

Annex 1

REVISED METHODS OF WORK OF THE WORKING GROUP ON ENFORCED OR INVOLUNTARY DISAPPEARANCES

(Adopted on 4 December 2008)

Mandate

The Working Group's methods of work are based on its mandate as stipulated originally in Commission on Human Rights resolution 20 (XXXVI) and as developed by the then Commission and the Human Rights Council in numerous further resolutions. The parameters of its work are laid down in the Charter of the United Nations, the International Bill of Human Rights, Economic and Social Council resolution 1235 (XLI) and the Declaration on the Protection of All Persons from Enforced or Involuntary Disappearance, adopted by the General Assembly in its resolution 47/133 of 18 December 1992 (hereinafter referred to as "the Declaration").

Definition of enforced disappearance

As defined in the preambular part of the Declaration, enforced disappearances occur 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.

Basic mandate

The basic mandate of the Working Group is humanitarian in nature, aimed at assisting families in determining the fate and whereabouts of their disappeared relatives who are placed outside the protection of the law. To this end, the Working Group endeavours to establish a channel of communication between the families and the Governments concerned, with a view to ensuring that sufficiently documented and clearly identified individual cases which families, directly or indirectly, have brought to the Group's attention are investigated with a view to clarifying the fate or whereabouts of the disappeared persons.

The Declaration

In addition to its original mandate, the Working Group has been entrusted by the General Assembly, the then Commission on Human Rights and the Human Rights Council, with various tasks. In particular, the Working Group is to monitor States' compliance with their obligations deriving from the Declaration on the Protection of All Persons from Enforced Disappearance and to provide to Governments assistance in its implementation. States are under an obligation to take effective measures to prevent and terminate acts of enforced disappearance by making them continuing offences under criminal law and establishing civil liability of those responsible. The Declaration also

refers to the right to a prompt and effective judicial remedy, as well as unhampered access of national authorities to all places of detention, the right to habeas corpus, the maintenance of centralized registers of all places of detention, the duty to investigate fully all alleged cases of disappearance, the duty to try alleged perpetrators of acts of disappearance before ordinary (not military) courts, the exemption of the criminal offence of acts of enforced disappearances from statutes of limitation, special amnesty laws and similar measures leading to impunity.

The Working Group reminds the Governments of these obligations not only in the context of clarifying individual cases but also that of taking action of a more general nature. It draws the attention of Governments and non-governmental organizations to general or specific aspects of the Declaration, it recommends ways of overcoming obstacles to the realization of the Declaration, it discusses with representatives of Governments and non-governmental organizations how to solve specific problems in the light of the Declaration, it assists Governments by carrying out on-the-spot visits, organizing seminars and providing similar advisory services. The Working Group also makes observations on the implementation of the Declaration when the concerned Government has not fulfilled its obligations related to the rights to truth, justice and reparation. The Working Group adopts general comments whenever it considers that a provision of the Declaration requires further clarification or interpretation.

Admissibility of reports on disappearances

Reports on disappearances are considered admissible by the Working Group when they originate from the family or friends of the disappeared person. Such reports may, however, be channelled to the Working Group through representatives of the family, Governments, intergovernmental 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 other than a family member, it must have direct consent of the family to submit the case on its behalf, and it must also be in a position to follow up with the relatives of the disappeared person concerning his or her fate.

The Working Group does not deal with situations of international armed conflict.

Elements for admissibility

In order to enable Governments to carry out meaningful investigations, the Working Group provides them with information containing at least a minimum of basic data. In addition, the Working Group constantly urges the senders of reports to furnish as many details as possible concerning the identity of the disappeared person and the circumstances of the disappearance. The Group requires the following minimum elements:

- (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. When the disappeared

person was last seen in a detention centre, an approximate indication is sufficient (for example, March or spring 1990);

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

(d) Parties, acting on behalf of, or with the support, direct or indirect, consent or acquiescence of the Government, presumed to have carried out the arrest or abduction or to be holding the disappeared person in unacknowledged detention;

(e) Steps taken by the family to determine the fate or whereabouts of the disappeared person, or at least an indication that efforts to resort to domestic remedies were frustrated or have otherwise been 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 their direct consent that this case be submitted to the Working Group on their behalf.

If a case is not admitted, the Working Group sends a response to the source indicating that the information received did not fulfil the established requirements, in order to permit the source to provide all relevant information.

Communication with Governments

In transmitting cases of disappearance, the Working Group deals exclusively with Governments, basing itself on the principle that Governments must assume responsibility for any violation of human rights on their territory.

Perpetrators

The Working Group operates on the basis that, and in accordance with the definition contained in the Preamble of the Declaration, for purposes of its work, enforced disappearances are only considered as such when the act in question is perpetrated by State actors or by private individuals or organized groups (e.g. paramilitary groups) acting on behalf of, or with the support, direct or indirect, consent or acquiescence of the Government. Based on the above, the Working Group does not admit cases when they are attributed to persons or groups not acting on behalf of, or with the support, direct or indirect, consent or acquiescence of the Government, such as terrorist or insurgent movements fighting the Government in its own territory.

Standard procedure

Reported cases of disappearances are placed before the Working Group for detailed examination during its sessions. Those which fulfil the requirements outlined above are transmitted, upon the Group's specific authorization, to the Governments concerned with the request that they carry out investigations in order to clarify the fate or whereabouts of the disappeared person, and inform the Group about the results. These cases are communicated by letter from the Group's Chairman to the Government

concerned through the Permanent Representative to the United Nations Office at Geneva.

Any substantive additional information which the sources submit on an outstanding case is placed before the Working Group and, following its approval, transmitted to the Government concerned.

Urgent actions

Cases that occurred within the three months preceding receipt of the report by the Group are transmitted to the Minister for Foreign Affairs of the country concerned by the most direct and rapid means. Their transmission can be authorized by the Chairman on the basis of a specific delegation of power given to him by the Group. Cases which occurred prior to the three-month limit, but not more than one year before the date of their receipt by the Secretariat, provided that they had some connection with a case which occurred within the three-month period, can be transmitted between sessions by letter, upon authorization by the Chairman. The Working Group provides the source with a copy of the summary of each urgent action, thus helping it to enter into communication with the authorities on the case concerned.

Pregnancy

In the case of the disappearance of a pregnant woman, the child presumed to have been born during the mother's captivity should be mentioned in the description of the case of the mother. The child would be treated as a separate case when witnesses reported that the mother had actually given birth to a child during detention.

Situations of vulnerability

With respect to reported cases of disappearances, the Working Group highlights the condition of people in situations of vulnerability, including women, children, the elderly, persons with disabilities, and other vulnerable groups.

Cases concerning two or more countries

Reports on a disappearance indicating that officials from one country are 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 only be counted in the statistics of the country in which the person was reportedly arrested, detained, abducted or last seen. The same principles are applied with respect to the transmission of general allegations and prompt interventions.

Government replies

All replies received from Governments concerning reports of disappearances are examined by the Working Group and summarized in the Group's annual report to the Human Rights Council. Any information given on specific cases is forwarded to the sources of those reports, who are invited to make observations thereon or to provide additional details on the cases.

Reminders

The Working Group reminds every Government concerned once a year of the cases which have not yet been clarified and three times a year of all urgent action cases transmitted since the previous session. On request, the Working Group provides to the Government concerned or the source, to the extent possible, updated information on specific cases.

Clarification

Clarification occurs when the fate or whereabouts of the disappeared persons are clearly established as a result of investigations by the Government, inquiries by non-governmental organizations, 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, or by the search of the family, irrespective of whether the person is alive or dead.

The six-month rule

Any reply of the Government containing detailed information on the fate or whereabouts of the disappeared person is transmitted to the source. If the source does not respond within six months of the date on which the Government's reply was communicated to it, or if it contests the Government's information on grounds which are considered unreasonable by the Working Group, the case is considered clarified and is accordingly listed 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 invited to comment.

Closed cases

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 or preferably, a declaration of absence as a result of enforced disappearance. Presumption of death and a declaration of absence as a result of enforced disappearance should at all times respect the right to integral reparation.

Discontinuation of cases

In exceptional circumstances, the Working Group may decide to discontinue the consideration of cases where the families have manifested, freely and indisputably, their 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.

Outstanding cases

The Working Group considers cases as outstanding for as long as they have not been clarified, closed or discontinued in accordance with the methods of work. This

principle is not affected by changes of Government in a given country nor in the event of State succession.

Reopening of cases

If sources provide well-documented information that a case has been considered clarified, discontinued, or closed erroneously, 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 referred to above, the Working Group transmits the case to the Government

anew, requesting it to comment. In such instances, the case in question is again listed among the outstanding cases and a specific explanation is given in the Group's report to the Human Rights Council, describing the above-mentioned errors or discrepancies.

General allegations

The Working Group regularly transmits to the Governments concerned a summary of allegations received from relatives of disappeared persons and non-governmental organizations with regard to obstacles encountered in the implementation of the Declaration in their respective countries, inviting them to comment thereon if they so wish.

Prompt intervention

Cases of intimidation, persecution or reprisal against relatives of disappeared persons, witnesses to disappearances or their families, members of organizations of relatives and other non-governmental organizations, human rights defenders or individuals concerned with disappearances are transmitted to the pertinent Governments, with the appeal that they take steps to protect all the fundamental rights of the persons affected. Cases of that nature, which require prompt intervention, are transmitted directly to the Ministers for Foreign Affairs by the most direct and rapid means. To that end, the Working Group has authorized its Chairman to transmit such cases between sessions.

Cooperation with other mechanisms

If a case or allegation contains information relevant to other thematic mechanisms of the Council, the information is transmitted to the mechanism concerned.

Country missions

The Working Group carries out visits to countries on invitation, but also takes the initiative of approaching Governments with a view to carrying out visits to countries, when considered appropriate. Such visits are intended to enhance the dialogue between the authorities most directly concerned, the families or their representatives and the Working Group, and to assist in the clarification of the reported disappearances. The Working Group also undertakes visits to examine the practices carried out by Governments to clarify cases of enforced disappearances, as well as the programmes and measures adopted to implement the Declaration and to guarantee the rights of the victims, including the right to integral reparation. The Working Group reports to the Council on its country visits in an addendum to its annual report.

Follow-up

With regard to countries in which visits have been carried out, the Working Group periodically reminds the Governments concerned of the observations and recommendations formulated in the respective reports, requesting information on the consideration given to them, and the steps taken for their implementation or the

constraints which might have prevented their implementation. The Working Group may also take the initiative to carry out follow-up visits.

Meetings

The Working Group meets three times a year to consider the information brought to its attention since its previous session. Its meetings are held in private. However, the Working Group works intersessionally and regularly meets with representatives of Governments, non-governmental organizations, family members and witnesses.

Reports

The Working Group reports annually to the Human Rights Council on the activities which it has carried out from the end of Council's previous session up until the last day of the Working Group's third annual session. It informs the Council of its communications with Governments and non-governmental organizations, its meetings and missions. Reports on missions are contained as addenda to the main report. The Working Group reports on all cases of disappearance received by the Group during the year, on a country-by-country basis, and on the decision it has taken thereon. It provides the Council with a statistical summary for each country of cases transmitted to the Government, clarifications, and the status of the person concerned on the date of clarification. It includes graphs showing the development of disappearances in countries with more than 100 transmitted cases as of the date of the adoption by the Working Group of its annual report. The Working Group includes conclusions and recommendations in its report and makes observations on the situation of disappearances in individual countries. The Working Group further reports on the implementation of the Declaration and the obstacles encountered therein, and periodically reports on broader issues surrounding the phenomenon of enforced disappearance.

Participation of experts

When the information under consideration concerns a country to which one of the members of the Working Group is a national, that member does not participate in the discussion.

Titles

Titles are for reference only and should not be considered as part of the methods of work.