

COUNCIL CONCLUDES DISCUSSION ON REPORT OF WORKING GROUP ON DRAFT CONVENTION AGAINST ENFORCED DISAPPEARANCE

Speakers Urge Council to Approve the Draft Convention
27 June 2006

The Human Rights Council in a midday meeting concluded its discussion on the report of the Working Group to elaborate a draft legally binding normative instrument for the protection of all persons from enforced disappearance.

Speakers said the draft treaty on the protection against enforced disappearance brought another important building block to the edifice of international human rights instruments and standards, and it would be an important standard-setting document which provided for protection from enforced disappearance. It was part of a global effort to promote in the international community the recognition that enforced disappearance was a crime against humanity.

This draft treaty was the culmination of a lengthy process, characterised by a painful past where systematic human rights violations reigned in order to intimidate societies and silence opponents, a speaker said. Its impending adoption would help to strengthen the international regime for protecting human rights and freedoms, and would help to eradicate the crimes of kidnapping, hostage taking, and terrorist acts, and become part of the global effort to combat terrorism.

Now that the Council had been established, it was important to adopt the convention with the agreement of the international community in this new era of human rights. World public opinion expected much from the initial meeting of the Council, and the adoption of the draft would mean a huge step forward, greatly hoped for by all victims of forced disappearance throughout the world. The best testimony of the support for the work was the wide consensus that was emerging in support for the draft Convention, a speaker said, urging its adoption.

Speakers taking the floor this afternoon included India, Indonesia, France, Argentina, Morocco, Brazil speaking on behalf of GRULAC, Brazil, the Russian Federation, Japan, Guatemala, Ecuador, Pakistan, China, Azerbaijan, Algeria, Senegal, Bangladesh, Cameroon, Costa Rica, Spain, Chile, Belgium, the United States, Greece, and Bolivia.

Also taking the floor were the representative of the International Committee of the Red Cross; the Center for Human Rights Information in the Philippines; *Federacion latinoamericana de asociaciones de familiares de detenidos-desaparecidos (FEDEFAM)* (in a joint statement with International Commission of Jurists; International Federation of Human Rights Leagues; Human Rights Watch; International Service for Human Rights; and Amnesty International), the World Federation of United Nations Associations; Families of Victims of Enforced Disappearance: Permanent Assembly for Human Rights; Union de l'Action Feminine; and the Consultative Council of Human Rights in Morocco.

Speaking in a right of reply was the delegation of Algeria.

The Chairperson-Rapporteur of the Working Group to elaborate the draft instrument for the protection of all persons from enforced disappearance, Bernard Kessedjian, presented the report of the Working Group in the morning meeting.

The next meeting of the Council will take place on Tuesday 27 June at 3 p.m., when it will begin consideration of the report of the Working Group on a draft United Nations Declaration on the Rights of Indigenous Peoples. The Council is meeting non-stop today from 9 a.m. to 6 p.m.

Statements on the Report of the Working Group to Elaborate a Legally Binding Instrument for the Protection of All Persons from Enforced Disappearance

AJAI MALHOTRA ([India](#)) said India believed that the international community should focus on strengthening of national capacity against enforced disappearances. India had already been fighting the phenomenon through measures adopted in its domestic legislation. The Indian legal system provided not only remedies to the victims of the crime but also offered compensation to those victims and their families. The Council should adopt the draft convention on a consensus basis.

WIWIEK SETYAWATI ([Indonesia](#)) said it was essential that the Council put the highest priority on non-derogable rights. Extra-judicial killings and enforced disappearances should be put to an end. Nobody should be subjected to enforced disappearance, and there should be zero tolerance for the act. The Convention would be an important standard-setting document which provided for protection from enforced disappearance. It should provide protection against any circumstance in which a State or group of individuals could invoke in seeking to justify the practice. Nevertheless, a solid consensus should have been sought, and sufficient examination should also have been undertaken to enable residual loopholes to be addressed.

A number of countries had put forward their views and concerns with regard to the process, which should have taken into account the importance of the capacity of all legal systems to accommodate its provisions. Indonesia was acutely aware of the various concerns harboured by many, which it also shared. Nevertheless, given the importance of the principle of addressing such acts, it would like to join the consensus as reflected in the final stage in the process. The draft brought another important building block to the edifice of international human rights instruments and standards.

JEAN-MAURICE RIPERT ([France](#)) said forced disappearance was not a crime of the past, that barbaric act was still being practised. Forced disappearance was not a phenomenon attributed to Latin America, it was a universal one. Even today, forced disappearances were taking place in many countries around the world. France supported the steps taken by the United Nations to elaborate a binding legal instrument against that crime. The draft Convention for the Protection of All Persons from Forced Disappearance would now fill the legal gap that existed in the past. The draft Convention would define the crime of forced disappearances and the right not to disappear. It would also provide remedy to the victims and their families.

SERGIO CERDA ([Argentina](#)) said the draft Convention for the Protection of All Persons against Forced Disappearance should be adopted. World public opinion expected much from the initial meeting of the Council. Drafts for this text had been submitted already 25 years ago. The Working Group had completed its work successfully in 2005, with the draft that was before the Council, and it should be adopted by consensus.

In the drafting group, amidst the diversity of opinions, agreement had been reached on all needs and concerns; the result was a balanced draft convention which included protection. The excellent theoretical and practical contributions by NGOs and the families of victims organisations had all been significant contributions to advances in the draft, which had filled a vacuum which still existed in international protection from fundamental rights and freedoms. The text included a warning and criminal sanctions were stipulated on the appropriation of children. There was an innovative inclusion of a mechanism to find disappeared persons. The adoption of the draft meant a huge step forward, greatly hoped for by all victims of forced disappearance throughout the world.

OMAR KADIRI ([Morocco](#)) said Morocco, since the beginning of the work of the Group, had expressed its support in elaborating a binding international legal instrument to fight against enforced disappearance, and had participated actively with the view to finalize the drafting of the instrument, which would ensure the prevention of the crime. Morocco was committed to promoting and protecting human rights. Its commitments were also realized through its firm will to close its chapter of past human rights violations, particularly relating to enforced disappearances.

The Truth and Reconciliation Forum, which was created in 2004, had carried out investigations of human rights violations and had made a series of recommendations relating to reparations, compensation and the adoption of legal instruments.

CLODOALDO HUGUENEY ([Brazil](#)), speaking on behalf of the [Group of Latin American and Caribbean Countries \(GRULAC\)](#), said this was the culmination of a lengthy process, characterised by a painful past where systematic human rights violations reigned in order to intimidate societies and silence opponents. This was not the end of a struggle, but the beginning of a new stage in the promotion and protection of human rights. Beyond the national measures adopted in this field, it had been necessary to complete the international framework and adopt an international mandatory instrument, which was before the Council today, and showed the fundamental role that was given to prevention of the crime of disappearance.

The Convention covered basic areas of human rights that were already taken into account in other instruments, but with the gradual development of international law, it now included new trends such as the international habeas corpus and the protection of children. It would also help to combat impunity. Families and societies had a right to truth, which was enshrined in the draft Convention. It was important for the international community to sanction perpetrators of enforced disappearance. Now that the Council had been established, it was important to adopt the draft convention, with the agreement of the international community in this new era of human rights.

CLODOALDO HUGUENEY ([Brazil](#)) said Brazil was one of the co-sponsors of the draft resolution calling for the adoption of the draft convention, which would be submitted to the Council for consideration. Between the 1960s and the 1980s, many Latin American countries were ruled by authoritarian regimes, in which torture was wide-spread and the number of disappeared persons was rampant.

In the case of Brazil, the re-establishment of democracy at the late 1980s favoured the adoption of many measures aimed at the reparation of the victims and their families. At the same time, Brazil had become part of many regional and international instruments of human rights. Both measures, taken at national

and international levels, had reinforced democracy in the country. However, at the international level, an effective remedy to fight and prevent the crime of enforced disappearances was still lacking.

MARINA KORUNOVA ([Russian Federation](#)) said it would be hard to overestimate the importance of the issue that was covered in this draft convention, especially in the context of new crimes such as kidnapping, hostage taking, and terrorist acts. Hostage-taking was a most flagrant violation of human rights, aimed at destroying the whole system of protection of the human rights of individuals, and could not be condoned under any circumstances. The Council should give hostage-taking a high level of importance. The Council, like the General Assembly, should confirm that every person had the inalienable right to be protected against terrorism.

The impending adoption of the Convention would help to strengthen the international regime for protecting human rights and freedoms, and would help to eradicate these crimes, and become part of the global effort to combat terrorism. It was particularly important to have a draft article which put responsibility for human rights violations on non-State actors where appropriate. A considerable number of enforced and involuntary disappearances was committed by terrorists and terrorist groups and illegal armed groups.

TETSUYA KIMURA ([Japan](#)) said the Government of Japan attached great importance to the combating of enforced disappearances. That crime placed not only disappeared persons but also their families in a grievous situation. The international community should fight against the crime for enforced disappearance and make every effort to get the victims back to their families. The Government of Japan supported the draft convention.

CARLA RODRIGUEZ MANCIA ([Guatemala](#)) said this was part of a global effort to promote in the international community the recognition that enforced disappearance was a crime against humanity. The international convention would provide greater protection against enforced disappearance. The provisions for reparations to the victims and their family members included the right to truth. The draft also stated that enforced disappearances could be committed by non-State actors, and this was a reality that the legal system had to deal with, and bring those responsible to justice before the law.

In 2004, Guatemala had set up a national programme for reparation, for civilian victims of human rights violations and crimes against humanity, including enforced disappearances. The adoption of the text of the Convention should take place at this session of the Council, and the General Assembly should adopt it formally, as this would strengthen efforts for victims in many countries.

GALO LARENAS SERRANO ([Ecuador](#)) said one of the tasks of the Council was promoting universal respect for all human rights as was set forth in the General Assembly resolution which set it up. The right to life was one of the most important human rights, and practically equally important was the obligation of the international community and the State to protect this right. Enforced disappearance was a violation of this basic right, both for victims and their families.

The Commission had given its views on the matter, establishing the Working Group for the purpose of drafting the text of this international legal instrument. Following a lengthy process and establishment of the theme, the Council was faced with a completed work, and a draft text. Given the obvious urgent nature of this theme, perhaps the work had taken too long. There was full support for the cause of the draft.

TEHMINA JANJUA ([Pakistan](#)) said enforced or involuntary disappearance was a serious violation of one of the most basic rights, the right to life, and it violated a series of international norms. All States had a duty to prevent such violations. The convention should be adopted at the first session of the Council, and this would be a fitting beginning, presenting the human face of the body.

DONG ZHIHUA ([China](#)) said the efforts of the international community to prevent enforced disappearance were supported. The adoption by consensus in the Working Group of the draft showed that such conventions should reflect international consensus and enjoy broad support. China welcomed and supported the approach of consensus on international legal instruments as a way to fully display international solidarity and cooperation, and had taken note of the fact that the draft Convention had been completed in a short span of two years. China expected that in the future, the Convention would resolve the concerns of certain countries with regards to implementation.

MAMMAD TALIBOV ([Azerbaijan](#)) said that the intersessional open-ended Working Group to elaborate a draft legally binding instrument for the protection all persons from enforced disappearances had gone a long way and done a lot of work that was important for all without exception. It was worth mentioning that the draft convention had been transmitted to the Commission on Human Rights for adoption. For well-known reasons, a decision was not taken at that time. Action had to be taken today at the Human Rights Council. Azerbaijan confirmed its view that enforced disappearance was a crime, and in certain

cases, a crime against humanity. Azerbaijan therefore supported the adoption of the resolution on a Convention on Enforced Disappearances to fight against that scourge in the future. Unanimous adoption of that resolution would illustrate the solidarity of the international community to prevent and punish that crime.

IDRISS JAZAIRY ([Algeria](#)) said the unprecedented attention given in the draft convention to the acknowledgement of the serious responsibility which could be laid at the door of non-State actors at the hands of terrorist groups was appreciated. The best testimony of the support for the work would be the wide consensus that was emerging in support for the draft convention. The adoption of the convention would result in a real improvement in the protection of people world-wide.

ABDUL WAHAB HAIDARA ([Senegal](#)) said that it had been a long struggle to get to this point where there was a possibility of being protected against enforced disappearance. The effective implementation of the provisions in the draft instrument would also assist in the promotion of other important human rights, in particular that of freedom of movement.

HEMAYETUDDIN ([Bangladesh](#)) said enforced disappearance was among the worst forms of human rights violations and crimes against humanity. It was not committed against just one individual, but brought untold misery and trauma to the family and society at large. Bangladesh, deeply committed to democratic principles, had stringent laws, guided by the draft convention against enforced disappearances, and wholeheartedly supported the international laws and instruments that addressed the issue of enforced disappearances. Bangladesh would go along with the consensus decision on the issue.

SAMUEL MVONDO AYOLO ([Cameroon](#)) said that the issue of forced disappearances had unfortunately become a universal one. Cameroon welcomed the completion of the draft Convention, after 25 years of work, and it wished to pay tribute to the balanced nature of the draft, as well as to the many innovations that it contained. The United Nations now had an instrument that punished the shameful crime of enforced disappearance. Perpetrators of such acts, be they State or non-State actors, should be forewarned. Cameroon fully supported the draft Convention and wished to become a co-sponsor of the draft resolution calling for the adoption of the draft Convention on the Protection of All Persons against Enforced Disappearances by the General Assembly.

CORDULA DROEGE, of [International Committee of the Red Cross \(ICRC\)](#), said the adoption of this draft convention at the first session of the Council was of particular importance. The draft should be adopted. The ICRC was gravely concerned about the fate of the forcibly disappeared, who were abducted and sometimes killed, and their families left in the dark as to their fate. Enforced disappearance was a grave violation of human rights, as it broke many prohibitions for their protection. It was a denial to the right of family life, and to the families' right to truth and to know the fate of their loved ones. The prohibition of enforced disappearance knew no derogation or justification, and no person could be placed outside the law, whether this be by the State or non-State actors.

For the first time, obligations would be legally codified in a legally-binding human rights treaty. Much more still remained to be done against enforced disappearance. The respect and dignity of missing persons and their families should be restored, and more effort should be put into protecting those who had gone missing. The Council should adopt the Convention at its first session.

LUIS VARELA QUIROS ([Costa Rica](#)) associated itself with the statement made by Brazil on behalf of the Group of Latin American and Caribbean States. As they had already made known, Costa Rica had supported and actively participated in the negotiation of this instrument, to protect all from the horror of the practice of enforced disappearances. A convention was necessary to obtain a guarantee from all States to protect and prevent individuals from enforced disappearances and work with other States to do so, as well as to sanction perpetrators and accomplices of those crimes. Lastly, they should not forget yesterday's and today's victims, and the convention had to be carried out so that they would not be forgotten.

JOAQUIN MARIA DE ARISTEGUI LABORDE ([Spain](#)) said progress in this matter was still a priority. This was a historic moment in developing human rights. It was up to the Council to continue the work of the Commission, and it should come up with tangible results, and this draft convention was of particular important. From a political and moral viewpoint, this gave a satisfactory response to the legitimate aspirations of the victims and their family members and heirs, who supported this draft. Spain gave the draft full backing, and associated itself with those urging its adoption, so that it could be conveyed to the General Assembly at the next session, and would be one of the first signatories and parties to this historic document.

PATRICIO UTRERAS ([Chile](#)) said that Chile fully supported the statement made by Brazil on behalf of the Group of Latin American and Caribbean States. Chile had co-sponsored the draft resolution submitted by the delegation of France, recommending the adoption of the draft convention for the protection of all

persons from enforced disappearance.

Since enforced disappearance was not just a question relating to the past, but also continued today, it was important to focus on the preventive nature of the Convention. Important preventive measures included prohibiting secret detention centres and obliging States parties to keep records of those being held in detention, and sanctioning those who failed to do so. States parties were also required to have all detentions subject to rapid judicial review. Chile had lived through such atrocities and was particularly sensitive to this issue. With the adoption by consensus of this Convention, the Council would unite its voice with others to say "Never again will we allow enforced disappearance".

BART OUVRY (Belgium) said that a good compromise had been achieved, which Belgium hoped would be adopted by consensus. The suffering of the disappeared and their families in the 1970s had horrified many, and the United Nations had responded. More than 25 years later, the draft Convention was being proposed for adoption, with the hope that it would improve the fate of the victims and their dear ones. Thanks to the Convention, it was being recognised as a specific crime, and States given weapons to respond to its committal. An important step had been taken, but this was only one: following adoption by the General Assembly, the Convention had to be adopted by the widest possible number of States.

PAULA BARTON (United States) said the United States thanked the Chair of the Working Group and all participants, especially the families of the disappeared and other representatives of civil society, for focusing attention on this important issue. The United States referred the Council to its written statement submitted to the secretariat and requested that it be made part of the official record, as it contained the United States legal interpretation and reservations to the instrument.

FRANCISCOS VERROS (Greece) said it fully supported the draft Convention, and called upon the Council to adopt the text by consensus here at its first session. Greece believed the draft Convention was an important step forward in the struggle against the scourge of forced disappearances and the efforts to protect victims and their families. It would be an important part of international law, filling a gap, and forcing signatory States to recognise the right of every individual not to be disappeared, and to criminalise that in its legislation. Forced disappearance was a crime against humanity, and could be subject to international enquiry. The adoption of the Convention would be a clear signal to the victims of enforced disappearance and their families that the Council was backstopping their efforts, and sharing their hopes.

The Representative of Bolivia said that Bolivia supported the statement made by Brazil on behalf of the Group of Latin American and Caribbean States. The enforced disappearances of persons had become one of the major violations of human rights, leaving in its wake the irreparable suffering caused by the complete and constant uncertainty for those left behind, which represented in itself a form of torture. The draft convention contained prohibitions against keeping people in secret detention, required the keeping of detention registers, and provided for access to the detained by their family members and legitimately interested third parties. Bolivia called on all the members of the Human Rights Council to support by consensus and as a matter of priority the adoption at this session of the draft convention for the protection of all persons from enforced disappearance.

MARY AILEEN BACALSO, of Center for Human Rights Information in the Philippines, said the voices of the disappeared in Asia were echoed, as this was the continent where there were the most disappeared, including in China, Kashmir, Indonesia, and many other places where there were disappeared, whose families did not know the fate of their loved ones. Precious lives had been lost, and families and wider society had been deeply traumatised, and therefore the draft Convention should be adopted, as it would fill gaps, and protect new rights, such as the right not to be disappeared. The Council was obligated to prevent further disappearances, and turn this concrete crime into a victorious struggle for justice, and should adopt the Convention without delay.

MARTA OCAMPO VASQUEZ, of Federacion latinoamericana de asociaciones de familiares de detenidos-desaparecidos (FEDEFAM) (speaking in a joint statement with International Commission of Jurists; International Federation of Human Rights Leagues; Human Rights Watch; International Service for Human Rights; and Amnesty International) said enforced disappearance was an odious crime. Enforced disappearance was a crime affecting not only the victims but also the families and their children. One of the odious crimes of disappearance was the keeping of children of victims of disappeared persons and separating them from other family members. The Working Group had adopted a draft treaty on the issue and the Council now had to consider it. The crime of disappearances had violated all international norms. That odious practice could not be tolerated and should be completely banned. She requested the Council to adopt the draft convention and submit it to the General Assembly for its final decision.

BRUNA MOLINA FAIDUTTI, of World Federation of United Nations Associations, said that the question of enforced disappearances was first brought to the attention of the United Nations by the delegation of Chile in the 1980s. Now, the Human Rights Council had before it for consideration a draft

convention on enforced disappearances. Tribute had to be paid to the non-governmental organizations, experts and Member States who had worked tirelessly on that text. The Convention, once approved, would fill a legal gap in the legal instruments for the promotion and protection of human rights of the United Nations system. The establishment of a committee of experts would help in prevention and would assist in monitoring the implementation of the Convention. The Convention also reaffirmed the principles of restitution to the family of origin and contemplated the provision of reparations for the families of the disappeared.

MILDA SUMILLA, of Families of Victims of Enforced Disappearances, said her organization joined other organizations in supporting the realization of an instrument in the Philippines to bring remedy to disappearances. Forced disappearance was common in situations of state of emergencies and other urgent circumstances. The perpetrators of the disappearance remained with impunity in many cases. During recent years about 25 peoples had disappeared in the Philippines and the perpetrators of the forced disappearance were not brought to justice nor the cases of the victims elucidated. Her own brother, a lawyer, had disappeared and his family did not yet know his whereabouts.

HORACIO RAVENNA, of Permanent Assembly for Human Rights, said that not all of the objectives that they had wished to see achieved had been included in the draft, but, nonetheless, the Permanent Assembly supported the current text and the adoption of the draft convention on enforced disappearances. It represented an importance advance for the international community. In particular they supported the keeping of a register of detainees that could be consulted by families. The convention also made an important advance in providing for widespread human rights violations to be raised directly by the Secretary-General with the General Assembly.

OUARDI ZAHNA, of Union de l'action feminine, said that once all States ratified the convention, it would give protection to all victims and that States would be able to protect their citizens from disappearance. The Moroccan Government would also be heeding to the appeals of the families of the enforced disappearances. He had prepared a report regarding enforced disappearance in Morocco. He asked for the fate of those who disappeared in Morocco. He hoped that the adoption of the convention would help many families to find out the reasons of disappearances of their beloved ones.

MAHJOUB EL HAIBA, of Consultative Council on Human Rights in Morocco, said that the Consultative Council on Human Rights in Morocco supported the adoption of the Convention on Enforced Disappearances for a number of reasons. The Consultative Council had been behind a mechanism that had allowed for reconciliation in Morocco. This draft Convention was an essential element in ensuring the right to truth. The Consultative Council had a wealth of experience in this domain. The adoption of the convention would also serve to strengthen peace and security and satisfy the needs of people worldwide to be safe from this crime. The convention would also contribute to putting an end to impunity. As a national human rights institution, the Consultative Council said that they needed to bolster national efforts to see that the Convention was adopted.

BERNARD KESSEDJIAN, Chairperson-Rapporteur of the intergovernmental Working Group to elaborate a draft legally binding normative instrument for all persons form enforced disappearance, said the debate in the Council was in favour of the convention and that all had supported it. The quality of the debate would encourage his group in its efforts to realize the work. He was happy and proud for the result the Working Group had accomplished.

Right of Reply

A Representative of Algeria, speaking in a right of reply, said that at this morning's session, a non-governmental organization spoke on the question of the Sahrawi refugee camps. It would be better to avoid making statements of that kind and to give the Human Rights Council the chance to hear the results of the mission there. In that regard, both the World Food Programme and the Office of the High Commissioner for Human Rights were present in the field in those refugee camps.

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