

PANEL DISCUSSION

*Opening remarks by the Permanent Representative of Argentina to the United Nations,
AMBASSADOR JORGE ARGÜELLO*

Panelist:

JORGE TAIANA

Minister of Foreign Affairs,
International Trade and Worship of Argentina

ESTELA DE CARLOTTO

Abuelas de Plaza de Mayo

SANTIAGO CORCUERA

Chairperson of the Working Group on enforced or involuntary disappearances
of the Human Rights Council

KENNETH ROTH

Human Rights Watch

YASMIN SOOKA

Foundation for Human Rights of South Africa

Moderator:

JUAN MENDEZ

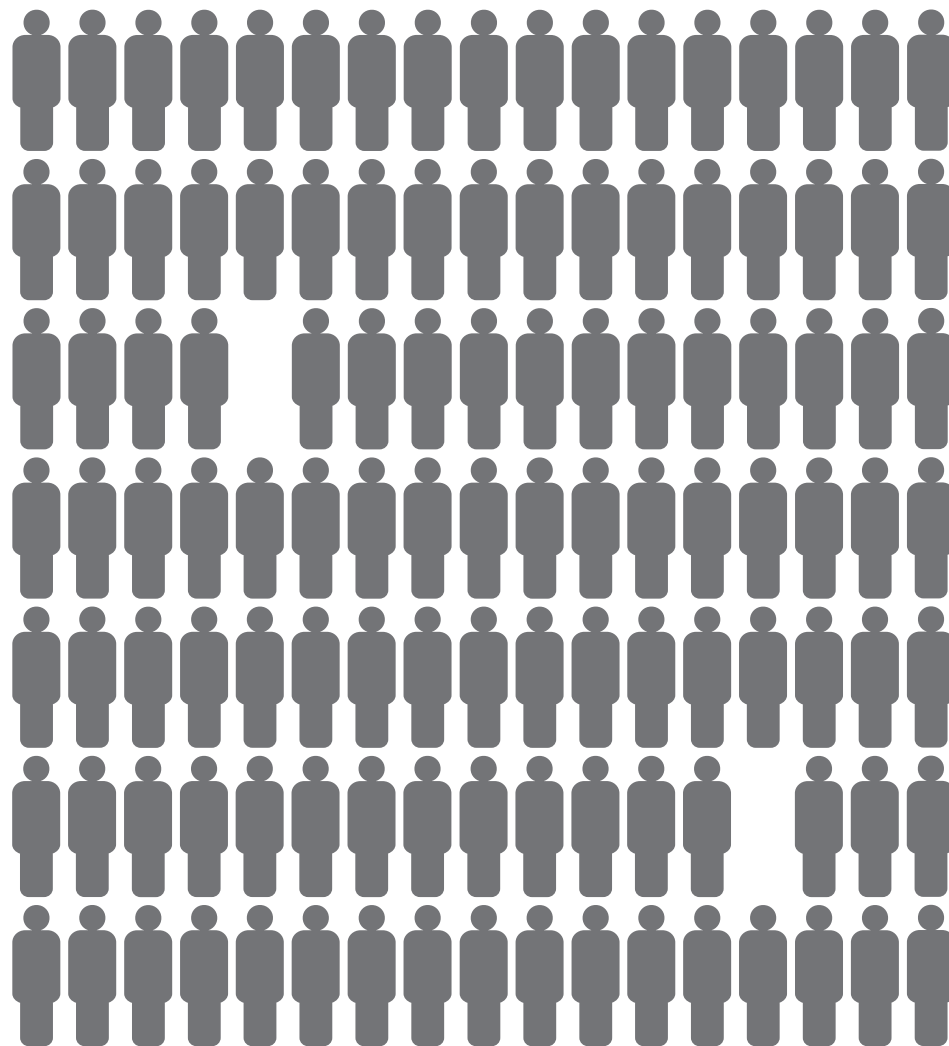
International Center for Transitional Justice

Dialogue open to all participants

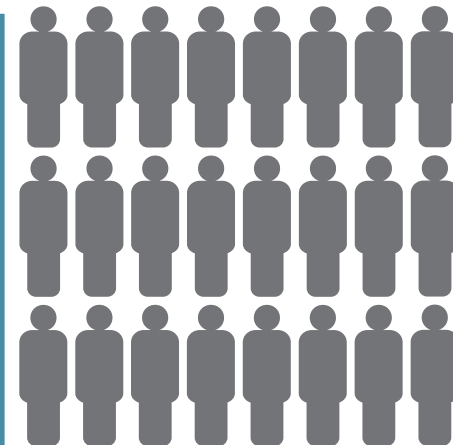
Thursday, 22 May 2008 ~ 5:00pm to 7:00pm
Conference Room 6, United Nations



ORGANIZED BY THE PERMANENT MISSION OF ARGENTINA TO THE UNITED NATIONS
COSPONSORED BY THE OFFICE OF THE HIGH COMMISSIONER FOR HUMAN RIGHTS



CONVENTION
for the PROTECTION
of ALL PERSONS
from ENFORCED
DISAPPEARANCE



IN THE FRAMEWORK OF THE 60TH ANNIVERSARY OF THE UNIVERSAL DECLARATION OF HUMAN RIGHTS AND OF THE INTERNATIONAL CAMPAIGN TOWARDS THE PROMPT RATIFICATION AND FULL IMPLEMENTATION OF THE INTERNATIONAL CONVENTION FOR THE PROTECTION OF ALL PERSONS FROM ENFORCED DISAPPEARANCE, THE PERMANENT MISSION OF ARGENTINA TO THE UNITED NATIONS INVITES ALL MEMBER STATES TO REFLECT ON THE IMPORTANCE AND URGENCY OF THE ENTERING INTO FORCE OF THIS INTERNATIONAL INSTRUMENT, AND TO TAKE STEPS TO THAT END.



“Enforced disappearance had a precedent in horror in the XX Century, and that was the Holocaust, where Nazism led millions of persons to extermination and disappearance. My own country, Argentina, was, also during the XX Century, a second laboratory for experimentation in this kind of practices. State terrorism had the goal of planting widespread terror, fear, panic, horror in our society, in order to also impose a certain economic and social model of exclusion.

Therefore, with great honor and great commitment I come today to sign this Convention. Institutional commitment and also moral, political and generational commitment. I belong to a generation that was victimized by such State terrorism, and on behalf of those who had no chance to defend themselves in a fair trial before constitutional judges –which is what, in the last analysis, should characterize a civilized society– I want to vindicate the presence of the women that today are here with me, Mothers and Grandmothers. Women who, after years of being ignored and years of injustice, went on with their demands devoid of any vindictive attitude. Simply demanding the application of the law and the recognition of the human condition”.

Statement by the former Senator and current President of Argentina, **Dr. Cristina Fernández de Kirchner**, upon signing the Convention on Enforced Disappearance in Paris, France, on February 6th, 2007



“ This Convention fills an immense gap in the international legal framework which is the lack of an international treaty to prevent and suppress this international crime and most serious violation of human rights. The Convention will not only become an effective legal tool of the international community in its struggle against enforced disappearances, but also represents a basically political message that this odious practice will no longer be tolerated and must be suppressed.”

Joint open letter to the UN Human Rights Council signed by NGOs, family member organizations and personalities from all over the world. June 2006.

ENFORCED DISAPPEARANCE CHALLENGES THE VERY CONCEPT OF HUMAN RIGHTS

It amounts to the denial of the right of all persons to exist, to have an identity. Enforced disappearance was recognized as a crime under the Statute of the International Criminal Court for some cases: this Convention is the first legally binding international recognition of the scope of violation of rights caused by enforced disappearance in any circumstances, reaffirming the rights of the victims to justice, to reparations and to the truth.

Twenty ratifications are needed for the Convention to enter into force and for the Committee to be established and begin its work. Of the 72 UN Member States who have signed this Convention after its adoption by consensus by the UN General Assembly in December 2006, so far, Albania, Argentina, Mexico and Honduras have ratified the Convention.

WHY IS THIS CONVENTION ESSENTIAL?

Enforced disappearance as a crime has not been fully dealt with by any previous legally binding international instrument. Of course, this heinous crime violates several of the rights protected by the International Covenant on Civil and Political Rights and other international and regional human rights treaties, including the right to life, the right to be free from torture, the right to physical integrity, the right to a fair trial, the right to recognition as a person before the law. The UN Declaration on Disappearances of 1992 clearly offers extremely useful elements, yet is not legally binding. The Inter American Convention on Forced Disappearance of Persons of 1994 provides a binding legal framework, but only for States Parties in the Americas. The Rome Statute includes the enforced disappearance of persons as a crime against humanity in its art. 7, when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack. It is clear that the existing instruments offered only a partial answer and proved to be insufficient to protect people from enforced disappearance. The Convention is the first universal instrument to ban this practice in all circumstances, as a decisive step towards its complete eradication from all national legal frameworks and all national realities.

WHY IS THE ENTRY INTO FORCE OF THIS CONVENTION URGENT?

This crime, that was first shaped under the Nazi regime in Europe and whose widespread use marked a grim chapter of the recent Latin American history is, unfortunately, far from being just a thing from the past. This practice is still ongoing in some countries. Its victims continue to suffer today. By ensuring the prompt ratification of this Convention, each State Party makes a tangible contribution towards a stronger international system for the protection of human rights, and a commitment to ban forever this heinous practice from its own legislation. Furthermore, six months after the entry into force of the Convention, a Committee is to be established, which not only will monitor implementation by State Parties but also has investigative powers to perform a preventive function and respond to grave and imminent situations. The nationals of State Parties will therefore be better protected from this abhorrent practice wherever they are. It is important that States when they ratify the Convention, also recognize the competence of the Committee so that it can be an effective tool in the fight against disappearances.

WHAT STEPS ARE NECESSARY FOR IMPLEMENTATION UPON RATIFICATION?

State Parties are expected to review their military law, administrative law and criminal law to incorporate the definition of enforced disappearance as an offense punishable under criminal law, with a statute of limitations that is favorable to the victims and takes into account the continuous nature of the crime, and precluding superior orders as a defense. It must also incorporate preventive measures to ensure accountability for persons held in detention centers and the manner of their release, and appropriate training for law enforcement personnel.

WHAT IS THE RIGHT OF VICTIMS TO REPARATIONS?

Under art. 24 of the Convention, 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. This covers material and moral damages and, where appropriate, other forms of reparation such as: restitution; rehabilitation; satisfaction, including restoration of dignity and reputation; and guarantees of non-repetition. Victims are defined not only as the person subjected to enforced disappearance but also as any individual who has

suffered harm as the direct result of an enforced disappearance. None of the provisions of the Convention, including those regarding reparations, can be applied retroactively: obligations for State Parties shall rise from situations existing as of the date of entry into force of the Convention for that particular State Party.

WHAT IS THE RIGHT TO THE TRUTH?

Under art. 24, each victim – including family members – 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. The right to information is considered in art. 18 of the Convention, whereby each State Party shall guarantee, to any person with a legitimate interest in this information, access to a minimum amount of information. Arts. 19 and 20 establish the scope of this right, including confidentiality of all personal information, including medical and genetic data, and establishes the circumstances under which State parties may restrict this information, provided a person is under the protection of the law and the deprivation of liberty is subject to judicial control and does not constitute enforced disappearance.

WHAT DIFFERENCE WILL THE COMMITTEE MAKE?

It is important that States, when they ratify the Convention, also recognize the competence of the Committee. The Committee is endowed with the authority to ensure respect for the provisions of the Convention, issuing recommendations and furthering the progressive development of international law in this regard. The Committee also has unique competences regarding prevention. Besides the ability to issue requests for information to a State and to make country visits after consultation with the State Party concerned, the Committee can follow an urgent humanitarian procedure to search and find disappeared persons upon request of an interested party, and the power to bring a widespread and systematic practice of enforced disappearance to the attention of the General Assembly. Past experience has shown that focus and relentless international pressure can be instrumental to the protection of individuals in such cases. In accordance with the established international practice and art.35 of the Convention, the Committee shall have competence solely in respect of enforced disappearances which commenced after the entry into force of this Convention.