

AMNESTY INTERNATIONAL

Statement by Wies De Graeve, director of Amnesty International Belgium Flemish Office at the public event '*Enforced disappearance in the 21st century: nature, challenges and measures to combat it*' of the 114th Session of the UN Working Group on Enforced.

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M(s) Chairperson,

Minister Reynders,

Esteemed members of the Working Group and of the Committee on Enforced Disappearance,

Dear colleagues and guests,

It is an honour for me to speak at this public part of the UN Working Group's session in Belgium. I must say that – as a Belgian citizen – I am particularly pleased that the Belgian ministry for Foreign Affairs invited the Working Group to hold its session in Brussels. As far as I am aware, this is for the first time and I hope it can be interpreted as a start to a re-invigorated attention for enforced disappearances, crimes under international law and the struggle against impunity.

Indeed, my organisation, Amnesty International applauds that Belgium has made the struggle against impunity a standing priority for its multilateral foreign policy and has done so for many years. There have been marked successes in terms of strengthening international law and, of course, there are still many challenges to overcome. I will address some of these challenges and opportunities later in my contribution.

First though, a few things about the crime of enforced disappearance. It is one of the worst human rights violations that exist: it's a crime that places people outside the protection of the law and causes severe suffering on them and on their families. An international crime in and of itself, it is also a grave threat to the most basic of our human rights, like the right to life, the right to liberty and the right not to be subjected to torture and other cruel, inhuman or degrading treatment or punishment. It can be a crime against humanity.

Beyond the severity of each single case of enforced disappearance, the numbers are baffling. There are tens upon tens of thousands of direct victims and hundreds of thousands affected. The working group last year alone transmitted well over a thousand new cases to 36 states.

The crime is grave, the numbers are staggering and there is not one continent where there are no harrowing tales from victims and survivors to be collected. Indeed, the crime of enforced disappearance is perhaps more geographically widespread than ever

before. If European states, for instance, think this crime is something that happens far away, they are dangerously overestimating themselves and their neighbours.

The issue clearly deserves the undivided attention of each of us. Not least because, as I believe we are all painfully aware, the number of convictions for those responsible for these crimes is entirely insignificant in comparison to the number of victims. Far too often enforced disappearance results in impunity.

So, what can we expect from states and the international community to help tackle this huge problem?

First, **each state** should be diligently bringing its legal framework in line with the Convention. That means ratifying and implementing into national law. It is imperative that they do so without reservations and that they fully recognize the competence of the Committee on Enforced Disappearance.

Amnesty International stands at the ready to help any state in achieving this. We published a 90-page checklist for states to use when implementing the convention fully and effectively.

As the Committee and the Working Group together stated last year: there is no valid excuse not to ratify the convention. Since we're in Belgium, I do take the liberty to stress two things:

- First, several EU states have not yet ratified the convention, we would be remiss were we not to request our Belgian hosts to remind their co-member states to ratify and implement swiftly. Particular attention could perhaps go to the 4 EU member states that haven't even signed the convention.
- Second, Belgium ratified the convention swiftly but still has some work to do when it comes to the implementation into the national legislation, including on the reinforcement of its rules on universal jurisdiction and on necessary changes to the criminal code. As some of you may know, Belgium's criminal procedures are currently in the process of a very important review which of course is an opportunity to bring the criminal procedural law in line with the convention and other international law.

With strong national legislations in place, the next step is that states should carefully seek in any territory subject to their jurisdiction the presence of any person suspected of criminal responsibility for EDs or other crimes under international law, with the aim of exercising jurisdiction unless the person is extradited and surrendered to an international court or tribunal.

To be able to do this, those responsible for the prosecution and investigation of international crimes, need the means and capacity to do their job. This is an often-overlooked step: it is very well to have great laws but without the means to investigate crimes and pursue criminals, one cannot hope to end impunity.

In sum, there is a lot of work to be done at the national level, and I think that goes for most if not all states.

At the **international level**, I want to draw your attention to two very important developments in terms of international law with a direct link to the crime of enforced disappearances. Two draft treaties offer important opportunities and a few threats. Both will require our attention this year.

First, **1) Draft Convention on crimes against humanity**

Last year the International Law Commission (ILC) provisionally approved, in first reading, the draft Convention on crimes against humanity. The draft text was sent to states, for comments, by 1 Dec. 2018.

The draft Convention follows Article 7 of the Rome Statute of the International Criminal Court (Rome Statute) while defining crimes against humanity and, therefore, enforced disappearance, as a crime against humanity, will be incorporated in the new Treaty.

This is a good opportunity for states, like Belgium, to propose a number of amendments to the draft Convention before the deadline of 1 December this year. Our ambition must not be limited to confirming the status quo but must be to ensure further progress of the international juridical framework regarding crimes against humanity. So now is the time to further improve the text.

We should for instance be vigilant about the definition of enforced disappearance in the Convention on Crimes against humanity. The text should not revert to the flawed definition in the Rome Statute, but rather use the one in the Convention on Enforced Disappearance itself. Secondly, we encourage Belgium and other states to advocate for the explicit prohibition of amnesties and other similar measures of impunity. Thirdly, we urge all states to ensure that victims are properly defined within the text, again as is the case in the Enforced Disappearance Convention. Finally, like in the Rome Statute, there should be no reservation permitted.

2) Mutual legal assistance (MLA) treaty

A second opportunity is the initiative of Belgium, the Netherlands, Slovenia, Argentina, Senegal and Mongolia¹ on a potential Convention on mutual legal assistance among states to provide the widest measure of legal assistance in investigations, prosecutions, and judicial proceedings in relations to crimes under international law, including enforced disappearances.

Last October, Amnesty International made interventions in a governmental conference to discuss that potential new Treaty, held in Doorn (NL).² We stressed there the need to add other distinct crimes under international law, like torture and enforced disappearances, along with the three core crimes that are currently provided. The use of improper grounds for refusal of legal assistance is one of the issues this treaty should try to overcome. To do so, states should make sure that the MLA-treaty limits the grounds to the narrowest list possible. Permissions of refusals should be limited to the expressly listed grounds.

¹ 21.02.2018 - Edited to include Senegal and Mongolia.

² 21.02.2018. Correction.

On the other hand and importantly, the current treaty skeleton does not have effective human rights safeguards. This needs to be addressed urgently. There should for example be a non-refoulement provision to prevent that the granting of mutual legal assistance leads to serious human rights violations.

Ladies and gentlemen,

When considering the highly necessary legal work at both national and international level, we should never lose sight of what this is for: helping, as best as we can, the victims of these heinous crimes and their relatives.

One survivor of enforced disappearance who was held for 15 months in illegal detention in the Ukraine, told Amnesty International that his guards often said to him “you don’t exist”. Four words that sum up the challenge in front of us. It is remarkable how similar the sentiments expressed by other victims and family members are. The spouse of Juan Almonte, who disappeared in the Dominican Republic, said: “we are fighting against power, and they see us as if we are nothing.”

Breaking that feeling of non-existence and giving support to those who feel they are up against insurmountable odds in trying to get some news about their loved ones, is our job here.

It has always been an important driver behind Amnesty International to give voice to the voiceless and to bring light to those who are held in the shadows. I cannot imagine any of the esteemed members of the Working Group would be willing to do this work if they didn’t share that aspiration.

The Working group will this week hear many testimonies and review 800 cases. The testimonies will undoubtedly be heart-breaking and I wish the esteemed members strength when listening and processing these stories and conviction, tenacity and courage when taking the cases further to the states that hold responsibility.

Thank you.