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**IMPLEMENTATION OF GENERAL ASSEMBLY RESOLUTION 60/251
OF 15 MARCH 2006 ENTITLED "HUMAN RIGHTS COUNCIL"**

**Report of the Working Group on Enforced or
Involuntary Disappearances**

Addendum

MISSION TO EL SALVADOR: PRELIMINARY NOTE

(5-7 February 2007)

Preliminary note

1. The Working Group on Enforced or Involuntary Disappearances carried out its first mission to El Salvador from 5 to 7 February 2007. The main purpose of this mission was to gather information to serve as a basis for clarifying the greatest possible number of cases remaining active on its registers.
2. Since it was established, the Working Group has received for consideration 2,661 cases of enforced disappearances in El Salvador dating from the armed internal conflict. The Working Group still has 2,270 cases pending for clarification of the whereabouts or fate of the victims concerned. This of course represents an underestimate of the number of cases of enforced disappearances in El Salvador, which according to the report of the Commission on the Truth for El Salvador may have amounted to over 5,500.
3. During the mission, the Working Group held meetings with the Minister for Foreign Affairs, the President of the Supreme Court of Justice, members of the Justice and Human Rights Commission and the Legislative Assembly's Commission on Foreign Relations, Central American Integration and Expatriate Salvadorans, the Vice-Minister for Public Security and Justice, the Procurator for the Defence of Human Rights, the Deputy Attorney-General of the Republic, the Minister of National Defence, and members of the Inter-institutional Commission to Search for Children who Disappeared owing to Armed Conflict in El Salvador.
4. The Working Group was grateful for the hospitality and cooperation extended by the Government during its visit.
5. The Working Group also met with members of various civil society organizations and with the families of victims of enforced disappearances, with whom it held open and objective discussions.
6. The Working Group expressed the wish to strengthen the channels of communication with official and non-governmental sources so that links with the families of the victims might be maintained with the goal of clarifying the maximum number of cases. The Working Group gave all those concerned a list of the above cases and explained the applicable criteria for considering the cases pending to be resolved.
7. The Working Group respectfully suggested to El Salvador that it should accede to the Inter-American Convention of Enforced Disappearance of Persons and the Rome Statute of the International Criminal Court, which defines the international crime of enforced disappearance of persons as one embodying the characteristics of crime against humanity. It also recommended that El Salvador should accede to the Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity, which lays down that crimes against humanity are prosecutable irrespective of their date of commission. The Working Group also stated its views on the preparation in Paris of the signing ceremony for the new International Convention for the Protection of All Persons of Enforced Disappearance, expressing the hope that this Convention would very soon receive the greatest possible number of ratifications, including that of El Salvador, so as to ensure its entry into force in the very near future.

8. With regard to the implementation of the Declaration on the Protection of All Persons from Enforced Disappearance (hereinafter the “Declaration”) by El Salvador, the Working Group made the following observations:

(a) Salvadoran criminal law characterizes the enforced disappearance of persons as an autonomous offence, as required by the Declaration. The Working Group respectfully called on the Legislative Assembly to review the relevant legal provisions, especially with regard to the punishments prescribed, as compared with other less serious offences so as to provide for severer penalties than those laid down for the offence of enforced disappearance;

(b) The Working Group referred in this connection to the continuing nature of the offence in question, such that it was applicable to enforced disappearances even where their commission preceded the entry into force of the corresponding statute, meaning that it did not constitute a breach of the principle of non-retroactivity of the criminal law detrimental to the accused. It followed that, in strict compliance with international law, the commission of enforced disappearances not yet been clarified continued into the present given that the offence in question was continuing and was not a matter relating to the past. Furthermore, the Working Group had seen for itself from the various testimonies it had heard that the families and loved ones of missing persons whose fate or whereabouts remained unknown continued to experience great suffering, which pointed up the continuing relevance of article 1, paragraph 2, of the Declaration;

(c) The Working Group had received information to the effect that the alleged perpetrators of serious violations of human rights, including disappearances, were not only at liberty, but were moreover not subject to any effective investigation, much less any sentence. A fundamental obstacle in the Salvadoran context to fulfilment of the right to justice, truth, redress and rehabilitation was the maintenance on the statute of the Amnesty Act of 1993. The Working Group respectfully reminded the legislative authorities and Government of El Salvador that article 18 of the Declaration provides that persons responsible or alleged to be responsible for enforced disappearances should not benefit from any special amnesty law or other similar measures that might have the effect of exempting them from any criminal proceedings or sanction;

(d) The Working Group reminded the Salvadoran Government that, pursuant to article 5 of the Declaration, in addition to such criminal penalties as were applicable, the perpetrators of enforced disappearances were liable more generally under civil law, that is to say, should indemnify victims for the damage suffered and should be suspended from official duties, in accordance with the provisions of paragraph 1, article 16, of the Declaration. The foregoing was without prejudice to the international responsibility of El Salvador in accordance with the principles of international law, as reflected in the aforementioned article 5 of the Declaration;

(e) The Working Group noted that the Salvadoran Government was making some efforts to search for children who had disappeared. However, it did not have a comprehensive plan or programme to search for persons who had disappeared. It was to be recommended that such a search plan should involve the organized involvement of civil society, particularly the families and loved ones of missing persons, pursuant to article 13, paragraphs 1 and 4, and should preferably have the backing of the legal authorities;

(f) In this connection, the Working Group had been informed that the Inter-institutional Commission to Search for Children who Disappeared owing to Armed Conflict in El Salvador had located 17 children, 2 of them dead and 11 resulting in reunions. In this respect, the Working Group praised the work carried out for over a decade, and the results achieved, by the Association in Search of Missing Children, which, according to its registers, had succeeded in locating 317 persons alive and bringing about 181 cases of family reunion. It had also located 42 children who had died;

(g) In this regard, the Working Group called on the competent authorities to make available to those concerned information and documents that still in some cases remained confidential, so as to facilitate the finding of missing persons, in full exercise of the right to information and truth;

(h) The Working Group considered that, under the comprehensive search programme suggested in subparagraph (e), there was a need for a comprehensive programme of redress, pursuant to article 19 of the Declaration, to include adequate compensation and other means of redress, such as the fullest possible rehabilitation and full observance of the right to justice and truth.

9. The Working Group urged governmental and non-governmental bodies to strengthen cooperative links in order to resolve problems relating to cases of enforced disappearance that remained to be clarified.

10. The above topics and a number of others deriving from the gathering of information during this mission, together with a series of recommendations and observations, would be elaborated in greater detail in the report to be issued by the Working Group as the outcome of the mission to El Salvador.
