."

¹¹ Declaration, art. 10, para. 1.

¹² Declaration, art. 10, paras. 2 and 3.

¹³ CRC, art. 9, para. 4.

¹⁴ See report and recommendations of the Committee on the Rights of the Child following the Day of General Discussion on "Children of incarcerated parents", para.13, available at: <http://www2.ohchr.org/english/bodies/crc/docs/discussion/2011CRCDGDRreport.pdf>.

intimately linked to the child in his or her specific individuality and private life. This right to identity has special importance during childhood as it is essential for the development of a person. In the case of enforced disappearances of children, the violation of the right to identity has particular consequences as it tends to include a series of illegal acts to conceal them and to prevent the re-establishment of the bond between the disappeared children and their families.

18. As the Working Group already mentioned in its general comment on the topic, the right to be recognized as a person before the law is also implicated in the case of children who were born during their mothers' enforced disappearance, and who were thereafter illegally adopted. As far as their biological identity is not protected, their very own personality is not recognized before the law.

Adoption and custody

19. In order to prevent enforced disappearances, States must act with due diligence in all cases of adoption. Pursuant to article 20, paragraph 2, of the Declaration, States must adopt legal procedures for "the review... of any adoption which originated in enforced disappearance". Enforced disappearances of children are often exposed after tracing cases of illegal adoptions. Irregularities such as the forging of birth certificates and falsifying the identity of the child can occur. Through heightened awareness, training, and stricter measures and procedures within the civil registry, such an agency can effectively help prevent the falsification of the true identity of newborn or disappeared children. Birth registration provides children with a legal identity and supports enforcement of minimum age legislation. Thereby protects children against trafficking for the purpose of child labour and forcible conscription in armed forces, two instances that could lead to enforced disappearances. It also helps the traceability of children who have been separated from their parents.

20. CRC requires States to ensure that the adoption of a child is authorized only by competent authorities.¹⁵ Those authorities should determine on the basis of all pertinent and reliable information, that the adoption is permissible in view of the child's status concerning parents, relatives and legal guardians and that, if required, the persons concerned have given their informed consent to the adoption on the basis of such counselling as may be necessary. In addition, the Declaration in article 20, "considering the need to protect the best interests of children", establishes that "there shall be an opportunity, in States which recognize a system of adoption, for a review of the adoption of such children and, in particular, for annulment of any adoption which originated in enforced disappearance".

21. A child has an absolute right to protection and custody when separated from his or her family. Without the speedy resolution of custody issues resulting from the enforced disappearance of a child or of their parent or guardian, children may face problems ranging from lack of appropriate shelter to complete loss of legal identity. Any custody determination must take into account a child's best interest, protect the child from discrimination, and respect the child's views concerning the matter, pursuant to article 12 of the CRC.

¹⁵ See article 21 (a) of CRC. Furthermore, its article 3, paragraph 5, of the Convention's Optional Protocol on the sale of children (OP-SC) provides that States parties shall take all appropriate legal and administrative measures to ensure that all persons involved in the adoption of a child act in conformity with applicable international legal instruments. Furthermore, among the offences that States Parties to the OP-SC should fully cover under their criminal law, whether committed domestically or transnationally or on an individual or organized basis, there is "Improperly inducing consent, as an intermediary, for the adoption of a child in violation of applicable international legal instruments on adoption" (art. 3 (1)(a)(ii)).

22. According to article 20, paragraph 2, of the Declaration, States must, in most cases, annul “any adoption which originated in enforced disappearance”. However, considering the evolution of international human rights law in this area and particularly the need to protect the best interests of children such adoption should continue to be in force if consent is given, at the time of the review, by the child’s biological closest relatives. These principles should be combined with the principles of the CRC in determining whether the annulment of an adoption is in the best interests of the child. The views of children, according to the child’s age and maturity, should be given due consideration in the decision-making process.

23. In addition, and as the Working Group already stated in its general comment on the right to the truth in relation to enforced disappearances that “both the families of the disappeared and the child have an absolute right to know the truth about the child’s whereabouts”.

Right to the truth and obligation to search

24. States need to develop truth-seeking mechanisms that are child-sensitive and that assess how children were affected by enforced disappearances. The mandate of those mechanisms should make clear references to child victims of enforced disappearances. There should be proper allocation of resources to secure the proper expertise, methodology and structure.

25. The Declaration, in its article 20, requires that States “shall devote their efforts to the search for and identification of [children abducted of parents subjected to enforced disappearance and of children born during their mother's enforced disappearance]”. The Working Group understands that the obligation to search for child victims of enforced disappearances does not limit to those circumstances mentioned in article 20.¹⁶ To the contrary, there is an enhanced obligation to search for children in general. Acknowledging the special urgency of resolving cases of enforced disappearances involving children, States should create or adapt already-established institutions to search for these disappeared children and ensure their care in the event they are found. These institutions should serve as intermediaries between the State and civil society, fulfilling not only the victim and the families’ right to truth, but also the right to truth of society as a whole. These institutions should be charged with various investigative duties for determining the whereabouts of the child or his or her parent or guardian; they should also coordinate with a bank of genetic data, referring potential cases of enforced disappearances to this bank for DNA testing. These entities should also be charged with documentation duties, keeping up-to-date records on investigations and making them available to the families, counsel, and others with a legitimate interest in the child, unless the release of such information is detrimental to the best interests of the child. Institutions should also support the efforts of different non-governmental organizations that are seeking the truth concerning enforced disappearance of children and their families. Finally, these agencies should serve to educate and train other government agents and institutions on the importance of the rights to identity and truth as they relate to children, in this way developing a heightened sensitivity in different States agents and institutions towards the grave crime of enforced disappearances involving children. Such institutions should complement but not replace the role of the competent

¹⁶ Article 25, paragraph 2, of the International Convention provides that “each State Party shall take the necessary measures to search for and identify the children referred to in paragraph 1 (a) of this article and to return them to their families of origin, in accordance with legal procedures and applicable international agreements”. In addition, article 25, paragraph 3, provides that “States Parties shall assist one another in searching for, identifying and locating the children referred to in paragraph 1 (a) of this article”.

authorities charged with carrying out criminal investigations. All searches should be carried out in a safe, child- and gender-sensitive and fair manner by trained professionals.

Genetic data

26. States should create a bank of genetic data or adapt a similar institution to take DNA and blood samples and to store the genetic information of the families of disappeared children and conduct appropriate DNA tests when necessary to determine the true identity of a child or to identify their remains or the remains of their family members.

27. The bank of genetic data should also coordinate with the body responsible for the search process, taking referrals from them for conducting DNA and blood tests of possible child victims of enforced disappearances. Because many times these crimes are transnational in scope, the entity must also coordinate with a network of genetic banks or DNA-testing centres in order to facilitate the investigative process. In the trial process, staff members in charge of the genetic database should serve to give testimony and expert opinions regarding genetic tests in particular cases. Taking into account the particular importance of not presuming the child victim dead, genetic databases must maintain and store genetic information for a disappeared child for a time greater than or equal to the average lifespan of a person in that country.

28. Special guidelines must be established in the procedures for DNA testing, keeping in mind the best interests of the child and giving accurate weight to the child's views, depending on his or her age and maturity. The child's parents or guardians should be present, unless the conditions deem the presence of parents or guardians inappropriate, such as in cases where the aforementioned are the alleged perpetrators of the enforced disappearance or in cases in which the child does not desire parental presence. Tests based on court orders must be particularly sensitive to the privacy and views of the child assessing his or her age and maturity. The actual testing process should utilize the least invasive methods possible in order to minimize intrusions to privacy, taking gender and age into consideration.

29. An additional protection is included in article 19 of the Convention on the Protection of All Persons of Enforced Disappearance, which states that "personal information, including medical and genetic data, which is collected and/or transmitted within the framework of the search for a disappeared person shall not be used or made available for purposes other than the search for the disappeared person".

Recovery, reintegration and reparation

30. "Declarations of absence by reason of enforced disappearance" are particularly important in cases where children become victims because of the disappearance of one or both of their parents. These allow children access to any State benefits that would be available if their parents were deceased, without being forced to declare a parent dead and bringing an end to any State obligations to investigate the enforced disappearance. In order to properly secure a child's best interest, especially their development, there cannot be any obstacles discouraging them or their parents from claiming benefits.

31. The disruption of children's physical, emotional, moral, cognitive and social development of children victims of enforced disappearances has long-term consequences for them and their societies. Although States cannot fully repair the grave non-pecuniary losses of child victims of enforced disappearance, States are obliged to make integral reparations to child victims of enforced disappearance. In cases where children victims of enforced disappearance have had their identity altered, States should adopt measures to facilitate their subsequent obtention of proper documentation and pertinent corrections in all relevant registries.

32. Monetary compensation represents a reasonable step towards repairing such harm. When determining how best to deliver monetary compensation, States should take into account the age and maturity of the child and develop an appropriate arrangement for collection. Ultimately, the timescale should be sufficiently reasonable so that a child will have full access to compensation when he or she reaches an assessed appropriate level of maturity, or compensation should be available to them through a parent or guardian. If the parent or guardian has been subjected to an enforced disappearance, the responsible agent should designate a relative or other support person to serve as the child's trustee; this person will make all monetary decisions based on the best interests of the child until he or she reaches adulthood. If the child him or herself has been subjected to the enforced disappearance, his or her parents must receive monetary compensation. States should identify proper funds to implement a reparations programme that properly addresses the needs and challenges of children.

33. Children's right to education is often affected by the harm resulting from enforced disappearances. As a measure of rehabilitation, reparation programmes should include access to education for child victims of enforced disappearances.

34. Appropriate and comprehensive psychological care must be provided to child victims of enforced disappearance and take into account the fact that the disintegration of families deeply affects children. States have duties to ensure children's physical and psychological recovery and social integration. The well-being of a child is best promoted through family and community-based solutions designed to rebuild a child's self-esteem and improve his or her relationships with adults. Where such comprehensive psychological care has been carried out by a third party or organized by the victims themselves, the State has a duty to reimburse victims for all expenses.

35. Because the right to the truth is not merely an individual, but also a collective right, remedies should include steps to ensure public acknowledgement and remembrance of any acts of enforced disappearance of children. Programmes might include age-appropriate human rights education in the school curriculum and child activities to help preserve collective memory of human rights violations perpetrated against children. States could also take steps to memorialize child victims by placing statues or plaques in visible and appropriate locations, including schools and other places frequented by children.

36. States should develop a national system of data collection, analysis and dissemination, and a research agenda on the causes, consequences and frequency of enforced disappearances of children. The disaggregation of data by relevant factors is an essential tool for highlighting problems and the disproportionate impact of instances of enforced disappearances of children belonging to particular groups which are traditionally discriminated against or marginalized groups.

Effective investigation

37. States should pay particular attention to the expeditious resolution of cases involving child victims of enforced disappearance. Recognizing that an enforced disappearance is a continuous crime, acknowledging enforced disappearance as an extreme form of violence against children, and taking into account the special measures of protection that must be afforded to children, States have an obligation to conduct prompt and full investigations in order to determine the whereabouts of the child or of his or her parent or guardian. Because of children's dependence on adults, the impact of the family separation, and their potential vulnerability and threats to their development and life, States should conduct expeditious investigations of cases involving child victims of enforced disappearance. States must conduct the investigation of enforced disappearances of children in an effective and prompt manner so that it is done in a reasonable amount of time, ensuring that the competent authorities conduct the corresponding ex officio investigations, having at their disposal the

necessary authorization and remedies. Those who are part of the investigation, among them the victim's relatives, witnesses, and administrators of justice, shall be assured the due guarantees of protection and security. States must ensure the full access and capacity to act of the next of kin of the victims in every stage of the investigation and prosecution of those responsible. These investigations should be assumed as a State obligation, and should not be deemed the responsibility of the victim's family.

38. Additionally, the result of the corresponding judicial investigations should be made publicly accessible in order for the society as a whole to know of the facts of the enforced disappearances of children, including those responsible for them.

Right to complain

39. Under article 13 of the Declaration, victims and their advocates have the right to complain to a competent authority that will properly investigate each case, fully prosecute perpetrators, and conduct body exhumations where appropriate. The right to complain must be treated sensitively when dealing with children because they may be less willing to come forward than adults or may be unaware of remedies available. States must facilitate a complaint by adopting measures that are sensitive to the child's age, gender and maturity and that foster an environment of safety for the child.¹⁷

40. In its article 13, paragraph 3, the Declaration requires the protection of complainants and all others involved in an investigation from intimidation or reprisals. States should ensure that children and their family members receive protection and respectful treatment during their search of the whereabouts and fate of a disappeared child or family member. Given the importance of protecting the best interests of children and ensuring their survival and development, States must remove any obstacles that discourage or prevent parents, family members, or children themselves from reporting cases of an enforced disappearance.

Child participation

41. States must actively foster and encourage child participation in all official proceedings regarding cases where they are victims of enforced disappearance. A child always has the right to be heard directly and not only through a representative or an appropriate body, if this is in his or her best interests. Truth commissions and prosecutors must seek out the children affected by enforced disappearances and secure their participation in proceedings in a way that is sensitive to each child's needs, age, gender and maturity level.¹⁸

42. Upholding the principle of child participation includes informing a child about the enforced disappearance of a relative in a manner that he or she understands. This will not only require presentation of the information in the child's native language, but also the explanation of the circumstances of the disappearance and of the legal proceedings in a manner that takes into account the age, maturity, and psychological state of the child.

43. States must designate a support person who is trained to assist a child throughout the justice process in order to prevent the risk of duress, re-victimization, or secondary victimization, according to the United Nations Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime.¹⁹ A child shall not be required to testify in the justice process against his or her will or without the knowledge of his or her parents,

¹⁷ See Joint report on child sensitive counselling, complaint and reporting mechanisms issued by Special Rapporteur on the Sale of Children, Child Prostitution and Child Pornography A/HRC/16/56.

¹⁸ See General Comment n° 12 (2009) of the Committee on the Rights of the Child, CRC/C/GC/12 "The right of the child to be heard".

¹⁹ Economic and Social Council resolution 2005/20.

adopting parents, or guardian, unless his or her parents are the alleged perpetrators of the enforced disappearance, the child expresses a concern about being accompanied by his or her parents or guardian, or the court deems it not to be in the best interest of the child to be accompanied by his or her parents or guardian.

44. Court proceedings concerning an enforced disappearance shall ensure child participation, while minimizing chance of a violation of the right to privacy by adopting measures such as allowing children to speak to judges and express their views privately; using video links to avoid contact between children and perpetrators or using voice and image distortion to protect children.

45. States should develop, support and encourage engagement with community and civil society groups, including child-led organizations.

International cooperation

46. Enforced disappearances of children can be transnational in scope. States must act with reciprocity and cooperation with other States in the search, identification, localization, and restitution of children who have been transported to another State or retained in another State as a result of an enforced disappearance. As required by article 20 of the Declaration, States shall, where appropriate, conclude bilateral and multilateral agreements for these purposes. The absence of such agreements should not be a barrier to the cooperation among States. In particular, the Hague Child Abduction Convention and the Hague Convention on Inter-Country Adoption, provide a useful framework to address problems related to child victim of enforced disappearance who are referred to as “wrongful removal” in the Hague Convention on Child Abduction. Both Conventions require States to have central authorities who cooperate with each other in such situations, and outline procedures in how to process claims relating to forcibly removed children. The Working Group calls upon States to ratify both Conventions and fully implement them.

Universal ratification of human rights treaties

47. The universal ratification and implementation of the International Convention for the Protection of All Persons from Enforced Disappearance, the Convention on the Rights of the Child and its three Optional Protocols, the relevant Hague Conventions²⁰ and all relevant international and regional instruments would contribute to effective child protection framework against enforced disappearances. The Working Group encourages States to ratify these instruments.

²⁰ Convention of 25 October 1980 on the Civil Aspects of International Child Abduction and Convention of 29 May 1993 on Protection of Children and Co-operation in Respect of Intercountry Adoption.