



# General Assembly

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## Human Rights Council Working Group on Enforced or Involuntary Disappearances

### Post-sessional document

101st session (4–13 November 2013)

#### I. Introduction

1. The present document reflects activities conducted and communications and cases examined by the Working Group on Enforced or Involuntary Disappearances at its 101st session, held from 4 to 13 November 2013.

#### II. Activities

2. On 8 November 2013, the Working Group held an expert consultation on enforced disappearances and economic, social and cultural rights. During the half-day thematic discussion, experts from various regions of the world exchanged views on the indivisibility of human rights and the relationship between enforced disappearances and economic, social and cultural rights. The Working Group will report on this subject to the Human Rights Council in 2014.

#### III. Communications

3. Between its 100th and 101st sessions, the Working Group transmitted 18 cases under its urgent action procedure, to Iraq (7), Nepal (1), Pakistan (1), Peru (1), the Syrian Arab Republic (4), the United Arab Emirates (1) and Yemen (3).

4. At its 101st session, the Working Group decided to transmit 41 newly reported cases of enforced disappearance to 10 States. The Working Group also clarified 15 cases, concerning Chile (5), Namibia (1), Pakistan (2), Saudi Arabia (1), Sri Lanka (3), the Syrian Arab Republic (2) and the United Arab Emirates (1). Of the 15 cases, 8 were clarified on the basis of information provided by Governments, and 7 on the basis of information provided by sources.

5. Between its 100th and 101st sessions, under its prompt intervention procedure, the Working Group transmitted six communications jointly with other special procedures mechanisms, to Algeria (2), Colombia (2) and Kenya (2). The Working Group also

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transmitted nine urgent appeals, jointly with other special procedures mechanisms, concerning persons who had been arrested, detained, abducted or otherwise deprived of their liberty or who had been forcibly disappeared or were at risk of disappearance in Bahrain, China, Kazakhstan, the Russian Federation, the Sudan and the Syrian Arab Republic.

6. During its 101st session, the Working Group also reviewed five general allegations concerning Colombia, Guatemala, Indonesia, Mexico and Morocco.

#### **IV. Information concerning enforced or involuntary disappearances in States reviewed by the Working Group during the session**

##### **1. Albania**

###### **Information from the Government**

7. On 25 October 2013, the Government transmitted a communication regarding one outstanding case. The information provided was not considered sufficient to lead to clarification of the case.

###### **Information from sources**

8. Sources provided information on one outstanding case.

##### **2. Algeria**

###### **Prompt intervention letter**

9. On 20 August 2013, the Working Group transmitted a prompt intervention letter concerning the alleged excessive use of force against and subsequent arrest of relatives of victims of enforced disappearances during a peaceful demonstration on 27 June 2013, on the occasion of the United Nations International Day in Support of Victims of Torture.

10. On 18 October 2013, the Working Group transmitted another prompt intervention letter concerning the alleged excessive use of force against and subsequent arrest of relatives of victims of enforced disappearances during a peaceful demonstration on 29 September 2013. The demonstration had been organized to denounce the provisions of the Charter for Peace and National Reconciliation.

###### **Information from the Government**

11. The Working Group continued to process the information that had been transmitted by the Government on 5 February 2013. Information concerning 100 outstanding cases was reviewed during the session and was not considered sufficient to lead to clarification of the cases.

###### **Information from sources**

12. Sources provided information on seven outstanding cases.

###### **Observations**

13. Regarding the alleged excessive use of force against relatives of victims of enforced disappearances mentioned in the prompt intervention letters, the Working Group would like

to express its deep concern and recall Human Rights Council resolution 21/4, in which the Council urged States to take steps to provide adequate protection to, among others, human rights defenders acting against enforced disappearances and families of disappeared persons against any intimidation, persecution, reprisals or ill-treatment to which they might be subjected.

### **3. Angola**

#### **Information from the Government**

14. On 8 July 2013, the Government responded to a prompt intervention letter sent on 10 June 2013 concerning the alleged incommunicado detention of Mr. Emiliano Catumbela (“Ticreme”) and the alleged arbitrary arrest of and excessive police action against eight other human rights defenders during their participation in a vigil. In its response, the Government indicated, *inter alia*, that “Mr. Emiliano Catumbela, commonly known as Ti Cream, 22 years old, was released, on Tuesday, 25 June 2013, by the decision of the Attorney General of the Republic at the National Directorate of Criminal Investigation (DNIC), and will wait in liberty and freedom the trial to answer to the charges” that he is facing.

15. On 30 September 2013, the Government transmitted a communication regarding two outstanding cases. The information provided was not considered sufficient to lead to the clarification of the cases.

16. In the same communication, the Government responded again to the aforementioned prompt intervention letter. The Government indicated, *inter alia*: “What happened is that during the demonstrations, some demonstrators revolted against the enforcement officers; one of them had even attacked an officer in the head with a broken bottle. Therefore, some demonstrators, including six people, were taken to the police station. There, procedure n° 2176/13-MA was followed and resulted in the arrest of the citizen Emiliano Catumbela Lumbugululo for the crime of attempted murder, under a combination of articles 11, 106 and 349 of the Criminal Code.”

#### **Observations**

17. The Working Group would like to thank the Government for its replies to the prompt intervention letter. The Working Group appreciates the information indicating that Mr. Catumbela was released on 25 June 2013. In that regard, it would like to recall article 2 of the Declaration on the Protection of All Persons from Enforced Disappearance, which provides that no State shall practise, permit or tolerate enforced disappearances.

### **4. Argentina**

#### **Information from the Government**

18. On 6 August 2013, the Government transmitted a communication concerning one outstanding case registered under the statistics of Peru. The information provided was not considered sufficient to lead to the clarification of the case.

19. The Working Group decided to suspend the application of the six-month rule to one case.

## **5. Bahrain**

### **Urgent appeals**

20. On 28 August 2013, the Working Group transmitted one urgent appeal concerning allegations of the arbitrary detention, torture and ill-treatment of Ms. **Rihanna al-Musawi** and Ms. **Nafeesa al-Asfoor**, and of the lack of judicial safeguards for them while in detention, as well as allegations of the arbitrary detention of Mr. **Abas al-Asfoor**, whose whereabouts are currently unknown.

## **6. Belarus**

### **Information from the Government**

21. On 24 October 2013, the Government transmitted a communication regarding three outstanding cases. The information provided was not considered sufficient to lead to clarification of the cases.

### **Observations**

22. The Working Group hopes that the Government of Belarus will continue its cooperation with the mechanism. In that respect, the Working Group would like to recall Human Rights Council resolution 21/4, in which the Council urged States to cooperate with the Working Group and help it to carry out its mandate effectively; and resolution 7/12, in which the Council urged the Governments concerned to intensify their cooperation with the Working Group on any action taken pursuant to recommendations addressed to them by the Working Group.

## **7. Central African Republic**

### **Press release**

23. On 5 August 2013, the Working Group issued a press release concerning the situation of human rights in the Central African Republic. In the press release, the experts urged the current authorities to take immediate steps to put an end to all human rights violations, including enforced disappearances, and to ensure that there is no impunity for the perpetrators.

### **Observations**

24. In relation to the press release, the Working Group would like to reiterate its deep concern at allegations of enforced disappearances in the country. The Working Group would like to recall article 2 of the Declaration, which provides that “no State shall practise, permit or tolerate enforced disappearances”.

## **8. Chile**

### **Clarification**

25. On the basis of information provided by the Government, the Working Group decided to clarify five outstanding cases following the expiration of the period prescribed by the six-month rule.

## 9. China

### **Urgent appeals**

26. On 9 August 2013, the Working Group transmitted an urgent appeal concerning a pattern across the country of arbitrary arrests, ill-treatment in detention and incommunicado detention as well as intimidation of human rights defenders and activists.

27. On 1 October 2013, the Working Group transmitted a second urgent appeal, concerning allegations that two individuals had been prohibited from travelling to Geneva to attend a training seminar on United Nations mechanisms, and further allegations that one of them had been subjected to enforced disappearance.

28. On 22 October 2013, the Working Group transmitted a third urgent appeal, concerning the arrest and detention of 20 individuals, some of whom had disappeared, in connection with their participation in peaceful assemblies or human rights campaigns in various parts of the country.

### **Press release**

29. On 16 October 2013, the Working Group issued a press release concerning alleged reprisals against activists linked to the universal periodic review of China. In the press release, the experts expressed serious concern at reports that Chinese human rights defenders had suffered reprisals for seeking to participate in a major United Nations human rights assessment of China. The Working Group was, in particular, concerned that information on the detention of one individual had reportedly not been made available to that person's family.

### **Observations**

30. In relation to the press release, the Working Group would like to recall article 10 of the Declaration, which provides that "accurate information on the detention of [any person deprived of liberty] and their place or places of detention, including transfers, shall be made promptly available to their family members, their counsel or to any other persons having a legitimate interest in the information unless a wish to the contrary has been manifested by the persons concerned."

## 10. Colombia

### **Prompt intervention letter**

31. On 2 August 2013, the Working Group transmitted a prompt intervention letter concerning alleged death threats against members of the National Movement for Victims of State Crimes (MOVIC) and the Regional Association of Victims of State Crimes in Magdalena Medio (ASORVIMM) after a ceremony held on 5 and 6 July 2013, during which they received the remains of some disappeared persons.

32. On 13 September 2013, the Working Group transmitted another prompt intervention letter, concerning the alleged murder of a lawyer and alleged acts of intimidation and stigmatization and death threats against lawyers working on cases of human rights violations, including enforced disappearances.

**General allegation**

33. The Working Group received information from reliable sources on obstacles encountered in the implementation in Colombia of the Declaration on the Protection of All Persons from Enforced Disappearance.

34. According to information provided by the source, enforced disappearances continue to occur in Colombia in large numbers. According to figures from the National Institute of Legal Medicine and Forensic Sciences, as at 31 August 2012, the total number of missing persons had reached 74,361, of whom 18,638 were victims of enforced disappearance.

35. Between 7 August 2010 and 31 August 2012, 486 cases of alleged enforced disappearance were reported. In those cases, 40 people were found dead and 68 were found alive. The fate and whereabouts of 378 victims remain unknown. Of the total number of persons reported as disappeared, 104 are women (25 per cent), 382 are men (57 per cent) and 73 are children (18 per cent), of whom 33 are girls and 40 are boys.

36. The source indicates that, although the figures are alarming, the total number of enforced disappearance for that period could be even greater, since the various State databases have not been fully centralized. In that respect, the source notes, for example, that 7,000 allegations of enforced disappearances received under the Justice and Peace Law (Law No. 975/05) reportedly remain excluded from the National Registry of Disappeared Persons.

37. The Working Group was also informed that a number of human rights defenders had been victims of enforced disappearance in recent years. In that regard, it was indicated that in 2011 six human rights defenders were victims of enforced disappearance. The source mentions as an example the enforced disappearance of the environmentalist Miguel Ángel Pabón Pabón on 31 October 2012 in Magdalena Medio. Mr. Pabón was part of the Movimiento Colombiano en Defensa de los Territorios y de los Afectados por Represas “Ríos Vivos” (Colombian Movement for Defence of Territories and People Affected by the “Ríos Vivos” Dams). It was noted that there was a military base and paramilitary groups were present in the area where the disappearance occurred. Another example provided by the source is the disappearance of the land restitution leader Manuel Ruiz, along with his 15-year-old son, on 23 March 2013. Their bodies were found by the community five days later. Manuel Ruiz and his son had been detained by police just before they were disappeared by suspected paramilitary members.

38. Furthermore, it is reported that the National Search Plan does not have the legal strength or the necessary effectiveness to carry out its function. In that regard, while progress has reportedly been made with respect to the right to information and participation of victims of enforced disappearance, through Law 1408/2010, the regulatory decree for that law has not been issued yet. Also, the searches for disappeared persons that have been conducted have not yielded the expected results.

39. Additionally, it is alleged that in the vast majority of cases, the perpetrators of enforced disappearances remain unpunished. It is indicated that there are serious shortcomings in the implementation of the Justice and Peace Law and that Government ordinances and resolutions of the Office of the Prosecutor would, in practice, further undercut victims’ rights, contrary to what was established in the 2006 ruling of Constitutional Court C-370. For example, resolutions 3398 of 2006 and 0387 of 2007 of the Attorney General’s Office, and Decree 315 of 2007, limit the participation of victims in the proceedings envisaged under the Justice and Peace Law.

40. Moreover, Law 1448 of 10 June 2011, known as the law for victims, despite being a step forward in relation to the protection of the rights of disappeared persons and their families, excludes “members of illegal armed groups” from its definition of victim. This

means that, for instance, members of guerrilla groups (whether actual or perceived) who were victims of enforced disappearance would not be considered as such, and that their families would be deprived of the right to reparation and to the truth. The source also alleges that the so-called Legal Framework for Peace contains several provisions contrary to the right to justice for families.

41. Furthermore, the source indicates that members of organizations of relatives of the disappeared have allegedly constantly been threatened and been the victims of attacks. In that regard, it is noted that, on 24 January 2013, Martha Elena Díaz Ospina, founder and President of the Association of Families United by a Single Sorrow (AFUSODO), an organization that supports mothers of victims of enforced disappearances at the hands of the military, and a member of the Atlantic branch of the National Movement for Victims of State Crimes, received a death threat signed by the paramilitary group Los Rastrojos. Between July and September 2012, a number of threats against the Association of Relatives of the Disappeared (ASFADDES) and its members were reported; incidents of surveillance and photo-taking directed at the organization were also reported. The source also reported that the Nydia Erika Bautista Foundation for Human Rights (FNEB) and its directors had allegedly been the subject of repeated illegal intelligence operations. For example, in late November 2012, FNEB reported the monitoring and surveillance of the Foundation by a police officer, as well as by an individual travelling in an official vehicle. Despite having been documented and reported, those incidents have allegedly not been investigated. The source emphasizes that FNEB has been under State protection since mid-2011.

#### Observations

42. The Working Group is deeply concerned about the alleged murder of, or death threats against, lawyers working on cases of enforced disappearance. In this respect, the Working Group would like to recall article 13 of the Declaration, which provides that “steps shall be taken to ensure that all involved in the investigation [of an enforced disappearance], including the complainant, counsel, witnesses and those conducting the investigation, are protected against ill-treatment, intimidation or reprisal” (para. 3) and that “steps shall be taken to ensure that any ill-treatment, intimidation or reprisal or any other form of interference on the occasion of the lodging of a complaint or during the investigation procedure is appropriately punished” (para. 5).

## 11. Democratic People’s Republic of Korea

#### Standard procedure

43. The Working Group transmitted 12 cases under its standard procedure. In accordance with the Working Group’s methods of work, the Government of the Republic of Korea received copies of those cases.

44. The first case concerned Mr. **Gi-man Eom**, who was allegedly abducted on 7 August 1968, when *Deoksu-2 ho*, the fishing boat he worked on, was reportedly captured by forces of the Democratic People’s Republic of Korea. Mr. Eom was below the age of 18 at the time of the alleged abduction.

45. The second case concerned Mr. **Gwang-mo Jeong**, who was allegedly abducted on 5 June 1970, when *I-2*, the navy ship Mr. Jeong served on, was reportedly captured by forces of the Democratic People’s Republic of Korea.

46. The third case concerned Mr. **Dal-young Kim**, who was allegedly abducted on 4 February 1972, when the boat he worked on, *Anyoung 35-ho*, was reportedly forced into Democratic People’s Republic of Korea waters by armed vessels of the Democratic People’s Republic of Korea.

47. The fourth and fifth cases concerned Mr. **Mu-su Nam** and Mr. **Jeong-yeol Nam**, also known as Jeong-lyeol Nam, who were allegedly abducted on 9 June 1972, when *Yupungho*, the fishing boat they worked on, was reportedly captured by forces of the Democratic People's Republic of Korea.

48. The sixth case concerned Mr. **Hyeob-ju Park**, who was allegedly abducted on 15 February 1974, when *Suwon-ho 33*, the fishing boat he worked on, was reportedly captured by forces of the Democratic People's Republic of Korea.

49. The seventh and eighth cases concerned Mr. **Seung-min Choi**, below the age of 18 at the time of the alleged abduction, and Mr. **Min-kyo Lee**, who were allegedly abducted in August 1977 by an agent of the Democratic People's Republic of Korea when they were on holiday on Hongdo Island.

50. The ninth and tenth cases concerned Mr. **Young-shik Hwang** and Mr. **Wan-sang Jeong**, who were allegedly abducted on 6 January, 1971, when *Huiyoung 37*, the fishing boat they worked on, was reportedly captured by forces of the Democratic People's Republic of Korea in the Yellow Sea.

51. The eleventh and twelfth cases concerned Mr. **Byeong-gi Lee** and Mr. **Jang-won Kim**, who were allegedly abducted on 20 November 1965, when *Myeongdeok-ho*, the fishing boat they worked on, was reportedly captured by forces of the Democratic People's Republic of Korea in the Sea of Japan.

#### **Information from the Government**

52. On 7 October 2013, the Government transmitted a communication regarding one outstanding case. The information provided was not considered sufficient to lead to the clarification of the case.

## **12. Dominican Republic**

#### **Information from the Government**

53. On 2 July 2013, the Government transmitted a communication regarding one outstanding case. The information provided was not considered sufficient to lead to clarification of the case.

#### **Observations**

54. The Working Group would like to recall that, under its humanitarian mandate, it may consider cases even when they are considered by other human rights mechanisms.

## **13. Guatemala**

#### **General allegation**

55. The Working Group received information from reliable sources on obstacles encountered in the implementation in Guatemala of the Declaration on the Protection of All Persons from Enforced Disappearance.

56. It is alleged that, during the armed conflict in Guatemala (1962–1996), the enforced disappearance of persons was a systematic practice of the State security forces. According to the information received, more than 45,000 people were forcibly disappeared; few of those cases have been resolved, with those responsible duly tried and convicted.



57. The source notes that, since 2009, significant progress has been made with respect to the investigation, arrest and punishment of some of the persons responsible for serious human rights violations committed during the internal armed conflict, including enforced disappearances. The sources cite the example of the convictions in the cases of Choatalúm (2009), el Jute (2009) and Edgar Fernando García (2010), for the crime of enforced disappearance.

58. According to the allegations, that progress was a result of the constant and resolute momentum sustained by the victims and their representatives, as well as the crucial role of prosecutors and certain magistrates and judges. In that regard, the source emphasized the District Attorney's request and the subsequent decision of the Criminal Chamber of the Supreme Court that the judgements of the Inter-American Court of Human Rights with regard to the State of Guatemala should be self-executing in cases of serious human rights violations, including enforced disappearances, and the authorities should be ordered to reopen or continue the investigation of those cases, which have been suspended for several years. Additionally, 2009 saw the creation of both the Court of First Instance and the Court of Criminal, Drug-Trafficking and Environmental Crimes of Guatemala City, also known as "High Risk" or "High Impact" tribunals, which have jurisdiction to hear cases on such crimes committed in any part of the State. Since 2011, these courts have issued several convictions against police, military and paramilitary agents involved in serious crimes and human rights violations, including several persons responsible for the Plan de Sánchez massacre and those responsible for the enforced disappearances of Edgar Enrique Sáenz Calito (2012) and Edgar Leonel Paredes Chegüen (2013).

59. Notwithstanding the foregoing, the source adds that this scant progress is at risk of stalling, given the State's new judicial stance, under which criminal investigations into enforced disappearance do not proceed and the judgements of the Inter-American Court of Human Rights on international State responsibility for enforced disappearances should be disobeyed.

60. In particular, according to the source, Guatemala claims that it is not possible to investigate enforced disappearances committed during the armed conflict, given that the crime of enforced disappearance was not punishable by law during the period of armed conflict and because such cases would be subject to a statute of limitations. According to the source, Guatemala argued before both the Committee against Torture and the Inter-American Court of Human Rights that alleged incidents reported as crimes of enforced disappearance are impossible to define in criminal law, because they occurred prior to the enactment of the decree that modifies the Penal Code and criminalizes enforced disappearances (Decree 33-96); this with consideration and full respect for procedural rights relating to the retroactivity of criminal law.

61. The source further alleges that the State maintains that the criminal investigation of disappearances would be prohibited by the amnesty law. According to the State, as documented by the source, the peace negotiations allowed for historical research, without judicial ramifications, and an amnesty agreement had been negotiated between the Government and the guerrillas which included United Nations participation in the negotiations and the support of friendly countries. That amnesty was publicly debated and approved by the Congress. If that agreement had not been signed, there would not have been peace or an end to the armed conflict. Following the adoption of the amnesty agreement, judicial proceedings began and they were interpreted as outside of the context of what was negotiated and agreed on regarding exceptions contained in the text of the amnesty agreement. According to the source, that position has also meant that the State refuses to comply with the judgements of the Inter-American Court of Human Rights relating to enforced disappearances, wherein the Court ordered the adoption of a series of reparation measures. Those measures included a thorough investigation of the facts in order

to identify, prosecute and punish those responsible. The State also argues that the Inter-American Court of Human Rights was not competent in that regard for reasons of *ratione temporis*.

62. The source adds that the State's position before the aforementioned bodies is not isolated or accidental, but represents the "new" position of the Guatemalan authorities on grave human rights violations that occurred in the armed conflict. According to the authorities, both international and national bodies would lack jurisdiction to hear cases of enforced disappearance.

63. The source further expressed its concern over the Constitutional Court ruling of 20 May 2013, by which the conviction of Efraín Ríos Montt for the crime of genocide and crimes against humanity was reversed. The source alleges that there is a deep sense of frustration on the part of victims and their families, who, six months after the annulment of the judgement, are still awaiting a new trial.

64. Finally, the source maintains that in Guatemala there is no system for obtaining genetic information that would permit the determination of the whereabouts and the clarification of the identity of disappeared persons. Nor, the source alleges, is there sufficient State support for the search for, exhumation and identification of disappeared persons.

## 14. Guinea

### Standard procedure

65. The Working Group transmitted two cases under its standard procedure.

66. The first case concerned Mr. **Ibrahima Bah**, who was allegedly abducted on 28 September 2009 by law enforcement officials, possibly Beret Rouges, from the Conakry stadium.

67. The second case concerned Mr. **Mamadou Sow**, who was allegedly last seen on 28 September 2009 at the Conakry stadium. According to the information received, Mr. Sow was participating in a demonstration at the stadium and disappeared after shooting started.

## 15. India

### Information from the Government

68. On 8 August 2013, the Government transmitted a reply to an urgent appeal, sent on 28 September 2012, concerning new acts of harassment against members of the People's Movement Against Nuclear Energy and other human rights defenders, and including allegations that the fate and whereabouts of three individuals are unknown. In its response, the Government indicates that:

The High Court of the State of Tamil Nadu ... observed that the protestors resorted to damage of public properties, threatened people to close down their business establishments and caused damage to vehicles and forced [members of the] general public to yield to their view. The police action on the protestors near the Koodankulam Plant was aimed at restoring law and order in the area. [The High Court] had also examined the allegations of excessive force used by police and found that the principle of proportionality was respected. These allegations were thus dismissed by the High Court. In the light of the above ... the allegations contained in the Joint Urgent Appeal are baseless.

69. On 28 August 2013, the Government transmitted a communication regarding one outstanding case. The information provided was not considered sufficient to lead to clarification of the case.

### **Observations**

70. The Working Group would like to thank the Government for its reply to the joint urgent appeal and would like to recall article 13, paragraph 1, of the Declaration, according to which: “Whenever there are reasonable grounds to believe that an enforced disappearance has been committed, the State shall promptly refer the matter to [a competent and independent State authority] for [a prompt, thorough and impartial investigation], even if there has been no formal complaint. No measure shall be taken to curtail or impede the investigation.”

## **16. Indonesia**

### **Information from sources**

71. Sources provided information on one outstanding case.

### **General allegation**

72. The Working Group received information from credible sources concerning obstacles encountered in the implementation in Indonesia of the Declaration on the Protection of All Persons from Enforced Disappearance.

73. The source reported that on 30 September 2009, the Parliament of Indonesia had issued a recommendation to the President and the Government to implement the following recommendations of the National Commission on Human Rights (Komnas HAM):

- (a) That the President establish an ad hoc human rights court for the cases of disappearances of activists in 1997–1998;
- (b) That the President and related institutions seek and locate the whereabouts of the 13 still missing activists;
- (c) That the Government provide compensation and rehabilitation to the families of victims;
- (d) That the Government ratify the International Convention for the Protection of All Persons from Enforced Disappearance.

74. The source alleges that, although a process is currently under way to ratify the Convention, the three other recommendations have not yet been implemented. It is alleged that, acting at the request of the families of the disappeared, the Ombudsman of the Republic of Indonesia has established that the President had committed maladministration and violated the principle of good governance in not providing follow-up to the Parliament’s recommendations.

75. The source alleges that this failure to implement the Parliament’s recommendations is a violation of the Declaration on the Protection of All Persons from Enforced Disappearance and is obstructing the rights to truth, justice and redress of the relatives of the disappeared persons.

## 17. Iraq

### **Urgent actions**

76. On 10 September 2013, the Working Group transmitted seven cases in one communication, concerning seven residents of Ashraf Camp, namely, Ms. **Mahnaz Azizi**, Ms. **Vajihe Karbalaey**, Ms. **Lila Nabahat**, Ms. **Zahra Ramezany**, Ms. **Fatehma Sakhie**, Ms. **Fatemeh Tahoori**, and Mr. **Mohammad Ratebi**, who were allegedly abducted from the camp on 1 September 2013 by Iraqi forces.

### **Information from the Government**

77. On 4 November 2013, the Government transmitted a communication regarding seven outstanding cases. The information provided was not considered sufficient to lead to clarification of the cases.

### **Information from sources**

78. Sources provided information on seven outstanding cases.

## 18. Kazakhstan

### **Urgent appeals**

79. On 30 October 2013, the Working Group transmitted one urgent appeal, concerning the alleged disappearance of the poet and social activist, Mr. **Aron Atabek**, while in detention.

## 19. Kenya

### **Prompt intervention letter**

80. On 31 July 2013, the Working Group transmitted a prompt intervention letter concerning the alleged harassment and intimidation of families of victims of enforced disappearance and eight human rights defenders in relation to their cooperation with the Working Group.

81. On 26 September 2013, the Working Group transmitted another prompt intervention letter, concerning the killing of Mr. **Peter Wanyama Wanyonyi**, a human rights lawyer, and the alleged harassment and intimidation of families of victims of enforced disappearance and human rights defenders in relation to their cooperation with the Working Group.

### **Observations**

82. The Working Group expresses deep concern about the alleged killing of a human rights lawyer and the harassment and intimidation of families of victims of enforced disappearance mentioned in the prompt intervention letters. In this respect, the Working Group would like to recall article 13 of the Declaration, which provides that “steps shall be taken to ensure that all involved in the investigation [of an enforced disappearance], including the complainant, counsel, witnesses and those conducting the investigation, are protected against ill-treatment, intimidation or reprisal” (para. 3) and that “steps shall be taken to ensure that any ill-treatment, intimidation or reprisal or any other form of interference on the occasion of the lodging of a complaint or during the investigation procedure is appropriately punished” (para. 5). The Working Group would also like to

reiterate that, in its resolution 21/4, the Human Rights Council urged States to take steps to provide adequate protection to witnesses of enforced or involuntary disappearances, human rights defenders acting against enforced disappearances and the lawyers and families of disappeared persons against any intimidation, persecution, reprisals or ill-treatment to which they might be subjected.

## 20. Lao People's Democratic Republic

### Information from the Government

83. On 23 October 2013, the Government transmitted a communication regarding two outstanding cases. The information provided was not considered sufficient to lead to clarification of the cases.

### Information from sources

84. Sources provided information on one outstanding case.

## 21. Libya

### Standard procedure

85. The Working Group transmitted one case, concerning Mr. **Malik Idris Mohamed al-Fassi**, who was allegedly last seen on 27 January 2012, at a mosque in Emsallata city, following Friday prayers. It was reported that Mr. Al-Fassi may have been arrested by members of the Emsallata Rebels Katiba militia.

## 22. Mexico

### General allegation

86. On 13 September 2013, the Working Group transmitted a general allegation to the Government.

87. The Working Group received information from credible sources concerning reported obstacles encountered in the implementation in Mexico of the Declaration on the Protection of All Persons from Enforced Disappearance.

88. Sources reported that a list allegedly established by the Attorney General's Office (Procuraduría General de la República) of Mexico had been released on 20 December 2012, putting the number of missing persons, including persons who had been forcibly disappeared, at 20,851 over the past six years. According to the sources, in February 2013, the Government published sections of the same database, which, at the time of publication of the sections, included 16,121 entries.

89. The sources added that the list may be not complete or precise; some of the missing may have returned to their homes and some families may have never reported disappearances. Additionally, the list as compiled reportedly contains a broad spectrum of cases, making no distinction between those who have been forcibly disappeared and missing persons, victims of common crime such as kidnappings, persons who may have voluntarily absented themselves, and those who were not able to recall their identities. Additionally, persons who subsequently reappeared have not always been removed from the aforementioned list, while many cases of enforced disappearance documented by human rights organizations were not included therein. The sources added that, even with all

its problems, the list provided clear evidence that thousands of Mexicans had been forcibly disappeared and that the Government knew about them.

90. According to the sources, the list provides details for each missing or disappeared person, including age, gender, the date and location of disappearance, the clothes they were wearing, their jobs and a few other brief details. The list, recorded in Microsoft Excel columns, was allegedly compiled by the Attorney General's Office with data submitted by state prosecutors and vetted by the federal Government.

91. The sources added that the list appears to confirm the number of disappearances and problems with the identification process documented by other institutions. They assert that, according to the National Commission on Human Rights, more than 7,000 people killed in Mexico in the past six years lie unidentified in morgue freezers or common graves. The Commission indicated that between 2006 and mid-2011 more than 18,000 Mexicans were reported missing.

92. According to the sources, the Mexican Congress passed a law creating the National Registry of Missing and Disappeared Persons (Registro Nacional de Datos de Personas Extraviadas o Desaparecidas). The law requires the Government to establish a national database, which could be used to help track cases of disappearance. According to the sources, the regulations of such a registry took several months to be adopted and have not yet been fully implemented.

93. The sources also alleged that the list demonstrated the failure of the authorities to apply a clear methodology and procedures to gather reliable nationwide data on reported enforced disappearances. According to the sources, that failure undermined the effective investigation of enforced disappearances and the capacity to locate and identify the victims.

94. Finally, the sources indicated that the Government had made a commitment to remove from the list records not relating to ongoing cases of disappearance, although the methodology to be applied remains unclear and no results have been shown.

## **23. Morocco**

### **Information from the Government**

95. On 18 September 2013, the Government transmitted a communication concerning the discovery of the remains of eight persons who had presumably been buried in a mass grave in Fadret Leguiaa.

### **General allegation**

96. The Working Group received information from credible sources concerning obstacles encountered in the implementation in Morocco of the Declaration on the Protection of All Persons from Enforced Disappearance.

97. It has been reported that from 1975 to 1993 there were over 400 cases of disappearance on the Territory of Western Sahara and that those cases were attributable to Moroccan security forces. About 80 per cent of such disappearances allegedly occurred between 1975 and 1977.

98. It is alleged that, in February 2013, human remains were found in Fadret Leguiaa in the region of Smara, near Amgala and Meheris, in an area under the supervision of the United Nations Mission for the Referendum in Western Sahara (MINURSO). It is reported that a forensic research team exhumed two graves and found the remains of eight persons. The research team came to the conclusion, on the basis of anthropological and DNA analysis, that the remains were those of eight persons, including two minors, who had been

executed by firearms and superficially buried. The victims were Bedouins who made their living by herding camels and goats. According to the source, the case corresponds to extrajudicial executions that had been reported by an eyewitness of the events that took place on 12 February 1976.

99. It is further alleged that the report of the Equity and Reconciliation Commission (IER) and further reports by the Consultative Council on Human Rights (CCDH) did not provide proper information on the cases of those disappeared persons. Information had been provided on four of the eight persons identified. No information was provided on the other four, although they were arrested on the same day and in the same place and despite the fact that a relative of one of the four filed a petition with IER on 25 November 2003 and again on 13 December 2004, to which no follow-up was given. The source further reports that the information provided on four of the eight cases is inaccurate, as it is stated that these persons had been arrested in Amgala and then taken to Smara headquarters, where they died in custody.

100. The source reports that other locations of mass graves are well known and have been identified by relatives or survivors. Most of them are allegedly in the Territory of Western Sahara under the de facto administration of Morocco. Others may be situated near detention centres in Morocco. The source indicates in particular that there have been reports alleging that a mass grave exists in Lemsayed, but that the State never investigated those reports.

101. The source further alleges that the families' right to truth was not respected, that no investigations have been undertaken and that the perpetrators of those acts have not been punished.

102. According to the source, the majority of the relatives of the disappeared currently live in refugee camps and are mostly women. The source further alleges that those victims have not benefited from any kind of recognition of the human rights violations they experienced, nor have they had access to information or to the procedures to request the opening of an investigation. Reportedly, those relatives were also excluded from any contact with institutions such as the Arbitration Committee, IER or CCDH and were thus not in a position to file complaints or to obtain compensation, as those living in the Territory of Western Sahara did.

103. According to another source reporting on the same facts, the discovery made by the forensic team highlighted the limits of IER and the efforts of CCDH to uncover the truth about hundreds of enforced disappearances in Morocco and Western Sahara, and the need for further independent, impartial and thorough investigations to be conducted. The same source further alleges that IER increased Sahrawis' feelings of marginalization by failing to address the particular breadth of violations they suffered, to acknowledge that the region suffered disproportionately and to rebuild trust with victims, families and civil society organizations in Western Sahara.

### **Observations**

104. The Working Group would like to thank the Government for the information provided.

## **24. Namibia**

### **Information from sources**

105. Sources provided information on three outstanding cases. One case was clarified as a result.

### Clarification

106. Following the information provided by the sources, the Working Group decided to clarify one case.

## 25. Nepal

### Urgent actions

107. On 28 August 2013, the Working Group transmitted one case concerning Mr. **Dasarath Yadav**, who was allegedly abducted on 20 June 2013, from his home, by Nepali and Indian police. In accordance with the Working Group's methods of work, the Government of India was provided with a copy of this case.

## 26. Pakistan

### Urgent actions

108. On 5 August 2013, the Working Group transmitted one case concerning Mr. **Bijjar Ahmed**, who was allegedly abducted by Pakistani intelligence personnel on 24 June 2013 at the Karobi checkpoint near the Rabi area of Dera Allah Yar, Balochistan, when travelling home on a bus to Sindh.

109. The case was later clarified on the basis of the information provided by the sources.

### Standard procedure

110. The Working Group transmitted 11 cases to the Government under its standard procedure.

111. The first case concerned Mr. **Muhammad Ramzan Quraish**, who was allegedly abducted on 24 July 2010 by a police officer and individuals in civilian clothes, believed to belong to the Military Intelligence or the Inter-Services Intelligence, at Uthal zero point near a bus stop, when he was waiting for the bus.

112. The second case concerned Mr. **Zafarullah Bangulzai**, who was allegedly abducted from Quim Khan Baduzai, in a village in Dasht Tehsil, Mastung, Mastung District, on 13 July 2010 by armed Frontier Corps personnel in uniform and masked intelligence service personnel in plain clothes.

113. The third case concerned Mr. **Abdul Wahid**, who was allegedly abducted from his home at midnight on 2 June 2010 by approximately 50 personnel in uniform, believed to belong to the Frontier Corps.

114. The fourth case concerned Mr. **Dad Muhammad**, who was allegedly abducted from his home at midnight on 2 June 2010 by approximately 50 personnel in uniform, believed to belong to the Frontier Corps. It was reported that the alleged perpetrators arrived in official vehicles.

115. The fifth case concerned Mr. **Farmanullah**, who was allegedly abducted from Jafar Abad Killi, Shah Daizai, Shah Jee Hotel, Quetta on 26 June 2010 by individuals believed to belong to the intelligence agencies.

116. The sixth case concerned Mr. **Sahib Khan**, who was allegedly abducted on 7 March 2010 by individuals believed to belong to the Frontier Corps.



117. The seventh case concerned Mr. **Manzoor Ahmed**, who was allegedly abducted at Killi Kachi Bay Shahwani market, near Haq Baho House, Seryab, Quetta on 26 March 2010 by individuals believed to belong to the Frontier Corps.

118. The eighth case concerned Mr. **Zubirahmed Baloch**, who was allegedly abducted from Boodaeg Kaur area, Mand, Balochistan, on 5 May 2011 by individuals believed to belong to the Frontier Corps.

119. The ninth case concerned Mr. **Hameed Baloch**, who was allegedly abducted from his home on the night of 20 April 2011 by individuals believed to belong to the Frontier Corps.

120. The tenth case concerned Mr. **Mazar Khan**, who was allegedly abducted near Killi Mafzal Station, Noshki on 19 December 2009 by military intelligence personnel in plain clothes.

121. The eleventh case concerned Mr. **Ghaffar Abdul Ghafoor Mengal**, who was allegedly abducted on his way home on 20 December 2009 by individuals believed to belong to the Frontier Corps.

#### **Information from the Government**

122. On 11 October 2013, the Government transmitted a communication requesting information on one outstanding case.

#### **Information from sources**

123. Sources provided information on two outstanding cases. Both cases were clarified as a result.

#### **Clarification**

124. Following the information provided by the sources, the Working Group decided to clarify two cases.

## **27. Peru**

#### **Urgent actions**

125. On 2 August 2013, the Working Group transmitted one case, concerning Mr. **Bruno Carlos Schell**, who was allegedly last seen on 4 June 2013 opposite the Salto del Fraile restaurant, near cliffs overlooking the sea in Chorrillos, an unpopulated area in the region of Lima. According to the source, agents of the Citizen Security office of Miraflores (Serenazgo suboffice) might be responsible for the alleged disappearance of Mr. Schell. In accordance with the methods of work of the Working Group, a copy of the case has been sent to the Government of Argentina.

#### **Information from the Government**

126. The Working Group continued to process the information that had been transmitted by the Government on 11 July 2011. Information concerning 25 outstanding cases was reviewed and was not considered sufficient to lead to clarification of the cases.

## **28. Russian Federation**

### **Urgent appeals**

127. On 5 November 2013, the Working Group transmitted one urgent appeal, concerning the situation of Ms. **Nadezhda Tolokonnikova**, including allegations that her place of detention was unknown to her family and her legal representatives.

## **29. Saudi Arabia**

### **Information from sources**

128. Sources provided information on one outstanding case. The case was clarified as a result.

### **Clarification**

129. Following the information provided by the sources, the Working Group decided to clarify one case.

## **30. Senegal**

### **Information from the Government**

130. On 1 October 2013, the Government transmitted a communication regarding one outstanding case. The information provided was not considered sufficient to lead to the clarification of the case.

### **Information from sources**

131. Sources provided information on one outstanding case.

## **31. Spain**

### **Standard procedure**

132. The Working Group transmitted one case, concerning Mr. **Teófilo Alcorisa Monleón**, who was allegedly last seen in April 1947 in Utiel, Cuenca, Spain. According to the source, the Civil Guard might have been responsible for the alleged disappearance.

## **32. Sri Lanka**

### **Standard procedure**

133. The Working Group transmitted seven cases to the Government under its standard procedure.

134. The first case concerned Mr. **Subramaniam Sodmivadivel**, who was allegedly last seen on 4 December 2007 in Uranee, Batticaloa, Eastern Province of Sri Lanka. According to the source, intelligence personnel of the army camp known as the “Tooth Powder Camp” might have been responsible for the alleged disappearance.

135. The second case concerned Mr. **Nagamuthu Sripavan**, who was allegedly last seen on 24 April 2006 in Madduvil North, near the Panrithalaichchi Amman Temple, Puttur-Chavakachcheri Road, Chavakachcheri. According to the information received,

Mr. Sripavan left for work on his motorbike and was reportedly stopped and arrested by the security forces in Madduvil North, an area which was at the time reportedly under full army control.

136. The third case concerned Mr. **Sukirthan Patkunathan**, who was allegedly last seen on 13 February 2007 on Karli Kovil Road, Thirunelveli, Jaffna. According to the information received, military personnel from the Urelu camp were reportedly responsible for the alleged disappearance of Mr. Patkunathan.

137. The fourth and fifth cases concerned Mr. **Vishnukamar Nadesamoorthy**, also known as Paheerathan, and Mr. **Thevalingam Ambalanatham**, who were allegedly last seen on 18 May 2009 in Vettuvahal, Mullaitivu District. According to the information received, prior to the alleged disappearance, Mr. Nadesamoorthy surrendered to the Sri Lanka Army along with about 80 other Liberation Tigers of Tamil Eelam (LTTE) members at Vettuvahal.

138. The sixth case concerned Mr. **Sivarajasingham Valli**, who was allegedly last seen on 17 May 2009 in Vettuvahal, Mullaitivu District. According to the information received, Mr. Valli, along with other LTTE cadres, surrendered to the Sri Lankan army at Vettuvahal.

139. The seventh case concerned Mr. **Thushishanker Kandasamy**, who was allegedly last seen on 17 May 2009 in Vettuvahal, Mullaitivu District. According to the information received, Mr. Kandasamy was injured and handed over to the Sri Lankan army at Vettuvahal along with another 20 injured persons.

#### **Information from the Government**

140. On 11 March 2013, the Government transmitted a reply to the general allegation sent in May 2011 regarding serious obstacles encountered in Sri Lanka in the implementation of the Declaration during the last phase of the war against LTTE (from 2006 to 2009). In its reply, the Government indicated that:

It is unable to respond to allegations of a general nature without being provided specific details of cases of alleged disappearances, torture etc. ...

An Inter-Ministerial Working Group has been established to verify cases of alleged disappearances. ... Information on such cases was provided in the National Report of Sri Lanka to the UPR 2012. The Government has taken measures to investigate all reported cases of alleged disappearances including those related to the last phase of the conflict. ... An Inter-Agency Working Committee has also been appointed and it works round the clock to verify the cases in reference. Further investigations are being conducted on remaining allegations by this committee. In addition ... a Working Committee, headed by a Deputy Inspector General of Police has also been appointed to conduct ground verifications to ascertain present facts.

141. On 16 October 2013, the Government transmitted a communication regarding three outstanding cases. Based on the information provided by the Government, the Working Group decided, at its 101st session, to apply the six-month rule to one case. Regarding the remaining cases, the information provided was not considered sufficient to lead to clarification of the cases.

#### **Information from sources**

142. Sources provided information on one outstanding case.

**Clarification**

143. On the basis of information provided by the Government, the Working Group decided to clarify three outstanding cases following the expiration of the period prescribed by the six-month rule.

**Observations**

144. The Working Group would like to thank the Government for its response to the general allegation. The Working Group acknowledges the various efforts made by the Government in investigating cases of alleged enforced disappearance. In this respect, the Working Group encourages the Government of Sri Lanka to continue its investigation into all cases of alleged enforced disappearance and reiterates that, as provided by article 13 of the Declaration, complaints of enforced disappearance should be “promptly, thoroughly and impartially investigated” by “a competent and independent State authority”, and that investigation into alleged enforced disappearances “should be able to be conducted for as long as the fate of the victim of enforced disappearance remains unclarified”.

**33. Sudan****Urgent appeals**

145. On 17 October 2013, the Working Group transmitted one urgent appeal, concerning alleged violations of human rights, including the broad use of incommunicado detention following demonstrations which took place in many cities of the Sudan.

**Information from the Government**

146. On 22 August 2013, the Government transmitted a reply to an urgent appeal, sent on 16 April 2013, concerning the incommunicado detention of Messrs. **Hatim Ali Mohammed** and **Sharf Eldein Tia**, and allegations according to which their fate and whereabouts were unknown. In its reply, the Government indicated that Mr. Tia had never been arrested by the national security or any other law enforcement agency. Regarding Mr. Hatim Ali Mohammed, the Government indicated that “[he] was arrested on 25 March 2013 because of the existence of prima facie evidence violating sections of the Criminal Law Act 1991. ... Mr. Hatim Ali was released on 25 April 2013.”

**Observations**

147. The Working Group would like to thank the Government for its reply to the joint urgent appeal and appreciates the information indicating that Mr. Hatim Ali was released on 25 April 2013. Regarding the allegations according to which the fate and whereabouts of Mr. Tia were unknown, the Working Group would like to recall article 13 of the Declaration, which provides that “whenever there are reasonable grounds to believe that an enforced disappearance has been committed, the State shall promptly refer the matter to [the relevant] authority for ... investigation”.

**34. Syrian Arab Republic****Urgent actions**

148. The Working Group transmitted four cases under its urgent action procedure.

149. On 2 October 2013, the Working Group transmitted one case, concerning Ms. **Dania Yakoub**, who was allegedly abducted on 7 August 2013, at a Government checkpoint, by

agents of security services (the *mukhabarat*). This case was later clarified on the basis of the information provided by the sources.

150. On 18 October 2013, the Working Group transmitted another case, concerning Ms. **Safi Farah**, who was allegedly arrested on 12 August 2013 at the Charity and Social Services Hospital (Al-birr Hospital), New Homs, Homs, Syrian Arab Republic, by Homs “State Security Personnel”.

151. On 13 November 2013, the Working Group transmitted a third communication, concerning two cases. The first case concerned Ms. **Marwa Tuffaha**, who was allegedly abducted on 4 October 2013, from her home in Rouk al-Deen, Damascus, by agents of the Air Force Security Service. The second case concerned Mr. **Muhammad Tuffaha**, who was allegedly last seen on 26 October 2013 at the Al-Thawra checkpoint with agents of the Air Force Security Service.

#### **Standard procedure**

152. The Working Group transmitted one case, concerning Mr. **Hussam Youssef**, who was last seen in early April 2013, at the Beginners’ Training Centre under the control of Air Force Intelligence, close to Najhah, a village along the highway to Damascus International Airport (Damascus–As-Suwayda road).

#### **Urgent appeals**

153. On 16 August 2013, the Working Group transmitted an urgent appeal concerning the alleged enforced disappearances of Messrs. **Bassam Bahrah** and **Sameeh Bahrah**.

154. On 29 August 2013, the Working Group transmitted another urgent appeal, concerning the alleged enforced disappearances of Messrs. **Youssef Abdelke** and **Adnan al-Dibs**, as well as the alleged arrest of Mr. **Toufiq Umran**. All three men are members of the National Coordination Body for Democratic Change and recently signed a declaration calling for peaceful democratic change in the Syrian Arab Republic. Mr. Abdelke has also criticized some decisions of the Government of the Syrian Arab Republic in the media.

#### **Information from sources**

155. Sources provided information on three outstanding cases. Two cases were clarified as a result.

#### **Clarification**

156. Following the information provided by the sources, the Working Group decided to clarify two cases.

#### **Observations**

157. The Working Group is deeply concerned about the newly reported cases of enforced disappearance in the Syrian Arab Republic. In this respect, the Working Group would like to recall articles 2 and 3 of the Declaration, which provide that “no State shall practise, permit or tolerate enforced disappearances” (art. 2, para. 1) and that “each State shall take effective legislative, administrative, judicial or other measures to prevent and terminate acts of enforced disappearance in any territory under its jurisdiction” (art. 3).

### **35. Tajikistan**

#### **Information from the Government**

158. On 7 February 2013 and 13 June 2013, the Government transmitted two communications regarding four outstanding cases. Based on the information provided by the Government, the Working Group decided, at its 101st session, to apply the six-month rule to one case. Regarding the remaining cases, the information provided was not considered sufficient to lead to clarification of the cases.

### **36. Thailand**

#### **Standard procedure**

159. The Working Group transmitted two cases, concerning Ms. **Oy-Napha Sukprasong** and her assistant, Ms. **Wantana Taksima**, who were allegedly abducted on 2 December 2004 by police officers.

#### **Information from sources**

160. Sources provided information on one outstanding case.

### **37. Togo**

#### **Information from the Government**

161. On 6 September 2013, the Government transmitted a communication concerning one outstanding case. The information provided was not considered sufficient to lead to clarification of the case.

### **38. Turkey**

#### **Standard procedure**

162. The Working Group transmitted two cases under its standard procedure.

163. The first case concerned Mr. **Abdulkaki Birlik**, who was allegedly last seen on 29 March 1995; soon after, he left to the city centre of Kiziltepe with relatives who had just been released from prison. According to the information received, Mr. Birlik was allegedly abducted by State forces.

164. The second case concerned Mr. **Mehmet Selim Orhan**, who was allegedly abducted on 24 May 1994 by State forces after a raid on his village by the Bolu Commando Unit.

#### **Information from the Government**

165. On 5 July 2013 and 11 July 2013, the Government transmitted two communications concerning 47 outstanding cases. The information provided was not considered sufficient to lead to clarification of the cases.

### 39. Ukraine

#### Information from the Government

166. On 1 July 2013, the Government transmitted a communication concerning four outstanding cases. The information provided was not considered sufficient to lead to clarification of the cases.

### 40. United Arab Emirates

#### Urgent actions

167. On 26 July 2013, the Working Group transmitted one case, concerning Mr. **Ibrahim Abdel Magid Hassanin al-Sanhury**, who was allegedly last seen on 19 June 2013. According to the source, Mr. Al-Sanhury left home after receiving a telephone call from local security personnel summoning him to an unknown location.

168. This case was later clarified on the basis of the information provided by the sources.

#### Information from the Government

169. On 26 March 2013, the Government transmitted a reply to an urgent appeal, sent on 7 November 2012, concerning the alleged mass arrest and detention of human rights defenders, judges and lawyers, including allegations according to which the fate and whereabouts of Messers. **Ahmad Gaith al-Suwaidi, Rashid Mohamed Abdullah al-Roken, Abdullah al-Hajiri, Juma Darwish al-Felassi, Ali Saaed al-Kindi and Khamis Saaed al-Sam al-Zyoudi** were unknown. In its reply, the Government indicated that “all of the accused persons referred to in the above report are suspected of committing offences punishable under the Federal Criminal Code and the Information Technology Act. The Public Prosecution took the decision to place them in preventive detention after questioning them, with full legal safeguards guaranteed.”

#### Information from sources

170. Sources provided information on one outstanding case. The case was clarified as a result.

#### Clarification

171. Following the information provided by the sources, the Working Group decided to clarify one case.

#### Observations

172. The Working Group would like to thank the Government for its reply to the joint urgent appeal.

### 41. Uruguay

#### Information from the Government

173. On 25 July 2013, the Government transmitted a reply to the general allegation sent on 14 May 2013 concerning the closure, and potential closure, of certain judicial cases relating to enforced disappearances, torture and executions carried out during the Uruguayan dictatorial period, as a consequence of rulings of the Supreme Court of Justice, which considered articles 2 and 3 of Law No. 18.831 (entitled “Punitive Powers of the

State”) unconstitutional. Those articles enabled the investigation and indictment of crimes committed during the dictatorship.

174. The Government recalled that, after the return to democracy, numerous victims of human rights violations and their families had brought criminal charges to the judicial authorities. However, it noted that with the entry into force of Law No. 15.848, known as the Law on the Expiration of the Punitive Powers of the State, the operation of justice was impeded.

175. The Government noted the steps that had been taken in order to redress this situation. In this context, the Government noted that the Supreme Court of Justice had declared the unconstitutionality of articles 2 and 3 of Law No. 18.831. It highlighted that although the unconstitutionality had been declared for a specific case, the jurisprudence of the Supreme Court in that sentence was such that the court considered the law introducing the crime of enforced disappearance as a law not applicable retroactively to the cases committed during the military dictatorship. The Government expressed its concern that that action allowed for the statute of limitations to be retained for those crimes, and that the jurisprudence of that sentence would certainly be applied to other judicial cases.

176. The Government also transmitted a communication from the Supreme Court answering the questions in the general allegation. The court indicated that it had not declared a statute of limitations on the crimes committed during the military dictatorship. In the cases referred to in the general allegation, the Supreme Court had limited itself to examining the constitutionality of the contested articles of Law 18.831, and the majority of its members concluded that articles 2 and 3 were inapplicable in those cases. However, the court emphasized that it had not examined, in these cases mentioned, whether a statute of limitations applied. It noted that the issue must be settled with complete independence by courts intervening in those matters.

177. The Supreme Court further claimed that it was inaccurate to state that the court’s decisions on the crimes committed up to March 1985 doomed all criminal investigations to failure because it did not view them as crimes against humanity and did not recognize the non-applicability of a statute of limitations, as that would in fact restore the effects of the law on Expiry of the Punitive Powers of the State.

178. The Supreme Court further stated that the latter law currently had no effect because it had been declared unconstitutional by the Supreme Court itself in a ruling from 2009.

179. Further, the Supreme Court reiterated that it had not ordered that any cases be archived nor had it declared any statute of limitations in the same cases.

180. Regarding the current state of the judicial investigations, the Supreme Court clarified that it was not within its competence to follow up on the criminal investigations referred to.

181. In addition to transmitting the reply from the Supreme Court, the Government noted that the investigations in the reopened cases would depend on the decisions of the judges in those cases.

182. Regarding the search for the remains of the disappeared, the Government noted that the punitive powers of the State had been re-established in article 1 of Law 18.831. It explained that the judicial body’s decision had in fact not kept many prosecutors or criminal judges from continuing the judicial cases by using other mechanisms and legal norms that allowed them to overcome the obstacles encountered. Furthermore, the Government confirmed that it would support the judicial branch with a view to enabling progress in the investigations.



## Observations

183. The Working Group would like to thank the Government for its reply to the general allegation. In this respect, the Working Group would like to recall article 18, paragraph 1, of the Declaration, which states that “persons who have or are alleged to have committed [acts of enforced disappearance] shall not benefit from any special amnesty law or similar measures that might have the effect of exempting them from any criminal proceedings or sanction”. The Working Group would also like to reiterate that the application of statutory limitations when the crime of enforced disappearance is still ongoing or when the practice of enforced disappearance constitutes a crime against humanity should be considered contrary to the Declaration.<sup>1</sup> In paragraph 5 of its general comment No. 9 (2010) on enforced disappearance as a continuous crime, the Working Group stressed that “one consequence of the continuing character of enforced disappearance is that it is possible to convict someone for enforced disappearance on the basis of a legal instrument that was enacted after the enforced disappearance began, notwithstanding the fundamental principle of non-retroactivity. The crime cannot be separated and the conviction should cover the enforced disappearance as a whole.” In its general comment No. 10 (2010) on the right to the truth in relation to enforced disappearance, the Working Group emphasized that the State has “the obligation to investigate until the fate and the whereabouts of the person have been clarified” (para. 5).

## 42. Uzbekistan

### Information from the Government

184. On 2 July 2013, the Government transmitted a communication regarding seven outstanding cases. The information provided was not considered sufficient to lead to clarification of the cases.

### Information from source

185. Sources provided information on three outstanding cases.

## 43. Venezuela (Bolivarian Republic of)

### Information from the Government

186. On 1 July 2013, the Government transmitted one communication regarding 10 outstanding cases. The information provided was not considered sufficient to lead to clarification of the cases.

## 44. Yemen

### Urgent actions

187. On 19 September 2013, the Working Group transmitted three cases in one communication, concerning Mr. **Hareth al-Jaradi**, a person below the age of 18, who was allegedly abducted on 24 July 2013 at the entrance of his work place in Shumailah, by armed individuals in civilian clothes; and his two brothers, namely, Mr. **Abdullah al-Jaradi** and Mr. **Hamza al-Jaradi**, also below the age of 18, who were allegedly abducted

<sup>1</sup> Working Group on Enforced or Involuntary Disappearances, general comment No. 6 (2005) on article 18 of the Declaration, para. 3 (a) and (b).

on 22 August 2013 by armed individuals, believed to be from the Army and the police. According to the information received, the abductions were allegedly ordered by a military officer in relation to a conflict between the victims' tribe and the said officer.

**Standard procedure**

188. The Working Group transmitted two cases under its standard procedure.

189. The first case concerned Mr. **Muhamad Ahmad Abdul Aziz al-Hindi**, who was allegedly abducted on 19 August 2011 by personnel believed to belong to the national security service, in the backstreets in Al-Hota city.

190. The second case concerned Mr. **Ahmed Ghanem Maarouf al-Masraba**, who was reportedly last seen on 17 December 1981 after he left home to surrender himself to the authorities in North Yemen.

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