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COMMISSION ON HUMAN RIGHTS

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Working Group on the Administration of Justice

THE ADMINISTRATION OF JUSTICE AND HUMAN RIGHTS

Report of the sessional working group on the  
administration of justice

Chairman Rapporteur: Mr. Louis Joinet

[...]

DRAFT INTERNATIONAL CONVENTION ON THE PROTECTION OF ALL PERSONS  
FROM FORCED DISAPPEARANCE

PREAMBLE

The States Parties to this Convention,

Considering that, in accordance with the principles proclaimed in the Charter of the United Nations and other international instruments, recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world,

Bearing in mind the obligation of States under the Charter, in particular Article 55, to promote universal respect for, and observance of, human rights and fundamental freedoms,

Taking into account that any act of forced disappearance of a person constitutes an offence to human dignity, is a denial of the purposes of the Charter and is a gross and flagrant violation of the human rights and fundamental freedoms proclaimed in the Universal Declaration of Human Rights, and reaffirmed and developed in other international instruments in this field,

In view of the fact that any act of forced disappearance of a person constitutes a violation of the rules of international law guaranteeing the right to recognition as a person before the law, the right to liberty and security of the person, and the right not to be subjected to torture and other cruel, inhuman or degrading treatment or punishment,

Considering that forced disappearance undermines the deepest values of any society committed to the respect of the rule of law, human rights and fundamental freedoms, and that the systematic or widespread practice of such acts constitutes a crime against humanity,

Recognizing that forced disappearance violates the right to life or puts it in grave danger and denies individuals the protection of the law,

Taking into account the Declaration on the Protection of All Persons from Enforced Disappearance adopted by the General Assembly of the United Nations,

Recalling the protection afforded to victims of armed conflicts by the Geneva Conventions of 12 August 1949 and the Additional Protocols thereto of 1977,

Having regard in particular to the relevant articles of the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights, which protect the right to life, the right to liberty and security of the person, the right not to be subjected to torture and the right to recognition as a person before the law,

Having regard also to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, which provides that States Parties shall take effective measures to prevent and punish acts of torture,

Bearing in mind the Code of Conduct for Law Enforcement Officials, the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, the Standard Minimum Rules for the Treatment of Prisoners, and the Principles of international cooperation in the detection, arrest, extradition and punishment of persons guilty of war crimes and crimes against humanity,

Affirming that, in order to prevent acts that contribute to forced disappearances it is necessary to ensure strict compliance with the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, adopted by the General Assembly on 9 December 1988, and the Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions, endorsed by the General Assembly on 15 December 1989,

Taking into account also the Vienna Declaration and Programme of Action adopted by the World Conference on Human Rights on 25 June 1993,

Wishing to increase the effectiveness of the struggle against forced disappearances of persons throughout the

world,

Have agreed as follows:

## PART I

### Article 1

1. For the purposes of this Convention, forced disappearance is considered to be the deprivation of a person's liberty, in whatever form or for whatever reason, brought about by agents of the State or by persons or groups of persons acting with the authorization, support or acquiescence of the State, followed by an absence of information, or refusal to acknowledge the deprivation of liberty or information, or concealment of the fate or whereabouts of the disappeared person.
2. This article is without prejudice to any international instrument or national legislation that does or may contain provisions of broader application, especially with regard to forced disappearances perpetrated by groups or individuals other than those referred to at paragraph 1 of this article.

### Article 2

1. The perpetrator of and other participants in the offence of forced disappearance or of any constituent element of the offence, as defined in article 1 of this Convention, shall be punished. The perpetrators or other participants in a constituent element of the offence as defined in article 1 of this Convention shall be punished for a forced disappearance where they knew or ought to have known that the offence was about to be or was in the process of being committed. The perpetrator of and other participants in the following acts shall also be punished:
  - (a) Instigation, incitement or encouragement of the commission of the offence of forced disappearance;
  - (b) Conspiracy or collusion to commit an offence of forced disappearance;
  - (c) Attempt to commit an offence of forced disappearance; and
  - (d) Concealment of an offence of forced disappearance.
2. Non\_fulfilment of the legal duty to act to prevent a forced disappearance shall also be punished.

### Article 3

1. The systematic or massive practice of forced disappearance constitutes a crime against humanity.
2. Where persons are suspected of having perpetrated or participated in an offence, as defined in articles 1 and 2 of this Convention, they should be charged with a crime against humanity where they knew or ought to have known that this act was part of a systematic or massive practice of forced disappearances, however limited the character of their participation.

### Article 4

1. The States Parties undertake:
  - (a) Not to practise, permit or tolerate forced disappearance;
  - (b) To investigate immediately and swiftly any complaint of forced disappearance and to inform the family of the disappeared person about his or her fate and whereabouts;
  - (c) To impose sanctions, within their jurisdiction, on the offence of forced disappearance and the acts or omissions referred to in article 2 of this Convention;
  - (d) To cooperate with each other and with the United Nations to contribute to the prevention, investigation, punishment and eradication of forced disappearance;

(e) To provide prompt and appropriate reparation for the damage caused to the victims of a forced disappearance in the terms described in article 24 of this Convention.

2. No circumstance \_ whether internal political instability, threat of war, state of war, any state of emergency or suspension of individual guarantees \_ may be invoked in order not to comply with the obligations established in this Convention.
3. The States Parties undertake to adopt the necessary legislative, administrative, judicial or other measures to fulfil the commitments into which they have entered in this Convention.

#### Article 5

1. The States Parties undertake to adopt the necessary legislative measures to define the forced disappearance of persons as an independent offence, as defined in article 1 of this Convention, and to define a crime against humanity, as defined in article 3 of this Convention, as separate offences, and to impose an appropriate punishment commensurate with their extreme gravity. The death penalty shall not be imposed in any circumstances. This offence is continuous and permanent as long as the fate or whereabouts of the disappeared person have not been determined with certainty.
2. The State Parties may establish mitigating circumstances for persons who, having been implicated in the acts referred to in article 2 of this Convention, effectively contribute to bringing the disappeared person forward alive, or voluntarily provide information that contributes to solving cases of forced disappearance or identifying those responsible for an offence of forced disappearance.

#### Article 6

1. Forced disappearance and the other acts referred to in article 2 of this Convention shall be considered as offences in every State Party. Consequently, each State Party shall take the necessary measures to establish jurisdiction in the following instances:
  - (a) When the offence of forced disappearance was committed within any territory under its jurisdiction;
  - (b) When the alleged perpetrator or the other alleged participants in the offence of forced disappearance or the other acts referred to in article 2 of this Convention are in the territory of the State Party, irrespective of the nationality of the alleged perpetrator or the other alleged participants, or of the nationality of the disappeared person, or of the place or territory where the offence took place unless the State extradites them or transfers them to an international criminal tribunal.
2. This Convention does not exclude any jurisdiction exercised by an international criminal tribunal.

#### Article 7

1. Any State Party on whose territory a person suspected of having committed a forced disappearance or an act referred to in article 2 of this Convention is present shall, if after considering the information at its disposal it deems that the circumstances so warrant, take all necessary measures to ensure the continued presence of that person in the territory and if necessary take him or her into custody. Such detention and measures shall be exercised in conformity with the legislation of that State, and may be continued only for the period necessary to enable any criminal or extradition proceedings to be instituted.
2. Such State shall immediately make a preliminary investigation of the facts.
3. When a State, pursuant to this article, gathers evidence of a person's responsibility but does not exercise its jurisdiction over the matter, it shall immediately notify the State on whose territory the offence was committed, informing it of the circumstances justifying the presumption of responsibility, in order to allow that State to request extradition.

#### Article 8

1. States Parties shall afford one another the greatest measure of legal assistance in connection with any criminal investigation or proceedings relating to the offence of forced disappearance, including the supply of all the evidence at their disposal that is necessary for the proceedings.

2. States Parties shall cooperate with each other, and shall afford one another the greatest measure of legal assistance in the search for, location, release and rescue of disappeared persons or, in the event of death, in the return of their remains.
3. States Parties shall carry out their obligations under paragraphs 1 and 2 of this article, without prejudice to the obligations arising from any treaties on mutual legal assistance that may exist between them.

#### Article 9

1. No order or instruction of any public authority \_ civilian, military or other \_ may be invoked to justify a forced disappearance. Any person receiving such an order or instruction shall have the right and duty not to obey it. Each State shall prohibit orders or instructions commanding, authorizing or encouraging a forced disappearance.
2. Law enforcement officials who have reason to believe that a forced disappearance has occurred or is about to occur shall communicate the matter to their superior authorities and, when necessary, to competent authorities or organs with reviewing or remedial power.
3. Forced disappearance committed by a subordinate shall not relieve his superiors of criminal responsibility if the latter failed to exercise the powers vested in them to prevent or halt the commission of the crime, if they were in possession of information that enabled them to know that the crime was being or was about to be committed.

#### Article 10

1. The alleged perpetrators of and other participants in the offence of forced disappearance or the other acts referred to in article 2 of this Convention shall be tried only in the courts of general jurisdiction of each State, to the exclusion of all courts of special jurisdiction, and particularly military courts.
2. No privileges, immunities or special exemptions shall be granted in such trials, subject to the provisions of the Vienna Convention on Diplomatic Relations.
3. The perpetrators of and other participants in the offence of forced disappearance or the other acts referred to in article 2 of this Convention shall in no case be exempt from criminal responsibility including where such offences or acts were committed in the exercise of military or police duties or in the course of performing these functions.
4. The States Parties guarantee a broad legal standing in the judicial process to any wronged party, or any person or national or international organization having a legitimate interest therein.

#### Article 11

1. Each State Party shall ensure that any person who alleges that someone has been subjected to forced disappearance has the right to complain to a competent and independent State authority and to have that complaint immediately, thoroughly and impartially investigated by that authority.
2. Whenever there are grounds to believe that a forced disappearance has been committed, the State shall refer the matter to that authority without delay for such an investigation, even if there has been no formal complaint. No measure shall be taken to curtail or impede the investigation.
3. Each State Party shall ensure that the competent authority has the necessary powers and resources to conduct the investigation, including powers to compel attendance of the alleged perpetrators or other participants in the offence of forced disappearance or other acts referred to in article 2 of this Convention, and of witnesses, and the production of relevant evidence. Each State shall allow immediate and direct access to all documents requested by the competent authority, without exception.
4. Each State Party shall ensure that the competent authority has access, without delay or prior notice, to any place, including those classified as being places of national security or of restricted access, where it is suspected that a victim of forced disappearance may be held.
5. Each State Party shall take steps to ensure that all persons involved in the investigation \_ including the complainant, the relatives of the disappeared person, legal counsel, witnesses and those conducting the investigation \_ are protected against ill\_treatment and any acts of intimidation or reprisal as a result of the complaint or investigation. Anyone responsible for such acts shall be subject to criminal punishment.
6. The findings of a criminal investigation shall be made available upon request to all persons concerned, unless doing so would gravely hinder an ongoing investigation. However, the competent authority shall communicate regularly and without delay to the relatives of the disappeared person the results of the inquiry into the fate and whereabouts of that person.
7. It must be possible to conduct an investigation, in accordance with the procedures described above, for as long as the fate or whereabouts of the disappeared person have not been established with certainty.
8. The alleged perpetrators of and other participants in the offence of forced disappearance or other acts referred to in article 2 of this Convention shall be suspended from any official duties during the investigation.

#### Article 12

1. Forced disappearance shall not be considered a political offence for purposes of extradition.
2. Forced disappearance shall be deemed to be included among the extraditable offences in every extradition treaty entered into between States Parties.
3. States Parties undertake to include the offence of forced disappearance among the extraditable offences in every

extradition treaty they conclude.

4. Should a State Party that makes extradition conditional on the existence of a treaty receive a request for extradition from another State Party with which it has no extradition treaty, it may consider this Convention as the necessary legal basis for extradition with respect to the offence of forced disappearance.
5. States Parties which do not make extradition conditional on the existence of a treaty shall recognize the said offence as extraditable.
6. Extradition shall be subject to the procedures established in the law of the requested State.

#### Article 13

When a State Party does not grant the extradition or is not requested to do so, it shall submit the case to its competent authorities as if the offence had been committed within its jurisdiction, for the purposes of investigation and, when appropriate, for criminal proceedings, in accordance with its national law. Any decision adopted by these authorities shall be communicated to the State requesting extradition.

#### Article 14

Forced disappearance shall not be considered a political offence, nor related to a political offence, for purposes of asylum and refuge. States Parties to this Convention shall not grant diplomatic or territorial asylum or refugee status to any person if there are substantiated grounds for believing that he or she has taken part in a forced disappearance.

#### Article 15

1. No State Party shall expel, return (refouler) or extradite a person to another State if there are grounds for believing that he or she would be in danger of being subjected to forced disappearance or any other serious human rights violation in that other State.
2. For the purpose of determining whether such grounds exist, the competent authorities shall take into account all relevant considerations, including, where applicable, the existence in the State in question of situations indicating gross, systematic or widespread violations of human rights.

#### Article 16

1. No statutory limitation shall apply to criminal proceedings and any punishment arising from forced disappearances, when the forced disappearance constitutes a crime against humanity, in accordance with article 3 of this Convention.
2. When the forced disappearance does not constitute a crime against humanity in accordance with article 3 of this Convention, the statute of limitation for the offence and the criminal proceedings shall be equal to the longest period laid down in the law of each State Party, starting from the moment when the fate or whereabouts of the disappeared person is established with certainty. When the remedies described in article 2 of the International Covenant on Civil and Political Rights are no longer effective, the prescription for the offence of forced disappearance shall be suspended until the efficacy of these remedies has been restored.
3. States Parties shall adopt any legislative or other measures necessary to bring their law into conformity with the provisions of the preceding paragraphs.

#### Article 17

1. The perpetrators or suspected perpetrators of and other participants in the offence of forced disappearance or the acts referred to in article 2 of this Convention shall not benefit from any amnesty measure or similar measures prior to their trial and, where applicable, conviction that would have the effect of exempting them from any criminal action or penalty.

2. The extreme seriousness of the offence of forced disappearance shall be taken into account in the granting of pardon.

#### Article 18

1. Without prejudice to articles 2 and 5 of this Convention, States Parties shall prevent and punish the abduction of children whose parents are victims of forced disappearance and of children born during their mother's forced disappearance, and shall search for and identify such children. As a general rule, the child will be returned to his or her family of origin. Here the best interests of the child must be taken into account and the views of the child shall be given due weight in accordance with the age and maturity of the child.
2. States Parties shall give each other assistance in the search for, identification, location and return of minors who have been removed to another State or held therein. For these purposes, States shall, as needed, conclude bilateral or multilateral agreements.
3. States Parties whose laws provide for a system of adoption shall establish through their national law the possibility of reviewing adoptions, and in particular the possibility of annulment of any adoption which has arisen from a forced disappearance. Such adoption may, however, continue in force if consent is given, at the time of the review, by the child's closest relatives. In any event, the best interests of the child should prevail and the views of the child should be given due weight in accordance with the age and maturity of the child.
4. States Parties shall impose penalties in their criminal law on the abduction of children whose parents are victims of forced disappearance or of children born during their mother's forced disappearance, and on the falsification or suppression of documents attesting to the child's true identity. The penalties shall take into account the extreme seriousness of these offences.

#### Article 19

States Parties shall ensure that the training of public law enforcement personnel and officials includes the necessary education on the provisions of this Convention.

#### Article 20

1. Without prejudice to any legal remedies for challenging the lawfulness of a deprivation of liberty, States Parties shall guarantee the right to a prompt, simple and effective judicial remedy as a means of determining the whereabouts or state of health of persons deprived of their liberty and/or identifying the authority that ordered the deprivation of liberty and the authority that carried it out. This remedy, as well as that of habeas corpus and similar remedies, may not be suspended or restricted, even in the circumstances described in article 4, paragraph 2, of this Convention.
2. In the framework of this remedy, and without prejudice to the powers of any judicial authority, judges acting in these cases shall enjoy the power to summon witnesses, to order the production of evidence, and to have unrestricted access to places where it may be presumed that a person deprived of liberty might be found.
3. Any delay to or obstruction of this remedy shall result in criminal penalties.

#### Article 21

1. States Parties shall establish norms under their national law indicating those officials who are authorized to order the deprivation of liberty, establishing the conditions under which such orders may be given, and stipulating the penalties for officials who do not or refuse to provide information on the deprivation of liberty of a person.
2. Each State Party shall likewise ensure strict supervision, in accordance with a clear chain of command, of all officials responsible for apprehensions, arrests, detentions, police custody, transfers and imprisonment, and of all other law enforcement officials.
3. Arrest, detention or imprisonment shall only be carried out strictly in accordance with the provisions of the law and by the competent authorities or persons authorized for that purpose.

4. There shall be no restriction upon or derogation from any of the human rights of persons under any form of deprivation of liberty that are recognized, binding upon or in force in any State pursuant to law, conventions, regulations or custom on the pretext that this Convention does not recognize such rights or that it recognizes them to a lesser extent.
5. Any form of deprivation of liberty and all measures affecting the human rights of a person under any form of deprivation of liberty shall be ordered by, or be subject to the effective control of, a judicial or other competent authority.
6. Competent authorities shall have access to all places where there is reason to believe that persons deprived of their liberty might be found.

#### Article 22

1. States Parties guarantee that any person deprived of liberty shall be held solely in an officially recognized and controlled place of detention and be brought before a judge or other competent judicial authority without delay, who will also be informed of the place where the person is being deprived of liberty.
2. Accurate information on the deprivation of liberty of any person and on his or her whereabouts, including information on any transfer, the identity of those responsible for the deprivation of liberty, and the authority in whose hands the person has been placed, shall be made immediately available to the person's counsel or to any other persons having a legitimate interest in the information.
3. In every place where persons deprived of liberty are held, States Parties shall maintain an official up\_to\_date register of such persons. Additionally, they shall maintain similar centralized registers. The information contained in these registers shall be made available to the persons and authorities mentioned in the preceding paragraph.
4. States Parties shall identify who is the responsible person in national law for the integrity and accuracy of the custody record. Without prejudice to the provisions of articles 1, 2 and 3 of this Convention, States Parties shall make it a criminal offence for the responsible person, as defined in national law, to fail to register the deprivation of liberty of any person or to record information which is or should be known to be inaccurate in the custody record.
5. States Parties shall periodically publish lists that name the places where persons are deprived of liberty. Such places must be visited regularly by qualified and experienced persons named by a competent authority, different from the authority directly in charge of the administration of the place.

#### Article 23

States Parties guarantee that all persons deprived of liberty shall be released in a manner that allows reliable verification that they have actually been released and, further, have been released in conditions in which their physical integrity and their ability fully to exercise their rights are assured.

#### Article 24

1. States Parties guarantee, in all circumstances, the right to reparation for the harm caused to the victims of forced disappearance.
2. For the purposes of this Convention, the right to reparation comprises restitution, compensation, rehabilitation, satisfaction, and the restoration of the honour and reputation of the victims of the offence of forced disappearance. The rehabilitation of victims of forced disappearance will be physical and psychological as well as professional and legal.
3. For the purposes of this Convention, the term "victim of the offence of forced disappearance" means the disappeared person, his or her relatives, any dependant who has a direct relationship with her or him, and anyone who has suffered harm through intervening in order to prevent the forced disappearance or to shed light on the whereabouts of the disappeared person.
4. In addition to such criminal penalties as are applicable, the acts referred to in articles 2 and 3 of this Convention shall render the State liable under civil law, and the State may bring an action against those responsible in order to recover what it has had to pay, without prejudice to the international responsibility of the State concerned in accordance with the

principles of international law.

## PART II

### Article 25

1. There shall be established a Committee against Forced Disappearance (hereinafter referred to as the Committee) which shall carry out the functions hereinafter provided. The Committee shall consist of 10 experts of high moral standing and recognized competence in the field of human rights, who shall serve in a personal and independent capacity. Membership of the Committee is incompatible with any post or function subject to the hierarchical structure of the executive authority of a State Party. The experts shall be elected by the States Parties, consideration being given to equitable geographical distribution and to the usefulness of the participation of some persons having legal experience.
2. The members of the Committee shall be elected by secret ballot from a list of persons nominated by States Parties. Each State Party may nominate not more than two persons from among its own nationals.
3. Elections of the members of the Committee shall be held at biennial meetings of States Parties convened by the Secretary-General of the United Nations. At those meetings, for which two thirds of the States Parties shall constitute a quorum, the persons elected to the Committee shall be those who obtain the largest number of votes and an absolute majority of the votes of the representatives of States Parties present and voting.
4. The initial election shall be held no later than six months after the date of the entry into force of this Convention. At least eight months before the date of each election, the Secretary-General of the United Nations shall address a letter to the States Parties inviting them to submit their nominations within three months. The Secretary-General of the United Nations shall prepare a list in alphabetical order of all the persons thus nominated, indicating the States Parties which have nominated them, and shall submit it to the States Parties, the relevant intergovernmental organizations and the relevant non-governmental organizations that enjoy consultative status with the Economic and Social Council.
5. The members of the Committee shall be elected for a term of four years. They shall be eligible for re-election if renominated. However, the term of five of the members elected at the first election shall expire at the end of two years; immediately after the first election the names of these five members shall be chosen by lot by the chairman of the meeting referred to in paragraph 3 of this article.
6. If a member of the Committee dies or resigns or for any other cause can no longer perform his Committee duties, the State Party which nominated him shall appoint another expert from among its nationals to serve for the remainder of his term, subject to the approval of the majority of the States Parties. The approval shall be considered given unless half of the States Parties respond negatively within six weeks after having been informed by the Secretary-General of the United Nations of the proposed appointment.
7. The United Nations shall be responsible for the expenses incurred by the application of this Convention.

### Article 26

1. The Committee shall elect its officers for a term of two years. They may be re-elected.
2. The Committee shall establish its own rules of procedure, but these rules shall provide, inter alia, that:
  - (a) Six members shall constitute a quorum;
  - (b) Decisions of the Committee shall be made by a majority vote of the members present.
3. The Secretary-General of the United Nations shall provide the necessary staff and facilities for the effective performance of the functions of the Committee under this Convention.
4. The Secretary-General of the United Nations shall convene the initial meeting of the Committee. After its

initial meeting, the Committee shall meet at such times as shall be provided in its rules of procedure.

5. With the approval of the General Assembly, the members of the Committee shall receive emoluments from United Nations resources on such terms and conditions as the Assembly may decide in the light of the importance of the functions of the Committee.

#### Article 27

1. The States Parties shall submit to the Committee, through the Secretary-General of the United Nations, reports on the measures they have taken to give effect to their undertakings under this Convention, within one year after the entry into force of the Convention for the State Party concerned. In connection with the submission of the first report of each State Party concerned, the Committee may make a visit to the territory under the control of that State Party. The State Party concerned shall provide all the necessary facilities for such a visit including the entry into the country and access to such places and meeting with such persons as may be required for carrying out the mission of the visit. Thereafter the States Parties shall submit supplementary reports at the request of the Committee.

2. The Secretary-General of the United Nations shall transmit the reports to all States Parties.

3. Each report shall be considered by the Committee which may make such comments, observations and recommendations as it may consider appropriate and shall forward the said comments, observations and recommendations to the State Party concerned. That State Party may respond with any observations it chooses to the Committee.

4. The Committee may, at its discretion, decide to include any comments, observations and recommendations made by it in accordance with paragraph 3 of this article, together with the observations thereon received from the State Party concerned, in its annual report made in accordance with article 33. If so requested by the State Party concerned, the Committee may also include a copy of the report submitted under paragraph 1 of this article.

#### Article 28

1. If the Committee receives reliable information which appears to it to contain well-founded indications that forced disappearance is being systematically or widely practised in the territory under the control of a State Party, the Committee shall invite that State Party to cooperate in the examination of the information and to this end to submit observations with regard to the information concerned.

2. Taking into account any observations which may have been submitted by the State Party concerned, as well as any other relevant information available to it, the Committee may, if it decides that this is warranted, designate one or more of its members to make an inquiry and to report to the Committee urgently.

3. If an inquiry is made in accordance with paragraph 2 of this article, the Committee shall seek the cooperation of the State Party concerned. In agreement with that State Party, such an inquiry may include a visit to the territory under its control. At least one member of the Committee, who may be accompanied if necessary by interpreters, secretaries and experts, shall be responsible for conducting the missions which include visits to the territory under the control of the State Party. No member of the delegation, with the exception of the interpreters, may be a national of the State to which the visit is to be made.

4. The Committee shall notify the Government of the State Party concerned in writing of its intention to organize a mission, indicating the composition of the delegation. During its mission the Committee may make such visits as it may consider necessary in order to fulfil its commitments. If one of the two parties so desires, the Committee and the State Party concerned may, before a mission is carried out, hold consultations in order to define the practical arrangements for the mission without delay. The consultations concerning the practical arrangements for the mission may not include negotiations concerning the obligations for a State Party arising out of this Convention.

5. After examining the report submitted by its member or members in accordance with paragraph 2 of this article, the Committee shall transmit its report to the State Party concerned, together with its conclusions, observations and

recommendations.

6. After the proceedings have been completed with regard to an inquiry made in accordance with paragraph 2, the Committee may, after consultation with the State Party concerned, include the results of the proceedings together with the conclusions, observations and recommendations in its annual report made in accordance with article 33.

#### Article 29

A State Party to this Convention may submit to the Committee communications to the effect that another State Party is not fulfilling its obligations under this Convention. Communications received under this article shall be dealt with in accordance with the following procedure:

(a) If a State Party considers that another State Party is not giving effect to the provisions of this Convention, it may, by written communication, bring the matter to the attention of that State Party. Within three months after the receipt of the communication the receiving State shall afford the State which sent the communication an explanation or any other statement in writing clarifying the matter, which should include, to the extent possible and pertinent, reference to domestic procedures and remedies taken, pending or available in the matter;

(b) If the matter is not adjusted to the satisfaction of both States Parties concerned within six months after the receipt by the receiving State of the initial communication, either State shall have the right to refer the matter to the Committee, by notice given to the Committee and to the other State;

(c) The Committee shall deal with a matter referred to it under this article only after it has ascertained that all domestic remedies have been invoked and exhausted in the matter, in conformity with the generally recognized principles of international law. This shall not be the rule where the application of the remedies is unreasonably prolonged or is unlikely to bring effective relief to the person who is the victim of the violation of this Convention;

(d) The Committee shall hold closed meetings when examining communications under this article;

(e) Subject to the provisions of subparagraph (c), the Committee shall make available its good offices to the State Parties concerned with a view to a friendly solution of the matter on the basis of respect for the obligations provided for in this Convention. For this purpose, the Committee may, when appropriate, set up an ad hoc conciliation commission;

(f) In any matter referred to it under this article, the Committee may call upon the States Parties concerned, referred to in subparagraph (b), to supply any relevant information;

(g) The States Parties concerned, referred to in subparagraph (b), shall have the right to be represented when the matter is being considered by the Committee and to make submissions orally and/or in writing;

(h) The Committee shall, within 12 months after the date of receipt of notice under subparagraph (b), submit a report:

(i) If a solution within the terms of subparagraph (e) is reached, the Committee shall confine its report to a brief statement of the facts and of the solutions reached;

(ii) If a solution within the terms of subparagraph (e) is not reached, the Committee shall confine its report to a brief statement of the facts; the written submissions and record of the oral submissions made by the States Parties concerned shall be attached to the report. In every matter, the report shall be communicated to the States Parties concerned.

#### Article 30

1. Any person or group of persons under the jurisdiction of a State Party or any non-governmental organization may submit communications to the Committee concerning a violation of the provisions of this Convention by a State

Party.

2. The Committee shall consider inadmissible any communication under this article which is anonymous or which it considers to be an abuse of the right of submission of such communications or to be incompatible with the provisions of this Convention.
3. Subject to the provisions of paragraph 2, the Committee shall bring any communications submitted to it under this article to the attention of the State Party to this Convention which is alleged to be violating any provisions of the Convention. Within six months, the receiving State shall submit to the Committee written explanations or statements clarifying the matter and the remedy that may have been taken by that State.
4. The Committee shall consider communications received under this article in the light of all information made available to it by or on behalf of the author of the communication referred to in paragraph 1 and by the State Party concerned. The Committee may, if it deems it necessary, organize hearings and investigation missions. For these purposes the Committee shall be governed by paragraphs 3 and 4 of article 28.
5. The Committee shall not consider any communications from an individual under this article unless it has been ascertained that:
  - (a) The same matter has not been, and is not being, examined under another procedure of international investigation or settlement;
  - (b) The author of the communication has exhausted all domestic remedies. This shall not be the rule if, in the domestic legislation of the State Party, there is no effective remedy to protect the right alleged to have been violated, if access to domestic remedies has been prevented, if the application of the remedies is unreasonably prolonged or if it is unlikely that application of the remedies would improve the situation of the person who is the victim of the violation.
6. The Committee shall hold closed meetings when examining communications under this article.
7. In urgent cases the Committee may request the State Party concerned to take whatever protective measures it may deem appropriate, when there is a need to avoid irreparable damage. When the Committee is carrying out its functions of considering communications submitted to it, the request to adopt such measures and their adoption shall not prejudice its final decision.
8. The Committee shall forward its views to the State Party concerned and to the individual.

#### Article 31

1. The Committee may undertake any effective procedure to seek and find persons who have disappeared within the meaning of this Convention, either on its own initiative or at the request of a State Party, an individual, a group of individuals or a non-governmental organization.
2. The Committee shall consider inadmissible any request received under this article which is anonymous or which it considers to be an abuse of the right of submission of such requests or to be incompatible with the provisions of this Convention. In no case may the exhaustion of domestic remedies be required.
3. The Committee may, if it decides that this is warranted, appoint one or more of its members to undertake an investigation mission and to report to the Committee urgently. The Committee shall be governed by the provisions of paragraphs 3 and 4 of article 28 of this Convention.
4. The Committee shall discharge this function in a strictly neutral and humanitarian capacity.

#### Article 32

The members of the Committee and persons accompanying them on mission in the territory of the States

Parties referred to in articles 28, 29 and 31 shall be entitled to the facilities, privileges and immunities of experts on mission for the United Nations as laid down in the relevant sections of the Convention on the Privileges and Immunities of the United Nations.

#### Article 33

1. The Committee shall submit an annual report on its activities under this Convention to the States Parties and to the General Assembly of the United Nations.
2. To ensure that its observations and recommendations are followed up, the Committee shall include in the report referred to in paragraph 1 of this article the measures taken by the States Parties to guarantee effective compliance with the observations and recommendations made in accordance with articles 27, 28, 29, 30 and 31 of this Convention.

#### PART III

#### Article 34

1. This Convention is open for signature by all States.
2. This Convention is subject to ratification. Instruments of ratification shall be deposited with the Secretary-General of the United Nations.

#### Article 35

This Convention is open to accession by all States. Accession shall be effected by the deposit of an instrument of accession with the Secretary-General of the United Nations.

Article 36

1. No State can, at the time of signature or ratification of this Convention or accession thereto, make reservations concerning articles 1 to 24 and article 31 of this Convention, nor make a reservation the effect of which would inhibit the operation of any of the bodies established by this Convention.
2. Any State Party having made a reservation in accordance with paragraph 1 of this article may, at any time, withdraw this reservation by notification to the Secretary-General of the United Nations.

Article 37

1. This Convention shall enter into force on the thirtieth day following the date of deposit of the tenth instrument of ratification or accession.
2. For each State ratifying or acceding to this Convention after the deposit of the tenth instrument of ratification or accession, the Convention shall enter into force on the thirtieth day after the deposit by such State of its instrument of ratification or accession.

Article 38

The Secretary-General of the United Nations shall inform all States Members of the United Nations and all States which have signed this Convention or acceded to it of the following:

- (a) Signatures, ratifications and accessions under articles 34 and 35;
- (b) The date of entry into force of this Convention under article 37.

Article 39

1. This Convention, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations.
2. The Secretary-General of the United Nations shall transmit certified copies of this Convention to all States.

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