



**HRVATSKI SABOR**

KLASA: 022-03/21-01/116

URBROJ: 65-21-02

Zagreb, 28. listopada 2021.



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**ZASTUPNICAMA I ZASTUPNICIMA  
HRVATSKOGA SABORA**

**PREDSJEDNICAMA I PREDSJEDNICIMA  
RADNIH TIJELA**

Na temelju članaka 178. i 192., a u svezi članka 207.a Poslovnika Hrvatskoga sabora u prilogu upućujem *Konačni prijedlog zakona o potvrđivanju Međunarodne konvencije o zaštiti svih osoba od prisilnog nestanka*, koji je predsjedniku Hrvatskoga sabora podnijela Vlada Republike Hrvatske, aktom od 28. listopada 2021. godine.

Za svoje predstavnike, koji će u njezino ime sudjelovati u radu Hrvatskoga sabora i njegovih radnih tijela, Vlada je odredila ministra pravosuđa i uprave dr. sc. Ivana Malenicu i državne tajnike mr. sc. Josipa Salapića, Juru Martinovića i Sanjina Rukavinu.

**PREDSJEDNIK**

**Gordan Jandroković**



**VLADA REPUBLIKE HRVATSKE**

KLASA: 022-03/21-11/44  
URBROJ: 50301-21/32-21-3

Zagreb, 28. listopada 2021.

**PREDSJEDNIKU HRVATSKOGA SABORA**

**PREDMET:** Konačni prijedlog zakona o potvrđivanju Međunarodne konvencije o zaštiti svih osoba od prisilnog nestanka

Na temelju članka 85. Ustava Republike Hrvatske („Narodne novine“, br. 85/10. – pročišćeni tekst i 5/14. – Odluka Ustavnog suda Republike Hrvatske) i članka 207.a Poslovnika Hrvatskoga sabora („Narodne novine“, br. 81/13., 113/16., 69/17., 29/18., 53/20., 119/20. – Odluka Ustavnog suda Republike Hrvatske i 123/20.), Vlada Republike Hrvatske podnosi Konačni prijedlog zakona o potvrđivanju Međunarodne konvencije o zaštiti svih osoba od prisilnog nestanka.

Za svoje predstavnike, koji će u njezino ime sudjelovati u radu Hrvatskoga sabora i njegovih radnih tijela, Vlada je odredila ministra pravosuđa i uprave dr. sc. Ivana Malenicu i državne tajnike mr. sc. Josipa Salapića, Juru Martinovića i Sanjina Rukavinu.

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PREDSJEDNIK  
mr. sc. Andrej Plenković

**VLADA REPUBLIKE HRVATSKE**

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**KONAČNI PRIJEDLOG ZAKONA O POTVRĐIVANJU MEĐUNARODNE  
KONVENCIJE O ZAŠTITI SVIH OSOBA OD PRISILNOG NESTANKA**

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**Zagreb, listopad 2021.**

# **KONAČNI PRIJEDLOG ZAKONA O POTVRĐIVANJU MEĐUNARODNE KONVENCIJE O ZAŠTITI SVIH OSOBA OD PRISILNOG NESTANKA**

## **I. USTAVNA OSNOVA ZA DONOŠENJE ZAKONA**

Ustavna osnova za donošenje Zakona o potvrđivanju Međunarodne konvencije o zaštiti svih osoba od prisilnog nestanka, sadržana je u odredbi članka 140. stavka 1. Ustava Republike Hrvatske („Narodne novine“, br. 85/10. – pročišćeni tekst i 5/14. – Odluka Ustavnog suda Republike Hrvatske).

## **II. OCJENA STANJA I OSNOVNA PITANJA KOJA SE TREBAJU UREDITI ZAKONOM TE POSLJEDICE KOJE ĆE DONOŠENJEM ZAKONA PROISTEĆI**

### **a) Ocjena stanja**

Postojanje prisilnih nestanaka osoba na svjetskoj razini poznata je činjenica koja dovodi do opasnosti za slobodu i život pojedinaca, ugrožava društvo u cjelini, predstavlja kršenje ljudskih prava i temeljnih sloboda te se protivi ljudskom dostojanstvu. U borbi protiv navedene kaznene aktivnosti, na međunarodnoj razini usvojeni su međunarodnopravni instrumenti, kao i propisi na nacionalnoj razini.

Opća deklaracija o ljudskim pravima, usvojena i proglašena na Općoj skupštini Ujedinjenih naroda Rezolucijom 217 A (III) 10. prosinca 1948. („Narodne novine“ - Međunarodni ugovori, broj 12/09.), kao i Međunarodni pakt o građanskim i političkim pravima, usvojen Rezolucijom 2200 A 16. prosinca 1966. („Narodne novine“ - Međunarodni ugovori, broj 12/93.), na temelju notifikacije o sukcesiji, sadrže odredbe kojima se kriminalizira samovoljno oduzimanje slobode pojedincu.

Međunarodnu konvenciju o zaštiti svih osoba od prisilnog nestanka usvojila je Opća skupština Ujedinjenih naroda 20. prosinca 2006., a stupila je na snagu 23. prosinca 2010. Do sada je 98 država članica Ujedinjenih naroda potpisalo Konvenciju, dok su 63 države članice stranke Konvencije.

Vlada Republike Hrvatske je na sjednici održanoj 1. veljače 2007. donijela Odluku o pokretanju postupka za potpisivanje Međunarodne konvencije o zaštiti svih osoba od prisilnog nestanka. Republika Hrvatska potpisala je Međunarodnu konvenciju o zaštiti svih osoba od prisilnog nestanka 6. veljače 2007.

Svrha ove Konvencije je sprječavanje i borba protiv prisilnih nestanaka osoba inkriminacijom određenih djela, zaštita prava žrtava kaznenih djela utvrđenih u skladu s ovom Konvencijom, olakšavanje suradnje na nacionalnoj i međunarodnoj razini u mjerama suzbijanja prisilnih nestanaka, kao i mjere prevencije na nacionalnoj i međunarodnoj razini.

Republika Hrvatska je tijekom izrade ove Konvencije izrazila svoju podršku usvajanju iste pri Ujedinjenim narodima, zastupajući stajalište da se provedba prisilnih nestanaka ne može

opravdati nikakvim okolnostima. Za Republiku Hrvatsku ova je Konvencija od posebne važnosti, a kako bi, kao država s neposrednim iskustvom vezanim uz slučajeve prisilno nestalih u Domovinskom ratu, pridonijela daljnjem suzbijanju ove pojave u svim okolnostima i u globalnim razmjerima. Nadalje, ova Konvencija predstavlja dodatni mehanizam za zaštitu temeljnih ljudskih prava i sloboda, ali i novi iskorak u unaprjeđenju međunarodnog humanitarnog prava, te podršku međunarodnim naporima u kontekstu borbe protiv terorizma. Također, za Republiku Hrvatsku, kao stranku najvažnijih međunarodnopravnih instrumenata na području ljudskih prava i međunarodnog humanitarnog prava, predstavlja kontinuitet na međunarodnom planu, ali i daljnje opredjeljenje za provedbu suvremenih standarda u nacionalnom zakonodavstvu. Temeljna načela na kojima počiva ova Konvencija ujedno su i temeljna načela Ustava Republike Hrvatske kojima se štite ljudska prava i temeljne slobode.

Republika Hrvatska već ima nacionalni kaznenopravni okvir o suzbijanju prisilnih nestanaka osoba. U članku 136. Kaznenog zakona („Narodne novine“, br. 125/11., 144/12., 56/15., 61/15. – ispravak, 101/17., 118/18., 126/19. i 84/21.) sankcionirano je kazneno djelo: „Protupravno oduzimanje slobode“.

U suradnji Ministarstva pravosuđa i uprave i drugih nadležnih tijela državne uprave, potrebno je osnažiti mehanizme međuresorne suradnje i povezivanja svih koji sudjeluju u prepoznavanju, izvještavanju, istrazi, sprječavanju i progonu počinitelja kaznenih djela protupravnog oduzimanja slobode, kao i pružanju zaštite žrtvama.

#### **b) Osnovna pitanja koja se trebaju urediti Zakonom**

Ovim se Zakonom potvrđuje Međunarodna konvencija o zaštiti svih osoba od prisilnog nestanka, kako bi njezine odredbe u smislu članka 141. Ustava Republike Hrvatske postale dio unutarnjeg pravnog poretka Republike Hrvatske.

Konvencijom se predviđa inkriminacija sljedećih radnji: prisilan nestanak što u smislu ove Konvencije podrazumijeva zadržavanje, otmicu ili bilo koji drugi oblik uskraćivanja slobode koji počine službene osobe države, osobe ili skupine osoba koje rade s odobrenjem, podrškom ili prihvaćanjem države, a kojem slijedi odbijanje da se prizna počinjeno uskraćenje slobode ili prikrivanje sudbine ili mjesta boravka nestale osobe; poticanje, nagovaranje, naređenje, počinjenje ili sudjelovanje u počinjenju, pokušaj zločina prisilnog nestanka; nadzor nad radnjama u vezi sa zločinom prisilnog nestanka; svjesno zanemarivanje podataka koji jasno ukazuju na namjeru počinjenja zločina prisilnog nestanka ili jasno ukazuju na činjenje zločina prisilnog nestanka te ne poduzimanje neophodnih i razumnih mjera kako bi se spriječilo ili suzbilo počinjenje zločina prisilnog nestanka.

Nadalje, Konvencija sadrži odredbe o svrsi, području primjene i korištenju pojmova; odredbe kaznenog materijalnog prava, uz navedene inkriminacije i odredbe o nadležnosti, odgovornosti, sankcijama i mjerama, otegotnim i olakotnim okolnostima; odredbe kaznenog postupnog prava, o pokretanju i tijeku postupka, istragama i međunarodnoj suradnji; odredbe o mjerama zaštite, o zaštiti žrtava i njihovih obitelji; zaštiti svjedoka; odredbe o mjerama prevencije na nacionalnoj i međunarodnoj razini; odredbe o ostvarivanju prava na naknadu štete; odredbe o mehanizmu praćenja provedbe Konvencije, o Odboru za prisilne nestanke i njegovim zadaćama; odredbe o odnosu prema drugim međunarodnim instrumentima; odredbe o izmjenama i dopunama Konvencije, te završne odredbe.

U Republici Hrvatskoj stvoren je normativni okvir koji omogućuje progon i sankcioniranje počinitelja kaznenog djela protupravnog oduzimanja slobode, te pružanje pomoći i zaštite žrtvama navedenog kaznenog djela. U nastojanju za stalnim poboljšanjem uspostavljenog sustava, nužno je i adekvatno unapređenje okvira, čemu će pridonijeti ratifikacija ove Konvencije.

### **c) Posljedice koje će donošenjem Zakona proisteći**

Imajući u vidu da prisilni nestanci osoba predstavljaju izravnu prijetnju slobodi i životu pojedinca, Republika Hrvatska se potvrđivanjem ove Konvencije želi priključiti inicijativi jačanja mehanizama međunarodne suradnje na prevenciji odnosno učinkovitom sankcioniranju takve prakse.

Stav je Republike Hrvatske da samo univerzalna primjena Međunarodne konvencije o zaštiti svih osoba od prisilnog nestanka može spriječiti da počinitelji najtežih kaznenih djela zaštićenih međunarodnim pravom ne ostanu nekažnjeni te se stoga Republika Hrvatska zalaže da sve države članice Međunarodne konvencije o zaštiti svih osoba od prisilnog nestanka osiguraju njezinu punu implementaciju u svoja nacionalna zakonodavstva te stvore odgovarajuće mehanizme u skladu s Konvencijom, kojima će se osigurati suradnja država članica.

## **III. OCJENA SREDSTAVA POTREBNIH ZA PROVEDBU ZAKONA**

Sredstva za provedbu ovoga Zakona osigurana su u okviru redovne djelatnosti razdjela 109 Ministarstva pravosuđa i uprave te razdjela 040 Ministarstva unutarnjih poslova.

## **IV. ZAKONI KOJIMA SE POTVRĐUJU MEĐUNARODNI UGOVORI**

Temelj za donošenje ovoga Zakona nalazi se u članku 207.a Poslovnika Hrvatskoga sabora („Narodne novine“, br. 81/13., 113/16., 69/17., 29/18., 53/20., 119/20. – Odluka Ustavnog suda Republike Hrvatske i 123/20.), prema kojemu se zakoni kojima se, u skladu s Ustavom Republike Hrvatske, potvrđuju međunarodni ugovori donose u pravilu u jednom čitanju, a postupak donošenja pokreće se podnošenjem konačnog prijedloga zakona o potvrđivanju međunarodnog ugovora.

S obzirom na prirodu postupka potvrđivanja međunarodnih ugovora, kojima država i formalno izražava pristanak biti vezana već sklopljenim međunarodnim ugovorom, kao i na činjenicu da se u ovoj fazi postupka, u pravilu ne može mijenjati ili dopunjavati tekst međunarodnog ugovora, predlaže se ovaj Konačni prijedlog zakona raspraviti i prihvatiti u jednom čitanju.

## **KONAČNI PRIJEDLOG ZAKONA O POTVRĐIVANJU MEĐUNARODNE KONVENCIJE O ZAŠTITI SVIH OSOBA OD PRISILNOG NESTANKA**

### **Članak 1.**

Potvrđuje se Međunarodna konvencija o zaštiti svih osoba od prisilnog nestanka, usvojena u New Yorku 20. prosinca 2006. tijekom šezdeset prvog zasjedanja Opće skupštine Ujedinjenih naroda, u izvorniku na arapskom, kineskom, engleskom, francuskom, ruskom i španjolskom jeziku, a koju je Republika Hrvatska potpisala 6. veljače 2007.

### **Članak 2.**

Tekst Konvencije iz članka 1. ovoga Zakona, u izvorniku na engleskom jeziku i u prijevodu na hrvatski jezik, glasi:

## **MEĐUNARODNA KONVENCIJA O ZAŠTITI SVIH OSOBA OD PRISILNOG NESTANKA**

### **Preambula**

*Države stranke ove Konvencije,*

*uzimajući u obzir obveze prema Povelji Ujedinjenih naroda da promiču opće poštivanje i pridržavanje ljudskih prava i temeljnih sloboda,*

*uzimajući u obzir Opću deklaraciju o ljudskim pravima,*

*podsjećajući na Međunarodni pakt o gospodarskim, socijalnim i kulturnim pravima, Međunarodni pakt o građanskim i političkim pravima te druge odgovarajuće međunarodne instrumente u području ljudskih prava, humanitarnog prava i međunarodnog kaznenog prava,*

*također podsjećajući na Deklaraciju o zaštiti svih osoba od prisilnog nestanka koju je usvojila Opća skupština Ujedinjenih naroda u svojoj rezoluciji 47/133 od 18. prosinca 1992,*

*svjesne izuzetne ozbiljnosti prisilnog nestanka koji predstavlja zločin te, kao što je u određenim slučajevima određeno međunarodnim pravom, zločin protiv čovječnosti,*

*odlučne spriječiti prisilne nestanke i boriti se protiv nekažnjavanja zločina prisilnog nestanka,*

*uzimajući u obzir pravo svake osobe da ne bude podvrgnuta prisilnom nestanku, pravo žrtava na pravdu i odštetu,*

*potvrđujući* pravo svake žrtve da zna istinu o okolnostima prisilnog nestanka i sudbine nestalih osoba te pravo na slobodu traženja, primanja i dijeljenja informacija s tim ciljem,

*sporazumjele su se* o sljedećim člancima:

## **DIO I.**

### *Članak 1.*

1. Nitko ne smije biti podvrgnut prisilnom nestanku.
2. Nikakve iznimne okolnosti, bilo ratno stanje ili prijetnja ratom, unutarnja politička nestabilnost ili druge hitne okolnosti ne mogu biti opravdanje za prisilan nestanak.

### *Članak 2.*

Za potrebe ove Konvencije, „prisilnim nestankom“ se smatra uhićenje, zadržavanje, otmica ili bilo koji drugi oblik uskraćivanja slobode koji počine službene osobe države ili osobe ili skupine osoba koje djeluju s odobrenjem, podrškom ili prihvaćanjem države, a kojem slijedi odbijanje da se prizna počinjeno uskraćivanje slobode ili prikrivanje sudbine ili mjesta boravka nestale osobe, čime se takvu osobu stavlja izvan zaštite zakona.

### *Članak 3.*

Svaka država stranka poduzima potrebne mjere u cilju provođenja istrage djela određenih u članku 2. koja su počinile osobe ili skupine osoba djelujući bez odobrenja, podrške ili prihvaćanja države, te odgovorne osobe dovode pred lice pravde.

### *Članak 4.*

Svaka država stranka poduzima potrebne mjere kako bi osigurala da prisilan nestanak predstavlja kazneno djelo prema njezinom kaznenom pravu.

### *Članak 5.*

Prošireno ili sustavno provođenje prakse prisilnih nestanaka predstavlja zločin protiv čovječnosti kako je određeno u primjenjivom međunarodnom pravu, te u tom smislu rezultira posljedicama određenim u primjenjivom međunarodnom pravu.

### *Članak 6.*

1. Svaka država stranka poduzima potrebne mjere da se kazneno odgovornim smatra barem:
  - (a) svaka osoba koja počini, naredi, nagovara ili potiče na počinjenje, ili pokušaj počinjenja, suučesnik je ili sudjeluje u prisilnom nestanku;
  - (b) nadređena osoba koja:



(i) je znala ili svjesno zanemarila podatak koji je jasno ukazivao na to da osobe u njezinoj nadležnosti i ovlasti čine i namjeravaju počiniti zločin prisilnog nestanka;

(ii) je bila izravno odgovorna za i nadzirala radnje u vezi sa zločinom prisilnog nestanka; i

(iii) nije poduzela sve potrebne i razumne mjere koje su bile u njezinoj moći da spriječi ili suzbi počinjenje zločina prisilnog nestanka ili podatak prenijela nadležnim organima radi istrage i progona;

(c) Podstavak (b) gore ne dovodi u pitanje više standarde odgovornosti primjenjive prema mjerodavnom međunarodnom pravu u odnosu na vojne zapovjednike ili osobe u funkciji vojnog zapovjednika.

2. Nijedna zapovijed ili uputa javnih tijela, civilnih, vojnih ili inih, ne može se smatrati opravdanjem za kazneno djelo prisilnog nestanka.

#### *Članak 7.*

1. Svaka država stranka poduzima potrebne mjere da kazneno djelo prisilnog nestanka bude primjereno kažnjeno uzimajući u obzir njegovu krajnju ozbiljnost.

2. Svaka država stranka može utvrditi:

(a) olakšavajuće okolnosti, osobito za osobe koje su sudjelovale u počinjenju prisilnog nestanka, no aktivno pridonose vraćanju nestale osobe žive ili olakšaju razjašnjavanje slučajeva prisilnog nestanka ili prepoznaju počinitelje kaznenog djela prisilnog nestanka;

(b) ne dovodeći u pitanje druge kaznene postupke, otegotne okolnosti, osobito u slučaju smrti nestale osobe ili počinjenja prisilnog nestanka trudnih žena, maloljetnika, osoba s invaliditetom ili drugih posebno ranjivih osoba.

#### *Članak 8.*

Ne dovodeći u pitanje članak 5.,

1. država stranka koja odredi rok za zastaru kaznenog progona zbog prisilnog nestanka, poduzima potrebne mjere kojima osigurava da rok za zastaru:

(a) bude dugotrajan i u skladu s iznimnom ozbiljnošću kaznenog djela;

(b) počinje od trenutka kada prestaje kazneno djelo prisilnog nestanka, uzimajući u obzir njegovu trajnu narav.

2. Svaka država stranka jamči žrtvama prisilnog nestanka ostvarivanje prava na odštetu tijekom trajanja postupka.

#### *Članak 9.*

1. Svaka država stranka poduzima potrebne mjere za utvrđivanje svoje nadležnosti nad kaznenim djelom prisilnog nestanka:

(a) kada je kazneno djelo počinjeno na području pod nadležnošću određene države ili na brodu ili zrakoplovu registriranom u toj državi stranci;

- (b) kada je osumnjičeni državljanin države stranke;
- (c) kada je nestala osoba državljanin države stranke, te država to smatra prikladnim.

2. Svaka država stranka poduzima potrebne mjere kojima utvrđuje svoju nadležnost nad kaznenim djelom prisilnog nestanka kada se osumnjičenik nalazi na bilo kojem državnom području pod njihovom nadležnošću, ukoliko ga ne izruče ili predaju drugoj državi u skladu s međunarodnim obvezama ili ga ne predaju međunarodnom kaznenom sudu čiju nadležnost priznaju.

3. Ova Konvencija ne isključuje bilo kakvu dodatnu kaznenu nadležnost koja postoji u skladu s nacionalnim pravom.

#### *Članak 10.*

1. Kada se nakon analize dostupnih informacija utvrdi da to okolnosti zahtijevaju, svaka država stranka na čijemu se državnom području nalazi osoba osumnjičena za počinjenje kaznenog djela prisilnog nestanka tu osobu stavlja u pritvor ili po potrebi poduzima druge pravne mjere kojima osigurava njezinu nazočnost. Pritvor i druge pravne mjere država stranka propisuje zakonom, no ove mjere mogu trajati samo onoliko koliko je potrebno da se zajamči nazočnost osobe za potrebe kaznenog postupka, predaje ili izručenja.

2. Država stranka koja je poduzela mjere iz stavka 1. ovoga članka bez odgode provodi preliminarnu istragu ili ispitivanje radi utvrđivanja činjenica. Nadalje, dužna je obavijestiti države stranke iz članka 9. stavka 1. o poduzetim mjerama u skladu sa stavkom 1. ovoga članka, uključujući pritvor i okolnosti zbog kojih je poduzet, te o rezultatima preliminarnog ispitivanja ili istrage, naznačivši namjerava li djelovati u skladu sa svojom nadležnošću.

3. Svaka osoba u pritvoru sukladno stavku 1. ovoga članka može se bez odgode obratiti najbližem odgovarajućem predstavniku svoje države, ili, ukoliko nema ničije državljanstvo, predstavniku države u kojoj uobičajeno boravi.

#### *Članak 11.*

1. Država stranka u čijoj se nadležnosti nalazi državno područje na kojemu je pronađena osoba osumnjičena za počinjenje kaznenog djela prisilnog nestanka, ukoliko tu osobu ne izruči ili preda drugoj državi u skladu s međunarodnim obvezama ili je ne preda međunarodnom kaznenom sudu čiju nadležnost priznaje, predat će slučaj svojim nadležnim tijelima radi kaznenog progona.

2. Ova su tijela obvezna donositi odluke na isti način kao i u slučajevima drugih kaznenih djela ozbiljne prirode prema zakonima države stranke. U slučajevima iz članka 9. stavka 2. standardi za dokaze potrebne za kazneni progon i presudu ne mogu biti ništa manje strogi od onih koji se primjenjuju u slučajevima iz članka 9. stavka 1.

3. Osobama protiv kojih se vodi postupak u vezi s kaznenim djelom prisilnog nestanka jamči se pravedan tretman u svim fazama postupka. Sve osobe

kojima se sudi zbog kaznenog djela prisilnog nestanka jamči se pošteno suđenje pred zakonom utemeljenim kompetentnim, neovisnim i nepristranim sudom ili sudskim vijećem.

#### *Članak 12.*

1. Svaka država stranka jamči svakoj osobi koja izrazi sumnju da je neka osoba podvrgnuta prisilnom nestanku, pravo da te činjenice iznese pred nadležnim tijelima koja bez odgode nepristrano istražuju činjenice i okolnosti, te prema potrebi provode temeljitu i nepristranu istragu. Ukoliko je potrebno, poduzimaju se odgovarajući koraci da se tužitelj, svjedoci, obitelj nestale osobe i njihov odvjetnik, kao i osobe koje sudjeluju u istrazi, zaštite od zlostavljanja ili zastrašivanja kao posljedice tužbe ili predloženih dokaza.

2. Kada postoji razumna osnova za sumnju da je neka osoba žrtva prisilnog nestanka, vlasti navedene u stavku 1. ovoga članka provode istragu čak i kada nije podnesena kaznena prijava.

3. Svaka država stranka jamči da tijela iz stavka 1. ovoga članka:

(a) imaju potrebne ovlasti i sredstva za provođenje djelotvorne istrage, uključujući pristup dokumentaciji i druge podatke relevantne za istragu;

(b) imaju pristup, ukoliko je potrebno uz prethodno odobrenje sudske vlasti, koja će u navedenom slučaju žurno postupati, svim mjestima zatočenja ili bilo kojem drugom mjestu za koje postoje razumne osnove za sumnju da na njemu boravi nestala osoba.

4. Svaka država stranka poduzima mjere neophodne za sprječavanje i kažnjavanje djela koja ometaju provođenje istrage. Posebice su obvezne osigurati da osobe osumnjičene za počinjenje kaznenog djela prisilnog nestanka nisu u mogućnosti utjecati na tijek istrage pritiskom, zastrašivanjem ili represalijama prema tužitelju, svjedocima, obitelji nestale osobe ili njihovom odvjetniku, ili osobama koje sudjeluju u istrazi.

#### *Članak 13.*

1. Za potrebe izručenja između država stranaka, kazneno djelo prisilnog nestanka ne smatra se političkim kaznenim djelom ili kaznenim djelom vezanim uz političko kazneno djelo ili kaznenim djelom nadahnutim političkim motivima. Prema tome, zahtjev za izručenje utemeljen na takvom kaznenom djelu ne može biti odbijen samo na tim osnovama.

2. Kazneno djelo prisilnog nestanka smatra se jednim od kaznenih djela koja podliježu izručenju u bilo kojem ugovoru o izručenju između država stranaka prije stupanja na snagu ove Konvencije.

3. Države stranke obvezuju se uključiti kazneno djelo prisilnog nestanka među kaznena djela koja podliježu izručenju u svaki ugovor o izručenju koji će u budućnosti sklopiti.

4. Ako država stranka koja izručenje uvjetuje postojanjem ugovora primi zahtjev za izručenjem od druge države stranke s kojom nema ugovor o izručenju, može u slučaju kaznenog djela prisilnog nestanka ovu Konvenciju smatrati potrebnom pravnom osnovom za izručenje.

5. Države stranke koje izručenje ne uvjetuju postojanjem ugovora priznaju kazneno djelo prisilnog nestanka djelom koje podliježe izručenju između njih.

6. Izručenje, u svim slučajevima, podliježe uvjetima određenim zakonom tražene države stranke ili primjenjivim ugovorima o izručenju, uključujući, osobito uvjete vezane uz minimalnu kaznu za izručenje i temelje na osnovu kojih država stranka može odbiti izručenje ili ga uvjetovati određenim uvjetima.

7. Ništa navedeno u ovoj Konvenciji ne može se smatrati nametanjem obveze izručenja ukoliko tražena država stranka ima osnova smatrati da je zahtjev za izručenje upućen u svrhu progona ili kažnjavanja osobe na osnovu spola, rase, vjere, nacionalnosti, etničke pripadnosti, političkog uvjerenja ili pripadnosti određenoj društvenoj skupini, ili da bi ispunjavanje zahtjeva uzrokovalo štetu toj osobi iz bilo kojeg od navedenih razloga.

#### *Članak 14.*

1. Države stranke pružaju jedna drugoj međunarodnu pravnu pomoć u najvećoj mogućoj mjeri u vezi s kaznenim postupcima protiv kaznenih djela prisilnih nestanaka, uključujući pribavljanje svih potrebnih raspoloživih dokaza.

2. Takva međunarodna pravna pomoć podliježe uvjetima određenim zakonom tražene države stranke ili primjenjivim ugovorima o međunarodnoj pravnoj pomoći, uključujući osobito uvjete vezane uz osnove na temelju kojih država stranka može odbiti pružiti međunarodnu pravnu pomoć ili je uvjetovati određenim uvjetima.

#### *Članak 15.*

Države stranke međusobno surađuju te jedna drugoj pružaju međunarodnu pravnu pomoć u najvećoj mogućoj mjeri kako bi se pomoglo žrtvama prisilnog nestanka, u traženju, pronalaženju i oslobađanju nestalih osoba te, u slučaju smrti, ekshumaciji i identifikaciji osoba i vraćanju njihovih posmrtnih ostataka.

#### *Članak 16.*

1. Nijedna država stranka ne može protjerati, vratiti, predati ili izručiti osobu drugoj državi ukoliko postoje osnovani razlozi da će osoba biti u opasnosti od prisilnog nestanka.

2. U svrhu utvrđivanja postoje li takve osnove, nadležna tijela uzimaju u obzir sve mjerodavne okolnosti, uključujući, gdje je primjenjivo, i postojanje u državi o kojoj je riječ, dosljednog uzorka jasnog, očitog ili masovnog kršenja ljudskih prava ili ozbiljnog kršenja međunarodnog humanitarnog prava.

#### *Članak 17.*

1. Nitko ne smije biti zadržan u tajnom pritvoru.

2. Ne dovodeći u pitanje druge međunarodne obveze države stranke u pogledu oduzimanja slobode, svaka država stranka je dužna u svom zakonodavstvu:

(a) utvrditi uvjete pod kojima se može izdati zapovijed o oduzimanju slobode;

(b) navesti tijela ovlaštena zapovjediti oduzimanje slobode;

(c) jamčiti da će sve osobe kojima je oduzeta sloboda biti smještene isključivo u službeno određenim i nadziranim mjestima za oduzimanje slobode;

(d) jamčiti da svaka osoba kojoj je oduzeta sloboda ima pravo komunicirati i primati posjete svoje obitelji, odvjetnika ili bilo koje druge osobe prema svom odabiru, što podliježe ne samo uvjetima utvrđenim zakonom, ili, ukoliko je osoba stranac, komunicirati sa svojim konzularnim vlastima, u skladu s primjenjivim međunarodnim pravom;

(e) jamčiti nadležnim i zakonom ovlaštenim tijelima i ustanovama pristup mjestima gdje borave osobe kojima je oduzeta sloboda, ako je potrebno uz prethodno odobrenje sudskih vlasti;

(f) jamčiti svim osobama kojima je oduzeta sloboda ili, u slučaju sumnje na prisilni nestanak, budući da osobe kojima je oduzeta sloboda nisu u mogućnosti iskoristiti ovo pravo, da će bilo koja osoba s legitimnim interesom, poput obitelji osobe kojoj je oduzeta sloboda, njihovog zastupnika ili odvjetnika, u svim okolnostima, biti ovlaštena provesti postupak pred sudom da bi sud bez odlaganja mogao odlučiti o zakonitosti oduzimanja slobode te zapovjediti puštanje ukoliko oduzimanje slobode nije bilo zakonito.

3. Svaka država stranka osigurava sastavljanje i održavanje jednog ili više ažuriranih službenih registara i/ili evidencije osoba kojima je oduzeta sloboda, koji moraju biti žurno dostupni na zahtjev svim sudskim ili drugim nadležnim vlastima ili ustanovama ovlaštenim u tu svrhu zakonima države stranke ili bilo kojim relevantnim međunarodnim pravnim instrumentom kojega je dotična država stranka. Registar mora sadržavati barem sljedeće podatke:

(a) identitet osobe kojoj je oduzeta sloboda;

(b) datum, vrijeme i mjesto oduzimanja slobode te naziv nadležnog tijela koje je izvršilo oduzimanje slobode;

(c) ovlašteno tijelo koje je odlučilo o oduzimanju slobode te razloge oduzimanja slobode;

(d) nadležno tijelo koje nadzire oduzimanje slobode;

(e) mjesto gdje je smještena osoba po oduzimanju slobode, datum i vrijeme prijema u ustanovu, te nadležno tijelo odgovorno za mjesto na kojemu boravi osoba kojoj je oduzeta sloboda;

(f) podatke o zdravstvenom stanju osobe kojoj je oduzeta sloboda; -

(g) u slučaju smrti tijekom razdoblja oduzimanja slobode, okolnosti i uzrok smrti te odredište posmrtnih ostataka;

(h) datum i vrijeme puštanja ili premještaja u drugo mjesto pritvora, odredište i tijelo odgovorno za premještaj.

#### *Članak 18.*

1. U vezi s člancima 19. i 20. svaka država stranka jamči svim osobama koje imaju opravdan interes za dobivanje informacija, poput obitelji osobe kojoj je oduzeta sloboda, njezinog zastupnika ili odvjetnika, pristup barem sljedećim informacijama:

(a) koje nadležno tijelo je odlučilo o oduzimanju slobode;

(b) datum, vrijeme i mjesto oduzimanja sloboda i dolaska u mjesto oduzimanja slobode;

(c) koje nadležno tijelo je nadziralo oduzimanje slobode;

(d) boravište osobe kojoj je oduzeta sloboda, uključujući, u slučaju premještaja u drugo mjesto oduzimanja slobode, odredište i ovlašteno tijelo odgovorno za premještaj;

(e) datum, vrijeme i mjesto puštanja na slobodu;

(f) podatke o zdravstvenom stanju osobe kojoj je oduzeta sloboda;

(g) u slučaju smrti tijekom oduzimanja slobode, okolnosti i uzrok smrti te odredište posmrtnih ostataka;

2. Kada je to potrebno, poduzimaju se odgovarajuće mjere zaštite osoba iz stavka 1. ovoga članka, kao i osoba koje sudjeluju u istrazi, od svih oblika zlostavljanja, zastrašivanja ili kažnjavanja koji mogu biti rezultat potrage za informacijama u vezi s osobom kojoj je oduzeta sloboda.

#### *Članak 19.*

1. Osobni podaci, uključujući medicinske i genetičke podatke, koji se prikupljaju i/ili dostavljaju u okviru potrage za nestalom osobom neće biti korišteni ili dostupni u bilo koje druge svrhe osim za potrebe potrage za nestalom osobom. Navedeno ne dovodi u pitanje upotrebu takvih podataka u kaznenim postupcima vezanim uz kaznena djela prisilnog nestanka ili u postupcima ostvarivanja prava na naknadu štete.

2. Prikupljanje, obrada, uporaba i pohranjivanje osobnih podataka, uključujući medicinske i genetičke podatke, ne smije narušiti ili imati takav učinak na ljudska prava, temeljne slobode ili ljudsko dostojanstvo pojedinca.

#### *Članak 20.*

1. Pravo na informacije iz članka 18. može biti ograničeno kada osoba ima pravnu zaštitu i kada oduzimanje slobode podliježe sudskom nadzoru i to samo u iznimnim slučajevima kada je to izričito neophodno te definirano zakonom, te ako bi

prijenos informacija ugrozio privatnost ili sigurnost osobe, ometao istragu ili iz drugih sličnih razloga u skladu sa zakonom i primjenjivim međunarodnim pravom te ciljevima ove Konvencije. Ni u kojem slučaju ne smije biti ograničenja prava na informaciju iz članka 18. ukoliko predstavlja djelovanje određeno u članku 2. ili krši članak. 17. stavak 1.

2. Ne dovodeći u pitanje razmatranje zakonitosti oduzimanja slobode osobe, države stranke obvezuju se osobama iz članka 18. stavka 1. osigurati pravo na brz i učinkovit pravni lijek kao sredstvo dobivanja pravovremenih informacija iz članka 18. stavka 1. Pravo na pravni lijek ne smije se ni pod kojim uvjetima oduzeti ili ograničiti.

#### *Članak 21.*

Svaka država stranka poduzima potrebne mjere da se osobe kojima je oduzeta sloboda puste na način koji omogućuje pouzdanu provjeru jesu li doista bile puštene. Svaka država stranka poduzima potrebne mjere kojima se osiguravaju fizički integritet tih osoba i mogućnost da u potpunosti iskoriste svoja prava u vrijeme puštanja, ne dovodeći u pitanje bilo koje obveze kojima takve osobe podliježu prema nacionalnom pravu.

#### *Članak 22.*

Ne dovodeći u pitanje članak 6., svaka država stranka poduzima mjere neophodne za sprječavanje i određivanje kazni za sljedeće oblike ponašanja:

(a) u slučaju odgađanja ili ometanja pravnih lijekova navedenih u članku 17. stavku 2. točki (f) i članku 20. stavku 2.;

(b) nebilježenje oduzimanja slobode osobe ili bilježenje podataka za koje službenik odgovoran za službeni registar zna ili je trebao znati da su netočni;

(c) odbijanje pružanja informacija o oduzimanju slobode osobe ili pružanje netočnih informacija, iako su zadovoljeni pravni uvjeti za pružanje takvih informacija.

#### *Članak 23.*

1. Svaka država stranka osigurava da izobrazba osoblja za provođenje zakona, civilnog ili vojnog, medicinskog osoblja, javnih službenika i drugih osoba koje mogu biti uključene u nadzor ili obradu bilo koje osobe kojoj je oduzeta sloboda, uključuje potrebno obrazovanje i informacije u vezi s odgovarajućim odredbama ove Konvencije kako bi:

(a) spriječile sudjelovanje takvih službenika u prisilnim nestancima;

(b) naglasile važnost sprječavanja i istraživanja prisilnih nestanaka;

(c) zajamčile da se prepozna hitnost rješavanja slučajeva prisilnog nestanka.

2. Svaka država stranka osigurava da su sve zapovijedi ili upute koje propisuju, ovlašćuju ili potiču prisilne nestanke zabranjene. Svaka

država stranka obvezna je jamčiti da osoba koja odbije postupiti po takvoj zapovijedi neće biti kažnjena.

3. Svaka država stranka poduzima potrebne mjere kojima osigurava da osobe iz stavka 1. ovoga članka koje imaju razloga vjerovati da se prisilan nestanak dogodio ili se planira, o tome izvijeste nadređene osobe i, ukoliko je potrebno, nadležne službe ili tijela koji su to u mogućnosti istražiti.

#### *Članak 24.*

1. Za potrebe ove Konvencije, „žrtva“ znači nestala osoba i bilo koja osoba koja je pretrpjela štetu kao izravnu posljedicu prisilnog nestanka.

2. Svaka žrtva ima pravo znati istinu u odnosu na okolnosti prisilnog nestanka, napredak i rezultate istrage te sudbinu nestale osobe. Svaka država stranka poduzima odgovarajuće mjere u tom pogledu.

3. Svaka država stranka poduzima sve odgovarajuće mjere u svrhu traženja, pronalaženja i oslobađanja nestalih osoba te, u slučaju smrti, pronalaska i vraćanja njihovih posmrtnih ostataka.

4. Svaka država stranka osigurava u okviru svog pravnog sustava da žrtve prisilnog nestanka imaju pravo na odštetu te žurnu, poštenu i odgovarajuću naknadu štete.

5. Pravo na odštetu iz stavka 4. ovoga članka obuhvaća materijalnu i nematerijalnu štetu i, gdje je moguće primijeniti, druge oblike odštete poput:

- (a) restitucije;
- (b) rehabilitacije;
- (c) zadovoljštine, uključujući obnovu dostojanstva i dobrog ugleda;
- (d) jamstva da se isto neće ponoviti.

6. Ne dovodeći u pitanje obvezu nastavka provođenja istrage dok se ne rasvijetli sudbina nestale osobe, svaka država stranka poduzima odgovarajuće korake u odnosu na pravnu situaciju nestalih osoba čija sudbina nije razjašnjena te njihovih obitelji, u područjima kao što su socijalna, financijska i obiteljska pitanja te vlasnička prava.

7. Svaka država stranka jamči pravo slobodnog osnivanja i sudjelovanja u organizacijama i udruženjima koja pridonose utvrđivanju činjenica prisilnih nestanaka i sudbine nestalih osoba, te pomaganju žrtvama prisilnog nestanka.

#### *Članak 25.*

1. Svaka država stranka poduzima potrebne mjere za sprječavanje i kažnjavanje prema svojem kaznenom pravu:

(a) protupravno premještanje u drugu sredinu djece koja su podvrgnuta prisilnom nestanku, djece čiji su otac, majka ili staratelji podvrgnuti prisilnom



nestanku ili djece koja su rođena tijekom zatočeništva majke podvrgnute prisilnom nestanku;

(b) krivotvorenje, prikrivanje ili uništavanje dokumenata koji potvrđuju pravi identitet djece iz podstavka (a).

2. Svaka država stranka poduzima potrebne mjere radi traženja i identifikacije djece iz stavka 1. (a) ovoga članka i vraćanja djece njihovim obiteljima, u skladu s pravnim postupcima i primjenjivim međunarodnim ugovorima.

3. Države stranke obvezne su pomagati jedna drugoj u potrazi, identifikaciji i pronalaženju djece iz stavka 1. (a) ovoga članka.

4. S obzirom na potrebu zaštite najboljeg interesa djece iz stavka 1. (a) ovoga članka i njihovog prava da sačuvaju ili ponovno utvrde svoj identitet, uključujući nacionalnost, ime i obiteljske veze priznate zakonom, države stranke koje priznaju sustav posvajanja ili drugi oblik zbrinjavanja djece obvezne su pokrenuti pravni postupak kojim će se revidirati postupak posvajanja ili smještaja i, prema potrebi, poništiti svako posvajanje ili smještanje djece nastalo na osnovu prisilnog nestanka.

5. U svim slučajevima, a osobito u slučajevima na koje se odnosi ovaj članak, najbolji interes djeteta prvenstveni je cilj te stoga dijete koje je sposobno oblikovati svoje stavove, iste ima pravo i slobodno iznijeti, te će oni imati odgovarajuću težinu u skladu s dobi i zrelošću djeteta.

## **DIO II.**

### *Članak 26.*

1. Odbor za prisilne nestanke (u daljnjem tekstu „Odbor“) osniva se za obavljanje funkcija određenih ovom Konvencijom. Odbor se sastoji od deset stručnjaka visokih moralnih vrijednosti i priznate stručnosti iz područja ljudskih prava, koji dužnost obavljaju osobno, neovisno i nepristrano. Članove Odbora biraju države stranke u skladu s ravnomjernom zemljopisnom raspodjelom. Pri izboru članova Odbora uzima se u obzir korisnost osoba s relevantnim pravnim iskustvom za sudjelovanje u radu Odbora kao i ravnomjerna zastupljenost spolova.

2. Članovi Odbora biraju se tajnim glasanjem s popisa osoba koje su predložile države stranke iz redova svojih državljana na polugodišnjim sastancima država stranaka koje u tu svrhu saziva glavni tajnik Ujedinjenih naroda. Na zasjedanju je potrebna nazočnost dvije trećine država stranaka da bi postojao kvorum, a u Odbor se biraju osobe koje dobiju najveći broj glasova i apsolutnu većinu glasova prisutnih predstavnika država stranaka koji su glasali.

3. Prvi izbor održava se šest mjeseci nakon stupanja na snagu ove Konvencije. Četiri mjeseca prije svakog izbora, glavni tajnik Ujedinjenih naroda upućuje pismo državama strankama pozivajući ih da u roku od tri mjeseca predlože svoje kandidate. Glavni tajnik priprema abecedni popis svih tako predloženih osoba,

naznačivši državu stranku koja je predložila pojedinog kandidata, te ga dostavlja svim državama strankama.

4. Članovi Odbora biraju se na mandat od četiri godine te imaju pravo jednog reizbora. Mandat pet članova izabranih na prvim izborima ističe na kraju druge godine, odmah nakon prvog izbora. Imena ovih pet članova odabire ždrijebom predsjedatelj zasjedanja kao što je navedeno u stavku 2. ovoga članka.

5. Ako član Odbora umre ili da ostavku ili iz nekog drugog razloga više ne može obavljati svoje dužnosti, država stranka koja ga je predložila, u skladu s kriterijima iznesenim u stavku 1. ovoga članka, imenovat će drugog kandidata da obnaša dužnost preostali dio mandata, što mora odobriti većina država stranaka. Odobrenje se smatra dobivenim ukoliko pola ili više od pola država stranaka ne uputi negativan odgovor u roku od šest tjedana nakon što ih je glavni tajnik Ujedinjenih naroda obavijestio o predloženom imenovanju.

6. Odbor usvaja svoja vlastita pravila postupanja.

7. Glavni tajnik Ujedinjenih naroda osigurava potrebna sredstva, osoblje i opremu za djelotvorno obavljanje funkcija Odbora. Glavni tajnik Ujedinjenih naroda saziva prvo zasjedanje Odbora.

8. Članovi Odbora imaju pravo na opremu, povlastice i imunitet „stručnjaka u misiji“ za Ujedinjene narode, sukladno odredbama Konvencije o privilegijama i imunitetima Ujedinjenih naroda.

9. Svaka država stranka obvezna je surađivati s Odborom i pomagati njegovim članovima u obavljanju njihovih dužnosti, u opsegu funkcija Odbora koje su države stranke prihvatile.

#### *Članak 27.*

Konferencija država stranaka održat će se najranije četiri, a najkasnije šest godina od stupanja na snagu ove Konvencije, kako bi države stranke ocijenile rad Odbora i odlučile, u skladu s postupcima opisanima u stavku 2. članka 44., je li potrebno nadzor nad provedbom ove Konvencije povjeriti drugom tijelu – ne isključujući druge mogućnosti – u skladu s ovlastima navedenima u člancima 28. i 36.

#### *Članak 28.*

1. U okviru ovlasti koje propisuje ova Konvencija, Odbor surađuje sa svim odgovarajućim tijelima, uredima i specijaliziranim agencijama te fondovima Ujedinjenih naroda, s ugovornim tijelima utemeljenima na međunarodnim instrumentima, sudjeluje u posebnim postupcima pred Ujedinjenim narodima, te surađuje sa regionalnim međuvladinim organizacijama i tijelima, kao i svim drugim državnim ustanovama, agencijama ili uredima koji rade na zaštiti svih osoba od prisilnih nestanaka.

2. Prilikom predaje mandata, Odbor provodi konzultacije sa svim drugim ugovornim tijelima utemeljenima na osnovi odgovarajućih međunarodnih

instrumenata za ljudska prava, osobito Vijećem za ljudska prava koje je utemeljeno Međunarodnim paktom o građanskim i političkim pravima, kako bi se osigurala dosljednost njihovih primjedbi i preporuka.

*Članak 29.*

1. Svaka država stranka posredstvom glavnog tajnika Ujedinjenih naroda, Odbor izvješćuje o mjerama poduzetim u cilju ispunjavanja obveza iz ove Konvencije, u roku od dvije godine od stupanja na snagu ove Konvencije za tu državu članicu.

2. Glavni tajnik Ujedinjenih naroda ovo izvješće čini dostupnim svim državama strankama.

3. Odbor razmatra svako izvješće te prema potrebi daje svoje komentare, primjedbe ili preporuke. Komentari, primjedbe ili preporuke dostavljaju se državi stranci na koju se odnose, koja na njih može odgovoriti, bilo na vlastitu inicijativu ili na zahtjev Odbora.

4. Odbor može zatražiti i dodatne informacije od države stranke vezano uz provedbu ove Konvencije.

*Članak 30.*

1. Zahtjev da se nestala osoba potraži i pronađe mogu podnijeti Odboru po hitnom postupku srodnici nestale osobe ili njihovi pravni zastupnici, njihov odvjetnik ili bilo koja druga osoba koju su ovlastili, kao i bilo koja druga osoba koja ima opravdani interes.

2. Ako Odbor smatra da zahtjev za hitno djelovanje podnesen u skladu sa stavkom 1. ovoga članka:

- (a) nije izričito neutemeljen;
- (b) ne predstavlja zloupotrebu prava na upućivanje takvog zahtjeva;
- (c) je već bio upućen nadležnim tijelima države stranke, poput istražnih vlasti, kada ta mogućnost postoji;
- (d) nije u suprotnosti s odredbama ove Konvencije; i
- (e) isti slučaj nije predmet druge međunarodne istrage ili nagodbe iste naravi;

zatražit će državu stranku na koju se upit odnosi da Odbor obavijesti o situaciji u vezi dotične osobe u vremenskom roku koje odredi Odbor.

3. U svjetlu informacija dobivenih od države stranke u skladu sa stavkom 2. ovoga članka, Odbor može dostaviti preporuke državi stranci uključujući i zahtjev da država stranka poduzme odgovarajuće mjere, uključujući privremene mjere, za pronalazak i zaštitu osobe u skladu s ovom Konvencijom, te da obavijesti Odbor u određenom vremenskom roku o poduzetim mjerama, uzimajući u obzir

hitnost situacije. Odbor bez odgode obavješćuje osobu koja je podnijela zahtjev za hitno djelovanje o preporukama i informacijama dobivenima od države stranke.

4. Odbor nastavlja surađivati sa državom strankom dok sudbina tražene osobe ne bude riješena. Osoba koja je podnijela zahtjev iz stavka 1. ima pravo biti obaviještena o svim poduzetim radnjama.

#### *Članak 31.*

1. Država stranka može u vrijeme ili nakon ratifikacije ove Konvencije ili bilo koje drugo vrijeme izjaviti da priznaje nadležnost Odbora da prima i razmatra upite od ili u ime pojedinaca koji su u njezinoj nadležnosti, a tvrde da su žrtve kršenja odredbi ove Konvencije koje je počinila država stranka. Odbor ne prima upite u vezi s državom strankom koja nije dala takvu izjavu.

2. Odbor upit smatra neprihvatljivim u slučaju:

(a) kada je upit anonimn;

(b) kada upit predstavlja zlorabu prava na upućivanje takvog upita ili je u suprotnosti s odredbama ove Konvencije;

(c) kada je isti slučaj predmet drugog međunarodnog istražnog postupka ili nagodbe iste naravi; ili

(d) kada nisu iscrpljena sva raspoloživa pravna sredstva u okviru nacionalnog zakonodavstva. Ovo se pravilo ne primjenjuje u slučajevima kada je primjena pravnih sredstava odgođena bez razloga.

3. Ako Odbor odluči da upit udovoljava uvjetima iz stavka 2. ovoga članka, dostavlja ga državi stranci, zahtijevajući od države stranke da dostavi primjedbe i komentare u ograničenom vremenskom roku koji odredi Odbor.

4. U bilo kojem trenutku nakon primitka upita, a prije utvrđivanja prihvatljivosti upita, Odbor može državi stranci na koju se upit odnosi dostaviti hitan zahtjev da država stranka poduzme potrebne privremene mjere kako bi se izbjegla moguća nenadoknativa šteta žrtvi ili žrtvama navodnog kršenja prava. Ako Odbor iskoristi svoje diskrecijsko pravo, to ne podrazumijeva da je donio odluku o prihvatljivosti ili valjanosti upita.

5. Odbor upite razmatra na zatvorenim sjednicama, te obavješćuje podnositelja upita o odgovoru koji mu je uputila država stranka na koju se upit odnosi. Kada Odbor odluči okončati postupak, svoja stajališta je obvezan iznijeti državi stranci i podnositelju upita.

#### *Članak 32.*

Država stranka ove Konvencije može u bilo koje vrijeme izjaviti da priznaje nadležnost Odbora da prima i razmatra prigovore u smislu da jedna država stranka tvrdi da druga država stranka ne ispunjava svoje obveze prema ovoj Konvenciji.

Odbor ne prima nikakve prigovore u vezi s državom strankom koja nije dala takvu izjavu, niti prigovore od države stranke koja nije dala takvu izjavu.

#### *Članak 33.*

1. Ako Odbor primi pouzdane informacije koje ukazuju na ozbiljno kršenje ove Konvencije od strane države stranke, može, nakon konzultacija s državom strankom, uputiti jednog ili više svojih članova da posjete državu stranku i bez odgode o tome obavijeste Odbor.

2. Odbor obavješćuje odnosnu državu stranku pisanim putem o namjeri organizacije posjeta, navodeći članove izaslanstva i svrhu posjeta. Država stranka obvezna je odgovoriti Odboru u razumnom roku.

3. Na temelju potkrijepljenog zahtjeva države stranke, Odbor može odgoditi ili otkazati posjet.

4. Ako država stranka pristane na posjet, Odbor i država stranka surađivat će po pitanju definiranja modaliteta posjeta, a država stranka osigurava Odboru sva potrebna sredstva za uspješan završetak posjeta.

5. Nakon posjeta, Odbor državi stranci dostavlja svoje primjedbe i preporuke.

#### *Članak 34.*

Ako Odbor primi informacije na osnovi kojih je moguće zaključiti da se prisilni nestanci sustavno i sveobuhvatno provode na državnom području u nadležnosti države stranke, može, nakon traženja države stranke da dostavi sve bitne informacije o situaciji, predmet hitno dostaviti na uvid Općoj skupštini Ujedinjenih naroda posredstvom glavnog tajnika Ujedinjenih naroda.

#### *Članak 35.*

1. Odbor ima nadležnost isključivo u pogledu prisilnih nestanaka koji su se dogodili nakon stupanja na snagu ove Konvencije.

2. Ako država postane stranka ove Konvencije nakon njezinog stupanja na snagu, obveze te države u pogledu Odbora odnose se samo na prisilne nestanke koji su se dogodili nakon stupanja na snagu ove Konvencije za tu državu.

#### *Članak 36.*

1. Odbor podnosi godišnje izvješće o svojim aktivnostima u okviru ove Konvencije državama strankama i Općoj skupštini Ujedinjenih naroda.

2. Prije objave mišljenja o državi stranci u godišnjem izvješću, država stranka se o tome unaprijed obavješćuje te joj se određuje primjeren rok za odgovor. Država stranka može zatražiti objavljivanje svojih komentara ili primjedbi na izvješće.

**DIO III.***Članak 37.*

Ništa u ovoj Konvenciji ne utječe na bilo koje odredbe koje su više u korist zaštite svih osoba od prisilnog nestanka i koje mogu biti sadržane u:

- (a) pravu države stranke;
- (b) međunarodnom pravu na snazi za tu državu.

*Članak 38.*

1. Ova Konvencija otvorena je za potpisivanje svim državama članicama Ujedinjenih naroda.

2. Ova Konvencija podliježe ratifikaciji svih država članica Ujedinjenih naroda. Isprave o ratifikaciji polažu se kod glavnog tajnika Ujedinjenih naroda.

3. Ova Konvencija otvorena je za pristup svim državama članicama Ujedinjenih naroda. Pristup se obavlja polaganjem isprave o pristupu kod glavnog tajnika Ujedinjenih naroda.

*Članak 39.*

1. Ova Konvencija stupa na snagu tridesetoga dana nakon datuma polaganja dvadesete isprave o ratifikaciji ili pristupu kod glavnog tajnika Ujedinjenih naroda.

2. Za svaku državu koja ratificira ili pristupi ovoj Konvenciji nakon polaganja dvadesete isprave o ratifikaciji ili pristupu, ova Konvencija stupa na snagu tridesetoga dana nakon datuma polaganja isprave o ratifikaciji ili pristupu te države.

*Članak 40.*

Glavni tajnik Ujedinjenih naroda obavješćuje sve države članice Ujedinjenih naroda i sve države koje su potpisale ili su pristupile ovoj Konvenciji o sljedećem:

- (a) potpisima, ratifikacijama i pristupima prema članku 38.;
- (b) datumu stupanja na snagu ove Konvencije prema članku 39.

*Članak 41.*

Odredbe ove Konvencije primjenjuju se na sve dijelove saveznih država bez ikakvih ograničenja ili izuzetaka.

*Članak 42.*

1. Bilo koji spor između dvije ili više država stranaka u vezi s tumačenjem ili primjenom ove Konvencije koji ne može biti riješen pregovorima ili postupkom izrijetkom predviđenim u ovoj Konvenciji, na zahtjev jedne od njih podnosi se na arbitražu. Ukoliko se unutar šest mjeseci od datuma zahtjeva za arbitražu stranke nisu u mogućnosti dogovoriti o organiziranju arbitraže, bilo koja od tih stranaka spor može podnijeti Međunarodnom sudu zahtjevom u skladu sa Statutom Suda.

2. Država može, u trenutku potpisivanja ili ratifikacije ove Konvencije ili pristupa njoj, izjaviti da se ne smatra vezanom stavkom 1. ovoga članka. Druge države nisu vezane stavkom 1. ovoga članka u odnosu na bilo koju državu stranku koja je priopćila takvu izjavu.

3. Bilo koja država koja je priopćila izjavu u skladu s odredbama stavka 2. ovoga članka, može u bilo koje doba povući izjavu obaviješću upućenom glavnom tajniku Ujedinjenih naroda.

#### *Članak 43.*

Ova Konvencija ne utječe na odredbe međunarodnog humanitarnog prava, uključujući obveze visokih ugovornih strana četiriju Ženevskih konvencija od 12. kolovoza 1949. i dva Dodatna protokola uz njih od 8. lipnja 1977., ili na mogućnost dostupnu svakoj državi stranci da ovlasti Međunarodni odbor Crvenog križa da posjeti mjesta zadržavanja u situacijama koje nisu obuhvaćene međunarodnim humanitarnim pravom.

#### *Članak 44.*

1. Bilo koja država stranka ove Konvencije može predložiti izmjenu i dopunu i podnijeti je glavnom tajniku Ujedinjenih naroda. Glavni tajnik potom prosljeđuje predloženu izmjenu i dopunu državama strankama ove Konvencije sa zahtjevom da se izjasne o potrebi organiziranja konferencije država stranaka u svrhu razmatranja i glasanja o prijedlogu. Ukoliko se u roku od četiri mjeseca od datuma takvog prosljeđivanja barem jedna trećina država stranaka izjasni da smatra potrebnim organiziranje konferencije, glavni tajnik saziva konferenciju pod okriljem Ujedinjenih naroda.

2. Bilo koju izmjenu i dopunu usvojenu većinom od dvije trećine država stranaka koje su prisutne i glasuju na konferenciji, glavni tajnik Ujedinjenih naroda upućuje svim državama strankama na prihvata.

3. Izmjena i dopuna usvojena u skladu sa stavkom 1. ovoga članka stupa na snagu kada su je dvije trećine država stranaka ove Konvencije prihvatile u skladu s njihovim odgovarajućim ustavnim postupcima.

4. Kada izmjene i dopune stupe na snagu, obvezujuće su za one države stranke koje su ih prihvatile. Druge države stranke još uvijek obvezuju odredbe ove Konvencije i bilo koje ranije izmjene i dopune koje su prihvatile.

#### *Članak 45.*

1. Ova Konvencija čiji tekstovi na arapskom, kineskom, engleskom, francuskom, ruskom i španjolskom jeziku su jednako vjerodostojni, pohranjuje se kod glavnog tajnika Ujedinjenih naroda.

2. Glavni tajnik Ujedinjenih naroda dostavlja ovjerene preslike ove Konvencije svim državama navedenima u članku 38.

**INTERNATIONAL CONVENTION FOR THE PROTECTION OF  
ALL PERSONS FROM ENFORCED DISAPPEARANCE**

**Preamble**

*The States Parties to this Convention,*

*Considering* the obligation of States under the Charter of the United Nations to promote universal respect for, and observance of, human rights and fundamental freedoms,

*Having regard* to the Universal Declaration of Human Rights,

*Recalling* the International Covenant on Economic, Social and Cultural Rights, the International Covenant on Civil and Political Rights and the other relevant international instruments in the fields of human rights, humanitarian law and international criminal law,

*Also recalling* the Declaration on the Protection of All Persons from Enforced Disappearance adopted by the General Assembly of the United Nations in its resolution 47/133 of 18 December 1992,

*Aware* of the extreme seriousness of enforced disappearance, which constitutes a crime and, in certain circumstances defined in international law, a crime against humanity,

*Determined* to prevent enforced disappearances and to combat impunity for the crime of enforced disappearance,

*Considering* the right of any person not to be subjected to enforced disappearance, the right of victims to justice and to reparation,

*Affirming* the right of any victim to know the truth about the circumstances of an enforced disappearance and the fate of the disappeared person, and the right to freedom to seek, receive and impart information to this end,

*Have agreed* on the following articles:

**PART I**

*Article 1*

1. No one shall be subjected to enforced disappearance.
2. No exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency, may be invoked as a justification for enforced disappearance.

*Article 2*

For the purposes of this Convention, "enforced disappearance" is considered to be 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.

*Article 3*

Each State Party shall take appropriate measures to investigate acts defined in article 2 committed by persons or groups of persons acting without the authorization, support or acquiescence of the State and to bring those responsible to justice.

*Article 4*

Each State Party shall take the necessary measures to ensure that enforced disappearance constitutes an offence under its criminal law.

*Article 5*

The 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.

*Article 6*

1. Each State Party shall take the necessary measures to hold criminally responsible at least:

(a) Any person who commits, orders, solicits or induces the commission of, attempts to commit, is an accomplice to or participates in an enforced disappearance;

(b) A superior who:

(i) Knew, or consciously disregarded information which clearly indicated, that subordinates under his or her effective authority and control were committing or about to commit a crime of enforced disappearance;

(ii) Exercised effective responsibility for and control over activities which were concerned with the crime of enforced disappearance; and

(iii) Failed to take all necessary and reasonable measures within his or her power to prevent or repress the commission of an enforced disappearance or to submit the matter to the competent authorities for investigation and prosecution;

(c) Subparagraph (b) above is without prejudice to the higher standards of responsibility applicable under relevant international law to a military commander or to a person effectively acting as a military commander.

2. No order or instruction from any public authority, civilian, military or other, may be invoked to justify an offence of enforced disappearance.

*Article 7*

1. Each State Party shall make the offence of enforced disappearance punishable by appropriate penalties which take into account its extreme seriousness.

2. Each State Party may establish:

(a) Mitigating circumstances, in particular for persons who, having been implicated in the commission of an enforced disappearance, effectively contribute to bringing the disappeared person forward alive or make it possible to clarify cases of enforced disappearance or to identify the perpetrators of an enforced disappearance;

(b) 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.

#### *Article 8*

Without prejudice to article 5,

1. A State Party which applies a statute of limitations in respect of enforced disappearance shall take the necessary measures to ensure that the term of limitation for criminal proceedings:

(a) Is of long duration and is proportionate to the extreme seriousness of this offence;

(b) Commences from the moment when the offence of enforced disappearance ceases, taking into account its continuous nature.

2. Each State Party shall guarantee the right of victims of enforced disappearance to an effective remedy during the term of limitation.

#### *Article 9*

1. Each State Party shall take the necessary measures to establish its competence to exercise jurisdiction over the offence of enforced disappearance:

(a) When the offence is committed in any territory under its jurisdiction or on board a ship or aircraft registered in that State;

(b) When the alleged offender is one of its nationals;

(c) When the disappeared person is one of its nationals and the State Party considers it appropriate.

2. Each State Party shall likewise take such measures as may be necessary to establish its competence to exercise jurisdiction over the offence of enforced disappearance when the alleged offender is present in any territory under its jurisdiction, unless it extradites or surrenders him or her to another State in accordance with its international obligations or surrenders him or her to an international criminal tribunal whose jurisdiction it has recognized.

3. This Convention does not exclude any additional criminal jurisdiction exercised in accordance with national law.

#### *Article 10*

1. Upon being satisfied, after an examination of the information available to it, that the circumstances so warrant, any State Party in whose territory a person suspected of having committed an offence of enforced disappearance is present shall take him or her into custody or take such other legal measures as are necessary to ensure his or her presence. The custody and other legal measures shall be as provided for in the law of that State Party but may be maintained only for such time as is necessary to ensure the person's presence at criminal, surrender or extradition proceedings.

2. A State Party which has taken the measures referred to in paragraph 1 of this article shall immediately carry out a preliminary inquiry or investigations to establish the facts. It shall notify the States Parties referred to in article 9, paragraph

1, of the measures it has taken in pursuance of paragraph 1 of this article, including detention and the circumstances warranting detention, and of the findings of its preliminary inquiry or its investigations, indicating whether it intends to exercise its jurisdiction.

3. Any person in custody pursuant to paragraph 1 of this article may communicate immediately with the nearest appropriate representative of the State of which he or she is a national, or, if he or she is a stateless person, with the representative of the State where he or she usually resides.

#### *Article 11*

1. The State Party in the territory under whose jurisdiction a person alleged to have committed an offence of enforced disappearance is found shall, if it does not extradite that person or surrender him or her to another State in accordance with its international obligations or surrender him or her to an international criminal tribunal whose jurisdiction it has recognized, submit the case to its competent authorities for the purpose of prosecution.

2. These authorities shall take their decision in the same manner as in the case of any ordinary offence of a serious nature under the law of that State Party. In the cases referred to in article 9, paragraph 2, the standards of evidence required for prosecution and conviction shall in no way be less stringent than those which apply in the cases referred to in article 9, paragraph 1.

3. Any person against whom proceedings are brought in connection with an offence of enforced disappearance shall be guaranteed fair treatment at all stages of the proceedings. Any person tried for an offence of enforced disappearance shall benefit from a fair trial before a competent, independent and impartial court or tribunal established by law.

#### *Article 12*

1. Each State Party shall 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, which shall examine the allegation promptly and impartially and, where necessary, undertake without delay a thorough and impartial investigation. Appropriate steps shall be taken, where necessary, to ensure that the complainant, witnesses, relatives of the disappeared person and their defence counsel, as well as persons participating in the investigation, are protected against all ill-treatment or intimidation as a consequence of the complaint or any evidence given.

2. Where there are reasonable grounds for believing that a person has been subjected to enforced disappearance, the authorities referred to in paragraph 1 of this article shall undertake an investigation, even if there has been no formal complaint.

3. Each State Party shall ensure that the authorities referred to in paragraph 1 of this article:

(a) Have the necessary powers and resources to conduct the investigation effectively, including access to the documentation and other information relevant to their investigation;

(b) Have access, if necessary with the prior authorization of a judicial authority, which shall rule promptly on the matter, to any place of detention or any other place where there are reasonable grounds to believe that the disappeared person may be present.

4. Each State Party shall take the necessary measures to prevent and sanction acts that hinder the conduct of an investigation. It shall ensure in particular that persons suspected of having committed an offence of enforced disappearance are not in a position to influence the progress of an investigation by means of pressure or acts of intimidation or reprisal aimed at the complainant, witnesses, relatives of the disappeared person or their defence counsel, or at persons participating in the investigation.

#### *Article 13*

1. For the purposes of extradition between States Parties, the offence of enforced disappearance shall not be regarded as a political offence or as an offence connected with a political offence or as an offence inspired by political motives. Accordingly, a request for extradition based on such an offence may not be refused on these grounds alone.

2. The offence of enforced disappearance shall be deemed to be included as an extraditable offence in any extradition treaty existing between States Parties before the entry into force of this Convention.

3. States Parties undertake to include the offence of enforced disappearance as an extraditable offence in any extradition treaty subsequently to be concluded between them.

4. If a State Party which makes extradition conditional on the existence of a treaty receives 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 in respect of the offence of enforced disappearance.

5. States Parties which do not make extradition conditional on the existence of a treaty shall recognize the offence of enforced disappearance as an extraditable offence between themselves.

6. Extradition shall, in all cases, be subject to the conditions provided for by the law of the requested State Party or by applicable extradition treaties, including, in particular, conditions relating to the minimum penalty requirement for extradition and the grounds upon which the requested State Party may refuse extradition or make it subject to certain conditions.

7. Nothing in this Convention shall be interpreted as imposing an obligation to extradite if the requested State Party has substantial grounds for believing that the request has been made for the purpose of prosecuting or punishing a person on account of that person's sex, race, religion, nationality, ethnic origin, political opinions or membership of a particular social group, or that compliance with the request would cause harm to that person for any one of these reasons.

#### *Article 14*

1. States Parties shall afford one another the greatest measure of mutual legal assistance in connection with criminal proceedings brought in respect of an

offence of enforced disappearance, including the supply of all evidence at their disposal that is necessary for the proceedings.

2. Such mutual legal assistance shall be subject to the conditions provided for by the domestic law of the requested State Party or by applicable treaties on mutual legal assistance, including, in particular, the conditions in relation to the grounds upon which the requested State Party may refuse to grant mutual legal assistance or may make it subject to conditions.

#### *Article 15*

States Parties shall cooperate with each other and shall afford one another the greatest measure of mutual assistance with a view to assisting victims of enforced disappearance, and in searching for, locating and releasing disappeared persons and, in the event of death, in exhuming and identifying them and returning their remains.

#### *Article 16*

1. No State Party shall expel, return ("refouler"), surrender or extradite a person to another State where there are substantial grounds for believing that he or she would be in danger of being subjected to enforced disappearance.

2. For the purpose of determining whether there are such grounds, the competent authorities shall take into account all relevant considerations, including, where applicable, the existence in the State concerned of a consistent pattern of gross, flagrant or mass violations of human rights or of serious violations of international humanitarian law.

#### *Article 17*

1. No one shall be held in secret detention.

2. Without prejudice to other international obligations of the State Party with regard to the deprivation of liberty, each State Party shall, in its legislation:

(a) Establish the conditions under which orders of deprivation of liberty may be given;

(b) Indicate those authorities authorized to order the deprivation of liberty;

(c) Guarantee that any person deprived of liberty shall be held solely in officially recognized and supervised places of deprivation of liberty;

(d) Guarantee that any person deprived of liberty shall be authorized to communicate with and be visited by his or her family, counsel or any other person of his or her choice, subject only to the conditions established by law, or, if he or she is a foreigner, to communicate with his or her consular authorities, in accordance with applicable international law;

(e) Guarantee access by the competent and legally authorized authorities and institutions to the places where persons are deprived of liberty, if necessary with prior authorization from a judicial authority;

(f) Guarantee that any person deprived of liberty or, in the case of a suspected enforced disappearance, since the person deprived of liberty is not able to exercise this right, any persons with a legitimate interest, such as relatives of the person deprived of liberty, their representatives or their counsel, shall, in all circumstances, be entitled to take proceedings before a court, in order that the court

may decide without delay on the lawfulness of the deprivation of liberty and order the person's release if such deprivation of liberty is not lawful.

3. Each State Party shall assure the compilation and maintenance of one or more up-to-date official registers and/or records of persons deprived of liberty, which shall be made promptly available, upon request, to any judicial or other competent authority or institution authorized for that purpose by the law of the State Party concerned or any relevant international legal instrument to which the State concerned is a party. The information contained therein shall include, as a minimum:

- (a) The identity of the person deprived of liberty;
- (b) The date, time and place where the person was deprived of liberty and the identity of the authority that deprived the person of liberty;
- (c) The authority that ordered the deprivation of liberty and the grounds for the deprivation of liberty;
- (d) The authority responsible for supervising the deprivation of liberty;
- (e) The place of deprivation of liberty, the date and time of admission to the place of deprivation of liberty and the authority responsible for the place of deprivation of liberty;
- (f) Elements relating to the state of health of the person deprived of liberty;
- (g) In the event of death during the deprivation of liberty, the circumstances and cause of death and the destination of the remains;
- (h) The date and time of release or transfer to another place of detention, the destination and the authority responsible for the transfer.

#### *Article 18*

1. Subject to articles 19 and 20, each State Party shall guarantee to any person with a legitimate interest in this information, such as relatives of the person deprived of liberty, their representatives or their counsel, access to at least the following information:

- (a) The authority that ordered the deprivation of liberty;
- (b) The date, time and place where the person was deprived of liberty and admitted to the place of deprivation of liberty;
- (c) The authority responsible for supervising the deprivation of liberty;
- (d) The whereabouts of the person deprived of liberty, including, in the event of a transfer to another place of deprivation of liberty, the destination and the authority responsible for the transfer;
- (e) The date, time and place of release;
- (f) Elements relating to the state of health of the person deprived of liberty;
- (g) In the event of death during the deprivation of liberty, the circumstances and cause of death and the destination of the remains.

2. Appropriate measures shall be taken, where necessary, to protect the persons referred to in paragraph 1 of this article, as well as persons participating in

the investigation, from any ill-treatment, intimidation or sanction as a result of the search for information concerning a person deprived of liberty.

#### *Article 19*

1. 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. This is without prejudice to the use of such information in criminal proceedings relating to an offence of enforced disappearance or the exercise of the right to obtain reparation.

2. The collection, processing, use and storage of personal information, including medical and genetic data, shall not infringe or have the effect of infringing the human rights, fundamental freedoms or human dignity of an individual.

#### *Article 20*

1. Only where a person is under the protection of the law and the deprivation of liberty is subject to judicial control may the right to information referred to in article 18 be restricted, on an exceptional basis, where strictly necessary and where provided for by law, and if the transmission of the information would adversely affect the privacy or safety of the person, hinder a criminal investigation, or for other equivalent reasons in accordance with the law, and in conformity with applicable international law and with the objectives of this Convention. In no case shall there be restrictions on the right to information referred to in article 18 that could constitute conduct defined in article 2 or be in violation of article 17, paragraph 1.

2. Without prejudice to consideration of the lawfulness of the deprivation of a person's liberty, States Parties shall guarantee to the persons referred to in article 18, paragraph 1, the right to a prompt and effective judicial remedy as a means of obtaining without delay the information referred to in article 18, paragraph 1. This right to a remedy may not be suspended or restricted in any circumstances.

#### *Article 21*

Each State Party shall take the necessary measures to ensure that persons deprived of liberty are released in a manner permitting reliable verification that they have actually been released. Each State Party shall also take the necessary measures to assure the physical integrity of such persons and their ability to exercise fully their rights at the time of release, without prejudice to any obligations to which such persons may be subject under national law.

#### *Article 22*

Without prejudice to article 6, each State Party shall take the necessary measures to prevent and impose sanctions for the following conduct:

(a) Delaying or obstructing the remedies referred to in article 17, paragraph 2 (f), and article 20, paragraph 2;

(b) Failure to record the deprivation of liberty of any person, or the recording of any information which the official responsible for the official register knew or should have known to be inaccurate;

(c) Refusal to provide information on the deprivation of liberty of a person, or the provision of inaccurate information, even though the legal requirements for providing such information have been met.

#### *Article 23*

1. Each State Party shall ensure that the training of law enforcement personnel, civil or military, medical personnel, public officials and other persons who may be involved in the custody or treatment of any person deprived of liberty includes the necessary education and information regarding the relevant provisions of this Convention, in order to:

- (a) Prevent the involvement of such officials in enforced disappearances;
- (b) Emphasize the importance of prevention and investigations in relation to enforced disappearances;
- (c) Ensure that the urgent need to resolve cases of enforced disappearance is recognized.

2. Each State Party shall ensure that orders or instructions prescribing, authorizing or encouraging enforced disappearance are prohibited. Each State Party shall guarantee that a person who refuses to obey such an order will not be punished.

3. Each State Party shall take the necessary measures to ensure that the persons referred to in paragraph 1 of this article who have reason to believe that an enforced disappearance has occurred or is planned report the matter to their superiors and, where necessary, to the appropriate authorities or bodies vested with powers of review or remedy.

#### *Article 24*

1. For the purposes of this Convention, "victim" means the disappeared person and any individual who has suffered harm as the direct result of an enforced disappearance.

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

3. Each State Party shall 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.

4. Each State Party shall ensure in its legal system that the victims of enforced disappearance have the right to obtain reparation and prompt, fair and adequate compensation.

5. The right to obtain reparation referred to in paragraph 4 of this article covers material and moral damages and, where appropriate, other forms of reparation such as:

- (a) Restitution;
- (b) Rehabilitation;
- (c) Satisfaction, including restoration of dignity and reputation;
- (d) Guarantees of non-repetition.



6. Without prejudice to the obligation to continue the investigation until the fate of the disappeared person has been clarified, each State Party shall take the appropriate steps with regard to the legal situation of disappeared persons whose fate has not been clarified and that of their relatives, in fields such as social welfare, financial matters, family law and property rights.

7. Each State Party shall 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.

#### *Article 25*

1. Each State Party shall take the necessary measures to prevent and punish under its criminal law:

(a) 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;

(b) The falsification, concealment or destruction of documents attesting to the true identity of the children referred to in subparagraph ( a ) above.

2. 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.

3. States Parties shall assist one another in searching for, identifying and locating the children referred to in paragraph 1 ( a ) of this article.

4. Given the need to protect the best interests of the children referred to in paragraph 1 ( a ) of this article and their right to preserve, or to have re-established, their identity, including their nationality, name and family relations as recognized by law, States Parties which recognize a system of adoption or other form of placement of children shall have legal procedures in place to review the adoption or placement procedure, and, where appropriate, to annul any adoption or placement of children that originated in an enforced disappearance.

5. In all cases, and in particular in all matters relating to this article, the best interests of the child shall be a primary consideration, and a child who is capable of forming his or her own views shall have the right to express those views freely, the views of the child being given due weight in accordance with the age and maturity of the child.

## ***PART II***

#### *Article 26*

1. A Committee on Enforced Disappearances (hereinafter referred to as "the Committee") shall be established to carry out the functions provided for under this Convention. The Committee shall consist of ten experts of high moral character and recognized competence in the field of human rights, who shall serve in their personal capacity and be independent and impartial. The members of the Committee shall be elected by the States Parties according to equitable geographical distribution.

Due account shall be taken of the usefulness of the participation in the work of the Committee of persons having relevant legal experience and of balanced gender representation.

2. The members of the Committee shall be elected by secret ballot from a list of persons nominated by States Parties from among their nationals, at biennial meetings of the States Parties convened by the Secretary-General of the United Nations for this purpose. 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.

3. The initial election shall be held no later than six months after the date of entry into force of this Convention. Four 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 nominations within three months. The Secretary-General shall prepare a list in alphabetical order of all persons thus nominated, indicating the State Party which nominated each candidate, and shall submit this list to all States Parties.

4. The members of the Committee shall be elected for a term of four years. They shall be eligible for re-election once. 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 2 of this article.

5. If a member of the Committee dies or resigns or for any other reason can no longer perform his or her Committee duties, the State Party which nominated him or her shall, in accordance with the criteria set out in paragraph 1 of this article, appoint another candidate from among its nationals to serve out his or her term, subject to the approval of the majority of the States Parties. Such approval shall be considered to have been obtained unless half or more of the States Parties respond negatively within six weeks of having been informed by the Secretary-General of the United Nations of the proposed appointment.

6. The Committee shall establish its own rules of procedure.

7. The Secretary-General of the United Nations shall provide the Committee with the necessary means, staff and facilities for the effective performance of its functions. The Secretary-General of the United Nations shall convene the initial meeting of the Committee.

8. The members of the Committee 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.

9. Each State Party shall cooperate with the Committee and assist its members in the fulfilment of their mandate, to the extent of the Committee's functions that the State Party has accepted.

#### *Article 27*

A Conference of the States Parties will take place at the earliest four years and at the latest six years following the entry into force of this Convention to evaluate the functioning of the Committee and to decide, in accordance with the procedure

described in article 44, paragraph 2, whether it is appropriate to transfer to another body - without excluding any possibility - the monitoring of this Convention, in accordance with the functions defined in articles 28 to 36.

*Article 28*

1. In the framework of the competencies granted by this Convention, the Committee shall cooperate with all relevant organs, offices and specialized agencies and funds of the United Nations, with the treaty bodies instituted by international instruments, with the special procedures of the United Nations and with the relevant regional intergovernmental organizations or bodies, as well as with all relevant State institutions, agencies or offices working towards the protection of all persons against enforced disappearances.

2. As it discharges its mandate, the Committee shall consult other treaty bodies instituted by relevant international human rights instruments, in particular the Human Rights Committee instituted by the International Covenant on Civil and Political Rights, with a view to ensuring the consistency of their respective observations and recommendations.

*Article 29*

1. Each State Party shall submit to the Committee, through the Secretary-General of the United Nations, a report 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.

2. The Secretary-General of the United Nations shall make this report available to all States Parties.

3. Each report shall be considered by the Committee, which shall issue such comments, observations or recommendations as it may deem appropriate. The comments, observations or recommendations shall be communicated to the State Party concerned, which may respond to them, on its own initiative or at the request of the Committee.

4. The Committee may also request States Parties to provide additional information on the implementation of this Convention.

*Article 30*

1. A request that a disappeared person should be sought and found may be submitted to the Committee, as a matter of urgency, by relatives of the disappeared person or their legal representatives, their counsel or any person authorized by them, as well as by any other person having a legitimate interest.

2. If the Committee considers that a request for urgent action submitted in pursuance of paragraph 1 of this article:

(a) Is not manifestly unfounded;

(b) Does not constitute an abuse of the right of submission of such requests;

(c) Has already been duly presented to the competent bodies of the State Party concerned, such as those authorized to undertake investigations, where such a possibility exists;

(d) Is not incompatible with the provisions of this Convention; and

(e) The same matter is not being examined under another procedure of international investigation or settlement of the same nature;

it shall request the State Party concerned to provide it with information on the situation of the persons sought, within a time limit set by the Committee.

3. In the light of the information provided by the State Party concerned in accordance with paragraph 2 of this article, the Committee may transmit recommendations to the State Party, including a request that the State Party should take all the necessary measures, including interim measures, to locate and protect the person concerned in accordance with this Convention and to inform the Committee, within a specified period of time, of measures taken, taking into account the urgency of the situation. The Committee shall inform the person submitting the urgent action request of its recommendations and of the information provided to it by the State as it becomes available.

4. The Committee shall continue its efforts to work with the State Party concerned for as long as the fate of the person sought remains unresolved. The person presenting the request shall be kept informed.

#### *Article 31*

1. A State Party may at the time of ratification of this Convention or at any time afterwards 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. The Committee shall not admit any communication concerning a State Party which has not made such a declaration.

2. The Committee shall consider a communication inadmissible where:

(a) The communication is anonymous;

(b) The communication constitutes an abuse of the right of submission of such communications or is incompatible with the provisions of this Convention;

(c) The same matter is being examined under another procedure of international investigation or settlement of the same nature; or where

(d) All effective available domestic remedies have not been exhausted. This rule shall not apply where the application of the remedies is unreasonably prolonged.

3. If the Committee considers that the communication meets the requirements set out in paragraph 2 of this article, it shall transmit the communication to the State Party concerned, requesting it to provide observations and comments within a time limit set by the Committee.

4. At any time after the receipt of a communication and before a determination on the merits has been reached, the Committee may transmit to the State Party concerned for its urgent consideration a request that the State Party will take such interim measures as may be necessary to avoid possible irreparable damage to the victims of the alleged violation. Where the Committee exercises its discretion, this does not imply a determination on admissibility or on the merits of the communication.

5. The Committee shall hold closed meetings when examining communications under the present article. It shall inform the author of a

communication of the responses provided by the State Party concerned. When the Committee decides to finalize the procedure, it shall communicate its views to the State Party and to the author of the communication.

*Article 32*

A State Party to this Convention may at any time 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. The Committee shall not receive communications concerning a State Party which has not made such a declaration, nor communications from a State Party which has not made such a declaration.

*Article 33*

1. If the Committee receives reliable information indicating that a State Party is seriously violating the provisions of this Convention, it 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.

2. The Committee shall notify the State Party concerned, in writing, of its intention to organize a visit, indicating the composition of the delegation and the purpose of the visit. The State Party shall answer the Committee within a reasonable time.

3. Upon a substantiated request by the State Party, the Committee may decide to postpone or cancel its visit.

4. If the State Party agrees to the visit, the Committee and the State Party concerned shall work together to define the modalities of the visit and the State Party shall provide the Committee with all the facilities needed for the successful completion of the visit.

5. Following its visit, the Committee shall communicate to the State Party concerned its observations and recommendations.

*Article 34*

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.

*Article 35*

1. The Committee shall have competence solely in respect of enforced disappearances which commenced after the entry into force of this Convention.

2. If a State becomes a party to this Convention after its entry into force, the obligations of that State vis-à-vis the Committee shall relate only to enforced disappearances which commenced after the entry into force of this Convention for the State concerned.

*Article 36*

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. Before an observation on a State Party is published in the annual report, the State Party concerned shall be informed in advance and shall be given reasonable time to answer. This State Party may request the publication of its comments or observations in the report.

***PART III****Article 37*

Nothing in this Convention shall affect any provisions which are more conducive to the protection of all persons from enforced disappearance and which may be contained in:

- (a) The law of a State Party;
- (b) International law in force for that State.

*Article 38*

1. This Convention is open for signature by all Member States of the United Nations.

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

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

*Article 39*

1. This Convention shall enter into force on the thirtieth day after the date of deposit with the Secretary-General of the United Nations of the twentieth instrument of ratification or accession.

2. For each State ratifying or acceding to this Convention after the deposit of the twentieth instrument of ratification or accession, this Convention shall enter into force on the thirtieth day after the date of the deposit of that State's instrument of ratification or accession.

*Article 40*

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

- (a) Signatures, ratifications and accessions under article 38;
- (b) The date of entry into force of this Convention under article 39.

*Article 41*

The provisions of this Convention shall apply to all parts of federal States without any limitations or exceptions.

*Article 42*

1. Any dispute between two or more States Parties concerning the interpretation or application of this Convention which cannot be settled through negotiation or by the procedures expressly provided for in this Convention shall, at the request of one of them, be submitted to arbitration. If within six months from the date of the request for arbitration the Parties are unable to agree on the organization of the arbitration, any one of those Parties may refer the dispute to the International Court of Justice by request in conformity with the Statute of the Court.

2. A State may, at the time of signature or ratification of this Convention or accession thereto, declare that it does not consider itself bound by paragraph 1 of this article. The other States Parties shall not be bound by paragraph 1 of this article with respect to any State Party having made such a declaration.

3. Any State Party having made a declaration in accordance with the provisions of paragraph 2 of this article may at any time withdraw this declaration by notification to the Secretary-General of the United Nations.

*Article 43*

This Convention is without prejudice to the provisions of international humanitarian law, including the obligations of the High Contracting Parties to the four Geneva Conventions of 12 August 1949 and the two Additional Protocols thereto of 8 June 1977, or to the opportunity available to any State Party to authorize the International Committee of the Red Cross to visit places of detention in situations not covered by international humanitarian law.

*Article 44*

1. Any State Party to this Convention may propose an amendment and file it with the Secretary-General of the United Nations. The Secretary-General shall thereupon communicate the proposed amendment to the States Parties to this Convention with a request that they indicate whether they favour a conference of States Parties for the purpose of considering and voting upon the proposal. In the event that within four months from the date of such communication at least one third of the States Parties favour such a conference, the Secretary-General shall convene the conference under the auspices of the United Nations.

2. Any amendment adopted by a majority of two thirds of the States Parties present and voting at the conference shall be submitted by the Secretary-General of the United Nations to all the States Parties for acceptance.

3. An amendment adopted in accordance with paragraph 2 of this article shall enter into force when two thirds of the States Parties to this Convention have accepted it in accordance with their respective constitutional processes.

4. When amendments enter into force, they shall be binding on those States Parties which have accepted them, other States Parties still being bound by the provisions of this Convention and any earlier amendment which they have accepted.

*Article 45*

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 referred to in article 38.

**Članak 3.**

Prilikom polaganja isprave o ratifikaciji, Republika Hrvatska će na Konvenciju iz članka 1. ovoga Zakona priopćiti sljedeće izjave:

*Izjava  
vezana uz članak 31. stavak 1. Konvencije*

Republika Hrvatska priznaje nadležnost Odbora da prima i razmatra upite od ili u ime pojedinaca koji su u njezinoj nadležnosti, a tvrde da su žrtve kršenja odredaba ove Konvencije.

*Izjava  
vezana uz članak 32. Konvencije*

Republika Hrvatska priznaje nadležnost Odbora da prima i razmatra prigovore u smislu da jedna država članica tvrdi da druga država članica ne ispunjava svoje obveze prema ovoj Konvenciji.

**Članak 4.**

Provedba ovoga Zakona u djelokrugu je tijela državne uprave nadležnih za poslove pravosuđa i unutarnje poslove.

**Članak 5.**

Na dan stupanja na snagu ovoga Zakona, Konvencija iz članka 1. ovoga Zakona nije na snazi u odnosu na Republiku Hrvatsku, te će se podaci o njezinom stupanju na snagu objaviti naknadno, u skladu s odredbom članka 30. stavka 3. Zakona o sklapanju i izvršavanju međunarodnih ugovora („Narodne novine“, broj 28/96.).

**Članak 6.**

Ovaj Zakon stupa na snagu osmoga dana od dana objave u „Narodnim novinama“.



## OBRAZLOŽENJE

### **Uz članak 1.**

Ovim člankom utvrđuje se da Hrvatski sabor potvrđuje Međunarodnu konvenciju o zaštiti svih osoba od prisilnog nestanka sukladno odredbama članka 140. stavka 1. Ustava Republike Hrvatske („Narodne novine“, br. 85/10. – pročišćeni tekst i 5/14. – Odluka Ustavnog suda Republike Hrvatske) i članka 18. Zakona o sklapanju i izvršavanju međunarodnih ugovora („Narodne novine“, broj 28/96.).

Ovime se iskazuje formalni pristanak Republike Hrvatske da bude vezana Konvencijom, na temelju čega će ovaj pristanak biti iskazan i na međunarodnoj razini.

### **Uz članak 2.**

Članak 2. sadrži tekst Konvencije u izvorniku na engleskom jeziku i u prijevodu na hrvatski jezik.

### **Uz članak 3.**

Članak 3. sadrži izjave u skladu s člankom 31. stavkom 1. i člankom 32. Konvencije kojima Republika Hrvatska priznaje nadležnost Odbora da prima i razmatra upite od ili u ime pojedinaca koji su u njezinoj nadležnosti, a tvrde da su žrtve kršenja odredbi ove Konvencije, te da prima i razmatra prigovore u smislu da jedna država članica tvrdi da druga država članica ne ispunjava svoje obveze prema ovoj Konvenciji.

### **Uz članak 4.**

Člankom 4. utvrđuje se da je provedba ovoga Zakona u djelokrugu tijela državne uprave nadležnih za poslove pravosuđa i unutarnje poslove.

### **Uz članak 5.**

Člankom 5. utvrđuje se da na dan stupanja na snagu ovoga Zakona, Konvencija iz članka 1. ovoga Zakona nije na snazi u odnosu na Republiku Hrvatsku, te da će se podaci o njezinom stupanju na snagu objaviti naknadno, u skladu s odredbom članka 30. stavka 3. Zakona o sklapanju i izvršavanju međunarodnih ugovora („Narodne novine“, broj 28/96.).

### **Uz članak 6.**

Člankom 6. propisuje se stupanje Zakona na snagu.

**Prilog** – Preslika teksta Međunarodne konvencije u izvorniku na engleskom jeziku



**INTERNATIONAL CONVENTION FOR THE  
PROTECTION OF ALL PERSONS FROM  
ENFORCED DISAPPEARANCE**



**UNITED NATIONS  
2007**

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# INTERNATIONAL CONVENTION FOR THE PROTECTION OF ALL PERSONS FROM ENFORCED DISAPPEARANCE

## Preamble

*The States Parties to this Convention,*

*Considering* the obligation of States under the Charter of the United Nations to promote universal respect for, and observance of, human rights and fundamental freedoms,

*Having regard* to the Universal Declaration of Human Rights,

*Recalling* the International Covenant on Economic, Social and Cultural Rights, the International Covenant on Civil and Political Rights and the other relevant international instruments in the fields of human rights, humanitarian law and international criminal law,

*Also recalling* the Declaration on the Protection of All Persons from Enforced Disappearance adopted by the General Assembly of the United Nations in its resolution 47/133 of 18 December 1992,

*Aware* of the extreme seriousness of enforced disappearance, which constitutes a crime and, in certain circumstances defined in international law, a crime against humanity,

*Determined* to prevent enforced disappearances and to combat impunity for the crime of enforced disappearance,

*Considering* the right of any person not to be subjected to enforced disappearance, the right of victims to justice and to reparation,

*Affirming* the right of any victim to know the truth about the circumstances of an enforced disappearance and the fate of the disappeared person, and the right to freedom to seek, receive and impart information to this end,

*Have agreed* on the following articles:

## PART I

### Article 1

1. No one shall be subjected to enforced disappearance.

2. No exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency, may be invoked as a justification for enforced disappearance.

#### *Article 2*

For the purposes of this Convention, "enforced disappearance" is considered to be 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.

#### *Article 3*

Each State Party shall take appropriate measures to investigate acts defined in article 2 committed by persons or groups of persons acting without the authorization, support or acquiescence of the State and to bring those responsible to justice.

#### *Article 4*

Each State Party shall take the necessary measures to ensure that enforced disappearance constitutes an offence under its criminal law.

#### *Article 5*

The 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.

#### *Article 6*

1. Each State Party shall take the necessary measures to hold criminally responsible at least:

(a) Any person who commits, orders, solicits or induces the commission of, attempts to commit, is an accomplice to or participates in an enforced disappearance;

(b) A superior who:

(i) Knew, or consciously disregarded information which clearly indicated, that subordinates under his or her effective authority and

control were committing or about to commit a crime of enforced disappearance;

(ii) Exercised effective responsibility for and control over activities which were concerned with the crime of enforced disappearance; and

(iii) Failed to take all necessary and reasonable measures within his or her power to prevent or repress the commission of an enforced disappearance or to submit the matter to the competent authorities for investigation and prosecution;

(c) Subparagraph (b) above is without prejudice to the higher standards of responsibility applicable under relevant international law to a military commander or to a person effectively acting as a military commander.

2. No order or instruction from any public authority, civilian, military or other, may be invoked to justify an offence of enforced disappearance.

#### *Article 7*

1. Each State Party shall make the offence of enforced disappearance punishable by appropriate penalties which take into account its extreme seriousness.

2. Each State Party may establish:

(a) Mitigating circumstances, in particular for persons who, having been implicated in the commission of an enforced disappearance, effectively contribute to bringing the disappeared person forward alive or make it possible to clarify cases of enforced disappearance or to identify the perpetrators of an enforced disappearance;

(b) 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.

#### *Article 8*

Without prejudice to article 5,

1. A State Party which applies a statute of limitations in respect of enforced disappearance shall take the necessary measures to ensure that the term of limitation for criminal proceedings:

(a) Is of long duration and is proportionate to the extreme seriousness of this offence;

(b) Commences from the moment when the offence of enforced disappearance ceases, taking into account its continuous nature.

2. Each State Party shall guarantee the right of victims of enforced disappearance to an effective remedy during the term of limitation.

#### *Article 9*

1. Each State Party shall take the necessary measures to establish its competence to exercise jurisdiction over the offence of enforced disappearance:

(a) When the offence is committed in any territory under its jurisdiction or on board a ship or aircraft registered in that State;

(b) When the alleged offender is one of its nationals;

(c) When the disappeared person is one of its nationals and the State Party considers it appropriate.

2. Each State Party shall likewise take such measures as may be necessary to establish its competence to exercise jurisdiction over the offence of enforced disappearance when the alleged offender is present in any territory under its jurisdiction, unless it extradites or surrenders him or her to another State in accordance with its international obligations or surrenders him or her to an international criminal tribunal whose jurisdiction it has recognized.

3. This Convention does not exclude any additional criminal jurisdiction exercised in accordance with national law.

#### *Article 10*

1. Upon being satisfied, after an examination of the information available to it, that the circumstances so warrant, any State Party in whose territory a person suspected of having committed an offence of enforced disappearance is present shall take him or her into custody or take such other legal measures as are necessary to ensure his or her presence. The custody and other legal measures shall be as provided for in the law of that State Party but may be maintained only for such time as is necessary to ensure the person's presence at criminal, surrender or extradition proceedings.

2. A State Party which has taken the measures referred to in paragraph 1 of this article shall immediately carry out a preliminary inquiry or



investigations to establish the facts. It shall notify the States Parties referred to in article 9, paragraph 1, of the measures it has taken in pursuance of paragraph 1 of this article, including detention and the circumstances warranting detention, and of the findings of its preliminary inquiry or its investigations, indicating whether it intends to exercise its jurisdiction.

3. Any person in custody pursuant to paragraph 1 of this article may communicate immediately with the nearest appropriate representative of the State of which he or she is a national, or, if he or she is a stateless person, with the representative of the State where he or she usually resides.

#### *Article 11*

1. The State Party in the territory under whose jurisdiction a person alleged to have committed an offence of enforced disappearance is found shall, if it does not extradite that person or surrender him or her to another State in accordance with its international obligations or surrender him or her to an international criminal tribunal whose jurisdiction it has recognized, submit the case to its competent authorities for the purpose of prosecution.

2. These authorities shall take their decision in the same manner as in the case of any ordinary offence of a serious nature under the law of that State Party. In the cases referred to in article 9, paragraph 2, the standards of evidence required for prosecution and conviction shall in no way be less stringent than those which apply in the cases referred to in article 9, paragraph 1.

3. Any person against whom proceedings are brought in connection with an offence of enforced disappearance shall be guaranteed fair treatment at all stages of the proceedings. Any person tried for an offence of enforced disappearance shall benefit from a fair trial before a competent, independent and impartial court or tribunal established by law.

#### *Article 12*

1. Each State Party shall 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, which shall examine the allegation promptly and impartially and, where necessary, undertake without delay a thorough and impartial investigation. Appropriate steps shall be taken, where necessary, to ensure that the complainant, witnesses, relatives of the disappeared person and their defence counsel, as well as persons participating in the investigation, are protected against all ill-treatment or intimidation as a consequence of the complaint or any evidence given.

2. Where there are reasonable grounds for believing that a person has been subjected to enforced disappearance, the authorities referred to in paragraph 1 of this article shall undertake an investigation, even if there has been no formal complaint.

3. Each State Party shall ensure that the authorities referred to in paragraph 1 of this article:

(a) Have the necessary powers and resources to conduct the investigation effectively, including access to the documentation and other information relevant to their investigation;

(b) Have access, if necessary with the prior authorization of a judicial authority, which shall rule promptly on the matter, to any place of detention or any other place where there are reasonable grounds to believe that the disappeared person may be present.

4. Each State Party shall take the necessary measures to prevent and sanction acts that hinder the conduct of an investigation. It shall ensure in particular that persons suspected of having committed an offence of enforced disappearance are not in a position to influence the progress of an investigation by means of pressure or acts of intimidation or reprisal aimed at the complainant, witnesses, relatives of the disappeared person or their defence counsel, or at persons participating in the investigation.

### *Article 13*

1. For the purposes of extradition between States Parties, the offence of enforced disappearance shall not be regarded as a political offence or as an offence connected with a political offence or as an offence inspired by political motives. Accordingly, a request for extradition based on such an offence may not be refused on these grounds alone.

2. The offence of enforced disappearance shall be deemed to be included as an extraditable offence in any extradition treaty existing between States Parties before the entry into force of this Convention.

3. States Parties undertake to include the offence of enforced disappearance as an extraditable offence in any extradition treaty subsequently to be concluded between them.

4. If a State Party which makes extradition conditional on the existence of a treaty receives 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 in respect of the offence of enforced disappearance.

5. States Parties which do not make extradition conditional on the existence of a treaty shall recognize the offence of enforced disappearance as an extraditable offence between themselves.

6. Extradition shall, in all cases, be subject to the conditions provided for by the law of the requested State Party or by applicable extradition treaties, including, in particular, conditions relating to the minimum penalty requirement for extradition and the grounds upon which the requested State Party may refuse extradition or make it subject to certain conditions.

7. Nothing in this Convention shall be interpreted as imposing an obligation to extradite if the requested State Party has substantial grounds for believing that the request has been made for the purpose of prosecuting or punishing a person on account of that person's sex, race, religion, nationality, ethnic origin, political opinions or membership of a particular social group, or that compliance with the request would cause harm to that person for any one of these reasons.

#### *Article 14*

1. States Parties shall afford one another the greatest measure of mutual legal assistance in connection with criminal proceedings brought in respect of an offence of enforced disappearance, including the supply of all evidence at their disposal that is necessary for the proceedings.

2. Such mutual legal assistance shall be subject to the conditions provided for by the domestic law of the requested State Party or by applicable treaties on mutual legal assistance, including, in particular, the conditions in relation to the grounds upon which the requested State Party may refuse to grant mutual legal assistance or may make it subject to conditions.

#### *Article 15*

States Parties shall cooperate with each other and shall afford one another the greatest measure of mutual assistance with a view to assisting victims of enforced disappearance, and in searching for, locating and releasing disappeared persons and, in the event of death, in exhuming and identifying them and returning their remains.

#### *Article 16*

1. No State Party shall expel, return ("refouler"), surrender or extradite a person to another State where there are substantial grounds for believing that he or she would be in danger of being subjected to enforced disappearance.

2. For the purpose of determining whether there are such grounds, the competent authorities shall take into account all relevant considerations, including, where applicable, the existence in the State concerned of a consistent pattern of gross, flagrant or mass violations of human rights or of serious violations of international humanitarian law.

*Article 17*

1. No one shall be held in secret detention.

2. Without prejudice to other international obligations of the State Party with regard to the deprivation of liberty, each State Party shall, in its legislation:

(a) Establish the conditions under which orders of deprivation of liberty may be given;

(b) Indicate those authorities authorized to order the deprivation of liberty;

(c) Guarantee that any person deprived of liberty shall be held solely in officially recognized and supervised places of deprivation of liberty;

(d) Guarantee that any person deprived of liberty shall be authorized to communicate with and be visited by his or her family, counsel or any other person of his or her choice, subject only to the conditions established by law, or, if he or she is a foreigner, to communicate with his or her consular authorities, in accordance with applicable international law;

(e) Guarantee access by the competent and legally authorized authorities and institutions to the places where persons are deprived of liberty, if necessary with prior authorization from a judicial authority;

(f) Guarantee that any person deprived of liberty or, in the case of a suspected enforced disappearance, since the person deprived of liberty is not able to exercise this right, any persons with a legitimate interest, such as relatives of the person deprived of liberty, their representatives or their counsel, shall, in all circumstances, be entitled to take proceedings before a court, in order that the court may decide without delay on the lawfulness of the deprivation of liberty and order the person's release if such deprivation of liberty is not lawful.

3. Each State Party shall assure the compilation and maintenance of one or more up-to-date official registers and/or records of persons deprived of liberty, which shall be made promptly available, upon request, to any judicial or other competent authority or institution authorized for that purpose by the

law of the State Party concerned or any relevant international legal instrument to which the State concerned is a party. The information contained therein shall include, as a minimum:

- (a) The identity of the person deprived of liberty;
- (b) The date, time and place where the person was deprived of liberty and the identity of the authority that deprived the person of liberty;
- (c) The authority that ordered the deprivation of liberty and the grounds for the deprivation of liberty;
- (d) The authority responsible for supervising the deprivation of liberty;
- (e) The place of deprivation of liberty, the date and time of admission to the place of deprivation of liberty and the authority responsible for the place of deprivation of liberty;
- (f) Elements relating to the state of health of the person deprived of liberty;
- (g) In the event of death during the deprivation of liberty, the circumstances and cause of death and the destination of the remains;
- (h) The date and time of release or transfer to another place of detention, the destination and the authority responsible for the transfer.

#### *Article 18*

1. Subject to articles 19 and 20, each State Party shall guarantee to any person with a legitimate interest in this information, such as relatives of the person deprived of liberty, their representatives or their counsel, access to at least the following information:

- (a) The authority that ordered the deprivation of liberty;
- (b) The date, time and place where the person was deprived of liberty and admitted to the place of deprivation of liberty;
- (c) The authority responsible for supervising the deprivation of liberty;
- (d) The whereabouts of the person deprived of liberty, including, in the event of a transfer to another place of deprivation of liberty, the destination and the authority responsible for the transfer;

- (e) The date, time and place of release;
- (f) Elements relating to the state of health of the person deprived of liberty;
- (g) In the event of death during the deprivation of liberty, the circumstances and cause of death and the destination of the remains.

2. Appropriate measures shall be taken, where necessary, to protect the persons referred to in paragraph 1 of this article, as well as persons participating in the investigation, from any ill-treatment, intimidation or sanction as a result of the search for information concerning a person deprived of liberty.

#### *Article 19*

1. 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. This is without prejudice to the use of such information in criminal proceedings relating to an offence of enforced disappearance or the exercise of the right to obtain reparation.

2. The collection, processing, use and storage of personal information, including medical and genetic data, shall not infringe or have the effect of infringing the human rights, fundamental freedoms or human dignity of an individual.

#### *Article 20*

1. Only where a person is under the protection of the law and the deprivation of liberty is subject to judicial control may the right to information referred to in article 18 be restricted, on an exceptional basis, where strictly necessary and where provided for by law, and if the transmission of the information would adversely affect the privacy or safety of the person, hinder a criminal investigation, or for other equivalent reasons in accordance with the law, and in conformity with applicable international law and with the objectives of this Convention. In no case shall there be restrictions on the right to information referred to in article 18 that could constitute conduct defined in article 2 or be in violation of article 17, paragraph 1.

2. Without prejudice to consideration of the lawfulness of the deprivation of a person's liberty, States Parties shall guarantee to the persons referred to in article 18, paragraph 1, the right to a prompt and effective judicial remedy as a means of obtaining without delay the information referred

to in article 18, paragraph 1. This right to a remedy may not be suspended or restricted in any circumstances.

#### *Article 21*

Each State Party shall take the necessary measures to ensure that persons deprived of liberty are released in a manner permitting reliable verification that they have actually been released. Each State Party shall also take the necessary measures to assure the physical integrity of such persons and their ability to exercise fully their rights at the time of release, without prejudice to any obligations to which such persons may be subject under national law.

#### *Article 22*

Without prejudice to article 6, each State Party shall take the necessary measures to prevent and impose sanctions for the following conduct:

(a) Delaying or obstructing the remedies referred to in article 17, paragraph 2 (f), and article 20, paragraph 2;

(b) Failure to record the deprivation of liberty of any person, or the recording of any information which the official responsible for the official register knew or should have known to be inaccurate;

(c) Refusal to provide information on the deprivation of liberty of a person, or the provision of inaccurate information, even though the legal requirements for providing such information have been met.

#### *Article 23*

1. Each State Party shall ensure that the training of law enforcement personnel, civil or military, medical personnel, public officials and other persons who may be involved in the custody or treatment of any person deprived of liberty includes the necessary education and information regarding the relevant provisions of this Convention, in order to:

(a) Prevent the involvement of such officials in enforced disappearances;

(b) Emphasize the importance of prevention and investigations in relation to enforced disappearances;

(c) Ensure that the urgent need to resolve cases of enforced disappearance is recognized.

2. Each State Party shall ensure that orders or instructions prescribing, authorizing or encouraging enforced disappearance are prohibited. Each State Party shall guarantee that a person who refuses to obey such an order will not be punished.

3. Each State Party shall take the necessary measures to ensure that the persons referred to in paragraph 1 of this article who have reason to believe that an enforced disappearance has occurred or is planned report the matter to their superiors and, where necessary, to the appropriate authorities or bodies vested with powers of review or remedy.

#### *Article 24*

1. For the purposes of this Convention, "victim" means the disappeared person and any individual who has suffered harm as the direct result of an enforced disappearance.

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

3. Each State Party shall 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.

4. Each State Party shall ensure in its legal system that the victims of enforced disappearance have the right to obtain reparation and prompt, fair and adequate compensation.

5. The right to obtain reparation referred to in paragraph 4 of this article covers material and moral damages and, where appropriate, other forms of reparation such as:

- (a) Restitution;
- (b) Rehabilitation;
- (c) Satisfaction, including restoration of dignity and reputation;
- (d) Guarantees of non-repetition.

6. Without prejudice to the obligation to continue the investigation until the fate of the disappeared person has been clarified, each State Party shall take the appropriate steps with regard to the legal situation of disappeared



persons whose fate has not been clarified and that of their relatives, in fields such as social welfare, financial matters, family law and property rights.

7. Each State Party shall 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.

#### *Article 25*

1. Each State Party shall take the necessary measures to prevent and punish under its criminal law:

(a) 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;

(b) The falsification, concealment or destruction of documents attesting to the true identity of the children referred to in subparagraph (a) above.

2. 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.

3. States Parties shall assist one another in searching for, identifying and locating the children referred to in paragraph 1 (a) of this article.

4. Given the need to protect the best interests of the children referred to in paragraph 1 (a) of this article and their right to preserve, or to have re-established, their identity, including their nationality, name and family relations as recognized by law, States Parties which recognize a system of adoption or other form of placement of children shall have legal procedures in place to review the adoption or placement procedure, and, where appropriate, to annul any adoption or placement of children that originated in an enforced disappearance.

5. In all cases, and in particular in all matters relating to this article, the best interests of the child shall be a primary consideration, and a child who is capable of forming his or her own views shall have the right to express those views freely, the views of the child being given due weight in accordance with the age and maturity of the child.

## PART II

### Article 26

1. A Committee on Enforced Disappearances (hereinafter referred to as "the Committee") shall be established to carry out the functions provided for under this Convention. The Committee shall consist of ten experts of high moral character and recognized competence in the field of human rights, who shall serve in their personal capacity and be independent and impartial. The members of the Committee shall be elected by the States Parties according to equitable geographical distribution. Due account shall be taken of the usefulness of the participation in the work of the Committee of persons having relevant legal experience and of balanced gender representation.

2. The members of the Committee shall be elected by secret ballot from a list of persons nominated by States Parties from among their nationals, at biennial meetings of the States Parties convened by the Secretary-General of the United Nations for this purpose. 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.

3. The initial election shall be held no later than six months after the date of entry into force of this Convention. Four 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 nominations within three months. The Secretary-General shall prepare a list in alphabetical order of all persons thus nominated, indicating the State Party which nominated each candidate, and shall submit this list to all States Parties.

4. The members of the Committee shall be elected for a term of four years. They shall be eligible for re-election once. 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 2 of this article.

5. If a member of the Committee dies or resigns or for any other reason can no longer perform his or her Committee duties, the State Party which nominated him or her shall, in accordance with the criteria set out in paragraph 1 of this article, appoint another candidate from among its nationals to serve out his or her term, subject to the approval of the majority of the States Parties. Such approval shall be considered to have been obtained unless half or more of the States Parties respond negatively within six weeks of

having been informed by the Secretary-General of the United Nations of the proposed appointment.

6. The Committee shall establish its own rules of procedure.

7. The Secretary-General of the United Nations shall provide the Committee with the necessary means, staff and facilities for the effective performance of its functions. The Secretary-General of the United Nations shall convene the initial meeting of the Committee.

8. The members of the Committee 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.

9. Each State Party shall cooperate with the Committee and assist its members in the fulfilment of their mandate, to the extent of the Committee's functions that the State Party has accepted.

#### *Article 27*

A Conference of the States Parties will take place at the earliest four years and at the latest six years following the entry into force of this Convention to evaluate the functioning of the Committee and to decide, in accordance with the procedure described in article 44, paragraph 2, whether it is appropriate to transfer to another body — without excluding any possibility — the monitoring of this Convention, in accordance with the functions defined in articles 28 to 36.

#### *Article 28*

1. In the framework of the competencies granted by this Convention, the Committee shall cooperate with all relevant organs, offices and specialized agencies and funds of the United Nations, with the treaty bodies instituted by international instruments, with the special procedures of the United Nations and with the relevant regional intergovernmental organizations or bodies, as well as with all relevant State institutions, agencies or offices working towards the protection of all persons against enforced disappearances.

2. As it discharges its mandate, the Committee shall consult other treaty bodies instituted by relevant international human rights instruments, in particular the Human Rights Committee instituted by the International Covenant on Civil and Political Rights, with a view to ensuring the consistency of their respective observations and recommendations.

*Article 29*

1. Each State Party shall submit to the Committee, through the Secretary-General of the United Nations, a report 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.

2. The Secretary-General of the United Nations shall make this report available to all States Parties.

3. Each report shall be considered by the Committee, which shall issue such comments, observations or recommendations as it may deem appropriate. The comments, observations or recommendations shall be communicated to the State Party concerned, which may respond to them, on its own initiative or at the request of the Committee.

4. The Committee may also request States Parties to provide additional information on the implementation of this Convention.

*Article 30*

1. A request that a disappeared person should be sought and found may be submitted to the Committee, as a matter of urgency, by relatives of the disappeared person or their legal representatives, their counsel or any person authorized by them, as well as by any other person having a legitimate interest.

2. If the Committee considers that a request for urgent action submitted in pursuance of paragraph 1 of this article:

(a) Is not manifestly unfounded;

(b) Does not constitute an abuse of the right of submission of such requests;

(c) Has already been duly presented to the competent bodies of the State Party concerned, such as those authorized to undertake investigations, where such a possibility exists;

(d) Is not incompatible with the provisions of this Convention; and

(e) The same matter is not being examined under another procedure of international investigation or settlement of the same nature;

it shall request the State Party concerned to provide it with information on the situation of the persons sought, within a time limit set by the Committee.

3. In the light of the information provided by the State Party concerned in accordance with paragraph 2 of this article, the Committee may transmit recommendations to the State Party, including a request that the State Party should take all the necessary measures, including interim measures, to locate and protect the person concerned in accordance with this Convention and to inform the Committee, within a specified period of time, of measures taken, taking into account the urgency of the situation. The Committee shall inform the person submitting the urgent action request of its recommendations and of the information provided to it by the State as it becomes available.

4. The Committee shall continue its efforts to work with the State Party concerned for as long as the fate of the person sought remains unresolved. The person presenting the request shall be kept informed.

#### *Article 31*

1. A State Party may at the time of ratification of this Convention or at any time afterwards 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. The Committee shall not admit any communication concerning a State Party which has not made such a declaration.

2. The Committee shall consider a communication inadmissible where:

(a) The communication is anonymous;

(b) The communication constitutes an abuse of the right of submission of such communications or is incompatible with the provisions of this Convention;

(c) The same matter is being examined under another procedure of international investigation or settlement of the same nature; or where

(d) All effective available domestic remedies have not been exhausted. This rule shall not apply where the application of the remedies is unreasonably prolonged.

3. If the Committee considers that the communication meets the requirements set out in paragraph 2 of this article, it shall transmit the communication to the State Party concerned, requesting it to provide observations and comments within a time limit set by the Committee.

4. At any time after the receipt of a communication and before a determination on the merits has been reached, the Committee may transmit to the State Party concerned for its urgent consideration a request that the State Party will take such interim measures as may be necessary to avoid possible irreparable damage to the victims of the alleged violation. Where the Committee exercises its discretion, this does not imply a determination on admissibility or on the merits of the communication.

5. The Committee shall hold closed meetings when examining communications under the present article. It shall inform the author of a communication of the responses provided by the State Party concerned. When the Committee decides to finalize the procedure, it shall communicate its views to the State Party and to the author of the communication.

### *Article 32*

A State Party to this Convention may at any time 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. The Committee shall not receive communications concerning a State Party which has not made such a declaration, nor communications from a State Party which has not made such a declaration.

### *Article 33*

1. If the Committee receives reliable information indicating that a State Party is seriously violating the provisions of this Convention, it 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.

2. The Committee shall notify the State Party concerned, in writing, of its intention to organize a visit, indicating the composition of the delegation and the purpose of the visit. The State Party shall answer the Committee within a reasonable time.

3. Upon a substantiated request by the State Party, the Committee may decide to postpone or cancel its visit.

4. If the State Party agrees to the visit, the Committee and the State Party concerned shall work together to define the modalities of the visit and the State Party shall provide the Committee with all the facilities needed for the successful completion of the visit.

5. Following its visit, the Committee shall communicate to the State Party concerned its observations and recommendations.

*Article 34*

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.

*Article 35*

1. The Committee shall have competence solely in respect of enforced disappearances which commenced after the entry into force of this Convention.

2. If a State becomes a party to this Convention after its entry into force, the obligations of that State vis-à-vis the Committee shall relate only to enforced disappearances which commenced after the entry into force of this Convention for the State concerned.

*Article 36*

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. Before an observation on a State Party is published in the annual report, the State Party concerned shall be informed in advance and shall be given reasonable time to answer. This State Party may request the publication of its comments or observations in the report.

**PART III**

*Article 37*

Nothing in this Convention shall affect any provisions which are more conducive to the protection of all persons from enforced disappearance and which may be contained in:

- (a) The law of a State Party;
- (b) International law in force for that State.

*Article 38*

1. This Convention is open for signature by all Member States of the United Nations.

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

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

*Article 39*

1. This Convention shall enter into force on the thirtieth day after the date of deposit with the Secretary-General of the United Nations of the twentieth instrument of ratification or accession.

2. For each State ratifying or acceding to this Convention after the deposit of the twentieth instrument of ratification or accession, this Convention shall enter into force on the thirtieth day after the date of the deposit of that State's instrument of ratification or accession.

*Article 40*

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

- (a) Signatures, ratifications and accessions under article 38;
- (b) The date of entry into force of this Convention under article 39.

*Article 41*

The provisions of this Convention shall apply to all parts of federal States without any limitations or exceptions.

*Article 42*

1. Any dispute between two or more States Parties concerning the interpretation or application of this Convention which cannot be settled through negotiation or by the procedures expressly provided for in this Convention shall, at the request of one of them, be submitted to arbitration. If within six months from the date of the request for arbitration the Parties are



unable to agree on the organization of the arbitration, any one of those Parties may refer the dispute to the International Court of Justice by request in conformity with the Statute of the Court.

2. A State may, at the time of signature or ratification of this Convention or accession thereto, declare that it does not consider itself bound by paragraph 1 of this article. The other States Parties shall not be bound by paragraph 1 of this article with respect to any State Party having made such a declaration.

3. Any State Party having made a declaration in accordance with the provisions of paragraph 2 of this article may at any time withdraw this declaration by notification to the Secretary-General of the United Nations.

#### *Article 43*

This Convention is without prejudice to the provisions of international humanitarian law, including the obligations of the High Contracting Parties to the four Geneva Conventions of 12 August 1949 and the two Additional Protocols thereto of 8 June 1977, or to the opportunity available to any State Party to authorize the International Committee of the Red Cross to visit places of detention in situations not covered by international humanitarian law.

#### *Article 44*

1. Any State Party to this Convention may propose an amendment and file it with the Secretary-General of the United Nations. The Secretary-General shall thereupon communicate the proposed amendment to the States Parties to this Convention with a request that they indicate whether they favour a conference of States Parties for the purpose of considering and voting upon the proposal. In the event that within four months from the date of such communication at least one third of the States Parties favour such a conference, the Secretary-General shall convene the conference under the auspices of the United Nations.

2. Any amendment adopted by a majority of two thirds of the States Parties present and voting at the conference shall be submitted by the Secretary-General of the United Nations to all the States Parties for acceptance.

3. An amendment adopted in accordance with paragraph 1 of this article shall enter into force when two thirds of the States Parties to this Convention have accepted it in accordance with their respective constitutional processes.

4. When amendments enter into force, they shall be binding on those States Parties which have accepted them, other States Parties still being bound by the provisions of this Convention and any earlier amendment which they have accepted.

*Article 45*

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 referred to in article 38.

I hereby certify that the foregoing text is a true copy of the International Convention for the Protection of All Persons from Enforced Disappearance, adopted by the General Assembly of the United Nations on 20 December 2006, the original of which is deposited with the Secretary-General of the United Nations.

Je certifie que le texte qui précède est une copie conforme de la Convention internationale pour la protection de toutes les personnes contre les disparitions forcées, adoptée par l'Assemblée générale des Nations Unies le 20 décembre 2006, dont l'original se trouve déposé auprès du Secrétaire général des Nations Unies.

For the Secretary-General,  
The Legal Counsel  
(Under-Secretary-General  
for Legal Affairs)

Pour le Secrétaire général,  
Le Conseiller juridique  
(Secrétaire général adjoint  
aux affaires juridiques)



Nicolas Michel

United Nations  
New York, 18 January 2007

Organisation des Nations Unies  
New York, le 18 janvier 2007