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some men arrive they force their way into a family's home rich or poor house hotel or hut in a city or in a village anywhere. they come at any time of the day or night usually in plain clothes sometimes in uniform always carrying weapons giving no reasons producing no arrest warrant frequently without saying who they are or on whose authority they come they take one or more members of the family towards a car using violence in the process if necessary

Report entitled *Disappeared! Technique of Terror*, prepared by the Independent Commission on International Humanitarian Issues, London, 1986.

SPECIAL ISSUE

JOHN HUMPHREY FREEDOM AWARD

FORCED DISAPPEARANCES: WHAT WE DON'T KNOW CAN HURT

BY PHILIPPE TREMBLAY

THOUSANDS OF PEOPLE around the world are kidnapped each year by unidentified individuals, never to be seen again by their relatives and friends. The most terrible aspect of forced disappearances is the particular form of cruelty they deal to the survivors. What can be worse than not knowing whether your loved one is still alive? What can be worse than hoping — most often in vain — that she or he may one day reappear?

Beyond the inchoate suffering that they cause and the durable psychological harm that often results, numerous practical problems are raised by forced disappearances. Very often, the disappeared person is the family's only breadwinner and his or her absence puts the family in a position of extreme financial hardship. Without a death certificate, the relatives cannot claim any benefits from the State. And, as with too many such phenomena, women are hit the hardest, directly or indirectly. If a woman is the victim of disappearance herself, she is likely to be subjected to sexual violence. If her spouse disappears, she may be intimidated or threatened when she takes steps to find him. Finally, in many societies, women are not allowed to remarry and are driven into poverty.

It would perhaps be overstating the case to assert that indigenous peoples are particularly affected by the practice of forced disappearance by the sole reason of their ethnic origin. Nevertheless, they are proportionately more likely to be affected than the majority of the population. Since, beyond the quest for power, armed conflicts are motivated by attempts to appropriate the wealth of a given region, it is unsurprising that, in countries like Colombia, rebels and paramili-

ENJOINING
ALL STATES
TO EMPHASIZE
THE IMPLEMENTATION OF
PREVENTIVE
MECHANISMS.

taries maintain a considerable presence in mining- and petroleum-based areas. These areas, though, often correspond to the ancestral lands of indigenous peoples. Armed groups often carry out forced disappearances in order to strengthen their power and influence, silence the local population and loot their resources.

In 1980, the UN Commission on Human Rights set up the first Working Group on Enforced or Involuntary Disappearances and mandated it to survey the development of this phenomenon.¹ This Working Group, despite its chronic underfunding, has examined more than 50,000 individual cases from over 70 countries

since its inception, 8,000 of which have been resolved. Among these latter cases, 4,390 involved collaborative work in 2001 with Sri Lankan authorities. This success shows that significant results can be achieved if the national authorities participate in good faith.

In 1992, the international community adopted a *Declaration on the Protection of All Persons from Enforced Disappearances*,² but some in the human rights community are now campaigning for a binding international instrument on the model of the one already existing in the Americas.³ It is true that forced disappearances are already prohibited since they violate a multitude of rights (including the right to liberty and the right not to be subjected to cruel, inhuman or degrading treatment) protected by existing legal instruments. However, the adoption and ratification of an international convention against forced disappearances would have the merit of enjoining all States to emphasize the implementation of preventive mechanisms and to de-emphasize punishment.

continued on page 3

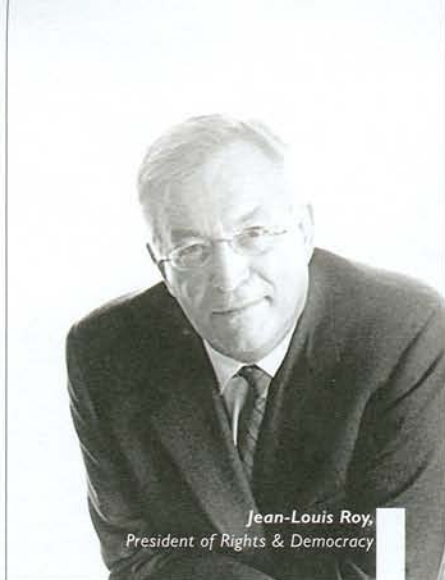


Rights & Democracy
International Centre for Human Rights
and Democratic Development

RIGHTS & DEMOCRACY (International Centre for Human Rights and Democratic Development) is a Canadian institution with an international mandate. It is an independent organization, which promotes, advocates and defends the democratic and human rights set out in the *International Bill of Human Rights*. In cooperation with civil society and governments in Canada and abroad, Rights & Democracy initiates and supports programmes to strengthen laws and democratic institutions, principally in developing countries.

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ON THE OCCASION OF THE PRESENTATION OF THE JOHN HUMPHREY FREEDOM AWARD 2003



Jean-Louis Roy,
President of Rights & Democracy

FROM PERU AND COLOMBIA, respectively, Angélica Mendoza de Ascarza and Kimy Pernía Domicó are the recipients of the John Humphrey Freedom Award 2003. These indigenous representatives have both been direct victims of enforced disappearance—an extreme form of rights denial, the denial of all human rights.

Whether practiced by governments or ordered by them, or used by lawless groups, enforced disappearances are becoming increasingly common

ONE OF THE MOST
BARBARIC ACTS
PRACTICED IN THE
WORLD TODAY.

around the world—a direct result of the lack of security, civility and accountability in a growing number of countries.

This year's laureates will visit five of Canada's major cities. Mr. Domicó, whose fate remains unknown, will be represented by his daughter, Martha Cecilia. Their presence among us is intended to help break the silence surrounding one of the most barbaric acts practiced in the world today and to demonstrate our unflinching support for those battling against it on the front lines. We must particularly fight to ensure that all victims receive full redress and that those responsible benefit from no form of impunity. *ℓ*

Jean-Louis Roy.

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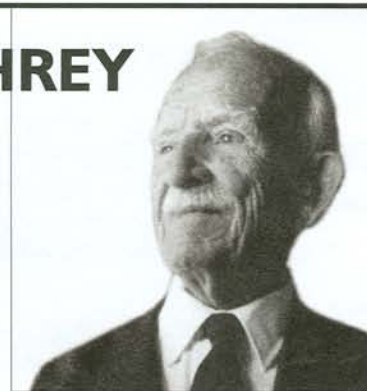
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2003 JOHN HUMPHREY FREEDOM AWARD



RIGHTS & DEMOCRACY (International Centre for Human Rights and Democratic Development) presents the John Humphrey Freedom Award each year to an organization or individual from any country or region of the world, including Canada, for exceptional achievement in the promotion of human rights and democratic development. The Award consists of a grant of \$25,000 as well as a speaking tour of Canadian cities to help increase awareness of the recipient's human rights work. It is named in honour of the Canadian John Peters Humphrey, the human rights law professor who prepared the first draft of the *Universal Declaration of Human Rights*. The winner is selected by an international jury composed of five members of Rights & Democracy's Board of Directors. *ℓ*

PREVIOUS WINNERS

- 1992** Instituto de Defensa Legal (Peru).
- 1993** La Plate-forme des organismes haïtiens de défense des droits humains (Haïti).
- 1994** Campaign for Democracy (Nigeria) and Egyptian Organization for Human Rights.
- 1995** Bishop Carlos F. X. Belo (East Timor).
- 1996** Sultana Kamal (Bangladesh).
- 1997** Father Javier Giraldo (Colombia).
- 1998** Palden Gyatso (Tibet).
- 1999** Dr. Cynthia Maung and Min Ko Naing (Burma).
- 2000** Reverend Timothy Njoya (Kenya).
- 2001** Dr. Sima Samar (Afghanistan).
- 2002** Ayesha Imam, BAOBAB for Women's Human Rights (Nigeria).

For further details, visit www.ichrdd.ca or write Anyle Côté (acote@ichrdd.ca).

FORCED DISAPPEARANCES: WHAT WE DON'T KNOW CAN HURT

continued from page 1

However, while prevention is obviously preferable to punishment, the persons responsible for forced disappearances must nonetheless be punished, if only as a deterrent. Yet the impact of State terror — of which forced disappearances constitute an important manifestation in many different contexts — is so great in countries undergoing a democratic transition that they are often faced with a historic dilemma: whether to “let bygones be bygones” by enacting amnesty laws or, to try the perpetrators of these crimes. Some argue that

the 1980s due to its systematic use to crush dissidence by several dictatorial regimes (Chile, Uruguay, Argentina). But the practice is not peculiar to that region, nor is it only practiced by military regimes and dictatorships; indeed, it affects countries whose present-day reality is quite different. Whether in civilian regimes with functioning public institutions (Russia, India), or countries facing a strong and organized rebellion

involuntary disappearances.

The current world state of affairs requires an unequivocal response from the human rights community. The recent conflicts in Afghanistan and Iraq produced their quota of disappearances, and every possible step must now be taken to put an end to this human tragedy. Now more than ever, it is important to demand that our governments take action on this crucial issue. *ℓ*

THERE IS LEGITIMATE FEAR THAT THE WAR ON TERRORISM MAY SERVE AS A PRETEXT FOR STEPPING UP THE USE OF REPRESSIVE METHODS. █

criminal prosecution is a *sine qua non* of national reconciliation, while others feel that this might cause defendants to revoke their consent to the birth of a democratic space. The Declaration forbids the use of amnesties to shield perpetrators from prosecution or punishment, however, in most of the countries concerned, amnesties were indeed used to terminate legal proceedings against the accused perpetrators and the intellectual authors of these repressive methods, in particular.

Aside from the United Nations, several international organizations take a keen interest in the issue of forced disappearance and are seeking solutions. Among these, the International Committee of the Red Cross (ICRC), which promotes international humanitarian law (IHL) and governments' respect for it, stands apart by virtue of its long-standing commitment. The ICRC, in cooperation with the national Red Cross and Red Crescent associations, offers a tracing service for disappeared persons, basing this action on the right enshrined in IHL to know the fate of one's loved ones.

The practice of forced disappearance gained special notoriety in Latin America in the 1970s and

(Nepal) or in the grip of ethnic or religious conflict (the Philippines, Algeria), the use of disappearances is unfortunately still widespread. In the wake of the attacks of 11 September, 2001, there is legitimate fear that the war on terrorism may serve as a pretext for stepping up the use of repressive methods, thereby causing a recrudescence of

FROM THIS PERSPECTIVE, WE EXHORT THE GOVERNMENT OF CANADA TO:

MULTILATERALLY:

- ✓ - Ratify the *Inter-American Convention on the Forced Disappearance of Persons* and encourage the other countries of the Americas to do the same.
- ✓ - Support international efforts to draft a world convention stressing the importance of preventive mechanisms.
- ✓ - Support the allocation of additional financial and human resources to the Working Group on Enforced or Involuntary Disappearances so that it can work more effectively on the many outstanding dossiers.
- ✓ - Support all efforts to bring the perpetrators of forced disappearances to justice before either domestic courts or the International Criminal Court.

DOMESTICALLY:

- ✓ - Ensure that countries benefiting from Canadian development assistance do not engage in this practice and that, if they have done so in the past, they are taking measures to compensate the victims or their relatives.
- ✓ - Ensure that Canadian companies engaging in commercial activities abroad are not active in regions affected by the phenomenon of forced disappearances.
- ✓ - As in cases where torture is a possibility, ensure that persons deported from Canada are not sent to countries where they are likely to fall victim to forced disappearance.
- ✓ - Support the development of a tracing service by the Canadian Red Cross Society.

¹ COMMISSION ON HUMAN RIGHTS RES. 20 (XXXVI) (29 FEBRUARY 1980).

³ UN GENERAL ASSEMBLY RES. A/RES/47/133 (18 DECEMBER 1992) (THE “DECLARATION”).

³ IN 1994, AT BELÉM DO PARÁ (BRAZIL), THE OAS ADOPTED AN INTER-AMERICAN AGREEMENT ON THE FORCED DISAPPEARANCE OF PERSONS THAT HAS ONLY BEEN RATIFIED BY 10 STATES TO DATE, INCLUDING PERU.

ANGÉLICA MENDOZA DE ASCARZA

BY MADELEINE DESNOYERS



ON 8 APRIL 2002, Angélica Mendoza de Ascarza testified publicly before the hearings of the Truth and Reconciliation Commission in Ayacucho. Between the brutal abduction of her 19-year-old son Arquimedes by soldiers on 12 July 1983 and this testimony, Ms. Mendoza has tenaciously sought answers about her son's fate from the military authorities in Ayacucho and the judicial authorities in Lima. Faced with their silence, she had no choice but to look for her son in the most terrible places — the so-called "body dumps," where she was shot at by soldiers one day.

Several months after her son's disappearance, she and other parents of the disappeared founded the National Association of Parents of the Disappeared (ANFASEP). Emboldened by her leadership, thousands of other parents began to call on the authorities to stop denying the abductions and disappearances. In Lima, they brought their cases to the Attorney General's Office starting in 1983, and by the end of that year some 600 disappearance cases had been denounced in the country.

In 1984 and the following years, the United Nations and the Organizations of American States conducted investigations in Peru. That same year,

braving the reign of terror and the fear living within each of them, the ANFASEP members held their first demonstration to demand the truth, publicly displaying photos of their disappeared relatives. Using all means at their disposal, Angélica Mendoza and the parents of the disappeared — these people from the Sierra, these excluded ones living in rural areas and despised by too many in Peruvian society, asserted themselves as full-fledged citizens.

Their cry soon became a demand for justice: that the disappeared not be forgotten, that light be shed on the circumstances of their disappearance and that the guilty parties be named. The Truth and Reconciliation Commission would eventually amplify their voices by shining the light on the scope of the phenomenon of forced disappearances and its systematic use as a weapon of repression. Ms. Mendoza views the Commission's report as a useful tool for identifying the perpetrators so that they can be held accountable for their acts before the courts. To give her the John Humphrey Award is to contribute to the recognition of her courage and determination, but more than that, it is to support her in her efforts to make sure that the recommendations of the Truth and Reconciliation Commission are implemented. *ℓ*

TESTIMONIAL BY SOFIA MACHER

MEMBER OF THE TRUTH AND RECONCILIATION COMMISSION
MEMBER OF RIGHTS & DEMOCRACY'S BOARD OF DIRECTORS

MAMA ANGÉLICA had a significant effect on my work as the Executive Secretary of the Coordinadora Nacional de Derechos Humanos (CNDH, national human rights coordinating committee) and, later, as a member of the Truth and Reconciliation Commission.

When I was just beginning to work as the CNDH Executive Secretary, I visited her in Ayacucho, and she made a huge impression on me. On the one hand, I could sense how strong she was when she demanded that we be more active on behalf of missing detainees. On the other hand, I felt that she was a very warm, welcoming, and protective person. I will never forget that first meeting.

I later accompanied Mama Angélica at many meetings, where she would tell the story of how a group of soldiers entered her home in the middle of the night to take away her 19-year-old son. She would tell how she had held onto him and how the soldiers had pushed her away. She recounted the following days, spent entirely in waiting outside the entrance to the Los Cabitos military barracks in Ayacucho. She would go back each day to demand that her son be freed and to take food to him.

She also told of the tiny note that her son had managed to send to her, asking that she find the money needed to set him free. A week later, the military told her that her son was not in Los Cabitos and that he had NEVER been there. Then they threw her out, screaming that she was a terrorist. As of that November day in 1983, she never stopped demanding to know where her son was.

It is not easy to understand how a poor, illiterate woman — a woman who had been excluded and stigmatized, a woman who did not speak Spanish very well — had the strength to continue her struggle for more than 20 years. As I see it, the only explanation is that she did it out of love for her son and out of a strong sense of how just her demand was.

What she represented, her integrity, and her strength, these were the things that made me strong so that I could fight for the Truth Commission and hold on for those two years of work during which we constantly had to probe into the pain of other people.

Mama Angélica was my fortress. *ℓ*



KIMY PERNÍA DOMICÓ

BY ANGELA LAIRD

Karagabiba bania diasia druwa jomaíta, jenzeraba wāgajirube ê ba marea. Mauba bacuru, zroma jenené oi wandra bania aî zebicia. Mauba êbêrata, bedata, nuduwuruta bania Do bia bea marea.

(Karagabi gave water to the world so that Jenzerá would not monopolize it. It is for this reason that Karagabi made water flow from the great tree in the forest (Jenené) so that people, fish and animals could drink and live.)

ACCORDING TO EMBERA-KATIO ORAL HISTORY, animals once walked the earth as people and lived as equals. When the bullet ant (Jenzerá) refused to share the water with the others, the great tree where the water was stored was felled by the efforts of the animals and this is how the rivers and oceans were formed.

Kimy Pernía Domicó, son of the cacique "Manuelito," knows how important the river is to his people. He knows that the rivers sustain life – both animal and human life. What he likely doesn't know today is how his efforts to preserve the rivers in the Alto Sinu region of Colombia have resonated throughout the world and how his name has become synonymous with the struggle of indigenous peoples for autonomy and against the imposition of megaprojects in their territories.

When Kimy was a young man, he came to know an American who had moved to Tierralta, and became friends with him. Kimy learned to have an open mind about the Kampunia (non-indigenous people) and this laid the base for his future role as an interlocutor about the plight of his people. He traveled outside Colombia on several occasions, to speak to the Inter-American Commission on Human Rights, to address Canada's Standing Committee on Foreign Affairs and International Trade, to speak at the Second People's Summit of the Americas in Quebec City, and to other organizations. He also met with international visitors, including members of a delegation from Canada's First Nations and Canadian Parliamentarians when they visited Colombia in 2001, a mission which was organized by Rights & Democracy. His message was always the same: the construction of the Urrá dam was threatening the very existence of his people by shrinking the food supply and creating conditions for disease and malnutrition. Ironically, the Embera-Katio do not benefit from the hydroelectric project – they still do not have a reliable supply of electricity in their communities.

Kimy was kidnapped, presumably by paramilitaries, on June 2, 2001. In spite of an extensive search by more than 1,000 members of different indigenous communities, Kimy has not been seen since and no serious investigation of his disappearance has been undertaken by the Colombian government. If the proposed law granting impunity to perpetrators of crimes committed during the Colombian conflict is passed by the Colombian government, the people responsible for Kimy's disappearance may never be brought to justice.

The National Indigenous Organization of Colombia (ONIC) put Kimy forward as a candidate in the 2002 presidential elections, as a way to force the State to respond for his disappearance, and they strive to maintain a high profile until there is some kind of resolution to his case.

The greedy bullet ant was not able to deprive the other creatures of the water they needed to survive; unfortunately the people and animals in the Alto Sinú are not so fortunate. However, through the efforts of the community and leaders like Kimy Pernía Domicó, perhaps there is still time to avoid such disasters for other communities and to try to mitigate the damage being done in the Alto Sinú. *ℓ*



PHOTO: KATHY PRICE

KIMY'S STRUGGLE: THE SURVIVAL OF A PEOPLE

BY MARIE LÉGER

THE 84 INDIGENOUS PEOPLES of Colombia occupy 28% of a rich territory that is also coveted by a number of other interests. Their leaders are targets for illegal armed groups (particularly the AUC and the FARC) and their territories are seen as strategic by companies that exploit natural resources. The Embera-Katio are emblematic of this situation.

Kimy is one of 3,000 Embera-Katio living in small communities along the banks of the Sinú, Verde and Esmeralda rivers, from which they draw their subsistence and cultural heritage.

The Urrá hydroelectric dam project, for which Canada provided \$18 million in assistance through its Export Development Corporation (EDC), was put on the drawing board in the late 1970s. As of 1994 the Embera-Katio, aware of the situation, began to protest publicly. After an abortive process of dialogue, they took their case to the courts.

In 1998, they obtained an injunction from the Constitutional Court of Colombia to stop work on the project, especially the flooding of vast traditional territories in preparation for the operation of the Urrá dam. The Court ruled that the Embera-Katio had not been sufficiently consulted as to the impact of the project on their lives.

One month after the stop-work order, a traditional leader, Alonso Domicó Jarupia, was assassinated, and ten more would meet the same fate before Kimy disappeared in June 2001.

Despite the struggle and the court challenges, the dam is now completed and the reservoir is full. The fish have practically disappeared from the Sinú. Many Embera-Katio have had to emigrate and are now experiencing the social problems typical of uprooted peoples. Their struggle did bring them financial compensation, but they lost the river that was their livelihood.

As is often the case in Colombia, their territory has become a thoroughfare for armed groups and a zone of armed conflict. Forced disappearances, assassinations, and forced conscription of indigenous youth are now part of their daily lot.

Regardless that the Constitution and laws recognize indigenous rights and territories, the people are paying a high cost in human life for their desire to stay on the land, to develop it according to their own priorities, and to carry on their lives as heirs to a millennial land-based tradition.

Kimy is a symbol of this struggle, this will to survive. *ℓ*

Angélica Mendoza and Martha Cecilia Domicó have shown great tenacity and courage in their attempts to locate disappeared persons, and especially in demanding that the authorities identify the persons and institutions responsible and take steps to prevent a repetition of these acts on such a large scale.

Rights & Democracy sees the visit of Angélica Mendoza and Martha Cecilia Domicó to Canada as an opportunity for Canadians to make a tangible gesture in support of their demands and proposals. We suggest that Canadians write letters in support of these demands to the respective governments (Peru and Colombia) and the Government of Canada.

On our website (www.ichrdd.ca), we suggest model letters containing the recommendations below.

COLOMBIA: CALL TO ACTION

WE CALL ON THE GOVERNMENT OF COLOMBIA TO:

- √- Initiate and carry through to completion a genuine inquiry into the disappearance of the Embera-Katio leader Kimy Pernía Domicó.
- √- Exhort the office of the ombudsman (*Defensoría del Pueblo*) to send observers (*defensores comunitarios*) to threatened indigenous communities where the latter so request, while ensuring that these observers have the power to intervene when they recognize human rights violations.
- √- Implement and actively support prevention mechanisms designed to avert human rights violations – particularly forced disappearances – in indigenous communities, such as the joint commission instituted to supervise the situation in Tierralta.

WE CALL ON THE GOVERNMENT OF CANADA TO:

- √- Put pressure on the Government of Colombia to ensure that it follow through with the recommendations.
- √- Ask its ambassador in Bogota to offer to take part, as an observer, in the initiatives undertaken by the Government of Colombia to prevent serious human rights violations, such as forced disappearances, as the ambassador has done in the Mixed Commission.
- √- Exhort all parties to desist from the practice of forced disappearances and commit to respecting the neutrality of the indigenous peoples.

PERU: CALL TO ACTION

ANFASEP'S DEMANDS TO THE GOVERNMENT OF PERU

- √- That the Government of Peru immediately take a position on the final report of the Truth and Reconciliation Commission.
- √- That a body be created to follow up on the recommendations of the Truth and Reconciliation Commission with the participation of organizations representing the affected persons.
- √- That grave human rights violations and crimes against humanity not go unpunished, that justice be done, and that in this effort the Government of Peru allocate the resources necessary to pursue the prosecution and exhumation of clandestine graves.
- √- That investigations into the forced disappearances that occurred between 1980 and 2000 be pursued.
- √- That the Government of Peru allocate the funds necessary to make comprehensive reparations to the victims and their families.

DEMANDS TO THE GOVERNMENT OF CANADA

- √- That the Government of Canada make representations to the Government of Peru in support of ANFASEP's demands and recommendations.
- √- That the Government of Canada provide financial aid and human resources to the Government of Peru to assist with the implementation of these recommendations.

INDIGENOUS PEOPLES IN INTERNATIONAL ORGANIZATIONS:

RESOURCES

THE UNITED NATIONS ORGANIZATION has a number of instruments and discussion forums for those wishing to learn more about the issues of indigenous peoples' rights, particularly their relationship with natural resource companies attempting to develop their territory. www.unhcr.ch/indigenous/main.html in English, www.unhcr.ch/french/indigenous in French, and www.unhcr.ch/spanish/indigenous in Spanish give you access to the relevant documents and mechanisms, i.e., the Permanent Forum on Indigenous Issues, the *Draft Declaration on the Rights of Indigenous Peoples*, the Working Group on Indigenous Populations (which is working on relations with transnationals whose activities affect indigenous communities and the context of globalization) and the Commission on Human Rights' Special Rapporteur on the Situation of Human Rights and Fundamental Freedoms of Indigenous People. *ℓ*

FORCED DISAPPEARANCES:

A DEFINITION

IN INTERNATIONAL HUMAN RIGHTS LAW, the phenomenon of forced disappearance implies at least the passive cooperation of agents of the State. This crime is defined in the preamble to the *Declaration on the Protection of All Persons Against Enforced Disappearances*¹ as the arrest, detention, or abduction of an individual by the government – or an organized group or individual with the support, consent or acquiescence of the government – followed by a refusal to disclose the person's fate or whereabouts or to acknowledge the deprivation of his or her liberty, with the intent of placing such person outside the protection of the law for a prolonged period. As can be seen, this definition, based on which the Working Group on Enforced or Involuntary Disappearances determines whether or not to examine each case submitted to it, does not encompass disappearances attributable to non-governmental actors such as armed opposition groups. Moreover, the definition of this phenomenon is not the same in international humanitarian law (IHL), another component of international law that only applies in situations of armed conflict. For example, in IHL a soldier who goes missing in action meets the definition of a disappeared person, even if there was no intent on the part of a government, or agents acting on its behalf, to violate the soldier's rights. *ℓ*

¹ UN GENERAL ASSEMBLY RES. A/RES/47/133 (18 DECEMBER 1992).