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Aim: This fact sheet seeks to familiarise the ACATs with the International Convention for the Protection of All Persons from Enforced Disappearance and to help them find arguments with which to convince their governments to sign or ratify the Convention.

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THE INTERNATIONAL CONVENTION FOR THE PROTECTION OF ALL PERSONS FROM ENFORCED DISAPPEARANCE IN 5 QUESTIONS

I) What is “enforced disappearance”?

Definition:

Individuals, as a rule in civilian clothes and armed, remove an opponent or human rights activist to an unknown place by force and without apparent motive. When the victim's loved ones try to ascertain his or her whereabouts, the authorities either ignore their entreaties or open an inquiry which they know will lead nowhere or which ends in the exoneration of the suspects.

According to personal testimony, the victims of such “disappearances” are most often tortured. For instance, in 2006 experts from the Committee against Torture expressed concern about reports of the involvement of the United States in enforced disappearances with respect to Guantánamo and secret detention facilities. They considered the US view that such acts do not constitute a form of torture to be regrettable.

A worldwide phenomenon:

Although it is difficult to estimate its exact extent, this practice, typical of Latin American dictatorships in the 1970s and 1980s, is widespread across the world today.

Since its establishment in 1980, 41 257 cases which have remained unsolved or not been closed, concerning 78 countries, have been referred to the Working Group on Enforced or Involuntary Disappearances. The group has nonetheless been able to shed light on 2 702 cases in the past five years.

The suffering of families:

Victims' families sometimes endure years of uncertainty as to the fate of their loved ones, and are therefore unable to grieve for them. The representations they make to the authorities to shed light on a disappearance expose them to reprisals from the authorities themselves or from the armed groups responsible for that crime. Hence the families become victims as well.

II) How does this differ from...

... abduction?

Unlike an abduction, an enforced disappearance has political and non-malevolent motives, no demands are issued (organised silence), and the perpetrators act on behalf of the State or with its backing.

... arbitrary detention?

In contrast to an enforced disappearance, in cases of arbitrary detention the State does not deny deprivation of liberty.

Detention is deemed to be “arbitrary” in two cases: on the one hand, where it does not follow national law or the due process of criminal procedure (from investigation to sentencing), and on the other hand, where such standards are upheld by the judge but do not comply with international norms.

II) Which legal instruments dealt with enforced disappearance prior to the 2006 Convention?

An enforced disappearance implies the violation of a whole host of rights, be they civil or political (right to life, right to physical integrity, right to recognition as a person before the law, right to personal liberty and security) or economic, social or cultural (right to a family life, right to an adequate standard of living, right to education). Hence, prior to 2006, victims of enforced disappearance were obliged to approach the UN bodies responsible for defending those rights (Committee against Torture, Human Rights Committee, Committee on Economic, Social and Cultural Rights, etc.), since there was no body dealing specifically with cases of enforced disappearance.

Bans on disappearances existed under international law prior to 2006, but only in special circumstances.

Under the Geneva Conventions (1949) and their additional protocols (1977), which lay down the rules governing international humanitarian law (IHL), families are entitled to learn of the fate of their loved ones. These documents oblige States to take all possible measures to clarify the fate of people reported missing in action, but they neither apply to peacetime nor prohibit disappearances as such.

Article 7 of the Statute of Rome (which defines the operations of the International Criminal Court or ICC) considers enforced disappearance to be a crime against humanity which may be judged by the ICC where such an act is committed as part of a widespread or systematic attack directed against any civilian population.

Prior to 2006 instruments of strictly regional application such as the Inter-American Convention on Enforced Disappearance of Persons (1994) had also come into force, but had rarely been ratified.

Thus the Convention for the Protection of All Persons from Enforced Disappearance is the first **universal** instrument to ban the practice of enforced disappearance **in all circumstances**.

III) Which steps led to the adoption of the Convention in 2006?

In 1979 the United Nations began deliberating the issue of enforced disappearance in response to the actions of the Argentine dictatorship.

Here is a timeline charting the major UN initiatives on enforced disappearance:

- **1979:** France submits the first resolution on enforced disappearance (33/173) to the United Nations General Assembly (UNGA).
- **1980:** By resolution 20 (XXXVI), the Commission on Human Rights establishes the Working Group on Enforced or Involuntary Disappearances, whose mandate is subsequently renewed regularly.
The Working Group receives and examines reports of disappearances submitted by relatives of missing persons or human rights organizations acting on their behalf. After determining whether those 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.
- **1992:** the UNGA adopts the non-binding *Declaration on the Protection of All Persons from Enforced Disappearance* (resolution 47/133).
- **2003:** first meeting of the working group set up by the Human Rights Commission to elaborate a draft legally binding instrument for the protection of all persons from enforced disappearance.
- **23 September 2005:** Adoption by consensus of the draft Convention by the working group.
- **29 June 2006:** Adoption of the draft Convention at the first session of the newly established Human Rights Council.
- **20 December 2006:** Final adoption by the UNGA in plenary (by consensus, co-sponsored by 103 States). The International Coalition Against Enforced Disappearances (ICAED), created at the same time as the setup of the Convention and composed of actors of the civil society, is in charge of advocacy work on the issue of the ratification of the text. FIACAT is one of the members of its Steering Committee.
- **6 February 2007:** the *Convention for the Protection of All Persons from Enforced Disappearance* is opened for signature in Paris. 57 states sign it.
- **8 November 2007:** Albania ratifies the *Convention for the Protection of All Persons from Enforced Disappearance*.
- **14 December 2007:** Argentina ratifies the *Convention for the Protection of All Persons from Enforced Disappearance*.
- **10 March 2008:** the Working Group on Enforced or Involuntary Disappearances presents its final report to the 7th session of the Human Rights Council.
- **18 March 2008 :** Mexico ratifies the *Convention for the Protection of All Persons from Enforced Disappearance*.

IV) What advantages does the Convention bring?

- It defines the offence of enforced disappearance: “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 2).

- It compels the States Parties to make the offence of enforced disappearance punishable under criminal law (Article 7).
- It compels them further to apply a statute of limitations that is more favourable to victims. The term of limitation for criminal proceedings must be of long duration, proportionate to the extreme seriousness of the offence of enforced disappearance, and commence from the moment when the offence ceases (Article 8).
- It obliges States to take preventive measures to strengthen guarantees with respect to detention (Article 17).
- It ushers in several new rights: the right of victims to information (Article 18), their right to know the truth regarding the circumstances of the enforced disappearance (Article 24(2)), and their right to reparation (Article 24(4)).
- It obliges States to take measures to prevent and punish under criminal law the adoption or removal of children born in captivity or whose parents are subjected to enforced disappearance (Article 25).
- It sets up the Committee on Enforced Disappearances, an innovative monitoring body with investigative powers (Part II of the Convention).
In addition to the traditional duties of a treaty body (i.e. examining reports from States and individual and inter-State communications and submitting reports to the UNGA), this ten-member committee will perform a preventive function in issuing urgent appeals and conducting field visits in response to acute situations.
It will coordinate its activities closely with treaty bodies and special procedures.
It may bring situations in which the practice of enforced disappearance is widespread and systematic to the attention of the Secretary-General of the United Nations.
Lastly, it will be in place for a four-year trial period, pending extensive reform of the UN treaty bodies.