



OSCE SHOULD ADDRESS THE PROBLEM OF ENFORCED DISAPPEARANCES NOW

APPEAL OF THE CIVIC SOLIDARITY PLATFORM TO OSCE PARTICIPATING STATES, POLITICAL BODIES AND INSTITUTIONS ON THE OCCASION OF THE INTERNATIONAL WEEK OF THE DISAPPEARED

The week of 26-31 May 2014 has been commemorated by civil society organisations and concerned citizens across the world as the International Week of the Disappeared. We give tribute to the disappeared and their families and join international efforts for the universal ratification and implementation of the International Convention for the Protection of All Persons from Enforced Disappearance, the recognition of the competence of the UN Committee on Enforced Disappearances and the enactment of domestic laws criminalizing enforced disappearances. Having entered into force in December 2010, the International Convention provides the right to truth and justice and the right not to be subjected to enforced disappearance. It considers unresolved past cases of enforced disappearance as a continuing offense and holds States responsible for the acts committed by its agents. It has strong provisions on truth, justice, reparation and guarantees of non-recurrence.

However, almost four years after entry of this important international treaty into force, there are only 92 signatories and 43 States Parties to the Convention. Of the 43 ratifications, only 16 have recognized the competence of the UN Committee on Enforced Disappearances. The slow rate of ratification of the Convention and recognition of the competence of the Committee is a challenge to global human rights on the background of the continuing commission of the crime of enforced disappearance in many countries across the globe and the lack of effective investigation of the past cases as documented by the United Nations Working Group on Enforced or Involuntary Disappearances.

We strongly believe that an alarming trend of spreading of the crime of enforced disappearances in a number of OSCE participating States requires particular vigilance and immediate actions by OSCE. In particular, lack of a specific OSCE commitment to prevent and combat the crime of enforced disappearances and absence of this important subject on the agenda of OSCE human dimension activities is deeply disturbing and must be addressed without delay. However, even in the absence of an explicit OSCE commitment on this subject, it is obvious that the practice of enforced disappearance contradicts existing OSCE commitments and international human rights law more generally. At the very least, it is an ultimate negation of proper procedures of arrest and fair trial. There is important jurisprudence of the European Court of Human Rights, keeping states responsible for a proper process of investigation of enforced disappearances even if they occurred before the state became party to the Convention.

As OSCE and other inter-governmental organisations have failed to address numerous past cases of enforced disappearances in a number of countries of the region, an atmosphere of impunity prevails there and a breeding ground for commission of new crimes is established. This not only denies justice and effective remedy to victims and their families but often leads to other grave human rights crimes such as short-term abductions, torture and murder.

Enforced disappearances often target political opponents, civic activists and journalists; they are committed during counter-terrorism operations against terrorism suspects, and take place with alarming occurrence against civilians in the course of armed internal and international conflicts. Both agents of the state and private actors commit this crime.

A few examples of enforced disappearances stand out in the OSCE region. Among them we recall numerous cases of this crime in Chechnya and other regions in the North Caucasus which are not just a matter of the past but continue unabated today. Equally importantly, lack of effective investigation of massive enforced disappearances in almost all countries of the former Yugoslavia during the wars in the 1990s not only denied justice and effective remedy to victims and their families but also led to commission of this crime during the war in Kosovo in the 2000s. Alarming reports about enforced disappearances have been also coming from Turkey. Most recently, numerous disturbing reports of abductions and enforced disappearances have been coming from Ukraine, where they have been committed against protesters during the Maidan events, in Crimea and lately by separatist forces in the East of the country against journalists, civic activists and even members of the OSCE monitoring missions.

Two participating States that have been a subject to the OSCE Moscow Mechanism, Turkmenistan and Belarus, stand out as having the biggest problems with enforced disappearances in the entire OSCE region.

According to information from reliable sources and reports of witnesses, from the first years of Alexander Lukashenka's ruling in mid-1990s, political leadership of Belarus started to create a secret group for assassination of dangerous criminals and political opponents of the regime with total annihilation of their bodies or hiding them without a trace. This group included former and acting officers of special services and was often referred to as a "death squad". According to witnesses, it was finally formed by the late 1990s and started its activity. Reportedly, about 30 persons were abducted and murdered by this group. Its victims included several leading political opponents of the regime and a leading journalist. None of these crimes have been effectively investigated despite of international and domestic outcry. More recently, in 2008-2014 the practice of abductions has been widely spread: a number of civic and political activists were abducted, taken outside of the city, intimidated, and in some cases tortured and threatened with murder.

More than 10 years ago several "resonant" trials took place in Turkmenistan. A number of persons, including acting or former high-ranking officials, were sentenced to life or long term imprisonment. Information on the most prominent cases can be found in the 2003 report of the OSCE Moscow Mechanism Rapporteur. The report unveiled numerous due process violations, brought up evidence of torture of persons under investigation, and repression against relatives and friends of the accused. These people faced evictions, deprivation of rights, and denial of any information about their dear ones ever since. All cases have led to the emergence of a large category of persons sentenced to life or long-term imprisonment, between 70 and 100 people in total. Most of these people have been held incommunicado since the time of their detention more than 11 years ago. For all this time, neither relatives nor the public have received any official information about the fact of whether these people are still alive or dead and what their health condition is. These people have in fact forcefully disappeared in the Turkmenistan prison system.

On the occasion of the International Week of the Disappeared we make the following recommendations to OSCE:

- All OSCE participating States should ratify the International Convention for the Protection of All Persons from Enforced Disappearance and recognise the competence of the UN Committee on Enforced Disappearances;

- OSCE participating States should fully implement relevant judgments of the European Court of Human Rights as concerns both individual cases and general measures;
- All OSCE participating States should enact domestic legislation criminalising enforced disappearances based on the provisions of the International Convention for the Protection of All Persons from Enforced Disappearance;
- All OSCE participating States should take all necessary practical steps to combat this heinous crime, effectively investigate allegations of enforced disappearance, bring perpetrators to justice and provide proper compensation to the victims and their families;
- OSCE participating States should assist other participating States in combating the crime of enforced disappearances by applying the mechanism of universal jurisdiction to apprehend individuals from other countries suspected in or responsible for committing the crime of enforced disappearance, effectively investigate allegations brought against them, and bring perpetrators to justice;
- OSCE political bodies, institutions and participating States should start working without delay on drafting an explicit OSCE commitment on enforced disappearances with the aim of adopting such commitment in the nearest future. The OSCE Chairmanship should take a lead in this process;
- Meanwhile, OSCE political bodies, institutions and participating States should immediately review and update existing OSCE commitments related to torture, and in the process recognize enforced disappearance as a crime and a form of torture. The OSCE Chairmanship should organise the process of preparing updated OSCE commitments on torture that would include enforced disappearance as a form of torture;
- Continued application of the OSCE Moscow Mechanism regarding a human dimension situation in a participating State should not be considered finished until substantial progress in the implementation of recommendations contained in the Moscow Mechanism report has happened. This progress should be documented in subsequent reports by a working group or a rapporteur established by the OSCE Chairmanship or the HDC Chair or a group of concerned participating States (with a more informal status). An absolute minimum requirement for continued application of the Moscow Mechanism should be the continuation of such gross violations of human dimension commitments as continued abductions and enforced disappearances, lack of effective investigation of the past cases of abductions and enforced disappearances, continued incarceration of political prisoners, repeated and widespread use of force against participants of peaceful assemblies, and systematic use of torture against political prisoners, victims of abductions and participants of peaceful assemblies. Each incoming OSCE Chairmanship should look into such “open Moscow Mechanism cases”, examine the current situation in a country and organise a follow-up process if needed.

We urge OSCE participating States, political bodies and institutions to act together now to stop enforced disappearances.

2 June 2014