

On the question of an international convention on the prevention and punishment of enforced disappearance, the report states that a monitoring body would be essential in order to supervise the compliance of state parties. The WG restated its opinion that, in order to avoid a further proliferation of treaty monitoring bodies, the task of monitoring should either be entrusted to one of the existing treaty bodies — for example by adopting a further optional protocol to the International Covenant on Civil and Political Rights — or to the Working Group. In the latter case, the WG would be prepared, in analogy to the double role of the Inter-American Commission on Human Rights, to examine the possibility of continuing to function both as a thematic mechanism of the UN Commission on Human Rights with respect to all countries of the world where cases of disappearances are alleged to occur, and as a treaty monitoring body with respect to states parties to the future convention on disappearances.

The narrative on compensation, presumption of death and exhumation notes that, in recent years, a number of countries have started to compensate financially victims and the families of victims of enforced disappearance. It also notes that there have been significant variances in the legal, procedural and financial aspects taken by each country. Emphasizing the importance that it places on the issue, the WG communicated with governments in countries with more than 20 pending cases of alleged disappearance, requesting information on their practices with regard to compensation, presumption of death and exhumation. The Working Group posed a number of specific questions:

1. What is the legal basis for compensation in your country?
2. What are the legal requirements and legal procedures leading to a presumption of death? Who initiates such a procedure? Can a person be presumed dead over the objections of the family?
3. Does the payment of compensation require a presumption of death?
4. Has your Government used the method of exhumation to determine the identity of a person reported to have disappeared?
5. Has your Government compensated victims or families of victims of disappearance?

At the time the report was prepared the replies of 12 governments variously indicated that:

- ♦ the legal bases for compensation included: compensation for victims of enforced disappearance or death caused by the action of the armed forces, the security forces or paramilitary groups prior to the return of democracy; compensation for non-surviving victims of human rights violations, disappearances or executed detainees, whose disappearance occurred during a specific time period; provisions in criminal and civil codes on criminal responsibility and related

civil liability; orders to pay compensation rendered by the national human rights commission; and, provisions in law stipulating compensation to be paid to next of kin of persons who have died or sustained injuries as a result of violence, terrorist activity, related security operations and consequent to civil unrest; and

- ♦ legal requirements and procedures leading to a presumption of death, include varying periods of time which must have elapsed, for example, 1 to 10 years, and the periodic publication in official organs, as well as other media, of proceedings aimed at a declaration of a presumption of death; in some states proceedings may be initiated by any concerned or interested party while, in others, this process is limited to family members or cohabiting partners; in some cases a prior notice of presumption of death or a "declaration of absence" is required before compensation is paid.

Following on this consideration of issues related to compensation, the report refers to article 19 of the Declaration on the Protection of All Persons from Enforced Disappearances which stipulates: "The victims of acts of enforced disappearance and their family shall obtain redress and shall have the right to adequate compensation, including the means for as complete a rehabilitation as possible. In the event of the death of the victim as a result of an act of enforced disappearance, their dependants shall also be entitled to compensation." The report notes that the right to obtain redress in article 19 of the Declaration is broader than the right to an effective legal or judicial remedy as stipulated, for instance, in article 2 (3) of the International Covenant on Civil and Political Rights. The WG stated that, as has been recognized in the jurisprudence of UN treaty monitoring bodies and in the draft basic principles and guidelines on the right to reparation for victims of [gross] violations of human rights and international humanitarian law (E/CN.4/1997/104, Appendix), the right to obtain redress derives from the general obligation of states to ensure human rights and applies, in particular, to cases of gross violations.

The report then reviews aspects of the Declaration related to compensation and the right to obtain redress noting, *inter alia*: states have an obligation to make acts of enforced disappearance an offence under criminal law and bring the perpetrators to justice; bearing in mind that impunity is one of the major root causes of the widespread practice of enforced disappearance, many victims of such acts and their families consider the prosecution and punishment of the perpetrators as important redress for their suffering; states also have an obligation to adopt legislative and other measures in order to enable the victims to claim compensation before the courts or special administrative bodies empowered to grant compensation; in addition to the victims who survived the disappearance, their families are entitled to compensation for the suffering during the time of disappearance and, in the event of the death of the victim, his or her dependants are entitled to compensation; the Declaration stipulates that