

Special Procedures Advisory

GENERAL COMMENT ON THE RIGHT TO THE TRUTH WORKING GROUP ON ENFORCED OR INVOLUNTARY DISAPPEARANCES

Geneva (22 July 2010) –The United Nations Working Group on Enforced or Involuntary Disappearances has adopted a general comment* on the right to the truth in relation to enforced disappearances, to focus attention of States more effectively on the relevant obligations deriving from the Declaration on the Protection of All Persons from Enforced Disappearance that flow from the right to the truth.

According to the general comment, the right to the truth in relation to human rights violations, acknowledged by the Working Group in its very first report in 1981, is now widely recognized in international law.

The experts affirm that the right to the truth in relation to enforced disappearances, to be clearly distinguished from the right to information, means the right to know about the progress and results of an investigation, the fate or the whereabouts of the disappeared persons, the circumstances of the disappearances, and the identity of the perpetrator(s).

The Working Group recalls that States have an obligation to investigate cases of enforced disappearance and let any interested person know the concrete steps taken to clarify the fate and whereabouts of the disappeared persons. The refusal to provide information is a limitation to the right to the truth, which must be strictly proportionate to the only legitimate aim of avoiding jeopardizing an ongoing criminal investigation. The Working Group expresses, however, the opinion that there must be recourse in national legislation to review such a refusal, available at the moment of the refusal and on a regular basis to ensure that the reasons invoked by the competent public authority to refuse the information remain valid.

The Working Group notes that “the right of the relatives to know the truth of *the fate and whereabouts* of the disappeared persons is an absolute right, not subject to any limitation or derogation.” “No legitimate aim, or exceptional circumstances, may be invoked by the State to restrict this right,” added the experts. However, the experts understand that, while “there is an absolute obligation to take all necessary steps to find the person,” there is no absolute obligation of result.

Based on State practice, the Working Group recognizes that the right to know the truth about *the circumstances* of the disappearance is not absolute as, in some cases, hiding parts of the truth has been chosen to facilitate reconciliation. Nevertheless, the Working Group recalls that States have an obligation to bring any person alleged to have perpetrated an enforced disappearance to justice.

The Working Group also affirms that “the right to the truth also ensures that the State has an obligation to provide the necessary protection and assistance to victims, witnesses and other interested persons” and also “an obligation to provide for effective protection of interested parties.”

(*) The full text of the General Comment on the Right to the Truth in Relation to Enforced Disappearances is available at: http://www2.ohchr.org/english/issues/disappear/docs/GC-right_to_the_truth.pdf

ENDS

The Working Group on Enforced or Involuntary Disappearances is comprised of five independent experts from all regions of the world. The Chair-Rapporteur is Mr. Jeremy Sarkin (South Africa), and the other Expert-Members are Mr. Santiago Corcuera (Mexico), Ms. Jasminka Dzumhur (Bosnia and Herzegovina), Mr. Olivier de Frouville (France) and Mr. Osman El-Hajjé (Lebanon).

For more information on the WGEID, please visit:
<http://www.ohchr.org/english/issues/disappear/index.htm>

Fact sheet no. 6 on Enforced or Involuntary Disappearances available in Arabic, Chinese, French, English Russian and Spanish at:
<http://www.ohchr.org/EN/PublicationsResources/Pages/FactSheets.aspx>

Declaration on the Protection of All Persons From Enforced Disappearance:
<http://www2.ohchr.org/english/law/disappearance.htm>