



## THE GLOBAL PHENOMENON OF ENFORCED DISAPPEARANCES TODAY:

### DEEPLY DISTURBING, BUT WITH GROUNDS FOR HOPE

(The following is an expanded version of a statement delivered by Peter Splinter on behalf of Amnesty International on the occasion of the 30<sup>th</sup> anniversary of the United Nations Working Group on Enforced or Involuntary Disappearances, UN Palais des Nations, Geneva, 18 March 2010.)

Mr. Chairperson,

I am honoured to represent Amnesty International today as we commemorate the thirtieth anniversary of the Working Group on Enforced or Involuntary Disappearances. Strictly speaking, before we get carried away with this anniversary, we should recall that the resolution creating the Working Group on Enforced and Involuntary Disappearances was adopted on 29 February 1980, which makes the Working Group only eight and a half years old.<sup>i</sup> Fortunately we have all exercised discretion on this technical point, and I am pleased to have this opportunity to express Amnesty International's acknowledgement of the many achievements of the Working Group over three decades in the fight to eradicate disappearances. More seriously however, any celebrations of this anniversary must be tempered by the knowledge of the chilling reality that enforced disappearances remain prevalent in the world today.<sup>ii</sup>

I invite you to examine the Annual Report that was issued by Amnesty International in 1980, the same year that the Working Group on disappearances was formed. Three pages into the publication one finds the following passage: "Political abductions, frequently ending in the murder and mutilation of the victims, continue. The term '*disappearance*', having acquired a new, dark meaning, has entered the vocabulary of journalism and political science." Likewise, in its 1990 Annual Report, Amnesty recorded that around the world, tens of thousands of people had become victims of security operations resulting in "disappearances" and extrajudicial executions. Skimming the pages of these reports, it is saddening, though not surprising, to note that some of the countries identified as ones where enforced disappearances were a serious concern then are among those identified in our research now - either because disappearances are still taking place or because impunity for those crimes has prevailed.

When Amnesty International launched its global campaign on "disappearances" and political killings in 1994, we described these violations as "the human rights crisis of the 1990s". Unfortunately, that crisis did not end with the millennium and if we speak of 2010, we are only too aware that enforced disappearances are still very much part of the arsenal of repression used by states. Governments still engage in the crime of enforced disappearances the world over to silence dissent and to eliminate political opponents; to persecute ethnic, religious and political groups. Disappearances continue to be used to spread fear through communities.

On or about 28 January this year, for example, four former soldiers who left **Equatorial Guinea** in the early 1990s and who had been living in Benin as refugees ever since were abducted in Benin

by security personnel from Equatorial Guinea. They were returned to their native country. However, the Equatorial Guinean authorities have not confirmed the whereabouts of the four men or even whether they are holding them.<sup>iii</sup>

At around the same date, in **Sri Lankan**, the journalist and political analyst Prageeth Eknaligoda disappeared shortly after leaving work at the Lanka-e-News office. Local residents told Sri Lankan press of seeing a white van without number plates close to his house at around this time. In the days leading up to his disappearance he had told a close friend that he believed he was being followed.<sup>iv</sup>

In **Iran**, Ali Reza Firouzi and Sorna Hashemi, both students expelled from Zanzan University for their role in exposing the sexual abuse of a female student in 2008, were believed to have been victims of enforced disappearance after leaving Tehran on 2 January 2010 to visit Tabriz in north-western Iran. Their fate was not acknowledged by the authorities and their families were unable to obtain information about them for 70 days. Subsequently, early this month, they were able to contact their families to confirm that they are being detained in Evin Prison.<sup>v</sup>

One of the fronts of the so-called “war on terror” has been the operation of secret detention programs by the **United States** and its allies over a period of several years. Individuals held in secret detention sites were victims of enforced disappearance and other human rights violations. Several states, including **Poland, Lithuania and Romania**, hosted secret detention facilities. Despite the admission by former President Bush that these programs existed, no one has been brought to account for authorizing or perpetrating the enforced disappearances that were at the core of the program.<sup>vi</sup>

**Pakistan's** civilian government has not revealed the findings of its investigations into cases of the hundreds of people believed to be held secretly by the government as part of its contribution to the so-called “war on terror”, or in response to internal opposition, for instance in Baluchistan.<sup>vii</sup>

Ending impunity is a significant aspect of our work in ending enforced disappearances. In June 2009 for example, we published a report about 10 years of impunity for enforced disappearances and abductions in **Kosovo** which took place from 1998 to 1999. The report highlighted the failure of the authorities in both Serbia and Kosovo to respect the right of the relatives to reparation, including compensation.<sup>viii</sup>

Similarly, we continue to express serious concerns about the **Algerian** government’s policy of impunity, which benefits members of security forces, state armed militia and armed groups. There are no investigations into some 8,000 disappearances which took place during the internal conflict in the 1990s, and the families of the disappeared are denied their right to know the truth and to obtain justice and reparation.<sup>ix</sup>

Recently, we called on the government of **Bolivia** to hand over immediately, unconditionally and in full, all military documents related to cases of enforced disappearance and other human rights violations. This follows a decision of 10 February 2010 by the Eighth Examining Magistrate for Criminal Matters ordering the Armed Forces to hand over any documents in their possession to help locate the remains of individuals who disappeared during 1980 and 1981. The Bolivian Armed Forces’ persistent refusal to declassify their files makes the search for truth and justice impossible.<sup>x</sup>

These excerpts, and they are only excerpts, from the catalogue of past and present violations tell us that the phenomenon of enforced disappearances remains global, deeply disturbing and continues to demand the attention of all concerned with the protection of human rights. Is there any indication that disappearances are declining? We cannot tell – the nature of the crime is that it is almost impossible to ever accurately quantify. Does this render us hopeless? No. Thanks largely to the courageous and determined efforts of families and friends of the disappeared and human rights defenders and advocates the world over, we are all in a better position to fight for the eradication of enforced disappearances. Some governments, like those in Chile and Argentina, have taken concerted efforts to redress a national legacy of enforced disappearances and together with others, like that of France, have led international efforts to combat enforced disappearances. Amnesty International hopes that this commitment will be sustained to ensure that impunity for authorizing or perpetrating enforced disappearances is never again tolerated.

The body of international law which has been developed to prevent and combat enforced disappearances is considerably more developed today than it was in 1980. The 1992 *Declaration on the Protection of All Persons from Enforced Disappearances*, which sets out a normative framework applicable to all, contains important provisions aimed at the prevention of enforced disappearances and at the investigation and prosecution of those responsible for them. It also establishes that enforced disappearance must be made a criminal offence under national law. In the *Rome Statute of the International Criminal Court*, enforced disappearance is among those acts that constitute a crime against humanity when committed as part of a widespread or systematic attack directed against any civilian population carried out with knowledge of the perpetrator. Since 1980, there also has been the adoption of treaties and important jurisprudence emanating from regional bodies and courts that have helped to clarify further a range of complex questions associated with enforced disappearances. The elaboration of the normative framework to combat enforced disappearances is ongoing as we have seen at this session of the Human Rights Council in the rich discussion of the evolving concept of the “right to truth”.

Above all, we are on the threshold of the entry into force of the *UN Convention on Enforced Disappearances*, which will surely play a pivotal and complementary role in galvanizing state activity to prevent and punish the crime of disappearances. Amnesty International has worked with other members of civil society for the past three decades for such a treaty.<sup>xi</sup> Today we call upon all states that have not yet done so to ratify the Convention without any reservations; to recognize the supervisory Committee’s competence to consider individual communications; to nominate in transparent consultation with civil society the best qualified and dedicated candidates for election to the Committee; and to implement the Convention effectively in national law. This national implementation of the Convention is important so that no person responsible for this vile crime will have a safe haven from justice, so that the truth can be established about enforced disappearances, and so that victims will be able to obtain full reparations.

After three decades and even with the Convention, Amnesty International believes that the Working Group on Disappearances remains central to efforts to end enforced disappearances and to the fight against impunity. The Working Group has made an important contribution to combating disappearances and, charged with ensuring implementation of the 1992 Declaration, the Working Group continues to have an important contribution to make in encouraging states to make enforced disappearances a crime under national law.

We could not mark the occasion of the Working Group's anniversary without reflecting on the Working Group's significant contribution to the development of the independent expert system of Special Procedures. As the first of the thematic mechanisms, the Working Group on Disappearances was the pioneer of the functions that have come to characterize the Special Procedures in their efforts to "respond effectively" to allegations of violations. The Working Group established an urgent appeals procedure, as well as a mechanism for taking up individual cases without the prior exhaustion of domestic remedies and regardless of the states' treaty obligations. The Working Group undertook the first on-site mission by a thematic mechanism, which was to Mexico in January 1982, in order to establish direct contacts with the government and with relevant domestic stakeholders.<sup>xii</sup> Following the mission, the Working Group members issued a public press communiqué and presented a report of the visit to the Commission on Human Rights. More recently, the Working Group has adopted General Comments to clarify or interpret the 1992 Declaration. It has also been quick to respond to the issue of reprisals by establishing a dedicated mechanism to deal with cases of intimidation, persecution or reprisals against those concerned with disappearances.

The ability of the Working Group to develop its own working methods and to carry out its mandate independently and free from political interference has been key to its success. For that reason, Amnesty International believes that it has been important to preserve this basic tenet of the Special Procedures system, as recently challenged by some governments, for instance questioning whether the Working Group and other Special Procedures had a mandate to carry out the joint study on secret detention.<sup>xiii</sup>

As long as the Working Group continues to act on urgent cases, to raise individual cases with the state concerned until the fate or whereabouts of the person have been determined, to provide a mechanism to address reprisals, to have its findings considered by commissions of inquiry, and to produce reports on topics which it considers to be of significance to its mandate, the Working Group will continue to play a key role in global efforts to eradicate enforced disappearances.

Thank you Mr. Chairperson

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<sup>i</sup> UN Resolution 20 (XXXVI) *Question of missing and disappeared persons*, adopted by the Commission on Human Rights at its 1563<sup>rd</sup> meeting on 29 February 1980.

<sup>ii</sup> The term enforced disappearances is used when there are reasonable grounds to believe that someone has been apprehended by the authorities or their agents, or people acting with their acquiescence, but the authorities do not acknowledge this or conceal the person's fate or whereabouts and place them outside the protection of the law.

<sup>iii</sup> Amnesty International, *Equatorial Guinea: Four at risk of torture*, AI Index: AFR 24/003/2010, 26 February 2010.

<sup>iv</sup> Amnesty International, *Sri Lanka: Demand investigation into missing journalist*, AI Index: ASA 37/003/2010, 26 February 2010.

<sup>v</sup> Amnesty International, *Iran: Fears for demonstrators as authorities warn of zero tolerance amid ongoing arrests and trials*, AI Index: MDE 13/020/2010, 9 February 2010.

<sup>vi</sup> See for example Amnesty International, *United States of America: daily injustice, immeasurable damage*, AI Index: AMR 51/020/2010, 5 March 2010.

<sup>vii</sup> Amnesty International, *Pakistan: government must provide information on disappearance cases to the courts*, AI Index: ASA 33/001/2010, 5 February 2010.

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<sup>viii</sup> Amnesty International, *Serbia: Burying the past – impunity for enforced disappearances and abductions in Kosovo*, AI Index: EUR 70/007/2009, 8 June 2009.

<sup>ix</sup> Amnesty International, *Algeria: Legacy of impunity threatens future*, AI Index: MDE 28/003/2009, 28 August 2009.

<sup>x</sup> Amnesty International, *Bolivia: Military documents must be handed over if justice for past disappearance cases is to be achieved*, AI Index: AMR 18/003/2010, 23 February 2010.

<sup>xi</sup> Amnesty International is a member of the International Coalition Against Enforced Disappearances. For more information about the ICAED's work, visit <http://www.icaed.org>.

<sup>xii</sup> *Report of the Working Group on Enforced or Involuntary Disappearances*, Addendum, UN Doc. E/CN.4/1492/Add.1, 22 February 1982.

<sup>xiii</sup> *Joint study on global practices in relation to secret detentions in the context of countering terrorism of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, the Special Rapporteur on torture and other cruel, inhuman and degrading treatment or punishment, the Working Group on arbitrary detention and the Working Group on enforced or involuntary disappearances*, UN Doc. A/HRC/13/42, 26 January 2010.