

ENFORCED DISAPPEARANCES: Q & A

IOR 51/010/2011

1. What is the crime of enforced disappearance?

An “enforced disappearance” takes place when a person is arrested, detained or abducted against his or her will or otherwise deprived of their liberty by government officials or by organized groups or private individuals whose actions are condoned by the government in some way. That deprivation of liberty is followed by a refusal to disclose the fate or whereabouts of the persons concerned or a refusal to acknowledge the deprivation of their liberty. As a result of this conduct, the disappeared person is placed outside the protection of the law, impeding his or her recourse to legal remedies and guarantees of protection and placing him or her in a situation of complete defencelessness. This in turn makes him or her vulnerable to other human rights violations, such as torture, sexual violence or even murder.

The *International Convention for the Protection of All Persons from Enforced Disappearance* identifies the following elements in the definition of enforced disappearances:

- There is an arrest, detention, abduction or any other form of deprivation of liberty;
- That conduct is carried out by agents of the state or by persons or groups of persons with the authorization, support or acquiescence of the state;
- The conduct is followed either by a refusal to acknowledge the deprivation of liberty or by concealment of the fate or whereabouts of the disappeared person;
- The objective result of the conduct is that the disappeared person is placed outside of the protection of the law.

International Convention for the Protection of All Persons from 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.

2. Which rights does the crime of enforced disappearance violate?

Enforced disappearance is a cumulative violation of human rights. This is because it may inflict a wide range of human rights violations, including violation of:

- the right to life: as the person may be killed or his or her fate may be unknown
- the right to security and dignity of a person
- the right to be free from arbitrary detention
- 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 legal personality
- the right to fair trial
- the right to family life

Enforced disappearance is a particularly cruel human rights abuse as it results in a continuous violation as long as the fate or whereabouts of the victim has not been determined. Furthermore, it also constitutes a violation of the rights of the families and loved ones of the victim, who often have to wait for years to find out the truth about the victim’s fate.

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Declaration on the Protection of All Persons from Enforced Disappearance, Article 1:

1. Any act of enforced disappearance is an offence to human dignity. It is condemned as a denial of the purposes of the Charter of the United Nations and as a grave and flagrant violation of the human rights and fundamental freedoms proclaimed in the Universal Declaration of Human Rights and reaffirmed and developed in international instruments in this field.
2. Any act of enforced disappearance places the persons subjected thereto outside the protection of the law and inflicts severe suffering on them and their families. It constitutes a violation of the rules of international law guaranteeing, *inter alia*, the right to recognition as a person before the law, the right to liberty and security of the person and the right not to be subjected to torture and other cruel, inhuman or degrading treatment or punishment. It also violates or constitutes a grave threat to the right of life.

3. What impact does the crime of enforced disappearance have on societies and individuals?

An enforced disappearance of an individual has a tremendous effect on the lives of his or her loved ones and their communities. The brother of Sanjeev Kumar Karna, a victim of enforced disappearance in Nepal, described the far-reaching impact of an individual's disappearance in an interview with Amnesty International, stating that “[w]hen a member of a family is disappeared, that family is completely destroyed.”

Families are often emotionally unable to find closure and come to terms with the disappearance of their loved ones. Many suffer from severe psychological distress, sometimes resulting in physical illness as well. Children are not immune from such anguish; disappearance of a parent, sibling, or other members of the family often adversely affects their educational performance and social behaviour.

Furthermore, families frequently face enormous economic consequences, especially when the victim was the principal bread-winner of the family. Even if this was not the case, many families find themselves in dire economic straits during the course of their search for the victim.

The societal and cultural isolation faced by the families frequently goes undocumented. For example, while widows in certain cultures have a well-established support system within communities, wives of disappeared victims are at times left in limbo.

4. Is enforced disappearance a crime under international law?

Yes, enforced disappearance is a crime under international law for which states are obliged to hold perpetrators responsible through criminal investigation and prosecution. This applies even if the crime was committed abroad and neither the suspect nor the victims are nationals of that state. Moreover, it amounts to a crime against humanity when it is committed as part of a widespread or systematic attack on a civilian population.

Furthermore, although international humanitarian law treaties do not directly refer to the term “enforced disappearance,” the act of enforced disappearance violates Rule 98 of the International Committee of the Red Cross *Rules of Customary International Humanitarian Law* (“Enforced disappearance is prohibited”).

The *Rome Statute of the International Criminal Court* states that the crime of enforced disappearance committed as part of a widespread or systematic attack against a civilian population constitutes a crime against humanity. In addition, the *Inter-American Convention on the Forced Disappearance of Persons* also prohibits the act and obliges state parties to

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define forced disappearance of persons as a crime in their national law and to impose a appropriate punishment commensurate with its gravity.

Rome Statute of the International Criminal Court, Article 7:

For the purpose of this Statute, “crime against humanity” means any of the following acts when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack:

- (i) Enforced disappearance of persons;

Inter-American Convention on the Forced Disappearance of Persons, Article 1:

The States Parties to this Convention undertake:

- a. Not to practice, permit or tolerate the forced disappearance of persons, even in the states of emergency or suspension of individuals guarantees;

5. What is the *International Convention for the Protection of All Persons from Enforced Disappearance*?

The *International Convention for the Protection of all Persons from Enforced Disappearance* is an international human rights instrument by the United Nations (UN). The text was adopted by the United Nations General Assembly on 20 December, 2006 (A/RES/61/177), and was opened for signature on 6 February, 2007. The Convention entered into force on 23 December, 2010. To date, 90 states have become signatories, and 30 have ratified the Convention.¹ Among those states that are a party, 12 have recognized the competence of the Committee of Enforced Disappearances (CED) to receive and consider communications both by individuals alleging that their rights under the Convention have been violated as well as communications by states claiming that another state party is not fulfilling its obligations under the Convention. Very few states have implemented the Convention into national law.

The Convention provides a definition of the crime of enforced disappearance and necessary state action in order to both prevent the occurrence of the crime and to allow for the investigation and prosecution of the perpetrators.

Implementation of the Convention is monitored by the Committee on Enforced Disappearances (CED), which can provide authoritative interpretations of the Convention.

6. Why is the Convention important?

Unlike other human rights violations, such as torture, enforced disappearances were not prohibited by a universal legally binding instrument before the Convention came into force in 2010. Before that only the Rome Statute of the International Criminal Court (which came into force in 2002) provided for prosecution and award of reparation to victims in cases where enforced disappearance amounted to crimes against humanity.

The crime of enforced disappearances was also prohibited prior to 2010 by the 1992 UN Declaration on the Protection of all Persons from Enforced Disappearance, the 1996 Inter-American Convention on Forced Disappearance of Persons Rights and customary international humanitarian law. However, this previously existing framework exhibited both serious gaps and

¹ The countries that have ratified the Convention to this date are: Albania, Argentina, Armenia, Belgium, Bolivia, Brazil, Burkina Faso, Chile, Cuba, Ecuador, France, Gabon, Germany, Honduras, Iraq, Japan, Kazakhstan, Mali, Mexico, Montenegro, Netherlands, Nigeria, Panama, Paraguay, Senegal, Serbia, Spain, Tunisia, Uruguay, Zambia

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ambiguities, and has proven to be insufficient as a protection mechanism. The Convention, despite its own flaws, corrects some of the existing gaps in the legal framework.

First, the Convention makes enforced disappearance criminal under international law and recalls the right of every person not to be subject to it, even under exceptional circumstances, such as the state of war or a threat of war, internal political instability or any other public emergency.

Secondly, it is an important treaty because it obliges states to implement it into national law – therefore, ensuring that impunity shall not prevail for enforced disappearance.

Thirdly, it guarantees the rights of victims or their relatives to have access to justice and full and effective reparation.

Fourthly, the Convention sets up the Committee on Enforced Disappearances – which begins its work in November 2011. Prior to this, the only mechanism specialized to deal specifically with enforced disappearances was the UN Working Group on Enforced or Involuntary Disappearances. This body has received and examined reports of disappearances submitted by relatives of disappeared persons or human rights organizations acting on their behalf since its establishment in 1980. This important global rapid response mechanism for requesting states to carry out investigations into cases in which the Working Group believes an enforced disappearance has taken place and monitoring state compliance with the *Declaration on the Protection of all Persons from Enforced Disappearance* continues to exist. The Committee on Enforced Disappearance will similarly receive requests for urgent action from relatives of the disappeared, their legal representatives or others, which it can transmit to the state party concerned with a request to clarify the fate and whereabouts of the disappeared person. Also it will be able to consider individual complaints by persons who claim to be a victim of a violation of the provisions of the Convention, although only after states parties have recognised the Committee's competence to do so. The Committee is also empowered to perform other functions to monitor implementation and state parties' compliance with their obligations under the 2010 Convention (see below, Question 7).

7. What is the Committee on Enforced Disappearance (CED), and how does it work?

The CED is similar in its form and function to other UN human rights treaty bodies, such as the Committee against Torture (CAT). CED is composed of ten experts in the field of human rights, who serve on the Committee in their individual capacity and are expected to exercise their functions independently and impartially. Within two years of accepting the Convention, state parties are required to submit a report to the Committee about the measures they have been undertaking to implement the Convention. Upon examining the report, the Committee will make general suggestions and recommendations as it considers appropriate to the state party. The Committee will hold its inaugural session in Geneva from 8th to 11th November, 2011.

Furthermore, the Committee can transmit requests for urgent action – sent by or on behalf of the relatives of a disappeared person – to state parties requesting that they clarify the fate and whereabouts of the disappeared person. It can also undertake visits if it receives reliable information indicating that a state party is seriously violating the provisions of the Convention, or may bring situations of widespread or systematic practices of enforced disappearances to the attention of the UN General Assembly.

Moreover, the Committee also has an optional individual complaints system. This means that it can consider communications submitted by or on behalf of individuals alleging to be victims of a violation of the provisions of the Convention by a state party, which has declared that it accepts the competence of the Committee to receive such individual communications. The Committee may also receive and consider communications in which a state party claims that

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another state party is not fulfilling its obligations under the Convention if the state party concerned has agreed to the optional inter-state communications procedure.

8. What actions should states take?

States must commit themselves to ending the practice of enforced disappearance by taking steps to respect, protect and fulfil the rights of individuals not to be subjected to enforced disappearance. Furthermore, states must tackle the issue of impunity and ensure that the perpetrators are brought to justice. To that end, Amnesty International urges states to:

- Ratify the *International Convention for the Protection of All Persons from Enforced Disappearance*
- Accept the competence of the Committee on Enforced Disappearances to receive complaints from individuals and state parties under Articles 31 and 32 of the Convention.
- Implement the Convention into national law into line with international law and standards
- Adopt a long-term, comprehensive plan to prevent and eliminate enforced disappearance, which involves establishment of effective training programs of law enforcement and other personnel

9. What is the Amnesty International Checklist on the Convention on Enforced Disappearance?

[No Impunity for Enforced Disappearances: Checklist for Effective Implementation of the International Convention for the Protection of all Persons from Enforced Disappearance](#) (Amnesty International Index: IOR 51/006/2011) is a comprehensive guide for states on how to implement the enforced disappearances convention into national law and in practice consistently with international law and standards. It provides an explanation of the provisions that must be implemented in national law per the explicit requirements of the Convention, as well as those that should be implemented as a matter of best practice. This paper is similar to others published by the organization, such as [International Criminal Court: Updated Checklist for Effective Implementation](#) (Amnesty International Index: IOR 53/009/2009).

10. How can civil society support the implementation of the Convention on Enforced Disappearance?

Civil society actors can take specific actions to support their calls urging governments to ratify the Convention. Civil society may participate in the drafting and commenting of national implementing legislation. Women and women's organizations should be particularly encouraged to do so to ensure that gender issues are taken into account and that the process of preparing implementing law is inclusive. Also, in many countries, it is men who are most often subject to disappearance, and it is their women family members who spearhead efforts to obtain justice for their loved ones.

Amnesty International's *Checklist* can serve as a useful tool in this process. It can serve as an informational material that can better equip civil society members to lobby for ratification of the convention, analyze draft national implementing legislation, suggest avenues of support for individual cases, and strengthen advocacy for the rights of victims and their families. Specifically, the *Checklist* can be used to support the following advocacy initiatives by civil society:

- As an advocacy **tool to promote ratification**
- An informative material to **promote effective national implementing legislation**: the *Checklist* provides commentary on necessary state actions that should follow from the language of the Convention. Furthermore, it introduces best practices that should be incorporated in national implementing legislation. The Annex of the *Checklist* is a particularly useful tool in this respect: it contains a chart designed

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to assist those who are drafting of national legislation or those who are analyzing drafts or enacted legislation to improve compliance with the Convention.

- Call for bringing perpetrators of enforced disappearances to justice: the *Checklist* can also aid in formulating demands for investigation and prosecution, as it provides commentary on the Convention and other relevant international law and standards regarding what state must and should do to define enforced disappearance as a crime and to hold persons responsible for the act criminally responsible (pp.4-10). The checklist can also aid in formulating demands for international investigation, as it provides, in part, commentary on the crime of enforced disappearance under the Rome Statute of the International Criminal Court (pp. 5-6).
- Encourage civil society ***involvement with the Committee on Enforced Disappearances***: civil society members can provide information in relation to the Committee's review of state reports and its other functions under the Convention, submit urgent requests for action to clarify the fate and whereabouts of a disappeared person, or submit individual communications on behalf of an individual who claims to be a victim of a violation of the Convention's provisions by a state party. The *Checklist* explores the relevant provisions of the Convention that set out these procedures (pp. 66-67).
- Demand ***reparation and protection for victims and their families***: the *Checklist* provides commentary on the definition of a victim of enforced disappearance and his or her rights, which can be relied upon when formulating demands for better access to protection and reparation for the victims and their families (pp.54-61).
- Highlight ***preventive measures*** set forth by the Convention: the *Checklist* not only presents commentary on the provisions on the Convention itself regarding steps that states may take to prevent the harms resulting from enforced disappearance, but also introduces other international law and standards and recommends state action in this regard (pp. 38-53).

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