

## **International Convention for the Protection of All Persons from Enforced Disappearance**

**Canada** has neither signed nor acceded to the International Convention for the Protection of All Persons from Enforced Disappearance.

**Adoption:** The Convention was adopted by the United Nations General Assembly on 20 December 2006.

**Entry into force:** 23 December 2010.

**Number of signatories and ratifications/accessions:** There are 46 State parties to the Convention. An additional 54 states have signed but not ratified the Convention.

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### **Summary information**

The [Convention](#) defines enforced disappearance as “the arrest, detention, abduction or any other form of deprivation of liberty by agents of the State or by persons or groups of persons acting with the authorization, support or acquiescence of the State, followed by a refusal to acknowledge the deprivation of liberty or by concealment of the fate or whereabouts of the disappeared person, which place such a person outside the protection of the law.”

The Convention focuses on the obligations of States Parties to prevent and punish the crime of enforced disappearance and draws extensively on the Declaration on the Protection of All Persons from Enforced Disappearance made by the General Assembly in 1992 but with new and strengthened standards and obligations.

The International Convention for the Protection of All Persons from Enforced Disappearance was adopted by the General Assembly of the United Nations in 2006. It entered into force in 2010 after 20 States had ratified or acceded to it. The Convention established the Committee on Enforced Disappearances (CED).

## History

[Human Rights Watch \(HRW\)](#) traces the first known use of such disappearances to Adolf Hitler. His *Nacht und Nebel Erlass* (Night and Fog Decree) of December 7, 1941 was used to “seize persons in occupied territories ‘endangering German security’ ... and to transport them secretly to Germany, where they disappeared without trace. German authorities prohibited officials from giving any information in order to achieve the desired intimidating effect.” HRW then describes the use of enforced disappearances by Guatemalan security forces in the 1960s followed by other Latin American regimes such as in Chile, Argentina, El Salvador, Honduras, Colombia and Nicaragua in the 1970s and 1980s and more recently by Iraq, Sri Lanka and Algeria.

In 1980, the United Nations Commission on Human Rights established “for a period of one year a [working group](#) consisting of five of its members, to serve as experts in their individual capacities, to examine questions relevant to enforced or involuntary disappearances of persons.”

The mandate of the Working Group on Enforced or Involuntary Disappearances has been renewed since that time. One of its primary tasks has been “to assist families in determining the fate or whereabouts of their family members who are reportedly disappeared.” The Working Group “serves as a channel of communication between family members of victims of enforced disappearance and other sources reporting cases of disappearances, and the Governments concerned” and requests that those governments carry out investigations and inform the Working Group of the results. The cases remain open until the fate or location of the person is determined.

On 18 December 1992, the General Assembly proclaimed the Declaration on the Protection of All Persons from Enforced Disappearance as a body of principles applicable to all States. The preamble identifies enforced disappearance as undermining “the deepest values of any society committed to respect for the rule of law, human rights and fundamental freedoms, and that the systematic practice of such acts is of the nature of a crime against humanity.” The preamble also states that the enforced disappearances violate multiple United Nations human rights instruments including the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. However, the Declaration then states that “while the acts which comprise enforced disappearance constitute a violation of the prohibition found in the aforementioned international instruments, it is none the less important to devise an instrument which characterizes all acts of enforced disappearance of persons as very serious offences and sets forth standards designed to punish and prevent their

commission.”

The [Declaration](#) describes enforced disappearances as “an offence to human dignity” and as “a grave and flagrant violation of the human rights and fundamental freedoms proclaimed in the Universal Declaration of Human Rights”.

According to the Declaration, “any act of enforced disappearance constitutes a violation of the rules of international law guaranteeing, inter alia, 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. It also violates or constitutes a grave threat to the right to life. States are under an obligation to take effective legislative, administrative, judicial or other measures to prevent and terminate acts of enforced disappearance, in particular to consider them a continuing offence and to establish civil liability.”

The Declaration also refers to the right to a prompt and effective judicial remedy as a means of determining the whereabouts or state of health of persons deprived of their liberty, to the protection of all persons involved in the investigation of an enforced disappearance and to the provision of redress and compensation to the victims of enforced disappearances and their families. The Declaration pays special attention to the disappearance of children, the abduction of children of parents subjected to enforced disappearance and of children born during their mother’s enforced disappearance.

Following the Declaration, the Working Group was “entrusted with monitoring the progress of States in fulfilling their obligations deriving from the Declaration and to provide to governments assistance in its implementation.”

The formation of normative principles related to enforced disappearances was helped further by “jurisprudence from international bodies, such as the United Nations Human Rights Committee, the Inter-American Court of Human Rights, the European Court of Human Rights and the Human Rights Chamber for Bosnia and Herzegovina.”

According to the [OHCHR](#), “In 2001, the Commission on Human Rights requested an independent expert to examine the existing international criminal and human rights framework for the protection of persons from enforced or involuntary disappearance and to identify gaps in order to ensure full protection. In his report, the independent expert concluded that the right not to be subjected to enforced disappearance was not established in any universal treaty and that there were many gaps regarding measures of prevention and effective remedies and reparation for victims. These gaps in the international legal framework justified the drawing-up of a new treaty.”

In 2003, following the report of the independent expert, the Commission on Human Rights proceeded with the drafting of such a treaty. Over 70 States, as well as numerous NGOs, associations of families of the disappeared and experts participated in the three-year negotiation process.

The International Convention on the Protection of All Persons from Enforced Disappearance was adopted by the General Assembly of the United Nations by its resolution A/RES/61/177 of 20 December 2006 and was opened for signatures on 6 February 2007. The Convention entered into force on 23 December 2010 after 20 States had ratified or acceded to it.

## Key Provisions

The [Convention](#) defines “enforced disappearance” as “the arrest, detention, abduction or any other form of deprivation of liberty by agents of the State or by persons or groups of persons acting with the authorization, support or acquiescence of the State, followed by a refusal to acknowledge the deprivation of liberty or by concealment of the fate or whereabouts of the disappeared person, which place such a person outside the protection of the law.” The Convention also provides a definition of “victim” as “the disappeared person and any individual who has suffered harm as the direct result of an enforced disappearance”. As a result, family members and others can be included under the definition.

The Convention states that no one shall be subjected to enforced disappearance under any circumstance. It requires State Parties “to ensure that enforced disappearance constitutes an offence under its criminal law” and to “make the offence ... punishable by appropriate penalties which take into account its extreme seriousness.”

The Convention affirms that, “widespread or systematic practice of enforced disappearance constitutes a crime against humanity as defined in applicable international law and shall attract the consequences provided for under such applicable international law.”

State Parties must ensure that “any individual who alleges that a person has been subjected to enforced disappearance has the right to report the facts to the competent authorities.” Those authorities are required to “examine the allegation promptly and impartially and, where necessary, undertake without delay a thorough and impartial investigation.” Protection against ill-treatment and intimidation must be provided to the complainant, witnesses, relatives of the disappeared person, their defence counsel and investigators. State Parties must also ensure that “persons suspected of having committed an offence of enforced disappearance are not in a position to influence the progress of an investigation.”

“Among the measures intended to prevent enforced disappearances, the Convention includes the express prohibition of secret detention and calls on States to guarantee minimum legal standards around the deprivation of liberty, such as the maintenance of official registers of persons deprived of liberty with a minimum of information and the authorization to communicate with their family, counsel or any other person of their choice.”

The Convention also establishes that each victim (which includes family members and others) has “the right to know the truth regarding the circumstances of the enforced disappearance, the progress and results of the investigation and the fate of the disappeared person,” rights each State Party must ensure. In addition, each State Party must “take all appropriate measures to search for, locate and release disappeared persons and, in the event of death, to locate, respect and return their remains” and ensure “that the victims of enforced disappearance have the right to obtain reparation and prompt, fair and adequate compensation.” Each State Party must also “guarantee the right to form and participate freely in organizations and associations concerned with attempting to establish the circumstances of enforced disappearances and the fate of disappeared persons, and to assist victims of enforced disappearance.”

Finally, the Convention requires each State Party to prevent and punish under its criminal law the “wrongful removal of children who are subjected to enforced disappearance, children whose father, mother or legal guardian is subjected to enforced disappearance or children born during the captivity of a mother subjected to enforced disappearance” as well as the falsification, concealment or destruction of documents attesting to the true identity of these children.

### **Canada’s Commitments and Responsibilities**

Canada has neither signed nor acceded to the Convention. As a result, there are no commitments or responsibilities for Canada under the Convention.

### **International Monitoring and Implementation**

The Convention established the [Committee on Enforced Disappearances](#) (CED) to monitor the implementation of the Convention by its State Parties. It held its first session in 2011. The Committee on Enforced Disappearances is currently composed of 10 independent experts who are elected for a term of 4 years by States Parties.

Each State Party is required to submit, through the UN Secretary-General, a report to the Committee “on the measures taken to give effect to its obligations under this Convention, within two years after the entry into force of this Convention for the State Party concerned.” The Committee examines each report and address its concerns and recommendations to the State Party in the form of concluding observations.

In addition, a State Party may declare “that it recognizes the competence of the Committee to receive and consider communications from or on behalf of individuals subject to its jurisdiction claiming to be victims of a violation by this State Party of provisions of this Convention.” A State Party may also declare “that it recognizes the competence of the Committee to receive and consider communications in which a State Party claims that another State Party is not fulfilling its obligations under this

Convention.”

Upon receiving reliable information of a serious violation of the Convention by a State Party, the Committee that a State Party may, “after consultation with the State Party concerned, request one or more of its members to undertake a visit and report back to it without delay.” Then, if “the Committee receives information which appears to it to contain well-founded indications that enforced disappearance is being practised on a widespread or systematic basis in the territory under the jurisdiction of a State Party, it may, after seeking from the State Party concerned all relevant information on the situation, urgently bring the matter to the attention of the General Assembly of the United Nations, through the Secretary-General of the United Nations.”

The Committee meets in Geneva and normally holds two sessions per year.

The Committee on Enforced Disappearances and the [Working Group on Enforced or Involuntary Disappearances](#) coexist side by side and seek to collaborate and coordinate their activities with a view to strengthen the joint efforts to prevent and eradicate enforced disappearances.

With respect to Canada, because it has neither signed nor acceded to the Convention, it is not impacted by any international monitoring created by the treaty.

In 2006, [Canada assured the UN General Assembly](#) that it is “pleased to support” the Convention. However, in response to the [2009 Universal Periodic Review of human rights in Canada](#), under the auspices of the UN Human Rights Council, the Canadian Government stated that Canada is not considering becoming a party to CED.

One [writer speculated](#) in 2009 that a possible reason for Canada’s refusal to sign the Convention was that Canadian personnel were responsible for enforced disappearances in Afghanistan.

## References

[International Convention for the Protection of All Persons from Enforced Disappearance](#)

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[Question of Missing and Disappeared Persons – the Commission on Human Rights](#)

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