

Check against delivery



**Statement by the Chair-Rapporteur of the Working Group on
Enforced or Involuntary Disappearances, Jeremy Sarkin**

**Sixteenth session of the Human Rights Council
(28 February - 25 March 2011)**

Geneva, 7 March 2011



Mr. President,
Distinguished Delegates,
Ladies and Gentlemen:

1. In my capacity as Chair-Rapporteur of the Working Group on Enforced or Involuntary Disappearances, it is my privilege to introduce the annual report of the Working Group covering the period 14 November 2009 to 12 November 2010.
2. In 2010, the Working Group commemorated its 30th anniversary. This was done with an inaugural side event at the 13th session of the Human Rights Council on 18 March 2010 and with a commemorative event held on 5 November 2010, as mandated by this Council resolution 14/10. The event was organized with the support of the Organisation Internationale de la Francophonie. At the event renowned international experts discussed the development and evolution of the Working Group as the first thematic human rights mechanism with a global reach and further stimulated reflection on contemporary and future challenges for its work. They encouraged Member States to further engage with the Working Group and civil society to report cases of enforced or involuntary disappearances and thus progressively overcome underreporting. The event was attended by a number of relatives of disappeared persons.
3. Since its creation, the Working Group has transmitted 53,337 individual cases to Governments in all regions of the world. Over the past five years, the Working Group clarified 1,814 cases. Much work therefore remains to be done. Enforced disappearance remains a global problem occurring worldwide and, in particular, in States suffering from internal conflict. Thousands of cases of disappearances remain unclarified and consequently, they remain continuous crimes.
4. The Working Group would like once again to draw attention to the underreporting of disappearance cases in all regions of the world including Africa. The phenomenon occurs for various reasons, including poverty, illiteracy, fear of reprisals, weak administration of justice, ineffective reporting channels, institutionalized systems of impunity, a practice of silence, restrictions on the work of civil society and unfortunately a lack of awareness about the Working Group and its mandate.
5. Notwithstanding the underreporting, during the reporting period, the Working Group transmitted 105 new cases of enforced disappearances, 50 under its urgent action procedure, to 22 States. 53 of these cases allegedly occurred during this period. During the same reporting period, the Working Group clarified 70 cases concerning 16 countries.
6. The Working Group also sent 7 prompt intervention communications to 5 Governments, including 6 jointly with other special procedures mechanisms. These communications regarded the reported harassment of, and threats to, relatives of disappeared persons or human rights defenders working on cases

of enforced disappearances. Furthermore, the Working Group sent 13 urgent appeals, all jointly with other special procedures mechanisms, to 10 Governments. These concerned persons who have been arrested, detained, abducted or otherwise deprived of their liberty or who had been forcibly disappeared or were at risk of being disappeared. In addition, the Working Group sent 2 general allegations to 2 Governments, based on information received about obstacles in the implementation of the Declaration on the Protection of all Persons from Enforced Disappearance in their respective countries. The sending of joint communications is just one example of how the Working Group continues to cooperate closely with other special procedures of the Council.

7. In 2010, the Working Group adopted two general comments: one on Enforced disappearance as a continuous crime and the other on the Right to the Truth in Relation to Enforced Disappearance.
8. In the 2004 to 2009 period the Working Group conducted official visits to Nepal, El Salvador, Guatemala, Honduras, Colombia, Argentina, and Morocco. The Working Group is grateful to the Governments of Colombia, Guatemala, Honduras and Morocco that have presented informative notes on the status of implementation of the recommendations made by the Working Group in the country visit reports. I will introduce the follow-up reports on the missions to Guatemala and Honduras at the end of the presentation of the annual activities.
9. From 14 to 21 June 2010, the Working Group conducted a country visit to Bosnia and Herzegovina, which was followed by its 92nd session, held in Sarajevo from 22 to 25 June 2010. I will report on this mission at the end of the presentation of the annual activities. While outside the reporting period I would like to highlight that the Working Group recently conducted a visit to Timor-Leste from 7 to 14 February 2011. We sincerely thank the Government of Timor-Leste for its cooperation in the preparation and conduct of the visit. The visit shall be reported upon at a future session of the Council.
10. In addition, I would like to inform that Council that the Working Group shall hold its 93rd session in Mexico City, Mexico from 15-18 March to be followed by a country mission to Mexico. I would like to thank the Government for its kind cooperation to date. In addition we thank the Government of the Republic of Congo for extending an invitation to the Working Group to visit during the course of this year and to Chile for extending an invitation to visit in 2012. The Working Group calls on those States that have received a request for an official visit to consider a positive reply.

Mr. President,

11. In its annual report, the Working Group notes four major areas of concern. The first refers to the continuous and autonomous nature of the crime of enforced disappearance. In the general comment that it adopted during the reporting period, the Working Group recognized that "one consequence of the

continuing character of enforced disappearance is that it is possible to convict someone for enforced disappearance on the basis of a legal instrument that was enacted after the enforced disappearance began, notwithstanding the fundamental principle of non-retroactivity. The crime cannot be separated and the conviction should cover the enforced disappearance as a whole." States should also take specific measures under their criminal law to define enforced disappearances as an autonomous criminal offence and to bring their existing legislation in line with the Declaration. The Working Group remains committed to assisting States in ensuring that their legislation and other measures are in conformity with the Declaration, by providing its expertise in this regard.

12. The second concern relates to the right to the truth, which has been acknowledged by the Working Group as an autonomous right since its first report in 1981. The right to the truth is both an individual and a collective right. The Working Group would like to emphasize that the right to the truth about the fate and the whereabouts of a person includes when the disappeared person is found to be dead and the right of the family to have the remains of their loved one returned to them. The remains of the person should be clearly and indisputably identified, including through DNA analysis. States should take the necessary steps to use forensic expertise and scientific methods of identification to the maximum of their available resources, including through international assistance and cooperation.
13. The third concern relates to widespread impunity for the crime of enforced disappearances which, in certain parts of the world, remains a particularly acute problem. The Working Group notes that the introduction of enforced disappearance as a continuous and autonomous crime, coupled with the right of victims to know the truth, would lead to a decrease in impunity.
14. The fourth concern relates a pattern of threats, intimidation and reprisals which exists against victims of enforced disappearances, including family members, witnesses and human rights defenders working on such cases. The Working Group calls upon States to take specific measures to prevent such acts; provide assistance to the victims, including legal assistance, psychological and medical support, and to punish the perpetrators and protect those working on enforced disappearances. The Working Group encourages States to apply the most comprehensive definition of "victim", with no distinction between direct and indirect victims. Indeed, any act of enforced disappearance affects and disrupts many lives, well beyond the person who is actually disappeared.
15. On a procedural matter, the Working Group noted that a few States have requested additional information with regard to some cases. In this connection, the Working Group would like to recall its methods of work, according to which a series of minimum elements are required for a case to be admissible. Paragraph 10 of the Working Group's methods of work provides that: "In order to enable Governments to carry out meaningful investigations, the Working Group provides them with information containing at least a minimum of basic data. In addition, the WGEID constantly urges the senders

of reports to furnish as many additional details as possible concerning the identity of the disappeared person and the circumstances of the disappearance”

Mr. President,

16. The Working Group welcomes the entry into force of the International Convention for the Protection of All Persons from Enforced Disappearance. It notes, however that out of 23 countries which ratified the Convention, only 7 have accepted the competence of its Committee under article 31 for individual complaints and the inter-State complaint mechanism under article 32, and one has accepted the competence of the Committee under article 32 only. The Working Group invites all States to ratify the Convention and to accept the competence of its Committee under articles 31 and 32.
17. The Working Group acknowledges with appreciation the fact that the United Nations declared 30 August, the day already commemorated by civil society around the world, as International Day of the Victims of Enforced Disappearances.
18. Noting that 2012 marks the 20th anniversary of the adoption by the General Assembly of the Declaration on the Protection of All Persons from Enforced Disappearances, the Working Group encourages all States to translate it into as many languages and dialects as possible to assist its global dissemination and with a view to promote wider education of the rights and duties contained in the Declaration and thereby prevent enforced disappearances.
19. The Working Group continues each year to face a heavy workload and is committed to doing more, but the resources at its disposal continue to remain insufficient. This is evidenced by a heavy case load and a range of other demands. The Council and the General Assembly need to particularly revisit the human resources provided to special procedures and in particular the working groups to ensure that the Members of the Working Groups are able to execute their mandate most effectively. I reiterate the earlier calls that myself and my predecessors have made for this matter to be given due and prompt attention.

Mr. President,

20. I would like now to turn to the Working Group's visit to Bosnia and Herzegovina. The purpose of this visit was to learn about the efforts made by the State to address cases of enforced disappearances and missing persons and to examine lessons learned and good practices in dealing with past cases of enforced disappearance, the fight against impunity, and other issues including matters concerning truth, justice and reparations for victims.
21. The delegation of the Working Group held meetings with high-level representatives of the Government, the Parliament and the Judiciary at the State and entity levels, many non-governmental organizations, associations of families of missing persons, relatives of missing persons and other civil society actors as well as representatives of the international community. It

visited several locations in the country, facilities for the identification of remains, exhumation sites, former detention camps and the Potočari memorial centre in Srebrenica.

22. During the visit, the Working Group noted with appreciation the immense progress made by Bosnia and Herzegovina in the search and identification of the disappeared, reparations for victims and the prosecution of the heinous crime of enforced disappearance.
23. However, the Working Group is also aware that there remains room for improvement to achieve the right to the truth, the right to reparation and the right to justice for the disappeared persons and their families.
24. During its visit, the Working Group noted that a central issue in the claim by all victims and groups in the society is to be treated equally and without discrimination of any kind. The Working Group therefore recommends that the right to non-discrimination be promoted and protected in any activities, and that all persons in Bosnia and Herzegovina are treated equally, wherever they live and whatever their ethnic origin.
25. With regard to the right to the truth, the Working Group notes that there have been major developments and advances to determine the fate and whereabouts of disappeared persons, including the enactment of the Law on Missing Persons in 2004, the establishment of the Missing Persons Institute and the significant number of exhumations and identifications carried out.
26. However, there remain some shortcomings. The Working Group recommends Bosnia and Herzegovina set up the Central Records of Missing Persons provided for in the Law on Missing Persons as soon as possible; to support and strengthen as well as to guarantee the independence of the Missing Persons Institute; and to provide additional resources and staff to those working on exhumations, in particular to prosecutors. The Working Group also notes the crucial role played by the International Commission on Missing Persons in the discovery and identification of the disappeared. This institution should remain actively engaged.
27. Concerning the right to reparation, the Working Group notes that much remains to be done to provide integral reparation to the disappeared and their families. The Working Group recommends that the Fund for Support to the Families of Missing Persons provided for by the Law on Missing Persons be established as a matter of priority and that a national programme on reparations for relatives of victims of enforced disappearance that includes compensation, restitution, rehabilitation, satisfaction and guarantees of non-repetition be established.
28. In relation to the right to justice, the Working Group is satisfied with the important progress achieved in Bosnia and Herzegovina to bring domestic legislation in line with international law. In particular, the Working Group welcomes the fact that the criminal code provides for enforced disappearance as a crime against humanity. However, the criminal code should be amended

to add enforced disappearance as an autonomous crime and to remove the possibility of granting amnesty for serious crimes.

29. The Working Group also deems it important that the justice system gives more attention to victims. In particular, families of victims should be regularly informed about the progress of investigations; protection and assistance programmes for victims and witnesses should be strengthened; and programmes of psychological assistance should be generalized and strengthened where they already exist.

Mr. President,

30. During the reporting period, the Working Group adopted a report to assess the implementation of the recommendations made in the framework of the country mission it conducted to Guatemala in 2006. It notes with satisfaction the progress made by Guatemala. It encourages the Government to set up a national public registry of disappeared persons; to pass a bill on the declaration of presumption of death in cases of enforced or involuntary disappearances and to undertake all necessary measures to effectively search for the disappeared persons in accordance with the right of the victims to know the truth, and to actively prevent acts of intimidations on those who are actively involved in the investigations of cases of enforced disappearances.
31. The Working Group also adopted a report to assess the implementation of the recommendations made in the framework of the country mission it conducted to Honduras in 2007. It notes with satisfaction that some progress was made by Honduras. It reiterates its recommendation for the inclusion of enforced disappearance as an autonomous crime in the Penal Code and the need to further clarify cases in the respect of the right of victims to know the truth. The Working Group, while conscious of the fundamental need for national reconciliation, notes with concern that amnesty laws seriously hamper the investigation of human rights violations and further prevent the trial of alleged perpetrators.

Mr. President,

32. As mandated by Human Rights Council Resolution 14/10, the Working Group prepared a report highlighting best practices drawing on existing legislation and jurisprudence to assist States in enhancing existing, and developing new legislation on enforced disappearance. I would like to now introduce this report by first thanking those States that provided related information.
33. The report aims at highlighting best practices in the matter of the criminal treatment of enforced disappearance and at formulating recommendations to assist States in enhancing existing legislation, and developing new legislation on enforced disappearance. In its report, the Working Group highlights certain of those best practices that should be followed by all States:

(a) Ratification of the relevant international instruments and incorporation of those instruments in domestic legislation, in

particular, the Statute of the International Criminal Court and the International Convention for the Protection of All Persons from Enforced Disappearance;

(b) Codification of an autonomous offence of enforced disappearance sufficiently broad to cover enforced disappearances committed as part of a widespread or systematic attack against a civilian population, but also isolated acts;

(c) Inclusion in the definition of the crime of the three following cumulative minimum elements: (i) deprivation of liberty of the victim; (ii) involvement of Government officials, at least indirectly by acquiescence; and (iii) refusal to disclose the fate and whereabouts of the person concerned;

(d) Inclusion of the element of "placement of the victim outside the protection of the law" as a *consequence* of the other constitutive elements;

(e) Characterization of the offence of enforced disappearance as a continuous crime;

(f) Establishment of a comprehensive regime of individual responsibility in relation to enforced disappearances, including superior responsibility;

(g) Providing for appropriate penalties which take into account the extreme seriousness of the crime, whether qualified as a crime against humanity or not;

(h) Providing for appropriate mitigating or aggravating circumstances, as well as appropriate accessory sanctions;

(i) Exclusion of the crime of enforced disappearance from the application of amnesty laws or similar measures, whether qualified as a crime against humanity or not;

(j) Providing that no order or instruction may be invoked to justify an enforced disappearance, whether qualified as a crime against humanity or not;

(k) Providing that enforced disappearances are not subject to statute of limitations, whether qualified as a crime against humanity or not;

(l) Providing that enforced disappearances can never be considered as an in-service offence and that military or other special courts have no jurisdiction on enforced disappearances; and

(m) Providing for universal jurisdiction and for the principle *aut dedere, aut judicare* in relation to crimes of enforced disappearances, whether qualified as a crime against humanity or not.

Mr. President, Distinguished Delegates, Ladies and Gentlemen,

34. The Working Group continues to discharge its mandate with conviction, vigour and discipline. We remain committed to doing so but need your support and cooperation to ensure that this heinous crime is eradicated and that the victims of enforced disappearances achieve justice, truth, and reparations.

I thank you for your attention.