

## DISAPPEARANCES

### Working Group on enforced or involuntary disappearances (E/CN.4/1997/34)

The Working Group (WG) on Enforced or Involuntary Disappearances, established in 1980, was the first thematic mechanism set up by the Commission on Human Rights to deal with specific human rights violations of a particularly serious nature occurring on a global scale. The basic mandate, renewable every three years, is to assist relatives of disappeared persons to ascertain the fate and whereabouts of their missing family members. The cases are dealt with on a humanitarian basis, irrespective of whether the government concerned has ratified any of the existing legal instruments which provide for an individual complaints procedure. The WG acts on the principle that the state is responsible for human rights violations committed within its territory and is obligated to prevent such violations or to investigate them when they have occurred. This responsibility continues to exist irrespective of changes of government. The WG does not deal with situations of international armed conflict. Nor will it consider abductions which are not directly or indirectly attributable to a government (i.e., the Group will not process individual cases of disappearance perpetrated by irregular or insurgent groups fighting a government on its own territory). This notwithstanding, the WG operates on the assumption that information on all disappearances is relevant to a proper evaluation of an overall situation. Since its establishment, the WG has dealt with some 50,000 individual cases occurring in more than 70 countries.

Following the 1992 adoption by the General Assembly of the Declaration on the Protection of All Persons from Enforced Disappearances, the WG was also given the task of monitoring states' compliance with the Declaration. The effect of the Declaration was to place states "under an obligation to take effective measures to prevent and terminate acts of enforced disappearance by making them continuing offences under criminal law and establishing civil liability."

Articles in the Declaration declare or stipulate, *inter alia*: any act of enforced disappearance is an offence to human dignity and places the persons concerned outside the protection of the law; no state shall practice, permit or tolerate enforced disappearances, and every state shall take effective necessary measures to prevent and terminate acts of disappearance; all acts of enforced disappearance shall be offences under criminal law and the state and its authorities and agents are liable under civil law for any acts of disappearance; there is no basis on which acts of enforced disappearance may be justified; states may not expel or forcibly return anyone to another state where there are substantial grounds to believe there exists the danger of enforced disappearance; the state must ensure the right to prompt and effective judicial remedy as a means to determine the whereabouts or state of health of persons deprived of liberty and/or identify the authority responsible for the detention or arrest; a person detained or arrested must be held in an officially recognized place of detention and the state must establish rules indicating which officials may order deprivation of liberty; a state must investigate all allegations of enforced disappearance and, when warranted, ensure that

the person or persons responsible are held accountable before civil authorities; an act constituting enforced disappearance shall be considered a continuing offence as long as the fate and whereabouts of the disappeared person(s) remain unclarified; persons who have or are alleged to have committed acts of enforced disappearance shall not benefit from any special amnesty law or similar measure; victims of disappearance and their families shall have the right to redress and adequate compensation; states shall prevent and suppress the abduction of children of parents who have disappeared and of children born during the mother's enforced disappearance; and states must establish a process of review and annulment of cases of adoption of children of disappeared persons and children born during the mother's disappearance, but provide that such adoptions may continue if consent is given by a child's closest relatives.

The 1997 report of the WG states that progress in states' compliance with the Declaration has been extremely slow and that very few countries have enacted special legislation to make the act of enforced disappearance a specific offence under criminal law or to implement other provisions of the Declaration. The WG has taken up the practice, with the aims of making the Declaration better known and drawing the attention of governments to their responsibilities, of adopting general comments on specific provisions of the Declaration.

The 1997 report of the Working Group notes that more than 43,000 cases, related to the period between 1980 and 1996, remain under active consideration. In some instances, the cases relate to past situations of intense internal armed conflict or military dictatorships. In others, the numbers reflect armed conflict that may be either internal or transborder or have elements of both. Commentary in the report shows that individuals working in some professions are more vulnerable than others but that, in general, all sectors of society are potential targets. For example, victims have included journalists, medical doctors, university professors, students, civil servants, farmers, tourists, members of opposition political parties, members of groups in armed opposition, human rights advocates, lawyers, members of ethnic groups, civilians in territories under dispute, religious leaders, relatives of missing or disappeared persons and members of civic human rights groups and non-governmental organizations.

At its 1997 session, the Commission adopted a resolution by consensus (1997/26) related to disappearances and the mandate of the WG. The Commission, *inter alia*: expressed concern at the intensification of disappearances in various regions and the growing number of reports of harassment, ill-treatment and intimidation of witnesses and relatives of disappeared persons; reminded the WG that its primary role is to act as a channel of communication between families of disappeared persons and governments; reminded the WG of its humanitarian task and the need for it to observe UN standards and practices related to the handling of communications and consideration of government replies; reminded the WG that it should continue to consider the question of impunity, giving due regard to relevant provisions in the Declaration; reminded the WG to give particular attention to cases of disappeared children and children of disappeared persons; reminded the WG to apply a gender perspective in the reporting process, including in information collection and formulation of recommendations; deplored the failure of some governments to