

COUNCIL MONITOR

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COUNCIL UPDATE – ITEM 3, WORKING GROUP ON ENFORCED DISAPPEARANCES HUMAN RIGHTS COUNCIL, 10TH SESSION 10 AND 12 MARCH 2009

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Overview

The Chairperson-Rapporteur of the Working Group on enforced or involuntary disappearance, Mr Santiago Corcuera, presented the annual report, including the report on the country visit to Argentina.¹ He highlighted the five major areas of concern addressed in the report. Among the issues addressed during the interactive dialogue were: the mandate and the workload of the Working Group and the special situation concerning women and children. Furthermore, various States asked specific questions.

Item 3 – Working Group on enforced or involuntary disappearance

Presentation by the Chairperson

Presenting his annual report, the Chairperson-Rapporteur, Mr Corcuera, updated the Human Rights Council (the Council) on the **key activities** of the Working Group:

- The total number of cases transmitted by the Working Group to governments since its inception is 52,952.
- The Working Group clarified 1,763 cases over the past five years.
- In 2008, the Working Group transmitted 1,203 newly-reported cases of enforced disappearance to 27 governments².
- Of the newly-reported cases, 83 allegedly occurred during the reporting period.
- During the reporting period, the Working Group also clarified 54 cases of disappearance.³

¹ A/HRC/10/9 (annual report), Add.1 (mission to Argentina).

² Algeria, Argentina, Bangladesh, Cameroon, Chad, Colombia, India, Indonesia, Iran, Iraq, Japan, Libya, Mexico, Morocco, Nepal, Pakistan, Peru, Philippines, Russian Federation, Sri Lanka, Sudan, Switzerland, Thailand, Turkey, Viet Nam, Yemen and Zimbabwe.

- During that period, the Working Group sent 12 urgent appeals to nine governments⁴ addressing harassment of and threats to human rights defenders.
- In addition, the Working Group sent 14 letters of allegations to 11 governments,⁵ based on information received from credible sources. Those allegations referred to obstacles encountered in the countries concerned, concerning the implementation of the *International Convention for the Protection of All Persons from Enforced Disappearance* (the Convention).

Mr Corcuera stressed that, comparing these data with those of 2007, the Working Group has doubled its volume of work, both in terms of number of cases processed and the number of communications sent to governments. He added that the Working Group has maintained strong cooperation with other special procedures of the Council.

He addressed the Working Group's **country visit to Argentina** and expressed its appreciation to the Government for its cooperation during the visit. Mr Corcuera stressed that the report⁶ on the visit highlights the efforts made by Argentina to determine the fate or whereabouts of disappeared persons, to ensure the right to justice and to combat impunity. He underscored the Working Group's recommendations to define enforced disappearance as an autonomous crime and to adopt a comprehensive protection programme for witnesses, families, lawyers, prosecutors, judges, and civil society organisation involved in the investigation of cases of enforced disappearance.

The Chairperson-Rapporteur particularly drew attention to the underreporting of cases of disappearances, especially in the African region.

He highlighted the **five major areas of concern** addressed in the report:

1. Measures taken by States in the context of combating terrorism and their relation to enforced disappearances. These include the enactment of legislation restricting personal freedoms and weakening due process, random arrests committed during military operations, arbitrary detentions and extraordinary renditions, which amount to enforced disappearances.
2. Very few States have taken specific measures under criminal law to define enforced disappearances as a separated criminal offence and to bring their existing legislation in line with the *Declaration on the Protection of All Persons from Enforced Disappearances*.
3. The lack of prompt, impartial and thorough investigations into allegations of enforced disappearances. The Working Group recommended the establishment of special independent investigative bodies.
4. The particular impact of disappearances on women. The serious economic hardships which usually accompany a disappearance are most often borne by them. When women themselves are the victims of disappearance, their families may become subject to intimidation, persecution and reprisals.
5. The importance of the right to truth, which should be enjoyed by all victims of enforced disappearance.

Mr Corcuera highlighted the Working Group's continuing extreme concern about the increasing number of reported cases of disappearances in Sri Lanka. He stated that the Working Group had not received a positive response to repeated requests to conduct a country visit. He called on all States with pending requests for visits to respond with specific dates as soon as possible.

He concluded by noting that 81 countries have signed and ten have ratified the Convention, and by inviting all States to ratify the Convention in due course.

Interactive dialogue

Argentina, as the **concerned country**, thanked the Working Group for the reports. It highlighted the high priority attached by Argentina to fighting impunity and the importance of truth about past human rights violations, and stressed that cases relating to the right to truth are now being tried. It stated that, over the last few years, Argentina

³ In the following countries: Algeria, Argentina, China, Colombia, Ecuador, India, Libya, Morocco, Nepal, Philippines, Sri Lanka and Turkey.

⁴ Argentina, Colombia, Guatemala, Mexico, Namibia, Philippines, Senegal, Sri Lanka and Thailand.

⁵ Bolivia, Colombia, Egypt, India, Italy, Nepal, Pakistan, Philippines, Sudan, United States and Thailand.

⁶ A/HRC/10/9/Add.1.

adopted a series of special measures. It has set up a national archive for memory and taken steps to ensure witness protection. It underscored that it is the second country in world to ratify the Convention, and that it will continue its efforts to cooperate with the Working Group. Furthermore, it announced that it will present a new resolution on the importance of using forensic medicine in relation to human rights at this Council session.

Several countries addressed their position regarding the **Convention**⁷ and addressed the **efforts made at the national level**.⁸

Iraq expressed its readiness to settle any pending cases in Iraq. It also stressed that it adopted a law to protect common graves. Morocco expressed its ambition to put an end to the chapter of disappearances and stressed that many victims have benefited from compensation.

Sri Lanka⁹ expressed that it is of the opinion that two complications are caused by the mandate of the Working Group. It stated that the first complication relates to the activities of non-state actors. Sri Lanka welcomed the condemnation by the Working Group of the activities of non-state actors, in particular by the Liberation Tigers of Tamil Eelam (LTTE).¹⁰ It stated that the names of those lost are available, and that it hopes that, 'if ever the mandate of the Working Group can be expanded', 'justice might be done to them too'. Secondly, it criticised that the terms of the mandate mean that 'anyone who wishes to complain feels they have to throw suspicion on the State'. It said it found significant difference between what had been reported to the police in Sri Lanka and what had been reported to the Council. It urged the Working Group to investigate these anomalies. In response, the Chairperson-Rapporteur confirmed that the Working Group took note of these comments and objections. He reiterated the importance of being able to conduct a visit to Sri Lanka to be able to collect information which will clarify the concerns raised and to be able to verify statements that were put up as significant background information for the country.

Regarding the **workload** of the Working Group, Morocco put forth that human resources and other resources should be increased to allow the Working Group to work its mandate more effectively, given the large number of cases. France underlined that only few cases are brought to the attention of the Working Group (as recognised in the report).

Canada, the Czech Republic (on behalf of the European Union) and France addressed the situation of **women and children**. Canada and the Czech Republic (on behalf of the EU) asked the Working Group what steps should be taken to specifically address the situation of women and children. Mr Corcuera replied that it might be possible to establish special programmes similar to witness protection programmes for defenders, in order to protect family members of those who have been disappeared, because they are particularly vulnerable.

Algeria declared that it had informed the Working Group on three occasions about disappearances. It criticised the Working Group for passing over in silence the replies of the Government. It called on the Working Group to reflect this in its next report. The Chairperson-Rapporteur acknowledged that the Working Group was well aware that there are some differences of opinion with regard to the compatibility and the Charter of reconciliation in Algeria, which, for the Working Group, might be similar to an amnesty law. He underlined that he did not want these differences of opinion to become an obstacle.

Furthermore, various States asked **specific questions**. Brazil asked if the Working Group could elaborate on the main obstacles to further develop and achieve concrete results in its activities, especially in the assistance to families and with regard to reparations. Canada addressed the importance of truth and reconciliation and asked for the Working Group's suggestions on how States can use reconciliation mechanisms to combat disappearances

⁷ Cuba (ratified in February 2009), China (reviewing possibility of becoming a party), Uruguay (ratified), Bolivia (party), Thailand (considering), Japan (aiming to ratify).

⁸ Uruguay, Morocco, Bolivia, Nepal, Algeria, Sri Lanka, Iraq.

⁹ In June 2008, the Working Group issued a press release deploring the large number of cases of disappearances in Sri Lanka.

¹⁰ Although non-state actors, acting without the consent or acquiescence of the State, are not included in the Group's mandate, the Working Group condemned the practice of acts analogous to enforced disappearance, irrespective of who the perpetrators may be.

while at the same time not using these as a substitute for bringing perpetrators to justice. The Chairperson-Rapporteur confirmed that this is a significant question: how to maintain the right to justice as well as the quest for truth and reconciliation? He stressed that ‘looking for reconciliation and truth does not mean impunity’. He stated that there are very good practices in various countries that can be taken into account, such as truth commissions. The Czech Republic (on behalf of the EU) raised the issue of **impunity** as a major concern. It addressed the lack of progress with regard to an estimated 1,500 cases of disappearance that occurred during the conflict in **Nepal**. It asked the Working Group to urge Nepal to respond to a recent OHCHR report on conflict-related disappearances and to set out which steps it plans for the implementation of recommendations stated in this report.

The Sudan referred to the past transfer of children from the Sudan to France, and asked the Chairperson-Rapporteur whether he was aware of that, and what steps he intends to take to find these children in France. Japan highlighted the abduction of 12 persons in Japan by the DPRK, and urged the DPRK to immediately start thorough investigation and concrete action as to confirm the whereabouts of these victims. Canada also asked whether the Working Group was aware of any developments regarding the case of the Thai lawyer and human rights defender Somchai Neelapaijit. Thailand later referred to this case, stating that its Prime Minister had recently met with his wife, and that Thailand is doing its utmost to resolve the case.

Responses

In his response, Mr Corcuera stipulated that it was impossible to respond to all the questions raised in only five minutes. He announced that the Working Group will endeavour to reply to all delegations and organisations in writing. He reiterated the Working Group’s availability and willingness to maintain constructive dialogue with any country that still has pending cases. Furthermore, he addressed the comments made by the Asian Legal Resource Centre regarding Pakistan that there are very few cases of disappearances in Pakistan in the report. He stated that this is a reflection of the lack of supply of information on enforced disappearances to the Working Group. He elaborated that this lack of reporting occurs in many parts of the world and is often the result of the lack of support by NGOs to the families of disappeared persons (since NGOs in those parts of the world sometimes do not exist).

Further information

For further information on the Council, please consult the following resources:

- Web site of the International Service for Human Rights, providing up-to-date information before, during and after sessions of the Council: <http://www.ishr.ch/council>. During the session, ISHR will provide information about the Council’s proceedings on a regular but not daily basis. You can subscribe to receive alerts of our publications by sending an email to information@ishr.ch.
- Web site of the Office of the High Commissioner for Human Rights (OHCHR) on the 10th session of the Human Rights Council: <http://www2.ohchr.org/english/bodies/hrcouncil/10session>. For direct access to reports considered, check <http://www2.ohchr.org/english/bodies/hrcouncil/10session/reports.htm>.
- More informal documents and draft resolutions are available on the ‘OHCHR extranet’ at <http://portal.ohchr.org/portal/page/portal/HRCExtranet>. Username: ‘hrc extranet’ Password: ‘1session’.

NGOs and human rights defenders seeking more specific information or individual advice on the Council session, please contact the ISHR secretariat by email or phone at +41 (0) 22 919 71 00.

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