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Reports of the Working Group on enforced or involuntary disappearances¹

Chairperson-Rapporteur

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Mandate

The Working Group on enforced or involuntary disappearances (the Working Group) was established in 1980² to assist families in determining the fate and whereabouts of their relatives who, having disappeared, are placed outside the protection of the law. The Working Group endeavours to establish a channel of communication between the families and the Governments concerned, to ensure that individual cases that families have brought to the Group's attention are investigated with the objective of clarifying the whereabouts of disappeared persons. The Working Group relies on international standards such as the *Declaration on the Protection of All Persons from Enforced or Involuntary Disappearance* (the Declaration) and the *Rome Statute of the International Criminal Court*. The Working Group is mandated to pay particular attention to cases involving children and human rights defenders and must apply a gender perspective to its work.

Activities

- The Working Group held three sessions during the period under review;
- It transmitted 535 newly reported cases of disappearances to 22 Governments, 91 of which allegedly occurred during the last year. The Working Group sent 132 of these cases under the urgent action procedure. The total number of cases transmitted by the Working Group to Governments since its inception is 51,236;
- The Working Group joined with other special procedures to issue 15 joint Urgent Actions;
- It clarified 1,309 cases in 17 countries, a considerable increase over previous years due to enhanced and relatively stable staffing. The total number of cases under active consideration that have not been clarified yet stands at 41,128, with 7,087 cases clarified over the past five years;
- The Working Group has participated in meetings of the inter-sessional working group to draft a legally binding instrument for the protection of all persons from enforced disappearance;
- The Working Group commissioned a comparative study on the criminal law treatment of enforced or involuntary disappearances. Preliminary analysis reveals that outside of Latin America, very few States have created a specific criminal offence of enforced or involuntary disappearances;
- The Working Group adopted a general comment providing the proper interpretation of Article 18 of the Declaration, which concerns amnesty laws. The general comment lists a number of consequences of amnesty laws, which render them contrary to the provisions of the Declaration, as well as a number of measures that should be considered contrary to the Declaration;
- Mission to Colombia from 5 to 13 July 2005.

Annual report³

Scope

¹ Summaries prepared by Cléa Thouin, Intern, ISHR, supervised and edited by Meghna Abraham, Information Program, ISHR.

² Commission on Human Rights *Resolution 20 (XXXVI)*.

³ E/CN.4/2006/56, 27 December 2005.

The report contains an overview of the activities of the Working Group from November 2004 to November 2005, describes its mandate and working methods, and provides information concerning enforced or involuntary disappearances in various countries and territories. The report reflects a new format, with a tabular summary of relevant information for each State where disappearances have been reported to the Working Group. Contained in annexes are the decisions taken on individual cases taken by the Working Group during 2005; a statistical summary of cases of enforced or involuntary disappearance reported to the Working Group between 1980 and 2005; graphs showing the development of disappearances in countries with more than 100 transmitted cases between 1964 and 2005; and lists of names of newly reported cases, from countries where there were more than 10 newly transmitted cases during the last year.

Summary and key conclusions

The Working Group was initially formed to address disappearances arising from authoritarian rule in Latin America. Disappearances have now become a global phenomenon occurring: in States suffering from internal conflicts, such as Colombia, Nepal, the Russian Federation, Iraq and the Sudan; as a result of political repression, as in Algeria and the Philippines; or radical political changes such as in the Islamic Republic of Iran. A number of countries still carry the burden of their past, with thousands of cases awaiting clarification, such as Argentina and Chile. In some situations, due to underreporting, especially in Africa, the Working Group expects large reports to come in the future. Underreporting is usually due to poverty, illiteracy, submissiveness to fatalism, fear of reprisal, weakness of administration of justice, ineffectual reporting channels and mechanisms, institutionalised systems of impunity, practices of silence, and restrictions on the work of civil society.

The Working Group expresses serious concern regarding situations of disappearances worldwide but is particularly alarmed at reports concerning disappearances of **children** and **people with physical or mental disabilities**. The protection of human rights defenders, families seeking their disappeared relatives, witnesses, and legal counsel is a constant preoccupation of the Working Group. The Working Group also expressed its concern that **anti-terrorist activities** are being used by an increasing number of States as an excuse for not respecting the obligations of the Declaration. Credible reports point to the repression of opposition groups in many States in the name of a “war on terror”; the use of “extraordinary rendition” to transport terrorist suspects to other States; and reports of secret detention centres where terrorist suspects are held in complete isolation from the outside world. This is particularly concerning since disappearances tend to be a precursor to torture and even extra-judicial executions. The Working Group is also concerned that in some **post-conflict situations**, mechanisms of truth and reconciliation may enact amnesty laws and other measures leading to impunity. The Working Group has therefore adopted a General Comment on Article 18 of the Declaration.

The Working Group reviewed cases from Afghanistan, Algeria, Angola, Argentina, Bangladesh, Belarus, Bhutan, Bolivia, Brazil, Burkina Faso, Burundi, Cambodia, Cameroon, Chad, Chile, China, Colombia, Congo, Democratic People’s Republic of Korea, Democratic Republic of the Congo, Dominican Republic, Ecuador, Egypt, El Salvador, Equatorial Guinea, Eritrea, Ethiopia, France, Greece, Guatemala, Guinea, Haiti, Honduras, India, Indonesia, the Islamic Republic of Iran, Israel, Japan, Jordan, Kuwait, Lao People’s Democratic Republic, Lebanon, Libyan Arab Jamahiriya, Malaysia, Mauritania, Mexico, Morocco, Mozambique, Myanmar, Namibia, Nepal, Nicaragua, Nigeria, Pakistan, Palestine, Paraguay, Peru, the Philippines, the Russian Federation, Rwanda, Saudi Arabia, Serbia and Montenegro, Seychelles, Spain, Sri Lanka, the Sudan, the Syrian Arab Republic, Tajikistan, Thailand, Timor-Leste, Togo, Tunisia, Turkey, Uganda, Ukraine, Uruguay, Uzbekistan, Venezuela, Yemen, and Zimbabwe.

Key recommendations

- **States who have not replied to the Working Group’s** requests for information or have provided *pro forma* responses should fulfil their obligations under the Declaration and the resolutions of the General Assembly and the Commission on Human Rights;
- With regard to **anti-terrorist measures**, States should comply with their obligations under international human rights and humanitarian law, which stresses that no circumstances may be invoked to justify enforced disappearances. Furthermore, States should hold persons deprived of their liberty in an officially recognised place of detention and promptly provide accurate information on the detention and transfer of such persons. States should also comply with their obligations under Article 8 of the Declaration, which states that no State shall expel, return or extradite a person to another State where they may be at risk of enforced disappearance;
- States should allow **NGOs** working on disappearances to undertake their work freely and without impediment;
- States should make every effort to prevent the disappearances of **children**;

- States should adopt **preventive measures** such as harmonising domestic law with the Declaration; keeping accessible and updated registries of detainees; strengthening civil society organisations; bringing all persons accused of having committed acts of enforced disappearance to justice; and providing redress and adequate compensation to victims and their families. States should also create and support specific bodies and institutions charged with addressing disappearances;
- **OHCHR should promote the Declaration** and include in its program of technical cooperation the strengthening of national capacities for the prevention and eradication of disappearance;
- States should pay particular attention to the **Working Group's comment on article 18 of the Declaration**.

Corrigendum⁴

In the English version of the annual report of the Working Group, the chart in each country session should be understood to come immediately after the name of the country.

Mission to Colombia⁵

Scope

The Working Group visited Colombia from 5 to 13 July 2005 to follow up on the recommendations made by the Working Group during its first visit in 1988 and to investigate the development of disappearance. The delegation visited the cities of Bogotá, Barrancabermeja and Medellín and met with high-ranking officials, local authorities, members of the Constitutional Court and the Supreme Court, representatives of the army and the police, non-governmental organisations, and families of victims of enforced disappearances.

Summary and key conclusions

The report presents an overview of the constitutional and legal framework on enforced disappearances, highlighting the gap between a highly sophisticated legal system and very poor concrete results in practice. For more than 40 years, Colombia has been an arena of conflict where various actors have perpetrated all kinds of violence and gross human rights violations. Despite this, there is no official recognition of the internal conflict. The President has presented a plan, the Democratic Security Policy, to strengthen the rule of law across the territory through the consolidation of democratic authority and the legal participation of citizens. While the Government has noted significant progress in reducing the level of violence across the country, non-governmental sources claim that the dismantlement of paramilitary units is largely a cosmetic exercise and that paramilitaries have been consolidating their power, notably in economic and political institutions. Furthermore, various reports indicated that disappearances have not lessened and the majority of cases reported involve paramilitaries with the acquiescence of certain elements within the State military and security forces.

Since 1988, Colombia has established one of the most developed systems of constitutional, legal and institutional mechanisms for dealing with enforced disappearances, notably through the 1991 Constitution, the Criminal code, and the ratification of the *Inter-American Convention on Forced Disappearances of Persons* (IACFDP). A number of State institutions have been established to deal with enforced disappearances, including the National Commission to Search for Disappeared Persons; the National Registry of the Disappeared, the Human Rights Ombudsman, the Constitutional Court; and human rights units within governmental ministries and departments. The implementation of the constitutional and legal framework however, has left much to be desired including:

- **Gaps between legal progress and practical implementation:** of 391 complaints of enforced disappearances, only 84 have been opened implicating government officials and only 44 persons have been sanctioned so far. The National Commission to Search for Disappeared Persons has also not produced sufficient results;
- **Overlapping institutions** and agencies with competing programs and missions: lack of central coordination, poor inter-agency communication, fragmentation of authority all lead to weak and ineffective policy. The grouping of the ministry of justice and the interior is also problematic;
- **Definition of the criminal offence of enforced disappearance:** the definition allows the possibility of including acts committed by non-State actors in conflict with the Declaration and the IACFDP, which may have the effect of diluting State responsibility;

⁴ E/CN.4/2006/56/Corr.1, 23 February 2006.

⁵ E/CN.4/2006/56/Add.1, 17 January 2006.

- **Tracing the fate of victims:** of the over 1,150 cases reported since 1981, there are approximately 895 outstanding cases. Thousands of graveyards containing bodies of missing and disappeared persons still exist all over the country;
- **Underreporting of cases:** while from 1973 to the end of the 1990s alleged perpetrators were mainly government officials, from 1998 to present, there are more cases where paramilitary groups are directly responsible. Another aspect of disappearances that has been underreported is the way in which they are perpetrated in conjunction with other gross violations, with targets drawn from the most vulnerable groups of society. Reasons for underreporting include the link between State Authorities and paramilitary forces; the pervasive atmosphere of fear, intimidation and terror; and the profound lack of trust in the judicial system.

There are also a number of other matters of concern around:

- **Legal provisions for demobilisation of paramilitaries:** Law 418 establishes that for the purpose of facilitating peace talks, arrest and imprisonment warrants would cease to apply to persons involved in the peace talks. The Justice and Peace Law further provides for mitigation of sentence for perpetrators of enforced disappearances, when demobilising, in contravention of the Declaration;
- **Protection regime and the environment of fear:** while the Government has affirmed its commitment to protecting persons involved in investigations, including relatives, legal counsel, witnesses, related NGOs, human rights defenders, and prosecutors, in practice these measures have not functioned as planned. The Government also has a hostile and derisive attitude towards NGOs and human rights defenders;
- There is a **lack of political will**.

Key recommendations

- The Government should **cease to deny the internal armed conflict**;
- The Government should address the **links between members of the military forces and National Police and paramilitary groups**. It should investigate the role of paramilitary groups in carrying out enforced disappearances;
- The Government has the responsibility to conduct **thorough and impartial investigations** for as long as the fate of the victim remains unknown;
- The Colombia authorities should ensure the **safety of relatives, witnesses and their lawyers**;
- The Government should demonstrate that it has enough **political will** to deal with the problem of criminalisation of disappearances under the Constitution and the Criminal Code;
- The Government should guarantee the **right to truth, justice and reparation** and consider the creation of a **National Commission for Truth, Reconciliation and Reparation**;
- The Government should not weaken the judicial control of the **Constitutional Court** over State actions;
- It is necessary to strengthen **inter-agency cooperation** within the Colombian Government as well as the **National Commission to Search for Disappeared Persons** and separate the **Ministry of the Interior and the Ministry of Justice**;
- The Government must take urgent measures recognising the special needs of the country's most **vulnerable groups**, including women, children, human rights defenders, trade union leaders, and rural dwellers;
- The Government should **treat civil society groups as partners**;
- The **Justice and Peace Law** should be amended so as to ensure compliance with the Declaration.