

A crucial opportunity to end enforced disappearance

A new UN Convention – if ratified – will provide a powerful tool for working to prevent this violation of human rights, ensure reparations and help bring those responsible to account.

“I carry on, not ever knowing if my husband is alive or dead, if they are torturing him, or what they might be doing to him.” Elena Moreno’s husband, Mustafa Setmariam Nasar, was captured in Pakistan in 2005. He has since “disappeared”, his family have never been told where he is or who is holding him. But he has not vanished into thin air. Someone knows what has happened to him, or indeed is happening. Someone is responsible.

Amnesty International, together with the other members of the International Coalition against Enforced Disappearances, calls on all states to ratify the new UN convention.

The first recorded use of enforced disappearance on a large scale was in Nazi Germany, when a 1941 decree provided for the secret transfer from occupied territories of individuals believed to be part of resistance movements

Faustin Sosso was abducted in Kinshasa, Democratic Republic of the Congo (DRC), on 20 August 2006. The married father of two was believed to have been snatched by members of the Garde Républicaine (GR), President Joseph Kabila’s army presidential guard. Reports suggest he was bundled into a jeep and taken to Camp Tshatshi, the main base of the GR, and later transferred to the custody of military intelligence.

Faustin Sosso had worked as medical adviser to Jean- Pierre Bemba, the main rival to President Kabila in the DRC’s 2006 presidential elections.

A year later, his family still has no news about his fate.

Since then, hundreds of thousands more people have been the victims of enforced disappearance. And hundreds of thousands of family members and friends are still left without any knowledge of their fate. Enforced disappearances are happening all over the world, right now – in countries such as Algeria, Colombia, Nepal, the Russian Federation, Sri Lanka, and the former Yugoslavia – to name but a few. The USA, sometimes acting with the complicity of other governments, has carried out enforced disappearances of terror suspects. Those who commit these crimes have done so with almost complete impunity.

On 27 July 1995, Colonel Avdo Palić was taken by force by soldiers of the Bosnian Serb Army from the UN Protection Forces compound in Žepa. He was never seen again. Avdo Palić was a war-time commander of the Army of the Republic of Bosnia and Herzegovina and was negotiating civilian evacuation from the surrendered town of Žepa when he was snatched.

Following an order of the Office of the High Representative in Bosnia and Herzegovina in April 2006, the Republika Srpska submitted a report claiming to reveal the location of Avdo Palić’s body. But the Republika Srpska authorities have still failed to exhume the remains and for Avdo Palić’s family, the waiting continues.

Twelve years after the end of the war in Bosnia and Herzegovina, between 12,000 and 15,000 people are still reported missing. In total, 30,000 people went missing during the war – including men, women and children from all ethnic groups. Many of them were victims of enforced disappearance, but almost none of those responsible has been brought to justice.

Each enforced disappearance violates a swathe of human rights: the right to security and dignity of person; the right not to be subjected to torture or other cruel, inhuman or degrading treatment or punishment; the right to humane conditions of detention; the right to a legal personality; as well as rights related to fair trial and family life. Ultimately, it can violate the right to life, as victims of enforced disappearance are often killed.

The International Convention for the Protection of All Persons from Enforced Disappearance (Convention against Enforced Disappearance) was adopted by the UN General Assembly on 20 December 2006. It is the culmination of years of hard work by associations of relatives of victims, NGOs such as Amnesty International, and key governments.

The Convention against Enforced Disappearance is one of the strongest human rights treaties ever adopted by the UN. Key to this is the definition of enforced disappearance, the Convention's universal jurisdiction, its provisions for reparations and implementation.

Some of its provisions appear for the first time and introduce important new standards – such as the right to know the truth about the fate of a disappeared person. The Convention aims to prevent enforced disappearances, establish the truth when this crime occurs, punish the perpetrators and provide reparations to the victims and their families.

But the Convention alone will not stamp out enforced disappearance; to be truly effective it must be ratified by all states, and governments must enact effective legislation to implement it – in accordance with their international obligations. By joining together they can put an end to this heinous practice.

Sivasubramaniam Raveendranath, Vice-Chancellor of Eastern University, Sri Lanka, disappeared while at a conference in Colombo on 15 December 2006. Reports suggest he was abducted and it is likely that his captors were acting on behalf of the military. He has not been heard from since.

In 2006 and 2007, a number of people were reported to have been abducted and forcibly disappeared by the security forces or armed groups in areas in the north and east of Sri Lanka, as well as the capital Colombo. Such people are often taken in "for questioning" and held incommunicado. No receipts or records of their detention are made available. There are 5,749 outstanding cases of enforced disappearance in Sri Lanka being reviewed by the UN Working Group on Enforced and Involuntary Disappearances. Many cases implicate members of the security forces, others implicate armed groups including the Liberation Tigers of Tamil Eelam (LTTE) and the Karuna group.

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What is enforced disappearance?

The Convention defines enforced disappearance as “*The arrest, detention, abduction or any other form of deprivation of liberty by agents of the State or by persons or groups of persons acting with the authorization, support or acquiescence of the State, followed by a refusal to acknowledge the deprivation of liberty or by concealment of the fate or whereabouts of the disappeared person, which place such a person outside the protection of the law.*” (Article 2)

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Key aspects of the Convention

The full text can be found at www.ohchr.org/english/law/disappearance-convention.htm

- It recognizes the right of any person not to be subjected to enforced disappearance. No exceptional circumstances, not even a state of war, may be invoked as justification (Article 1);
- It recognizes that in certain circumstances enforced disappearance constitutes a crime against humanity (Article 5)
- It establishes the right of victims, who include the families of the disappeared person – to know the truth regarding the enforced disappearance and to receive reparations (Article 24);
- It requires states parties to the Convention to
 - make enforced disappearance a criminal offence under national law (Article 4), make the offence punishable by appropriate penalties (Article 7), and strictly limit any statute of limitations (Article 8);
 - hold any person involved in an enforced disappearance criminally responsible, as well as their superiors who knew or should have known what they were doing, and prohibit superior orders as a defence (Article 6);
 - submit those suspected of carrying out enforced disappearances who are found on their territory to the competent authorities, extradite them to another state, or surrender them to an international criminal court (Articles 9 and 11);
 - investigate complaints and reports of enforced disappearance, protect witnesses and others involved in the investigation against ill-treatment and intimidation, and ensure that the investigating body has the necessary powers and resources to conduct the investigation effectively (Article 12);
 - institute stringent safeguards for the protection of people deprived of their liberty (Articles 17, 18 and 21);
 - ensure all officials responsible for detainees are trained in the provisions of the Convention (Article 23);
 - search for the disappeared person and, in the event of death, locate, respect and return their remains (Article 24);
 - take measures to resolve the legal situation of those whose fate has not been clarified and of their relatives (Article 24);
 - prevent and punish the wrongful removal of children of victims of enforced disappearance, and search for, identify and where appropriate return those children to their families (Article 25).

On 14 January 1990, 60 army-backed paramilitaries entered the community of Pueblo Bello, in the Antioquia Department of Colombia, and abducted 43 people, allegedly in retaliation for the theft of a paramilitary commander's cattle. Those abducted were taken to the Las Tangas farm, in the Córdoba Department, where they were probably killed. On the way, the paramilitaries passed unchallenged through a military checkpoint; despite witness reports that screams could be heard coming from the trucks. In April 1990, 24 bodies were exhumed but only six were identified as victims of the Pueblo Bello abductions.

In 1997 some paramilitaries were sentenced to prison in connection with the killing of those six. However, no one has been brought to justice for the 37 others and their fate remains unclarified.

In January 2006, the Inter-American Court on Human Rights said that the armed forces were implicated in the case and concluded that the state was responsible.

43 people were abducted from the Pueblo Bello. The fate of 37 remains unclarified.

How will the Convention be enforced?

The Convention establishes a 10-member, independent expert Committee on Enforced Disappearances to monitor the implementation of its provisions and to take action in individual cases (Articles 26 to 36). The Committee's remit will cover only those enforced disappearances which happened after the Convention came into force.

Each state party must submit a report to the Committee on the measures it has taken to meet its Convention obligations. The Committee will then issue findings and recommendations. It has the power to visit the territory of a state party if it receives reliable reports of grave violations of the Convention.

The Convention includes other "optional" procedures to combat enforced disappearance, such as allowing individuals and states parties to complain to the Committee. These procedures are crucial – states must accept them for the Convention to have most impact.

Unique to the Convention is an urgent humanitarian procedure for the Committee to seek and find people who have disappeared.

Finally, the Committee has the unique power to bring indications of a "widespread or systematic" practice of enforced disappearance to the attention of the UN General Assembly.

YOU CAN ACT NOW

Urge your government to:

- ratify the Convention against Enforced Disappearances at the earliest opportunity and without reservations that would limit its effectiveness;
- declare that it recognizes the competence of the Committee on Enforced Disappearances to receive and consider communications from individuals and states according to Articles 31 and 32;
- enact effective implementing legislation without delay.

Letters should be addressed to the Minister of Foreign Affairs (for addresses see: www.usip.org/library/formin.html).

Visit www.amnesty.org/un to learn how else you can support the Convention against Enforced Disappearance.

Contact the International Coalition against Enforced Disappearances at d.hardy@hom.nl

Thousands of people were the victims of enforced disappearance between 1993 and 2002 in Algeria – and for many, their fate remains unknown. The anguish of their relatives continues. Salah Saker, a teacher and member of the banned Salvation Islamic Front, was arrested by the security forces in May 1994 and has not been seen since. By July 2007 the Algerian authorities had taken no steps to investigate.

Indeed, the laws on national reconciliation bar courts from investigating complaints concerning the 1993-2002 enforced disappearances. Dozens of cases brought by victims' families have not led to full investigations or prosecution. In March 2006 the UN Human Rights Committee found that the Algerian state had violated several provisions of the International Covenant on Civil and Political Rights in failing to protect the rights and life of Salah Saker. The Committee also recognized that the authorities' failure to provide his relatives with news of his fate or whereabouts amounted to ill-treatment.

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Who is Amnesty International?

Amnesty International is a global movement of 2.2 million people in more than 150 countries and territories, who campaign for human rights. Our vision is for every person to enjoy all the rights enshrined in the Universal Declaration of Human Rights and other international standards.

We research, campaign, advocate and mobilize to end abuses of human rights – civil, political, social, cultural and economic. From freedom of expression and association to physical and mental integrity, from protection from discrimination to the right to shelter – these rights are indivisible.

Amnesty International is independent of any government, political ideology, economic interest or religion. Our work is largely financed by contributions from our membership and donations.

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More information on human rights can be obtained on Amnesty International's website: www.amnesty.org

Amnesty International, International Secretariat, Peter Benenson House,

1 Easton Street, London WC1X 0DW, United Kingdom

www.amnesty.org

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