

Enforced Disappearances

When Secrecy Allows
Atrocity



©Unrepresented Nations and Peoples Organization (UNPO)

Report elaborated by Pierre-Alain Rouffiange on behalf of UNPO

Case study “The Uyghurs” written by Sofia Melikova

Case study “The Crimean Tatars” written by Susann Nowack (December 2014)

Design by Iva Petkovic

Composed in December 2013

Launched in September 2014

Unrepresented Nations and Peoples Organization (UNPO)

Laan van Meerdervoort 70

2517 AN The Hague

The Netherlands

Tel.: +31(0)70 3646504

Fax: +31(0)70 3646608

unpo@unpo.org

www.unpo.org



ENFORCED DISAPPEARANCES WHEN SECRECY ALLOWS ATROCITY

**December 2013
September 2014
December 2014**

Brussels, Belgium

TABLE OF CONTENTS

Foreword	1
Contribution by José Roberto Rugamas Morán - Asociación Pro-Búsqueda de Niñas y Niños Desaparecidos, El Salvador	1
A. An Atrocious but Invisible Crime	4
B. A Nazi Practice.....	7
C. Who is Forcibly Disappeared?	8
D. The Fate of the Disappeared	9
E. The Plight of the Victim’s Family	10
II. Legal background	11
A. Rights violated by enforced disappearances	12
1) From the perspective of the missing person	12
2) From the perspective of the family	14
B. The Working Group on Enforced or Involuntary Disappearances (1980)	15
C. The Declaration on the Protection of All Persons from Enforced Disappearance (1992).....	16
D. The Vienna Declaration and Programme of Action (1993)	18
E. The Rome Statute of the International Criminal Court (1998-2002).....	18
F. The International Convention for the Protection of All Persons from Enforced Disappearance (2006-2010).....	18
1) Part I of the Convention: the substantive provisions	19
2) Part II of the Convention: the Committee on Enforced Disappearances	20
3) Status of ratification of the Convention	22
III. Current “Hotspots”	23
.....	25
IV. Combating the problem	26

A. The United Nations	26
B. The International Committee of the Red Cross	27
C. The European Union	28
D. The role of civil society.....	30
1) Advocacy	30
2) Field work.....	31
V. Case Studies	32
A. Balochistan.....	32
1) Background.....	32
2) Main issues	33
3) Cases of enforced disappearances.....	36
4) Recommendations.....	37
B. The Uyghurs	38
1) Background.....	38
2) Main issues	39
3) Cases of Enforced Disappearances	42
4) Recommendations.....	43
C. The Crimean Tatars	44
1) Background	45
2) Main Issues	46
3) Cases of Enforced Disappearances	48
4) Recommendations	49
VI. Conclusion	51
VII. Recommendations	52
Appendices.....	54

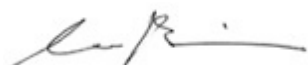
Foreword

Enforced disappearances have been perpetrated for decades by criminal governments and other state institutions to terrorise and muzzle individuals and communities. Worldwide, thousands of people have been abducted, detained, tortured and sometimes killed in complete secrecy – and the practice is far from being a distant, unpleasant memory.

Several of UNPO's members are facing the realities of enforced disappearances on a daily basis: the Baloch, both in Iran and Pakistan, and the Uyghurs in China have been targeted in an attempt to weaken the resilience of their community. The act of forcibly disappearing someone has taken its toll on indigenous populations and ethnic peoples around the world – and yet they continue to fight for their rights, undeterred by the political and physical limits imposed by states and governments on their non-violent actions.

A unique international conference on the subject of enforced disappearances at the European Parliament, in January 2013, convinced European and international actors of the importance to continue to raise awareness on the topic. The publication of this report, offering a strong introduction to the crime at hand as well as its legal implications, is a natural response to this urge: documenting the crimes, raising the issue and providing a tool for human rights advocates and defenders in making their case for a world free from terror.

Considered by many as one of the most severe human rights violations, it is imperative to fight towards the eradication of enforced disappearances. In this respect, it should be stressed that most of EU Member States, and many other countries, have yet to sign, ratify and implement effectively the International Convention for the Protection of All Persons from Enforced Disappearance. This must change, and this report is a first step in understanding why this is urgently needed.



Marino Busdachin
UNPO General Secretary

Contribution by José Roberto Rugamas Morán - Asociación Pro-Búsqueda de Niñas y Niños Desaparecidos, El Salvador

“Whereas disregard and contempt for human rights have resulted in barbarous acts which have outraged the conscience of mankind, and the advent of a world in which human beings shall enjoy freedom of speech and belief, and freedom from fear and want, has been proclaimed as the highest aspiration of the common people [...]”
(Preamble of the Universal Declaration of Human Rights).

When the General Assembly of the United Nations proclaimed the Universal Declaration of Human Rights on the 10th December 1948, the feeling of hope was widespread after nations finally achieved consensus on 30 articles defining political commitments of States towards individuals. The Universal Declaration of Human Rights became an international instrument, widely accepted by States as a measure for future international and domestic legislation. It is a model which has inspired an ever increasing number of legal guarantees and has evolved and expanded human rights according to new needs and values.

Nonetheless, with this UNPO report, we are sadly reminded that the realities, which *shock* the moral conscience of *mankind*, such as recent cases of enforced disappearances in Sri Lanka, Mali and China, prevail. The basis for systematic violence and human rights violations are divisive political and economic systems, social and religious practices, which encourage hate. This can materialize into some of the worst crimes against humanity: extrajudicial executions, disappearances, torture.

We believe that the best answer is to resist through mutual respect, construction of peace, dialogue, opposing tyranny, advocating the use of political mechanisms and justice systems (national and international) which we have developed in the past century, promoting democratic institutions and persuading others to relinquish violent measures.

Similar to UNPO’s report, the “Asociación Pro-Búsqueda de Niñas y Niños Desaparecidos”¹ has worked in El Salvador to expose the numerous and trans-generational effects of the crime of forced disappearances and the system of impunity. We developed as a human rights organisation in the post-conflict context; almost the entire region was submerged in a state of armed conflict in the 1980s, motivated principally by grave structural inequalities in the economies of the countries, and also by the ideological polarization, which was sustained internationally in the context of the Cold War.

In El Salvador, “*State terrorism was possible due to historical control over the military, and political and economic power over the justice system. The state of impunity is the foundation for state terrorism*”.² The dual nature of both internal and regional conflicts, which had been unravelling since the 1970s, evolved in El Salvador in the form of a civil war between 1980s and 1991.³

¹ Association dealing with the search of disappeared children in El Salvador.

² David Morales, *Política de lucha por la justicia*, San Salvador, Asociación Pro Búsqueda de Niñas y Niños Desaparecidos, 2007, p. 7.

³ Comisión de la Verdad, *De la locura a la esperanza. La guerra de 12 años en El Salvador*, San Salvador, Editorial de Cultura Popular, 2006.

The government's response was guided by the counterinsurgency policy, which "*is largely based on the vision of an enemy as being part of a global conspiracy*".⁴ The highly ideological government response was to instil terror in various parts of the population.

“Within this policy of terror, systematic forced disappearances of children were also practiced, as demonstrated by Asociación Pro Búsqueda. The phenomenon of missing children was accompanied by other serious crimes against children, such as illegal adoptions, illegal trafficking and various other forms of abuse of power”.⁵

In 1992, the efforts of warring factions were frustrated thanks to the timely and supportive intervention by the international community. Under the auspice of the United Nations, the Chapultepec Peace Accords were signed, with which the Government and guerrilla movement entered into a definitive ceasefire. The ceasefire opened new spaces of political participation and commitments to fully respect human rights and eliminating impunity in cases of grave violations of human rights and crimes against humanity.

During the new phase of peace building, the Spanish Jesuit priest Jon Cortina worked with victims struggling with the most painful experience in the war: the violent separation of hundreds of children from their biological families. As of today, 935 cases have been reported, of which, Pro-Búsqueda has managed to resolve 387.

By submitting complaint reports to the Inter-American Commission on Human Rights and the Inter-American Court of Human Rights, Pro-Búsqueda has managed to find efficient remedies for victims with judgements in the cases ‘Serrano Cruz Sisters v. El Salvador’ in 2005 and ‘Contreras and others v. El Salvador’ in 2011. In the ‘Rochac and others v. El Salvador’ case, which is currently under-way, the State has admitted its responsibility in these events.

Yet, the biggest task will be the dismantling of criminal impunity, authorized by the terrible “General Amnesty Law for the Consolidation of Peace”, which absolutely and unconditionally pardons crimes against humanity committed during the period of the armed conflict.

In building democracy, the most important political and moral task is the struggle for human rights. In a similar vein, crimes against humanity occur in settings where diverse conflicts take place and therefore the best way to prevent these crimes and resolve conflicts is to build social peace and strengthen democracy.

The international community has the immense challenge of maintaining open intercultural dialogue. The issue of human rights brings up serious questions about the articulation of models of geopolitical domination based on the worldview of ‘centre-periphery’. The real political commitment for dignified life requires the international community to include everyone in dialogue in equity and co-responsibility.

⁴ M. López Bonilla, “Origen de los conflictos armados en la década de 1980”, *Los conflictos políticos armados y sus consecuencias sobre la situación de los derechos humanos y democratización: el caso de Honduras en la década de los 80*, San José, ACECOD - Unión Europea, 1998, pp. 15-21.

⁵ David Morales, *Política de lucha por la justicia*, *op. cit.*, p. 7.

We must all consider ourselves responsible for the existence of human rights violations, and we are all obligated to cover the cost of violations and to eliminate the fear of subjugation, which is contrary to human dignity. We consider ourselves legitimate representatives advocating for the respect of human dignity.

The tremendous task before states, international organizations and civil society at local, regional and global levels is to assume the role of defenders, in order to stand up to arbitrariness, violence, injustice, and oppression, because the universal application of human rights is our aspiration and demand.

This report meets the objective of thoroughly reporting on the contemporary phenomenon of enforced disappearances and provides a tool for the international community to intervene in other examples of conflict situations where there is evidence of the crime.

The international community should feel committed to initiating dialogue in the midst of armed conflict, since enforced disappearances are used as a way to intimidate the enemy and take advantage of impunity. Therefore, only with international observation can this practice be reduced, although later it is essential to denounce, investigate and sanction it.

Impunity, in cases of enforced disappearance, gives a sense of freedom to the culprits to continue this practice under new forms of organized crime. Thus in many cases, forced disappearances are a route to give impunity to other crimes.

This report should encourage the EU, UN and other regional organizations committed to human rights to urge States such as El Salvador to sign, ratify and effectively enforce the International Convention for the Protection of All persons from Enforced Disappearances.

José Roberto Rugamas Morán - Lawyer

Asociación Pro-Búsqueda de Niñas y Niños Desaparecidos, El Salvador

I. Introduction to Enforced Disappearances

A. An Atrocious but Invisible Crime

Every year, hundreds of people throughout the world are arrested, abducted and imprisoned by their states or state-sponsored actors. The whereabouts of the victims are not known, and often their detention is denied altogether. Victims of enforced disappearances are frequently tortured and/or killed, very few of them ever released. The families of the victims may never discover what happened to their relative.

The official term “enforced disappearance”⁶ does not reflect the degree of abomination of this practice, since it does not communicate a mere disappearance, a void. In fact, this crime is horrible but invisible and affects not only the

⁶ “*Detenidos desaparecidos*” is the first term that was used to refer to this crime. It appeared in Latin America and means “detained persons that disappeared”. Later, the terms “forced disappearance” and “involuntary disappearance” were used and,

disappeared, but also their families, their communities and society as a whole. As for its comprehensive definition, 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*”.⁷

Even though this practice is still an appalling reality in at least 80 countries around the world, it receives little international attention. This is all the more surprising given that it is **one of the most atrocious human rights violations** that can be committed. Being outside the reach of the law, the disappeared are stripped of their basic rights, being at the mercy of their captors. The situation can continue for many years or even decades after the abduction. In the event that the disappeared survives and is released, the damage has been done in terms of physical and psychological injuries, not to mention the impact on the community by spreading fear for subsequent abductions.⁸

As outlined above, the **family and friends** of the missing person are also very much targeted by the disappearance of their beloved one. Not knowing about the fate of the disappeared, they are unable to mourn and come to terms with the loss. Moreover, finding and suing the perpetrator of the crime is extremely difficult and dangerous. On top of that, the anguish of the victim’s relatives is often exacerbated by material deprivation, especially if the missing person was the main breadwinner of the family. Without a death certificate, the victim’s family cannot obtain pensions or other means of support, and wives are not able to remarry.⁹

The practice of enforced disappearances also touches upon the fabric of the **entire community**, with fear spreading once one or several individuals are targeted. Most of the time, there is no way of anticipating what is being sanctioned or who will be targeted next, and the disappearance of an individual becomes a way of silencing, paralysing and thus controlling an entire community.¹⁰

recently, there has been a consensus to use the term “enforced disappearances” (Ewoud Plate, “An Introduction to Enforced Disappearances – From a Nazi Instrument to a Contemporary Strategy of Enforcement”, speech at the conference *Enforced Disappearances – Tackling an Invisible Crime*, organized by the office of Josef Weidenholzer MEP and UNPO, European Parliament, Brussels, 23 January 2013).

⁷ Preamble of the Declaration on the Protection of All Persons from Enforced Disappearance, adopted by United Nations General Assembly resolution 47/133 of 18 December 1992.

⁸ Ewoud Plate, “An Introduction to Enforced Disappearances – From a Nazi Instrument to a Contemporary Strategy of Enforcement”, *op. cit.*; Amnesty International, *Enforced Disappearances*, available at <http://www.amnesty.org/en/enforced-disappearances> (consulted on 13 December 2013).

⁹ *Ibid.*; Office of the United Nations - High Commissioner for Human Rights, “Enforced or Involuntary Disappearances”, *Fact Sheet*, No. 6/Rev.3., Geneva, United Nations, 2009, pp. 1-2; UNPO, *Enforced Disappearances: The Deafening Silence of the Disappeared*, 30 August 2013, available at <http://www.unpo.org/article/16329> (consulted on 13 December 2013).

¹⁰ Office of the United Nations – High Commissioner for Human Rights, “Enforced or Involuntary Disappearances”, *op. cit.*; Ewoud Plate, “An Introduction to Enforced Disappearances - From a Nazi Instrument to a Contemporary Strategy of Enforcement”, *op. cit.*

Women looking for a disappeared family member, Sri Lanka ¹¹



¹¹(Photo @Flickr by Vikalpa - August 30, 2012).

B. A Nazi Practice

The first enforced disappearances committed on a gross scale were perpetrated in **Nazi-occupied Europe**. The “Night and Fog” decree (Nacht und Nebel Erlass) of the Nazi regime, issued on 7 December 1941, was the first systematic policy of enforced disappearances.

Activists living in the occupied territories, especially in France, Belgium and the Netherlands, were captured overnight and taken to Germany, where they were sentenced to imprisonment or death. Around 5,200 people disappeared under Nazi occupation, in an attempt to terrorize civilian populations and discourage all forms of resistance.¹²

In the 1960s, a similar practice to silence opponents and resistance emerged in **Latin America**, particularly in Argentina, Brazil, Columbia, Chile, Ecuador, El Salvador, Guatemala, Honduras, Peru and Uruguay. Numerous individuals and groups were considered to be enemies of the regime and subsequently disappeared. People were taken from their beds in the early morning by agents in plain clothes who used cars without license plates. These enforced disappearances were a way of covering up targeted, political killings. Under Augusto Pinochet’s seventeen-year rule in Chile, 2,279 people were abducted and killed by the regime for political reasons.¹³ Because these waves of disappearances coincided with the globalization of media coverage, the disappearances in Latin America, specifically the Argentinians and the Chilean cases, became well known to the general public.¹⁴

Despite these horrendous figures, the practice of enforced disappearances has increased on a global scale since the 1980s. The phenomenon occurs **in more than 80 countries** worldwide, and in many different contexts (See below “Current Hotspots”, pp. 27-29).

¹² Amnesty International, *Enforced Disappearances*, *op. cit.*; Ewoud Plate, “An Introduction to Enforced Disappearances – From a Nazi Instrument to a Contemporary Strategy of Enforcement”, *op. cit.*; Özgür Sevgi Göral, Ayhan Işık and Özlem Kaya, *The unspoken truth: enforced disappearances*, Istanbul, Truth Justice Memory Center, 2013, p. 11.

¹³ Figures are taken from the Rettig Report, officially known as The National Commission for Truth and Reconciliation Report. Issued in 1991 by a commission designated by President Patricio Aylwin, this document is a record of disappearances, as well as human rights violations resulting in death, that took place in Chile under Augusto Pinochet, from September 11, 1973 to March 11, 1990.

¹⁴ Ewoud Plate, “An Introduction to Enforced Disappearances – From a Nazi Instrument to a Contemporary Strategy of Enforcement”, *op. cit.*; Özgür Sevgi Göral, Ayhan Işık and Özlem Kaya, *The unspoken truth: enforced disappearances*, *op. cit.*, p. 12; UNPO, *Enforced Disappearances: The Deafening Silence of the Disappeared*, *op. cit.*

C. Who is Forcibly Disappeared?

While enforced disappearances were originally the product of military dictatorships, they can nowadays be committed in various situations of conflict and target different communities. However, the rationale behind the use of this practice is often the same: **the paralysation of any form of dissidence** throughout the population.

Perpetrators target specific individuals or groups whose attitudes and actions are against the regime. Amongst these dissident voices we count human rights defenders, minority rights activists, political leaders, journalists, student leaders or unionists. Sometimes, the targeting of the victim seems arbitrary, thus creating an even bigger impact in terms of confusion and terror.¹⁵

The practice of forcibly disappearing people is indeed an effective way to cover-up political killings, since the crime leaves no trace and culprits are hard to find. Opponents are eliminated in complete secrecy and their relatives, peers and communities have no evidence to produce against the authorities, in countries where the judiciary systems are on top of that, often corrupted.

“People do not disappear by mistake or accident in situations of crisis, but through a deliberate strategy to terrorize civilian populations” (Olivier de Frouville, Member of the Working Group on Enforced or Involuntary Disappearances - August 28, 2013)

Nowadays, the ongoing harassment of the relatives of victims, witnesses of the crime and legal representatives trying to deal with the victims' cases is particularly worrying. In many cases, the regime uses counter-terrorist activities (and *ad hoc* laws related to these activities) as a pretext for breaching international standards and obligations, and commits these crimes with impunity. Moreover, enforced disappearances disproportionately target members of already oppressed and vulnerable **ethnic and religious minority groups**. These groups are often considered as dissidents or separatists when claiming respect for their basic human rights and political representation. By terrorising and paralyzing these minority communities, enforced disappearances allow the authorities to perpetuate their discriminative policies, to ignore the principles of democracy and to deprive these groups from their right to self-determination, enshrined in the United Nations Charter,¹⁶ the International Covenant on Civil and Political Rights

¹⁵ Ewoud Platé, “An Introduction to Enforced Disappearances – From a Nazi Instrument to a Contemporary Strategy of Enforcement”, *op. cit.*

¹⁶ Charter of the United Nations, signed on 26 June 1945, San Francisco.

(ICCPR),¹⁷ the International Covenant on Economic, Social, and Cultural Rights (ICESCR),¹⁸ the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP),¹⁹ and many other international and regional instruments.

D. The Fate of the Disappeared

The term “enforced disappearance” does not adequately reflect the cruelty of the practice it refers to. The abducted individual is not only violated in his or her rights by the disappearance in itself, but is very often subjected to additional crimes such as sexual abuse, torture, extra-judicial killing and organ harvesting.²⁰

Regimes or state-sponsored criminal actors are very imaginative when it comes to propagating panic within society by eliminating people. Among the numerous and various monstrosities that have been perpetrated, one could mention the cases of **Chile** and **Argentina**, where the military juntas abducted thousands of people and ‘simply’ threw them out of airplanes into the ocean to get rid of the evidence.²¹

However, barbaric practices are still rife in more recent conflicts. In May 2012, enforced disappearances and torture took place in **Mali** over the course of several weeks. Human Rights Watch (HRW) and other human rights organizations interviewed a number of survivors who testified that, after being abducted and taken to an unknown location, they were “*handcuffed and hogtied, beaten with batons, sticks, and gun butts, and kicked in the back, head, ribs, genitals, and elsewhere*”.²² Other people who were taken away by force explained that they had been “*stabbed in their extremities and burned with cigarettes and lighters on their backs, hands, arms, and ears*”.²³ As for the **Syrian crisis**, HRW provided details on 27 of the numerous torture facilities run by the Syrian authorities throughout Syria in 2012. According to former detainees, the torture methods included “*beating victims with cables and sticks, pulling out their fingernails, tying them to boards in painful positions or hanging them from the ceiling by their wrists so their toes barely touch the ground*”.²⁴

“Enforced disappearance is one of the most heinous crimes” (Navi Pillay,

United Nations High Commissioner for Human Rights – March 2012)

¹⁷ International Covenant on Civil and Political Rights, adopted by United Nations General Assembly resolution 2200A (XXI) of 16 December 1966, entry into force 23 March 1976.

¹⁸ International Covenant on Economic, Social and Cultural Rights, adopted by United Nations General Assembly resolution 2200A (XXI) of 16 December 1966, entry into force 3 January 1976.

¹⁹ United Nations Declaration on the Rights of Indigenous Peoples, adopted by United Nations General Assembly resolution 61/295 of 13 September 2007.

²⁰ Özgür Sevgi Göral, Ayhan Işık and Özlem Kaya, *The unspoken truth: enforced disappearances*, op. cit., p. 12.

²¹ *Ibid.*; Jihan Kikhia, *Enforced Disappearance in International Law: Case Study of Mansur Kikhia*, May 2009, p. 3, available at: http://www.mansurkikhia.org/uploads/Enforced_Disappearance_in_International_Law_-_Jihan_Kikhia.pdf (consulted on 13 December 2013).

²² Human Rights Watch, *Mali: Big Step for Justice in ‘Disappearance’ Case*, 1 November 2013, available at <http://www.hrw.org/news/2013/11/01/mali-big-step-justice-disappearance-case> (consulted on 13 December 2013).

²³ *Ibid.*

²⁴ Huffington Post, *Syria ‘Enforced Disappearances’: Government Holding Thousands In Secret, Say Rights groups*, 17 May 2013, available at http://www.huffingtonpost.com/2013/05/17/syria-enforced-disappearances_n_3294010.html (consulted on 13 December 2013).

E. The Plight of the Victim's Family

It is extremely difficult, if not impossible, for the victim's family to search for the missing person. Without material evidence, the corpse of the disappeared and proof (due to the lack of witnesses), it is difficult for the relatives to make a solid case. It is unclear which actors were involved in the abduction and detention of the disappeared, and the involvement of the state-sponsored actors makes it very dangerous for the families to even investigate the case. Relatives go to morgues and police stations, simply to hear there is no information whatsoever about the missing person. In extreme cases, **the family has to prove that their abducted relative once existed**. Birth registers and historical records of the missing person may have been eliminated. The existence of the disappeared is denied, and family members are portrayed as being insane, looking for a person who does not exist.²⁵

After the family members of a missing person cannot obtain any information about their relative, they go through a very strange kind of suffering. At first, there is a strong disbelief, followed by self-blame for not having been able to prevent the tragedy from occurring, with the constant hope for the missing person to reappear. The family has to go through a slow process of realising that their relative actually 'disappeared'. This in itself carries repercussions for the mourning process, with family members never being able to come to terms with the disappearance (which almost always implies a permanent loss). Due to the disappearance, the victim's relatives live with a constant feeling of uncertainty and many develop anxiety disorders.²⁶

“The relatives are torn between choosing to hope for the safety and health of their loved one and to assume that he or she is dead in order to be able to move on; but either way, the perpetual unknowing prevents any closure”

(Jihan Kikhia, author of “Enforced Disappearance in International Law: Case Study of Mansur Kikhia” – May 2009)

The crime of enforced disappearances also has a **gender dimension**. The person who disappears is mostly a man and the main source of income for the family. Subsequently, the family searching for the disappeared and struggling to survive in their absence are mostly females in a vulnerable position due to patriarchal structures (wives, children,

²⁵ *Ibid.*

²⁶ Jihan Kikhia, *Enforced Disappearance in International Law: Case Study of Mansur Kikhia*, *op. cit.*, pp. 3 and 11; Ewoud Plate, “An Introduction to Enforced Disappearances – From a Nazi Instrument to a Contemporary Strategy of Enforcement”, *op. cit.*

mothers and grandmothers). Every minute that is spent looking for the disappeared person is not being spent on looking for means of income. People in this precarious situation are often discouraged from investigating the case, not only out of fear but for economic reasons. They can furthermore be exposed to sexual harassment or abuse while searching for their loved one.²⁷ As stated before, female relatives are left in a legal limbo due to the nature of the crime that targeted their male relative. They are unable to inherit, to receive their husband's pension or to remarry, in the absence of a death certificate.



Women demanding a hearing with former President Felipe Calderon, State of Coahuila, Mexico ²⁸

“The victims are often very isolated since they are in a context of persecution or intimidation and they need a lot of courage to file complaints to the authorities, the police or the judicial system and also to set up an international network”
(Emmanuel Decaux, Chairperson of the Committee on Enforced Disappearances - August 28, 2013)

II. Legal background

²⁷ *Ibid.*

²⁸ (Photo @Flickr by Pepe Rivera - June 8, 2011).

The practice of enforced disappearances is prohibited under human rights law, international humanitarian law and international criminal law. The crime infringes upon a wide range of rights of both the disappeared person and their family members, and its seriousness is such that it eventually led to the adoption, in 2006, of a legally binding instrument specifically addressing the issue, called the International Convention for the Protection of All Persons from Enforced Disappearance (ICCPED).²⁹

A. Rights violated by enforced disappearances

1) From the perspective of the missing person

Enforced disappearances violate a series of human rights enshrined in the International Bill of Human Rights, which consists of the Universal Declaration of Human Rights (UDHR),³⁰ the International Covenant on Civil and Political Rights (ICCPR)³¹ and the International Covenant on Economic, Social and Cultural Rights (ICESCR).³² Moreover, this crime violates the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment³³ (CAT³⁴) along with international bodies of rules that are not conventions, such as the Standard Minimum Rules for the Treatment of Prisoners (SMR),³⁵ the Code of Conduct for Law Enforcement Officials (CCLEO)³⁶ and the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment (BOP).³⁷

An enforced disappearance indeed contravenes **numerous economic, social and cultural rights** of the victim, as well as the following **civil and political rights**.³⁸

The right to **recognition as a person** before the law;

²⁹ However, as of early December 2013, only 93 states have signed the Convention and 41 have ratified it (International Convention for the Protection of All Persons from Enforced Disappearance, adopted by United Nations General Assembly resolution 61/177 of 20 December 2006, entry into force 23 December 2010).

³⁰ Universal Declaration of Human Rights, adopted by United Nations General Assembly resolution 217 A (III) of 10 December 1948.

³¹ International Covenant on Civil and Political Rights, adopted by United Nations General Assembly resolution 2200A (XXI) of 16 December 1966, entry into force 23 March 1976.

³² International Covenant on Economic, Social and Cultural Rights, adopted by United Nations General Assembly resolution 2200A (XXI) of 16 December 1966, entry into force 3 January 1976.

³³ Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, adopted by United Nations General Assembly resolution 39/46 of 10 December 1984, entry into force 26 June 1987.

³⁴ “CAT” can also refer to the Committee Against Torture.

³⁵ Standard Minimum Rules for the Treatment of Prisoners, adopted by the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held at Geneva in 1955, and approved by the Economic and Social Council by its resolutions 663 C (XXIV) of 31 July 1957 and 2076 (LXII) of 13 May 1977.

³⁶ Code of Conduct for Law Enforcement Officials, adopted by United Nations General Assembly resolution 34/169 of 17 December 1979.

³⁷ Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, adopted by United Nations General Assembly resolution 43/173 of 9 December 1988 (Office of the United Nations - High Commissioner for Human Rights, “Enforced or Involuntary Disappearances”, *op. cit.*, pp. 3-4).

³⁸ Amnesty International, *Enforced Disappearances*, *op. cit.*; Office of the United Nations - High Commissioner for Human Rights, “Enforced or Involuntary Disappearances”, *op. cit.*, pp. 3-4.

The right to **liberty and security** of the person;
The right not to be subjected to **torture** and other cruel, inhumane 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 **freedom of opinion and expression**.³⁹

Furthermore, although international humanitarian law treaties do not refer to the term “enforced disappearance” as such, this crime also violates a number of **customary rules of international humanitarian law** (applicable in both international and non-international armed conflicts).⁴⁰ In particular, it infringes the prohibition of murder,⁴¹ the prohibition of torture and other cruel or inhuman treatment⁴² and the prohibition of arbitrary deprivation of liberty.⁴³

Eventually, enforced disappearances are considered a **crime against humanity under international criminal law**, when committed on a widespread or systematic basis.⁴⁴

“Although it is the widespread or systematic practice of enforced disappearance that constitutes a crime against humanity, any enforced disappearance is a violation of international humanitarian law and human rights law” (Rule 98 of the International Committee of the Red Cross Rules of Customary International Humanitarian Law)

³⁹ The United Nations Human Rights Committee has stated that “*the harassment, intimidation or stigmatization of a person, including arrest, detention, trial or imprisonment for reasons of the opinions they may hold, constitutes a violation of article 19, paragraph 1*[of the International Covenant on Civil and Political Rights]” (United Nations Human Rights Committee, General Comment No. 34, CCPR/C/GC/34, 12 September 2011).

⁴⁰ International Committee of the Red Cross, *Rules of Customary International Humanitarian Law*, Rule 98, available at http://www.icrc.org/customary-ihl/eng/docs/v1_cha_chapter32_rule98 (consulted on 13 December 2013).

⁴¹ *Ibid.*, Rule 89, available at http://www.icrc.org/customary-ihl/eng/docs/v1_cha_chapter32_rule89 (consulted on 13 December 2013).

⁴² *Ibid.*, Rule 90, available at http://www.icrc.org/customary-ihl/eng/docs/v1_cha_chapter32_rule90 (consulted on 13 December 2013).

⁴³ *Ibid.*, Rule 99, available at http://www.icrc.org/customary-ihl/eng/docs/v1_cha_chapter32_rule99 (consulted on 13 December 2013); Amnesty International, *Enforced Disappearances: Q & A*, available at <http://www.amnesty.org/en/library/asset/IOR51/010/2011/en/4f28f833-e1e9-48a3-ba3b-ccabf30a4e64/ior510102011en.pdf> (consulted on 13 December 2013); International Committee of the Red Cross, *Enforced disappearance: a violation of humanitarian law and human rights*, 27 June 2006, available at <http://www.icrc.org/eng/resources/documents/statement/human-rights-council-statement-270606.htm> (consulted on 13 December 2013).

⁴⁴ Article 7, (i), of the Rome Statute of the International Criminal Court, circulated as document A/CONF.183/9 and adopted on 17 July 1998, entry into force 1 July 2002; Article 5 of the International Convention for the Protection of All Persons from Enforced Disappearance, *op. cit.*

2) From the perspective of the family

Enforced disappearances affect family members of the missing person, and involve breaches of their rights. Firstly, they infringe on their right to **know the truth** regarding the circumstances of a disappearance of their relative, a right now widely recognized in international law.⁴⁵ Secondly, since the disappeared is often the main breadwinner, the families are left in a very precarious situation. As a consequence, enforced disappearances may violate, or indirectly lead to the violation of a range of rights embodied in the International Covenant on Economic, Social and Cultural Rights, such as the right to **protection and assistance to the family**, the right to an **adequate standard of living**, the right to **health** and the right to **education**.⁴⁶

The rights of **children**, who are particularly vulnerable victims of enforced disappearances, are also protected under international law. The disappearance of a child, or of one of his/her family members, infringes the human rights of the child concerned, in particular those enshrined in the Convention on the Rights of the Child (CRC).⁴⁷

Finally, **international humanitarian law** also addresses the plight of the missing person's family. Each party to a conflict is indeed required to respect family life⁴⁸ and “*must take all feasible measures to account for persons reported missing as a result of armed conflict and to provide their family members with information it has on their fate*”.⁴⁹

“The prohibitions against [...] abductions or unacknowledged detention are not subject to derogation. The absolute nature of these prohibitions, even in times of emergency, is justified by their status as norms of general international law”

(United Nations Human Rights Committee, General Comment No. 29, 31 August 2001, § 13, (b))

⁴⁵ The right to the truth relating to enforced disappearances or missing persons is recognized in Article 32 of the Protocol I to the Geneva Conventions and Article 24 of the 2006 International Convention for the Protection of All Persons from Enforced Disappearance. It has also been identified as an autonomous right by the by the Working Group on Enforced or Involuntary Disappearances, has been recognised by various other international bodies, regional and intergovernmental entities and has been accepted by State practice (Working Group on Enforced or Involuntary Disappearances, *General Comment on the Right to the Truth in Relation to Enforced Disappearances*, A/HRC/16/48, available at http://www.ohchr.org/Documents/Issues/Disappearances/GC-right_to_the_truth.pdf (consulted on 13 December 2013).

⁴⁶ Office of the United Nations - High Commissioner for Human Rights, “Enforced or Involuntary Disappearances”, *op. cit.*, pp. 3-4.

⁴⁷ Convention on the Rights of the Child, adopted by United Nations General Assembly resolution 44/25 of 20 November 1989, entry into force 2 September 1990 (Office of the United Nations - High Commissioner for Human Rights, “Enforced or Involuntary Disappearances”, *op. cit.*, p. 4).

⁴⁸ International Committee of the Red Cross, *Rules of Customary International Humanitarian Law*, Rule 105, available at http://www.icrc.org/customary-ihl/eng/docs/v1_cha_chapter32_rule105 (consulted on 13 December 2013).

⁴⁹ *Ibid.*, Rule 117, available at http://www.icrc.org/customary-ihl/eng/docs/v1_cha_chapter36_rule117 (consulted on 13 December 2013).

B. The Working Group on Enforced or Involuntary Disappearances (1980)

It was not until 1974 that the practice of enforced disappearances was recognized as a human rights violation, with the phenomenon in Chile being denounced by the Inter-American Commission on Human Rights (IACHR) to the General Assembly of the Organization of American States (OAS). In turn, the UN General Assembly condemned this practice and identified it as a human rights violation in December 1978, through Resolution 33/173 (non-binding) on “Disappeared Persons”.⁵⁰ Two years later, the United Nations Commission on Human Rights (UNCHR) followed suit by establishing a body,⁵¹ consisting of five members, to examine questions related to enforced or involuntary disappearances: the **Working Group on Enforced or Involuntary Disappearances (WGEID)**.⁵²

It was the first time that a United Nations human rights thematic mechanism was established with a universal mandate. Indeed, the Working Group may consider cases of enforced disappearance regardless of whether the involved national government has ratified any of the legal instruments which provide for an individual complaints procedure. Originally created for a period of one year, the mandate of the Working Group has been renewed each year (biannually from 1986 and on a three-yearly basis since 1992).⁵³

The core mandate of the Working Group is to **assist the relatives of disappeared persons to investigate the fate of the disappeared**. To this end, it examines reports submitted by these relatives or human rights organizations. When those reports meet a number of criteria, the cases are transmitted to the involved national governments, which are requested to carry out research and inform the Working Group of the results of their investigations. The Working Group thus acts as a bridge between the families of disappeared persons and the often complicit governments.⁵⁴

Following the adoption of the Declaration on the Protection of all Persons from Enforced Disappearances in 1992, analysed below,⁵⁵ the Working Group has also been entrusted with monitoring the progress of States in fulfilling their obligations deriving from this document and providing to Governments assistance in its implementation. Furthermore, the Working Group draws the attention of Governments and non-governmental organizations to different aspects of

⁵⁰ Olivier de Frouville, “The Committee on enforced disappearances”, in P. Alston, F. Megret (ed.), *The United Nations and Human Rights: A Critical Appraisal*, 2nd ed., to be published by Oxford University Press, p. 1, currently available at http://www.frouville.org/Publications_files/FROUVILLE-CED-ALSTON.pdf (consulted on 13 December 2013); Jihan Kikhia, *Enforced Disappearance in International Law: Case Study of Mansur Kikhia*, *op. cit.*, pp. 5-6; Office of the United Nations - High Commissioner for Human Rights, “Enforced or Involuntary Disappearances”, *op. cit.*, p. 11.

⁵¹ Resolution 20 (XXXVI) of 29 February 1980.

⁵² Hereinafter “the Working Group”.

⁵³ Office of the High Commissioner for Human Rights, *Working Group on Enforced or Involuntary Disappearances*, available at <http://www.ohchr.org/EN/ISSUES/DISAPPEARANCES/Pages/DisappearancesIndex.aspx> (consulted on 13 December 2013); Working Group on Enforced or Involuntary Disappearances, *Annual Report of the Working Group on Enforced or Involuntary Disappearances*, A/HRC/22/45, 28 January 2013, p. 3.

⁵⁴ Office of the United Nations - High Commissioner for Human Rights, “Enforced or Involuntary Disappearances”, *op. cit.*, p. 12; Working Group on Enforced or Involuntary Disappearances, *Annual Report of the Working Group on Enforced or Involuntary Disappearances*, *op. cit.*, p. 3.

⁵⁵ See pp. 19-20.

the Declaration and **assists States in overcoming obstacles to the realization of the Declaration**. This is done simultaneously while carrying out country visits and by providing advisory services, when requested.⁵⁶

C. The Declaration on the Protection of All Persons from Enforced Disappearance (1992)

With resolution 47/133, the General Assembly of the United Nations proclaimed the Declaration on the Protection of All Persons from Enforced Disappearance on 18 December 1992 “*as a body of principles for all States*” (preamble). While lacking a mandatory character, this document is paramount in so far as it provides **a set of rules all Member States of the United Nations are called upon to comply with**, without having to go through a ratification process.⁵⁷

First of all, the preamble to the Declaration recalls that, while enforced disappearances violate a series of rights enshrined in various existing international instruments, it is nonetheless necessary to devote a specific instrument to enforced disappearances. Having such an instrument allows the consideration of all acts of enforced disappearances as very serious offences and allows the establishment of standards designed to punish and prevent the perpetration of this crime.⁵⁸

The Declaration provides that 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 3). Furthermore, article 9 refers to a “*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*”. When victims engage into such proceedings, competent national authorities must be allowed access to all places where persons deprived of their liberty are being held, or may be found, and to consult registers containing information about these persons (article 10).

Additionally, the Declaration affirms that each State is under **obligation to investigate complaints** alleging that a person has been subject to enforced disappearance (article 13) and any individual accused of such a crime should be tried only by the competent ordinary courts, rather than by special tribunals (article 16). Moreover, any person involved in such investigations must be protected against intimidation, reprisal and ill-treatment (article 13). Statutes of limitations relating to acts of enforced disappearance must be substantial and commensurate with the extreme seriousness of the offence (article 17) and perpetrators of enforced disappearances cannot benefit from any measure which might lead to impunity, such as an amnesty law (article 18).

The Declaration also addresses the situation of the **missing person’s family**. Article 19 states that the victims of enforced disappearance, but also their family, shall obtain redress and have the right to adequate compensation,

⁵⁶ Office of the United Nations - High Commissioner for Human Rights, “Enforced or Involuntary Disappearances”, *op. cit.*, pp. 13-14; Working Group on Enforced or Involuntary Disappearances, *Annual Report of the Working Group on Enforced or Involuntary Disappearances*, A/HRC/22/45, 28 January 2013, p. 3.

⁵⁷ Office of the United Nations - High Commissioner for Human Rights, “Enforced or Involuntary Disappearances”, *op. cit.*, p. 5; Tullio Scovazzi and Gabriella Citroni, *The Struggle Against Enforced Disappearance and the 2007 United Nations Convention*, Leiden, Martinus Nijhoff Publishers, 2007, p. 96.

⁵⁸ Office of the United Nations - High Commissioner for Human Rights, “Enforced or Involuntary Disappearances”, *op. cit.*, p. 5.

“including the means for as complete a rehabilitation as possible”. Moreover, Article 20 deals with the disappearance of children as well as the abduction of children whose parents have disappeared, plus the disappearance of children born while their mother was subject to enforced disappearance. Each state must strive to search for and identify these children, the ultimate objective being to return them to their families.

D. The Vienna Declaration and Programme of Action (1993)

In June 1993, less than one year after the adoption of the Declaration on the Protection of All Persons from Enforced Disappearance, the Vienna Declaration and Programme of Action (VDPA)⁵⁹ was adopted by representatives of 171 States at the World Conference on Human Rights, held by the United Nations in Vienna. Among other things, this human rights declaration confirmed the **willingness of the international community to eradicate enforced disappearances**.⁶⁰ Paragraph 62 of the VDPA states the following:

“The World Conference on Human Rights, welcoming the adoption by the General Assembly of the Declaration on the Protection of All Persons from Enforced Disappearance, calls upon all States to take effective legislative, administrative, judicial or other measures to prevent, terminate and punish acts of enforced disappearance. The World Conference on Human Rights reaffirms 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.”

E. The Rome Statute of the International Criminal Court (1998-2002)

The Rome Statute of the International Criminal Court (RSICC), which established the International Criminal Court, was adopted in Rome on 17 July 1998 and entered into force on 1 July 2002.⁶¹

As far as enforced disappearances are concerned, the RSICC is particularly interesting as it addresses the issue from the perspective of international criminal law. More precisely, it identifies the act of enforced disappearance as a **crime against humanity**, “*when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack*”.⁶²

F. The International Convention for the Protection of All Persons from Enforced Disappearance (2006-2010)

It is not until December 2006 that a binding international instrument was adopted by the General Assembly of the United Nations, namely the **International Convention for the Protection of All Persons from Enforced Disappearance** (ICCPED),⁶³ which entered into force on 23 December 2010.⁶⁴ Although its

⁵⁹ Vienna Declaration and Programme of Action, adopted by the World Conference on Human Rights in Vienna on 25 June 1993.

⁶⁰ BBC, *World Conference and the Vienna Declaration*, available at http://www.bbc.co.uk/worldservice/people/features/ihavearightto/four_b/treaties_vienna.shtml (consulted on 13 December 2013); Office of the United Nations - High Commissioner for Human Rights, “Enforced or Involuntary Disappearances”, *op. cit.*, p. 6.

⁶¹ Rome Statute of the International Criminal Court, *op. cit.*

⁶² *Ibid.*, article 7, (i).

⁶³ International Convention for the Protection of All Persons from Enforced Disappearance, adopted by United Nations General Assembly resolution 61/177 of 20 December 2006, entry into force 23 December 2010. Hereinafter “the Convention”.

provisions are similar to those of the Declaration on the Protection of All Persons from Enforced Disappearance on many aspects, the Convention strengthened the existing standards and set forth new ones. The Convention is the **first universally binding treaty** that defines enforced disappearance as a human rights violation, explicitly prohibits it and recognizes that the victims of enforced disappearances are not only the disappeared themselves but also their relatives. Furthermore, it contains provisions for the prevention and investigation of state-authorized abductions, gives victims' families the right to seek reparations and, last but not least, establishes the **Committee on Enforced Disappearances (CED)**, an independent body in charge of monitoring compliance with the Convention.⁶⁵

The Convention is composed of three parts. The substantive provisions are in Part I, which also states the obligations of States parties. Part II concerns the creation of the Committee on Enforced Disappearances. As for the last part, it contains the requirements regarding signature, entry into force, amendments and the relationship between the Convention, domestic law of the State Parties and international humanitarian law.⁶⁶

1) Part I of the Convention: the substantive provisions

First of all, the Convention **defines the term “enforced disappearance”** (Article 2) and affirms the **non-derogable right not to be subjected to this practice** (Article 1).⁶⁷ As a consequence, States are under obligation to “*make the offence of enforced disappearance punishable by appropriate penalties which take into account its extreme seriousness*” (Article 7). Additionally, the Convention reinforces what was stated eight years before in the Rome Statute of the International Court, namely that enforced disappearance constitutes a **crime against humanity**, when practised in a widespread or systematic manner (Article 5).⁶⁸

Regarding the prevention of enforced disappearances, the Convention prohibits secret detention and calls on States to **guarantee minimum legal standards** when they deprive persons of liberty, such as the maintenance of official registers containing information about these people and the possibility to communicate with any person of their choice. The Convention further states that **any State Party has to**

⁶⁴ As of early December 2013, only 93 states have signed the Convention and 41 have ratified it.

⁶⁵ International Committee of the Red Cross, *Enforced disappearance: UN Convention “a major achievement” that brings new hope*, 20 December 2006, available at: <http://www.icrc.org/eng/resources/documents/interview/convention-enforced-disappearance-interview-201206.htm> (consulted on 13 December 2013); Office of the United Nations - High Commissioner for Human Rights, “Enforced or Involuntary Disappearances”, *op. cit.*, pp. 7-8; UNPO, *Enforced Disappearances: The Deafening Silence of the Disappeared*, *op. cit.*

⁶⁶ Office of the United Nations - High Commissioner for Human Rights, “Enforced or Involuntary Disappearances”, *op. cit.*, p. 8.

⁶⁷ “*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.*”

⁶⁸ Jihan Kikhia, *Enforced Disappearance in International Law: Case Study of Mansur Kikhia*, *op. cit.*, p. 8.

prosecute any alleged perpetrator of an act of enforced disappearance who is found in a territory under one's jurisdiction, unless it extradites that person or surrender him/her to another State or to an international criminal tribunal whose jurisdiction it has recognized (Article 11).

The Convention also pays attention to the situation of the **disappeared person's family**. Indeed, the wide definition of "victim" under Article 24 covers the missing person but also any individual who has suffered as the direct result of an enforced disappearance, such as family members (Article 24). Furthermore, Article 24 states that each victim has the **right to obtain reparations**, which cover material and moral damages and include restitution, rehabilitation, satisfaction and guarantees of non-repetition. Additionally, State Parties are required to take appropriate steps concerning the legal situation of the disappeared persons and that of their relatives, in particular with regard to social welfare, financial matters, family law and property rights. Finally, Article 24 affirms the **right of all the victims to the truth** "*regarding the circumstances of the enforced disappearance, the progress and results of the investigation and the fate of the disappeared person*". By doing so, the Convention is the first international human rights instrument to expressly recognize this right.⁶⁹

Children are also taken into consideration by the Convention. Under Article 25, State Parties are called upon to punish and prevent "*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*". Moreover, State Parties must fight against "*the falsification, concealment or destruction of documents attesting to the true identity*" of such children. Finally, they are under **obligation to search and identify these children**, so that they can return to live with their families, and they must protect their best interests. Indeed, children have the "**right to preserve, or to have re-established, their identity, including their nationality, name and family relation**".

2) Part II of the Convention: the Committee on Enforced Disappearances

The main contribution of the second part of the Convention is the creation of a **Committee on Enforced Disappearances** (CED), a body of independent experts which monitors implementation of the Convention by the States Parties. Its main tasks are the following:

- To consider and **comment on reports submitted by States parties** on the measures taken to give effect to their obligations under the Convention (Article 29);

⁶⁹ Office of the United Nations - High Commissioner for Human Rights, "Enforced or Involuntary Disappearances", *op. cit.*, p. 9.

- To **handle requests**, from any individual having a legitimate interest, claiming that a disappeared person should be sought and found, as a matter of urgency (Article 30);
- To request the State parties to take **all the necessary measures to locate and protect a disappeared person** (Article 30);⁷⁰
- 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, *if the State Party accused has made a declaration recognizing the competence of the Committee to do so* (Article 31);⁷¹
- To **receive and consider communications** in which a State party **claims that another State party is not fulfilling its obligations** under the Convention, *if the State Party accused has made a declaration recognizing the competence of the Committee to do so* (Article 32);⁷²
- 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 (Article 33);
- To **draw the attention** of the General Assembly, through the Secretary-General, to any practice of enforced disappearance committed on a **widespread or systematic basis** in a State party, if it receives reliable information indicating so and after seeking from the State Party concerned all relevant information on the situation (Article 34).⁷³

The Committee on Enforced Disappearances and the **Working Group on Enforced or Involuntary Disappearances** coexist side by side and **cooperate** in the fight to prevent and eradicate enforced disappearances. For example, on 15 November 2013, the two entities issued a joint statement highlighting, *inter alia*, “*the need to continue working collectively to achieve universal adherence to the International Convention for the Protection of All Persons from Enforced Disappearance and recognition of the competence of the Committee to receive individual and inter-State complaints [under Articles 31 and 32 of the Convention, respectively]*”.⁷⁴ The existence of two entities is useful in so far as the competence of the Committee is limited to the States that have ratified the International Convention for the Protection of All Persons from Enforced Disappearance, while the Working Group has the great advantage of being able to consider cases of enforced disappearance in any country, but purely on a humanitarian basis. Furthermore, whereas the Committee is only competent to deal with cases of enforced disappearances which took place after the Convention came into force, the Working Group may deal with all situations before that.⁷⁵ In

⁷⁰ It is the first time that such a mandate is given to a treaty-monitoring body (Office of the United Nations - High Commissioner for Human Rights, “Enforced or Involuntary Disappearances”, *op. cit.*, p. 10).

⁷¹ So far, only 16 State Parties have recognized the competence of the Committee under Article 31 (Albania, Argentina, Austria, Belgium, Bosnia and Herzegovina, Chile, Ecuador, France, Germany, Lithuania, Mali, Montenegro, the Netherlands, Serbia, Spain and Uruguay).

⁷² So far, only 17 State Parties have recognized the competence of the Committee under Article 32 (the 16 countries that have recognized its competence under Article 31 plus Japan).

⁷³ It is the first time that such a mandate is given to a treaty-monitoring body (Office of the United Nations - High Commissioner for Human Rights, “Enforced or Involuntary Disappearances”, *op. cit.*, p. 10).

⁷⁴ The Committee on Enforced Disappearances and The Working Group on Enforced or Involuntary Disappearances, *Joint statement: 3rd Annual meeting of the Committee on Enforced Disappearances and the Working Group on Enforced or Involuntary Disappearances*, 15 November 2013, available at <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=14010&LangID=E> (consulted on 13 December 2013).

⁷⁵ Office of the High Commissioner for Human Rights, *The Working Group and the Committee on Enforced Disappearance*, available at

November 2013, both bodies have nonetheless recognized the need to “*make their coordination of activities more effective*”.⁷⁶

3) Status of ratification of the Convention

Even though this Convention represents a significant step in the fight against enforced disappearances, much remains to be done regarding its signature and ratification. As of early December 2013, **only 93 states have signed the Convention and 41 have ratified it** (See appendice I).⁷⁷ Furthermore, only 16 State Parties have recognized the competence of the Committee on Enforced Disappearances mentioned pursuant to Article 31,⁷⁸ which provides for an individual complaints procedure, and 17 have accepted to be subject to interstate complaints under Article 32.⁷⁹

<http://www.ohchr.org/EN/Issues/Disappearances/Pages/WGInternationalConvention.aspx> (consulted on 13 December 2013); Office of the High Commissioner for Human Rights, *Working Group on Enforced or Involuntary Disappearances*, *op. cit.*

⁷⁶ The Committee on Enforced Disappearances and The Working Group on Enforced or Involuntary Disappearances, *Joint statement: 3rd Annual meeting of the Committee on Enforced Disappearances and the Working Group on Enforced or Involuntary Disappearances*, *op. cit.*

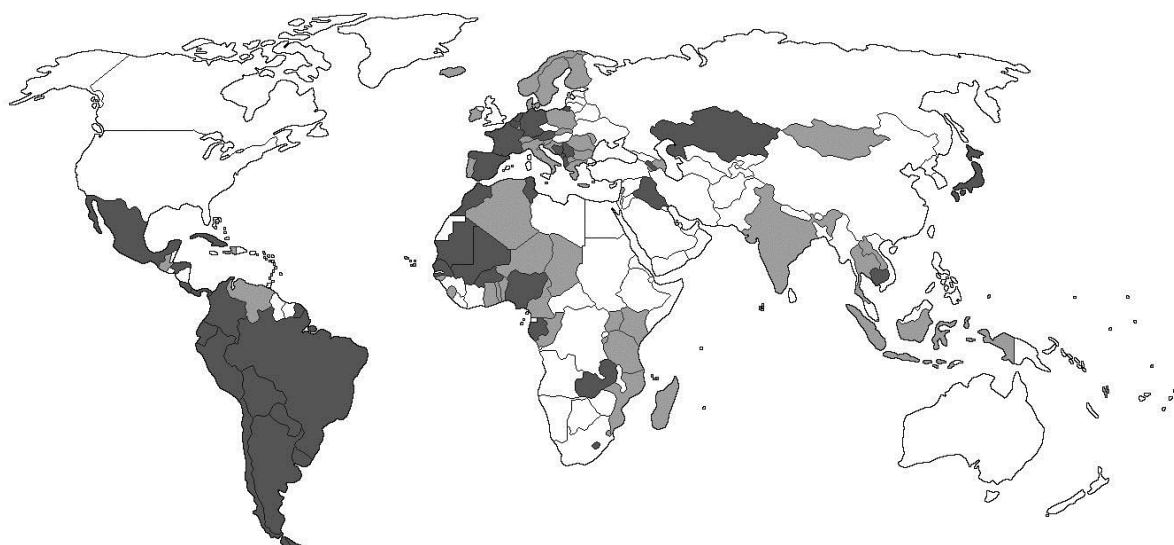
⁷⁷ International Coalition Against Enforced Disappearances, <http://www.icaed.org/> (consulted on 13 December 2013).

⁷⁸ Albania, Argentina, Austria, Belgium, Bosnia and Herzegovina, Chile, Ecuador, France, Germany, Lithuania, Mali, Montenegro, the Netherlands, Serbia, Spain and Uruguay.

⁷⁹ The 16 countries that have recognized its competence under Article 31 plus Japan.

Dark grey: Ratified

Light grey: Signed



*Ratification of the International Convention for the Protection of all Persons from Enforced disappearance*⁸⁰

III. Current “Hotspots”

In January 2013, the number of cases considered by the UN Working Group on Enforced or Involuntary Disappearances (WGEID) that had not yet been clarified, closed⁸¹ or discontinued⁸² stood at **42,889 in a total of 84 States**.⁸³ In some countries, thousands of people are still missing years or decades after internal conflicts and political repression. According to the last Report of the Working Group on Enforced or Involuntary Disappearances, the highest numbers of unclarified cases it has considered are found in the following countries.⁸⁴

⁸⁰ Office of the High Commissioner for Human Rights, *Committee on Enforced Disappearances*, available at <http://www.ohchr.org/EN/HRBodies/ced/Pages/CEDIndex.aspx> (consulted on 13 December 2013).

⁸¹ “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” (Office of the United Nations - High Commissioner for Human Rights, “Enforced or Involuntary Disappearances”, *op. cit.*, p. 18).

⁸² “In exceptional circumstances, the Working Group may decide to discontinue the consideration of a case 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” (Office of the United Nations - High Commissioner for Human Rights, “Enforced or Involuntary Disappearances”, *op. cit.*, p. 18).

⁸³ Working Group on Enforced or Involuntary Disappearances, *Annual Report of the Working Group on Enforced or Involuntary Disappearances*, *op. cit.*, p. 3.

⁸⁴ *Ibid.*, pp. 23 - 126.

1) Iraq (16,401)	11) Iran (518)
2) Sri Lanka (5,676)	12) Russia (471)
3) Argentina (3,271)	13) Nepal (458)
4) Algeria (3,005)	14) Timor-Leste (428)
5) Guatemala (2,899)	15) India (353)
6) Peru (2,371)	16) Mexico (327)
7) El Salvador (2,271)	17) Lebanon (313)
8) Colombia (969)	18) Sudan (173)
9) Chile (801)	19) Indonesia (162)
10) Philippines (621)	20) Honduras (129)

These numbers reflect both unsolved cases of the past and new cases.

In Latin America, enforced disappearances are no longer as prevalent as in the past, but many do continue to be targeted. In this respect, the case of **Mexico** is particularly worrying. Within the context of the violence between drug cartels and security forces, thousands of people have disappeared. In November 2012, a provisional list of the Federal Prosecutor's Office and the Interior Ministry of more than 25,000 people who had "disappeared" or were reported missing since 2006, was leaked to the media. Furthermore, prosecutors and law enforcement officials consistently fail to search effectively for disappeared people or to investigate those who seem responsible. Instead, most of the time, officials blame the victims and tell families it is their responsibility to find out the fate and whereabouts of their loved one. Although the administration of the current President, Peña Nieto, has announced some important reforms, it yet remains to be seen what impact these will have.⁸⁵

“Impunity only fuels new enforced disappearances, as the perpetrators believe there are no consequences for their actions” (Guadalupe Marengo, Amnesty International’s Americas Programme Director – August 30, 2013)

⁸⁵ Amnesty International, *Enforced disappearances still an appalling reality in the Americas*, 29 August 2013, available at <http://www.amnesty.org/en/news/enforced-disappearances-still-appalling-reality-americas-2013-08-29> (consulted on 13 December 2013); Amnesty International, *Five things you should know about disappearances*, 30 August 2013, available at <http://www.amnesty.org/en/news/day-disappeared-2013-2013-08-30> (consulted on 13 December 2013); *Human Rights Watch: Crisis of Enforced Disappearances*, 20 February 2013, available at <http://www.hrw.org/news/2013/02/20/mexico-crisis-enforced-disappearances> (consulted on 13 December 2013); Human Rights Watch, *Mexico: President’s Disappointing First Year on Human Rights*, 26 November 2013, available at <http://www.hrw.org/news/2013/11/26/mexico-president-s-disappointing-first-year-human-rights> (consulted on 13 December 2013); International Coalition Against Enforced Disappearances, <http://www.icaed.org/> (consulted on 13 December 2013).

In Africa, numerous enforced disappearances took place in **Mali** following the turmoil that started in the beginning of 2012. Soldiers supporting the junta abducted and tortured military and police officers after the attempted counter-coup in April 2012.⁸⁶

In the Middle East, the case of **Syria** is also of particular concern. Since the beginning of the uprising that led to an armed conflict two years ago, there has again been a dramatic increase in the authorities' use of enforced disappearances to silence opposition and sow fear among society. Thousands of people have been arrested, with many being held in unknown locations at which torture and other ill-treatment are reported to be rife. This adds to the approximately 17,000 individuals who were disappeared in the late 1970s and early 1980s when former Syrian President Hafez al-Assad started to face opposition from the population.⁸⁷

In **Sri Lanka**, around 12,000 complaints of enforced disappearances have been submitted to the UN since the 1980s. Although the majority of cases date back to Sri Lanka's civil war between the government and the 'Tamil Tigers', which ended in 2009, enforced disappearances in the country continue to be reported.⁸⁸



Family member of a disappeared person, Sri Lanka⁸⁹

⁸⁶ Amnesty International, *Mali: "We haven't seen our cellmates since": enforced disappearances and torture of soldiers and police officers opposed to the junta*, 31 July 2012, available at <http://www.amnesty.org/en/library/info/AFR37/004/2012> (consulted on 13 December 2013).

⁸⁷ Amnesty International, *Five things you should know about disappearances*, *op. cit.*; Asharq Al-Awsat, *At least 28,000 forcibly disappeared in Syria – Human Rights group*, 19 October 2012, available at <http://www.aawsat.net/2012/10/article55240181> (consulted on 13 December 2013).

⁸⁸ Amnesty International, *Five things you should know about disappearances*, *op. cit.*; Channel 4, *Who are Sri Lanka's disappeared?*, 14 November 2013, available at <http://www.channel4.com/news/sri-lanka-disappeared-white-vans-missing-people-war-chogm> (consulted on 13 December 2013); Claire San Filippo, "Enforced Disappearances in Pakistan – A Well-established Practice", speech at the conference *Enforced Disappearances – Tackling an Invisible Crime*, organized by the office of Josef Weidenholzer MEP and UNPO, European Parliament, Brussels, 23 January 2013.

⁸⁹ (Photo @Flickr by Vikalpa - October 27, 2012).

IV. Combating the problem

A. The United Nations



Navi Pillay, United Nations High Commissioner for Human Rights⁹⁰

In addition to the important activities of the Working Group on Enforced and Involuntary Disappearances and the Committee on Enforced disappearances presented above⁹¹, the United Nations addresses the practice of enforced disappearance through the **Office of the High Commissioner for Human Rights (OHCHR)**.

With its numerous offices around the world and its High Commissioner Navi Pillay (since 1 September 2008), the OHCHR actively **promotes the universal signature, ratification and effective implementation of the International Convention for the Protection of all Persons from Enforced disappearance**. Among other things, the High Commissioner personally encourages ratification of the Convention during her missions in the field, such as those to Algeria in September 2012 and Indonesia in November 2012. Furthermore, the OHCHR organizes media campaigns and assists governments and civil society organizations through training, capacity-building and awareness-raising about the Convention. For example, the OHCHR country office in Mexico provided technical support to the State of Nuevo Leon throughout the legislative processes which led to the introduction of the crime of enforced disappearance in the Criminal Code and Criminal Procedure Code of the State in November 2012.⁹²

The **United Nations Voluntary Fund for Victims of Torture (UNVFVT)**,⁹³ a fund managed by the United Nations Secretary-General through the OHCHR, has awarded grants to a number of NGOs investigating cases of enforced disappearance and/or providing assistance to families of victims.⁹⁴

⁹⁰ (Photo @Flickr by: UN Photo Geneva - December 1, 2011).

⁹¹ See pp. 17-19 and 24-25.

⁹² Secretary-General of the United Nations, *Report on the status of the International Convention for the Protection of All Persons from Enforced Disappearance*, A/68/210, 26 July 2013, pp. 8-9.

⁹³ Established by United Nations General Assembly resolution 36/151 on 16 December 1981.

“We must clarify the cases of disappeared persons, provide reparations to victims and bring perpetrators to justice” (UN Secretary-General Ban Ki-moon, May 2013)

B. The International Committee of the Red Cross

The **International Committee of the Red Cross (ICRC)** plays an active role in raising awareness about the victims of enforced disappearance. Through its website, promotional activities, statements and its participation in various events, the ICRC regularly appeals to end this practice and **encourages the ratification and implementation of the International Convention for the Protection of all Persons from Enforced disappearance.**⁹⁵

Additionally, the ICRC gives legal advice and technical assistance to governments willing to reform their national legislation. To this end, the ICRC developed guiding principles/model law⁹⁶ designed to facilitate legislation to prevent enforced disappearances, which “*stresses the importance of national authorities adopting legislation to ensure that the crime of enforced disappearance is criminalized under domestic law and that criminal proceedings can be initiated by the missing person or his/her legal representative(s), family members, interested parties or the State authority*”.⁹⁷ Moreover, the ICRC also collects and includes relevant national laws and case law into a public electronic database in order to facilitate the exchange of experiences and good practices.⁹⁸

The ICRC also conducts **activities in the field**. It visits detention centres and helps to prevent persons from going missing by registering them, keeping track of them and by bringing news to the families. Furthermore,

⁹⁴ Office of the High Commissioner for Human Rights, *The United Nations Voluntary Fund for Victims of Torture*, available at <http://www.ohchr.org/EN/Issues/Torture/UNVFT/Pages/WhattheFundis.aspx> (consulted on 13 December 2013); Secretary-General of the United Nations, *Report on the status of the International Convention for the Protection of All Persons from Enforced Disappearance*, *op. cit.*, p. 9.

⁹⁵ Secretary-General of the United Nations, *Report on the status of the International Convention for the Protection of All Persons from Enforced Disappearance*, *op. cit.*, p. 12.

⁹⁶ The International Committee of the Red Cross, *Guiding Principles/Model Law On The Missing*, February 2009, available at <http://www.icrc.org/eng/assets/files/other/model-law-missing-0209-eng-.pdf> (consulted on 13 December 2013).

⁹⁷ Secretary-General of the United Nations, *Report on the status of the International Convention for the Protection of All Persons from Enforced Disappearance*, *op. cit.*, p. 12.

⁹⁸ *Ibid.*

the ICRC supports families in finding the whereabouts of the disappeared persons and, in some cases, assists families with their needs.⁹⁹

C. The European Union

Up until now, the pace of ratification by EU Member States of the International Convention for the Protection of all Persons from Enforced disappearance has been slow, since **only 7 Member States have ratified the Convention**.¹⁰⁰ However, at the 31st International Conference of the Red Cross and Red Crescent in 2011, all Member States not yet party to the Convention committed themselves to consider ratifying the Convention by the next ICRC Conference in 2015, what they reiterated at the 2012 United Nations High Level Meeting on the Rule of Law.¹⁰¹

Furthermore, the **EU Guidelines on torture and other cruel treatment**,¹⁰² adopted by the General Affairs Council (GAC) in 2008, asked the EU to combat all forms of torture and ill treatment throughout the world, such as enforced disappearances. More precisely, the EU was tasked to urge third countries to ensure that all persons deprived of their liberty are brought before a judicial authority without delay, to ensure that persons deprived of their liberty can inform their relatives and other third parties without delay, and to ban secret places of detention so that persons deprived of their liberty are held in officially recognised places of detention and their whereabouts is known. Several examples show that these EU Guidelines have been put into practice, such as those of Sri Lanka and China.¹⁰³

As far as **Sri Lanka** is concerned, enforced disappearances were indeed one of the main issues addressed by the European Commission's 2009 investigation with respect to the effective implementation of certain human rights conventions in that country. In its report, the Commission firmly condemned this practice and stated, *inter alia*, that “*there have been a significant number of disappearances which are attributable to state agents or paramilitary factions complicit with the government; hence Sri Lanka has failed to implement its obligation to prevent disappearances by State agents and other forces for which it is responsible*”.¹⁰⁴ In subsequent negotiations with the Sri Lankan government, the EU stressed that, in order to continue to benefit from the GSP+ regime,¹⁰⁵ Sri Lanka had to

⁹⁹ The International Committee of the Red Cross, *Enforced disappearance: a violation of humanitarian law and human rights*, *op. cit.*

¹⁰⁰ Austria, Belgium, France, Germany, Lithuania, Netherlands and Spain.

¹⁰¹ Tobias King, “The Role of the EEAS and the European Contribution to Combat Enforced Disappearances”, speech at the conference *Enforced Disappearances – Tackling an Invisible Crime*, organized by the office of Josef Weidenholzer MEP and UNPO, European Parliament, Brussels, 23 January 2013.

¹⁰² General Affairs Council, *Guidelines to EU policy towards third countries on torture and other cruel, inhuman or degrading treatment or punishment*, 18 April 2008.

¹⁰³ Tobias King, “The Role of the EEAS and the European Contribution to Combat Enforced Disappearances”, speech at the conference *Enforced Disappearances – Tackling an Invisible Crime*, *op. cit.*

¹⁰⁴ European Commission, *Report on the findings of the investigation with respect to the effective implementation of certain human rights conventions in Sri Lanka*, C(2009) 7999, 19 October 2009, p. 29.

¹⁰⁵ The EU’s “Generalised Scheme of Preferences” (GSP) allows developing country exporters to pay lower duties on their exports to the EU (European Union, *Generalised Scheme of Preferences (GSP)*, available at http://ec.europa.eu/trade/policy/countries-and-regions/development/generalised-scheme-of-preferences/index_en.htm (consulted on 13 December 2013).

provide responses to a significant number of individual cases pending before the UN Working Group on Enforced Disappearances, to provide lists of all persons in detention and to grant access to all places of detention to international monitoring bodies. Unfortunately, these requests were refused by the Sri Lankan government, which led the EU to withdraw the GSP+ regime from Sri Lanka.¹⁰⁶

The EU is also concerned about the disappearance, in **China**, of a large number of Tibetans, from 2008, and hundreds of young Uyghur men, after the unrest in Xinjiang in 2009. The EU has raised its concerns with the Chinese authorities in the EU- China human rights dialogues and has urged China to co- operate fully with the UN Working Group on Enforced Disappearances. In her statement of 12 April 2011,¹⁰⁷ the message of the High Representative of the Union for Foreign Affairs and Security Policy, Catherine Ashton, was very clear: “*Arbitrary arrests and disappearances must cease. I urge the Chinese authorities to clarify the whereabouts of all persons who have disappeared recently. I call on China to ensure that the treatment of the individuals in question is fully in accordance with international human rights standards and the rule of law*”.¹⁰⁸



Catherine Ashton, High Representative of the Union for Foreign Affairs and Security Policy¹⁰⁹

These examples, as well as many others, demonstrate that **the EU is determined to raise the issue of enforced disappearance and lobby third countries**. However, 21 EU Member States have yet to ratify the International Convention for the Protection of all Persons from Enforced disappearance. As is often stated, the EU cannot maintain double standards on this issue.

¹⁰⁶ Tobias King, “The Role of the EEAS and the European Contribution to Combat Enforced Disappearances”, speech at the conference *Enforced Disappearances – Tackling an Invisible Crime*, *op. cit.*

¹⁰⁷ Catherine Ashton, High Representative of the Union for Foreign Affairs and Security Policy, *Statement on the human rights situation in China*, A 146/11, 12 April 2011.

¹⁰⁸ Tobias King, “The Role of the EEAS and the European Contribution to Combat Enforced Disappearances”, speech at the conference *Enforced Disappearances – Tackling an Invisible Crime*, *op. cit.*

¹⁰⁹ (Photo @Flickr by EUintheUS - September 28, 2010).

D. The role of civil society

1) Advocacy

The advocacy role of NGOs and associations of relatives of disappeared people is essential for the promotion and implementation of the International Convention for the Protection of All Persons from Enforced Disappearance. In fact, these organizations are often “*the only voices in their countries calling for truth, justice and reparation for the victims and highlighting the plight of the disappeared both nationally and internationally*”.¹¹⁰

In 2007, an international platform gathering a number of civil society organizations and families of disappeared individuals was established in Geneva: the **International Coalition Against Enforced Disappearances (ICAED)**. Its main goal is to **promote the ratification and effective implementation of the International Convention for the Protection of all Persons from Enforced disappearance**, as well as the recognition of the competences of the Committee on Enforced Disappearances pursuant to Articles 31 and 32. For this purpose, the Coalition allows its members to exchange information and experiences, combine their different skills and expertise, coordinate national campaigns, make effective use of resources and identify and carry out joint actions. Moreover, the Coalition sends letters to national governments, and participates in conferences, dialogues and forums all over the world. It also commemorates the International Day of the Victims of Enforced Disappearances (30 August),¹¹¹ the International Week of the Disappeared (every last week of May) and International Human Rights Week, culminating in Human Rights Day (10 December).¹¹²

Some of the members of the Coalition are international organizations, such as Human Rights Watch and Amnesty International. Others are small civil society organizations or associations of families of the disappeared, focusing their efforts on a specific country or region, such as the Association of Family Members of Disappeared (AFMD, Sri Lanka) or Families of Victims of Involuntary Disappearance (FIND, Philippines).¹¹³

¹¹⁰ United Nations, *On International Day, UN experts urge greater protection for those fighting for rights of disappeared persons*, 30 August 2013, available at

<http://www.un.org/apps/news/story.asp?NewsID=45736#.Up8NINJDUE0> (consulted on 13 December 2013).

¹¹¹ The International Day of the Victims of Enforced Disappearances is another important initiative aiming to raise awareness of the fate of disappeared persons. Initiated by the Latin American Federation of Associations of Relatives of Disappeared-Detainees (FEDEFAM), an NGO founded in 1981 in Costa Rica, this day has been officially recognised by the United Nations General Assembly on 21 December 2010. By its resolution 65/209, the Assembly indeed declared 30 August the International Day of the Victims of Enforced Disappearances, to be observed beginning in 2011 (United Nations, *International Day of the Victims of Enforced Disappearances*, available at <https://www.un.org/en/events/disappearancesday/> (consulted on 13 December 2013).

¹¹² International Coalition Against Enforced Disappearances, <http://www.icaed.org/> (consulted on 13 December 2013); UNPO, *Enforced Disappearances: The Deafening Silence of the Disappeared*, *op. cit.*

¹¹³ For a comprehensive list of the members of the Coalition, see appendice II.

2) Field work

Associations of relatives of the disappeared and NGO's conducting activities in the field, such as Front Line Defenders (FLD), play a key role in **shedding light on cases of enforced disappearances** and in **assisting the victims of this crime**, who are often very isolated since they are in a context of intimidation or persecution.

Once the disappearance is confirmed, these organizations make the crime as visible as possible and help families to voice their concerns with regional institutions, such as the European Union or the Council of Europe, and international instruments, such as the Committee on Enforced Disappearances. These institutions can contact the involved national authorities and urge them to disclose the whereabouts of the disappeared, launch an immediate independent investigation, reveal the grounds for detention and grant unfiltered access to lawyers, medical examination and family members.¹¹⁴

“Civil society played a key role in the discharging of its mandate [The Committee on Enforced Disappearance] and in particular played a key role in assisting victims of enforced disappearance to access the Committee” (Suela Janina, Member of the Committee on Enforced Disappearances - November 14, 2013)

Last but not least, these civil society groups bring **psychological and financial support** to families. They can help the families to engage in criminal proceedings by paying for their legal fees and by launching independent investigations. Furthermore, if the family itself is targeted, civil society groups can ensure their **safety**.¹¹⁵

The UN Committee on Enforced Disappearances and the UN Working Group on Enforced or Involuntary Disappearances have recognized that the role of non-governmental organizations and families of the disappeared is fundamental.¹¹⁶ However, many of them are exposed to reprisals and **need to be protected** in consequence.

¹¹⁴ Vincent Forest, “Human Rights Defenders, Targeted Victims of Enforced Disappearances”, speech at the conference *Enforced Disappearances – Tackling an Invisible Crime*, organized by the office of Josef Weidenholzer MEP and UNPO, European Parliament, Brussels, 23 January 2013.

¹¹⁵ *Ibid.*

¹¹⁶ Office of the High Commissioner for Human Rights, *Committee on Enforced Disappearances adopts paper on cooperation with Civil Society*, 14 November 2013, available at <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=13988&LangID=E> (consulted on 13 December 2013).

Furthermore, a number of civil society organizations fighting against enforced disappearances are facing serious constraints in carrying out their activities and others are even struggling to survive due to a **lack of funds**.¹¹⁷

V. Case Studies

Enforced disappearances disproportionately affect ethnic and religious minority groups. These include a number of UNPO members, such as the **Baloch**, living in Pakistan's biggest province Balochistan, the **Uyghurs** from East Turkestan in China's north-west as well as the Crimean Tatars on the peninsula.

A. Balochistan

Since a crackdown launched by former President Zulfakar Ali Bhutto in the 1970s, in retaliation of its political party's failure in the 1970 election in Balochistan, Pakistani authorities have disappeared thousands of citizens – up to 82% of whom are of Baloch origin. The subsequent struggle of the Baloch for their self-determination over the past decades has only increased this crackdown. Kidnappings, torture and extrajudicial killings are commonplace, most of this taking place in complete secrecy.¹¹⁸

1) Background

At present, Balochistan¹¹⁹ is split between three states: Iran, Afghanistan and Pakistan. It is **strategically situated** at the eastern flank of the Middle East, linking the Central Asian states with the Indian subcontinent and the Indian Ocean. The Baloch land served as a buffer zone between ancient empires and during the last few centuries between the Russian areas of influence in Central Asia and British India.¹²⁰

Among Pakistan's four provinces, Balochistan is the largest, occupying 43 percent of Pakistan's total area of 796,000 square kilometres. However, Balochistan is the country's least densely-populated province, accounting for a mere five percent of the country's burgeoning population (Pakistan Census, 1998a).¹²¹

¹¹⁷ Reliefweb, *Statement by United Nations experts marking the International Day of the Victims of Enforced Disappearances*, 30 August, 29 August 2013, available at <http://reliefweb.int/report/world/statement-united-nations-experts-marking-international-day-victims-enforced> (consulted on 13 December 2013).

¹¹⁸ The News, *Human rights epidemic*, 30 August 2012, available at <http://www.thenews.com.pk/Todays-News-9-129095-Human-rights-epidemic> (consulted on 13 December 2013); UNPO, *Enforced Disappearances: The Deafening Silence of the Disappeared*, *op. cit.*

¹¹⁹ Also spelled "Baluchistan".

¹²⁰ UNPO, *Balochistan*, 14 April 2008, available at <http://www.unpo.org/members/8014> (consulted on 13 December 2013).

¹²¹ C. Christine Fair, *Balochistan*, 8 February 2012, available at http://home.comcast.net/~christine_fair/pubs/20120208_Testimony_Fair_Balochistan.pdf (consulted on 13 December 2012).



Balochistan possesses **significant oil-and-gas reserves**. According to Asia Sentinel, Pakistan has an estimated 25.1 trillion cubic feet (TCF) of proven gas reserves of which 19 trillion are located in Balochistan. Furthermore, the region is **rich in other natural resources**, such as gold, coal, copper, iron ore, lead-zinc, titanium and uranium deposits, and provides access to the Persian Gulf, “*the world’s oil shipping center*”.¹²² Nevertheless, Balochistan is extremely underdeveloped and poor, a paradox which can be explained by the Pakistani government’s crackdown on the Baloch, in combination with Chinese exploitation of its resources.¹²³

Balochistan, whose population is estimated at 7, 9 million is **ethnically diverse** and is home to many **religious minorities**. The Baloch ethnic group is the largest in the province and is followed by the Pashtuns and the Brahui. In addition to these three main ethnic groups, the region is also home to Sindhis and Punjabis.¹²⁴

2) Main issues

According to Baloch activists, **more than 10,000 people have disappeared** under unclear circumstances since the crackdown launched by former President Zulfikar Ali Bhutto in the 1970s. In many cases, victims’ families blame the Pakistani security forces and, more specifically, the Frontier Corps and intelligence services. Security forces deny the charges and state that the disappearances are actually the result of disagreements between Baloch insurgents themselves. However, many Baloch witnessed arrests of people by officers of the Frontier Corps in uniform, after which the bodies of the victims were later found. Enforced disappearances and extrajudicial executions continue to take place at an alarming rate in Balochistan, one of the signs that Pakistan is failing its obligations to respect and enforce the right to life.¹²⁵

¹²² International Business Times, *Balochistan: Pakistan’s ‘Dirty War’ In Its Poorest, Most Lawless, But Resource-Rich Province*, 14 September 2013, available at <http://www.ibtimes.com/balochistan-pakistans-dirty-war-its-poorest-most-lawless-resource-rich-province-1405620> (consulted on 13 December 2013).

¹²³ *Ibid.*; Daily Times, *Comment: Plunder of Saindak’s copper and gold*, 15 October 2013, available at http://www.dailytimes.com.pk/default.asp?page=2013\10\15\story_15-10-2013_pg3_5 (consulted on 13 December 2013).

¹²⁴ C. Christine Fair, *Balochistan, op. cit.*

¹²⁵ Claire San Filippo, “Enforced Disappearances in Pakistan – A Well- established Practice”, *op. cit.*

This extremely worrying situation has been confirmed by human-rights watchdogs who have criticized Islamabad for its "**kill and dump**" operations in Balochistan.¹²⁶ In July 2011, Human Rights Watch (HRW) documented 45 documented cases of alleged enforced disappearances reported in Balochistan in 2009 and 2010, and called on Islamabad to "*investigate all allegations of enforced disappearances until the fate of each victim is clearly and publicly established*".¹²⁷ Amnesty International, in a February 2012 briefing, noted in turn that at least 249 Baloch activists, teachers, journalists, and lawyers had disappeared or were abducted in the period from October 2010 to September 2011. Amnesty called on the Pakistani authorities to "*immediately put an end to the practice of enforced disappearance, arbitrary detention, torture, and extra-judicial and other unlawful killings carried out with total impunity by state forces in Balochistan*".¹²⁸

“Ratifying the convention against disappearances is a key test for Prime Minister Nawaz Sharif’s new government” (Ali Dayan Hasan, Pakistan Director of Human Rights Watch, August 29, 2013)

In March 2010, the Pakistani government set up a **Commission of Enquiry** of Enforced Disappearances. However, it seems that this commission has not made any effort to systematically interview relatives in order to get a better understanding of the situation. Moreover, the commission has not provided any witness protection, or assistance to the victims and their relatives. It furthermore failed to investigate complicit actors, such as the intelligence service agencies of the security forces (ISI), or individuals accused of committing the crime of enforced disappearances.¹²⁹

The **judiciary** should also play a much more active role, and Pakistan’s high courts have taken several steps to investigate cases of enforced disappearances. Despite repeated denials by Pakistan's security agencies, the Supreme Court of Pakistan has even acknowledged the involvement of intelligence and security agencies in the practice of enforced disappearances. However up until now, they failed to bring individuals to trial, even in instances where there was strong *prima facie* evidence submitted by the lawyers of the victims of enforced disappearance of their relatives. One of the rare exceptions was the famous case of Sarfaraz Shah, who was shot dead in Karachi in June 2011 by Pakistani paramilitary rangers who wrongly accused him of being a thief. However, the perpetrators were only

¹²⁶ Radio Free Europe Radio Liberty, *New Film, Protests Highlight Disappearances In Pakistan*, 15 December 2013, available at <http://www.rferl.org/content/balochistan-enforced-disappearances/25171796.html> (consulted on 13 December 2013).

¹²⁷ Human Rights Watch, *“We Can Torture, Kill, or Keep You for Years” – Enforced Disappearances by Pakistan Security Forces in Balochistan*, New York, Human Rights Watch, July 2011, p. 6.

¹²⁸ Radio Free Europe Radio Liberty, *New Film, Protests Highlight Disappearances In Pakistan*, *op. cit.*

¹²⁹ Claire San Filippo, “Enforced Disappearances in Pakistan – A Well- established Practice”, *op. cit.*

arrested and judged after widespread media coverage and the release of a widely broadcast video showing the unarmed young man pleading for his life before being executed.¹³⁰

Recently, the judiciary has nonetheless again shown its willingness to fight against enforced disappearances. In early December 2013, the Supreme Court ordered the State to present 750 persons in court, to pass laws to immediately stop illegal detentions and to ensure the return of the missing people. A few days later, Pakistan's military partially complied with the Supreme Court ruling by producing 14 prisoners, but many others are still detained without charge and in complete secrecy. Furthermore, some worry that the retirement of Chief Justice Muhammad Iftikhar Chaudhry, on 12 December 2013, will weaken the fight against enforced disappearances in the country. Although he has been unable to compel the Pakistani authorities to reveal the thousands of missing people, he has led numerous cases of enforced disappearances and has been active in trying to find the whereabouts of the victims. It is hoped that his successor, Tassaduq Hussain Jilani, will address these cases with the same vigour and will obtain more results.¹³¹

Another issue is **Pakistan's counterterrorism laws**, in particular the Anti-Terrorism Act 1997, and the two almost identical Regulations adopted in 2011, which have provided legal cover to the unlawful acts committed by the armed forces during the military operations in Federally Administered Tribal Areas (FATA) and Provincially Administered Tribal Areas (PATA) since February 1, 2008 ("FATA/PATA Action (in Aid of Civil Power) Regulation, 2011"). Among other things, these regulations allow arbitrary deprivation of liberty, which in fact allow for enforced disappearances to 'legally' take place.¹³²

In August 2013, the International Commission of Jurists (ICJ) and Human Rights Watch called on the Pakistani government to carry out a full review of security-related legislation and ensure that all laws conform to Pakistan's international law obligations to prevent such violations. However, instead of taking these measures, the government of Pakistan has recently promulgated two new laws, aimed at reinforcing existing anti-terror laws. The first ordinance was promulgated on 11 October 2013 and has amended the Anti-Terrorist Act 1997. In particular, it allows Law Enforcement Authorities (LEA) to detain suspects up to three months and to convict people on the basis of incriminating text messages, phone calls and emails. Furthermore, it grants these authorities the power to shoot suspects on sight. As for the second ordinance ("Pakistan Protection Ordinance"), promulgated on October 20, it gives LEA even more power in particular by allowing them to enter and search houses without warrant and confiscate any property without permission from any lawful authority. Additionally, it has established a parallel judiciary by creating special courts and special prosecutors for terrorist crimes. From its side, the government has mainly justified the

¹³⁰ *Ibid.*

¹³¹ BBC, 'Secret' Pakistani prisoners appear before Supreme Court, 7 December 2013, available at <http://www.bbc.co.uk/news/world-asia-25287078> (consulted on 13 December 2013); Gulf News, *Pakistan Supreme Court orders return of missing persons within a week*, 10 December 2013, available at <http://gulfnews.com/news/world/pakistan/pakistan-supreme-court-orders-return-of-missing-persons-within-a-week-1.1265507> (consulted on 13 December 2013); Irin News, *Analysis: Pakistan's judges and military clash over rule of law*, 9 December 2013, available at <http://www.irinnews.org/fr/report/99293/analysis-pakistan-s-judges-and-military-clash-over-rule-of-law> (consulted on 13 December 2013); Reuters, *Pakistan's Supreme Court forces military to produce prisoners*, 8 December 2013, available at <http://in.reuters.com/article/2013/12/07/pakistan-missing-persons-idINDEE9B608M20131207> (consulted on 13 December 2013); Voice of America, *Pakistan's Highest Court Loses Independent Chief*, 11 December 2013, available at <http://www.voanews.com/content/pakistan-high-court-loses-independent-chief/1808291.html> (consulted on 13 December 2013).

¹³² Dawn, *New regulations give legal cover to detention in tribal areas*, 12 July 2011, available at <http://www.dawn.com/news/643548/new-regulations-give-legal-cover-to-detentions-in-tribal-areas-2> (consulted on 13 December 2013); UNPO, *Balochistan: Pakistan Urged To Ratify Convention On Enforced Disappearances*, 5 September 2013, available at <http://www.unpo.org/article/16349> (consulted on 13 December 2013).

promulgation of these new rules by the need to address terrorism, delays in trial and to ensure security in the country.¹³³

3) Cases of enforced disappearances

The Voice for Baloch Missing Persons (VBMP) issued a document listing disappearances that took place from 1992 to September 2013.¹³⁴ New cases are regularly reported and added to the list. In this respect, on 10 December 2013, the Human Rights Commission of Pakistan (HRCP) expressed deep concern over the **recent increase in the number of abductions and killings** in Balochistan.¹³⁵

Some cases of disappearances become more known than others. Nasir Baloch's case for example, has recently been made into a movie. "**The Line of Freedom**",¹³⁶ produced by Baloch political activist Noordin Mengal, his brother Bhawal Mengal and British filmmaker David Whitney, depicts the true story of the Baloch student who was abducted in January 2011, tortured and then dumped after being shot and left for dead. Surprisingly enough, Nasir Baloch survived all of these atrocious acts, but he was targeted again four months later on his way to receive medical treatment. The involvement of the local police and the paramilitary forces was more than clear since they arrested Nasir on a bus, in the presence of numerous witnesses. Nasir's bullet-riddled and mutilated body was found in July 2011.¹³⁷

Recently, Mama Qadeer Baloch, the chairperson of Voice for Baloch Missing Persons (VBMP), has also launched a project aiming at shedding light on the issue of enforced disappearances. His son, Jalil Reiki, was abducted in 2009 and found dead in 2011. In late October 2013, Mama Qadeer Baloch led **a 750-kilometer-long march from Balochistan's provincial capital, Quetta, to Pakistan's largest city, Karachi**. On 21 November 2013, hundreds of Baloch people arrived in Karachi and decided on 11 December 2013 that their march should end in the capital,

¹³³ Asian Human Rights Commission, *Pakistan: New draconian laws provide legal cover to disappearances, extrajudicial killings, torture, & and unfair trial*, 23 October 2013, available at <http://www.humanrights.asia/news/ahrc-news/AHRC-STM-190-2013> (consulted on 13 December 2013); Asian Human Rights Commission, *Pakistan: The country has turned into a Killing Field*, 9 December 2013, available at <http://www.humanrights.asia/news/ahrc-news/AHRC-STM-230-2013> (consulted on 13 December 2013); Tribune, *Pakistan Protection Ordinance: New law voted down by rights advocates*, 29 November 2013, available at <http://tribune.com.pk/story/638516/pakistan-protection-ordinance-new-law-voted-down-by-rights-advocates/> (consulted on 13 December 2013).

¹³⁴ See the "List of Missing Persons Year by Year", prepared by Voice for Baloch Missing Persons (VBMP), available at <http://www.humanrights.asia/news/ahrc-news/AHRC-STM-171-2013> (consulted on 13 December 2013).

¹³⁵ See more about these disappearances here: Business Standard, *Pakistani rights body seeks probe into Baloch killings*, 10 December 2013, available at http://www.business-standard.com/article/pti-stories/pakistani-rights-body-seeks-probe-into-baloch-killings-113121000558_1.html (consulted on 13 December 2013); The News, *HRCP urges Dr. Malik to stop disappearances*, 10 December 2013, available at <http://www.thenews.com.pk/Todays-News-2-219349-HRCP-urges-Dr-Malik-to-stop-disappearances> (consulted on 13 December 2013).

¹³⁶ A full version of the movie is available here: Youtube, *The Line Of Freedom – Full Movie 2013* ^{HD}, 16 November 2013, at <https://www.youtube.com/watch?v=ADUvYcX7-Rs> (consulted on 13 December 2013).

¹³⁷ Crisis Balochistan, *Account of twice-abducted teen Nasir Dagarzai Baloch, found dead July 17*, 23 July 2013, available at http://www.crisisbalochistan.com/secondary_menu/human-rights/account-of-twice-abducted-teen-nasir-dagarzai-baloch-found-dead-july-17.html (consulted on 13 December 2013); Radio Free Europe Radio Liberty, *New Film, Protests Highlight Disappearances In Pakistan*, *op. cit.*

Islamabad.¹³⁸ Unfortunately, this initiative is being largely ignored by mainstream Pakistani media, as is and has been the case for the issue of enforced disappearances.

“I know the walk to Punjab is unsafe. There are no pockets of Baloch inhabitants who will open their houses to us or share their food. But if I come back dead from Punjab, I will think the purpose of my life has been fulfilled” (Mama Qadeer Baloch, Chairperson of Voice for Baloch Missing Persons (VBMP) - December 11, 2013)

4) Recommendations

To the Government of Pakistan:

- To **end** the practice of secret and arbitrary detention and **release** the detained disappeared immediately, to **establish the truth on past cases** and to provide **adequate compensation** for the victims and their family members;
- To ensure that the police and prosecutors conduct prompt, competent, and impartial **investigations** into all current allegations of enforced disappearances and, if there is enough admissible evidence, **prosecute** and **sanction** all officials involved in enforced disappearances and other abuses, **without the imposition of the death penalty**;
- To **comply with its international commitments**, in particular by respecting the International Covenant on Civil and Political Rights, which it has ratified on June 23 2010;
- To **sign, ratify** (without making any reservation) and **implement effectively the International Convention for the Protection of All Persons from Enforced Disappearance**;
- To urgently adopt all necessary legislation, regulations and other measures, including making enforced disappearances a criminal offense, to **fully comply with the Convention even before its ratification**;
- To **recognize the competence of the Committee on Enforced Disappearances to consider individual and inter-State petitions**, pursuant to articles 31 and 32 of the Convention;

¹³⁸ Radio Free Europe Radio Liberty, *New Film, Protests Highlight Disappearances In Pakistan*, *op. cit.*; Tribune, *Missing persons: 26-day march from Balochistan ends outside press club*, 23 November 2013, available at <http://tribune.com.pk/story/635689/missing-persons-26-day-march-from-balochistan-ends-outside-press-club/> (consulted on 13 December 2013); Tribune, *‘Enforced’ disappearances: Families of missing Baloch men to carry on*, 11 December 2013, available at <http://tribune.com.pk/story/643799/enforced-disappearances-families-of-missing-baloch-men-to-carry-on/> (consulted on 13 December 2013).

- To reinforce the Commission of Inquiry of Enforced Disappearances, with more resources and staff;
- To make sure that all persons detained are held at **recognized places of detention**, are **not subjected to torture or cruel, inhuman or degrading treatment**;
- To **end any kind of harassment and violence against journalists, human rights defenders, minority rights activists and opposition members.**

B. The Uyghurs

The widespread practice of enforced disappearances by Chinese authorities, which particularly targets the Uyghur Muslim minority, is one of the most alarming developments in China. In addition to the restrictions on their religious practices and other discriminative policies they are facing, the Uyghurs are stigmatized and subject to arbitrary arrests and imprisonment, sometimes leading to torture and/or death.

1) Background

East Turkestan, which means “land of the Turkic peoples”,¹³⁹ is a region also known as the Xinjiang Uyghur Autonomous Province.¹⁴⁰ It lies in the heart of Asia and covers the territory of about 1.6 million km², approximately **one sixth of present-day China**. The region is bordered by the Russian Federation in the north, Kazakhstan, Kyrgyzstan and Tajikistan to the west, Afghanistan to the southwest, Pakistan, India and Tibet to the south, mainland China to the east and Mongolia to the northeast.



¹³⁹ The origin of this name is Iranian and dates back to the 5th century (UNPO, *East Turkestan*, 25 March 2008, available at <http://unpo.org/members/7872> (consulted on 13 December 2013)).

¹⁴⁰ Xinjiang means 'New Territory' in Chinese. Xinjiang is an exonym that is only applied by the Chinese authorities. The endonym as used by the Uyghurs is East Turkestan. This difference in name is in the same mould as the exonym and endonym naming of Tibet; Tibet is the endonym used by the Tibetans, Xizang (roughly translated as 'Western Treasure Vault') is the exonym used by the Chinese authorities (World Uyghur Congress, *Vanishing Vulnerable Voices: Four Years of Impunity Cases of Enforced Disappearances of Civilians in East Turkestan*, July 2013, available at <http://www.uyghurcongress.org/en/wp-content/uploads/Vanishing-Vulnerable-Voices.pdf> (consulted on 13 December 2013)).

As economic activity gradually increased in China during the past decades, the importance of East Turkestan grew. The region has become a **key asset in China's "Go-West" policy**, aiming to secure influence in Central Asia. Well-known gas and oil reserves in the region have drawn the attention of the Chinese government, which is subsequently seeking to impose stronger control over the area.

One of the other reasons for the Chinese authorities' special focus on East Turkestan is their **intention to establish a new "Silk Road"**, passing through the ancient Uyghur city of Kashgar. This new economic trade route with Central and South-East Asian countries implies a reform in infrastructure and industry, as well as in the tertiary sector, as cities continue to grow.

The number of people living in East Turkestan is a matter of considerable debate. No recent and transparent census of the population has ever been made. According to official Chinese data from 2003, there are about 19 million people inhabiting the Xinjiang Uyghur Autonomous Province, and "*the largest ethnic group comprises some 7,497,700 Han people, accounting for 40.6 percent of the population of Xinjiang*",¹⁴¹ while the remaining 10,964,900 people comprise 47 ethnic minority groups, such as the Uyghurs, Kazakhs, Kyrgyz, Mongols, Manchu and the Xibe. However, the World Uyghur Congress (WUC), an international organization which represents the Uyghurs, disputes these figures. They claim that the people belonging to their ethnic group actually number up to around 20 million.¹⁴²

2) Main issues

The first main issue is the significant demographic shift of population balance in East Turkestan, since Beijing launched an **assimilation policy** which encouraged Han Chinese to settle in East Turkestan and severely restricted external flows from that region to other parts. The **displacement of young unmarried Uyghurs girls** (16-25 years old) to southern parts of the country – which in most cases leads these to be exploited as slaves and cheap labour force, only adds to this demographic shift.¹⁴³ It is claimed that the aim of the central government is to transfer about 400 000 Uyghur girls to areas predominantly inhabited by Han Chinese.¹⁴⁴

Regardless of the constitutional guarantee on freedom of religious belief, the Chinese authorities implement **repressive measures in regard to religious practices** by Uyghurs. These particularly intensified after 11 September 2001, which allowed the Chinese government to use the pretext of the global fight against terror, thus targeting the

¹⁴¹ China Through A Lens, *Census of Xinjiang Autonomous Region*, available at <http://www.china.org.cn/english/MATERIAL/139224.htm> (consulted on 13 December 2013).

¹⁴² UNPO, *East Turkestan*, *op. cit.*

¹⁴³ Uyghur Human Rights Project, *Deception, Pressure and Threats: The Transfer of Young Uyghur Women to Eastern China*, 8 February 2008, available at http://docs.uyghuramerican.org/Transfer_uyghur_woman.pdf (consulted on 13 December 2013).

¹⁴⁴ Materials of the conference *Uyghurs call for dialogue with China - Implementation of the Chinese Constitution to safeguard the rights of the Uyghur people*, organized by Human Rights Without Frontiers International, European Parliament, Brussels, 29 April 2010.

Muslim Uyghur population.¹⁴⁵ Islam has been made harder to practice, with young people not being allowed to pray or fast during Ramadan, and being prohibited from travelling to Mecca for the Hajj. Furthermore, local governments and media regularly report on the **efforts of the Chinese authorities to prevent women from wearing head coverings** or head scarves. Unofficial religious schools, taking place in private houses due to the absence of alternatives, have also been targeted, resulting in the **arrest of individuals** and the **violent intrusion of policemen in private spaces**.¹⁴⁶

Following the recent incident on Tiananmen Square of 29 October 2013, the Chinese authorities increased pressure on the Uyghurs by framing their community as religious extremist, terrorist and separatist.

Killings and enforced disappearances

The most recent **racial killings**, which took place on 26 June 2009 at a toy factory in Shaoguan, drew renewed attention of the international community to the region. However, what exactly happened in this factory is still unclear and a topic of dispute. While official governmental sources have stated that two workers of Uyghur ethnic origin were killed, it is believed that the Chinese authorities hide the real number of deaths.

In the aftermath of this incident, a **peaceful demonstration** was organized on 5 July 2009 in the capital of Xinjiang Uyghur Autonomous Region – Urumchi. Protestors expressed their sympathy with the families of those killed and injured at the toy factory and called upon justice for the victims of Shaoguan. They also expressed their discontent with the restrictions imposed by the Chinese authorities on the freedom of religion and the government's discriminative resettlement policies in East Turkestan.¹⁴⁷

However, clashes with Han Chinese broke out and resulted into the **deaths of hundreds of people**. It was reported that large numbers of policemen opened fire on protesters and *“using batons to disperse a crowd”*.¹⁴⁸

Moreover, in the wake of these events, **Chinese security forces conducted raids** in Uyghur areas, arresting dozens of people on charges of sparking social unrests. Twelve of the detainees were sentenced to death penalty by court decisions.

¹⁴⁵ According to official statistics released in *China Law Yearbook 2013*, China arrested 1,105 people for “endangering state security” crimes in 2012, up 19% from 2011 (Dui Hua Human Rights Journal, *China's State Security Arrests Up 19% in 2012*, 26 November 2013, available at <http://www.duihuahrjournal.org/2013/11/chinas-state-security-arrests-up-19-in.html> (consulted on 13 December 2013)).

¹⁴⁶ International Business Times, *Project Beauty: Chinese Officials Pressure Uyghur Muslim Women in Xinjiang to Drop Their Veils, Men to Cut Beards*, 27 November 2013, available at <http://www.ibtimes.com/project-beauty-chinese-officials-pressure-uyghur-muslim-women-xinjiang-drop-their-veils-men-cut> (consulted on 13 December 2013).

¹⁴⁷ Society For Threatened Peoples, *After the Disturbances in Urumchi - Persecution of Uyghurs in China Continues*, Human Rights Report № 62, May 2010, pp. 10-11, available at http://www.gfbv.de/show_file.php?type=inhaltsDok&property=download&id=1953 (consulted on 13 December 2013).

¹⁴⁸ The Star, *Protest by Chinese Muslims turns violent*, 5 July 2009, available at http://www.thestar.com/news/world/2009/07/05/protest_by_chinese_muslims_turns_violent.html (consulted on 13 December 2013).

“That day, a large group of armed police arrived at our neighborhood and took many Uighur men away. They went after every young man they could catch - those who lived there, and those who just happened to be there. I saw how they were taken away - the police loaded a full bus of these young men” (G. Gulmira, a witness to a July 6, 2009 raid in one of the Uighur neighborhoods in Urumqi – cited in the Human Rights Watch Report, *“We Are Afraid to Even Look for Them”*, October 2009)

After this incident, the cases of enforced disappearances have significantly intensified, becoming commonplace for Uyghurs in East Turkestan. **Uyghurs are under particular threat**, often being subject to detention and torture for alleged “separatist activities”. Many Uyghurs have attempted to uncover the whereabouts, condition and fate of their forcibly disappeared relatives, but continually find their requests for information being rejected or ignored, leading to a stubborn culture of impunity.¹⁴⁹

Finally, China has long been suspected of being the site of killings aimed at harvesting the organs of its victims, mainly political prisoners. In this respect, two prominent Canadian human rights lawyers launched their own investigation in July 2006 (former MP David Kilgour and human rights attorney David Matas). Their report¹⁵⁰ concluded that the existence of organ harvesting is real, which was later confirmed by Ethan Gutmann, an American journalist who also conducted investigations and explained, *inter alia*, that the enforced disappearances of Uyghurs could lead them to be subject to this horrible practice.¹⁵¹ Former surgeon Enver Tohti, himself a Uyghur, testified on several occasions how he was forced to take out organs from political prisoners.¹⁵²

Criminal justice system

Regardless of the fact that **China is subject to a list of international legal commitments**, such as the Universal Declaration of Human Rights (UDHR)¹⁵³ and the UN Convention Against Torture (CAT),¹⁵⁴ there is still a very poor human rights record in the country. Furthermore, China still has to ratify other important international instruments,

¹⁴⁹ World Uyghur Congress, *Cases of Enforced Disappearances of Civilians in East Turkestan (Xinjiang Autonomous Region, PRC) After 5 Incident of 2009*, August 2012, available at <http://www.uyghurcongress.org/en/wp-content/uploads/2012-June-21-WUC-Report-on-Enforced-Disappearances-of-Uyghurs-in-China.pdf> (consulted on 13 December 2013).

¹⁵⁰ David Matas and David Kilgour, *Report into Allegations of Organ Harvesting of Falun Gong Practitioners in China*, 6 July 2006, available at <http://www.david-kilgour.com/2006/Kilgour-Matas-organ-harvesting-rpt-July6-eng.pdf> (consulted on 13 December 2013).

¹⁵¹ Radio Free Asia, *Organs Seized From Uyghurs*, 9 January 2013, available at <http://www.rfa.org/english/news/uyghur/seized-01092013163346.html> (consulted on 13 December 2013); Stop Organ Harvesting, <http://www.stoporganharvesting.org/> (consulted on 13 December 2013).

¹⁵² See his testimony here: UNPO, *Organ Harvesting In China: Testimony By Former Uyghur Surgeon Enver Tohti*, 16 December 2013, available at <http://unpo.org/article/16695> (consulted on 16 December 2013).

¹⁵³ Universal Declaration of Human Rights, adopted by United Nations General Assembly resolution 217 A (III) of 10 December 1948.

¹⁵⁴ Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, adopted by United Nations General Assembly resolution 39/46 of 10 December 1984, entry into force 26 June 1987.

such as the International Convention for the Protection of All Persons from Enforced Disappearances (ICCPED)¹⁵⁵ and the International Covenant on Civil and Political Rights (ICCPR).¹⁵⁶

There was some hope that the situation could improve in March 2012, when the Chinese National People's Council passed a list of **amendments to the Criminal Procedure Laws (CPL)**. These amendments, which came into force on 1 January 2013, indeed contain improvements to China's criminal justice system. For example, Article 33 of CPL stipulated the right for suspects to "*appoint a defender¹⁵⁷ as of the date on which the suspect is first interrogated*" and to be informed of this at an earlier stage of the criminal process. Other positive changes included better protection for juvenile offenders, women in jails, and death row inmates.¹⁵⁸

However, **some of the clauses of CPL were largely criticized** by the international community. One of the crucial drawbacks of the newly revised legislation is that when an attorney requests to meet with a detained criminal suspect, the detention facility is under obligation to arrange the meeting but has 48 hours to do so (Article 37).¹⁵⁹ Additionally, as Amnesty International pointed out, "*to be in full compliance with international human rights law, the CPL would need to be amended to require police to inform suspects at the time of their arrest, or when first taken into custody, of their right to legal counsel*".¹⁶⁰

While torture "*remains widespread in China*",¹⁶¹ **the 'residential surveillance' (house arrest) clause** is particularly worrying. Article 73 of the revised CPL now stipulates that "*residential surveillance shall be enforced at the domicile of the suspect or defendant*" **except** if there is no permanent domicile or in case of "*suspicion of crimes endangering state security, crimes of terrorism and particularly serious crimes of bribery*". In those cases, "*surveillance may be enforced at a designated place of residence*" (Article 73 CPL). This implies the suspect can be taken to any location the authorities deem appropriate, thus making the practice of enforced disappearance and torture very easy.

3) Cases of Enforced Disappearances

International and local experts document practices of systematic violations of Uyghur peoples' fundamental human rights, including arbitrary detentions, tortures and enforced disappearances.

¹⁵⁵ International Convention for the Protection of All Persons from Enforced Disappearance, adopted by United Nations General Assembly resolution 61/177 of 20 December 2006, entry into force 23 December 2010.

¹⁵⁶ International Covenant on Civil and Political Rights, adopted by United Nations General Assembly resolution 2200A (XXI) of 16 December 1966, entry into force 23 March 1976.

¹⁵⁷ In the Chinese Legislative system, "*defender*" can include a relative, a friend or a person from a public organization.

¹⁵⁸ Li Changshuan (on behalf of the Danish Institute for Human Rights), *Working Translation of Amendments to the Criminal Procedure Law of the People's Republic of China*, 20 March 2012.

¹⁵⁹ *Ibid.*, p. 4.

¹⁶⁰ Amnesty International, *Briefing on China's 2013 Criminal Procedure Law: In Line with International Standards?*, London, Amnesty International, 2013, p. 13 available at http://www.amnesty.nl/sites/default/files/public/final_2013_cpl_clean_formatted.pdf (consulted on 13 December 2013).

¹⁶¹ Office of the High Commissioner for Human Rights, *Special Rapporteur [Manfred Nowak] On Torture highlights challenges at end of visit to China*, 2 December 2005, available at <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=3463&LangID=E> (consulted on 13 December 2013).

In July 2013, the World Uyghur Congress (WUC) published an **extensive report** on the practice of enforced disappearances, addressing specific cases of disappeared Uyghurs.¹⁶² In total, the report included individual profiles of 32 Uyghurs and two Kazakh people, of which the majority was arrested right in the aftermath of July 2009 protests.¹⁶³ Most of the people reported disappeared were young men between the age of 16 and 39 and all of them, apart from one case in Kashgar, were arrested in Urumchi.

Among the most recent events relating to enforced disappearances, one should mention the **blog created by one of the survivors** of Chinese repressive policies, **Mutellip Imin, on which he publicizes descriptions of his unlawful incarceration.** Being an ethnic Uyghur and student in Turkey, Imin was kidnapped by the Xinjiang police on 15 July 2013 and kept in prison until 1 October 2013. The victim notes that, in absence of any legal procedure, he was interrogated and asked to give false statement by the Chinese officials due to his connections with some other ethnic Uyghur activists in the region.¹⁶⁴

In most cases, regardless of continuous search efforts, families and friends of the missing victims have been left hopeless due to the **reluctance of the police officers and local authorities to disclose any information** concerning the disappeared. According to the information provided by friends and relatives of the victims, the Police Department of the Urumchi region was designated to deal with the registration and investigation of all disappeared individuals since the July 2009 incident. However, not a single case was reported whereby local authorities collaborated with the family of the disappeared.¹⁶⁵

4) Recommendations

To the Government of China:

- To **end** the practice of secret and arbitrary detention and **release** the disappeared immediately, to **establish the truth on past cases** and to provide **adequate compensation** for the victims and their family members;
- To ensure that the police and prosecutors conduct prompt, competent, and impartial **investigations** into all current allegations of enforced disappearances and, if there is enough admissible evidence, **prosecute** and **sanction** all officials involved in enforced disappearances and other abuses, **without the imposition of the death penalty**;

¹⁶² World Uyghur Congress, *Vanishing Vulnerable Voices: Four Years of Impunity Cases of Enforced Disappearances of Civilians in East Turkestan*, *op. cit.*

¹⁶³ See appendice III.

¹⁶⁴ Blog of Mutellip Imin, *I was a Victim of Enforced Disappearances for 79 Days*, available at <http://mutellipimin.wordpress.com/2013/12/09/i-was-a-victim-of-enforced-disappearance-for-79-days/> (consulted on 13 December 2013).

¹⁶⁵ World Uyghur Congress, *Vanishing Vulnerable Voices: Four Years of Impunity Cases of Enforced Disappearances of Civilians in East Turkestan*, *op. cit.*, p. 71.

- To **ratify and implement effectively the International Covenant on Civil and Political Rights and the International Convention for the Protection of All Persons from Enforced Disappearance;**
- To urgently adopt all necessary legislation, regulations and other measures, including making enforced disappearances an autonomous criminal offense, to **fully comply with these conventions even before their ratification and with international law in general;**
- To **recognize the competence of the Committee on Enforced Disappearances to consider individual and inter-State petitions**, pursuant to articles 31 and 32 of the International Convention for the Protection of All Persons from Enforced Disappearances;
- To make sure that all persons detained are held at **recognized places of detention**, are **not subjected to torture or cruel, inhuman or degrading treatment;**
- To **end any kind of harassment and violence against journalists, human rights defenders and opposition members.**
- To **cease all forms of ethnic and religious discrimination and stop arbitrary executions** of political prisoners and prisoners of conscience;
- To **remove all restrictions** in regard to the **religious education** and the **right to pray;**
- To **permit establishment** of local **human and minority rights foundations, organizations and political parties;**
- To **abandon** re-shaping the demographic structure of the region through **forced migration and Chinese settlement.**

C. The Crimean Tatars

In March 2014, a referendum to secede from Ukraine was effectively imposed upon the citizens of the Crimean peninsula. Not only did the Mejlis, the executive arm of the Qurultay (Congress) of the Crimean Tatar People, boycott the referendum, but the European Union¹⁶⁶, the United Nations General Assembly¹⁶⁷, NATO¹⁶⁸ as well as countries, including the United States of America and Ukraine¹⁶⁹, also condemned the referendum and its outcome, Crimea's annexation by Russia, as illegal.

¹⁶⁶ EU Council condemns the illegal referendum in Crimea, http://eu-un.europa.eu/articles/en/article_14753_en.htm (consulted on 2 December 2014).

¹⁶⁷ UN News Centre, <http://www.un.org/apps/news/story.asp?NewsID=47443#.VH3UYzHF9-4> (consulted on 2 December 2014).

¹⁶⁸ NATO Press Release, http://www.nato.int/cps/en/natolive/news_108030.htm?selectedLocale=en (consulted on 2 December 2014).

¹⁶⁹ BBC, 'Ukraine crisis: 'Illegal' Crimean Referendum Condemned', <http://www.bbc.com/news/world-europe-26475508> (consulted on 2 December 2014).

Consequently, local authorities have increased the political pressure on the Crimean Tatars by abusing their human rights and persecuting them as a minority group. The Crimean Tatar leaders, Mustafa Jemilev and Refat Chubarov, have been banned from entering the peninsula until 2019. Cases of unlawful detention have been reported, and raids, searches and damages of Crimean Tatar organizations, educational institutes and mosques are routinely conducted by members of the security forces or, occasionally, by unidentified armed men. The number of enforced disappearances and murders is also increasing¹⁷⁰.

1) Background

Crimea is located on the northern coast of the Black Sea, narrowly connected to the mainland of Ukraine. Originally, the region was populated by the Crimean Tatars who consider themselves as the indigenous population of this territory. In 1944 they were collectively accused by Joseph Stalin's Soviet authorities of collaborating with the German Wehrmacht during World War II and were deported *en masse* to Central Asia.¹⁷¹ Crimean Tatars lost not only their property but also their homeland, and therefore part of their identity. In 1989 a Soviet Supreme decree, "On Recognizing the Illegal and Criminal Repressive Acts against Peoples Subjected to Forcible Resettlement and Ensuring their Rights", allowed all Crimean Tatars to return to Crimea; within four years almost half of the Crimean Tatar population (approximately 250,000 persons) managed to return.¹⁷² In 2001, the Ukrainian population census estimated that since 1989 the Crimean Tatar population has increased by about 10.2% in relation to the total population of Crimea.¹⁷³



Crimean Tatars are the largest Muslim ethnic minority group in Ukraine, but were only recognized as an official ethnic group by the Ukrainian parliament in April 2014 – a month after Crimea had become a *de facto* part of Russia.¹⁷⁴ In a bid to win the trust and support of the Crimean Tatars, Vladimir Putin, President

¹⁷⁰ Report by Nils Muiznieks – Commissioner for Human Rights of the Council of Europe, following his mission in Kyiv, Moscow and Crimea, from 7 to 12 September 2014 (<https://wcd.coe.int/com.instranet.InstraServlet?command=com.instranet.CmdBlobGet&InstranetImage=2624575&SecMode=1&DocId=2197556&Usage=2>) (consulted 2 December 2014).

¹⁷¹ International Committee for Crimea, 'The Deportation and Fate of the Crimean Tatars, by J. Otto Pohl, http://www.iccrimea.org/scholarly/jopohl.html#_ftn17 (consulted on 2 December 2014).

¹⁷² *Ibid.*

¹⁷³ Ukrainian Population Census, <http://2001.ukrcensus.gov.ua/rus/results/general/nationality/crimea/> (consulted on 2 December 2014).

¹⁷⁴ Human Rights Watch, <http://www.hrw.org/ru/node/130593/section/5> (consulted on 2 December 2014).

of the Russian Federation, issued a decree on the rehabilitation of the Crimean Tatars in May 2014¹⁷⁵ However, so far, no concrete measures have been taken to implement this decree; on the contrary, the crackdown on Crimea's Tatar population has increased since.

2) Main Issues

According to a report of the Office of the United Nations High Commissioner for Human Rights (OHCHR) on the human rights situation in Ukraine on 16 September 2014, the freedoms of expression, peaceful assembly and association, and religion or belief are drastically curtailed for the Crimean Tatars.¹⁷⁶ As a consequence, 8,000 to 10,000 Crimean Tatars have left the peninsula since Russia's annexation.¹⁷⁷ Those Crimean Tatars who decided to stay in their homeland face a difficult choice: either they apply for Russian citizenship, hence forfeiting their Ukrainian citizenship, or they accept to become 'foreigners' in their own territory.¹⁷⁸ Although it remains uncertain what exactly will happen to those persons who refuse to accept a new Russian passport¹⁷⁹, sources on the ground report that they will face obstacles in any kind of official matters, including holding administrative posts.

In 2007, the Russian Ministry of Justice issued a **Federal List of Extremist Materials**, which comprises more than 2,400 items, including Islamic religious books. Printing, possessing or distributing the documents on the list is an offense under Russian law.¹⁸⁰ Crimean authorities declared that inhabitants of the peninsula are granted a three-month period (until January 2015) to hand over books which are now deemed illegal but were not prohibited under Ukrainian law.¹⁸¹ Nevertheless, during illegal searches of dozens of private homes of Crimean Tatars, mosques and Islamic schools, authorities confiscated many books which are not included on the List of Extremist Materials, as well as planted guns and drugs.¹⁸²

Moreover, young Crimean Tatars are now requested to join the Russian army. If they resist the order, they are arrested and detained according to the Russian Criminal Code.¹⁸³

¹⁷⁵ <http://ria.ru/politics/20140516/1008042615.html> (consulted 2 December 2014).

¹⁷⁶ Office of the United Nations High Commissioner, report on the human rights situation in Ukraine on 16 September 2014, http://www.ohchr.org/Documents/Countries/UA/OHCHR_sixth_report_on_Ukraine.pdf (consulted 8 December 2014).

¹⁷⁷ <http://www.dailysabah.com/politics/2014/12/01/current-situation-worse-than-soviet-era> and <http://www.amnesty.org/en/for-media/press-releases/crimean-tatars-risk-persecution-and-harassment-new-crimea-2014-05-23> (consulted 8 December 2014).

¹⁷⁸ Persecution Of Crimean Tatars And The Question of Radicalization, by Anna Borshchevskaya, <http://www.forbes.com/sites/annaborshchevskaya/2014/10/22/persecution-of-crimean-tatars-and-the-question-of-radicalization-3/> (consulted 8 December 2015).

¹⁷⁹ Interview with Mr Nils Muiznieks, Council of Europe Commissioner for Human Rights, <http://ukrainianweek.com/Columns/50/123522> (consulted 8 December 2014).

¹⁸⁰ Office of the United Nations High Commissioner, report on the human rights situation in Ukraine on 16 September 2014, http://www.ohchr.org/Documents/Countries/UA/OHCHR_sixth_report_on_Ukraine.pdf, <http://www.worldbulletin.net/news/143844/russian-agents-raiding-homes-of-muslims-in-crimea>, <http://www.forbes.com/sites/annaborshchevskaya/2014/10/22/persecution-of-crimean-tatars-and-the-question-of-radicalization-3/> and <http://apostrophe.com.ua/article/society/2014-10-15/vlasti-kryima-prosyat-dat-pochitat/566> (consulted 8 December 2014).

¹⁸¹ <http://apostrophe.com.ua/article/society/2014-10-15/vlasti-kryima-prosyat-dat-pochitat/566> (consulted 8 December 2014).

¹⁸² Office of the United Nations High Commissioner, report on the human rights situation in Ukraine on 16 September 2014, http://www.ohchr.org/Documents/Countries/UA/OHCHR_sixth_report_on_Ukraine.pdf (consulted on 8 December 2014).

¹⁸³ Daily Sabash, Interview with Crimean Tatar leader Mustafa Jemilev, <http://www.dailysabah.com/politics/2014/12/01/current-situation-worse-than-soviet-era> (consulted 8 December 2014).

Since the Russian annexation, the Mejlis of the Crimean Tatar People has been threatened with closure and after demonstrations took place in May 2014, at least five Crimean Tatar protestors, demanding that Mustafa Jemilev be allowed to enter Crimea, were charged with assaulting police officers and, consequently, imprisoned.¹⁸⁴ Not only are public gatherings and demonstrations by the Crimean Tatar community now banned¹⁸⁵, but the Crimean Tatar newspaper, Avdet, and the Crimean Tatar TV channel, ATR, have also been accused of ‘extremist activities’ and threatened with closure.¹⁸⁶

International and Regional Human Rights Instruments

It is important to note that the **European Convention on Human Rights** still applies in Crimea because both Ukraine and the Russian Federation have ratified it. The European Court of Human Rights has jurisdiction over cases of human rights abuse, including the violation of Article 2 (right to life) as well as Article 3 (prohibition of torture or inhuman or degrading treatment or punishment) and can hold perpetrators accountable.¹⁸⁷ Additionally, both countries have ratified the **European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment**.

Ukraine is a party to core international human rights instruments including: the International Covenant on Civil and Political Rights; the International Covenant on Economic, Social and Cultural Rights; the Convention on the Elimination of all Forms of Racial Discrimination; the Convention on the Elimination of all Forms of Discrimination against Women; the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; and the Convention on the Rights of the Child. Moreover, the country is party to regional European treaties including: the Framework Convention on the Protection of National Minorities and the European Charter for Regional and Minority Languages.¹⁸⁸

Additionally, Russia has ratified the International Covenant on Civil and Political Rights; the International Covenant on Economic, Social and Cultural Rights; and the International Convention on the Elimination of All Forms of Racial Discrimination.¹⁸⁹

Neither the Russian Federation nor Ukraine have signed and ratified the **International Convention for the Protection of All Persons from Enforced Disappearance**.¹⁹⁰

Under the current circumstances, both *de jure* (Ukraine) and *de facto* (Russia) authorities are obliged to prevent and investigate any breaches of international and regional human rights law occurring in Crimea.

¹⁸⁴ <http://www.rferl.org/content/dzhemilev-tatar-custody-crimea-arrest-armyansk/26711628.html> (consulted 8 December 2014).

¹⁸⁵ Human Rights Watch Report: Rights in Retreat / Abuses in Crimea, 2014, http://www.hrw.org/sites/default/files/reports/crimea1114web_0.pdf (consulted 8 December 2014).

¹⁸⁶ <http://khpg.org/index.php?id=1401825999> and <http://khpg.org/index.php?id=1411646632> (consulted 8 December 2014).

¹⁸⁷ Interview with Mr Nils Muiznieks, Council of Europe Commissioner for Human Rights, <http://ukrainianweek.com/Columns/50/123522> and <http://www1.umn.edu/humanrts/research/ratification-russia.html> (consulted 8 December 2014).

¹⁸⁸ Office of the United Nations High Commissioner for Human Rights, report on the human rights situation in Ukraine on 15 April 2014.

¹⁸⁹ <http://www1.umn.edu/humanrts/research/ratification-russia.html> (consulted 9 December 2014).

¹⁹⁰ Office of the United Nations High Commissioner for Human Rights, report on the human rights situation in Ukraine on 15 April 2014 and http://www.icaed.org/fileadmin/user_upload/HRC_UPR_4th_session_remarks_on_disappearances.pdf (consulted 8 December 2014).

The Russian State can be held responsible for violations conducted by Crimean and Russian authorities, as well as paramilitary groups supported by these authorities.

Killings and enforced disappearances

“The current situation in Crimea is even worse than the Soviet regime. At least there were certain procedures in the Soviet regime. Opposition figures were first judged and then sent to jail; however, today they are abducted and killed. This causes fear among the people and due to this fear, people are leaving Crimea”.

Leader of the Crimean Tatars, Mustafa Jemilev (Qırımoğlu¹⁹¹)

Since March 2014, 19 Crimean Tatars have been abducted, some of them tortured and killed.¹⁹² Abductions usually occur in one of two manners: either, masked persons enter homes and kidnap a targeted person; or a targeted person is kidnapped in a more covert manner, for instance on their way to work. This second method usually involves personnel who appear to be more professionally trained. So-called self-defence units (paramilitary groups supported by local authorities) have been strongly associated with several cases of enforced disappearances.¹⁹³

Thus far, criminal investigations by local prosecutorial authorities into multiple enforced disappearance cases have not revealed the circumstances of the abductions, and no surviving victims or perpetrators have been found.¹⁹⁴

Whereas the increasing number of enforced disappearances is creating a climate of terror, fear, mistrust and lawlessness, specifically within the Crimean Tatar community, at least some of the cases can also be interpreted as religious persecution.¹⁹⁵

3) Cases of Enforced Disappearances

¹⁹¹ Daily Sabash, Interview with Crimean Tatar leader Mustafa Jemilev, <http://www.dailysabah.com/politics/2014/12/01/current-situation-worse-than-soviet-era> (consulted on 8 December 2014).

¹⁹² Daily Sabash, Interview with Crimean Tatar leader Mustafa Jemilev, <http://www.dailysabah.com/politics/2014/12/01/current-situation-worse-than-soviet-era> (consulted on 8 December 2014).

¹⁹³ <http://khpg.org/index.php?id=1412597376> (consulted 8 December 2014).

¹⁹⁴ Report by Nils Muiznieks, Commissioner for Human Rights of the Council of Europe, following his mission in Kyiv, Moscow and Crimea from 7 to 12 September 2014, <http://www.theguardian.com/world/2014/nov/25/-sp-russia-crimean-tatars-soviet-ukraine> (conducted 8 December 2014).

¹⁹⁵ <http://www.washingtontimes.com/news/2014/nov/4/faith-in-the-time-of-annexation-a-tough-choice-for/?page=all> (consulted 8 December 2014).

On 29 September 2014, a 25-year-old Crimean Tatar, **Edem Asanov**, disappeared on the way to his workplace and was found hanged in an abandoned sanatorium in Yevpatoria¹⁹⁶. He has been described as ‘not politically active’; a person who used to discuss the situation of the Crimean Tatars on a social network page.¹⁹⁷

Reshat Ametov was last seen during a protest at the Lenin Square in Simferopol on 3 March 2014, when three men wearing military-style jackets led him away. Requests made by relatives to the police to find Ametov remained ignored, and on 16 March 2014 his tortured body was found. Ametov regularly used social media platforms to discuss the future of the Crimean Tatars on the peninsula and he was socio-politically active; filing petitions to local authorities regarding challenges in his community.¹⁹⁸

The case has been presented to Nils Muiznieks, Commissioner for Human Rights of the Council of Europe, who has recommended that an expert analysis be conducted to clarify the detailed circumstances of the disappearance and to find the perpetrators.

4) Recommendations

To Authorities on the Crimean Peninsula and the Russian Federation:

- To Ratify and effectively implement the **International Convention for the Protection of All Persons from Enforced Disappearance**;
- To **recognize the competence of the Committee on Enforced Disappearances to consider individual and inter-State petitions**, pursuant to articles 31 and 32 of the International Convention for the Protection of All Persons from Enforced Disappearances;
- To allow Crimean Tatar media **freedom of expression** and **to stop harassment and violence against journalists**;
- To conduct **effective, impartial and prompt investigations** into all alleged cases of **human rights abuses** by the **police and other proxy forces** that have been active on the peninsula since February/March 2014;
- To **disarm and re-integrate all paramilitary units** and **prosecute** those elements that have **conducted human rights abuses**;
- To guarantee that **detained persons** have access to due legal process, are **held at recognized places** of detention and are **not subjected to torture or cruel, inhuman or degrading treatment**;
- To **end all harassment and violence against human rights defenders and opposition members**;
- To guarantee the entrance of a **free and independent human rights monitoring mission** to Crimea;
- To allow **Ukrainian citizens** to keep their Ukrainian passport and **not force Russian citizenships** upon inhabitants of Crimea against their will;

¹⁹⁶ <http://khpg.org/index.php?id=1412597376> (consulted 8 December 2014).

¹⁹⁷ <http://www.hrw.org/news/2014/10/07/crimea-enforced-disappearances> (consulted on 8 December 2014).

¹⁹⁸ Report by Nils Muiznieks, Commissioner for Human Rights of the Council of Europe, following his mission in Kyiv, Moscow and Crimea from 7 to 12 September 2014, <http://www.theguardian.com/world/2014/nov/25/-sp-russia-crimean-tatars-soviet-ukraine> and <http://www.hrw.org/news/2014/03/18/crimea-disappeared-man-found-killed> (consulted on 8 December 2014).

- To **stop all unlawful searches of political and educational institutes, mosques and homes of Crimean Tatars;**
- To **remove from the Federal List of Extremist Materials those religious books and documents that were legal in Crimea prior to March 2014.**

To the Government of Ukraine:

- To Ratify and effectively implement the **International Convention for the Protection of All Persons from Enforced Disappearance;**
- To **recognize the competence of the Committee on Enforced Disappearances in considering individual and inter-State petitions,** pursuant to articles 31 and 32 of the International Convention for the Protection of All Persons from Enforced Disappearances.

VI. Conclusion

The practice of forcibly disappearing people has been used by states throughout history to **crush any dissident voice**, and over the past decades has unfortunately become a systematic method of oppression in many countries. On the eve of the year 2014, **thousands of people are still detained in complete secrecy**, at the mercy of their captors. They are “disappeared”, a situation which also results in a **countless number of families** going through months, years and sometimes decades of extreme anguish and uncertainty. Exposing themselves to threats and reprisals in the hope of finding their missing relative, these families know that they may never discover what has become of them.

As was demonstrated in this report, there is no doubt that enforced disappearances involve **serious breaches of international human rights law, international humanitarian law and international criminal law**. However, the persistence of certain conflicts and the outbreak of new ones in recent years, such as the Syrian crisis, perpetuate this practice. Considering the global scale and gravity of enforced disappearances, **the universal ratification and implementation of the International Convention for the Protection of All Persons from Enforced Disappearance is an urgent imperative**. In this respect, numerous countries around the world, in particular 21 EU Member States, have yet to intensify their efforts.

It should be stressed that **indigenous populations and ethnic peoples are particularly affected** by this practice. Because of their different ethnic, cultural and/or linguistic identity and political aspirations, these oppressed minorities can easily be viewed as sources of contestation, making them a prime target for criminal governments willing to consolidate their position. Several UNPO members, such as the Baloch people and the Uyghurs, are indeed being subject to enforced disappearances and all types of atrocities resulting from them: sexual abuse, torture, extra-judicial killing and even organ harvesting. It is to be hoped that Pakistan and China, as well as many others, will promptly take all necessary measures to bring an end to this unacceptable and appalling situation. By choosing secrecy, they allow and encourage atrocity.

VII. Recommendations

To States worldwide:

- To **end the practice of forcibly disappearing people** without delay, to immediately **release** all prisoners of conscience, to **cease arbitrary arrests** on unfounded charges, to **establish the truth on past cases** and to provide prompt, fair, and **adequate compensation** for the victims and their family members;
- To ensure that the police and prosecutors conduct prompt, competent, and impartial **investigations** into all current allegations of enforced disappearances and, if there is enough admissible evidence, **prosecute and sanction** all officials involved in enforced disappearances and other abuses, **without the imposition of the death penalty**;
- To promptly **sign, ratify** (without making any reservation) and **implement effectively the International Convention for the Protection of All Persons from Enforced Disappearance**;
- To urgently adopt all necessary legislation, regulations and other measures, including making enforced disappearances an autonomous criminal offense, to **fully comply with the Convention even before its ratification**;
- To **recognize the competence of the Committee on Enforced Disappearances to consider individual and inter-State petitions**, pursuant to articles 31 and 32 of the Convention;
- To make sure that all persons detained are held at **recognized places of detention**, are **not subjected to torture or cruel, inhuman or degrading treatment**;
- To **end any kind of harassment and violence against journalists, human rights defenders and opposition members**;
- To **devote special attention to the plight of minority ethnic and religious groups**, who are disproportionately targeted by enforced disappearances;
- For all states, the European Union and the international community, to **raise greater awareness of the issue** of enforced disappearances and **intensify lobbying efforts and actions** towards its eradication;
- For all States, the European Union, the international community and donors, to provide adequate **support to international organizations, civil society organizations and associations of families of victims** fighting against enforced disappearances.

About the Unrepresented Nations and Peoples Organization (UNPO)



The Unrepresented Nations and Peoples Organization (UNPO) is an international, nonviolent, and democratic membership organisation. Its members are indigenous peoples, minorities, and unrecognized or occupied territories who have joined together to protect and promote their human and cultural rights, to preserve their environments, and to find nonviolent solutions to conflicts which affect them.

Although the aspirations of UNPO Members differ greatly, they are all united by one shared condition: they are not adequately represented at major international forums, such as the United Nations. As a consequence, their opportunity to participate on the international stage is significantly limited, as is their ability to access and draw upon the support of the global bodies mandated to defend their rights, protect their environments, and mitigate the effects of conflict.

In a world where over 90 percent of conflicts are intra-state, the UNPO has been established to fill this gap by providing an international forum through which its Members can become effective participants and contributors to the international community. In an increasingly interdependent world, it is ever more important that those who continue to be denied their rights or remain excluded be given an opportunity to present their cases. The UNPO therefore works to address the consequences of marginalisation, working with its Members to promote their democratic causes, to provide information, and to articulate creative and nonviolent strategies for progress. Above all, the UNPO works to ensure that the voices of its members are heard.

Founded in 1991 at the Peace Palace in The Hague, the UNPO is unique as an international organisation in that it is built entirely by its Members. Through this strong connection to those suffering the consequences of exclusion that the organisation seeks to address, the UNPO has since grown into a prominent respected international organisation.

The UNPO's membership has also grown steadily from its original fifteen founders, and now represents almost 50 Members worldwide. The work of the UNPO adapts continually to meet the challenges of its Members and the nature of the international political climate. Members remain committed to respecting the five principles enshrined in the UNPO Covenant: nonviolence, human rights, democracy and self-determination, environmental protection, and tolerance.

The UNPO remains committed to offering an increasing number of nations and peoples an entry point into the international community, enabling its Members to learn from one another, lending support where setbacks are encountered, and sharing successful experiences.

Appendices

APPENDICE I: International Convention for the Protection of All Persons from Enforced Disappearance Status¹⁹⁹

STATUS AS AT : 12-12-2013 05:03:01 EDT

CHAPTER IV

HUMAN RIGHTS

16 . International Convention for the Protection of All Persons from Enforced Disappearance

New York, 20 December 2006

Entry into force : 23 December 2010, in accordance with article 39(1) which reads as follows: "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".

Registration : 23 December 2010, No. 48088

Status : Signatories : 93. Parties : 41

Text : United Nations, *Treaty Series*, vol. 2715

Doc.A/61/448

[C.N.737.2008.TREATIES-12](#) of 2 October 2008 (Proposal of corrections to the original text of the Convention (Arabic, Chinese, English, French, Russian and Spanish texts) and to the Certified True Copies) and [C.N.1040.2008.TREATIES-20](#) of 2 January 2009 (Corrections).

Note : The above Convention was adopted on 20 December 2006 during the sixty-first session of the General Assembly by resolution A/RES/61/177. In accordance with its article 38, the Convention shall be open for signature by all Member States of the United Nations. The Convention shall be open for signature on 6 February 2007 in Paris, France, and thereafter at United Nations Headquarters in New York.

Participant	Signature	Accession(a), Ratification
Albania	6 Feb 2007	8 Nov 2007
Algeria	6 Feb 2007	
Argentina	6 Feb 2007	14 Dec 2007
Armenia	10 Apr 2007	24 Jan 2011
Austria	6 Feb 2007	7 Jun 2012
Azerbaijan	6 Feb 2007	
Belgium	6 Feb 2007	2 Jun 2011

¹⁹⁹ United Nations, *Treaty Collection*, available at

http://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-16&chapter=4&lang=en (consulted on 12 December 2013).

Benin	19 Mar 2010	
Bolivia (Plurinational State of)	6 Feb 2007	17 Dec 2008
Bosnia and Herzegovina	6 Feb 2007	30 Mar 2012
Brazil	6 Feb 2007	29 Nov 2010
Bulgaria	24 Sep 2008	
Burkina Faso	6 Feb 2007	3 Dec 2009
Burundi	6 Feb 2007	
Cambodia		27 Jun 2013 a
Cameroon	6 Feb 2007	
Cape Verde	6 Feb 2007	
Chad	6 Feb 2007	
Chile	6 Feb 2007	8 Dec 2009
Colombia	27 Sep 2007	11 Jul 2012
Comoros	6 Feb 2007	
Congo	6 Feb 2007	
Costa Rica	6 Feb 2007	16 Feb 2012
Croatia	6 Feb 2007	
Cuba	6 Feb 2007	2 Feb 2009
Cyprus	6 Feb 2007	
Denmark	25 Sep 2007	
Ecuador	24 May 2007	20 Oct 2009
Finland	6 Feb 2007	
France	6 Feb 2007	23 Sep 2008
Gabon	25 Sep 2007	19 Jan 2011
Germany	26 Sep 2007	24 Sep 2009
Ghana	6 Feb 2007	
Greece	1 Oct 2008	
Grenada	6 Feb 2007	
Guatemala	6 Feb 2007	
Guinea-Bissau	24 Sep 2013	
Haiti	6 Feb 2007	
Honduras	6 Feb 2007	1 Apr 2008
Iceland	1 Oct 2008	
India	6 Feb 2007	
Indonesia	27 Sep 2010	
Iraq		23 Nov 2010 a
Ireland	29 Mar 2007	
Italy	3 Jul 2007	
Japan	6 Feb 2007	23 Jul 2009
Kazakhstan		27 Feb 2009 a
Kenya	6 Feb 2007	
Lao People's Democratic Republic	29 Sep 2008	
Lebanon	6 Feb 2007	
Lesotho	22 Sep 2010	6 Dec 2013
Liechtenstein	1 Oct 2007	
Lithuania	6 Feb 2007	14 Aug 2013
Luxembourg	6 Feb 2007	
Madagascar	6 Feb 2007	
Maldives	6 Feb 2007	
Mali	6 Feb 2007	1 Jul 2009
Malta	6 Feb 2007	
Mauritania	27 Sep 2011	3 Oct 2012
Mexico	6 Feb 2007	18 Mar 2008
Monaco	6 Feb 2007	
Mongolia	6 Feb 2007	
Montenegro	6 Feb 2007	20 Sep 2011

Morocco	6 Feb 2007	14 May 2013
Mozambique	24 Dec 2008	
Netherlands²⁰⁰	29 Apr 2008	23 Mar 2011
Niger	6 Feb 2007	
Nigeria		27 Jul 2009 a
Norway	21 Dec 2007	
Palau	20 Sep 2011	
Panama	25 Sep 2007	24 Jun 2011
Paraguay	6 Feb 2007	3 Aug 2010
Peru		26 Sep 2012 a
Poland	25 Jun 2013	
Portugal	6 Feb 2007	
Republic of Moldova	6 Feb 2007	
Romania	3 Dec 2008	
Samoa	6 Feb 2007	27 Nov 2012
Senegal	6 Feb 2007	11 Dec 2008
Serbia	6 Feb 2007	18 May 2011
Sierra Leone	6 Feb 2007	
Slovakia	26 Sep 2007	
Slovenia	26 Sep 2007	
Spain	27 Sep 2007	24 Sep 2009
St. Vincent and the Grenadines	29 Mar 2010	
Swaziland	25 Sep 2007	
Sweden	6 Feb 2007	
Switzerland	19 Jan 2011	
Thailand	9 Jan 2012	
The former Yugoslav Republic of Macedonia	6 Feb 2007	
Togo	27 Oct 2010	
Tunisia	6 Feb 2007	29 Jun 2011
Uganda	6 Feb 2007	
United Republic of Tanzania	29 Sep 2008	
Uruguay	6 Feb 2007	4 Mar 2009
Vanuatu	6 Feb 2007	
Venezuela (Bolivarian Republic of)	21 Oct 2008	
Zambia	27 Sep 2010	4 Apr 2011

²⁰⁰ For the European part of the Netherlands and the Caribbean part of the Netherlands (the Islands of Bonaire, Sint Eustatius and Saba).



APPENDICE II: Members of the International Coalition Against Enforced Disappearances²⁰¹

1. Aim for human rights
2. Amnesty International
3. Asian Federation Against Involuntary Disappearances (AFAD)
4. Civil Initiative We Remember Foundation - Belarus
5. Collectif des Familles de Disparus en Algérie (CFDA) - Algeria
6. Euro-Med Federation Against Enforced Disappearances (FEMED)
7. Fédération Internationale des Droits de l'Homme (FIDH)
8. Fédération Internationale de l'ACAT (FIACAT)
9. Federación Latinoamericana de Asociaciones de Familiares de Detenidos-Desaparecidos (FEDEFAM)
10. Human Rights Watch (HRW)
11. International Commission of Jurists (ICJ)
12. Russian Justice Initiative - Russia
13. Liga Guatemalteca de Higiene Mental - Guatemala
14. TRIAL (Track Impunity Always – association suisse contre l'impunité) - Switzerland
15. Breaking the Walls of Silence - Namibia
16. AFAPREDESA - Western Sahara
17. Asociación Derechos Humanos Económicos, Sociales y Culturales en Guatemala (DESCGUA) - Guatemala
18. Disarmament and Non-Violence – Georgia
19. Lawyers for Human Rights- South Africa
20. National Society for Human Rights (NSHR) - Namibia
21. Colegio de Abogados - Peru
22. Association of Family Members of Disappeared - Sri Lanka
23. Asociación Pro-Búsqueda de Niñas y Niños Desaparecidos de El Salvador - El Salvador
24. Coordinadora Nacional de Derechos Humanos - Peru
25. Asociación de Detenidos-Desaparecidos, Ejecuciones Extrajudiciales y Torturados de Huancayo-Junin-Peru - Peru
26. Families of Victims of Involuntary Disappearance (FIND) - Philippines
27. Organisation Marocaine Des Droits HUMAINS - Morocco
28. Al-Ata'a for Human Rights Support - Iraq

²⁰¹ International Coalition Against Enforced Disappearances, *Members of ICAED*, available at <http://www.icaed.org/the-coalition/membership-list/> (consulted on 13 December 2013).

29. Centro de los derechos humanos y talleres productivos Qatari Panituri - Peru
30. Association de Parents et Amis de Disparus au Maroc (APADM)- Morocco
31. Comité de Coordination des Familles des Disparus au Maroc (CCFDM)- Morocco
32. Institute for Community Policing (ICP) - Nigeria
33. Asociación per a la recuperación de la memória històrica de Catalunya (ARMHC)- Spain
34. Truth now - Cyprus
35. Comision de Derechos Humanos (COMISEDH) - Peru
36. Social Justice for Equality - Nepal
37. Centro de documentacion en derechos humanos "Segundo Montes Mozo S.J" - Ecuador
38. Zimbabwe Peace Project - Zimbabwe
39. Equipo Peruano de Antropologia Forense - Peru
40. Asamblea Permanente por los Derechos Humanos - Argentina
41. Torture Abolition and Survivors Support Coalition International (TASSC)
42. Jardin des Disparus
43. Citizens' Alliance for North Korean Human Rights
44. Advocacy Forum
45. Non-violence International
46. Asian Human Rights Commission
47. Charter 97
48. Dmitry Zavadsky Foundation
49. Geneva for Human Rights
50. Madres y Familiares de Uruguayos Detenidos-Desaparecidos
51. European Belarus Civil Campaign

APPENDICE III: Reported Cases of Enforced Disappearances of Civilians in East Turkestan²⁰²

²⁰² World Uyghur Congress, *Vanishing Vulnerable Voices: Four Years of Impunity Cases of Enforced Disappearances of Civilians in East Turkestan*, *op. cit.*

№	Name	Age	Profession	Ethnicity	Place of Capture	Date of Capture
1	Alim Abdurehim	35	Employee at the Astane Company	Uyghur	Urumchi	5 July 2009
2	Abaxun Sopur	33	Street Fruit Vendor	Uyghur	Urumchi	7 July 2009
3	Abdukerim Abla	22	Retail Associate	Uyghur	Urumchi	13 August 2009
4	Abdugheni Eziz	39	Entrepreneur	Uyghur	Urumchi	31 July 2009
5	Abduleziz Ablet	17	Assistant Chef	Uyghur	Urumchi	5 July 2009
6	Abdurehim Qadir	45	Blacksmith	Uyghur	Urumchi	6 July 2009
7	Abdurehim Sidiq	24	Car Mechanic	Uyghur	Kashgar	5 July 2009
8	Ablajan Sulayman	19	Retail Associate	Uyghur	Urumchi	6 July 2009
9	Abliz Qadir	36	Baker	Uyghur	Urumchi	1 August 2009
10	Alimjan Helaji	17	Street Fruit Vendor	Uyghur	Urumchi	10 July 2009
11	Alimjan Bekri	24	Real Estate Agent	Uyghur	Urumchi	5 July 2009
12	Amantay Jumetay	29	Bus Driver	Kazakh	Urumchi	5 July 2009
13	Aytqazi Hasanbek	26	Recent Graduate from Forestry Designing Institute	Kazakh	Urumchi	5 July 2009
14	Bekri Toxti	34	Unknown	Uyghur	Unknown	Unknown
15	Ehmetjan	26	Street Vendor	Uyghur	Urumchi	27 August 2009

Jume						
16	Ekber Tursun	26	Entrepreneur	Uyghur	Urumchi	20 October 2009
17	Enver Turdi	26	Farmer	Uyghur	Urumchi	7 July 2009
18	Eysajan Emet	25	Chef/Musician	Uyghur	Urumchi	5 July 2009
19	Imammemet Eli	22	Recent Graduate from South China University of Technology	Uyghur	Urumchi	14 July 2009
20	Imin Momin	28	Construction Worker	Uyghur	Urumchi	5 July 2009
21	Jumejan Tursun	27	Unknown	Uyghur	Urumchi	5 July 2009
22	Memet Barat	25	Unknown	Uyghur	Urumchi	6 July 2009
23	Memetabla Abdurehim	17	Unemployed	Uyghur	Urumchi	Unknown
24	Memtimin Yasin	33	Unknown	Uyghur	Unknown	Unknown
25	Muxter Mexet	35	Unknown	Uyghur	Urumchi	15 July 2009
26	Nebi Eli	16	Student	Uyghur	Urumchi	15 August 2009
27	Nurul Islam	16	Student	Uyghur	Urumchi	27 August 2009
28	Tahirjan Ebey	36	Street Vendor	Uyghur	Urumchi	7 July 2009
29	Tohtieli Hashim	21	Restaurant Associate	Uyghur	Urumchi	5 July 2009
30	Turdimemet Tursunniyaz	20	Butcher	Uyghur	Urumchi	5 July 2009
31	Turghun Obulqasim	33	Restaurant Manager	Uyghur	Urumchi	9 July 2009
32	Tursunjan Tohti	26	Hairdresser	Uyghur	Urumchi	1 August 2009
33	Yusup Turghun	20	Student	Uyghur	Unknown	Unknown
34	Zakir Memet	34	Unknown	Uyghur	Urumchi	15 July 2009

