

Annex II

Revised methods of work of the Working Group on Enforced or Involuntary Disappearances

Adopted on 11 November 2011. Applicable as from 1 January 2012.

A. The mandate

Legal basis for the mandate

1. The Working Group on Enforced or Involuntary Disappearances' methods of work are based on its mandate as stipulated originally in Commission on Human Rights resolution 20 (XXXVI) and as developed by the Commission and its successor the Human Rights Council in numerous further resolutions. The parameters of its work are laid down in the Charter of the United Nations, the International Bill of Human Rights, Economic and Social Council resolution 1235 (XLI) 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 referred to as "the Declaration").

Humanitarian mandate

2. One of the mandates of the Working Group is aimed at assisting families in determining the fate and 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 Governments concerned, with a view to ensuring that sufficiently documented and clearly identified individual cases which families, directly or indirectly, have brought to the Working Group's attention are investigated with a view to clarifying the fate or whereabouts of the disappeared persons. In transmitting cases of disappearance, the Working Group deals exclusively with Governments, basing itself on the principle that Governments must assume responsibility for any violation of human rights on their territory.

Monitoring mandate

3. In addition, the Working Group has been entrusted to monitor States' compliance with their obligations deriving from the Declaration on the Protection of All Persons from Enforced Disappearance and of existing international rules and to provide to Governments with assistance in their implementation

4. The Working Group reminds the Governments of their obligations not only in the context of clarifying individual cases but also that of taking action of a more general nature. It draws the attention of Governments and non-governmental organizations to general or specific aspects of the Declaration, it recommends ways of overcoming obstacles to the realization of the Declaration, it discusses with representatives of Governments and non-governmental organizations how to solve specific problems in the light of the Declaration, it assists Governments by carrying out on-the-spot visits, organizing seminars and providing similar advisory services. The Working Group also makes observations on the implementation of the Declaration when the concerned Government has not fulfilled its obligations related to the rights to truth, justice and reparation. The Working Group adopts general comments whenever it considers that a provision of the Declaration requires further clarification or interpretation.

Definition of enforced disappearance

5. 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.

Definition of Perpetrators

6. 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 as such when the act in question is perpetrated by State actors or by private individuals or organized groups (e.g. paramilitary groups) acting on behalf of, or with the support, direct or indirect, consent or acquiescence of the Government. Based on the above, the Working Group does not admit cases when they 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 in its own territory.

B. Handling of cases

Urgent procedures

7. Cases of enforced disappearances that occurred within the three months preceding receipt of the report by the Working Group are transmitted to the Minister for Foreign Affairs of the country concerned by the most direct and rapid means. Their transmission can be authorized by the Chair-Rapporteur on the basis of a specific delegation of power given to him by the Working Group. Cases which 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 some connection with a case which occurred within the three-month period, can 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 concerned Government, thus helping it to enter into communication with the authorities about the specific case.

Standard procedures

8. Cases of enforced disappearances that are reported after three months are placed before the Working Group for detailed examination during its sessions. Those which fulfil the requirements outlined above are transmitted, upon the Working Group's specific authorization, to the Governments concerned with the request that they carry out investigations in order to clarify the fate or whereabouts of the disappeared person, and inform the Working Group of the results. These cases are communicated by letter from the Working Group's Chair-Rapporteur to the Government concerned through the Permanent Representative to the United Nations Office at Geneva.

9. Any substantive additional information which the sources submit on an outstanding case is placed before the Working Group and, following its approval, transmitted to the Government concerned.

Admissibility of cases of enforced or involuntary disappearances

10. Reports of disappearances are considered admissible by the Working Group when they originate from the family or friends of the disappeared person. Such reports may, however, be channelled to the Working Group through representatives of the family, Governments, intergovernmental organizations, non-governmental organizations and other reliable sources. They must be submitted in writing with a clear indication of the identity of the sender; if the source is other than a family member, it must have direct consent of the family to submit the case on its behalf, and it must also be in a position to follow up with the relatives of the disappeared person concerning his or her fate.

Elements for admissibility

11. In order to enable Governments to carry out meaningful investigations, the Working Group provides them with information containing at least a minimum of basic data. In addition, the Working Group constantly urges the senders of reports to furnish as many details 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 and, if possible, age, gender, nationality, and occupation or profession;
- (b) Date of disappearance, i.e. day, month and year of arrest or abduction, or day, month and year when the disappeared person was last seen. When the disappeared person was last seen in a detention centre, an approximate indication is sufficient (for example, March or spring 1990);
- (c) Place of arrest or abduction, or where the disappeared person was last seen (indication of town or village, at least);
- (d) Parties, acting on behalf of, or with the support, direct or indirect, consent or acquiescence of the Government, presumed to have carried out the arrest or abduction or to be holding the disappeared person in unacknowledged detention;
- (e) Steps taken by the family to determine the fate or whereabouts of the disappeared person, or at least an indication that efforts to resort to domestic remedies were frustrated or have otherwise been inconclusive.
- (f) A 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 this case be submitted to the Working Group on their behalf.

12. If a case is not admitted, the Working Group sends a response to the source indicating that the information received did not fulfil the established requirements, in order to permit the source to provide all relevant information.

Situations of vulnerability

13. With respect to reported cases of disappearances, the Working Group highlights the condition of people in situations of vulnerability, including women, children, the elderly, persons with disabilities, and other vulnerable groups.

Pregnancy

14. 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 case of the mother. The child would be treated as a separate case when witnesses reported that the mother had actually given birth to a child during detention.

Cases concerning two or more countries

15. Reports on a disappearance indicating that officials from one country are directly responsible for or involved in a disappearance in another country, or in cases where officials from more than one country were directly responsible for or involved in the disappearance would be communicated to all Governments concerned. However, the case would only be counted in the statistics of the country in which the person was reportedly arrested, detained, abducted or last seen. The same principles are applied with respect to the transmission of all communications. In exceptional circumstances, and if the humanitarian mandate of the Working Group so requires, cases may be counted in the statistics of a different country. However, the State upon whose territory the disappearance occurred will be copied on all communications so that it could also play a role, where possible, to gather all available information which could lead to the clarification of the cases.

Outstanding cases

16. The Working Group considers cases as outstanding for as long as they have not been clarified, closed or discontinued in accordance with the present methods of work. This principle is not affected by changes of Government in a given country nor in the event of State succession.

Reminders

17. The Working Group reminds every Government concerned once a year of the cases which 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 provides to the Government concerned or the source, to the extent possible, updated information on specific cases.

Government replies

18. All replies received from Governments concerning reports of disappearances are examined by the Working Group and summarized in the Working Group's annual report to the Human Rights Council. Any information given on specific cases is forwarded to the sources of those reports, who are invited to make observations thereon or to provide additional details on the cases.

The six-month rule

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

Clarification

20. Clarification occurs when the fate or whereabouts of the disappeared persons are clearly established and detailed information is transmitted as a result of an investigation by the Government, inquiries by non-governmental organisations, 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 the search of the family, irrespective

of whether the person is alive or dead. In these circumstances the six-month rule, provided in article 19, applies.

Closed cases

21. The Working Group may decide stop pursuing a case when the competent authority specified in the relevant national law issues a declaration of absence as a result of enforced disappearance or, alternatively, a declaration of presumption of death, 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 right to integral reparation.

Discontinuation of cases

22. 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 steps taken by the Working Group to establish communication with other sources have proven unsuccessful.

Reopening of cases

23. If sources provide well-documented information that a case has been considered clarified, closed or discontinued erroneously, because the Government'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 transmits the case to the Government anew, requesting it to comment. In such instances, the case in question is again listed among the outstanding cases and a specific explanation is given in the Working Group's report to the Human Rights Council, describing the above-mentioned errors or discrepancies.

C. Other protection mechanisms

Urgent appeals

24. When credible allegations are received that a person has been arrested, detained, abducted, or otherwise deprived of his liberty and has been enforcedly disappeared or is at risk of being disappeared, the Working Group will transmit those allegations to the Minister for Foreign Affairs of the Government concerned by the most direct and rapid means requesting said Government to carry out investigations to clarify the fate or whereabouts of the person(s) concerned and to inform the Working Group about the results. The transmission of urgent appeals is authorized by the Chair-Rapporteur on the basis of a specific delegation of power given to him by the Working Group.

25. Urgent appeals will be reflected in the annual report of the Working Group, but will not be counted in the statistics of the Government concerned. However, should the information contained therein be provided in accordance with the requirements listed under "Admissibility of cases of enforced or involuntary disappearances" and "Elements for admissibility", the urgent appeal will become a standard or urgent case as appropriate in which case the Government concerned will be informed by separate communication.

Prompt interventions

26. 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 Governments, with the appeal that they take steps to protect all the fundamental rights of the persons affected. Cases of that nature, which require prompt intervention, are transmitted directly to the Ministers for Foreign Affairs by the most direct and rapid means. To that end, the Working Group has authorized its Chair-Rapporteur to transmit such cases between sessions.

General allegations

27. The Working Group regularly transmits to the Governments concerned a summary of allegations received from relatives of disappeared persons and non-governmental organizations with regard to obstacles encountered in the implementation of the Declaration in their respective countries, inviting them to comment thereon if they so wish.

Cooperation with other mechanisms

28. If a case or allegation contains information relevant to other thematic mechanisms of the Human Rights Council, the information is transmitted to the mechanism concerned.

29. Where appropriate, the Working Group may join other mechanisms in the actions they take within the scope of their respective mandates.

D. Activities of the Working Group

Country missions

30. The Working Group carries out visits to countries on invitation, but also takes the initiative of approaching Governments with a view to carrying out visits to countries, when considered appropriate. Such visits are intended to 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 disappearances. The Working Group also undertakes visits to examine the practices carried out by Governments to clarify cases of enforced disappearances, as well as the programmes and measures adopted to implement the Declaration and to guarantee the rights of the victims, including the right to integral reparation. The Working Group reports to the Council on its country visits in an addendum to its annual report.

Follow-up

31. With regard to countries in which visits have been carried out, the Working Group periodically reminds the Governments concerned of the observations and recommendations formulated in the respective reports, requesting information on the consideration given to them, and the steps taken for their implementation or the constraints which might have prevented their implementation. The Working Group may also take the initiative to carry out follow-up visits.

Sessions

32. 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. However, the Working Group works intersessionally and regularly meets with representatives of Governments, non-governmental organizations, family members and witnesses.

Reports

33. The Working Group reports annually to the Human Rights Council on the activities which it has carried out from the end of the Council's previous session up until the last day

of the Working Group's third annual session. It informs the Council of its communications with Governments and non-governmental organizations, its meetings and missions. Reports on missions are contained as addenda to the main report. The Working Group reports on all cases of disappearance received by the Group during the year, on a country by country basis, and on the decision it has taken thereon. It provides the Council with a statistical summary for each country of cases transmitted to the Government, clarifications, and the status of the person concerned on the date of clarification. It includes graphs showing the development of disappearances in countries with more than 100 transmitted cases as of the date of the adoption by the Working Group of its annual report. The Working Group includes conclusions and recommendations in its report and makes observations on the situation of disappearances in individual countries. The Working Group further reports on the implementation of the Declaration and the obstacles encountered therein, and periodically reports on broader issues surrounding the phenomenon of enforced disappearance.

Participation of experts

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

Titles

35. Titles are for reference only and should not be considered as part of the methods of work.