Enforced or Involuntary Disappearances

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INTRODUCTION

Some men arrive. They force their way into a family's home, rich or poor, house, hovel or hut, in a city or in a village, anywhere. They come at any time of the day or night, usually in plain clothes, sometimes in uniform, always carrying weapons. Giving no reasons, producing no arrest warrant, frequently without saying who they are or on whose authority they are acting, they drag off one or more members of the family towards a car, using violence in the process if necessary.[*]

This is often the first act in the drama of an enforced or involuntary disappearance, a particularly heinous violation of human rights and an international crime. According to the Declaration on the Protection of All Persons from Enforced Disappearance, proclaimed by the General Assembly in its resolution 47/133 of 18 December 1992 as a body of principles for all States, an enforced disappearance occurs when "persons are arrested, detained or abducted against their will or otherwise deprived of their liberty by officials of different branches or levels of Government, or by organized groups or private individuals acting on behalf of, or with the support, direct or indirect, consent or acquiescence of the Government, followed by a refusal to disclose the fate or whereabouts of the persons concerned or a refusal to acknowledge the deprivation of their liberty, which places such persons outside the protection of the law" (preamble).

A disappearance has a doubly paralysing impact: on the victims, frequently tortured and in constant fear for their lives, and on their families, ignorant of the fate of their loved ones, their emotions alternating between hope and despair, wondering and waiting, sometimes for years, for news that may never come. The victims are well aware that their families do not know what has become of them and that the chances are slim that anyone will come to their aid. Having been removed from the protective precinct of the law and "disappeared" from society, they are in fact deprived of all their rights and are at the mercy of their captors. Even if death is not the final outcome and the victim is eventually released from the nightmare, the physical and psychological scars of this form of dehumanization and the brutality and torture which often accompany it remain.

The family and friends of disappeared persons experience slow mental anguish, not knowing whether the victim is still alive and, if so, where he or she is being held, under what conditions, and in what state of health.

[*] Independent Commission on International Humanitarian Issues, *Disappeared! Technique of Terror* (London, Zed Books, 1986).

Aware, furthermore, that they, too, are threatened, that they may suffer the same fate themselves and that searching for the truth may expose them to even greater danger.

The family's distress is frequently compounded by the material consequences of the disappearance. The disappeared person is often the family's main breadwinner. He or she may be the only member of the family able to cultivate the crops or run the family business. The emotional upheaval is thus exacerbated by material deprivation, made more acute by the costs incurred should they decide to undertake a search. Furthermore, they do not know when—if ever—their loved one is going to return, which makes it difficult for them to adapt to the new situation. In some cases, national legislation may make it impossible to draw a pension or receive other means of support in the absence of a death certificate. Economic and social marginalization is frequently the result.

Enforced disappearance has frequently been used as a strategy to spread terror within the society. The feeling of insecurity generated by this practice is not limited to the close relatives of the disappeared, but also affects their communities and society as a whole.

Enforced disappearance has become a global problem and is not restricted to a specific region of the world. Once largely the product of military dictatorships, enforced disappearances can nowadays be perpetrated in complex situations of internal conflict, especially as a means of political repression of opponents. Of particular concern is the ongoing harassment of human rights defenders, relatives of victims, witnesses and legal counsel dealing with cases of enforced disappearance; the use by States of counter-terrorist activities as an excuse for breaching their obligations; and the still widespread impunity for enforced disappearance. Special attention must also be paid to specific groups of especially vulnerable people, like children and people with disabilities.

I. RIGHTS VIOLATED BY THE PRACTICE OF DISAPPEARANCE

The enforced disappearance of persons infringes upon a range of human rights embodied in the Universal Declaration of Human Rights and set out in both International Covenants on human rights as well as in other major international human rights instruments.

The following civil or political rights may be infringed upon in the course of a disappearance:

- The right to recognition as a person before the law;
- The right to liberty and security of the person;
- The right not to be subjected to torture and other cruel, inhuman or degrading treatment or punishment;
- The right to life, when the disappeared person is killed;
- The right to an identity;
- The right to a fair trial and to judicial guarantees;
- The right to an effective remedy, including reparation and compensation;
- The right to know the truth regarding the circumstances of a disappearance.

Disappearances can also involve serious breaches of international instruments that are not conventions, such as the Standard Minimum Rules for the Treatment of Prisoners, approved by the United Nations Economic and Social Council in 1957, as well as the Code of Conduct for Law Enforcement Officials and the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, adopted by the General Assembly in 1979 and 1988, respectively.

Disappearances also generally violate various economic, social and cultural rights. Furthermore, an enforced disappearance can also have a particularly negative impact on the enjoyment of such rights by family members. The absence of the family's main breadwinner, particularly in less affluent societies, frequently leaves the family in such dire straits that a number of the rights enumerated in the International Covenant on Economic, Social and Cultural Rights cannot be realized, such as:

- The right to protection and assistance to the family;
- The right to an adequate standard of living;
- The right to health;
- The right to education.

The serious economic hardships which usually accompany a disappearance are most often borne by women, and it is women who are most often at the forefront of the struggle to resolve the disappearance of family members. In this capacity they may suffer intimidation, persecution and reprisals. When women are themselves direct victims of disappearance, they become particularly vulnerable to sexual and other forms of violence.

Children can also be victims, both directly and indirectly. The disappearance of a child is a clear contravention of a number of provisions of the Convention on the Rights of the Child, including the right to a personal identity. The loss of a parent through disappearance is also a serious violation of a child's human rights.

II. DECLARATION ON THE PROTECTION OF ALL PERSONS FROM ENFORCED DISAPPEARANCE

On 18 December 1992 the General Assembly, by resolution 47/133, proclaimed the Declaration on the Protection of All Persons from Enforced Disappearance as a body of principles for all States.

The preamble to the Declaration recalls that the acts which comprise enforced disappearance constitute a violation of the prohibitions found in other international instruments, including the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. It states, however, that it is nonetheless important to devise an instrument which characterizes all acts of enforced disappearance of persons as very serious offences and sets forth standards designed to punish and prevent their commission. The preamble also recalls that the systematic practice of enforced disappearance is of the nature of a crime against humanity.

According to the Declaration, any act of enforced disappearance 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 to life. States are under an obligation to take effective legislative, administrative, judicial or other measures to prevent and terminate acts of enforced disappearance, in particular to consider them a continuing offence and to establish civil liability.

The Declaration also refers to the right to a prompt and effective judicial remedy as a means of determining the whereabouts or state of health of persons deprived of their liberty, as well as unhampered access by national authorities to all places of detention, the maintenance of centralized registers of all persons in detention, the duty to investigate fully all alleged cases of disappearance and the duty to try alleged perpetrators of disappearances before competent ordinary courts and not special tribunals, in particular military courts. All persons involved in the investigation of cases of enforced disappearance shall be protected against ill-treatment, intimidation or reprisal. Statutes of limitations relating to acts of enforced disappearance shall be substantial and commensurate with the extreme

seriousness of the offence and perpetrators shall not benefit from any special amnesty law or similar measures which might lead to impunity.

The Declaration provides that the victims of enforced disappearance and their family shall obtain redress and shall have the right to adequate compensation, including the means for as complete a rehabilitation as possible.

The Declaration pays special attention to the disappearance of children, the abduction of children of parents subjected to enforced disappearance and of children born during their mother's enforced disappearance. States must devote their efforts to the search for and identification of such children and to their restitution to their families of origin.

The World Conference on Human Rights, held at Vienna from 14 to 25 June 1993, welcomed the adoption of the Declaration by the General Assembly and called upon all States "to take effective legislative, administrative, judicial or other measures to prevent, terminate and punish acts of enforced disappearance." The World Conference reaffirmed 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."

Since 1993, the Commission on Human Rights and its successor, the Human Rights Council, have regularly adopted resolutions in which they have invited all Governments to take appropriate legislative or other steps to prevent and punish the practice of enforced disappearance, with special reference to the Declaration, and to take action to that end nationally, regionally and in cooperation with the United Nations.

Notwithstanding the adoption of the International Convention for the Protection of All Persons from Enforced Disappearance in 2006, the Declaration remains a fundamental document in the fight against enforced disappearance as it sets forth a set of rules that all the Member States of the United Nations, without the requirement of a ratification, are called upon to apply as a minimum to prevent and suppress the practice.

The full text of the Declaration is set out in annex III to this Fact Sheet.

III. INTERNATIONAL CONVENTION FOR THE PROTECTION OF ALL PERSONS FROM ENFORCED DISAPPEARANCE

Before the creation of specific international instruments to address enforced disappearance, jurisprudence from international bodies, such as the United Nations Human Rights Committee, the Inter-American Court of Human Rights, the European Court of Human Rights and the Human Rights Chamber for Bosnia and Herzegovina, helped further normative principles relating to enforced disappearance.[1]

In 2001, the Commission on Human Rights requested an independent expert to examine the existing international criminal and human rights framework for the protection of persons from enforced or involuntary disappearance and to identify gaps in order to ensure full protection.[2] In his report, the independent expert concluded that the right not to be subjected to enforced disappearance was not established in any universal treaty and that there were many gaps regarding measures of prevention and effective remedies and reparation for victims. These gaps in the international legal framework justified the drawing-up of a new treaty. [3]

Following the report of the independent expert, the Commission on Human Rights decided in 2003 to draw up such a treaty. Over 70 States, as well as numerous NGOs, associations of families of the disappeared and experts participated in the three-year negotiation process. The International Convention for the Protection of All Persons from Enforced Disappearance was finally adopted by the General Assembly in December 2006. It will enter into force once 20 countries have ratified it.

Unlike the Declaration, the Convention is a legally binding instrument. It draws extensively on the provisions of the Declaration, but includes

[1] For further information on this case law, see "Civil and political rights, including questions of: disappearances and summary executions: Report submitted by Mr. Manfred Nowak, independent expert charged with examining the existing international criminal and human rights framework for the protection of persons from enforced or involuntary disappearances, pursuant to paragraph 11 of Commission resolution 2001/46" (E/CN.4/2002/71); and Tullio Scovazzi and Gabriella Citroni, *The Struggle against Enforced Disappearance and the 2007 United Nations Convention* (Leiden, Martinus Nijhoff Publishers, 2007).

[2] E/CN.4/2002/71.

[3] The Inte.r-American Convention on Forced Disappearance of Persons entered into force in 1996

new standards and strengthens others that were already stated in the Declaration. The inclusion in the Convention of a monitoring body is also a major difference between both instruments.

The Convention is divided into three parts. Part I contains the substantive provisions and focuses primarily on the obligations of States parties to prevent and punish such crimes. Part II establishes the Committee on Enforced Disappearances. Finally, Part III contains the formal requirements regarding signature, entry into force, amendments and the relationship between the Convention and international humanitarian law. It also notes that any provisions which are more conducive to the protection from enforced disappearance found in international or domestic laws should be applied.

The Convention represents significant progress in international law, in particular by defining the non-derogable right not to be subjected to an enforced disappearance.[4] According to article 2, " '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."

The Convention affirms that enforced disappearance constitutes a crime against humanity when practised in a widespread or systematic manner. It creates an obligation on States to make the offence of enforced disappearance punishable by appropriate penalties which take into account its extreme seriousness. Regarding the statute of limitations, the Convention states that the term of limitation begins from the moment when the disappearance ceases, taking into account its continuous nature.

Among the measures intended to prevent enforced disappearances, the Convention includes the express prohibition of secret detention and calls on States to guarantee minimum legal standards around the deprivation of liberty, such as the maintenance of official registers of persons deprived of liberty with a minimum of information and the authorization

[4] A non-derogable right is a right that may not be restricted or suspended, even in times of war or other public emergency. For instance, the right to life and the right to be free from torture are non-derogable.

to communicate with their family, counsel or any other person of their choice. The Convention establishes that, when an alleged perpetrator of an act of enforced disappearance is present in any territory under the jurisdiction of a State Party, such State shall take such measures as may be necessary to establish its jurisdiction over the offence, unless it extradites or surrenders the offender to another State in accordance with its international obligations or surrenders the offender to an international criminal tribunal whose jurisdiction it has recognized.

One of the Convention's major innovations is article 24, which includes in the definition of "victim" not only the disappeared person but also any individual who has suffered harm as the direct result of an enforced disappearance, such as family members.

This article also establishes the right to the truth "regarding the circumstances of the enforced disappearance, the progress and results of the investigation and the fate of the disappeared person." Although this right had been recognized in humanitarian law and by some international bodies, such as the Inter-American Commission on Human Rights, the Inter-American Court of Human Rights and the United Nations Commission on Human Rights, the Convention is the first international human rights instrument to expressly state it.

Article 24 also describes the right to obtain reparation, which covers material and moral damages and includes, as appropriate, restitution, rehabilitation, satisfaction and guarantees of non-repetition. Finally, it requires States Parties to take appropriate steps concerning the legal situation of the disappeared persons, particularly with regard to social welfare, financial matters, family law and property rights. This provision can help the families of the disappeared move on with some aspects of their life, such as inheritance and civil status.

The final provision in Part I of the Convention concerns the wrongful removal of children, whether they are subjected to enforced disappearance as individuals or as a consequence of their parents' disappearance, for instance children who are born during the captivity of a mother subjected to enforced disappearance. In searching and identifying such children, States shall protect the best interests of the children, including their right to preserve or re-establish their identity, nationality, name and family relations. States shall also take all necessary measures to prevent and suppress the falsification, concealment or destruction of documents attesting to the

true identity of children subjected to enforced disappearance or whose parents are victims of a disappearance.

Part II of the Convention contains the international monitoring provisions, that is, the establishment of a Committee on Enforced Disappearances charged with five monitoring tasks:

(a) To examine reports submitted by States parties on the measures taken to give effect to their obligations under the Convention;

(b) To send urgent communications to States, requesting that they take all the necessary measures, including interim measures, to locate and protect a disappeared person. This is the first time that a mandate of such nature is given to a treaty-monitoring body;

(c) To receive and consider communications from individuals claiming to be victims of a violation by a State party of provisions of the Convention;

(d) To receive and consider communications in which a State party claims that another State party is not fulfilling its obligations under the Convention;

(e) To undertake a visit to a State party, after consultation with the State concerned, if it receives information indicating that this State is seriously violating the provisions of the Convention.

Finally, if the Committee receives well-founded information that enforced disappearance is being practised on a widespread or systematic basis in a State party, it may bring the matter to the attention of the General Assembly, through the Secretary-General, after seeking information from the State concerned. It is, again, the first time that a mandate of this kind is given to a treaty-monitoring body.

The tasks assigned to the Committee will, it is hoped, lead to further protection against and prevention of enforced disappearances throughout the world.

The full text of the International Convention is set out in annex IV to this Fact Sheet.

IV. THE WORKING GROUP ON ENFORCED OR INVOLUNTARY DISAPPEARANCES

The United Nations General Assembly has devoted particular attention to this odious phenomenon on many occasions. In 1978, in its resolution 33/173, it expressed concern over reports from various parts of the world relating to enforced or involuntary disappearances of persons. It requested the United Nations Commission on Human Rights to consider the question and to make appropriate recommendations. By resolution 20 (XXXVI) of 29 February 1980, the Commission on Human Rights decided to establish a working group of five independent experts to examine questions relevant to enforced or involuntary disappearances of persons. Since then, the mandate of the Working Group has been regularly renewed.

A. *Definition of enforced disappearance*

In accordance with the definition contained in the preamble to the Declaration, the Working Group operates on the basis that enforced disappearances are considered as such only if perpetrated by State actors or by private individuals or organized groups, for example, paramilitary groups,[5] acting on behalf of, or with the support, direct or indirect, consent or acquiescence of State authorities. Therefore, the Working Group does not admit cases attributed to perpetrators that do not fall under these categories, such as non-State-sponsored terrorist or insurgent movements fighting the Government on its own territory. This distinction is based of the principle that States have the obligation to investigate and sanction acts similar in nature to enforced disappearance when committed by non-State actors. The Working Group maintains that the State's responsibility for enforced disappearances continues irrespective of changes of Government, even if the new Government shows greater respect for human rights than the Government in power at the time the disappearances occurred. Nevertheless, when studying the situation of enforced disappearances in a particular country or examining the phenomenon generally, the Working Group considers information on all kinds of disappearances to be relevant to a proper evaluation.

The Working Group does not deal with disappearances in the context of international armed conflicts, in view of the competence of the

[5] "Paramilitary groups" are organized groups that are effectively armed, trained or supported by the regular army.

International Committee of the Red Cross (ICRC) in such situations, as determined by the Geneva Conventions of 1949 and their Additional Protocols of 1977.[6]

For the purposes of defining an act of enforced disappearance, the Working Group considers that placing the victim outside the protection of the law is a consequence of the crime. The Working Group, therefore, admits cases of enforced disappearance without requiring the source of the information to demonstrate, or even presume, that the intention of the perpetrator was indeed to place the victim outside the protection of the law. Furthermore, the Working Group considers that an act of enforced disappearance may be initiated by an illegal detention or by an initially legal arrest or detention. That is to say, the protection of a victim from enforced disappearance must be effective upon the act of deprivation of liberty, whatever form such deprivation takes, and not be limited to illegal deprivations of liberty.

Finally, a detention followed by an extrajudicial execution is an enforced disappearance proper, if it was carried out by governmental agents of whatever branch or level, or by organized groups or private individuals acting on behalf of, or with the support, direct or indirect, consent or acquiescence of the Government, and, subsequent to the detention, or even after the execution was carried out, State officials refuse to disclose the fate or whereabouts of the persons concerned or refuse to acknowledge the act having been perpetrated at all.

B. *Activities of the Working Group*

The Working Group's basic mandate is to assist relatives to ascertain the fate and whereabouts of their disappeared family members. For this purpose, the Working Group examines reports of disappearances received from relatives of disappeared persons or human rights organizations acting on their behalf. After determining whether these reports comply with a number of criteria, the Working Group transmits individual cases to the Governments concerned, requesting them to carry out investigations and to inform the Working Group of the results. The Working Group deals with the cases on a purely humanitarian basis, irrespective of whether

[6] Further information on these Conventions may be found in Fact Sheet No. 13: *International Humanitarian Law and Human Rights*.

the Government concerned has ratified any relevant human rights treaty providing for an individual complaints procedure. It acts essentially as a channel of communication between the families of disappeared persons and Governments, and has successfully developed a dialogue with the majority of Governments concerned with the aim of solving cases of disappearance.

To avoid any delays in its attempts to save lives, the Working Group has established a procedure to take urgent action on cases of disappearance alleged to have occurred in the three months before they are reported to it.

The Working Group meets three times a year for five to eight working days, usually in Geneva. Its meetings are held in private. However, the Working Group regularly invites representatives of Governments, non-governmental organizations, family members and witnesses. Following each session, the Working Group informs Governments, in writing, of the decisions taken with regard to disappearances in their country. It reminds Governments, at least once a year, of the total number of cases transmitted in the past which have not yet been clarified. Twice a year it reminds Governments of "urgent action" cases sent during the preceding six months for which no clarification has been received. Furthermore, at any time during the year any Government may request, in writing, the summaries of cases that the Working Group has transmitted to it.

Another of the Working Group's activities is to conduct country visits. These are intended to facilitate the dialogue between the authorities most directly concerned, the families or their representatives and the Working Group, and to assist in the clarification of reported disappearances. In recent years, the Working Group has visited countries with the particular aim of clarifying cases of disappearance and discussing further efforts that Governments should take, in cooperation with the Working Group, to address all cases of disappearance in the light of international human rights standards, especially the Declaration.

With the General Assembly's adoption of the Declaration on the Protection of All Persons from Enforced Disappearance, the Working Group has, since 1992, also been entrusted, in addition to its core mandate, with monitoring States' progress in fulfilling their obligations deriving from the Declaration and providing assistance to them in its implementation. The Working Group draws the attention of Governments and non-governmental organizations to different aspects of the Declaration and recommends

ways of overcoming obstacles to the realization of its provisions. In this capacity, the Working Group has a preventive role, which it fulfils both during its country visits and by providing advisory services when requested. Furthermore, the Working Group regularly transmits, to the Governments concerned, summaries of allegations of violations of the Declaration in their countries that it has received from relatives of disappeared persons and non-governmental organizations, and invites them to comment on these allegations if they so wish.

Despite the Working Group's efforts to remind Governments of their obligation to implement the Declaration by taking appropriate legislative, administrative, judicial or other measures, very little progress has been made in practice. With some exceptions, States have not begun to systematically incorporate the principles set out in the Declaration into their national legislation. The Working Group has repeatedly stressed that the obligation to implement the Declaration applies not only to States where enforced disappearances actually occurred in the past or have continued up to the present day; legislative and other preventive measures, in particular, must be taken by all States to ensure that such acts will not occur in the future.

To facilitate the interpretation of the Declaration, the Working Group has to date issued general comments on the definition of enforced disappearance and on articles 3, 4, 10, 17, 18 and 19.[7]

The Working Group reports annually to the Human Rights Council on its activities. It reports on all cases of enforced disappearance that it has received during the year, country by country, and on the decisions it has taken on them. It provides the Council for each country with a statistical summary of cases transmitted, clarifications made and the status of the person concerned on the date of clarification. The Working Group includes conclusions and recommendations in its reports, and makes observations on the situation of disappearances in individual countries. Since 1993, it has reported on the implementation of the Declaration on the Protection of All Persons from Enforced Disappearance and the obstacles encountered. Periodically it also reports on broader issues surrounding the phenomenon of disappearance.

[7] These general comments are available in full at http://www.ohchr.org.

C. *Methods of work of the Working Group*

The methods of work of the Working Group are based on its mandate as stipulated in Commission on Human Rights resolution 20 (XXXVI) and developed first by the Commission and then by the Human Rights Council in further resolutions.[8] They are specifically geared towards its main objective: to assist families in determining the fate and whereabouts of their disappeared relatives. To this end, the Working Group endeavours to establish a channel of communication between the families and the Governments concerned, seeking to ensure that sufficiently documented and clearly identified individual cases which the families, directly or indirectly, have brought to the Working Group's attention are investigated.

The Working Group's role ends when the fate or whereabouts of the disappeared person have been clearly established as a result of investigations by the Government or the family, inquiries by non-governmental organizations, or fact-finding missions by the Working Group or by human rights personnel from the United Nations or from any other international organization operating in the field, irrespective of whether that person is alive or dead. At that point the Working Group no longer concerns itself with the question of determining responsibility for specific cases of disappearance or for other human rights violations which may have occurred in the course of a disappearance; its work in this respect is of a strictly humanitarian nature.

The Working Group's action is based on the principle that the State is responsible for human rights violations committed within its territory and is obligated to prevent such violations and to investigate them when they have occurred. As with all other situations of State responsibility, such responsibility continues to exist irrespective of changes of Government.

The Commission on Human Rights and its successor, the Human Rights Council, have noted the Working Group's methods of work and the humanitarian spirit underlying its mandate. They have also stressed the importance of publicizing the objectives, procedures and methods of the Working Group within the framework of the information activities of the Office of the United Nations High Commissioner for Human Rights.

[8] The Working Group's methods work are available at http://www.ohchr.org.

D. *Admissibility*

For a report of a disappearance to be considered admissible by the Working Group, it must originate from the family or friends of the disappeared person. Such reports may also be channelled to the Working Group through representatives of the family, Governments, intergovernmental organizations, humanitarian organizations, non-governmental organizations and other reliable sources. They must be submitted in writing with a clear indication of the identity of the sender. If the source is not a family member, it must be in a position to follow up with the relatives of the disappeared person concerning his or her fate. At the request of the source, and in an effort to protect those submitting a report, their identity is kept confidential.

To enable the Governments named in the reports to carry out meaningful investigations, the Working Group provides them with at least a minimum of basic data. In addition, the Working Group constantly urges the sources of reports to furnish as many details as possible on the identity of the disappeared person (even, if available, the identity card number) and the circumstances of the disappearance. The following minimum elements are required:

(a) Full name of the disappeared person and, if possible, age, gender, nationality and occupation or profession;

(b) Date of disappearance, i.e., day, month and year of arrest or abduction or day, month and year when the disappeared person was last seen. If the disappeared person was last seen in a detention centre, an approximate indication is sufficient;

(c) Place of arrest or abduction or where the disappeared person was last seen (at least an indication of the town or village);

(d) Parties presumed to have carried out the arrest or abduction or to hold the disappeared person in unacknowledged detention; and

(e) Steps taken to determine the fate or whereabouts of the disappeared person, or at least an indication that efforts to use domestic remedies were frustrated or otherwise inconclusive;

(f) A case should be submitted to the Working Group by a reliable source, which, if other than a family member, must indicate whether the reported victim's family has given its direct consent for this case to be submitted to the Working Group on its behalf.

Due to the humanitarian component of the Working Group's mandate, domestic remedies do not need to be exhausted before bringing a case to its attention.

A case submitted to the Working Group can also be submitted to the European Court of Human Rights, the African Commission on Human and Peoples' Rights, the Human Rights Committee, the Inter-American Commission on Human Rights, and the Inter-American Court of Human Rights or similar judicial or quasi-judicial international bodies.

The form to submit individual cases to the Working Group is reproduced in annex I to this Fact Sheet.

E. *Handling of cases*

Newly reported cases of disappearance are put before the Working Group for detailed examination during its sessions. Those which fulfil the requirements as outlined above are transmitted to the Governments concerned, with a request to carry out investigations and to inform the Working Group of the results.

The cases are normally communicated by letter from the Working Group's Chairperson to the Government concerned through the country's Permanent Representative to the United Nations at Geneva. However, cases that occurred less than three months earlier are transmitted directly to the country's Minister for Foreign Affairs by the most direct and rapid means. As indicated above, this is referred to as the *urgent action procedure*. Such communications can be authorized by the Chairperson on the basis of specific authority delegated to him or her by the Working Group. Cases which occurred before the three-month limit but not more than one year ago can be transmitted between sessions by letter, upon authorization by the Chairperson, provided that they have some connection with a case which occurred within the three-month period.

Reports indicating that officials from one country were directly responsible for or involved in a disappearance in another country, or in cases where officials from more than one country were directly responsible for or involved in the disappearance, would be communicated to all Governments concerned. However, the case would be counted only in the statistics of the country in which the person was reportedly arrested, detained, abducted or last seen.

In cases of the disappearance of a pregnant woman, the child presumed to have been born during the mother's captivity is mentioned in the description of the mother's case. The child is treated as a separate case when witnesses have reported that the mother actually gave birth during her detention.

F. *Replies from Governments and clarification, closure or discontinuation of cases*

Any reply from the Government containing detailed information on the fate or whereabouts of a disappeared person is transmitted to the source. If the source does not respond within six months or if it contests the Government's information on grounds which are considered unreasonable by the Working Group, the case is considered clarified and listed accordingly under the heading "cases clarified by the Government's response" in the statistical summary of the annual report. If the source contests the Government's information on reasonable grounds, the Government is so informed and asked to comment.

The Working Group may consider a case closed when the competent authority specified in the relevant national law pronounces, with the concurrence of the relatives and other interested parties, on the presumption of death of a person reported disappeared. Presumption of death shall at all times respect the right to adequate reparation and the right to know the truth on the fate of the dead person.

In exceptional circumstances, the Working Group may decide to discontinue the consideration of a cases if the family has manifested, freely and indisputably, its desire not to pursue the case any further, or when the source is no longer in existence or is unable to follow up the case and steps taken by the Working Group to establish communication with other sources have proven unsuccessful.

The fact that the Working Group declares a case clarified, closed or discontinued does not, however, exonerate the Government from its obligations under the Declaration to further investigate the case, to bring the perpetrators to justice, to provide adequate reparation to the family of the disappeared person and to take all measures necessary to prevent similar cases in the future.

If the source provides well-documented information that a case has erroneously been considered clarified, closed or discontinued because the

Government's reply referred to a different person, does not correspond to the reported situation or has not reached the source within the six-month period described above, the Working Group retransmits the case to the Government, requesting it to comment. In such instances the case is again listed among the unclarified cases and the situation is explained in the Working Group's report to the Human Rights Council, indicating the errors or discrepancies.

Any additional substantive information which the source submits on an outstanding case is put before the Working Group and, following its approval, transmitted to the Government concerned. If the additional information received amounts to a clarification of the case, the Government is so informed.

The Working Group retains cases in its files as long as the exact whereabouts of the disappeared persons have not been determined.

While the Working Group's mandate does not extend beyond the stage at which a disappeared person's fate is made known, other human rights procedures of the United Nations can take up where the Working Group leaves off. If the reply from the Government concerned clearly indicates that the disappeared person has been found dead, tortured, in arbitrary but acknowledged detention, or to be a victim of other human rights violations for which Government officials or groups or individuals linked to them are allegedly responsible, the case can be brought to the attention of the appropriate mechanism or body by the Working Group or by the relatives.

If the Working Group receives a report of an enforced disappearance in which the victim has already been found dead, it does not admit the case for transmission to the respective Government, since it would be a case clarified ab initio. However, such a case would still fall within the definition of enforced disappearance included in the Declaration, if (i) the deprivation of liberty took place against the will of the person concerned, (ii) with the involvement of Government officials, at least indirectly by acquiescence, and (iii) State officials thereafter refused to acknowledge the act or to disclose the fate or whereabouts of the person. That is to say, in accordance with the mandate of the Working Group to monitor the implementation of the Declaration, such a report may be transmitted to the Government in question as "general allegations", but not as an "urgent appeal" or under the "standard procedure". The Working Group would then invite the Government concerned to comment on the measures that

should be taken under the Declaration to investigate such cases, to bring the perpetrators to justice, to satisfy the right to adequate compensation, as well as to stop and prevent enforced disappearances.

Since its inception, the Working Group on Enforced or Involuntary Disappearances has dealt with some 50,000 individual cases in almost 80 countries. For reasons well beyond the control of the Working Group, only about 20 per cent of those cases have been clarified. Nevertheless, the extent to which the Working Group, through its patient and persistent contacts with the Governments concerned, may have prevented more cases from occurring cannot be quantified. The fact that it was able to contribute to the clarification of cases, especially within the framework of its urgent action procedure, and thus possibly to the saving of human lives, has been considered sufficient reason for the Human Rights Council to continue to renew its mandate. Moreover, the mechanism of the Working Group should be seen as a reflection of international concern and action. It should equally be seen as forming part of a long-term process leading to the elimination of major human rights violations, a process which includes the creation of widespread public awareness of human rights-related issues and the provision of advisory services and technical assistance to Governments for the promotion and protection of human rights.

G. *Protection of relatives and witnesses*

The Working Group is also concerned with the protection of relatives of disappeared persons, their legal counsel, witnesses to disappearances or their family, members of organizations of relatives and other non-governmental organizations, human rights defenders or individuals concerned with disappearances.

In cases of persecution, intimidation or reprisals against these persons, the Working Group appeals to the Government concerned to take all necessary steps to protect their fundamental rights and to investigate the cases thoroughly in order to put an end to the intimidation or reprisals.

Prompt intervention is often required to protect relatives, witnesses and other persons involved in a disappearance. Accordingly, allegations of intimidation, persecution or reprisals are transmitted directly to the relevant Ministers of Foreign Affairs by the most direct and rapid means. The Working Group has authorized its Chairperson to transmit such information between sessions.

The Human Rights Council has also requested the Working Group to take action in connection with acts of intimidation or reprisals against relatives of disappeared persons and private individuals or groups who seek to cooperate or have cooperated with United Nations human rights bodies, or who have provided testimony or information to them, as well as persons who avail or have availed themselves of procedures established under United Nations auspices for the protection of human rights and fundamental freedoms or persons who have provided legal assistance to others for that purpose.

V. FUTURE RELATIONSHIP BETWEEN THE COMMITTEE-TO-BE AND THE WORKING GROUP

As in other situations where both a treaty body and a special procedure of the Human Rights Council deal with the same kind of human rights violation, the Committee, created by virtue of the Convention, and the Working Group have complementary roles and functions, and should cooperate in order to maximize their efficiency and avoid duplication. In this respect, the Convention clearly indicates that the Committee shall cooperate inter alia with the treaty bodies instituted by international instruments and with the special procedures of the United Nations. Treaty-based mechanisms and thematic special procedures have coexisted for many years, for example, the Special Rapporteur on Torture and other cruel, inhuman or degrading treatment or punishment and the Committee against Torture, as well as the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance and the Committee on the Elimination of Racial Discrimination.

An important difference between the two bodies is that, unlike the treaty-based functions of the Committee, the Working Group's basic mandate is humanitarian, acting as a channel of communication between the families of the victims and Governments. Furthermore, while the Committee shall have competence solely in respect of enforced disappearances perpetrated in a State party to the Convention, the Working Group is able to act on all reported cases of disappearance which have occurred in all countries, regardless of whether the State has ratified relevant international human rights treaties. As such, even if a country is not a party to the Convention, the family of a victim of an enforced disappearance is able to approach the Working Group to help find their loved one.

The Working Group encourages the ratification of the Convention and the acceptance by States of the Committee's competence to receive and consider individual and inter-State communications.

Annex I

FORM TO SUBMIT A COMMUNICATION ON A VICTIM OF AN ENFORCED OR INVOLUNTARY DISAPPEARANCE

Important: **Elements indicated with an asterisk (*) are mandatory.**

Note: If any information contained in the report, besides the mandatory requested elements, should be kept confidential, please write "CONFIDENTIAL" beside the relevant entry.

CASES SUBMITTED BY ORGANIZATIONS:

Please note that if a case is being submitted to the Working Group by an organization, it is necessary for that organization to follow up on it by conveying Government information from the Working Group to the family and from the family to the Working Group until the fate or whereabouts of the person are determined. In this regard, ***please indicate whether the reported victim's family has given its direct consent*** for your organization to submit this case to the Working Group on its behalf and whether your organization will be able to liaise between the family and the Working Group.

***** Consent of victim's family given directly to your organization to submit this case?

Yes, direct consent received from family _____

No consent from family _____

*If this case is being submitted by an organization, will the organization be able to follow up by conveying information between the family and the Working Group? Yes _____ No____

1. Identity of the disappeared person:

(a) Family name (*):.....

(b) First name (*): .....

(c) Sex: male __ / female __

(d) Date of birth: .....

(e) Identity document:..... Nr: .....

Date of issue: ..... Place of issue: .....

(f) Address of usual residence:.....

.....

.....

(g) Pregnant: yes __ / no __.

2. Date on which the disappearance occurred (*):

Day: ..... Month(*): ..... Year(*): ..... of disappearance

3. Place of arrest or abduction, or where the disappeared person was last seen (*):

Location (if possible, street, city, province or other relevant indications):

.....

.....

.....

4. Forces (<u>State or State-supported</u>) believed to be responsible for the disappearance (*):

(a) If the perpetrators are believed to be State agents, please specify (military, police, persons in uniform or civilian clothes, agents of security services, unit to which they belong, rank and functions, etc.) and indicate why they are believed to be responsible. Be as precise as possible:

.....

.....

.....

(b) If identification as State agents is not possible, why do you believe that Government authorities, or persons linked to them, are responsible for the incident?

.....

.....

.....

(c) If there are witnesses to the incident, indicate their names. If they wish to remain anonymous, indicate if they are relatives, passers-by, etc. If there is evidence, please specify:

.....

.....

.....

5. Action taken by relatives or others to locate the person (enquiries with police, jail, human rights commission, habeas corpus petition, etc.) (*):

(a) Indicate if complaints have been filed, when, by whom and before which organ.

.....

.....

.....

(b) Other steps taken:

.....

.....

.....

(c) If action was not possible, please explain why:

.....

.....

.....

6. Identity of the person or organization submitting the report (*):

(a) Family name: .....

(b) First name:.....

(c) Relationship to the disappeared person: .....

(d) Organization (if applicable):.....

(e) Address (telephone, fax, e-mail): .....

.....

.....

(f) Please state whether you would like **your identity** to be kept **confidential**

Yes, keep my identity confidential: _____

No request for confidentiality: _____

Additional information on the case

Please indicate any other relevant information that has not been covered by the previous questions. If one of the mandatory elements noted (*) in this report could not be answered, please indicate why.

.....

.....

Date: ..... Signature of author: .....

Address to submit cases:
E-mail: wgeid@ohchr.org

Fax: +41 22 917 9006, attn: Working Group on Enforced or Involuntary Disappearances

Post: Working Group on Enforced or Involuntary Disappearances
OHCHR, Palais des Nations
8-14 Avenue de la Paix
CH-1211 Geneva 10 (Switzerland)

Annex II

PRACTICAL INFORMATION:

THE UNITED NATIONS WORKING GROUP ON ENFORCED OR INVOLUNTARY DISAPPEARANCES IN A NUTSHELL

What is the United Nations Working Group on Enforced or Involuntary Disappearances?

The Working Group was established in 1980 by the Commission on Human Rights. Its mandate is to assist families in determining the fate and whereabouts of their relatives. The Working Group is a channel of communication between the families and the Governments concerned, aiming to ensure that individual cases which families have brought to its attention are investigated by domestic authorities with the objective of clarifying the fate or whereabouts of disappeared persons.

In cases of intimidation, reprisals, harassment of relatives of disappeared people, human rights defenders or advocates and lawyers working on cases of disappearance, the Working Group calls on the Governments concerned to take steps to protect all the fundamental rights of the persons concerned.

Furthermore, the Working Group monitors the implementation of the 1992 Declaration on the Protection of All Persons from Enforced Disappearance.

The Working Group does not:

– Directly investigate individual cases;

– Directly adopt measures of protection against reprisals;

– Establish individual or State responsibility in cases of enforced

disappearance;

– Judge and sanction;

– Carry out exhumations;

– Grant satisfaction or reparation;

– Deal with disappearances perpetrated by non-State actors (e.g., rebel groups).

The Working Group, whose permanent secretariat is based in Geneva (Switzerland), is made up of five independent experts. It holds three regular sessions a year.

What are the Working Group's procedures?

Urgent appeals. The Working Group transmits directly (within 1 or 2 days after receipt) to the Ministry of Foreign Affairs of the country concerned, through the Permanent Representative to the United Nations Office at Geneva, cases that occurred within the past 3 months. For cases that happened more than 3 months ago (standard cases), the Working Group may authorize transmission to the Government concerned, requesting it to carry out investigations and inform the Working Group about the results.

General allegations. Allegations are formulated by relatives of disappeared people and NGOs with regard to existing obstacles in given countries to the implementation of the 1992 Declaration. Such allegations are transmitted to Governments for their response.

Prompt intervention for reprisals. The Working Group transmits to the Government concerned information on cases of intimidation, persecution or reprisal against relatives of disappeared people, witnesses or their families or members of NGOs concerned with disappearances, calling on it to take steps to protect all the fundamental rights of the persons affected.

Country visits. Upon previous consent by the Government, the Working Group can visit a country to assess the overall situation of disappearances. It will then release a report on such a visit.

Annual reports. The Working Group reports annually to the Human Rights Council on its activities, reporting also on its communications with Governments and NGOs, its missions, all cases of disappearance received during the year and the implementation of the 1992 Declaration.

All procedures of the Working Group are free of charge.

Why should a case be submitted to the Working Group?

The Working Group accepts cases from any country in the world. Furthermore, it is not necessary to exhaust domestic remedies before submitting a case to it. Finally, international pressure may be a key factor in solving a case of disappearance or reprisal against people working on it.

Is there any danger in submitting a case to the Working Group?

When submitting a case to the Working Group, one can ask for confidentiality. This will ensure a certain level of protection and, in case of reprisals, one can send a prompt intervention letter to the Working Group (this is not infallible, but has often played a significant role in the prevention of grave violations).

Can an individual submit a case to the Working Group alone or does he or she need assistance?

Cases of disappearance can be submitted to the Working Group by relatives of the disappeared themselves or by organizations acting on their behalf (with prior consent of the relatives). Whoever refers the case to the Working Group must be able to maintain communication with it and to answer promptly to requests for further information or clarification.

What can NGOs do before the Working Group?

First, NGOs can inform the general public about the existence and functioning of the Working Group and create awareness. Furthermore, NGOs can assist relatives of disappeared people in submitting cases to the Working Group or in sending prompt intervention letters. They can also present general allegations and support relatives during country visits, organizing meetings with the Working Group.

Is it difficult to communicate with the Working Group?

Information to the Working Group must be submitted in writing (preferably by fax or e-mail). Communications can be written in English, French or Spanish. The contact address is:

The Working Group on Enforced or Involuntary Disappearances

OHCHR-UNOG
CH-1211 Geneva 10
Switzerland

Fax: +41 (0)22 917 90 06
E-mail: wgeid@ohchr.org

A report of an enforced disappearance must always indicate:

- Full name of the victim;
- Day, month and year of disappearance;
- Place of disappearance;
- Those considered responsible; and
- Information about any search which has been made.

Most cases and replies are reviewed at the session following their receipt, provided they arrive at least one month before the session.

A case remains on the file of the Working Group until it is clarified (this may be for several years).

Annex III

DECLARATION ON THE PROTECTION OF ALL PERSONS FROM ENFORCED DISAPPEARANCE

(General Assembly resolution 47/133 of 18 December 1992)

The General Assembly,

Considering that, in accordance with the principles proclaimed in the Charter of the United Nations and other international instruments, recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world,

Bearing in mind the obligation of States under the Charter, in particular Article 55, to promote universal respect for, and observance of, human rights and fundamental freedoms,

Deeply concerned that in many countries, often in a persistent manner, enforced disappearances occur, in the sense that persons are arrested, detained or abducted against their will or otherwise deprived of their liberty by officials of different branches or levels of Government, or by organized groups or private individuals acting on behalf of, or with the support, direct or indirect, consent or acquiescence of the Government, followed by a refusal to disclose the fate or whereabouts of the persons concerned or a refusal to acknowledge the deprivation of their liberty, which places such persons outside the protection of the law,

Considering that enforced disappearance undermines the deepest values of any society committed to respect for the rule of law, human rights and fundamental freedoms, and that the systematic practice of such acts is of the nature of a crime against humanity,

Recalling its resolution 33/173 of 20 December 1978, in which it expressed concern about the reports from various parts of the world

relating to enforced or involuntary disappearances, as well as about the anguish and sorrow caused by those disappearances, and called upon Governments to hold law enforcement and security forces legally responsible for excesses which might lead to enforced or involuntary disappearances of persons,

Recalling also the protection afforded to victims of armed conflicts by the Geneva Conventions of 12 August 1949 and the Additional Protocols thereto, of 1977,

Having regard in particular to the relevant articles of the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights, which protect the right to life, the right to liberty and security of the person, the right not to be subjected to torture and the right to recognition as a person before the law,

Having regard also to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, which provides that States parties shall take effective measures to prevent and punish acts of torture,

Bearing in mind the Code of Conduct for Law Enforcement Officials, the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power and the Standard Minimum Rules for the Treatment of Prisoners,

Affirming that, in order to prevent enforced disappearances, it is necessary to ensure strict compliance with the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment contained in the annex to its resolution 43/173 of 9 December 1988, and with the Principles on the Effective Prevention and Investigation of Extralegal, Arbitrary and Summary Executions, set forth in the annex to Economic and Social Council resolution 1989/65 of 24 May 1989 and endorsed by the General Assembly in its resolution 44/162 of 15 December 1989,

Bearing in mind that, while the acts which comprise enforced disappearance constitute a violation of the prohibitions found in the aforementioned international instruments, it is nonetheless important to devise an instrument which characterizes all acts of enforced disappearance

of persons as very serious offences and sets forth standards designed to punish and prevent their commission,

1. *Proclaims* the present Declaration on the Protection of All Persons from Enforced Disappearance, as a body of principles for all States;

2. *Urges* that all efforts be made so that the Declaration becomes generally known and respected;

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 to life.

Article 2

1. No State shall practise, permit or tolerate enforced disappearances.

2. States shall act at the national and regional levels and in cooperation with the United Nations to contribute by all means to the prevention and eradication of enforced disappearance.

Article 3

Each State shall take effective legislative, administrative, judicial or other measures to prevent and terminate acts of enforced disappearance in any territory under its jurisdiction.

Article 4

1. All acts of enforced disappearance shall be offences under criminal law punishable by appropriate penalties which shall take into account their extreme seriousness.

2. Mitigating circumstances may be established in national legislation for persons who, having participated in enforced disappearances, are instrumental in bringing the victims forward alive or in providing voluntarily information which would contribute to clarifying cases of enforced disappearance.

Article 5

In addition to such criminal penalties as are applicable, enforced disappearances render their perpetrators and the State or State authorities which organize, acquiesce in or tolerate such disappearances liable under civil law, without prejudice to the international responsibility of the State concerned in accordance with the principles of international law.

Article 6

1. No order or instruction of any public authority, civilian, military or other, may be invoked to justify an enforced disappearance. Any person receiving such an order or instruction shall have the right and duty not to obey it.

2. Each State shall ensure that orders or instructions directing, authorizing or encouraging any enforced disappearance are prohibited.

3. Training of law enforcement officials shall emphasize the provisions in paragraphs 1 and 2 of the present article.

Article 7

No circumstances whatsoever, whether a threat of war, a state of war, internal political instability or any other public emergency, may be invoked to justify enforced disappearances.

Article 8

1. No State shall expel, return (refouler) or extradite a person to another State where there are substantial grounds to believe that he would be in danger of enforced disappearance.

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

Article 9

1. The right to a prompt and effective judicial remedy as a means of determining the whereabouts or state of health of persons deprived of their liberty and/or identifying the authority ordering or carrying out the deprivation of liberty is required to prevent enforced disappearances under all circumstances, including those referred to in article 7 above.

2. In such proceedings, competent national authorities shall have access to all places where persons deprived of their liberty are being held and to each part of those places, as well as to any place in which there are grounds to believe that such persons may be found.

3. Any other competent authority entitled under the law of the State or by any international legal instrument to which the State is a party may also have access to such places.

Article 10

1. Any person deprived of liberty shall be held in an officially recognized place of detention and, in conformity with national law, be brought before a judicial authority promptly after detention.

2. Accurate information on the detention of such persons and their place or places of detention, including transfers, shall be made promptly available to their family members, their counsel or to any other persons having a legitimate interest in the information unless a wish to the contrary has been manifested by the persons concerned.

3. An official up-to-date register of all persons deprived of their liberty shall be maintained in every place of detention. Additionally, each State shall take steps to maintain similar centralized registers. The information contained in these registers shall be made available to the persons mentioned in the preceding paragraph, to any judicial or other competent and independent national authority and to any other competent authority entitled under the law of the State concerned or

any international legal instrument to which a State concerned is a party, seeking to trace the whereabouts of a detained person.

Article 11

All persons deprived of liberty must be released in a manner permitting reliable verification that they have actually been released and, further, have been released in conditions in which their physical integrity and ability fully to exercise their rights are assured.

Article 12

1. Each State shall establish rules under its national law indicating those officials authorized to order deprivation of liberty, establishing the conditions under which such orders may be given, and stipulating penalties for officials who, without legal justification, refuse to provide information on any detention.

2. Each State shall likewise ensure strict supervision, including a clear chain of command, of all law enforcement officials responsible for apprehensions, arrests, detentions, custody, transfers and imprisonment, and of other officials authorized by law to use force and firearms.

Article 13

1. Each State shall ensure that any person having knowledge or a legitimate interest who alleges that a person has been subjected to enforced disappearance has the right to complain to a competent and independent State authority and to have that complaint promptly, thoroughly and impartially investigated by that authority. Whenever there are reasonable grounds to believe that an enforced disappearance has been committed, the State shall promptly refer the matter to that authority for such an investigation, even if there has been no formal complaint. No measure shall be taken to curtail or impede the investigation.

2. Each State shall ensure that the competent authority shall have the necessary powers and resources to conduct the investigation effectively, including powers to compel attendance of witnesses and production of relevant documents and to make immediate on-site visits.

3. Steps shall be taken to ensure that all involved in the investigation, including the complainant, counsel, witnesses and those conducting the investigation, are protected against ill-treatment, intimidation or reprisal.

4. The findings of such an investigation shall be made available upon request to all persons concerned, unless doing so would jeopardize an ongoing criminal investigation.

5. Steps shall be taken to ensure that any ill-treatment, intimidation or reprisal or any other form of interference on the occasion of the lodging of a complaint or during the investigation procedure is appropriately punished.

6. An investigation, in accordance with the procedures described above, should be able to be conducted for as long as the fate of the victim of enforced disappearance remains unclarified.

Article 14

Any person alleged to have perpetrated an act of enforced disappearance in a particular State shall, when the facts disclosed by an official investigation so warrant, be brought before the competent civil authorities of that State for the purpose of prosecution and trial unless he has been extradited to another State wishing to exercise jurisdiction in accordance with the relevant international agreements in force. All States should take any lawful and appropriate action available to them to bring to justice all persons presumed responsible for an act of enforced disappearance, who are found to be within their jurisdiction or under their control.

Article 15

The fact that there are grounds to believe that a person has participated in acts of an extremely serious nature such as those referred to in article 4, paragraph 1, above, regardless of the motives, shall be taken into account when the competent authorities of the State decide whether or not to grant asylum.

Article 16

1. Persons alleged to have committed any of the acts referred to in article 4, paragraph 1, above, shall be suspended from any official duties during the investigation referred to in article 13 above.

2. They shall be tried only by the competent ordinary courts in each State, and not by any other special tribunal, in particular military courts.

3. No privileges, immunities or special exemptions shall be admitted in such trials, without prejudice to the provisions contained in the Vienna Convention on Diplomatic Relations.

4. The persons presumed responsible for such acts shall be guaranteed fair treatment in accordance with the relevant provisions of the Universal Declaration of Human Rights and other relevant international agreements in force at all stages of the investigation and eventual prosecution and trial.

Article 17

1. Acts constituting enforced disappearance shall be considered a continuing offence as long as the perpetrators continue to conceal the fate and the whereabouts of persons who have disappeared and these facts remain unclarified.

2. When the remedies provided for in article 2 of the International Covenant on Civil and Political Rights are no longer effective, the statute of limitations relating to acts of enforced disappearance shall be suspended until these remedies are re-established.

3. Statutes of limitations, where they exist, relating to acts of enforced disappearance shall be substantial and commensurate with the extreme seriousness of the offence.

Article 18

1. Persons who have or are alleged to have committed offences referred to in article 4, paragraph 1, above, shall not benefit from any special amnesty law or similar measures that might have the effect of exempting them from any criminal proceedings or sanction.

2. In the exercise of the right of pardon, the extreme seriousness of acts of enforced disappearance shall be taken into account.

Article 19

The victims of acts of enforced disappearance and their family shall obtain redress and shall have the right to adequate compensation, including the means for as complete a rehabilitation as possible. In the event of the death of the victim as a result of an act of enforced disappearance, their dependents shall also be entitled to compensation.

Article 20

1. States shall prevent and suppress the abduction of children of parents subjected to enforced disappearance and of children born during their mother's enforced disappearance, and shall devote their efforts to the search for and identification of such children and to the restitution of the children to their families of origin.

2. Considering the need to protect the best interests of children referred to in the preceding paragraph, there shall be an opportunity, in States which recognize a system of adoption, for a review of the adoption of such children and, in particular, for annulment of any adoption which originated in enforced disappearance. Such adoption should, however, continue to be in force if consent is given, at the time of the review, by the child's closest relatives.

3. The abduction of children of parents subjected to enforced disappearance or of children born during their mother's enforced disappearance, and the act of altering or suppressing documents attesting to their true identity, shall constitute an extremely serious offence, which shall be punished as such.

4. For these purpose, States shall, where appropriate, conclude bilateral and multilateral agreements.

Article 21

The provisions of the present Declaration are without prejudice to the provisions enunciated in the Universal Declaration of Human Rights or in any other international instrument, and shall not be construed as restricting or derogating from any of those provisions.

Annex IV

INTERNATIONAL CONVENTION FOR THE PROTECTION OF ALL PERSONS FROM ENFORCED DISAPPEARANCE

Preamble

The States Parties to this Convention,

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

Having regard to the Universal Declaration of Human Rights,

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

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

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

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

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

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

Have agreed on the following articles:

Part I

Article 1

1. No one shall be subjected to enforced disappearance.

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

Article 2

For the purposes of this Convention, "enforced disappearance" is considered to be the arrest, detention, abduction or any other form of deprivation of liberty by agents of the State or by persons or groups of persons acting with the authorization, support or acquiescence of the State, followed by a refusal to acknowledge the deprivation of liberty or by concealment of the fate or whereabouts of the disappeared person, which place such a person outside the protection of the law.

Article 3

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

Article 4

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

Article 5

The widespread or systematic practice of enforced disappearance constitutes a crime against humanity as defined in applicable international law and shall attract the consequences provided for under such applicable international law.

Article 6

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

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

(*b*) A superior who:

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

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

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

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

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

Article 7

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

2. Each State Party may establish:

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

(*b*) Without prejudice to other criminal procedures, aggravating circumstances, in particular in the event of the death of the disappeared person or the commission of an enforced disappearance in respect of pregnant women, minors, persons with disabilities or other particularly vulnerable persons.

Article 8

Without prejudice to article 5,

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

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

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

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

Article 9

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

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

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

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

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

or surrenders him or her to an international criminal tribunal whose jurisdiction it has recognized.

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

Article 10

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

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

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

Article 11

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

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

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

Article 12

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

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

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

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

(*b*) Have access, if necessary with the prior authorization of a judicial authority, which shall rule promptly on the matter, to any place

of detention or any other place where there are reasonable grounds to believe that the disappeared person may be present.

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

Article 13

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

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

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

4. If a State Party which makes extradition conditional on the existence of a treaty receives a request for extradition from another State Party with which it has no extradition treaty, it may consider this Convention as the necessary legal basis for extradition in respect of the offence of enforced disappearance.

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

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

requested State Party may refuse extradition or make it subject to certain conditions.

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

Article 14

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

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

Article 15

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

Article 16

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

2. For the purpose of determining whether there are such grounds, the competent authorities shall take into account all relevant considerations,

including, where applicable, the existence in the State concerned of a consistent pattern of gross, flagrant or mass violations of human rights or of serious violations of international humanitarian law.

Article 17

1. No one shall be held in secret detention.

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

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

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

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

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

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

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

3. Each State Party shall assure the compilation and maintenance of one or more up-to-date official registers and/or records of persons

deprived of liberty, which shall be made promptly available, upon request, to any judicial or other competent authority or institution authorized for that purpose by the law of the State Party concerned or any relevant international legal instrument to which the State concerned is a party. The information contained therein shall include, as a minimum:

(*a*) The identity of the person deprived of liberty;

(*b*) The date, time and place where the person was deprived of liberty and the identity of the authority that deprived the person of liberty;

(*c*) The authority that ordered the deprivation of liberty and the grounds for the deprivation of liberty;

(*d*) The authority responsible for supervising the deprivation of liberty;

(*e*) The place of deprivation of liberty, the date and time of admission to the place of deprivation of liberty and the authority responsible for the place of deprivation of liberty;

(*f*) Elements relating to the state of health of the person deprived of liberty;

(*g*) In the event of death during the deprivation of liberty, the circumstances and cause of death and the destination of the remains;

(*h*) The date and time of release or transfer to another place of detention, the destination and the authority responsible for the transfer.

Article 18

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

(*a*) The authority that ordered the deprivation of liberty;

(*b*) The date, time and place where the person was deprived of liberty and admitted to the place of deprivation of liberty;

(*c*) The authority responsible for supervising the deprivation of liberty;

(*d*) The whereabouts of the person deprived of liberty, including, in the event of a transfer to another place of deprivation of liberty, the destination and the authority responsible for the transfer;

(*e*) The date, time and place of release;

(*f*) Elements relating to the state of health of the person deprived of liberty;

(*g*) In the event of death during the deprivation of liberty, the circumstances and cause of death and the destination of the remains.

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

Article 19

1. Personal information, including medical and genetic data, which is collected and/or transmitted within the framework of the search for a disappeared person shall not be used or made available for purposes other than the search for the disappeared person. This is without prejudice to the use of such information in criminal proceedings relating to an offence of enforced disappearance or the exercise of the right to obtain reparation.

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

Article 20

1. Only where a person is under the protection of the law and the deprivation of liberty is subject to judicial control may the right to information referred to in article 18 be restricted, on an exceptional basis, where strictly necessary and where provided for by law, and if

the transmission of the information would adversely affect the privacy or safety of the person, hinder a criminal investigation, or for other equivalent reasons in accordance with the law, and in conformity with applicable international law and with the objectives of this Convention. In no case shall there be restrictions on the right to information referred to in article 18 that could constitute conduct defined in article 2 or be in violation of article 17, paragraph 1.

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

Article 21

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

Article 22

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

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

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

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

Article 23

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

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

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

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

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

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

Article 24

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

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

3. Each State Party shall take all appropriate measures to search for, locate and release disappeared persons and, in the event of death, to locate, respect and return their remains.

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

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

(*a*) Restitution;

(*b*) Rehabilitation;

(*c*) Satisfaction, including restoration of dignity and reputation;

(*d*) Guarantees of non-repetition.

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

7. Each State Party shall guarantee the right to form and participate freely in organizations and associations concerned with attempting to establish the circumstances of enforced disappearances and the fate of disappeared persons, and to assist victims of enforced disappearance.

Article 25

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

(*a*) The wrongful removal of children who are subjected to enforced disappearance, children whose father, mother or legal guardian is subjected to enforced disappearance or children born during the captivity of a mother subjected to enforced disappearance;

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

2. Each State Party shall take the necessary measures to search for and identify the children referred to in paragraph 1 (*a*) of this article and to return them to their families of origin, in accordance with legal procedures and applicable international agreements.

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

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

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

Part II

Article 26

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

2. The members of the Committee shall be elected by secret ballot from a list of persons nominated by States Parties from among their nationals, at biennial meetings of the States Parties convened by

the Secretary-General of the United Nations for this purpose. At those meetings, for which two thirds of the States Parties shall constitute a quorum, the persons elected to the Committee shall be those who obtain the largest number of votes and an absolute majority of the votes of the representatives of States Parties present and voting.

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

4. The members of the Committee shall be elected for a term of four years. They shall be eligible for re-election once. However, the term of five of the members elected at the first election shall expire at the end of two years; immediately after the first election, the names of these five members shall be chosen by lot by the chairman of the meeting referred to in paragraph 2 of this article.

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

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

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

8. The members of the Committee shall be entitled to the facilities, privileges and immunities of experts on mission for the United Nations, as laid down in the relevant sections of the Convention on the Privileges and Immunities of the United Nations.

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

Article 27

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

Article 28

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

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

Article 29

1. Each State Party shall submit to the Committee, through the Secretary-General of the United Nations, a report on the measures taken to give effect to its obligations under this Convention, within two years after the entry into force of this Convention for the State Party concerned.

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

3. Each report shall be considered by the Committee, which shall

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

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

Article 30

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

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

(*a*) Is not manifestly unfounded;

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

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

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

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

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

3. In the light of the information provided by the State Party concerned in accordance with paragraph 2 of this article, the Committee may transmit recommendations to the State Party, including a request that the State Party should take all the necessary measures, including interim measures, to locate and protect the person concerned in accordance with

this Convention and to inform the Committee, within a specified period of time, of measures taken, taking into account the urgency of the situation. The Committee shall inform the person submitting the urgent action request of its recommendations and of the information provided to it by the State as it becomes available.

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

Article 31

1. A State Party may at the time of ratification of this Convention or at any time afterwards declare that it recognizes the competence of the Committee to receive and consider communications from or on behalf of individuals subject to its jurisdiction claiming to be victims of a violation by this State Party of provisions of this Convention. The Committee shall not admit any communication concerning a State Party which has not made such a declaration.

2. The Committee shall consider a communication inadmissible where:

(*a*) The communication is anonymous;

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

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

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

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

4. At any time after the receipt of a communication and before a

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

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

Article 32

A State Party to this Convention may at any time declare that it recognizes the competence of the Committee to receive and consider communications in which a State Party claims that another State Party is not fulfilling its obligations under this Convention. The Committee shall not receive communications concerning a State Party which has not made such a declaration, nor communications from a State Party which has not made such a declaration.

Article 33

1. If the Committee receives reliable information indicating that a State Party is seriously violating the provisions of this Convention, it may, after consultation with the State Party concerned, request one or more of its members to undertake a visit and report back to it without delay.

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

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

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

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

Article 34

If the Committee receives information which appears to it to contain well-founded indications that enforced disappearance is being practised on a widespread or systematic basis in the territory under the jurisdiction of a State Party, it may, after seeking from the State Party concerned all relevant information on the situation, urgently bring the matter to the attention of the General Assembly of the United Nations, through the Secretary-General of the United Nations.

Article 35

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

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

Article 36

1. The Committee shall submit an annual report on its activities under this Convention to the States Parties and to the General Assembly of the United Nations.

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

Part III

Article 37

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

(*a*) The law of a State Party;

(*b*) International law in force for that State.

Article 38

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

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

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

Article 39

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

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

Article 40

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

(*a*) Signatures, ratifications and accessions under article 38;

(*b*) The date of entry into force of this Convention under article 39.

Article 41

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

Article 42

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

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

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

Article 43

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

Article 44

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

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

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

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

Article 45

1. This Convention, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations.

2. The Secretary-General of the United Nations shall transmit certified copies of this Convention to all States referred to in article 38.

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