

Investigation

EXTERNAL (for general distribution)AI Index: ACT 33/28/93

Distr: SC/CC

No. of words: 8300

Amnesty International
International Secretariat
1 Easton Street
London WC1X 8DJ
United Kingdom

**"DISAPPEARANCES" AND POLITICAL KILLINGS:
HUMAN RIGHTS CRISIS OF THE 1990s**

A MANUAL FOR ACTION

@Chapter G-4

Investigation

Pre-Publication Version

October 1993

Chapter G-4

Investigation

Table of Contents

Section

1. The duty to investigate 1
 2. The impulse to investigate 2
 3. Objectives of an official investigation 3
 4. Characteristics of the investigating body 4
 5. Characteristics of the investigation 5
 6. Investigative techniques 6
 7. Autopsy 7
 8. The role of forensic anthropology 8
 9. Commissions of inquiry 10
 10. Investigations by relatives and human rights defenders 11
 11. Piecing together a pattern 13
- Notes 16

This is a pre-publication version of Chapter G-4 of the Amnesty International report *"Disappearances" and Political Killings: Human Rights Crisis of the 1990s - A Manual for Action*.

Chapter G-4

Investigation

1. The duty to investigate

"The State is obligated to investigate every situation involving a violation of the rights protected by the [American] Convention [on Human Rights]. If the State apparatus acts in such a way that the violation goes unpunished and the victim's full enjoyment of such rights is not restored as soon as possible, the State has failed to comply with its duty to ensure the free and full exercise of those rights to the persons within its jurisdiction."

- Inter-American Court of Human Rights, *Velásquez Rodríguez* judgmentⁱ

"Measures taken by Governments to open independent and impartial investigations with a view to identifying and bringing to justice those responsible for human rights violations constitute one of the main pillars of the effective protection of human rights. Consequently, a climate of impunity for human rights violators contributes to a great extent to the persistence of - and sometimes even to an increase in - human rights abuses in a number of countries. The Special Rapporteur has received many allegations concerning breaches of the obligation to investigate violations of the right to life. On repeated occasions, he has reminded the Governments concerned of this obligation..."

- UN Special Rapporteur on extrajudicial, summary or arbitrary executionsⁱⁱ

"The World Conference on Human Rights, welcoming the adoption by the General Assembly of the Declaration on the Protection of All Persons from Enforced Disappearance, calls upon all States to take effective legislative, administrative, judicial or other measures to prevent, terminate and punish acts of enforced disappearances. The World Conference on Human Rights reaffirms that it is the duty of all States, under any circumstances, to make investigations whenever there is reason to believe that an enforced disappearance has taken place on a territory under their jurisdiction and, if allegations are confirmed, to prosecute its perpetrators."

- World Conference on Human Rights, Vienna Declaration and Programme of Actionⁱⁱⁱ

Governments should ensure that all complaints and reports of "disappearances" and extrajudicial executions are investigated promptly, impartially and effectively by a body which is independent of those allegedly responsible.

- From Amnesty International's 14-Point Programs for the Prevention of "Disappearances" and Extrajudicial Executions

Investigation is one of the keys to combating "disappearances" and extrajudicial executions. Successful investigation will reveal facts that the perpetrators are trying to hide. These facts can help to save the victims if they are still alive, and to enable victims' relatives to cope with the great problems they face. These facts constitute evidence making it possible to hold those responsible for "disappearances" and

"Disappearances" and Political Killings: Human Rights Crisis of the 1990s

extrajudicial executions accountable for their actions and to bring them to justice.

When there are reports that a person has "disappeared" or been extrajudicially executed, Amnesty International calls on the authorities to conduct an investigation. The conclusion of an effective investigation, coupled with a clear public condemnation of "disappearances" and extrajudicial executions, helps to show that the authorities are determined to put a stop to these human rights violations. If there is no investigation or if an investigation is not properly done, there will be strong suspicions that the authorities are already full aware of the details of the case, that they themselves have ordered or acquiesced in a terrible crime, that they have decided to let the perpetrators get away with it and are determined that the truth should be covered up.

The obligation of governments to conduct prompt, thorough and impartial investigations into suspected "disappearances" and extrajudicial executions is established in UN human rights instruments, notably the **Declaration on the Protection of All Persons from Enforced Disappearance** ("Declaration on Disappearances", Article 13) and the **Principles on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions** ("Principles on Extra-legal, Arbitrary and Summary Executions", principles 9-17). These instruments also contain standards for how investigations should be conducted. The standards in the latter instrument are especially detailed.

The standards of investigation set forth in the UN Principles on Extra-Legal, Arbitrary and Summary Executions are supplemented by the UN **Manual on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions**.^{iv} This *Manual* has been welcomed by the UN Commission on Human Rights,^v and it is used by the UN Special Rapporteur on extrajudicial, summary or arbitrary executions as a standard for assessing governmental investigations. It is an invaluable tool for the investigation of extrajudicial executions in different countries. Many of the measures recommended in this chapter are adapted from the UN *Manual* and the *Model Protocol for a Legal Investigation of Extra-legal, Arbitrary and Summary Executions* ("**Minnesota Protocol**") contained in it.^{vi}

In many countries, valuable investigative work has been done by victims' relatives, local human rights organizations, lawyers, journalists and other private people, often working against severe obstacles and at great personal risk. "Unofficial" investigations such as these have brought key facts to light, setting in motion official investigations, and providing a basis for action. These unofficial investigations are discussed towards the end of the chapter.

Even when official investigation are held, the standards laid out in this chapter are unfortunately often not met. Wishing to avoid accountability for their crimes, those responsible for "disappearances" and extrajudicial executions will block investigations by means of techniques ranging from legal restrictions on the investigative process to non-cooperation, harassment, intimidation, death threats, and further "disappearances" and killings. The authorities responsible for ordering an investigation may have no interest in seeing that the investigation reaches a satisfactory conclusion, or they may be under pressure from the security forces and other powerful interests not to allow it to do so.

In the face of these obstacles, internationally recognized standards of investigation assume importance as a yard-stick of governmental behaviour. The wilful failure to meet these standards adds to the evidence of official acquiescence in the crimes.

As the UN *Manual* (page 14) states, "Non-compliance with the standards [for death investigations] can be publicized and pressure brought against non-complying Governments, especially where extra-legal, arbitrary and summary executions are believed to have occurred. If a Government refuses to establish

Investigation

impartial inquest procedures in such cases, it might be inferred that the Government is hiding such executions." The same inference can be drawn from a failure to investigate "disappearances".

2. The impulse to investigate

Governments should ensure that an investigation is started whenever there is either an official complaint or some other reliable report that a "disappearance" or an extrajudicial execution has been perpetrated. Deaths in custody and deaths at the hands of the security forces should be automatically investigated.

- A relative or any other person who has reason to believe that a "disappearance" or an extrajudicial execution has been committed should have the right to submit a complaint to an official body so that it can be investigated.^{vii}
- In order to avail themselves of this right, relatives and others affected need to know how and where to submit complaints and must be able to do so without fear of reprisals.^{viii} The authorities should not impose onerous conditions or procedures on victims' representatives who seek to make complaints.
- Even if no formal complaint has been made, an official investigation should be started if there are reports of a possible "disappearance" or extrajudicial execution.^{ix} These can include reports in the news media and reports from domestic or international human rights organizations. The obligation should always be on the government to show that it needs no prompting to investigate even informal allegations that members of its security services are responsible for "disappearances" or extrajudicial executions.
- All deaths in custody should be investigated, as should all cases where the authorities fail to account for the fate and whereabouts of a person reported to be in custody.^x
- There should be a system whereby all deaths resulting from the use of force or firearms by law enforcement officials are reported to the judicial and administrative authorities responsible for review and control of the services involved, in accordance with the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials (principle 22). An investigation should be initiated whenever there is reason to believe such deaths may have resulted from excessive use of force or may otherwise have been unlawful.
- An investigation should similarly be initiated on the basis of reports of deaths caused by members of the armed forces whenever there is reason to believe such deaths were unlawful.

The obligation to initiate official investigations is established in UN human rights instruments, as noted in the first section of this chapter. This obligation should be set forth in national laws and regulations.

3. Objectives of an official investigation

The main objective of an official investigation is to establish the facts:

- Has a "disappearance" or an extrajudicial execution been perpetrated? If so, by whom?
- If a public official has committed a crime or breach of regulations, was he or she acting under orders or

"Disappearances" and Political Killings: Human Rights Crisis of the 1990s
with the acquiescence of other officials?

An investigation of a suspected "**disappearance**" should, in particular,

- determine the whereabouts and fate of the supposed victim, establishing what happened to him or her from the moment of arrest. Such an investigation should have the power to take the necessary measures to protect the victim's life and safety.

An investigation of a possible **extrajudicial execution** should:

- identify the victim;
- determine the cause, manner, and time of death and the identity of the person or persons responsible. (Determining the cause and manner of death involves establishing what brought about death; whether the death was natural, accidental or deliberate; if the latter, whether it was a suicide or a homicide and, if a homicide, whether or not it was in self-defence.)

An investigation which may lead to **prosecution** should collect evidence of any crimes or breaches of regulations, including unlawful arrest or detention, torture or ill-treatment, and unlawful killing. The investigation should recover and preserve any evidentiary material, identify witnesses, and obtain statements from them. Those allegedly responsible for "disappearances" and extrajudicial executions should be identified, arrested, and brought before a competent court.

4. Characteristics of the investigating body

The body carrying out an official investigation into possible "disappearances" or extrajudicial executions should have several characteristics.

- It should be **independent** of those allegedly responsible.
- It should have the necessary **powers** and **resources**.^{xi}
- Those carrying out the investigation and their staff should be **professionally competent** for the required tasks.
- They should be **protected** against intimidation and reprisals.^{xii}

Often investigations are ineffective because the investigating body lacks these characteristics. Its members may not be independent. They may lack the power to subpoena evidence or to compel witnesses to testify. They may be bound by procedural constraints which prevent rapid or effective action. They may be denied access to government installations and official records. They may be subjected to murder, threats or other forms of pressure.

The need for **independence** applies both to the individual investigators and to the investigating body as a whole. This body should be separate from any agency suspected of responsibility for the actions under investigation. Its members and staff should not be associated with any person, governmental entity or political party potentially implicated in the matter.

Investigation

The investigating body should have the **power** to:

- respond immediately to complaints and reports of "disappearances" and extrajudicial executions;
- conduct on-site investigative visits, including the power to enter and search any place believed to be connected to "disappearances" or extrajudicial executions, and conduct interviews in private;
- obtain and compel the production of all necessary physical evidence, including government records and medical records;^{xiii}
- compel the attendance and cooperation of witnesses, and ensure their protection;
- receive evidence from witnesses unable to attend in person, including witnesses located outside the country.

The investigating body should have the **resources** needed to carry out its tasks, such as laboratory facilities, clerical equipment such as typewriters and computers, and resources to travel and to hold hearings. It should be able to use the services of legal counsel and experts in such fields as ballistics, pathology and forensic science, including, where necessary, experts from other countries. It should have adequate investigative, administrative and clerical staff.

5. Characteristics of the investigation

The investigation itself should have several characteristics.^{xiv}

- It should be **impartial**, not weighted in favour of the security services.
- It should be **effective**, obtaining and considering all relevant evidence and reaching conclusions that are as firm as the evidence permits.
- It should be **prompt**. Promptness is necessary to save the victims if possible, and to receive evidence quickly. Undue delays will give rise to fears that the investigation is being blocked or evidence destroyed.
- The **methods** of investigation should be made public in advance and described in the report of the investigation.
- Advance notices should be widely publicized inviting **members of the public** with relevant evidence to submit it to the investigation. Relatives of the victim and anyone else who has relevant information should have an opportunity to present it.
- Relatives should have access to all information relevant to the investigation.^{xv}
- Anyone called to give testimony should at the outset be informed of the subject and purpose of the inquiry and of their right to legal counsel and other legal rights.
- There should be an opportunity for the effective questioning of witnesses.

"Disappearances" and Political Killings: Human Rights Crisis of the 1990s

- Complainants, witnesses, lawyers and others involved in the investigation should be **protected** from intimidation and reprisals. Where there is a risk of intimidation or reprisals, the means for protecting witnesses should be publicly announced in advance. Where necessary, these may include such measures as keeping the identity of witnesses confidential and using only such evidence as will not present a risk of identifying the witness. Any ill-treatment, intimidation, reprisal or other interference with the investigation should be appropriately punished.^{xvi}
- Officials suspected of responsibility for the alleged "disappearance" or extrajudicial execution should be **suspended** from active duty during the investigation, as a precaution against the possibility of their perpetrating further such acts and to ensure the integrity of the investigation. They should be removed from any position of control or power over relatives, witnesses and others involved in the investigation while the investigation is in progress. These measures should be without prejudice to the outcome of the investigation, to the careers of the officers concerned or to any eventual judgment regarding their suspected involvement.^{xvii}
- The report of the investigation, or at least the findings and recommendations, should be **made public** as soon as the investigation is completed. It should state the evidence on which the findings and recommendations are based.^{xviii}
- Once the report has been submitted, the government should respond promptly, stating publicly what steps will be taken as a result.^{xix} The findings should be **acted on**.
- An investigation into a suspected "disappearance" should **not be cut short** until the fate of the victim is officially clarified.^{xx} If the victim has been killed, the killing should in turn be investigated and those responsible should be brought to justice.

6. Investigative techniques

Many techniques are needed in investigating "disappearances" and extrajudicial executions. Thus, an investigation into a reported "**disappearance**" should:

- examine arrest records and records of detention in centres where the presumed victim may have been held;
- collect and examine evidence from eyewitnesses and others, as well as material evidence on such matters as the vehicles or equipment used in the arrest;
- interview officials involved in arrest and detention who may have had contact with the victim or other knowledge of what happened;
- if there are fears that the victim has been killed, attempt to establish his or her fate by searching for places where the body may have been disposed of, and by matching physical details of the prisoner against information on unidentified bodies.

An investigation into a death in custody, a suspicious death at the hands of a public official, or other possible **extrajudicial execution** should include:

- detailed expert examination of the scene of death;

Investigation

- collection and examination of material evidence;
- ballistic examination of ammunition and firearms which may have been used in the killing;
- autopsy of the body of the person killed;
- interviews with witnesses and others having knowledge of the death or the surrounding circumstances;
- examination of any order or authorization for the use of force resulting in a killing.

7. Autopsy

An autopsy is a key technique in the investigation of possible extrajudicial executions. An autopsy can help to establish the identity of the victim. In conjunction with examination of the presumed scene of death, it can help to determine the time, place, cause and manner of death. If the victim was unlawfully killed, the evidence obtained through autopsy can help in bringing the killers to justice.

The UN Principles on Extra-Legal, Arbitrary and Summary Executions have established that in all suspected cases of extrajudicial executions, "(t)he body of the deceased person shall not be disposed of until an adequate autopsy is conducted by a physician ..." (principle 12).

An official autopsy in cases of possible extrajudicial executions should have several characteristics.^{xxi}

- The person conducting the autopsy should, if possible, be an expert in forensic pathology. He or she should be professionally competent, impartial, and independent of those allegedly responsible for the death.
- The person conducting the autopsy should have the necessary facilities and resources. He or she should have access to all investigative data, to the place where the body was discovered and to the place where death is thought to have occurred. The body should be available to those conducting the autopsy for enough time to enable a thorough investigation to be carried out.
- The autopsy report should describe all injuries, including any evidence of torture. A copy of the report should be made available immediately to the victim's relatives or their legal representative.
- Relatives of the victim should be entitled to appoint their own doctor to carry out or be present at an autopsy.
- The body should be returned to the deceased person's family or relatives when the autopsy has been completed.

A **Model Autopsy Protocol** is included in the UN *Manual on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions*. The protocol covers such matters as the investigation of the scene of death, external and internal examination of the body, X-ray examination, photography, and storage of material evidence, as well as specialized analyses which should be carried out, such as tests for poisonous substances and histological studies of tissues. It can be used by forensic pathologists and other doctors in conducting autopsies, by governments in establishing proper autopsy procedures, and by non-

"Disappearances" and Political Killings: Human Rights Crisis of the 1990s

specialists as a standard for evaluating the thoroughness of official autopsies. As stated in the introduction to the protocol, its use "will permit early and final resolution of potentially controversial cases and will thwart the speculation and innuendo that are fuelled by unanswered, partially answered or poorly answered questions in the investigation of an apparently suspicious death."

In 1993 the UN Commission on Human Rights decided to invite states "to take measures to introduce into their rules and practices" the international standards set forth in the Model Autopsy Protocol.^{xxii}

8. The role of forensic anthropology

Relatives and friends often spend years searching for the "disappeared". Sometimes their inquiries lead them to suspect that the victim has been killed and buried in a certain place. Sometimes secret burials come to light: bodies are found, but there is no record of their identity. By scientifically examining unidentified human remains and comparing them with information on prisoners who have "disappeared", forensic anthropology can help to establish the identity of the dead and thence the fate of the "disappeared".

Forensic anthropology is the study of medico-legal questions relating to a deceased person through the examination of his or her skeletal remains, aiming among other things at determining the person's identity and the manner and cause of death. The application of this technique of criminal investigation in a human rights context is one of the most important developments of the past decade in clarifying the fate of the "disappeared". It is valuable also in the investigation of extrajudicial executions.

Forensic anthropology was first used systematically in the investigation of "disappearances" in Argentina, where unidentified human remains were being found in mass graves. Early initiatives by Argentinian investigators in 1983 had resulted in the virtual destruction of evidence from opened graves due to lack of investigational skills of those carrying out the exhumations. In June 1984 forensic specialists from the American Association for the Advancement of Science held seminars in several Argentinian cities, and one of their members, Dr Clyde C. Snow, supervised on-site investigations and training of local professionals. As a result of their work with Dr Snow, a number of young doctors, anthropologists and students formed the *Equipo Argentino de Antropología Forense* (EAAF), Argentine Forensic Anthropology Team, in 1984.^{xxiii}

Since its formation the EAAF has scientifically recovered and analyzed more than 500 bodies of victims from both single and mass graves in Argentina, of whom at least 150 have been identified beyond reasonable doubt. The team has also helped to train investigators in Brazil, Chile, El Salvador, Venezuela and the Philippines, and its members have taken part in investigations in Uruguay, Colombia, Panama, Guatemala, Iraqi Kurdistan, Romania, Ethiopia and the former Yugoslavia.^{xxiv} The investigations have proved useful not only for the purpose of providing evidence for the courts, on the basis of which many of those responsible have been charged with murder in several countries, but also for the relatives of the victims, who were thus finally able to know the fate of their loved ones.

A 1993 UN report described three tasks performed by forensic scientists in investigating human remains in unmarked graves and other places:

"First, they conduct interviews and review documents to ascertain the location of the burial sites and the victims whose remains were probably buried in those sites. Scientists interview the people who live in the locality, sometimes grave-diggers who have been hired to bury the bodies, or civilians who may have

Investigation

heard rumours that a certain area is used as a burial site or who can provide information on other details leading to the identification of the victims. They also review documents, sometimes official records, which indicate where the bodies of certain individuals may have been interred..."

"Second, they conduct the exhumation in the appropriate scientific manner in order to be able to obtain the optimal amount of information. Because information from both the remains themselves and from the spatial features of the graves is useful, it is crucial that both be preserved and documented carefully. Hence, archaeological techniques much like those used in excavating prehistoric sites are used. The graves are marked so that the exact coordinates of where each item is uncovered can be identified. The soil and dirt are removed in such a manner as to ensure that no piece of evidence, however minute (e.g., teeth, bullets, etc.), will be missed. More important, the remains are exhumed with the care and deliberation that will ensure the least amount of damage and alteration to the surface and placement of the remains. Failure to employ the proper method of exhumation can lead to the destruction of the evidence..."

"Third, they examine the remains to determine the cause and manner of death, and attempt to establish the identity of the victim. Forensic experts analyze the skeletal remains to determine the physical characteristics of the victim, together with the cause, manner, time and place of death with a view to ascertaining the victim's identity. In doing so, they use techniques in pathology, odontology, radiology, etc. For instance, teeth and skeletal X-rays are taken to identify the victim. Also, anthropological studies may be undertaken to determine the skeleton's age at death, sex, race, stature and handedness. The results are then compared to the antemortem characteristics of the deceased. Forensic anthropologists can also distinguish various types of trauma to the bone which help determine the manner and cause of death."^{xxv}

The experience accumulated by forensic investigators since 1984 has yielded many lessons, including the following:

- When a grave containing the remains of unknown people is discovered, everything should be left in place and protected from disturbance until it can be excavated using sound archaeological techniques. Excavation by untrained people can destroy evidence which, once lost, can never be recovered.
- Careful records of investigations should be kept. The remains should be photographed and their location recorded before they are removed for laboratory examination.
- The identity of the person is established by comparing the remains with information supplied by relatives, including medical and dental records. For example, if the person had a deformity or an old injury, this will often be evident in the skeletal remains. Items such as clothing or jewelry found in the grave can also help to establish the victim's identity.
- Investigators may need to deal with a host of practical problems, including securing the cooperation of local authorities; overcoming official hostility and obstruction; and finding the necessary equipment, personnel and laboratory facilities. Sometimes the personal security of the investigators must be protected.
- Special care and sympathy are needed for dealing with victims' relatives, whose experience is acutely painful.^{xxvi} The investigators may need to arrange for appropriate counselling and - on occasion - psychiatric care. They will need to establish an ethically acceptable basis for their work in relation to the relatives' wishes. (As a matter of principle, the EAAF does not investigate the fate of a "disappeared" person if this is opposed by the victim's relatives.)

"Disappearances" and Political Killings: Human Rights Crisis of the 1990s

The UN has recently taken steps to facilitate international cooperation in the forensic investigation of human rights violations. In 1992 the UN Commission on Human Rights decided "that it would be desirable to create, under United Nations auspices, a standing team of forensic experts and experts in other relevant disciplines, to be enrolled on a voluntary basis worldwide, who could be requested by the Governments concerned, through the Secretary-General, to assist, on the basis of professional objectivity and in a humanitarian spirit, in the exhumation and identification of probable victims of human rights violations or in the training of local teams for the same purpose".^{xxvii} In 1993 the Commission decided to ask the UN Secretary-General to compile a list of forensic experts who could be asked to give their services.^{xxviii} However, there had been little progress in establishing such a team or list at the time of writing of this report.

A useful description of procedures for forensic anthropological investigation may be found in the Model Protocol for Disinterment and Analysis of Skeletal Remains, contained in the UN *Manual on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions*.

9. Commissions of inquiry and national human rights commissions

Amnesty International often recommends that a government should establish a **commission of inquiry** into human rights violations. Commissions of inquiry should be established when normal procedures for official investigations are not working effectively, or where there is a pattern of human rights violations which is not being tackled effectively on a case-by-case basis.

A commission of inquiry should have all the attributes, powers and resources of an official investigation as described above, but its scope should be broader. Its mandate should include:

- investigating patterns of alleged "disappearances" and extrajudicial executions as well as individual cases;
- making recommendations for the criminal prosecution of those responsible;
- considering the institutional changes needed to prevent further "disappearances" and unlawful killings, including legal changes, changes in administrative practice and procedures, recruitment, training and accountability of personnel;
- considering means of providing adequate compensation and redress to victims and their families.

The mandate should be formulated in such a way that it does not prevent the commission from examining other matters which appear during the inquiry to be material to the issues under investigation.

The work of a commission of inquiry should be publicized so that its findings will have a positive impact.

The need to set up commissions of inquiry into suspected extrajudicial executions in cases where established investigative procedures are inadequate is set forth in the UN Principles on Extra-Legal, Arbitrary and Summary Executions (principle 11). Detailed standards for commissions of inquiry are contained in the Minnesota Protocol, cited above.

In recent years a number of governments have established national **human rights commissions**. Such commissions often have investigative powers, but their role is usually broader than that of a commission

Investigation

of inquiry. They may, for example, be charged with reporting on human rights generally and advising the government on human rights matters.

Amnesty International has prepared a series of standards for the establishment and functioning of national human rights commissions.^{xxix} Such commissions can play an important role in strengthening the protection of human rights, but they can never replace, nor should they diminish, the safeguards and remedies inherent in comprehensive and effective legal structures enforced by an independent judiciary.

In March 1992 the UN Commission on Human Rights endorsed a set of *Principles relating to the status of national institutions*.^{xxx} This instrument contains detailed standards for the responsibilities, composition and methods of operation of national institutions to promote and perfect human rights. In Amnesty International's view, the Principles should be used as basic minimum guidelines for the establishment of national human rights commissions.

10. Investigations by relatives and human rights defenders

Despite the detailed standards adopted by the UN for the official investigation of suspected "disappearances" and extrajudicial executions, there is often no guarantee that they will be followed, or even that there will be any investigation at all. It is for this reason that investigations by relatives, human rights organizations and others are so important.

Domestic human rights organizations in many parts of the world have worked courageously to document cases of "disappearances" and extrajudicial executions in their countries. Not only organizations, but individual journalists, lawyers, and relatives of victims have done valuable investigative work. They have exposed official involvement in individual incidents and patterns of "disappearances" and killings, leading to remedial action. The evidence compiled locally has enabled international human rights organizations and the UN to take action. Often this evidence has been crucial in later official investigations. Such "unofficial" investigations and the procedures developed through them have become vital components of the effort to combat human rights violations nationally and internationally.

Many techniques, often ingenious, have been used in unofficial investigations. There is no single way, but certain minimal kinds of information and evidence should be sought as soon as possible. The aim is to provide as complete a picture of the case as possible.

When a person "disappears", relatives and human rights organizations should immediately try to compile a record of the facts. As part of this process they should obtain personal identity documents, dental records and copies of fingerprints. These precious records often disappear in the course of investigation.

A documented case of a "**disappearance**" should contain:

- the full name of a missing person, with a photograph if available;
- other information through which the missing person's identity may be established, such as physical characteristics or the clothing worn when the person was last seen;
- the date (day, month and year) and time when the person was arrested, abducted or last seen;
- the place where the person was arrested, abducted or last seen;

"Disappearances" and Political Killings: Human Rights Crisis of the 1990s

- names and details of any witnesses to the arrest or abduction;
- information on the identity of the parties believed to have carried out the arrest or abduction or to hold the person in unacknowledged detention, including physical characteristics, clothing and vehicles used, as well as descriptions of others present at the scene, including uniformed security force personnel;
- an indication of whether the arrest or detention has been denied by the authorities;
- information on the action taken by relatives or others to locate the missing person, such as inquiries with the authorities or *habeas corpus* petitions, including sworn statements by any witnesses and copies of any written communications sent to officials or official bodies.^{xxxii}
- copies of any newspaper reports on the incident.

A documented case of a suspected **extrajudicial execution** should contain, as a minimum:

- the full name of the victim, or if the victim's identity is not known, a physical description in as much detail as possible, with a photograph if available, as well as other information through which the victim's identity may be established, such as clothing or jewelry worn;
- a record of the sequence and location of events, including the attack and the moment of death. Times should be specified as precisely as possible. The record should indicate how the attack was carried out (if known) and the probable cause of death;
- information on the identity of the person or people believed to have carried out the attack including physical characteristics, clothing and vehicles used, as well as descriptions of others present at the scene;
- names and details of any witnesses to the incident;
- any other evidence indicating that the victim was unlawfully and deliberately killed by a public official, on official orders or with official acquiescence.

If possible, written reports of "disappearances" and killings should be supplemented by photographs of the actual events or of the scene of the events. Dead bodies also should be photographed for purposes of forensic investigation. Photographs should preferably be in colour, as colour photography records details which do not show up in black-and-white photographs. A ruler should be placed alongside bodies or objects when they are being photographed so as to give an indication of scale.

Tools for recording and reporting cases of "disappearances" and suspected extrajudicial executions include the **questionnaires** prepared by the UN Working Group on Disappearances and international, regional and national organizations such as Amnesty International and the Federación Latinoamericana de Asociaciones de Familiares de Detenidos-Desaparecidos (FEDEFAM), Latin American Federation of Associations of Families of the "Disappeared".^{xxxiii}

The investigation of a "disappearance" or a suspected extrajudicial execution does not stop here. Organizations and individuals working to resolve these cases should continue to collect information. **Continuing investigation** involves:

Investigation

- keeping a file on each case, including any published or official information, including court documents and other legal papers such as sworn statements;
- continuing to make inquiries about the whereabouts and fate of the "disappeared". Notes should be kept on all inquiries and the responses to them;
- placing advertisements in local and national newspapers, and asking radio and television stations to broadcast details of the "disappeared", asking for information and urging witnesses to come forward;
- searching for the "disappeared" in prisons, other places of detention, hospitals and morgues;
- interviewing people released from places of detention where a "disappeared" person is believed to have been held;
- pressing for official investigation by the courts or other competent official bodies, and pressing for investigations already started to be conducted effectively;
- responding quickly to any new evidence that becomes available by recording it, pursuing any leads, and seeking to ensure that it is not destroyed by officials or others implicated in the case;
- if unidentified bodies are discovered, ensuring that they are examined by forensic experts. (If mass graves are discovered, it is imperative to prevent their being disturbed until they can be examined by a person qualified in the techniques of forensic anthropology, so as not to destroy important evidence);
- arranging for expert assistance where forensic investigation or other specialized techniques are needed;
- transmitting information to UN bodies which take action on cases of "disappearances" and suspected extrajudicial executions (see Chapter G-6).

11. Piecing together a pattern

Clear evidence of official responsibility for an abduction or a killing is often hard to come by. But if the known details of different cases are examined side by side, common patterns often emerge. These patterns may suggest that the official security apparatus or some part of it is engaging in a systematic practice of "disappearance" or extrajudicial execution. If new cases conforming to the pattern arise, there will be a presumption that these cases were the product of the same practice.

Human rights organizations compiling cases of "disappearances" and extrajudicial executions have learned to look for possible indicators of governmental responsibility. They include the following.^{xxxiii}

Information about the victims may suggest that the authorities have selected them for "disappearance" or assassination. The investigator might ask:

- Is there reason to believe that the victim is perceived by the authorities as an enemy, or is the victim a relative of someone wanted by the authorities? Was the victim active politically? Could his or her work, study, or other activity have been deemed subversive or illegal? Did the victim belong to an organization which had been the object of repression or criticism by the government? Had he or she witnessed other human rights violations?

"Disappearances" and Political Killings: Human Rights Crisis of the 1990s

- Had the victim previously been detained? Can this previous detention be connected with the victim "disappearing" or being killed?
- Had the victim been threatened publicly or privately by the authorities? Had he or she been identified in published "death lists" or broadcast threats and branded as a subversive, a traitor or a public enemy?
- Had he or she been under official surveillance? Had his or her home been raided?
- Did the authorities later release information identifying the victim as a criminal or a subversive, implying that the "disappearance" or killing was justified? Did they vilify the victim's family or criticize those who sought to investigate the case?

Information on the methods and circumstances of abductions and killings suggestive of official involvement:

- Did the perpetrators use equipment normally associated with the security forces, such as walkie-talkies or particular types of vehicles or firearms? If unmarked vehicles were used, were they able to pass through security checkpoints unhindered?
- Did the perpetrators use the terminology of the security forces or refer to military or police ranks? (Survivors have often said that subordinates addressed the leaders of those detaining or interrogating them by their titles.)
- Are the cause and manner of death consistent with the known methods of the security services?
- Does the body suggest in any other way that the victim had been held in government custody? (In **El Salvador** many victims of killings have been found with their hands bound behind their backs by their thumbs, a traditional detention technique of the Salvadorean security forces. In other countries the bodies of "death squad" victims show signs of having been handcuffed.)
- Can practices resulting in "disappearances" and killings be linked to procedures or tactics set forth in military manuals, police force instructions or written orders?
- Do perpetrators appear to have access to official intelligence information on such matters as the identification of suspects, where to find them and how to get at them? (Sometimes plainclothes hit squads are found to carry photographs and surveillance information emanating from government security services.)
- Do members of the regular, uniformed security forces cooperate or stand by passively while "disappearances" and killings are perpetrated? For example, do "death squads" gain entry without difficulty to guarded public buildings, perhaps by displaying official credentials? Do perpetrators openly carry firearms without being challenged by ordinary security personnel?

Geographical concentrations of "disappearances" and killings which can be correlated with governmental or administrative units or with the presence of particular sections of the security forces or the assignment of certain military or police commanders to certain regions. (Two years after mass "disappearances" and extrajudicial executions began in **Peru** in 1983, all known cases continued to be reported from just 13 of the country's 144 provinces. These 13 adjoining provinces had been placed under a state of emergency and military control shortly before the killings and "disappearances" began.

Investigation

Later, as more provinces were placed under military control, "disappearances" and extrajudicial executions began to be perpetrated there.)

Changes over time which can be correlated with acknowledged changes in official policy - for example, *increases* in "disappearances" and killings in periods when military and police control is increased, as in times of declared public emergency when extraordinary powers are assumed, or *decreases* when the country is under international scrutiny following adverse publicity over human rights violations.

Lack of governmental action to investigate "disappearances" and killings and bring the perpetrators to justice. For example, do the police neglect to go promptly to the scene of abductions, assassinations and bombings, fail to question witnesses or to seek material evidence, or refuse to pursue named suspects? Can their reactions in cases where official involvement is suspected be contrasted with their reaction in similar incidents involving opposition groups? Do they frustrate the legal process by failing to appear in court?

Official condonation of "disappearances" and killings. Do officials speak approvingly of these crimes as examples of "social cleansing" or "fighting fire with fire", or by making statements such as that society has a right to "defend itself"? Do they make statements vilifying the victims and glorifying the perpetrators?

On an individual case, the presence of one or another of the above indicators constitutes circumstantial evidence suggesting official involvement. Often this evidence is not conclusive, but the more evidence there is, the stronger the case becomes. Moreover, among the many cases in which such circumstantial evidence is present, there will often be a few in which there is incontrovertible evidence of state responsibility for "disappearances" or murder.

When cases are examined together, a pattern may emerge of a systematic official practice of "disappearance" or extrajudicial execution. By revealing the pattern, human rights organizations can challenge official denials and break through governmental strategies for avoiding accountability. Well documented information becomes a weapon in the fight against "disappearances" and extrajudicial executions.

Notes

i Paragraph 176. The *Velásquez Rodríguez* judgment is cited in Chapter G-1.

ii SRESAE, 1993 report, paragraph 686.

iii Vienna Declaration and Programme of Action, adopted on 25 June 1993 by the World Conference on Human Rights (Vienna, 14-25 June 1993), United Nations, New York, Department of Public Information, DPI/1394-39399, 1993, part II, paragraph 62.

iv UN Office at Vienna, Centre for Social Development and Humanitarian Affairs, *Manual on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions*, United Nations, New York, 1991, UN Sales No. E.91.IV.1.

v UN Commission on Human Rights, resolution 1993/71, adopted without a vote on 10 March 1993.

vi The Minnesota Protocol is named after the Minnesota Lawyers International Human Rights Committee, which developed it. The Protocol contains a detailed list of techniques for the investigation of suspected extrajudicial executions and detailed standards for commissions of inquiry.

vii The right to submit complaints follows from the right of anyone whose human rights are violated to have an effective remedy, as established in the International Covenant on Civil and Political Rights, Article 2. It is recognized explicitly in the UN Declaration on Disappearances, Article 13 (1), and implicitly in the UN Principles on Extra-Legal, Arbitrary and Summary Executions, principles 9, 15 and 16.

viii The Declaration on Disappearances (Article 13 (3)) and the Principles on Extra-Legal, Arbitrary and Summary Executions (principle 15) provide that complainants should be protected from intimidation.

ix Declaration on Disappearances, Article 13; Principles on Extra-legal, Arbitrary and Summary Executions, principle 9.

x Principle 34 of the UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment calls for an investigation to be held whenever a prisoner dies or "disappears" and also when a former prisoner dies or "disappears" shortly after release. Principle 34 states:

"Whenever the death or disappearance of a detained or imprisoned person occurs during his detention or imprisonment, an inquiry into the cause of death or disappearance shall be held by a judicial or other authority, either on its own motion or at the instance of a member of the family of such a person or any person who has knowledge of the case. When circumstances so warrant, such an inquiry shall be held on the same procedural basis whenever the death or disappearance occurs shortly after the termination of the detention or imprisonment. ..."

xi Declaration on Disappearances, Article 13 (2); Principles on Extra-legal, Arbitrary and Summary Executions, principle 10.

xii Declaration on Disappearances, Article 13 (3); Principles on Extra-legal, Arbitrary and Summary Executions, principle 15.

xiii The importance of having adequate authority to obtain evidence is shown by the results which can be obtained when such authority is exercised. One such experience was that of the Commission of Inquiry regarding the Prevention of Public Violence and Intimidation, set up in South Africa in 1991 under the chairmanship of Mr Justice R.J. Goldstone. The Commission stated that it would investigate fully any evidence implicating senior members of the South African security forces in political violence and intimidation. The Commission was given extensive powers of search and seizure, and its staff was reinforced by international police experts seconded from European Community countries.

On 11 November 1992, largely as a result of strong support from these international experts, the Commission with police reinforcements raided a building housing a large operations unit of Military Intelligence and seized five files from a vast store of documentation. The seized files indicated the existence of a secret unit which appeared to be the coordinating structure for a range of clandestine military projects. The files also showed that the chief of staff of Military Intelligence had authorized the hiring in 1991 of a notorious former member of a covert military unit, the Civil Cooperation Bureau (CCB), to run a task force aimed at destabilizing the African National Congress and its military wing. The CCB had been officially disbanded in 1990 after damning evidence had been presented to a judicial commission of inquiry indicating that the unit had been responsible for political killings carried out in the 1980s.

The Goldstone Commission promptly published the findings of the raid, thus pre-empting the possibility that its discoveries would be hushed up. However, the State President of South Africa intervened and ordered an army and a police general to take over further investigation of the seized documents, in coordination with the Commission, thus effectively preventing the Commission from carrying out its own independent investigation. The appointment of such senior army and police investigators prompted fears of an official cover-up. Although 23 military officers were subsequently forced to take early retirement, no prosecutions have been brought against the officials alleged to have committed unlawful acts. Furthermore, the secret unit appears to be still in operation.

xiv Most of these characteristics are included in international instruments adopted by the UN. Both the UN Declaration on Disappearances (Article 13) and the UN Principles on Extra-Legal, Arbitrary and Summary Executions (principles 9, 15-17) call for prompt, thorough and impartial investigation.

xv Principles on Extra-legal, Arbitrary and Summary Executions, principle 16.

xvi Declaration on Disappearances, Article 13 (3, 5); Principles on Extra-legal, Arbitrary and Summary Executions, principle 15.

xvii Declaration on Disappearances, Article 16; Principles on Extra-legal, Arbitrary and Summary Executions, principle

15.

- xviii Principles on Extra-legal, Arbitrary and Summary Executions, principle 17. With reference to commissions of inquiry, detailed proposals for what should be included in the report are given in the Minnesota Protocol, section D (15).
- xix Principles on Extra-legal, Arbitrary and Summary Executions, principle 17.
- xx Declaration on Disappearances, Article 13 (6).

The UN Working Group on Disappearances has stated in its 1990 report (paragraph 362):

"Under its terms of reference, the Group will continue to deal with cases as long as they have not been clarified. It believes that the need to insist on investigation of all cases of disappearances lies at the heart of its mandate. It does so bearing in mind the interest of those who will suffer anguish and bitterness as long as they cannot be assured of the fate or whereabouts of their loved ones."

xxi Most of the characteristics listed here are included in the UN Principles on Extra-Legal, Arbitrary and Summary Executions (principles 12-14, 16).

xxii Commission on Human Rights, resolution 1993/33, adopted without a vote on 5 March 1993.

XXiii For a history of the work of the EAAF, see Christopher Joyce and Eric Stover, *Witnesses from the Grave; The Stories Bones Tell*, Little, Brown and Ballantine Books, New York and Bloomsbury, London, 1991; also Mauricio Cohen Salama, *Tumbas Anónimas; Informe sobre la Identificación de Restos de Víctimas de la Represión Ilegal...* (Unmarked Graves; Report on the Identification of Remains of Victims of the Illegal Repression), Catálogos Editora, Buenos Aires, 1992.

XXIV In a recent example of a forensic investigation, a forensic team from the US organizations Middle East Watch and Physicians for Human Rights exhumed 27 male skeletons from two graves in Koreme, a Kurdish village in northern Iraq, in 1992. All 27 of the victims appeared to have died from gunshot wounds. The team examined the location and trajectory of the bullet wounds and concluded that the evidence was consistent with witnesses' accounts of a massacre of 27 men and boys during the Iraqi armed forces' 1988 campaign against the Kurds of northern Iraq. (Middle East Watch and Physicians for Human Rights, *The Anfal Campaign in Iraqi Kurdistan; The Destruction of Koreme...*, Human Rights Watch, New York, 1993, pages 45-50, 97-99)

XXV UN Commission on Human Rights, 49th session, *Report of the Secretary-General on human rights and forensic science...*, UN document No. E/CN.4/1993/20, 5 February 1993, paragraphs 8-11.

xxvi The EAAF has found that most relatives need a constant flow of information from the investigators. This enables the relatives to accept the final truth emerging from the investigation whether or not it confirms their expectations. Also, the process of accepting the truth appears to be less traumatic when the relatives are given an active role in the investigation. The task most frequently taken on by them is the gathering of information about the "disappeared" person. This information can be vital for the identification of the remains.

xxvii Resolution 1992/24, adopted without a vote on 28 February 1992.

xxviii Resolution 1993/33, adopted without a vote on 5 March 1993.

xxix Amnesty International, "Proposed standards for national human rights commissions", AI Index: IOR 40/01/93, January 1993.

XXX Resolution 1992/54, adopted by consensus on 3 March 1992. The text of the Principles is reproduced in Amnesty International, "Proposed standards for national human rights commissions" (*op. cit.*).

XXXi Five essential pieces of information - name, date and place of "disappearance", parties considered responsible, and information on steps taken to determine the victim's fate or whereabouts - are minimum elements which a report of a "disappearance" submitted to the UN Working Group on Enforced or Involuntary Disappearances should contain. The Working Group urges those submitting reports to furnish as many details as possible on the identity of the victim (including identity card numbers if available) and the circumstances of the "disappearance". Missing details should not prevent the submission of reports, but the Working Group can only act on clearly identified individual cases containing the five minimum elements described above. ("Enforced or Involuntary Disappearances", *Human Rights Fact Sheets* series, No. 6, UN Centre for Human Rights, Geneva, 1988, pages 10-11, 13-14)

xxxii The UN Working Group on Disappearances has prepared a four-page questionnaire which local groups and individuals can use in sending reports of "disappearances" to the Working Group. Spaces are provided for details to be filled in under the five heading described above. Copies of the questionnaire may be obtained from the UN Centre for Human Rights in Geneva (for address, see Chapter G-6).

XXXiii For a discussion of the problems of establishing official involvement in the face of governmental denials, see Michael McClintock, "Establishing Accountability for State Violence", in *Human Rights in the Twenty-First Century: A Global Challenge*, proceedings of a conference held in Banff, Alberta, Canada, 1990.