

# COUNCIL MONITOR

International Service for Human Rights



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Report of the Working Group on enforced or involuntary disappearances<sup>1</sup>

### Mandate Holders

Mr Santiago Corcuera (Chairman-Rapporteur), Mr J 'Bayo Adekenye, Mr Saied Rajaie Khorasani, Mr Darko Göttlicher, and Mr Stephen Toope.

### Mandate

The mandate of the Working Group for enforced or involuntary disappearances was established in 1980<sup>2</sup> in response to the concern over reports from various parts of the world relating to enforced disappearances. The aim of the mandate is to serve as a channel of communication between family members of victims of disappearance and governments; to assist families in determining the fate or whereabouts of their family members who are reportedly disappeared; to make appropriate recommendations; to seek and receive information from governments, intergovernmental organisations, humanitarian organisations and other reliable sources; and to monitor the progress of States in fulfilling their obligations.

### Activities

- The Working Group presents its annual report and country visits to Honduras and El Salvador to the Human Rights Council (the Council).
- In 2007, the Working Group completed a process of reviewing its methods of work.<sup>3</sup>
- The Working Group met formally with representatives of the Governments of France, Iraq, Japan, Mexico and Thailand as well as representatives of non-governmental organisations (NGOs) and associations of relatives of disappeared persons and families or witnesses.
- During the period of review, the Working Group transmitted 629 cases of newly reported enforced disappearances to governments.<sup>4</sup> The urgent action procedure was used for 65 of these cases. 224 cases were clarified.

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<sup>1</sup> Summary prepared by Annika Åberg, Intern, ISHR, edited by Rosa Sanz, Geneva Program, ISHR.

<sup>2</sup> Commission on Human Rights *Resolution 1980/20*. The mandate was renewed in April 2004 through *Resolution 2004/40*.

<sup>3</sup> The revised methods of work will come into effect as of the next session of the Working Group.

- In response to developments in international law, the Working Group drafted a general comment to provide an elaboration of the definition of enforced disappearance, highlighting that enforced disappearances are only considered as such when the perpetrators are State actors, private individuals or organised groups acting on behalf of the government or with its consent. The Working Group stressed that even a short-term detention where the detainee is not charged is considered a violation.
- The Working Group has requested visits in 2008 to Algeria, Argentina, Indonesia, Iran, Nepal, Nicaragua, Philippines, Russian Federation, Sri Lanka, Sudan, and Timor-Leste.

## Annual report<sup>5</sup>

### Scope

- The Working Group is grateful for the cooperation received from a number of governments, but remains concerned that some governments have never replied to the communications or have provided responses that do not contain relevant information.<sup>6</sup>
- The revised methods of work of the Working Group are outlined in the annexes to the report, along with a number of statistical summaries and graphs concerning individual case decisions, reported cases, the development of disappearances in countries and a list of names of newly reported cases.
- In addition to countries visited, the annual report provides information concerning the number of newly reported, transmitted, clarified and outstanding cases, cases under the urgent action procedure and general allegations in a number of countries.<sup>7</sup>
- The Working Group made substantial comments on various countries.

### Substantive comments on various countries

- The Working Group expresses concern that little progress has been made in clarifying cases of disappearances in **Algeria**. It regrets that Algeria has not responded despite repeated requests to visit the country.
- With regards to **Argentina**, the Working Group commends the continuation of trials against actors involved in disappearances and the creation of a comprehensive database to establish the fate or whereabouts of disappeared persons.
- The Working Group is deeply concerned about the newly reported cases in **Chad**.
- The Working Group notes that only one case was received concerning **Colombia**. It hopes that this is a trend showing that disappearances are no longer occurring in the country rather than it being the effect of underreporting<sup>8</sup>, noted in a 2005 report.
- The Working Group reminds the Governments of **Ethiopia**, **Guatemala** and **India** of their responsibilities to conduct thorough and impartial investigations for as long as the fate of the victim of enforced disappearance remains unclarified.

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<sup>4</sup> To the Governments of Algeria, Bahrain, Chad, China, Colombia, Democratic Republic of Congo, Equatorial Guinea, Ethiopia, Gambia, Honduras, India, Indonesia, Iran, Japan, Lebanon, Libya, Mexico, Myanmar, Nepal, Pakistan, Philippines, Rwanda, Russian Federation, Saudi Arabia, Sri Lanka, Sudan, Syria, Thailand, United Arab Emirates.

<sup>5</sup> A/HRC/7/2.

<sup>6</sup> The governments who have not responded are Burundi, Guinea, Israel, Mozambique, Namibia, Seychelles, the Palestinian Authority.

<sup>7</sup> Algeria, Argentina, Bahrain, Bangladesh, Belarus, Cambodia, Chad, China, Colombia, Democratic People's Republic of Korea, the Democratic Republic of Congo, Ecuador, Equatorial Guinea, Ethiopia, France, Gambia, Greece, Guatemala, Guinea, India, Indonesia, Iran, Iraq, Japan, Jordan, Kuwait, Lebanon, Libya, Mexico, Montenegro, Morocco, Myanmar, Nepal, Nigeria, Pakistan, Peru, Philippines, Russian Federation, Rwanda, Saudi Arabia, Sri Lanka, Sudan, Syria, Tajikistan, Thailand, Timor-Leste, Turkey, Ukraine, USA, Uzbekistan, Venezuela, Yemen, Zimbabwe.

<sup>8</sup> Lack or relevant replies to communications.

- The Working Group expresses concern about the closure of the Special Prosecutor's Office in **Mexico**, which was the only institutional mechanism to investigate past human rights violations.
- The Working Group highlights the Government of **Morocco**'s successful efforts to clarify a large number of cases as an example to other countries.
- The Working Group expresses deep regret for the cases of disappearances in **Myanmar**. It reminds the Government of its obligations to adopt preventive measures and provide guarantees of non-repetition of enforced disappearances.
- In **Pakistan**, according to reports submitted to the Working Group, the police and intelligence agencies are responsible for most enforced disappearances, and the higher courts lack the power to search places of detention controlled by the military. The Working Group reminds the Government that no circumstances may be invoked to justify enforced disappearances.
- The Working Group is concerned that the absence of an appropriate legal framework on enforced disappearances in the **Philippines** is denying victims and their families the possibility to seek justice.
- The Working Group notes the large number of unresolved cases arising from the conflicts in the northern Caucasus and the alleged impunity. It reminds the Government of **Russia** of its obligations to conduct thorough and impartial investigations.
- The Working Group is gravely concerned at the increase in reported cases of recent enforced disappearances and the alleged growing culture of impunity for actors involved in disappearances in **Sri Lanka**, as it indicates a widespread pattern of disappearances in the country.
- The Working Group expresses concern about the possibility of underreporting of cases that may be happening in the Darfur region in **Sudan**.
- The Working Group expresses concern about the continuing policy and practice of rendition by the **United States of America** (the US) and its wide-ranging detention system for terrorism suspects, including secret detention facilities outside the US.

### **Key recommendations**

- When disappearances arise from an internal armed conflict, the way to an enduring and sustainable solution is for the international community to take concerted action to tackle the root causes that give rise to such conflicts. The monitoring of early warning indicators pointing to the occurrence of disappearances and policies and actions directed at poverty-reduction are essential preventive measures.
- The Working Group strongly urges States to establish solid legal frameworks that guarantee NGOs to undertake their work freely. It further urges States to take steps to create and support specific bodies and institutions responsible for addressing disappearances.
- The principles of the *Declaration on the Protection of All Persons from Enforced Disappearances*<sup>9</sup> (the Declaration) should be disseminated through mass media for the purpose of public education. These principles should also be incorporated in the curriculum of the police academies and training programmes of security forces.
- The Working Group reminds governments to comply with their obligations under the Declaration, in reaction to worrying reports on the existence of amnesty laws, on investigating authorities being part of the military forces, on suspended or closed investigations, and on secret detention systems.
- The Office of the United Nations High Commissioner for Human Rights (OHCHR) is encouraged to promote the Declaration and to strengthen national capacities for the prevention and eradication of disappearances.

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<sup>9</sup> General Assembly *Resolution 47/133*.

## **Mission to Honduras<sup>10</sup>**

### **Scope**

As a part of a four country-mission, the country visit to Honduras took place from 31 January to 2 February 2007. The purposes of the mission were to gather information which might serve as a basis for clarifying as many as possible of the outstanding cases in Honduras, and to discuss possible Governmental efforts to deal with enforced disappearances in the light of international human rights standards.

### **Summary and key conclusions**

- A practice of disappearances carried out or tolerated by the Honduran authorities existed between 1981 and 1984. Responsibility for those disappearances has been assigned to the Honduran armed forces and the Nicaraguan rebels operating in Honduras.
- Since its establishment, the Working Group has received 203 cases of enforced disappearances for consideration, with 125 cases still pending clarification.
- Despite some praiseworthy efforts made by the Government of Honduras to search for missing persons, the Working Group considers that the efforts appear to have been isolated and unsystematic, underlining the lack of a comprehensive search plan for missing persons and standards of compensations.
- Major gaps remain concerning the legal framework applying to enforced disappearances, particularly in relation to the lack of a separate statutory definition.
- The fact that enforced disappearance is not classified as a crime in the Honduran Criminal Code has contributed to impunity.

### **Key recommendations**

- Honduras should amend its Criminal Code to include enforced disappearance as a crime.
- In order for the categorisation of enforced disappearances to be in line with international instruments, the punishment for enforced disappearance should be in parity with the extreme seriousness of the offence, and a comparative study of Honduran criminal law with other legal systems should be conducted.
- It is important to mention in the legislation that no circumstances or instruction can justify this crime and that statutes of limitations should be substantial.
- Greater progress could be made on still outstanding cases if an institutional search mechanism for missing persons and a special attorney's office were established. Both must be independent of the executive branch and provided with well-trained staff and adequate material resources.
- A comprehensive programme of redress and adequate compensation should be instituted.
- The Working Group suggests that Honduras ratify the *International Convention for the Protection of All Persons from Enforced Disappearances*.<sup>11</sup>

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<sup>10</sup> A/HRC/7/2/Add.1.

<sup>11</sup> A/RES/61/177.

## **Mission to El Salvador<sup>12</sup>**

### **Scope**

The country visit to El Salvador took place from 5 to 7 February 2007. The main purposes of the mission were to gather information to serve as a basis for clarifying the greatest number possible of cases, and to forge links with the Government of El Salvador and civil society organisations responsible for investigating cases of enforced disappearances that occurred during the period of internal armed conflict.

### **Summary and key conclusions**

- A systematic practice of disappearances was ongoing between 1978 and 1992. More than 8.000 individuals are estimated to have disappeared.
- The Working Group has received 2,661 cases for consideration, with 2,270 cases still outstanding. No case of enforced disappearance has been received since the end of the armed conflict.
- The Working Group notes with concern that the relations between government officials and the relevant civil society organisations seemed not to be based on confidence and cooperation.
- The Working Group was made aware of considerable polarisation between the political and social groups with regards to the internal armed conflict, the crimes committed during that time, the recovery of the historical truth and the effects of the Amnesty Act on that recovery.
- The Working Group concludes that although El Salvador lacks an institutional system to search for missing persons, the efforts made by civil society are a cause for great hope.
- The Working Group is concerned about the existence of a legal framework that hinders transparency and access to information,<sup>13</sup> and the absence of a law that guarantees access to that information.
- Despite recommendations that the Amnesty Act should not be implemented, the practise of applying this much-criticised law has become a major obstacle to justice and redress, since perpetrators of serious human rights violations are not subjected to any effective investigation or condemnation.
- The definition of the offence of enforced disappearance in the Criminal Code refers only to acts committed by State agents or individuals acting under orders from State agents. The Working Group maintains that enforced disappearance is a criminal offence in all cases.
- Contrary to the provision that enforced disappearance should be punishable by appropriate penalties, a lighter penalty is provided for enforced disappearances than for less serious offences.
- Human rights defenders in El Salvador are subjected to threats, intimidation and harassment.

### **Key recommendations**

- The Working Group strongly recommends El Salvador to create and implement an effective plan to search for disappeared persons.
- To ensure that the search plan is institutionally permanent and that its management and budget are independent, the Working Group recommends entrusting it to a legal body and involving civil society.
- This institution and other relevant authorities should be given access to all information and documentation that may still be restricted.
- The Working Group recommends the Government of El Salvador to guarantee and implement the rights of justice, truth, redress, and rehabilitation. It therefore urges the State to amend the 1993 Amnesty Act and bring it into line with the provisions of international human rights law.

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<sup>12</sup> A/HRC/7/2/Add.2.

<sup>13</sup> In the Salvadoran legislature, any State employee or official who allows anyone to gain access to State information is liable to sentences of between two and six years of imprisonment; the information protected by the State is considered to a 'restricted' document, a 'political secret' or a 'closed document or military secret,' para. 59-60.

- The Working Group calls upon the Government to review the legal provisions concerning the access to information and the definition of the offence of enforced disappearance, particularly with regards to penalties.
- It should be made certain that actors involved with disappearances compensate victims and are suspended from any official duties.
- The Government is urged to ensure the safety of those working on the investigation of cases of enforced disappearances.
- The Working Group urges governmental and non-governmental bodies to strengthen cooperative links in order to resolve open cases of enforced disappearances.
- It is suggested that El Salvador should become a party to the *Inter-American Convention of Enforced Disappearances*, the *Rome Statute of the International Criminal Court*, the *Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity*, and in particular to the *International Convention for the Protection of All Persons of Enforced Disappearances*.

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