



Human Rights Council
Working Group on Enforced or Involuntary Disappearances**Methods of work of the Working Group on Enforced or Involuntary Disappearances****I. Mandate****Legal basis for the mandate**

1. The present Methods of Work of the Working Group on Enforced or Involuntary Disappearances are based on the mandate of the Working Group, as stipulated by the Commission on Human Rights in its resolution 20 (XXXVI) and developed by the Commission and the Human Rights Council in numerous subsequent resolutions. The parameters of its work are laid down in the Charter of the United Nations, the International Bill of Human Rights and the Declaration on the Protection of All Persons from Enforced or Involuntary Disappearance, adopted by the General Assembly in its resolution 47/133 of 18 December 1992 (hereinafter “the Declaration”).

The mandate: humanitarian and monitoring

2. One aspect of the mandate of the Working Group is to assist families in determining the fate or whereabouts of their disappeared relatives who are placed outside the protection of the law. To this end, the Working Group endeavours to establish a channel of communication between the families and the States concerned, with a view to ensuring that sufficiently documented and clearly identified individual cases that families have, directly or indirectly, brought to the attention of the Working Group are investigated with a view to clarifying the fate or whereabouts of the disappeared persons.

3. In transmitting cases of disappearance, the Working Group deals exclusively with States, on the basis of the principle that States must respect, protect and fulfil the human rights of any person under their jurisdiction.

4. The Working Group has also been entrusted to (a) monitor States’ compliance with their obligations deriving from the Declaration and existing international rules, and (b) to provide States with assistance in the implementation of these norms.

5. The Working Group reminds States of their obligations not only in the context of clarifying individual cases but also in taking action of a more general nature, including to prevent, investigate, punish and eradicate enforced disappearances.



6. The Working Group draws the attention of States, non-governmental organizations, families and other relevant stakeholders to general or specific aspects of the Declaration, recommends ways of overcoming obstacles to the realization of the Declaration and discusses with representatives of States, non-governmental organizations, families and other relevant stakeholders how to solve specific problems in the light of the Declaration. It furthermore assists States by carrying out country visits, and assists States, non-governmental organizations, families and other relevant stakeholders by organizing seminars and providing similar advisory services. The Working Group also makes observations on the implementation of the Declaration to concerned States. It adopts general comments whenever it determines that the Declaration requires further clarification or interpretation in the context of international law. The Working Group also develops strategies for disseminating its work to States, all relevant United Nations bodies, other intergovernmental human rights institutions, national human rights institutions, non-governmental organizations, other relevant civil society organizations and families.

Definition of enforced disappearance

7. As defined in the preamble of the Declaration, enforced disappearances occur when persons are arrested, detained or abducted against their will or otherwise deprived of their liberty by officials of different branches or levels of Government or by organized groups or private individuals acting on behalf of, or with the support, direct or indirect, consent or acquiescence of, the Government, followed by a refusal to disclose the fate or whereabouts of the persons concerned or a refusal to acknowledge the deprivation of their liberty, which places such persons outside the protection of the law.

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

Definition of victims

9. While the Declaration does not define explicitly the concept of victims of enforced disappearance, a definition may nonetheless be inferred from it and by taking into consideration the evolution of international law. For the purpose of the implementation of its mandate, the Working Group considers that victims include a disappeared person and any individual who has suffered harm as the direct result of an enforced disappearance.

II. Handling of cases

Urgent procedure

10. Cases of enforced disappearance that have occurred within the three months prior to the receipt of a report by the Working Group are transmitted to the State concerned through the most direct and rapid means possible. Cases that have occurred prior to the three-month limit, but not more than one year before the date of their receipt by the Secretariat, provided that they had a connection with a case that occurred within the three-month period, may be transmitted between sessions by letter upon authorization by the Chair-Rapporteur. The Working Group notifies sources that an urgent action has been sent to the State concerned,

thus helping relatives or the source to enter into communication with the relevant authorities.

Standard procedure

11. Cases of enforced disappearance that are reported after three months are brought before the Working Group for detailed examination during its sessions. Those cases are transmitted, upon the specific authorization of the Working Group, to the States concerned with the request to carry out investigations in order to clarify the fate or whereabouts of the disappeared person, and to inform the Working Group of the results. Such cases are communicated by letter from the Chair-Rapporteur of the Working Group to the States concerned.

Reports of cases of enforced or involuntary disappearance

12. Reports of cases of enforced or involuntary disappearances are generally submitted to the Working Group by the family or friends of the disappeared person. Such reports may, however, be transmitted to the Working Group by representatives of the family, States, intergovernmental organizations, non-governmental organizations or other reliable sources. The reports must be submitted in writing, with clear indication of the identity of the source; if the source is other than a family member, it must have the explicit consent of the family to submit the case on its behalf, and must also be in a position to follow up with the relatives of the disappeared person concerning that person's fate, unless exceptional circumstances exist, as provided for in paragraph 14(f) below.

13. The Working Group will formally acknowledge receipt of a report, and may request any clarification necessary from the source.

Requirements for consideration of cases

14. In order to enable States to carry out meaningful investigations, the Working Group provides them with all the available and relevant information received. In this regard, the Working Group urges sources to provide as much detail as possible concerning the identity of the disappeared person and the circumstances of the disappearance. The Working Group requires the following minimum elements:

(a) Full name of the disappeared person (with the full name in the original language, if possible) and, if applicable, any aliases or other names used by the person, and the person's date of birth, gender, nationality and occupation or profession;

(b) Date of disappearance, namely, the day, month and year of deprivation of liberty, or day, month and year when the disappeared person was last seen. In the event that the date of disappearance is not known, an approximate indication should be provided (for example, March or spring 2012);

(c) Place of deprivation of liberty or where the disappeared person was last seen (as precise as possible, with indication of street, city, province or any other relevant information);

(d) State agents or other parties acting on behalf of, or with the support, direct or indirect, consent or acquiescence of, the State believed to be responsible for the deprivation of liberty of the person or to be holding the disappeared person in unacknowledged detention;

(e) The steps taken by the family or any other individual or organization on behalf of the family to determine the fate or whereabouts of the disappeared person, or at least an indication that efforts to resort to domestic remedies have been frustrated or

otherwise been inconclusive. Reasons should be provided in the event that no action has been taken;

(f) The case should be submitted to the Working Group by a reliable source, which, if other than a family member, must indicate whether the reported victim's family has given their direct consent that the case be submitted to the Working Group on their behalf. If no consent has been provided, the source should include a detailed explanation.

15. If a case does not meet the above requirements, the Working Group will request additional information.

Situations of vulnerability

16. With regard to reported cases of disappearance, the Working Group highlights the condition of people in situations of vulnerability, including women, children, the elderly, persons with disabilities and persons belonging to minorities and indigenous peoples.

Children

17. In the case of the disappearance of a child, the Working Group will withhold the name of the child in public documents, unless the best interests of the child or the mandate of the Working Group requires otherwise.

Pregnancy

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

Cases concerning two or more States

19. Reports on a disappearance that indicate that officials from one State are directly responsible for or involved in a disappearance in another State, or in cases where officials from more than one State were directly responsible for or involved in the disappearance, are to be communicated to all States concerned. The Working Group may copy other States if the circumstances so require.

20. The case is only counted in the statistics of the State in which the person was reportedly deprived of liberty or last seen. In exceptional circumstances, and if the humanitarian mandate of the Working Group so requires, cases may be counted in the statistics of a different State. However, the State upon whose territory the disappearance occurred or from whom the victim is a national may be copied on communications so that it may also play a role, where possible, in gathering any information that could lead to the clarification of the case.

Outstanding cases

21. The Working Group considers cases outstanding until they have been clarified, archived or discontinued in accordance with the present Methods of Work. This principle shall not be affected by any change of Government in a given country or in the event of State succession.

Reminders

22. The Working Group reminds every State concerned once a year of the cases that have not yet been clarified, and three times a year of all urgent action cases transmitted

since the previous session. On request, the Working Group will provide, to the extent possible, updated information on specific cases to the State or source concerned.

Replies to and information on cases

23. All relevant information that a source or State submits on an outstanding case will be examined by the Working Group and transmitted to the State or source concerned for any observations that they may have or to provide additional details on the case. The Chair-Rapporteur may authorize during intersessional periods the transmission of information that does not potentially lead to the clarification, closure or discontinuation of the case. Members will be updated at the next session on the information transmitted on the authorization of the Chair-Rapporteur for any decision that may need to be taken.

24. If well-documented information provided by a source clearly establishes the fate or whereabouts of a disappeared person, the case is clarified. If the information is provided by the State concerned and the Working Group determines that there is sufficient information that may lead to the clarification of the case, the six-month rule will apply. If the Working Group decides that further information is required from the State or from the source, it may keep the case as outstanding.

Six-month rule

25. Any reply from a State containing clear and detailed information on the fate or whereabouts of the disappeared person will be transmitted to the source. If the source does not respond within six months of the date from which the State's reply was communicated to it, or if it contests the State's information on grounds that are considered unreasonable by the Working Group, the case will be considered clarified and accordingly listed under the heading "Cases clarified by the State's response" in the statistical summary of the annual report. If the source contests the State's information on reasonable grounds, the State will be so informed and invited to comment thereon.

Clarification of cases

26. Clarification occurs when the fate or whereabouts of disappeared persons are clearly established and detailed information is transmitted as a result of an investigation by the State, inquiries by non-governmental organizations, fact-finding missions by the Working Group or by human rights personnel from the United Nations or from any other international organization operating in the field, or by a search conducted by the family, irrespective of whether the person is alive or dead. In these circumstances, the six-month rule provided for in article 25 above will apply.

Archiving of cases

27. The Working Group may decide to archive a case when the competent authority specified in the relevant national law issues a declaration of absence as a result of enforced disappearance and the relatives or other interested parties have manifested, freely and indisputably, their desire not to pursue the case any further. These conditions should at all times respect the rights to truth, justice and integral reparation.

Discontinuation of cases

28. In exceptional circumstances, the Working Group may decide to discontinue the consideration of cases where the families have manifested, freely and indisputably, their desire not to pursue the case any further, or when the source is no longer in existence or is unable to follow up the case, and the steps taken by the Working Group to establish communication with other sources have proven unsuccessful.

Reopening of cases

29. If sources provide clear and detailed information on a case that has been clarified, archived or discontinued erroneously because the State's reply referred to a different person, does not correspond to the reported situation or has not reached the source within the six-month period referred to above, the Working Group may decide to transmit the case to the State anew and request it to comment. In such instances, the case in question will be relisted among the cases outstanding.

III. Other protection mechanisms

Urgent appeals

30. The Working Group may send an urgent appeal whenever credible allegations are received that a person has been arrested, detained, abducted or otherwise deprived of liberty and has been enforcedly disappeared or is at risk of being made to disappear. In other exceptional circumstances, this procedure may be followed when the Working Group deems it warranted by the situation. The Working Group will transmit those allegations to the Minister for Foreign Affairs of the State concerned by the most direct and rapid means, and requests the said State to carry out investigations on the matter and to inform the Working Group.

31. Urgent appeals are reflected in the post-sessional documents and the annual report of the Working Group, but will not be counted in the statistics of the State concerned. Should, however, the information contained therein be provided in accordance with the requirements listed under "Requirements for consideration of cases", the urgent appeal will become a standard or urgent case as appropriate, in which case the State concerned will be informed by separate communication.

Prompt interventions

32. Cases of intimidation, persecution or reprisal against relatives of disappeared persons, witnesses to disappearances or their families, members of organizations of relatives and other non-governmental organizations, human rights defenders or individuals concerned with disappearances are transmitted to the pertinent States, with the appeal that they take steps to protect all the fundamental rights of the persons affected. Cases of that nature requiring prompt intervention are transmitted directly to the Minister for Foreign Affairs by the most direct and rapid means.

General allegations

33. The Working Group regularly transmits to States a summary of allegations received or gathered from States, reliable sources, such as relatives of disappeared persons, or credible non-governmental organizations with regard to obstacles encountered in the implementation of the Declaration in any State, and requests the State to comment thereon if it so wishes.

34. General allegations will be reflected in the post-sessional documents and in the annual report of the Working Group.

Other communications

35. When credible and detailed allegations are received that a State is practicing enforced disappearances, the Working Group may decide to intervene.

36. The Working Group may also communicate with States and other sources when credible and detailed allegations are received that indicate that a State is considering the adoption of measures that could create obstacles in the implementation of the Declaration.

Follow-up on communications

37. When the Working Group considers it appropriate, it may require from the State, the original source or any other sources any relevant information on the matter that would permit it to assess the situation and the effectiveness of the measures taken by the State in response to its communications. The Working Group may adopt any other follow-up measures that it considers appropriate.

State replies to urgent appeals, general allegations, prompt interventions and other communications

38. All replies received from States concerning urgent appeals, general allegations, prompt interventions and other communications are examined by the Working Group and summarized in its post-session documents and the annual report submitted to the Human Rights Council. When pertinent, any information provided by the State on those communications is forwarded to the sources, who are invited to make observations thereon or to provide additional details.

IV. Delegation of authority

39. If the Working Group is not in session, the transmission of communications to States and sources may be authorized by the Chair-Rapporteur on the basis of delegation of power given to him or her by the Working Group, in consultation, if possible, with the other members.

40. The full text of any such transmission will be sent in the language of submission to the other members.

V. Dialogue, coordination and cooperation

41. The Working Group maintains a dialogue with States on issues relating to enforced disappearances and the implementation of the Declaration.

42. The Working Group cooperates, coordinates and, when appropriate, consults with the Human Rights Council, its special procedures, relevant organs, offices and specialized agencies and funds of the United Nations, treaty bodies and other bodies instituted by the United Nations or by other inter-governmental, international, regional or subregional organizations with a view to ensuring the consistency of their respective observations and recommendations.

43. The Working Group cooperates and coordinates with the Committee on Enforced Disappearances. When exchanging information and coordinating action, the Working Group respects the different mandates and roles of the two bodies. In dealing with cases and other urgent procedures, the Working Group operates in accordance with the rule contained in paragraph 47 below of the present Methods of Work.

44. The Working Group also works with national institutions in seeking dialogue on issues relevant to its mandate and when preparing its visits, during the visits and in their follow-up.

45. The Working Group interacts with non-governmental organizations, associations of victims' families and other relevant civil society organizations. It invites them to submit to it reports, other information or documentation and oral and written statements, as appropriate, relevant to the activities of the Working Group.

46. The Working Group may receive, at its discretion, any other information, documentation and statements submitted to it, including from individuals and sources not mentioned in the above paragraphs.

Referral of communication to other bodies

47. Should the Working Group determine that a case or allegation before it would be better handled by another body, it will consult with the source and then refer the case or allegation to the other body for action, if appropriate. When preferable, the Working Group will work jointly with the other body or bodies. If a case, allegation or other document received by the Working Group contains information relevant to other bodies, the information will be referred to the bodies concerned, if appropriate.

48. In the event that the Working Group receives claims of practices of enforced disappearances that may amount to crimes against humanity, it will evaluate these claims and, if appropriate, refer them to the competent authorities, be they international, regional, subregional or domestic.

VI. Other activities of the Working Group

Country visits and reports

49. The Working Group carries out visits to countries on invitation, but also takes the initiative of approaching States with a view to carrying out country visits, when considered appropriate. Such visits are intended to, inter alia, enhance the dialogue between the authorities most directly concerned, the families or their representatives and the Working Group and to assist in the clarification of the reported cases of enforced disappearance. The Working Group also undertakes visits to examine the practices carried out by States to prevent, investigate, punish and eradicate enforced disappearances, as well as the programmes and measures adopted to implement the Declaration and to guarantee the rights of, among others, the victims.

50. The Working Group reports to the Human Rights Council on its country visits.

51. With regard to countries that have not accepted requests to visit them, the Working Group may decide to assess the information gathered without a country visit. The Working Group may also decide how to make that assessment publicly available and how to engage in a constructive dialogue with the concerned State.

Follow-up

52. With regard to countries in which visits have been carried out or in cases where the situation has been assessed without a visit to the country, the Working Group will remind the States concerned of the observations and recommendations made in the relevant reports, requesting information on the consideration given to them, the steps taken for their implementation or the constraints which might have prevented their implementation for as long as the Working Group determines it appropriate. The Working Group may also take the initiative to carry out follow-up visits.

53. The Working Group may request information from civil society and from other appropriate sources in order to continue to assess the status of implementation of recommendations.

54. The information gathered from the State and other sources may be used in the preparation of a follow-up report in the annual report of the Working Group, or in any other appropriate forms.

Sessions

55. The Working Group meets three times a year to consider the information brought to its attention since its previous session. Its sessions are held in private. The Working Group may decide on an ad hoc basis to hold a meeting in public.

56. During sessions, the Working Group may convene meetings *ex officio* or at the request of interested parties to receive information from States or other sources.

Intersessional activities

57. The Working Group works during intersessional periods and meets regularly with representatives of States, non-governmental organizations, family members and witnesses.

58. Members of the Working Group engage in intersessional activities in their capacity as members of the Working Group.

59. All activities conducted by the members of the Working Group that have a connection with the mandate of the Working Group will be covered by the present Methods of Work.

60. Members engaging in intersessional activities should inform the Working Group in advance if possible and report back to the Working Group after the activity has been carried out.

61. Members engaging in intersessional activities are not empowered to make commitments or decisions on behalf of the Working Group unless there is a specific delegation of power given to him or her by the Working Group. Nothing in this rule shall restrict any of the already existing powers of the Chair-Rapporteur.

62. Members should avoid any type of actual or potential conflict of interest while engaging in intersessional activities.

Participation of members

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

VII. Election of officers

64. The Working Group shall elect from among its members a Chair-Rapporteur and a Vice-Chair. The officers of the Working Group shall be elected for a term of one year. They shall be eligible for re-election. In electing its officers, the Working Group shall give consideration, among other factors, to equitable geographical distribution and appropriate gender balance and, to the extent possible, rotation among members.

65. Where there is only one candidate for election of one of its officers, the Working Group may decide to elect that person by consensus. Where there are two or more candidates for election as one of its officers or where the Working Group otherwise decides to proceed with a ballot, the person obtaining a simple majority of the votes cast shall be elected. If no single candidate receives such a majority, a second ballot shall be held. The member receiving the most votes shall then be elected. Elections shall be held by secret ballot.

VIII. Annual report and post-sessional documents

66. The Working Group reports annually to the Human Rights Council and to the General Assembly on its activities. It informs the Council and the Assembly of its communications with States and non-governmental organizations, its meetings and visits. Reports on country visits are issued as addenda to the main report.

67. The Working Group adopts and publishes post-sessional documents after each session, reflecting the activities conducted and communications and cases examined.

IX. Titles

68. Titles are for reference only and should not be considered part of the present Methods of Work.

Adopted on 7 February 2014
