
COMMITTEE ON ENFORCED DISAPPEARANCES

Inaugural session attracts significant NGO interest



Photo: Arianna Marchesan

The inaugural meeting of the Committee on Enforced Disappearances (the Committee) saw the induction of the Committee's ten new members, and launched discussion on the body's programme of work and rules of procedure. The session took place in Geneva from 8 to 11 November 2011, when meetings were held with non-governmental organisations (NGOs), State Parties,¹ and with the Human Rights Council's Working Group on Enforced Disappearances.

All meetings, except those with NGOs and State Parties, and the opening of the session, were closed to the public. While there is arguably a need for new committees to first establish themselves in closed sessions, it became clear during the Committee's meeting with NGOs that there is a great deal of interest in its work, and confusion about the new body's mandate. An increased number of public sessions would have assisted all stakeholders to become more familiar with the new Committee.

MEMBERSHIP AND OFFICERS

The Committee has ten members, nine men and one woman.² They come from a mixture of civil society, government, academic, and legal backgrounds. The two members with a government background, Mr Mohammed Al-Obaidi (Iraq) and Ms Suela Janina (Algeria) have both previously been involved in drafting the State reports of their respective countries for previous treaty body reviews. It will be interesting to see how they approach their new roles of examining such reports.

Mr Rainer Huhle (Germany) and Mr Enoc Mulembe (Zambia) have roles within their countries' national human rights institutions (NHRIs), Mr Huhle as Deputy Chairman of the Board of Trustees and Mr Mulembe as Director. Both NHRIs comply with the Principles relating to the Status of National Institutions (the Paris Principles),³ which are aimed at ensuring the independence of NHRIs. Mr Lucian Hazan (Argentina) currently works as a lawyer for a human rights NGO, which works to find child victims of enforced disappearance. He also holds the posts of legal counsel within the Ministry of Justice and Human Rights, and faculty member at the University of Buenos Aires. Mr Emmanuel Decaux (France), a professor of law, has a long track record of working within the UN human rights system, and is also likely to value NGO engagement with the Committee. During the meeting with NGOs Mr Huhle and Mr Decaux were particularly appreciative of the need to ensure the Committee works closely with NGOs.

Of the other members of the Committee, Mr Yakushiji Kimi (Japan) is a professor of law, Mr Alvaro Garcé García y Santos (Uruguay) is a lawyer, currently working as Ombudsman for the Penitentiary System, and Mr Mamadou Badio Camara (Senegal) and Mr Juan José López Ortega (Spain) work within the judiciary. The majority of the members have no obvious work experience in the field of enforced disappearances. Only Mr Hazan can claim to have some expertise on the issue, due to his eight years working as a lawyer on enforced disappearance cases within an NGO. Mr Decaux and Ms Janina have carried out some academic work on the *International Convention for the Protection of All Persons from Enforced Disappearance* (the Convention).

At the opening session, Mr Decaux was elected as the first Chair of the Committee. Mr Al-Obaidi, Ms Janina, and Mr Camara were elected Vice-Chairs, and Mr Hazan was elected as rapporteur.

1 The provisional rules of procedure are available here: <http://bit.ly/wpUGAN>.

2 For more information on the members and their backgrounds see: <http://bit.ly/z51Y4s>.

3 Principles relating to the Status of National Institutions are available at <http://bit.ly/aaLzVS>.

MEETING WITH NGOS

The meeting held between the Committee and NGOs was exceptionally well attended, with approximately 50 representatives present, demonstrating a high level of interest in the Committee's work. However, NGO interventions revealed a lack of awareness about its mandate. There is a need in particular to distinguish the work and mandate of the Committee from that of the Working Group on Enforced Disappearances. For example, several NGO speakers were unaware of the need for a State to have ratified the Convention in order for the Committee to have authority to consider the situation in that State. It would have been particularly useful if at least part of the meeting with the Working Group had been held in public, in order that those interested could take the opportunity to ask questions of both bodies and establish which would provide the most appropriate forum for their work.

Around eight NGOs spoke during the meeting. They raised the need for the Committee to take seriously concerns about reprisals against NGOs that engage with the Committee; and questions about the cooperation envisaged with the Working Group on Enforced Disappearances. The Chair, Mr Decaux, was responsive to comments and expressed the Committee's commitment to working closely with NGOs. However, the significant NGO interest was a missed opportunity for the Committee to cement a working relationship with NGOs in Geneva, given the vast majority of the meetings at this first session were closed. In future sessions the stated commitment to closely collaborate with NGOs can become a reality by increasing the transparency of the Committee's work.

OTHER DEVELOPMENTS

At its next session the Committee will hold a Day of General Discussion on women and children victims of enforced disappearance, and on non-State actors and their involvement in the crime of enforced disappearance. The latter subject is particularly important, as the Convention has been criticised for not including the responsibility of non-State actors in the definition of enforced disappearance.⁴ The Committee will also continue to develop its rules of procedure and reporting guidelines, and will work on a 'user's manual' on its communications procedure. A working group led by Mr Yukushiji and Mr Mulembe will draft the manual, which will include proposals for changing the existing model complaint form for submission of cases. This manual could potentially be a useful tool for NGOs and will be most effective if NGOs are consulted during the drafting process. The second meeting of the Committee will be held from 26 to 30 March 2012.

The Convention on Enforced Disappearance

In 2005, the *International Convention for the Protection of All Persons from Enforced Disappearance* (the Convention) was adopted by the General Assembly. Six years later, the Committee created to implement the Convention held its first session, after the minimum number of ratifications by State Parties was reached.⁵ The Convention marks the first time that enforced disappearance has been explicitly prohibited in international law.

There are several international instruments that deal with one or more aspects of enforced disappearance, such as the *Convention against Torture* and the *International Covenant on Civil and Political Rights*. Prior to the Convention coming into force, it was through these instruments that the issue was addressed. Thus, while the passing of a new and specific treaty on enforced disappearance was a welcome development, the creation of an additional treaty body has raised questions on the best use of finite resources. Arguably, the monitoring of new provisions could have been entrusted to an existing treaty body along with additional resources.

On the other hand, there are many aspects to enforced disappearance that cannot be captured by existing provisions. Only focusing on those that can be tackled under existing treaties would mean the wider implications of enforced disappearance are missed. The creation of a dedicated instrument allows for a more targeted response.⁶ The Committee has as its main mandate to oversee the implementation of the treaty through regular examination of State reports. In addition, if States recognise the competence of the Committee in this regard, individuals can make use of an individual communication procedure. If the Committee receives information that a State Party is seriously violating the Convention, it may request for a member or members to visit the country concerned.⁷

The Convention mandates its Committee with two additional functions.⁸ Article 30 establishes an urgent action procedure, for relatives or the legal representatives of a disappeared person to submit as a matter of urgency a request that a 'person should be sought and found'. This allows for a response to alleged enforced disappearances even when a State is not currently reviewed by the Committee. Another innovation is Article 34, which grants the Committee the power to bring violations of the Convention by a State Party before the General Assembly through the Secretary-General, after seeking information from the State concerned. This provides the international community with an additional entry point to pressure States to refrain from enforced disappearances. ■

4 See for example, <http://bit.ly/zrmLtY>.

5 The Convention entered into force on 23 December 2010, one month after it was ratified by 20 nations.

6 See ISHR's review of the Convention at <http://bit.ly/w70PYJ>.

7 Article 33 of the Convention, available at <http://bit.ly/bURQ9Y>.

8 States must make a declaration under articles 31 and 32 before these optional procedures become applicable. See <http://bit.ly/bURQ9Y>