

the compensation shall be "adequate", that is, proportionate to the gravity of the human rights violation — for example, the period of disappearance and/or the conditions of detention — and to the suffering of the victim and the family; monetary compensation shall be granted for any damage resulting from an enforced disappearance such as physical or mental harm, lost opportunities, material damages and loss of earnings, harm to reputation and costs required for legal or expert assistance; civil claims for compensation shall not be limited by amnesty laws made subject to statutes of limitation or made dependent on penal sanctions imposed on the perpetrators; the right to adequate compensation set out in the Declaration shall be distinguished from the right to compensation for arbitrary executions, viz. the right of compensation shall not be made conditional on the death of the victim; and the right to obtain redress also includes the means for as complete a rehabilitation as possible through medical and psychological care and rehabilitation, legal and social rehabilitation, guarantees of non-repetition, restoration of personal liberty, family life, citizenship, employment or property, return to place of residence and similar forms of restitution, satisfaction and reparation which may remove the consequences of the enforced disappearance.

The report concludes with a number of observations on the phenomenon of disappearances and the WG's role in combatting it and relieving the suffering of the victims and their families. The points made in this section include, *inter alia*, that: since the 1960s and early 1970s the practice of disappearances has spread to a number of regions; most of the more recent cases occurred in the context of internal armed conflicts, ethnic and religious tensions and other forms of internal disturbances; the high percentage of unresolved cases partly reflects the fact that many of these disappearances date back to the 1970s or early 1980s and, while most of the victims have probably been dead for a long time, it remains extremely difficult to establish beyond a reasonable doubt the exact fate and whereabouts of the victims; according to the Group's methods of work, such proof is a precondition for considering the case clarified; in recent years the WG has intensified its efforts to mediate between the families of missing persons and the respective governments to find a solution to these old cases which might be acceptable to all sides concerned; although many of these governments have changed, and the new administrations show a keen interest in clarifying old cases, the families and non-governmental organizations often accuse them of not taking sufficient measures to investigate these cases and to bring the perpetrators to justice; these same governments, however, often enacted amnesty laws which legally prevent them from prosecuting the alleged perpetrators, a course of action which clearly is not in conformity with article 18 of the Declaration; the WG offers its assistance in those cases to find a solution by means of a judicial declaration of presumption of death, with the concurrence of the families, and the payment of adequate compensation to them; and, another method of clarifying old cases is the

exhumation and identification of remains from mass graves and other places where victims of enforced disappearance had been clandestinely buried.

The WG also observed that, in addition to financial compensation, the right to obtain redress for acts of enforced disappearance includes: other forms of compensation such as medical, psychological, legal and social rehabilitation; restoration of personal liberty, employment and property; and forms of restitution, satisfaction and reparation which may remove the consequences of the enforced disappearance. The WG further observed that: impunity is one of the root causes of enforced disappearances, and at the same time one of the major obstacles to clarifying past cases; in some states with a high number of outstanding cases, families of missing persons demand that governments comply with their obligations under the Declaration to carry out thorough investigations, to inform the public of the outcome of such investigations, and to punish the perpetrators — considered to be pre-conditions for a lasting solution to the problem; non-cooperation by some governments remains one of the principal reasons that a significant number of cases remain unresolved; equal in importance to clarification of past cases of enforced disappearance is the need for governments to take effective legislative, administrative and judicial measures aimed at preventing the occurrence of such acts in the future; although article 4 of the Declaration applies to all states and not only to those in which enforced disappearances actually take place, almost no government has amended its criminal laws in order to ensure that acts of enforced disappearance, as such, are offences punishable by appropriate penalties; and, the enactment and effective implementation of such laws would be a major step towards ending the widespread culture of impunity and preventing acts of enforced disappearance.

The Group noted that article 10 of the Declaration imposes three obligations on government, related to a recognized place of detention, limits of administrative or pre-trial detention, and prompt judicial intervention. Additional obligations are set out related to: the right of all detainees to have prompt access to their families and to lawyers and doctors of their own choice, the maintenance of official up-to-date registers of all persons deprived of their liberty, regular inspection of all places of detention by independent bodies, and proper human rights training of all prison and law enforcement personnel and members of the armed forces.

The report concludes with three recommendations, namely that:

- ♦ all states with a considerable number of outstanding cases develop comprehensive programmes of forensic activities and compensate the families of deceased victims of enforced disappearance;
- ♦ governments comply with their obligations under the Declaration not to impede investigations by enacting amnesty laws and to stop the cycle of impunity; and