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**CIVIL AND POLITICAL RIGHTS, INCLUDING THE QUESTIONS OF:
DISAPPEARANCES AND SUMMARY EXECUTIONS**

Question of enforced or involuntary disappearances

Report of the Working Group on Enforced or Involuntary Disappearances

Summary

Established by resolution 20 (XXXVI) of 29 February 1980 of the Commission on Human Rights, the Working Group on Enforced or Involuntary Disappearances was the first United Nations human rights thematic mechanism to be established with a global mandate. Since its inception, the Working Group has transmitted more than 50,000 individual cases to Governments in more than 90 countries.

In the present report, the Working Group on Enforced or Involuntary Disappearances expresses serious concern regarding situations of disappearance worldwide.

The Working Group notes with great concern the large number of reports of disappearances transmitted over the last year. During the period under review, the Working Group transmitted to Governments in 20 countries 595 newly reported cases of disappearances. These figures represent an almost threefold increase over the previous year. This is due in large measure to an enhanced capacity of the Secretariat to address a backlog of unprocessed cases. In the case of Nepal, 136 new cases occurred and were transmitted to the Government of Nepal during the period under review. From these cases, 125 were transmitted under the urgent-action procedure. The Working Group also transmitted to the Government of Algeria for the first time 180 cases that occurred between 1993 and 1998.

During the period under review, the Working Group transmitted 155 new cases to the Government of the Russian Federation which occurred in 2000 and 2001 in the Republic of Chechnya. Five other cases that reportedly occurred in Chechnya in 2004 were sent under the urgent-action procedure. During the reporting period, the Working Group clarified 23 cases of enforced disappearance.

The Working Group expresses its concern that complex situations of internal conflict or tensions generating violence and humanitarian crises often lead to human rights violations, including enforced disappearances. The Working Group is troubled that Africa has been racked by armed conflicts over the last decade but at the same time it is the region with the fewest reported cases of enforced or involuntary disappearances, probably due to underreporting.

Throughout the report, the Working Group expresses particular concern about reports of the existence of secret detention centres in a number of countries. The Working Group reminds all Governments that, under article 7 of the Declaration on the Protection of All Persons from Enforced Disappearance, “no circumstances whatsoever, whether a threat of war, a state of war, internal political instability or any other public emergency, may be invoked to justify enforced disappearances”. The Working Group notes that this includes any type of counter-terrorist campaign.

Further concerns highlighted by the Working Group in the report include: in a number of States legal restrictions are placed upon NGOs working on cases of disappearances; several States use criminal procedure rules to “suspend” investigation in cases of alleged disappearance; the occurrence of disappearances of children.

The Working Group strongly encourages the establishment of investigating bodies or truth commissions in order to clarify cases of disappearances and to implement compensation policies for victims. Nonetheless, effective preventive measures remain crucial. Among these, the Group highlights harmonization of domestic law with international obligations under the Declaration; accessible and updated registries of detainees; guaranteed access to appropriate information and to places of detention for relatives and lawyers of persons deprived of their liberty; strengthening of civil society organizations, especially human rights NGOs; ensuring that persons are brought before a judicial authority promptly following detention; bringing to justice all persons accused of having committed acts of enforced disappearances; guaranteeing their trial only by competent civilian courts; ensuring that perpetrators do not benefit from any special amnesty law or other similar measures likely to provide exemption from criminal proceedings or sanctions; and providing redress and adequate compensation to victims and their families.

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I. INTRODUCTION

A. The mandate and methods of work of the Working Group on Enforced or Involuntary Disappearances

1. In its resolution 33/173 of 20 December 1978, entitled "Disappeared persons", the General Assembly expressed concern over reports from various parts of the world relating to enforced or involuntary disappearances of persons and requested the Commission on Human Rights to consider the question and to make appropriate recommendations. By resolution 20 (XXXVI) of 29 February 1980, the Commission on Human Rights decided to establish a Working Group on Enforced or Involuntary Disappearances. This was the first United Nations human rights thematic mechanism to be established with a global mandate.
2. The primary task of the Working Group on Enforced or Involuntary Disappearances (the Working Group) is to clarify the fate or whereabouts of persons who are reported to have disappeared. The Working Group serves as a channel of communication between sources of information on alleged disappearances - typically family members or non-governmental organizations - and Governments. The Working Group does not establish criminal liability nor does it declare State responsibility. Its mandate is essentially humanitarian. Since its inception, the Working Group on Enforced or Involuntary Disappearances has transmitted more than 50,000 individual cases to Governments in more than 90 countries. Though clarifying the fate of disappeared persons is a difficult task, the Working Group, through its continuing contact with the Governments concerned and non-governmental organizations (NGOs) working on the question of disappearances, works to help the victims of disappearances including the persons concerned and their family members.
3. The crime of enforced disappearance, as defined in the Declaration on the Protection of All Persons from Enforced Disappearance¹ is a continuous crime until the fate or whereabouts of the disappeared person becomes known. For that reason, a disappearance remains under active consideration by the Working Group until the case is clarified. Once received from a source, a case is transmitted to a Government with a request for a response. It is common for the Working Group to facilitate successive exchanges of information between the source and the Government. Any governmental reply containing detailed information on the fate or whereabouts of the disappeared person is transmitted to the source. If the source does not respond within six months of the date on which the reply was communicated to it, or if it contests the Government's information on grounds that are considered to be unreasonable by the Working Group, the case is considered clarified, hereafter referred to as the "six-month rule".
4. The Working Group also takes action in connection with acts of intimidation or reprisals against relatives of missing persons and private individuals or groups who seek to cooperate or have cooperated with United Nations human rights bodies, or who have provided testimony or information to them, as well as persons who avail or have availed themselves of procedures established under United Nations auspices for the protection of human rights and fundamental freedoms or persons who have provided legal assistance to others for that purpose.

5. In addition to its core mandate, the Working Group has been entrusted, according to Commission on Human Rights resolution 2004/40, with the task of monitoring States' progress in fulfilling obligations derived from the Declaration. In particular, the Working Group has made specific references to the Declaration in its observations on individual countries in the present report and its recommendations following country visits.

6. Appeals made to the Working Group do not restrict simultaneous use of international or regional treaty-based human rights petition procedures.

7. In the period under review, the Working Group decided to adopt the practice that Working Group members will not attend meetings of the Working Group when issues related to the country of their nationality are discussed.

B. The phenomenon of disappearance in the world

8. Although the mandate of the Working Group was initially inspired by the need to address the legacy of disappearances arising from authoritarian rule in Latin America, disappearance is a now global phenomenon, not limited to specific regions. The more common pattern today is for large-scale disappearances to occur in States suffering from internal armed conflict, as in the cases of Colombia, Nepal, the Russian Federation and Sudan. In other countries, political repression of opponents has resulted in hundreds of cases of disappearances. In this regard, countries such as Algeria, the Islamic Republic of Iran or the Philippines may be mentioned. Other countries carry the heavy burden of their past, with thousands of cases that have still not been clarified after decades, such as Argentina or Chile.

9. In some situations, due to probable underreporting, especially in Africa, the Working Group expects that large numbers of reports of disappearance arising from current conflicts could be submitted to it during the coming years. The Working Group has highlighted a number of these situations in its current report.

10. The Working Group is concerned that underreporting of disappearances in certain regions and countries is also due to restrictions on civil society and NGO work on this sensitive issue. It is difficult to receive information from some parts of the world in which there are many indications that human rights violations, including disappearances, have taken and are still taking place. Unfortunately, in some regions non-governmental organizations are not numerous and organized enough to be able to work effectively on disappearances. Nevertheless, the Working Group received positive information on the development of networks of associations of families of victims and non-governmental organizations that may be able to deal with this issue in the future.

11. In the context of internal armed conflict, opposition forces have reportedly perpetrated enforced disappearances. While the mandate of the Working Group is limited to violations carried out by State actors or their agents, it notes that the act of enforced disappearance is often the source of further cycles of violence, regardless of the perpetrator.

12. The Working Group is particularly concerned about reports it has received on the forced disappearance of children, and in a few cases, of disabled persons. The Working Group recalls the obligation of States to protect these groups in situations of vulnerability. It will continue to monitor this issue.

13. The Working Group is gravely concerned that anti-terrorist activities are being used by an increasing number of States as an excuse for not respecting the obligations of the Declaration. States have used the excuse that they are justified to hold persons in secret detention, thereby effectively making them forcibly disappeared, or have diminished their rights to access to courts when accused of being involved in terrorist activities.

C. Remarks on the present report

14. In the period under review, the Working Group decided to modify the content of its report to the Commission on Human Rights. In countries where the number of newly reported cases is less than 10, the names of the persons appear in the country section. If the number of newly reported cases is greater than 10, the list of names appears in annex IV.

15. During the period under review, the Working Group transmitted for the first time 595 cases of disappearance in 20 countries, 131 of which allegedly occurred during the last year. The total number of cases transmitted for the first time represents an almost threefold increase over the previous year, but this is due in large measure to an enhanced capacity of the Secretariat to address a backlog of unprocessed cases. As in previous years, the Working Group has used an urgent-action procedure for 152 cases that allegedly occurred within the three months preceding the receipt of the report by the Group. During the reporting period, the Working Group clarified 23 cases of enforced disappearance.

16. A number of Governments of countries with large numbers of unresolved cases have not communicated on a regular basis with the Working Group. In 2003, the Working Group extended a special invitation to the Governments of those countries which had a particularly large number of outstanding cases to meet with the Group. The countries concerned were Algeria, Argentina, El Salvador and Peru. Iraq was not included in the list because of the vacuum in government authority. Of the four countries, only Algeria and Argentina requested meetings with the Working Group. These meetings were held at the seventieth session in August 2003 and the Governments concerned provided significant additional information. Other approaches are being considered by the Working Group to make its work more efficient and effective.

17. The total number of cases transmitted by the Working Group to Governments since the Working Group's inception is now 50,705. The total number of cases under active consideration, that have not yet been clarified or discontinued, stands at 41,909 and concerns 79 States. Over the past five years, the Working Group has been able to clarify 6,270 cases.

18. The present report of the Working Group is submitted pursuant to Commission on Human Rights resolution 2004/40.² As in the past, the report reflects only communications or cases examined prior to the last day of the third annual session of the Working Group, namely 15 November 2004. Those responses from Governments reviewed after that date, as well as

urgent actions subsequently transmitted, will be reflected in the next report of the Working Group. In respect of newly reported cases transmitted by the Working Group after 15 September 2004, it must be understood that the Governments concerned may not have been able to respond prior to the adoption of the present report.

19. This chapter covers only those countries in respect of which the Working Group received new information during the period under review. No new information was received concerning disappearance cases from Afghanistan, Bangladesh, Bolivia, Burundi, Cambodia, Cameroon, Chad, Dominican Republic, El Salvador, Equatorial Guinea, Ethiopia, Guinea, Haiti, Israel, Jordan, Mozambique, Myanmar, Namibia, Nicaragua, Nigeria, Pakistan, Seychelles, Syria, Tajikistan, Timor-Leste, Togo, Uganda, Yugoslavia, Zimbabwe and the Palestinian Authority. (See previous reports of the Working Group, E/CN.4/2002/79, E/CN.4/2003/70 and Corr.1 and 2 and E/CN.4/2004/58.)

20. Additional Secretariat staffing in 2004 has permitted the Working Group to begin to address a backlog of cases. While the continuing backlog affects the accuracy of statistical information, the Working Group welcomes the significant progress made in addressing this issue during the last year and expects further progress in 2005.

II. ACTIVITIES OF THE WORKING GROUP ON ENFORCED OR INVOLUNTARY DISAPPEARANCES IN 2004

A. Meetings and missions of the Working Group

21. During the period under review, the Working Group held three sessions in Geneva. The seventy-second session was held from 24 to 28 May, the seventy-third session was held from 16 to 20 August and the seventy-fourth session was held from 8 to 15 November 2004.

22. The Working Group continues to apply Commission on Human Rights decision 2000/109 of 26 April 2000, on enhancing the effectiveness of the mechanisms of the Commission, that a turnover of its membership be accomplished in incremental steps over a three-year transition period. In accordance with this decision, in January 2004, Mr. Darko Götlicher (Croatia) began his mandate. Mr. Diego García-Sayán (Peru) resigned in July 2004, and was replaced in August 2004 by Mr. Santiago Corcuera (Mexico). Following the resignation of Mr. García-Sayán, Mr. Stephen J. Toope was named Chairman-Rapporteur of the Working Group and Mr. J. 'Bayo Adekanye, Vice-Chairman-Rapporteur.

23. During the sixtieth session of the Commission on Human Rights, the Chairman-Rapporteur held a meeting with representatives of interested Governments and NGOs to discuss their concerns.

24. During the period under review, the Working Group met with representatives of the Governments of Colombia, Cyprus, Democratic People's Republic of Korea, Guatemala, the Islamic Republic of Iran, Japan, Kuwait, Malaysia, Mauritania, Mexico, Nepal, Saudi Arabia and Uzbekistan. The Group also met with representatives of human rights organizations, associations of relatives of disappeared persons and families or witnesses directly concerned with reports of enforced disappearance.

25. Regarding country visits, by letter dated 19 November 1997, the Government of the Islamic Republic of Iran invited the Working Group to visit that country and the Working Group accepted the invitation. However, due to the sudden illness of its Chairman, the Working Group decided to postpone the visit, which had been scheduled to take place from 11 to 18 June 2003. Dates for a visit were then agreed on, from 24 to 28 July 2004. This visit was postponed by the Islamic Republic of Iran due to the inability of the judiciary “to duly coordinate” the meetings with the Working Group. The Working Group awaits new dates for the mission from the Iranian authorities.

26. Following a meeting with the representatives of the Government of Nepal, an invitation was received to visit that country. The Working Group is planning this mission to Nepal from 6 to 14 December 2004.

27. Regretfully, up to now, the Government of Algeria has not responded to the interest expressed by the Working Group, in August 2000, to visit the country.

28. On 26 September 2001, the Government of Colombia reiterated its invitation of 30 March 1995 to the Working Group to visit the country. On 4 November 2002, the Government informed that owing to a change of Government, there was a need to initiate new steps with a view to such a visit taking place. On 8 November 2002 and, again, on 25 April 2003, the Working Group reiterated its interest for a visit to the Government of Colombia. After meeting with officials from the Government of Colombia, the dates for the visit were agreed for June 2005.

29. Invitations have also been received by the Working Group to visit Argentina and Kuwait. In addition, the Working Group may consider the open invitations that are presently addressed to special mechanisms.

B. Communications

30. During the period under review, the Working Group transmitted 595 new cases of enforced or involuntary disappearance to the Governments of Algeria, Angola, Bhutan, Brazil, China, Colombia, the Democratic People’s Republic of Korea, Ecuador, Egypt, France, India, Indonesia, Iraq, the Islamic Republic of Iran, Nepal, the Philippines, the Russian Federation, Rwanda, Sudan and Uzbekistan.

31. The Working Group sent 152 of these cases under the urgent-action procedure to the Governments of Brazil, China, Colombia, the Democratic People’s Republic of Korea, Ecuador, India, Indonesia, Nepal, the Philippines, the Russian Federation, Sudan and Uzbekistan. Of the newly reported cases, 131 allegedly occurred in 2004, and relate to Brazil, China, Colombia, the Democratic People’s Republic of Korea, Ecuador, India, Indonesia, Nepal, the Philippines, the Russian Federation, Sudan and Uzbekistan. During the same period, the Working Group clarified 23 cases in the following countries: Argentina, China, Colombia, Morocco, Nepal and the United States of America.

32. During the period under review, the Secretariat has actively worked with other thematic and country mandate holders by sharing non-confidential information with Special Rapporteurs on relevant situations of disappearances. During the same period, the Working Group joined other mandate holders in the transmission of urgent-action requests for cases relevant to multiple mandates.

33. As in previous years, the Working Group received reports and expressions of concern from non-governmental organizations, associations of relatives of disappeared persons and individuals about the safety of persons actively engaged in the search for missing persons, in reporting cases of disappearance or in the investigation of cases. In some countries, the mere act of reporting a disappearance entailed a serious risk to the life or security of the person making the report or to his or her family members. In addition, individuals, relatives of disappeared persons and members of human rights organizations were frequently harassed and threatened with death, for reporting cases of human rights violations or investigating such cases.

34. During the period under review, two prompt intervention communications were sent, on 27 September and 18 October 2004, to the Government of Algeria concerning harassment and unlawful imprisonment of human rights defenders and relatives of disappeared persons, as well as the refusal to provide legal status for organizations working on the issue of disappearances in that country.

C. Other activities

35. During the period under review, the Working Group launched a reflection on its methods of work.

36. In conjunction with the field offices of the Office of the High Commissioner for Human Rights, the Working Group has distributed information on the activities of the Group and on its methods of work. Several regional and country offices of the Office of the High Commissioner for Human Rights were provided with publications and information for local organizations regarding the Working Group.

37. In its resolution 57/215 on the question of enforced or involuntary disappearances, the General Assembly addressed requests for information to Governments, to the Working Group on Enforced or Involuntary Disappearances and to the Secretary-General, including a request to the Secretary-General to submit to it, at its fifty-ninth session, a report on the steps taken to implement the resolution. In response, the report on the implementation of the resolution (A/59/341) included replies from the Governments of Burkina Faso, Georgia, Kenya, Kuwait, Mauritius and Mexico on the implementation of the Declaration on the Protection of All Persons from Enforced Disappearance. It also contained information on the activities undertaken to promote the Declaration, in compliance with the requests contained in this resolution.

38. For the "International Day of the Disappeared", a press release was issued on 27 August 2004 on behalf of the Working Group expressing its concern about the phenomenon of disappearance in various parts of the world. It also expressed its "solidarity with the families and friends of victims and with all those who suffer from these brutal and inhuman acts". This press release was simultaneously released by the Office of the High Commissioner for Human Rights (OHCHR) field presences in Nepal and Colombia.

39. During the period under review, one joint statement was issued by eight mandate holders, including the Chair of the Working Group, on 14 July 2004 concerning “their serious concern regarding the extremely grave human rights situation in Nepal”. On 4 November 2004, a joint statement was issued by the Chairs of the Working Group and of the Working Group on Arbitrary Detention (WGAD) criticizing the recommendation by the Prosecutor General of the Russian Federation, calling on the Duma to adopt a law to allow the authorities to detain relatives of terrorists by force as a measure against hostage-taking.

D. Comments on a draft legally binding instrument for the protection of all persons from enforced disappearance

40. The Working Group on Enforced or Involuntary Disappearances (the Working Group) welcomes the efforts of the Intersessional open-ended working group (ISWG) to elaborate a draft legally binding instrument on enforced disappearances. As was clearly established in the report of Manfred Nowak (E/CN.4/2002/71 of 8 January 2002), important gaps exist in the current framework of protection against enforced and involuntary disappearances. The process of elaborating a draft legally binding instrument for the protection of all persons from enforced disappearance appears to be making substantial progress on questions of definition and on the refinement of substantive obligations.

41. The Working Group has participated in the deliberations of ISWG and has provided suggestions from the experience of the Working Group.

42. The Working Group notes with satisfaction that the draft legally binding instrument for the protection of all persons from enforced disappearance and subsequent discussions among States and non-governmental organizations in ISWG reflect many of the recommendations that the Working Group has for successive years submitted to the Commission on Human Rights. In particular, many States now recognize the need for: (a) clear national criminal law addressing disappearances; (b) the creation of mechanisms of compensation and satisfaction; and (c) specific actions to address the plight of children.

43. The Working Group is concerned, however, that current discussions seem to be leading to a dilution of the obligation expressed in the Declaration on strict limitations on amnesties (art. 18).

III. INFORMATION CONCERNING ENFORCED OR INVOLUNTARY DISAPPEARANCES IN VARIOUS COUNTRIES REVIEWED BY THE WORKING GROUP

44. This chapter covers only those countries in respect of which the Working Group received new information during the period under review. No new information was received concerning disappearance cases from Afghanistan, Bangladesh, Bolivia, Burundi, Cambodia, Cameroon, Chad, Dominican Republic, El Salvador, Equatorial Guinea, Ethiopia, Guinea, Haiti, Israel, Jordan, Mozambique, Myanmar, Namibia, Nicaragua, Nigeria, Pakistan, Seychelles, Syria, Tajikistan, Timor-Leste, Togo, Uganda, Yugoslavia, Zimbabwe or the Palestinian Authority (see previous reports of the Working Group, E/CN.4/2003/70 and E/CN.4/2004/58).

China

86. During the period under review, one new case of disappearance was transmitted by the Working Group to the Government of China under the urgent-action procedure. During the same period, the Working Group clarified four cases on the basis of information provided by the Government that the persons concerned were in custody, in a re-education-through-labour facility, at the addresses provided, or were dead. In these cases, the sources made no observations on the information received from the Government.

87. Most of the 109 cases of disappearance reported in the past are said to have occurred between 1988 and 1990, or between 1995 and 1996. The majority of these cases concerned Tibetans, 19 of them monks who were allegedly arrested in Nepal and handed over to the Chinese authorities. Thirteen cases concerned Falun Gong practitioners who were allegedly arrested or abducted in 2000 and 2001 by police, security services or local administrative officials. One case involved an autistic boy who reportedly disappeared in 2000 after having been questioned by Hong Kong immigration officers. The last case concerned a Chinese citizen, residing in the United States of America, who was allegedly detained in 2002 by persons belonging to the Ministry of Public Security.

88. The newly reported case concerns a 4-year-old child, **Yuan Yuan Zhang**, who was allegedly abducted from her home by police officers from Tongnan Country National Security Team in 2004. Reportedly, her parents have been persecuted for practising Falun Gong.

89. During the period under review, the Government provided information on five outstanding cases. In two cases, the persons concerned were either in custody or in a re-education-through-labour facility. In one case, the person was released from a re-education-through-labour facility. However information on the exact whereabouts of these three persons was not provided. In the other two cases, the whereabouts of the persons concerned remain unknown and reportedly the search is continuing. Another communication was received from the Chinese authorities in August 2004, but owing to the delay required for translation, it could not be reviewed by the Working Group in time to be included in the present report.

90. Of the 78 cases clarified by the Working Group, 69 were clarified on the basis of information provided by the Government and 9 on the basis of information provided by the source. In a majority of cases clarified on the basis of information provided by the Government, the persons concerned were living at liberty at the address that was provided. In respect of the 31 outstanding cases, the Working Group is unable to report on the fate or whereabouts of the disappeared persons.

Observations

91. The Working Group expresses appreciation to the Government of China for its cooperation. However the Working Group notes a worrying circumstance in which two of the outstanding cases of disappearance concern children.

Annex I

Decisions on individual cases taken by the Working Group during 2004

Countries	Cases which allegedly occurred in 2004	Cases transmitted to the Government during 2004		Clarification by:		Discontinued cases
		Urgent actions	Normal actions	Government	Non-governmental sources	
China	1	1	-	4	-	-

Annex II

**Statistical summary: cases of enforced or involuntary disappearance reported
to the Working Group between 1980 and 2004**

Countries/entities	Cases transmitted to the Government				Clarification by:		Status of person at date of clarification			Discontinued cases
	Total		Outstanding		Government	Non-governmental sources	At liberty	In detention	Dead	
	No. of cases	Female	No. of cases	Female						
China	109	13	31	7	69	9	43	33	2	-

Annex III

**Graphs showing the development of disappearances in countries with
more than 100 transmitted cases during the period 1971-2004**

