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Statement by the Chair-Rapporteur of the Working Group on Enforced or Involuntary Disappearances,
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Geneva, 5 March 2012
Madame 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 for the third time the annual report of the Working Group covering the period 13 November 2010 to 11 November 2011. The Working Group regrets that this year the report has not been translated in full into the six United Nations languages, nor edited in full. It hopes that this situation will be remedied in the future and, in light of the specificity of its work, that the full report will be available in all six languages as it has almost always previously been the case since the Working Group was established in 1980. The Working Group is the only procedure that has thousands of cases: in fact at present it has almost 43,000 outstanding cases.

Madame President,

2. Since its creation, the Working Group has transmitted 53,778 individual cases to States in all regions of the world. Over the past five years, it has clarified 448 cases. Much work remains to be done. Enforced disappearance remains a global problem and, in particular, in States suffering from internal conflict. Thousands of cases of disappearances remain unclarified and consequently remain continuous crimes.

3. The Working Group would again like to draw attention to the underreporting of disappearance cases in all regions of the world. The phenomenon occurs for various reasons, including fear of reprisals, ineffective reporting channels, restrictions on the work of civil society, and, unfortunately, a lack of awareness about the Working Group and its mandate.

4. Notwithstanding the underreporting, during the reporting period, the Working Group transmitted 261 new cases of enforced disappearances to 25 States, 73 under its urgent action procedure. During the same period, the Working Group clarified 63 cases concerning 18 States.

5. The Working Group also transmitted six prompt intervention communications to five Governments, five 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, it transmitted 41 urgent appeals, 39 jointly with other special procedures mechanisms, to 15 Governments. These concerned persons who had been forcibly disappeared or were at risk of being disappeared. In addition, it transmitted 14 general allegation letters to 13 Governments, based on information received about obstacles in the implementation of the Declaration on the Protection of all Persons from Enforced Disappearance (the Declaration) in their respective countries. The transmission of joint communications is just one example of how the Working Group continues to cooperate closely with other special procedures of the Human Rights Council.
6. The Working Group is grateful for the cooperation received from a number of States, which is indispensable for discovering the fate and whereabouts of disappeared persons around the globe. Nevertheless, it remains concerned that of the 82 States with outstanding cases, some have never replied to the Working Group’s communications and some States provide responses that do not contain relevant information. The Working Group urges those States to fulfil their obligations under the Declaration and the relevant Human Rights Council resolutions, and recalls that it stands ready to provide technical assistance on the relevance of the documentation and communications that States may wish to submit to the Working Group.

Madame President,

7. In 2011, the Working Group conducted country visits to Timor-Leste, Mexico, and the Republic of the Congo. Furthermore, it adopted follow-up reports to the recommendations made after its visits to Colombia and Nepal. I will introduce the country visits and follow-up reports later in my presentation.

8. In addition, I would like to thank the Governments of Chile, Pakistan, Serbia and Tajikistan for having extended an invitation to the Working Group to visit their countries. I take this opportunity to invite those States that have received a request for an official visit to consider a positive reply.

9. In the course of 2011, the Working Group also adopted a general comment on the right to recognition as a person before the law in the context of enforced disappearances and refined its methods of work. The revised methods entered into force on 1 January 2012.

Madame President,

10. The annual report highlights three major issues which are of concern to the Working Group. One of them, the right to be recognized as a person before the law, has been addressed with the adoption in 2011 of a general comment in which the Working Group concluded that enforced disappearance represents a paradigmatic violation of this right. Enforced disappearances entail the denial of the disappeared person’s legal existence and, as a consequence, prevent him or her from enjoying all other human rights and freedoms. States should acknowledge and respect the right of every disappeared person to be recognized as a person before the law, and the basis of this acknowledgement should take the form of a “declaration of absence by reason of enforced disappearance.” The Working Group is committed to preserve and safeguard the right to recognition as a person in the implementation of its mandate and, as the legal personality of the disappeared person is denied at the domestic level, the humanitarian mandate of this Working Group should be understood as an international guarantee of this right. The Working Group invites Governments and civil society to consult this new general comment.

11. Secondly, the Working Group regretfully observes that enforced disappearances seem to continue to be used by some States as a tool to deal with situations of conflict or internal unrest. It has witnessed the use of “short term disappearances” where victims are placed in secret detention or unknown locations, outside the protection of the law, before being released weeks or months later, sometimes after having been
tortured and without having been brought in front of a judge or other civil authority. This very worrisome practice, whether it is used to counter terrorism, fight organized crime or suppress legitimate civil strife demanding democracy, freedom of expression or religion, should be considered as an enforced disappearance and as such, adequately investigated, prosecuted and punished.

12. The third issue relates to a pattern of threats, intimidation and reprisals 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 and psychological and medical support; to punish the perpetrators; and protect those working on enforced disappearances. It further 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.

Madame President,

13. The Working Group again welcomes the entry into force of the International Convention for the Protection of All Persons from Enforced Disappearance and the establishment of the Committee on Enforced Disappearances, with which it hopes to build a fruitful alliance to fight against this appalling crime. It has already had fruitful meetings with the Committee. The Working Group invites all States to ratify the Convention and to accept the competence of its Committee under articles 31 and 32.

14. Noting that 2012 marks the 20th anniversary of the adoption by the General Assembly of the Declaration, the Working Group again encourages all States to translate this valuable instrument 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 therein and thereby prevent enforced disappearances.

15. The Working Group is grateful for the additional human resources given to it during part of the reporting period. However, it notes that the cumulative effect of lack of adequate staff during the past three years has led to a backlog of hundreds of cases. For this reason, it wishes to emphasize that the additional support needs to be sustained in the future.

Madame President,

16. I would like now to turn to the country visits that the Working Group undertook in 2011 to Timor-Leste, Mexico and the Republic of the Congo. Let me thank these three Governments for their cooperation during the preparations and throughout the visits.

17. The visit to Timor-Leste took place from 7 to 14 February 2011. The Working Group acknowledges the many efforts that Timor-Leste has made since its independence more than nine years ago, despite the several challenges it faces, in particular its economic constraints and the existence of a great number of conflicting interests. However, much more could be done to achieve the rights to truth, justice and reparation for the disappeared persons and their families.
18. Timor-Leste has come a long way since its independence in bringing about a process of national reconciliation, which was supported by the Commission for Reception, Truth and Reconciliation and the Commission for Truth and Friendship. The Working Group encourages Timor-Leste to implement the recommendations of these commissions and, in particular, encourages the Parliament to swiftly adopt the draft law on a framework for the national reparations programme and the draft bill establishing the Public Memory Institute.

19. The Working Group notes that there have been various processes in Timor-Leste to deal with questions relating to truth. Nevertheless, and despite many successes, some issues remain, including the need for processes to ensure that those who disappeared are looked for and that graves are found and exhumed; the need of an accurate assessment of who exactly disappeared; and the need for families to be further assisted with their needs to uncover the truth about the fate of their loved ones.

20. The Working Group appreciates the great progress made to bring domestic legislation into conformity with international law. However, there are still gaps and problems. In particular, enforced disappearance should be incorporated as an autonomous crime for cases not linked to crimes against humanity and criminal law should be amended to remove the possibility of granting amnesties for serious international law crimes, including enforced disappearance. Moreover, judicial and other police accountability mechanisms should be strengthened. Without effective criminal justice for serious crimes there cannot be lasting peace, nor can such crimes be prevented in the future. Immediate and effective steps to investigate all unresolved cases of enforced disappearances should also be taken.

21. The Working Group also recommends that a national programme on reparations that includes compensation, restitution, rehabilitation, satisfaction and guarantees of non-repetition for all victims of human rights violations during the period 1974-1999 is established as soon as possible.

22. Finally, the international community should assist Timor-Leste in its endeavours through the provision of funds, training, technical assistance, capacity-building measures and other necessary support, in particular considering the expiration of the mandate of the United Nations Integrated Mission in Timor-Leste, currently foreseen for the end of 2012. The Working Group recognizes the important role that the UN has had in the country and believes that it should continue in various ways. The presence, for example, of the Office of the High Commissioner for Human Rights is necessary to assist and provide support in the areas of human rights, transitional justice and rule of law.

23. Allow me now to turn to the visit to Mexico, which took place from 18 March to 1 April 2011.

24. The Working Group takes good note of the various efforts made by Mexico in the field of human rights, including to combat enforced disappearances, and the challenges posed by the current complex public security situation in the context of the fight against organized crime. Nevertheless, Mexico must continue its efforts to ensure observance of the rights of the victims of enforced disappearance.
25. The Working Group recommends that the Government recognize the scale of the problem of enforced disappearances as the first step required to implement comprehensive and effective measures for its eradication. It also recommends that the offence of enforced disappearance is included in the criminal codes of all states, that a general law on enforced disappearances is adopted without delay, and that the definition of enforced disappearance in criminal law is brought into line with that contained in relevant international instruments.

26. The Working Group also recommends that the jurisdiction of civil courts is guaranteed in all matters relating to enforced disappearances and violations of human rights in general; that relatives are regularly provided with information on the progress of investigations; and that it is ensured that it is not the obligation of victims and their relatives to obtain and provide evidence.

27. The Working Group further recommends the establishment of national search programme for missing persons with an immediate action protocol; the establishment and regular maintenance of a database of personal information on victims of enforced disappearances nationwide; and that the report drafted by Former Special Prosecutor for Social and Political Movements of the Past is disseminated and posted on the official website of the Attorney-General’s Office.

28. Furthermore, the right to full reparation for the victims of enforced disappearance should be guaranteed. Legislation should provide that reparation should be proportional to the gravity of the violation and suffering of the victim and their family. Provision should be made for restitution, and when possible, also for medical and psychosocial care, satisfaction, compensation and guarantees of non-repetition.

29. Finally, the Working Group recommends that the safety of human rights defenders is guaranteed; that a national mechanism to protect journalists is established; that the measures intended to eradicate violence against women, including enforced disappearances, are fully implemented; and that all the recommendations contained in the National Human Rights Commission reports on the abduction of migrants, some of which may amount to enforced disappearances, are swiftly implemented.

Madame President,

30. Let me now turn to the report on the Working Group’s mission to the Republic of the Congo, which took place from 24 September to 3 October 2011. The Working Group hopes to maintain a constructive dialogue with the Government and encourages it to continue to seek the truth concerning the fate of all those alleged to have been victims of enforced disappearances in the country.

31. While the Working Group welcomes the fact that the Criminal Code contains the definition of crimes against humanity as given in the Statute of the International Criminal Court, it calls on the authorities to incorporate enforced disappearance as a distinct criminal offence.

32. The Working Group also welcomes that domestic legislation on criminal procedure provides the necessary guarantees for the prevention of enforced disappearances and that the determination of police officers and members of the
judiciary to work together to ensure that individuals held in custody are brought before the courts within the legal time limit despite the material problems that they face. It encourages the Congo, in cooperation with international organizations, to provide the police and the judiciary with substantially better resources. In addition, the Working Group recommends that the practice of inspections of places of detention by the State prosecutor be encouraged and that authorities continue to closely involve the National Human Rights Commission and NGOs in monitoring places of detention.

33. The Working Group notes that reintegration and rehabilitation programmes have been set up for former combatants and former militia members. However, these programmes do not directly benefit the people who were sometimes the victims of the now demobilized former combatants. With full participation of the victims, Congo should draw up an integrated comprehensive programme of reparations based on the harm caused to civilians during the different conflicts that have blighted the country.

34. The Working Group welcomes the state of peace that has resulted from reconciliation between the various military and civilian groups, as well as the sense of national unity that inspires the country’s political figures today. However, it notes that the injuries that the conflicts caused to the civilian population are far from all being healed. In particular, there are families still hoping to learn the truth about the fate of their disappeared loved ones. The Working Group recommends that, with the full participation of the victims, the Government implements a programme aimed at restoration of the truth and reconciliation.

35. Concerning the so-called Beach disappearances, which were allegedly perpetrated on the arrival of refugees in Brazzaville’s river port in the context of a tripartite agreement signed in April 1999 between the Republic of the Congo, the Democratic Republic of the Congo and the Office of the UN High Commissioner for Refugees to organize the repatriation of Congolese refugees who wished to return home, the Working Group welcomes the 2005 trial before the Criminal Chamber of the Brazzaville Court of Appeal which did prove the State’s responsibility in the matter. However, it regrets that the legal proceedings have not yet led to the identification and punishment of those responsible for the disappearances. The Working Group recommends the Republic of the Congo to continue inquiries aimed at identifying and punishing those responsible for the disappearances, and clarifying the fate of the victims. The Working Group is gratified that the families who were civil parties to the case have received compensation. However, compensation should be supplemented by other forms of reparation, including psychological and social support. The Working Group also recommends that the Office of the United Nations High Commissioner for Refugees drafts a report on the repatriation of Congolese refugees to Brazzaville between April and December 1999 and the lessons that can be learned from it.

36. Finally, the Working Group recommends that the international community provides appropriate technical capacity-building assistance to the Republic of the Congo to help it promote and protect human rights.

37. I would like to take this opportunity to convey the message that the Working Group is fully at the disposal of these and all those Governments that have received its visit, as well as any other states, to provide any necessary assistance.
Madame President,

38. During the reporting period, the Working Group adopted two follow-up reports on the implementation of the recommendations made in the framework of country visits. Regarding the follow-up to the recommendations made to Colombia in 2005, the Working Group welcomes the numerous developments with regard to enforced disappearances, particularly in the last two years. However, it remains concerned that enforced disappearances continue to occur and that relatives and others connected to the disappeared persons are not being offered effective protection measures. The Working Group is further concerned about impunity in cases of enforced disappearance; at the lack of a policy to purge security forces and intelligence agencies of their links with the paramilitaries; and, inter alia, at the fact that the rights to truth, justice, reparation and guarantees of non-repetition for victims or relatives of victims of enforced disappearance are not yet adequately guaranteed. The Working Group invites the Government to address these and other issues noted in its follow-up report in light of the recommendations made in 2005.

39. Regarding the follow-up on the implementation of the recommendations made to Nepal in 2004, the Working Group notes that some progress has been made. It invites the Government to continue its efforts to harmonize national legislation and practices with Nepal’s international obligations; to hold the military and others from all political groupings accountable for enforced disappearances committed in the past; and to take every effective measure in order to have the orders and injunctions issued by the Supreme Court on enforced disappearances fully respected and implemented. It further calls Nepal to investigate actions taken against various human rights defenders and to provide them security. In addition, the Working Group notes the process to establish a Commission on the Inquiry of Disappearances and a Truth and Reconciliation Commission. It hopes that international law requirements are met when finalising these laws and that they ensure that the needs of victims for truth, justice and reparations are met.

Madame President,
Distinguished Delegates,
Ladies and Gentlemen,

40. The Working Group continues to discharge its mandate with conviction, vigour and discipline. It remains committed to doing so but needs your support and cooperation to ensure that this heinous crime is eradicated.

I thank you for your attention.