



Convention on Enforced Disappearance

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The 2006 International Convention on the Protection of all persons from Enforced Disappearance came into force in 2010 and has been ratified by 30 states. It creates a new human right against enforced disappearance, and requires the states that have ratified the convention to create new criminal offences in their domestic law and to adjust their laws on (for example) detention.

The Committee established to monitor implementation of the Convention and deal with complaints under it had its first session on 8-11 November 2011. There is already a UN Working Group on Enforced or Involuntary Disappearances which carries out similar functions.

The UK has not signed or ratified the Convention despite some pressure to do so. The Government appears to support the Convention in theory, and has apparently been looking into what changes to domestic law and what reservations or declarations would be needed in order to ratify it. The UK representative made a statement of the UK's interpretation of some articles of the Convention to the UN General Assembly in 2006.

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1 Introduction to the Convention

The [International Convention on the Protection of all persons from Enforced Disappearance](#) was adopted by the United Nations in New York on 20 December 2006. It entered into force on 23 December 2010, after 20 states had ratified it. As of 9 November 2011, [90 states have signed the treaty and 30 of those have ratified it](#).¹

The text of the Convention was produced in 2006 by a working group of the UN Commission on Human Rights (the predecessor of the Human Rights Council), following General Assembly resolutions on the subject. The Human Rights Council adopted the text at its first session, in June 2006, before forwarding the text to the UN General Assembly.

Amnesty International describes the adoption of the Convention as “a major step forward in ensuring that victims of enforced disappearance and their families obtain justice, truth and full reparation”. It has recently produced a [checklist](#) of guidance to states on how to implement, in law and practice, their obligations under the Convention and related international law and standards.² The checklist is also intended as a tool for civil society participating in the drafting of legislation implementing the Convention.

The [International Coalition Against Enforced Disappearances](#) has a great deal of information about the Convention on its website, including:

- History and background of the convention: the steps that lead to the adoption of the convention in 2006 with the relevant documents that have been produced and published from 1981 onwards.
- Need for a convention and key provisions: the new human rights in the convention, definition of enforced disappearance, and provisions on prevention, protection, reparation and prosecution of enforced disappearances.
- Ratification and implementation into domestic law: the main areas of domestic law that are affected; documents and links to resources from governments, NGOs and experts.
- Cases at national level: several countries that ratified the convention and that currently witness or have witnessed enforced disappearances use the convention for legal cases.
- Relevant legal framework besides convention: documents that are relevant for the overall legal framework on protection from enforced disappearances but that are not strictly about this convention.

Susan McCrory wrote an [article](#) in 2007 which highlights some of the issues she thinks seem most relevant to domestic legislators looking at implementing the Convention.³ These include the need to deal both with criminalisation and its consequences, and addressing all of the Convention's extensive requirements on prevention and redress for victims.

Other useful sources on the Convention include the website of the [Enforced Disappearances Information Exchange Center](#) and the Red Cross website page on [Missing Persons](#).

¹ UN Treaty collection website, *Status of treaties*, “[International convention for the Protection of All Persons from Enforced Disappearance](#)” [accessed 10 November 2011]

² Amnesty International, *No impunity for enforced disappearances: Checklist for effective implementation of the International Convention for the Protection of All Persons from Enforced Disappearance*, Index Number: IOR 51/006/2011, 9 November 2011

³ Susan McCrory, “[The International Convention for the Protection of all Persons from Enforced Disappearance](#)”, *Human Rights Law Review* (2007) 7 (3): 545-566

2 Main provisions of the Convention

New right against enforced disappearance

The Convention begins by stating that “No one shall be subjected to enforced disappearance”. This is a non-derogable right, which means that no circumstances may be invoked as a justification for carrying out enforced disappearances.

The widespread practice of enforced disappearance constitutes a crime against humanity (Article 5). This enables for instance the involvement of the International Criminal Court (ICC).

Defining enforced disappearances

The Convention sets out a universally binding definition of enforced disappearance:

- deprivation of liberty by the state,
- followed by refusal to acknowledge this deprivation of liberty or by concealment of the fate or whereabouts of the disappeared person,
- which places a person outside the protection of the law.

Enforced disappearances can also be carried out by non-state actors, but the Convention deals with these in a more limited way.

This is slightly different from the definition of enforced disappearance in the ICC’s [Rome Statute](#), which includes actions by an “political organization”, and requires the perpetrator to intend to remove the person from the protection of the law for a prolonged period of time (Article 7.2(i)).

Obligation to criminalise

Each state party must

- make enforced disappearance an offence under its criminal law,
- hold any person involved criminally responsible, and
- make the offence punishable by appropriate penalties.

A state must take into account the continuous nature of the crime when declaring a time limit on prosecutions. The limitation may only start from the moment the enforced disappearance ceases to exist.

Obligation to investigate

Where there are reasonable grounds for believing that a person has been subjected to enforced disappearance, the state must undertake an investigation, even if there has been no formal complaint.

The Convention also obliges states to investigate (but not necessarily criminalise) enforced disappearances carried out by non-state actors such as terrorist groups.

Safeguards

The Convention prohibits secret detention. It sets out rules and regulations on the deprivation of liberty, including a requirement to keep up-to-date official registers of people deprived of liberty.

It requires persons to be released from prison in a manner permitting reliable verification that they have actually been released.

It also obliges States to provide training on the Convention to law enforcement personnel.

Protecting victims

The Convention contains several provisions on protective measures after a disappearance has occurred. The state should for instance enable individuals to report an enforced disappearance, protect witnesses and investigate complaints and reports of disappearances.

The Convention also establishes several rights for victims. Relatives of the disappeared are included in the definition of victim, as well as any person who has suffered harm as a direct result of the enforced disappearance.

Every person with a legitimate interest should have access to basic information such as the date, time and place of the deprivation of liberty and the whereabouts of the person. Restrictions of such information are permitted only when a person is under judicial control and the restriction does not lead to an enforced disappearance.

States should also ensure reparation and prompt and adequate compensation for victims.

International cooperation

Often enforced disappearances concern the involvement of more than one state. The Convention requires states parties to cooperate in searching for disappeared people and, in the event of death, in exhuming and identifying them and returning their remains.

State parties should submit suspects who are found on their territory to the competent authorities, extradite them to another state, or surrender them to an international criminal court.

They should also take care that no person is expelled, returned surrendered or extradited who may be in danger of being subjected to enforced disappearance.

3 The Committee and the Working Group

The Convention provides for a new 10-member [Committee Against Disappearances](#) to monitor states-parties' compliance with the Convention, through:

- states parties' periodic reports
- country visits
- consideration of communications from individuals (only where the state has specifically recognised this competence of the Committee)
- urgent humanitarian procedure to search and find disappeared persons on the request of a relative.
- power to bring "widespread and systematic" practice of enforced disappearance to the attention of the UN General Assembly.

Not all states parties recognise all the competences of the Committee.

The Committee is holding its first session at the moment (8-11 November 2011).

There is also a [UN Working Group on Enforced or Involuntary Disappearances](#) which carries out some similar functions:

The Working Group's basic mandate is to assist the relatives of disappeared persons to ascertain the fate and whereabouts of their disappeared family members. For this purpose the Group receives and examines reports of disappearances submitted by

relatives of disappeared persons or human rights organizations acting on their behalf. After determining whether those reports comply with a number of criteria, the Working Group transmits individual cases to the Governments concerned, requesting them to carry out investigations and to inform the Working Group of the results.

The Working Group deals with the numerous individual cases of human rights violations on a purely humanitarian basis, irrespective of whether the Government concerned has ratified any of the existing legal instruments which provide for an individual complaints procedure. It acts essentially as a channel of communication between the families of disappeared persons and Governments, and has successfully developed a dialogue with the majority of Governments concerned with the aim of solving cases of disappearance.

With the adoption by the General Assembly of the Declaration on the Protection of all Persons from Enforced Disappearances, starting as at 1992 and in addition to its core mandate, the Working Group was also entrusted with monitoring the progress of States in fulfilling their obligations deriving from the Declaration and to provide to Governments assistance in its implementation. The Working Group draws the attention of Governments and non-governmental organizations to different aspects of the Declaration and recommends ways of overcoming obstacles to the realization of its provisions. In this capacity, the Working Group has a preventive role, by assisting States in overcoming obstacles to the realization of the Declaration. This is done both while carrying out country visits and by providing advisory services, when requested.

The Working Group is able to consider the situation in all countries, whereas the competence of the Committee is limited to those States that have ratified the Convention. Furthermore, while the Committee can deal only with enforced disappearances that took place after the Convention entered into force, the Working Group can examine all situations before that too. The two bodies will work closely with each other.

4 The UK's position

The UK has not signed or ratified the Convention, despite working on its drafting.

The Government appears to support the Convention in theory, and has apparently been looking into what would need to be done in order to ratify it:

The UK fully supports the need to protect all people from enforced disappearance and was supportive of the aims of the convention upon its adoption in 2006. However, the convention imposes detailed and complex requirements on those states which choose to sign and ratify it and the Government are considering how the provisions of the treaty might be implemented in the UK. The UK only signs a treaty once it is confident it can properly implement it and once any necessary changes to legislation have been made so that domestic law is compatible with the treaty.⁴

This echoes a series of answers by the last Government to parliamentary questions, which stressed the need for a full investigation of the changes to domestic law and possible reservations or declarations needed, without setting any deadline for this work to be completed. For example:

The Government support the International Convention and believe that it will have an important role in preventing enforced disappearance and secret detention in the future. [...] The UK is prepared to give its signature to treaties only when it has a clear intention to ratify within a reasonable timescale. The Government are conscious of the

⁴ HC Deb 7 March 2011 c749W

potentially significant impact of the convention in the domestic context, and we are therefore continuing our detailed assessment of the provisions of the convention and their effect across all areas of UK law and policy. In particular, we are analysing the extent to which common law provisions may need to be replicated in statute law; whether any new criminal offences would need to be introduced; and whether the UK would enter any reservations or declarations on ratification. Ratification will require primary legislation to facilitate changes to domestic law and the introduction of such primary legislation will depend on securing parliamentary time. The complexity of the issues still under consideration means that we are not setting a deadline for completion of our analysis, but work is being progressed as rapidly as possible.⁵

The UK played an active part in the negotiations to draft the Convention, and supported its adoption at both the UN Human Rights Council and the UN General Assembly. It made a [statement](#) of its interpretation of some articles of the Convention to the UN General Assembly in 2006:

The United Kingdom welcomes the adoption of draft resolution I contained in document A/61/448. We particularly wish to pay tribute to the non-governmental organizations that made an enormous contribution to the process of agreeing upon a text. The representatives of the victims of disappearances from all regions have provided a constant reminder of the need for us to finish our work and provide a tool to combat that atrocious and ongoing practice.

That said, the United Kingdom wishes to place on record the following understandings on certain provisions of the instrument. In relation to article 2, the United Kingdom notes that the placing of a person "outside the protection of the law" is an important element of the definition of an enforced disappearance, additional to its other elements. As such, the United Kingdom considers that the definition of an enforced disappearance in article 2 comprises the following elements: first, an arrest, detention, abduction or any other form of deprivation of liberty; secondly, that such acts are committed by agents of the State or by persons or groups acting with the authorization, support or acquiescence of the State; thirdly, that the act is followed by a refusal to acknowledge the deprivation of liberty or by concealment of the fate or whereabouts of the disappeared person; and fourthly, that the disappeared person is placed outside the protection of the law.

The United Kingdom understands the term "outside the protection of the law" to mean that the person's deprivation of liberty or detention is not within the scope of relevant domestic legal rules governing deprivations of liberty or detention, or that those rules are not compatible with applicable international law. Accordingly, the United Kingdom understands article 20, which permits restrictions to the provision of information as set out in article 18, to apply to all situations where a person is not "outside the protection of the law" -- in other words, where that person is within the State's domestic legal rules governing deprivation of liberty or detention, consistent with applicable international law.

The United Kingdom also wishes to place on record its understanding of article 43 of the Convention. The United Kingdom understands this provision to confirm that a State party's obligations under international humanitarian law, including its obligations and rights under the Geneva Conventions of 1949 and their Additional Protocols of 1977, remain *lex specialis* in situations of armed conflict and other situations to which international humanitarian law applies. The United Kingdom understands this article to operate as a "savings clause" in order to ensure that, where applicable, the relevant

⁵ HC Deb 19 October 2009 c1247W

provisions of international humanitarian law take precedence over any other provisions contained in the Convention.

Finally, in relation to article 25 (4), we understand that that article does not entail an obligation to provide a legal procedure which would lead to an automatic review of the adoption. We also understand that the article does not require the automatic annulment of an adoption which stems from an enforced disappearance. We interpret the article to require States parties to have a procedure or procedures providing a possibility to apply for review of an adoption covered by that article. Whether a review or annulment is in fact ordered will be an issue to be determined according to the applicable legal procedures in the State concerned.⁶

⁶ Mr Lee-Smith, UN General Assembly Session 61 meeting 82, Agenda item 68 "Report of the Human Rights Council Report of the Third Committee (A/61/448 and Corr.2), 20 December 2006