

CYPRUS

Proposal to the United Nations to establish an effective commission of inquiry to investigate “disappearances”, “missing” persons and deliberate and arbitrary killings in Cyprus

INTRODUCTION

Amnesty International has been raising the issue of “missing” and “disappeared” persons in Cyprus since the events of July 1974 - the coup in which President Makarios was overthrown and the subsequent landing on the island of Turkish armed forces. At first the organization called on all the relevant parties - the Cypriot Government, the Turkish Government and the Turkish Cypriot authorities - to investigate cases of people who appeared to have been taken into custody during the hostilities, but whose whereabouts were unknown. Later Amnesty International received information about Turkish Cypriots “missing” since the intercommunal disturbances of 1963-64 and these cases were raised with the Cypriot Government. In no case was Amnesty International informed directly by the authorities of any investigation undertaken or any case resolved. The organization was told that the respective parties had referred all cases to the Committee on Missing Persons in Cyprus (Committee on Missing Persons).

In late 1995 and early 1996 for the first time new information came to light concerning at least some of the “missing” and “disappeared”. In October 1995 there were reports in the Cyprus media that some of the Greek Cypriots listed as missing since 1974 had in fact died in action. President Clerides was quoted in the *Cyprus Mail* of 27 October 1995 as saying that following a study of 487 of the 1,619 cases of missing Greek Cypriots by the Attorney-General’s office, 96 people were found to have died in action. In March 1996 the Turkish Cypriot leader, Rauf Denktaş, in an interview by a Greek Cypriot television station, admitted that some captured Greek Cypriots had been killed. That the families of these missing and “disappeared” persons have had to wait for more than 20 years to learn the fate of their relatives is inexcusable. The Turkish Cypriot families who are still seeking to learn what happened to their relatives in 1963-64 have been waiting even longer.

The international body established under the auspices of the United Nations (UN) more than 15 years ago to resolve these cases, the Committee on Missing Persons, has failed to do so. Amnesty International welcomed the establishment of the Committee on Missing Persons and has provided information to it to assist in its inquiries.¹ However, as a result of the failure of the Committee on Missing Persons after a decade and a half to resolve these cases, Amnesty International is calling upon the UN to establish a new body - an international commission of inquiry - which satisfies the strict international standards for such investigations, with adequate resources and powers, to conduct a thorough and impartial inquiry into all cases of “disappearance”,

¹ Amnesty International, *Cyprus: Missing Persons in Cyprus - Amnesty International’s actions 1974-1989* (AI Index: EUR 17/02/89).

“missing” and deliberate and arbitrary killings arising out of the events of 1963-64 and 1974. It is also calling upon all parties to cooperate fully with the commission of inquiry so that families can learn the fate of their loved ones, those responsible can be brought to justice and the relatives of victims compensated for their loss. Amnesty International’s call is fully consistent with its appeals in other long-standing cases of “disappeared” and “missing” persons and victims of deliberate and arbitrary killings, most recently in its paper, *Bosnia-Herzegovina: The international community’s responsibility to ensure human rights* (AI Index: EUR 63/14/96).

THE COMMITTEE ON MISSING PERSONS

After the UN General Assembly in 1977 and 1978 called for an investigatory body to resolve these cases, and several years of negotiations, the UN Secretary-General on 22 April 1981 announced that an agreement had been reached with both sides to establish the Committee on Missing Persons. The General Assembly in Resolution 32/128, adopted on 16 December 1977, had requested the Secretary-General

“to provide his good offices, through his Special Representative in Cyprus, to support the establishment of an investigatory body with the participation of the International Committee of the Red Cross, which would be in a position to function impartially, effectively and speedily so as to resolve the problem without undue delay”.

The General Assembly renewed this call in Resolution 33/172, adopted on 20 December 1978, in which it called for the representative of the Secretary-General on the investigatory body to be able, in cases of disagreement, “to reach a binding independent opinion which shall be implemented”.

The Committee on Missing Persons, composed of three members, a representative of the Cypriot authorities, a representative of the Turkish Cypriot side and a representative of the Secretary-General (the Third Member), got off to a slow start. The General Assembly on several occasions expressed its concern about the lack of progress by the Committee on Missing Persons in its first few years.² Indeed, the Committee on Missing Persons did not adopt its procedural rules until March 1984. At the conclusion of its 60th working session on 10 April 1992, the Committee on Missing Persons stated: “It is true that the committee has not yet obtained the progress hoped for; it has decided to study the situation and to explore all means to secure better results.”³ From 13 December 1994 to 15 June 1995 it did not hold any formal meeting, although informal bi-lateral meetings between the Third Member and the other two members took place. On 17 May 1995, the Secretary-General wrote to the leaders of both sides proposing criteria for concluding investigations and both sides agreed to proceed on this basis. He proposed that a deadline be set for the submission of information by both sides. Information concerning all Turkish Cypriot cases was received shortly before the deadline and assurances were given that information concerning the remaining Greek Cypriot cases would be received by the end of 1995. As a result, the Committee

²GA Res. 37/181, adopted on 17 December 1982; GA Res. 36/164, adopted on 16 December 1981.

³ Press Release, 10 April 1992, para. 1.

on Missing Persons agreed to resume its activities. On 9 March 1996, the Third Member, Paul Wurth, resigned, which led to a recess in formal meetings.

The Committee on Missing Persons has operated largely in secret in the past 15 years, although it has occasionally issued brief and largely uninformative press releases about its activities.

As far as Amnesty International is aware, the Committee on Missing Persons has not publicly resolved a single case of “disappearance” or “missing” persons, its work has not led to a single person being brought to justice by either side for these crimes and its efforts have not resulted in compensation to a single relative. Those who looked to this body to resolve the fate of their loved ones so that they could get on with their lives and as a step toward ensuring that justice was done, have had their hopes dashed. Furthermore, as a result of its limited mandate, the Committee on Missing Persons cannot continue to investigate the cases of “disappearance” and “missing” persons once it has determined that the people involved have been victims of deliberate and arbitrary killings. It has stated that it “will not attempt to attribute responsibility for the deaths of any missing persons or make findings as to the cause of the deaths”.⁴

THE INTERNATIONAL STANDARDS FOR INVESTIGATING CASES OF “DISAPPEARANCE”

Why has this body failed? In part, of course, it has been the result of the failure of the parties at various times on different matters to cooperate fully with it. However, another important reason for its failure is that the Committee on Missing Persons fails to satisfy strict international standards which experience has proved necessary for effective investigations of “disappearances” and of deliberate and arbitrary killings in those cases where evidence suggests that the person concerned was killed. As a result of structural flaws, insufficient powers, lack of experienced staff and its confidential procedures, it has not been effective in satisfying either its limited humanitarian goals or in satisfying the international obligations concerning investigations of these crimes. Of course, the parties have the primary responsibility to investigate these cases, bring those responsible to justice and compensate victims or their families, but in the light of their failure for more than two decades to do so, the international community must take effective steps to investigate these cases and to press the parties to fulfil their responsibilities.

The UN Declaration on the Protection of All Persons from Enforced Disappearance (Declaration on Disappearances), adopted by the UN General Assembly without a vote on 18 December 1992 in Resolution 47/133, recognizes that the systematic practice of “disappearances” is in “the nature of a crime against humanity” (Preamble). The Declaration on Disappearances provides that all states must ensure that complaints of “disappearance” are “promptly, thoroughly and impartially investigated” (Article 13 (1)).⁵ This obligation - and the standards applicable to

⁴ Press Communiqué, 11 April 1990, para. 14.

⁵ Amnesty International has recommended that “[g]overnments should ensure that all complaints and reports of ‘disappearances’ are investigated promptly, impartially and effectively by a body which is independent of those allegedly responsible and has the necessary powers and resources to carry out the investigation.” 14-Point Program for the Prevention of “Disappearances”, Point 10.

investigations by individual states - necessarily apply to states acting collectively under the auspices of the UN to investigate such cases. The UN must not set a lower standard for its own investigations than it deems appropriate for states.

The Declaration on Disappearances requires each state to “ensure that the competent authority shall have the necessary powers and resources to conduct the investigation effectively, including powers to compel attendance of witnesses and production of relevant documents and to make immediate on-site visits” (Article 13 (2)). Witnesses and others involved in the investigation must be adequately protected.⁶ Each state must take steps “to ensure that all involved in the investigation, including the complainant, counsel, witnesses and those conducting the investigation are protected against ill-treatment, intimidation or reprisal” (Article 13 (3)) and steps must be taken to bring to justice those responsible for such interference with the investigation (Article 13 (5)). “The findings of such an investigation shall be made available upon request to all persons concerned, unless doing so would jeopardize an ongoing criminal investigation” (Article 13 (4)).⁷

The Committee on Missing Persons does not satisfy any of these requirements and its structure is seriously flawed. It “must, act by consensus, that is by unanimous agreement amongst the Three Members”.⁸ This is contrary to the intention of the General Assembly in Resolution 33/178 of 20 December 1978 that the representative of the Secretary-General would be able in cases of disagreement to reach a binding decision and has led to paralysis at various times on different issues. It has stated that “it is a purely humanitarian organ”.⁹ The Committee on Missing Persons bases its work on two sources of information:

- “a) The files and documents submitted to it by each side on the missing persons of that side.
- b) The testimony of the witnesses, both Greek Cypriot and Turkish Cypriot, interviewed by the investigative teams.”¹⁰

It uses investigation teams which “are organized by, and under the entire responsibility of, the Greek Cypriot or Turkish Cypriot side, as the case may be”, and the teams “are responsible for

⁶ Amnesty International’s 14-Point Program for the Prevention of “Disappearances” recommends that “[c]omplainants, witnesses, lawyers and others involved in the investigation should be protected from intimidation and reprisals” (Point 10).

⁷ Amnesty International’s 14-Point Program for the Prevention of “Disappearances” states: “Relatives of the victim should have access to information relevant to the investigation and should be entitled to present evidence.” (Point 10).

⁸ Press Communiqué, 11 April 1990, para. 12.

⁹ Press Communiqué, 11 April 1990, para. 3.

¹⁰ Press Communiqué, 11 April 1990, para. 4. In practice, the Committee on Missing Persons has accepted information supplied by other sources, including non-governmental organizations such as Amnesty International, but these two methods of obtaining information appear to be the main ways it has obtained information and they may have limited its effectiveness.

locating witnesses, arranging interviews and translating statements”.¹¹ The Third Member, representing the international community, has no control over the organization of the teams, the choice of the location and timing of visits, security, topics or witnesses, but the Third Member or his or her assistants “participate in the interviews, put the questions they want, as well as making any visits in the field which the investigations may require”.¹²

Its entirely confidential method of work has undermined public confidence in its work and defeated its humanitarian goal of providing information to families of the fate of their relatives. Indeed, the Committee on Missing Persons has recognized that “there is still little public knowledge of the realities of its activities and the nature of the difficulties it is facing” and that “it may not have been sufficiently explicit in its public announcements”.¹³ It has no powers to compel the attendance of witnesses or relevant documents or to conduct immediate on-site visits.¹⁴ Indeed, it has not been possible for the Committee on Missing Persons to excavate grave sites where “disappeared” or “missing” persons are feared to be buried. It has stated that, as part of its efforts to determine whether persons are alive or dead, its investigation teams

“have inquired systematically on both sides on burial places of missing persons, both Greek Cypriot and Turkish Cypriot. However, on neither side has the Committee been successful in this respect. No disinterment can take place under the aegis of the Committee, except that, should the Committee decide it, the matter would be referred to the International Committee of the Red Cross for processing according to its customary procedure.”¹⁵

There are no effective procedures, apart from assurances of confidentiality to witnesses, to protect those connected with the investigation from intimidation. Since the investigation teams are composed of staff from the Turkish Cypriot community when investigating incidents in Turkish Cypriot controlled areas and from the Greek Cypriot community when investigating incidents in the Greek Cypriot controlled areas, rather than being solely international teams, witnesses may well be reluctant to talk even though the Third Member is part of the team. In a relatively small country, witnesses may fear that their cooperation with the Committee on Missing Persons - or even their testimony - will become known in their community. Indeed, the Committee has stated that the reluctance of witnesses to testify has been one of its greatest obstacles: “The real, central difficulty

¹¹ Press Communiqué, 11 April 1990, para. 5.

¹² *Id.*

¹³ Press Communiqué, 11 April 1990, para. 1.

¹⁴ Press Communiqué, 11 April 1990, para. 3 (“The Committee . . . has no police or judicial powers”); para. 6 (The Committee on Missing Persons “cannot compel a witness to talk”).

¹⁵ Press Communiqué, 11 April 1990, para. 14. Unfortunately, at least one International Committee of the Red Cross (ICRC) official reportedly has taken a very restrictive view of the ability of exhumations to determine the identity of persons who may have been buried more than 15 years ago. Forensic science, with carefully collected *ante-mortem* data (information concerning the identity of the individual, age, dental records, clothing, illnesses, etc.), can in certain cases make it possible to determine either the identity or cause of death even after such long periods. The Committee on Missing Persons does not appear to have forensic experts.

the Committee is confronted with is that the witnesses are often reluctant, unwilling, or unable to give full information in their knowledge on the disappearance of a missing person.”¹⁶ It has explored the possibility of “measures that could be taken to ensure that they would be immune from possible judicial and/or police proceedings solely in connection with the issue of missing persons and for any statement, written or oral, made for the Committee, in the pursuit of activities within its mandate”.¹⁷ Apparently, no agreement has ever been reached with the parties permitting the Committee on Missing Persons to grant immunity for witness testimony.

The Committee on Missing Persons has failed in its humanitarian goal to inform families of the fate of their loved ones. It has stated that it is “a purely humanitarian organ”, that it is “fully aware of the anguish and anxiety of the families, both Turkish Cypriot and Greek Cypriot” and that “[i]t would obviously be most desirous of finding ways and means to relieve their uncertainties”.¹⁸ Nevertheless, it has failed in the course of the past 15 years to provide the findings - even interim findings - of its investigations to the families of the “disappeared” or “missing”, even though there is no evidence that this would jeopardize any ongoing criminal investigation. Indeed, Amnesty International is not aware of a single criminal investigation opened by either side in cases of “disappeared” or “missing” persons. On several occasions the Committee on Missing Persons has “debated the possibility of advising the relatives of the missing persons about whatever data has been obtained thus far by the committee, and the efforts made by it to complete, clarify and verify such data”, but it has yet to provide the families with any such interim information.¹⁹

The Declaration on Disappearances makes clear that the investigation must continue until the fate of the “disappeared” person is clarified (Article 13 (6)), but that is not the end of the story. Those alleged responsible - whatever their rank or position - must be “suspended from any official duties during the investigation” (Article 16 (1)).²⁰ Those responsible for the crime of “disappearance” must be brought to justice.²¹ Article 14 of the Declaration on Disappearances provides:

¹⁶ Press Communiqué, 11 April 1990, para. 6.

¹⁷ Press Communiqué, 11 April 1990, para. 10.

¹⁸ Press Communiqué, 11 April 1990, paras 3, 13.

¹⁹ Press release, 10 April 1992, para. 3; Press Communiqué, 11 April 1990, para. 17.

²⁰ Amnesty International’s 14-Point Program for the Prevention of “Disappearances” states: “Officials suspected of responsibility for ‘disappearances’ should be suspended from active duty during the investigation.” (Point 10).

²¹ Amnesty International’s 14-Point Program for the Prevention of “Disappearances” states: “Governments should ensure that those responsible for ‘disappearances’ are brought to justice. This principle should apply wherever such people happen to be, wherever the crime was committed, whatever the nationality of the perpetrators or victims and no matter how much time has elapsed since the commission of the crime.” (Point 11).

“Any person alleged to have perpetrated an act of enforced disappearance in a particular State shall, when the facts disclosed by an official investigation so warrant, be brought before the competent civil authorities of that State for the purpose of prosecution and trial unless he has been extradited to another State wishing to exercise jurisdiction in accordance with the relevant international agreements in force. All States should take any lawful and appropriate action available to them to bring all persons presumed responsible for an act of enforced disappearance, found to be within their jurisdiction or under their control, to justice”.

Acts constituting a “disappearance” remain “a continuing offence as long as the perpetrators continue to conceal the fate and the whereabouts of persons who have “disappeared” and these facts remain unclarified” (Article 17 (1)), statutes of limitation must remain suspended until there is an effective remedy for the “disappearance” (Article 17 (2)) and persons responsible for “disappearances” must “not benefit from any special amnesty law or similar measures that might have the effect of exempting them from any criminal proceedings or sanction” (Article 18 (1)). According to Article 19 of the Declaration on Disappearances, the families of the “disappeared” must

“obtain redress and shall have the right to adequate compensation, including the means for as complete a rehabilitation as possible. In the event of the death of the victim as a result of an act of enforced disappearance, their dependants shall also be entitled to compensation.”²²

Not only does the mandate of the Committee on Missing Persons not address these requirements, but it also frustrates the possibility that these obligations will be fulfilled by the parties. Since it operates entirely confidentially, the results of its investigations will never be provided to prosecutors with a view to persuading them to take appropriate action. This confidentiality also means that the findings will not be provided to an appropriate body with power to award compensation. Thus, none of the confidential findings which the Committee on Missing Persons may have made in the past 15 years can be used as the basis for calling for prosecutorial investigations to ensure that justice is done and compensation provided to the relatives of the victims. This incredible waste of effort could, perhaps, have been justified if it had led to families learning the fate of their loved ones. The failure to accomplish even this humanitarian task, and the failure to establish any other international or national body during this period to resolve these cases, however, is unjustifiable.

THE INTERNATIONAL STANDARDS FOR INVESTIGATING CASES OF DELIBERATE AND ARBITRARY KILLINGS

²² Similarly, Amnesty International’s 14-Point Program on the Prevention of “Disappearances” states: “Victims of ‘disappearances’ and their dependants should be entitled to obtain fair and adequate redress from the state, including financial compensation.” (Point 12).

The current mandate of the Committee on Missing Persons does not permit it to continue the investigation after it has been determined that the “disappeared” or “missing” person has been the victim of a deliberate and arbitrary killing. As an investigatory body established under UN auspices, with one of its members appointed by the Secretary-General, it should fully satisfy UN standards for investigations of human rights violations. As a result of the recent statement by Rauf Denktash indicating that many of the Greek Cypriot “disappeared” and “missing” may have been the victims of deliberate and arbitrary killings, the UN should establish a commission of inquiry to investigate those killings. In the interests of economy, the same body should investigate both the “disappearances” and abductions and the deliberate and arbitrary killings.

The UN has established strict standards for investigations of deliberate and arbitrary killings in its 1995 publication, *Guidelines for the conduct of United Nations inquiries into allegations of massacres*. The *Guidelines* provide that when the Secretary-General has received a request from an intergovernmental organization to conduct such an inquiry, the Secretary-General should establish a commission of inquiry which “should consist of at least three members and include individuals with expertise in medicine, forensic science, crime investigation, criminal law and other specialized fields, as appropriate” (para. 16). The Secretary-General should arrange for UN or other assistance to the commission, UN personnel “should in any case participate and assist in the investigation” and “[t]he commission should travel to the area concerned as soon as possible” (*Id.*). The commission of inquiry should monitor the preliminary investigations of the government or other authorities in control of the relevant area (para. 17) and, if necessary, carry out these activities itself, bearing in mind the rules of admissibility of evidence in criminal prosecutions (para. 18). The commission of inquiry must “utilize to the maximum extent feasible technical documents prepared by the United Nations to assist in investigations of extrajudicial killings” (para. 19).²³

The *Guidelines* require that the commission has the right of access and cooperation of the competent authorities (paras 20-21), provides detailed directions for the collection and preservation of material evidence (paras 22 to 32), specifies how witness interviews should be conducted (paras 33-49) and require that the inquiry “lead to a detailed report of its findings” (para. 50). The *Guidelines* state that “[t]he Secretary-General should, in principle, make his report available to the [UN] Special Rapporteur [on extrajudicial, summary or arbitrary executions] as well as to the public, subject to any decisions taken by the intergovernmental organ concerned”. The *only* grounds cited under which the Secretary-General may decide that the report or parts of the report should not be made public are when “the Secretary-General concludes that disclosure would lead to the destruction of evidence, put persons involved in the investigation at risk, or place in jeopardy the success of any future prosecutions” (para. 55).

²³ These documents include the protocols contained in the UN Manual on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions, the 1989 UN Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions, the UN Model Protocol for a Legal Investigation of Extra-legal, Arbitrary and Summary Executions (Minnesota Protocol). These and other documents are included as annexes to the *Guidelines* and a copy of the 1989 UN Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions.

THE URGENT NEED FOR AN INTERNATIONAL INVESTIGATION SATISFYING INTERNATIONAL STANDARDS

In the light of the failure of the Committee on Missing Persons to fulfil either its limited humanitarian mandate or the international requirement that “disappearances” and deliberate and arbitrary killings be thoroughly, promptly and impartially investigated, Amnesty International is calling upon the international community to establish a commission of inquiry with effective powers, resources and procedures to satisfy the humanitarian need of the families to learn the fate of their loved ones, to provide the basis calling for a prosecutorial investigation to bring to justice those responsible and to award compensation to victims and relatives. The commission of inquiry should fully satisfy the UN’s own strict standards and be consistent with the recommendations in Amnesty International’s 14-Point Program for the Prevention of “Disappearances” and its 14-Point Program for the Prevention of Extrajudicial Executions.

RECOMMENDATIONS

The international community should call upon the Secretary-General to establish a commission of inquiry immediately which fully satisfies strict international standards to investigate cases of “disappearance” and “missing” persons and deliberate and arbitrary killings which took place in Cyprus in 1963-64 and 1974.

The parties should cooperate fully with the international commission of inquiry to ensure that all cases are thoroughly and impartially investigated.

The parties should ensure that those responsible for these crimes are brought to justice.

The parties should ensure that the victims or relatives are fairly and adequately compensated.