



International Service for Human Rights

The Reports in Short

ISHR's summaries of documents for the 4th session of the Human Rights Council

Report of the Working Group on enforced or involuntary disappearances¹

Chairperson – Rapporteur

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Mandate

The Working Group on enforced or involuntary disappearances (the Working Group) was established in 1980², as a follow up to the concerns in 1978³ over enforced disappearances. This mandate was elaborated in 1992⁴, 2004⁵, and 2006⁶ to assist families in determining the fate and whereabouts of their relatives who, having disappeared, are placed outside the protection of the law. The Working Group is mandated to pay particular attention to cases that refer to ill-treatment, serious threatening or intimidation of witnesses of enforced or involuntary disappearances or relatives of disappeared persons, as well as disappearances of human rights defenders and workers. The Working Group relies on international standards such as the *Declaration on the Protection of All Persons from Enforced or Involuntary Disappearance* (the Declaration) and the *Rome Statute of the International Criminal Court*. The Working Group does not deal with situations of international armed conflict, and instead is mandated to cover violations carried out by State agents or non-State actors **acting with the State's consent**.

Activities

- The Working Group held three sessions in Geneva, the 78th (24-28 April 2006), 79th (24-28 July 2006), and 80th sessions (20 to 29 November);
- The Working Group transmitted 335 new cases of enforced disappearance to the governments of several nations, including Algeria, Bangladesh, Nepal, and the Sudan;
- 87 of these cases were treated under the urgent action procedure;
- 152 cases were clarified;
- The Working Group sent five prompt intervention communications addressing harassment of and threats to human rights defenders and relatives of disappeared persons in Algeria, Argentina, Nepal, and Thailand.
- It also sent seven general allegations to the Governments of Algeria, Colombia, Honduras, Morocco, Mexico, Nepal, Peru, the Russian Federation, Sri Lanka, and the United States of America.
- The Working Group conducted a country visit to Guatemala.

¹ Summary prepared by Alison Leon and Rami Chalabi; edited by Hannah Klein and Gareth Sweeney, Information Program, ISHR.

² Resolution 20 (XXXVI) of 29 February 1980 of the Commission on Human Rights.

³ General Assembly *Resolution 33/173* of 20 December 1978.

⁴ General Assembly *Resolution 47/133* of 18 December 1992.

⁵ Commission on Human Rights *Resolution 2004/40* of 19 April 2004.

⁶ Human Rights Council *Decision 1/102* of 30 June 2006.

Annual Report⁷

Scope

The report covers the activities of the working group between November 2005 and November 2006. It comprises the information submitted by States and other actors, as well as the group's own investigations.

Summary and key conclusions

The report gives an overview of their **methods of work**. They describe: **standard procedure**, or cases of disappearances placed before the Working Group for detailed examination; **urgent action**, or cases that occurred within the three months preceding receipt of the report by the Working Group and are transmitted directly to the Minister for Foreign Affairs of the country concerned; **clarification**, or the process by which a case is dismissed after the missing person's location has been established; the **six-month rule**, meaning if the source does not respond within six months of the date on which the reply was communicated to it, or if it contests the Government's information on grounds that are considered to be unreasonable by the Working Group, the case is considered clarified; **prompt intervention actions**, or cases in which the Working Group acts quickly in response to actions of intimidation, persecution, or reprisal against relatives of missing persons; and, **general allegations**, or the manner in which the Working Group responds to summaries of allegations presented by relatives of missing person or NGOs.

While the Working Group was initially formed to address the legacy of disappearances arising from authoritarian rule in Latin America, today **internal conflicts** are bringing other regions into concern, such as Sri Lanka, Nepal, the Philippines, and the Russian Federation. The Working Group reminds that it will **prioritise recent cases of disappearances** in order to better serve as an effective channel of communication. In response to this now **global problem**, the Working Group summarizes some concerns:

- In post-conflict situations or democratic transitions following widespread human rights violations, some disappearances remain unresolved, prompting reports that new **Governments need to do more** to clarify past cases and ensure a strong system of rule of law.
- The Working Group **expresses grave concern** over the increasing numbers of reports regarding disappearances of and acts of intimidation against human rights defenders.
- The Working Group reiterates its concern that the enactment of amnesty laws and other measures leading to **impunity** are contrary to Article 18 of the *Declaration on Enforced or Involuntary Disappearances*.
- The Working Group would like to remind States that they are **obligated under article 13 (3)** of the *Declaration* to protect against ill-treatment, intimidation, or reprisal all persons involved in the investigation of disappearances.
- The Group notes that some regions do not have **NGOs** present or who are well-funded to the degree necessary to work efficiently on disappearances.

The Working Group has participated in the meetings of the intersessional Working Group to draft a legally binding normative instrument for the protection of all persons from enforced disappearance. The Group has also prepared a submission to the General Assembly at its 61st session⁸ on the question of enforced or involuntary disappearances. This submission identified obstacles to the realization of the Declaration's provisions, as well as recommendations for overcoming them.

⁷ <http://www.ohchr.org/english/bodies/hrcouncil/docs/4session/A-HRC-4-18.doc>.

⁸ A/61/289

Key recommendations

- The Working Group urges the governments with outstanding cases who have never replied, or who have provided responses without relevant information, to **cooperate** with the Working Group to fulfill their obligations under the Declaration, the resolutions of the General Assembly, and the Commission on Human Rights.
- The Working Group strongly **urges States to allow NGOs** to undertake their work freely and without impediment, without bureaucratic or legislative obstacles.
- The Working Group calls on States to **comply with their obligations** under Articles 7, 8, and 9 of the *Declaration*, by not allowing any circumstance to justify enforced disappearances.
- The Working Group calls upon Governments to comply with their obligations under Article 10 of the *Declaration* with regard to official places of detention and the provision of accurate information.
- The Working Group calls upon Governments to comply with their obligations under Article 16, paragraph 2, whereby perpetrators will be tried by competent civil courts.
- The Working Group reminds Governments that **effective preventive measures** are crucial to combating disappearances.
- The Working Group is convinced that **preventative policies**, aiming at the root causes of conflicts such as poverty, is an effective way to facilitate the accomplishing of obligations under the *Declaration*.
- Such preventative measures should be aimed at making human rights the **cornerstone of public policy**.
- The Working Group encourages the OHCHR to strengthen the national capacities for the prevention and eradication of disappearance.
- The Working Group recommends that the international community and international NGOs support the development and strengthening of regional and national civil society institutions that deter human rights violations.

Mission to Guatemala⁹

Scope

The Working Group on enforced or involuntary disappearances visited Guatemala from 19 to 21 September 2006. The purpose of the visit was to discuss the efforts to address past disappearances in Guatemala in the light of international human rights standards. The delegation of the Working Group met with the Vice-President of the Republic, the President of the Supreme Court of Justice, the President of the Constitutional Court, the General Attorney of the Nation, the President of the Presidential Commission on Human Rights, the Vice Minister of Foreign Affairs, and many other high-ranking State officials. The Working Group also met with many non-governmental organizations and relatives of the disappeared.

Summary and key conclusions

- The Guatemalan Constitution contains a complete catalogue of human rights, but it does not make specific reference to the act of enforced disappearances. However, it does make reference to all the rights that are violated by this offence.
- Guatemala has yet to ratify the Rome Statute of the International Criminal Court, which renders enforced disappearances a crime against humanity, when committed as part of a widespread attack directed against any civilian population and with knowledge of the attack.

⁹ A/HRC/4/41/Add.1

- There is a broad gap between an advanced legal framework and expressions of political will to bring to justice cases of disappearances.
- The Working Group received a detailed report prepared by several human rights organizations, which refer to cases of attacks, acts of intimidation, threats and reprisals to several organizations and individuals. This includes five organizations working on the filing of legal actions and investigation of cases of enforced disappearances.
- The Working Group sees it as a positive sign that a Presidential decree was issued to create a Commission for the Search for Persons Disappeared during the Internal Armed Conflict.
- Although enforced disappearances are no longer a systematic practice in the policy of the democratic Government of Guatemala, the problem of the thousands of unresolved cases remains one of the most serious issues in the country.
- The Working Group recognizes the good intentions of the State actors, but it also expresses its concern at the lack of coordination in the realization of various programmes and activities between NGOs and state actors because of lack of mutual trust and consensus among them.
- It is a matter of concern to the Working Group that the definition of enforced disappearances contained in the Guatemala Criminal Code is not in line with the definition in the declaration.

Key recommendations

- The Working Group recommends that the State undertake all the necessary measures to harmonize domestic laws with international human rights instruments, especially with the *Declaration for the Protection of All Persons from Enforced Disappearances*.
- The State should provide training for justice officials, especially prosecutors and judges, in aspects of the crime of enforced disappearance under international law.
- Good cooperation and coordination between all State institutions and other non-governmental actors is crucial.
- The State should take effective measures to prevent the repetition of acts of intimidation and other forms of attacks on witnesses and on human rights defenders involved in the investigation of cases of enforced disappearances.
- The Working Group reiterates its request that the Government provide the Working Group with information on the nearly 3,000 remaining cases of disappeared persons.