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**Human rights questions: human rights questions,  
including alternative approaches for improving  
the effective enjoyment of human rights and  
fundamental freedoms**

## Question of enforced or involuntary disappearances

### Report of the Secretary-General\*\*

#### *Summary*

In its resolution 57/215 on the question of enforced or involuntary disappearances, the General Assembly addressed requests to Governments, to the Working Group on Enforced or Involuntary Disappearances of the Commission on Human Rights and to the Secretary-General, including a request to the Secretary-General to submit to it, at its fifty-ninth session, a report on the steps taken to implement the resolution. The present report is submitted in accordance with that request.

In a note verbale dated 4 December 2003, the Secretary-General invited Governments to transmit any information pertaining to the implementation of resolution 57/215. As at 1 August 2004, replies had been received from the Governments of Burkina Faso, Georgia, Kenya, Kuwait, Mauritius and Mexico. The responses of these Governments are summarized in the present report.

In its report to the Commission on Human Rights at its fifty-ninth session (E/CN.4/2003/70), the Working Group highlighted developments in regard to the practice of disappearance, which continues to occur in a number of countries, and the process of clarification of cases, especially of those transmitted more than 10 years ago. The Working Group continued to remind Governments of their obligations under the Declaration on the Protection of All Persons from Enforced Disappearance,

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\* A/59/150.

\*\* The present report is being submitted after the deadline so as to include as much updated information as possible.

which are relevant not only for the clarification of individual cases, but also to prevent the occurrence of enforced disappearance.

Finally, this report contains information on the activities undertaken to promote the Declaration on the Protection of All Persons from Enforced Disappearance, in compliance with the requests contained in resolution 57/215.

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## **I. Introduction**

1. In its resolution 57/215, entitled “Question of enforced or involuntary disappearances”, the General Assembly reaffirmed that any act of enforced disappearance is an offence to human dignity and a grave and flagrant violation of the human rights and fundamental freedoms proclaimed in the Universal Declaration of Human Rights.

2. In that resolution, the General Assembly reminded Governments that impunity contributes to the perpetuation of this phenomenon and constitutes an obstacle to the elucidation of its manifestations, and that if allegations are confirmed perpetrators should be prosecuted. It encouraged States to provide concrete information on measures taken to give effect to the Declaration on the Protection of All Persons from Enforced Disappearance, as well as obstacles encountered.

3. The General Assembly expressed its profound thanks to the many Governments that had cooperated with the Working Group on Enforced or Involuntary Disappearances and replied to its requests for information, and to the Governments that had invited the Working Group to visit their countries. In a note verbale dated 4 December 2003, the Secretary-General invited Governments to transmit relevant information on any action they have taken on recommendations of the Working Group. As at 1 August 2004, replies had been received from the Governments of Burkina Faso, Georgia, Kenya, Kuwait, Mauritius and Mexico. The responses of these Governments are summarized in the present report.

4. In its resolution, the General Assembly welcomed the decision of the Commission on Human Rights to convene the Intersessional open-ended Working Group to prepare, for consideration and adoption by the General Assembly, a draft legally binding normative instrument for the protection of all persons from enforced disappearance, on the basis of the Declaration adopted by the General Assembly in its resolution 47/133, in the light of the work of the independent expert charged with examining the existing international criminal and human rights framework and taking into account, inter alia, the draft international convention on the protection of all persons from enforced disappearance, transmitted by the Subcommission on the Promotion and Protection of Human Rights in its resolution 1998/25.

5. Finally, in the same resolution, the General Assembly requested the Secretary-General to continue to provide the Working Group with all of the facilities it required to perform its functions, to keep it informed of the steps he took to secure the widespread dissemination and promotion of the Declaration, and to submit to it at its fifty-ninth session a report on the steps taken to implement the resolution. The present report is submitted to the General Assembly in accordance with that request.

## **II. Replies received from Governments**

### **A. Burkina Faso**

6. Between gaining independence in 1960 and adopting its latest Constitution in 1991, Burkina Faso lived through four republics and six states of emergency. The country’s turbulent institutional and political history has sometimes seen attempts to seize and use State power that involved the loss of human life or physical, financial

or psychological injury, for which compensation was needed in order to preserve unity among the citizens of Burkina Faso.

7. In response to this need, since 1999, the Government of Burkina Faso has undertaken far-reaching reforms to bring order to national politics and to strengthen the rule of law and institutional human rights guarantees. Several measures have been taken for this purpose, some of which can be considered to be in line with the objectives of General Assembly resolution 57/215.

8. Some of these measures are of a political nature and have made it possible to finalize a process of national reconciliation and compensation for the victims of political violence and to pave the way for institutional reforms.

9. Thus, the College of the Wise (*Collège des Sages*) set up in 1999 submitted proposals to the Head of State on ways to preserve peace in society. A commission on national reconciliation was set up upon recommendation of the College of the Wise to look into various cases of financial crime and crimes resulting from, or thought to have resulted from, the political violence that had gone unpunished since 1960. The commission's recommendations led to the organization of a national day of pardon on 30 March 2001, at which the Head of State promised to do what was necessary to ensure that such crimes would "never again" take place in Burkina Faso.

10. In fulfilment of this promise, on 8 June 2001 a compensation fund was set up for the victims of political violence. The fund, with a budget of 6 billion CFA francs over a period of five years, comes to the aid of individuals recognized as victims of political violence or their beneficiaries who take part in the process of national reconciliation and pardon. So far, over 100 individuals or their families have received compensation.

11. Decree No. 2001-275/PRES/PM of 8 June 2001, establishing this fund, defined the concept of "political violence" as any act committed to seize and use State power that led to the loss of human life or physical, financial or psychological injury, and which was referred to the committee for national reconciliation.

12. Alongside this process, ordinary judicial procedures are available to anyone who prefers to take their case to court. Consequently, several cases are being tried, or have already been tried, by the courts.

13. In April 2004, Burkina Faso ratified the Rome Statute of the International Criminal Court.

## **B. Georgia**

14. For Georgia, measures to prevent the disappearance of persons are of particular importance in the context of the obligation to avoid the arbitrary deprivation of life.

15. In Georgia, reports of the unexplained absence of individuals are fielded by the internal affairs authorities, both in writing and orally, including over the telephone, and must be logged immediately. On receiving such a report, the following steps are taken: the time and circumstances of the person's disappearance are noted, as well as his or her appearance and clothing, and efforts are made to locate the missing person as rapidly as possible. Information about the disappearance is broadcast on

television and published in other media, and photographs and descriptions of the missing person are circulated to the relevant authorities. In addition, steps are taken to identify unclaimed bodies, checks are made of establishments in the Ministry of Labour, Health and Social Affairs system, instructions are issued to the State Border Defence Department to detain the missing person at the State border, and so forth. If the person is not traced within a period of five days, a judicial investigation is ordered. A detailed list of the steps to take to locate missing persons is established by order of the Minister of Internal Affairs.

16. If, in the course of a judicial investigation, it becomes evident that the missing person has been the victim of a criminal offence, criminal proceedings are instituted by the prosecutor's office. The search for a missing person is considered closed in two cases, if that person's whereabouts have been determined, or if the person is legally declared deceased.

17. In recent years, neither the State authorities nor the Office of the Public Defender of Georgia (Ombudsman) have received any report of disappearances in regard to which there were grounds to suspect the involvement of the law-enforcement authorities or the security forces.

18. In the context of this issue, it should be mentioned that Georgia has acceded to the following international instruments in the field of human rights:

Covenant on Civil and Political Rights;

Covenant on Economical, Social and Cultural Rights;

Convention on the Elimination of All Forms of Discrimination against Women;

Convention on the Elimination of All Forms of Racial Discrimination;

Convention on the Rights of the Child.

19. Georgia signed the Framework Convention of the Council of Europe on the Protection of National Minorities in January 2000, which will enter into force after ratification by the Parliament. In compliance with this Convention, the law on the protection of national minorities was to have been adopted before April 2001, but it has not been done so far.

20. Within the Parliament elected in October of 1999 the Committee on Civil Integration is established, whose basic task is to create legislative framework on the basis of which integrative processes in the society will be developed, more active involvement of minorities in the construction of democratic state will be arranged, protection of their rights will be provided. In 1998, the post of Assistant to the President on Issues of Interethnic Relations was introduced, whose function is to work with public associations of minorities and national Diasporas.

21. The Law on Citizenship states that all citizens of Georgia are equal before the law irrespective of origin, social and property status, racial and national affiliation, sex, education, language, religious and political beliefs, occupation, place of residence and other circumstances, and that they shall be guaranteed the political, social and economic rights recognized by national legislation and international law, as well as individual rights and freedoms (arts. 4 and 5). As concerns aliens and stateless persons, they are guaranteed the rights and freedoms contained in international law and the Georgian legislation, including the right to apply to courts

and other State bodies for the protection of their rights (art. 8 of the Law on Citizenship).

22. According to the Law on the Legal Status of Aliens, aliens enjoy the same rights and freedoms as nationals and are equal before the law irrespective of origin, social and property status, race, nationality, gender, education, language, religion, political and other opinions, field of activity, place of residence and other. Their rights and freedoms are protected, including the rights of stateless persons temporarily resident outside the country but who are permanent residents of Georgia (art. 3).

23. The most important non-discriminatory provisions of Georgian legislation recognizing the principle of equality before the law are contained in the Law on Courts of General Jurisdiction (art. 3), the General Administrative Code (art. 4), the Civil Procedure Code (arts. 2 and 5) and the Criminal Procedure Code (art. 9). These provisions concern the right of every individual to appear before a court to protect his or her rights or freedoms, and stress that justice is delivered on the basis of the equality of every party to the case before the law, and that preferential treatment or discrimination of any party is prohibited. The restriction of rights and preferential or discriminatory treatment in marriage or family relations are likewise prohibited by the Civil Code (art. 1153).

24. Amendments to the Criminal Code have been introduced with a view to including crimes in the criminal legislation in accordance with international legal instruments relating to non-discrimination. Article 142 punishes acts of discrimination violating the equality of citizens with up to three years in prison. Article 142 (1), adopted in July 2003, specifically targets racial discrimination as a criminal offence committed on grounds of race or nationality, including the intent to incite to national or racial hatred or conflict, to damage national dignity, or to limit human rights or render privileges on that basis. This offence is punishable with three years in prison. However, the sentence is increased to five years if it is committed as an abuse of official authority, or using physical violence or threat to the life and health of persons. Furthermore, offences of this nature committed by organized groups or which lead to the death of a person are punishable with up to eight years in prison.

25. Several other articles of the Criminal Code provide that racial, religious, national or ethnic intolerance shall be an aggravating circumstance of the offence that leads to more severe sanctions. This is notably the case with articles 109 ("Premeditated Murder under Aggravating Circumstances"), 117 ("Intentional Body Injury"), 126 ("Torture"), 258 ("Desecration of corpses"), 407 ("Genocide"), 411 ("Deliberate Violation of the Norms of International Humanitarian Law amid Armed Conflict").

26. The Plan of Action for Strengthening the Protection of Human Rights and Freedoms of Minorities Living in Georgia (2003-2005) can be consulted on the web site of the Department on Human Rights, Intellectual and Humanitarian Security Issues of the National Security Council of Georgia ([www.dhr-nsc.gov.ge](http://www.dhr-nsc.gov.ge)). Information on its implementation will also be included in the second periodic report of Georgia to the Committee on Racial Discrimination due in July 2004.

## C. Kenya

27. There are no known instances of enforced or involuntary disappearances in Kenya. Arrests and detention of persons are carried out within the ambit of the Constitution and the provisions of existing laws, in particular, the Criminal Procedure Code, Cap. 75 Laws of Kenya, Sections 29 to 39.

28. Arrested persons, other than those arrested for offences punishable by death, that is on charges of treason, murder and robbery with violence, are entitled to the provisions of bail as laid down in Cap. 75, sections 123 to 133. Section 72(2) of the Constitution stipulates that any person arrested or detained shall be informed as soon as is reasonably practicable, in a language he or she understands, of the reasons of his or her arrest or detention and brought before a court as soon as reasonably practicable; the rule is twenty-four hours for offences for which bail may be granted, and 14 days for offences without bail. If not tried within a reasonable time, section 72(5) of the Constitution stipulates that an arrested or detained person shall be released unless charged with a capital offence.

29. Under the Preservation of Public Security Act (Cap. 57), detention orders can be invoked for reasons of public security. A person who is considered a threat to public security can be detained and shall be deemed to be in lawful custody. Detention orders may, however, be revoked at any time. Such detentions are not inconsistent with or in contravention of the constitutional provisions that protect the rights to personal liberty or provide protection from discrimination, or any other provision of the Constitution. It should be emphasized that there are currently no detainees under the Preservation of Public Security Act.

30. Arrests and detentions in Kenya cannot lead to enforced disappearances since every case is accounted for in the police entry in the Occurrence Book (OB) where arrested or detained persons are first held and in the prison register in prisons where they are held either in remand pending final determination of their case or to serve their sentence. Relatives and friends of arrested or detained persons have access to them. Details of arrested or detained persons and those of their next of kin and relatives are kept in the prison register. Every arresting office is accountable for the whereabouts of the arrested or detained persons.

31. Section 72(6) of the Constitution of Kenya provides that a person who is unlawfully arrested or detained by any person shall be entitled to compensation from the arresting or detaining person.

32. In the event of deaths in custody, an inquest is made to determine the cause of death. If it is a result of human action, then the person responsible is prosecuted, be it a prison officer or a fellow convict.

33. An arrested or detained person is extradited if the Government of his or her country so requests and if such agreements exist between Kenya and the requesting country.

## D. Kuwait

34. Ever since it was established as a modern State, Kuwait has considered that the act of enforced disappearance is a material violation of human rights, particularly of the right peacefully to live in and to enjoy freedom. One of the first acts of the State

was to enshrine humanitarian principles in its Constitution of 1962. According to article 7 of the Constitution, "Justice, freedom and equality are the linchpins of society and mutual cooperation and tolerance seal the tightest bonds between the people." Article 31 of the Constitution states that: "No one may be arrested, imprisoned, searched or compelled to reside in a specific place, nor shall his freedom to choose his place of residence or his freedom of movement be restricted other than in accordance with the law. No one shall be subjected to torture or degrading treatment."

35. Other statutes and laws embody and elaborate on the principles set out in the Constitution. For example, article 184 of the Criminal Code No. 16/1960, as amended, provides that anyone who arrests, imprisons or detains a person in circumstances other than those prescribed by law, or who fails to respect the rules of due process of law, shall be liable to a penalty of up to three years in prison and/or a fine of up to 3,000 dinars. If these acts are accompanied by physical torture or the threat of death, the penalty shall be up to seven years in prison, to which may be added to a fine of up to 7,000 dinars.

36. Act No. 17/1960, promulgating the Code of Criminal Procedure and Prosecutions, as amended, stipulates the special importance to be accorded to the procedures used for the arrest or pre-trial detention of suspects or accused persons, in view of the close link between those measures and the question of enforced disappearance.

37. Kuwait law does not ignore the question of enforced disappearance. For example, article 136 of the Code of Personal Status refers explicitly to the problems of lost, missing or disappeared persons and the effects of such problems. Articles 174 to 178 of the Criminal Code make it a criminal offence to abduct a person against his or her will or by means of force or threats. It specifies the penalties to be imposed on anyone who commits such an offence.

38. The Ministry of the Interior has attached high importance to educating the members of its police force and others to comply with their obligations under the law and to respect human rights and public rights and freedoms.

39. Kuwaiti law offers every victim of an illegal enforced disappearance or arbitrary arrest the right to seek a remedy and to apply to the public authorities or the justice system to have his or her grievances heard.

40. With regard to the dissemination of the text of the Declaration on the Protection of all Persons from Enforced Disappearances, the Government of Kuwait has no objection to doing so and would like to point out that all the international instruments that it signs or ratifies are published in the Official Gazette.

## **E. Mauritius**

41. The legislation of Mauritius does not expressly provide for protection against enforced disappearances. However, the Constitution provides for the protection of human rights and freedoms. Some sections of the Criminal Code also give effect to these rights (sections 77, 79, 80, 81, 82, 84 and 258).

42. Section 77 provides for protection against abuse of authority by a public officer. If a public officer or any other person appointed by the Government orders

or commits any arbitrary act, prejudicial to individual liberty or to the civil rights of one or more individuals, or acts contrary to the Constitution of Mauritius, and does not prove that he or she acted by order of a superior, he or she shall be condemned to imprisonment and to a fine.

43. According to section 79, any administrative agent or member of the judicial police, or any person having the custody of a prisoner, who refuses or neglects to pay due regard to any demand tending to prove illegal or arbitrary any detention, whether in an official place of detention or elsewhere, and who does not prove having reported such detention to a superior shall be subject to the same punishment as in the section above.

44. Section 80 deals with arbitrary detention by public officers and states that any official of a detention centre who receives a prisoner without warrant or sentence, or refuses to produce to the prisoner a copy of the order concerning him, or refuses to produce the prisoner to any judicial or police officer entitled to demand the appearance of the prisoner, or refuses to exhibit his register to any judicial or police officer, shall be charged with arbitrary detention and is punishable by imprisonment. Section 81 concerns detention in unauthorized places.

45. Section 82 deals with conspiracy by public officers to take measures contrary to law, or measures against the execution of the law or against the orders of the Government, whether by an association of individuals or of bodies entrusted with any portion of the public authority. If the aim or the result of such an action is a plot affecting the internal safety of the State, the authors are charged with high treason and are punished in conformity with sections 50, 51, and 57 to 61 of the Criminal Code. These sections deal with offences against the State like stirring up civil war, plotting with foreign power, inciting officer to mutiny, and rising armed force.

46. Section 84 of the Code lays down that any administrative or judicial official, police officer or member of any civil or military authority, acting in an official capacity, enters the domicile of a person against his or her will except in cases provided by law and without complying with the prescribed formalities, shall be punished by a fine and by imprisonment.

47. Section 258 of the Criminal Code provides for protection from unlawful arrest, detention and sequestration. Any person who, without having received an order from a constituted authority and except in cases where the law directs the arrest of accused parties, detains or sequesters any person shall be punished by imprisonment, penal servitude and a fine. A person who knowingly provides a place for effecting such a detention or sequestration shall be similarly punished.

48. The provisions described above help to improve the protection of citizens from arbitrary arrest and detention, abduction, harassment, ill-treatment and intimidation of witnesses or relatives of persons who have disappeared. It is worth noting that the law provides protection against acts committed by public officials when they are not acting upon the orders of their superiors or the Government. There is no law specifically protecting in cases where the Government decides to cause the disappearance of a person, apart from the general protection given to citizens by the Constitution.

49. Section 111 of the District and Intermediate Court (Criminal Jurisdiction) Act provides that when a magistrate is informed that a person has died under circumstances raising a reasonable suspicion of an offence, he shall proceed or order

an investigation including the examination of the body with the assistance of a medical practitioner. According to section 112, the director of public prosecutions can order a similar inquiry if a person has suffered grievous bodily harm due to a crime or accident or where the death of a person may have been due to unnatural causes.

50. Civil law also provides for a declaration in the case of a “prolonged absence”. If a person does not appear at his residence for some time, the judge in chambers can declare that there is a “presumption of absence”. The judge will then appoint a relative to represent the person and safeguard his or her rights. If the person reappears, the Judge puts an end to the measures taken in his absence. If after five years, the person still does not appear, and there is a request on the part of the officer of the prosecutor or an interested party, the judge in chambers can officially declare that the person is absent. This can also be done in the case of a person who does not appear for 10 years at his residence, without a prior declaration of presumption of absence.

51. The Civil Code provides that when a person disappears in dangerous circumstances and his or her body has not been found, he or she can be declared legally deceased (for example, in the case of drowning). The office of the prosecutor or any interested person can make the request to the Judge in Chambers. However, if the latter is of the view that the death has not been adequately established, he can request further enquiry and order an administrative enquiry into the circumstances of the disappearance.

## **F. Mexico**

52. The Government of Mexico considers the eradication of the practice of enforced disappearances through various measures:

### **Legislative measures**

53. The primary objective is to provide a legislative framework that guarantees everyone greater protection against enforced disappearance. To this end, on 1 July 2001, the Government published a decree in the *Diario Oficial* adding a Chapter IIIB, entitled “Enforced Disappearance of Persons”, to Title 10 of the Federal Criminal Code.

54. At the local level, only the Criminal Codes of the Federal District, Oaxaca and Chiapas codify enforced disappearance as a criminal offence. For that reason, the Government of Mexico is now pressing for the adoption of a federal bill to make enforced disappearance a criminal offence. The Government is of the opinion that it would be more viable and efficient to regulate enforced disappearance generally, through legislation applicable throughout the country, than to wait for the legislative bodies of each of the federal States to amend their legislation so as to cover this type of crime.

55. Although certain legislative and other difficulties have complicated the direct and systematic application of the international rules on this subject, progress is being made. An amendment has been drafted to article 133 of the Constitution to overcome problems such as the possibility that the offence might be inappropriately classified, and the problem of the statute of limitations.

56. In response to the recommendations made in the report of the Office of the United Nations High Commissioner for Human Rights on the situation of human rights in Mexico, a proposal has been put forward for a comprehensive reform of the judicial system. The main features of the reform are to ensure respect for human rights in legal proceedings and to improve their effectiveness, and to exert greater control over the country's various police forces.

#### **Measures to end impunity for the crimes of the past**

57. Since 1990, the Federal Government has worked with the National Human Rights Commission to shed light on the enforced disappearances of members of social and political movements in the past, incidents related to the 1968 student movement, and attacks on participants in the student demonstration of 10 June 1971.

58. Recommendations to the Federal Government arising out of the investigation carried out by the National Human Rights Commission culminated in an agreement announced on 27 November 2001. Pursuant to this agreement, a Special Prosecutor was appointed under the auspices of the Public Prosecutor's Office to centralize and take charge of the investigations; to combine them with preliminary investigations into complaints about action taken, probably in breach of federal law, directly or indirectly by public officials against members of social and political movements; to prosecute crimes brought to trial before the competent local courts; and generally to take appropriate legal action. The Support Committee to the Special Prosecutor and the Interdisciplinary Committee were created to assist and complement the work of the Prosecutor.

59. On 4 January 2002, a Special Prosecutor was appointed to deal with complaints of action taken directly or indirectly by public officials, probably in breach of federal law, against members of social and political movements in the past. The Special Prosecutor's Office has launched 57 preliminary investigations, received 125 complaints, and carried out over 20 on-site investigations, combined with a number of official inquiries and proceedings.

60. On 21 April 2003, given the outcome of the inquiries conducted, criminal proceedings were brought against Luis de la Barrera Moreno, Miguel Nazar Haro and Juventino Romero Cisneros, the former heads of the defunct Federal Directorate of National Security, who were accused of unlawful deprivation of liberty in the form of kidnapping of Jesús Piedra Ibarra, who has been missing since 1975. The case was brought at the Fourth District Criminal Court in the State of Nuevo León. On 5 December 2003, the Court issued a warrant for the arrest of Luis de la Barrera Moreno, Miguel Nazar Haro and Juventino Romero Cisneros. On 18 February 2004, Miguel Nazar Haro was arrested in Mexico City. Criminal proceedings against him are currently under way.

#### **Preventive measures**

61. Considerable efforts have been made to train members of the local police and the armed forces with a view to promoting a culture of respect for human rights. Human rights and international humanitarian law have also been put on the curricula of all military schools, and in continuing training programmes for military personnel.

62. Staff of the Office of the Attorney-General have been instructed by their superiors that their actions must be lawful and set within a framework of strict compliance with the law, and that there must be proper grounds and reasons for any detention; they have been made aware of what is required and authorized under Title 10, Chapter IIIB, article 215, subsections A to D of the Federal Criminal Code.

63. Responsible officers of the Office at local level work in close cooperation with the heads of the Government Procurator's Office in their respective districts, and with the different units responsible for public security at the three levels of Government, to prevent and help to punish all conduct that leads to enforced disappearances.

64. Representatives at the State and local levels carry out inspections of the offices of the Federal Public Prosecutor and the State and local headquarters of the Federal Investigation Agency in order to ensure compliance with national legislation and unconditional respect for human rights. They also supervise the admission and treatment of prisoners.

### **III. Activities of the Working Group on Enforced or Involuntary Disappearances during the period under consideration**

65. The Working Group continued to highlight further developments regarding two basic aspects of the situation of enforced or involuntary disappearance in the world. Disappearances are a persistent global phenomenon not limited to specific regions. Although the mandate of the Working Group was initially inspired by the need to address the legacy of disappearances arising from authoritarian rule in Latin America, the more common pattern today are large-scale disappearances occurring in States on other continents. While in the last report a decline in the number of disappearances was reported, the number of cases submitted to the attention of the Working Group during the present period has drastically increased. This situation is mainly due to political and internal crises in some countries. While in the past the phenomenon was mainly associated with State policies of authoritarian regimes, disappearances today occur in the context of much more complex situations of internal conflict or tensions which generate violence, humanitarian crisis and human rights violations, including enforced disappearances.

66. The Working Group has received concrete assistance and strong cooperation from a number of Governments. Others however continue not to reply to its requests for information or its reminders. Without the cooperation of Governments, thousands of cases of disappearance will remain unclarified and the relatives of those who have disappeared will continue to live in anguish.

67. While dealing with internal conflicts, the Working Group is troubled by the fact that while Africa is the region which has been most racked by armed conflicts over the last decade, it is at the same time the one with supposedly the fewest reported cases of enforced or involuntary disappearances. The Working Group cooperates with local United Nations offices to promote and disseminate information about the Declaration on the Protection of All Persons from Enforced Disappearance.

68. The crime of enforced disappearance, as defined in the Declaration and in the Statute of the International Criminal Tribunal, is a continuous crime until the fate or

whereabouts of the disappeared person becomes known. The Working Group does not establish criminal liability or declare State responsibility; its mandate is essentially humanitarian. The primary task of the Working Group remains to clarify the fate or whereabouts of persons who are reported to have disappeared.

69. A number of Governments of countries with large numbers of unresolved cases have not communicated on a regular basis with the Working Group. At its sixty-ninth session, the Working Group therefore extended a special invitation to the Governments of those countries which have more than 1,000 outstanding cases to meet with the Working Group during its seventieth session. Of the four countries, only two requested meetings with the Working Group. These meetings were held and the Governments concerned provided significant additional information (E/CN.4/2004/58, para. 6).

70. The Working Group continues to apply decision 2000/109 of the Commission on Human Rights on enhancing the effectiveness of the mechanisms of the Commission, that a turnover of its membership be accomplished in incremental steps over a three-year transition period.

71. As concerns country visits, on 9 September 2003, the Working Group was invited by the Government of Argentina to visit that country. While on 26 September 2001, the Government of Colombia reiterated its invitation of 30 March 1995 to the Working Group to visit the country, on 4 November 2002, the Government informed that owing to a change of Government, there was a need to initiate new steps with a view to such a visit taking place. On 8 November 2002 and, again, on 25 April 2003, the Working Group reiterated its interest and is awaiting a response from the Government of Colombia. The Government of the Islamic Republic of Iran invited the Working Group to visit that country and the Working Group accepted the invitation. However, due to the sudden illness of its Chairman, the Working Group decided to postpone the visit, which was scheduled to take place from 11 to 18 June 2003. Another visit was scheduled from 24 to 28 July 2004, but was postponed at the request of the Government of the Islamic Republic of Iran. Whilst the Working Group has expressed its interest to visit Algeria and Iraq, no responses have been received from these countries.

72. The Working Group has welcomed the efforts of the Intersessional open-ended Working Group to elaborate a legally binding instrument on enforced disappearances. As was clearly established in the report of independent expert charged with examining the existing international criminal and human rights framework for the protection of persons from enforced or involuntary disappearances (E/CN.4/2002/71), important gaps exist in the current framework of protection against enforced and involuntary disappearances. The process of elaborating a draft convention appears to be making substantial progress on questions of definition and on the refinement of substantive obligations.

73. The Working Group notes with satisfaction that the draft convention and subsequent discussions among States and non-governmental organizations in the Intersessional open-ended Working Group reflects many of the recommendations that the Working Group has for successive years submitted to the Commission on Human Rights. In particular, many States now recognize the need for (a) clear national criminal law addressing disappearances; (b) strict limitations on amnesty; (c) the creation of mechanisms of compensation and satisfaction and (d) specific actions to address the plight of children.

#### **IV. Activities undertaken to promote the Declaration on the Protection of All Persons from Enforced Disappearances**

74. During the period under review, the activities of the Department of Public Information to promote the Declaration on the Protection of All Persons from Enforced Disappearances were part of an overall communications strategy to promote the work of OHCHR, the Commission on Human Rights and treaty bodies, as well as the work of the special rapporteurs, experts and working groups.

75. The Department issued press releases in English and French on action taken by the Commission on Human Rights and the Economic and Social Council on the subject. It also widely disseminated press releases about the sessions of the Working Group on Enforced or Involuntary Disappearances in 2003. These are available on the United Nations web site (<http://www.un.org>). Other printed materials relating to the Declaration produced by the Department included a background article entitled "The role of the special rapporteurs, special representatives and independent experts of the special procedures of the Commission on Human Rights". The article, which was prepared in close collaboration with OHCHR, was widely disseminated to United Nations Information Centres, other services and offices, to United Nations Development Programme (UNDP) field offices and to journalists at United Nations Headquarters.

76. The full text of the Declaration is available in the six official languages on the United Nations web site. The Public Relations Section of the Department of Public Information at United Nations Headquarters also makes the Declaration available to the general public and educational institutions, upon request.

77. United Nations Radio produced a four-minute feature on the opening in Geneva of the sessions of the Working Group on Enforced and Involuntary Disappearances. The subject was also covered in other radio programming during the period under review.

78. Given its proximity to OHCHR, the United Nations Information Service (UNIS) in Geneva has an especially important role in promoting United Nations action on human rights, including the Declaration. During the reporting period, UNIS in Geneva issued press releases in English and French covering the work of the Working Group on Enforced or Involuntary Disappearances. In 2003 and 2004, it issued four press releases in English and four in French. Two of these specifically dealt with the Working Group, and the two others summarized the debate on the subject at the annual session of the Commission on Human Rights. The OHCHR spokesperson was invited to the biweekly press briefings of the Director of UNIS to update correspondents, when required, on the work of the Working Group. The text of the Declaration is made available to journalists, non-governmental organizations and the public upon request at the UNIS Documentation Centre. UNIS also provided radio and television coverage of the meetings relating to the Declaration.

79. In the field, reference libraries at United Nations Information Centres, and its services and offices have copies of publications containing the Declaration for use by interested academicians, researchers and students. Copies are also distributed to media and non-governmental organizations and at special events, such as the annual observance of Human Rights Day.

80. Every opportunity is used to promote the elements of the Declaration in United Nations and human rights-related briefings and events at Headquarters, Geneva and throughout the network of United Nations Information Centres and Services.