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**ПООЩРЕНИЕ И ЗАЩИТА ВСЕХ ПРАВ ЧЕЛОВЕКА, ГРАЖДАНСКИХ,
ПОЛИТИЧЕСКИХ, ЭКОНОМИЧЕСКИХ, СОЦИАЛЬНЫХ И КУЛЬТУРНЫХ
ПРАВ, ВКЛЮЧАЯ ПРАВО НА РАЗВИТИЕ**

**Доклад Рабочей группы по насильственным или
недобровольным исчезновениям**

Добавление

МИССИЯ В ГОНДУРАС*

Резюме

По приглашению правительства Гондураса Рабочая группа по насильственным или недобровольным исчезновениям посетила Гондурас 31 января - 2 февраля 2007 года. Рабочая группа была представлена Председателем-докладчиком г-ном Сантьяго Коркуэрой и членом Группы г-ном Дарко Гёттлихером. Миссия проходила в рамках посещения четырех стран региона Центральной Америки, где зарегистрировано большое число дел, обстоятельства которых подлежат выяснению.

* Резюме доклада об этой миссии распространяется на всех официальных языках. Сам доклад содержится в приложении к резюме и распространяется только на том языке, на котором он был представлен, и на английском языке.

Основная цель посещения заключалась в первую очередь в сборе информации, которая позволила бы выяснить обстоятельства возможно большего числа дел, доведенных до сведения Рабочей группы и зарегистрированных ею. Вторая цель состояла в обсуждении возможных усилий, которые может предпринять правительство в сотрудничестве с Рабочей группой для рассмотрения дел о насильственном исчезновении в свете международных стандартов в области прав человека, в особенности Декларации о защите всех лиц от насильственных исчезновений ("Декларация"), принятой Генеральной Ассамблеей в резолюции 47/133 от 18 декабря 1992 года.

В ходе посещения члены Рабочей группы провели встречи с представителями Управления Национального уполномоченного по правам человека, секретариата по вопросам безопасности, Генеральной прокуратуры Республики, Верховного суда, в том числе Конституционной палаты, Комиссии по правам человека конгресса, министерства внутренних дел и юстиции, министерства безопасности, а также министерства иностранных дел. Перед проведением пресс-конференции по завершении посещения Рабочая группа сообщила министерству иностранных дел о своих предварительных замечаниях и выводах.

Члены Рабочей группы также встречались с представителями различных гражданских организаций и ассоциаций родственников жертв насильственных исчезновений, с которыми они поддерживали открытый и конструктивный диалог.

Настоящий доклад состоит из шести глав. Три первые главы носят общий характер, в них говорится о цели посещения и проведенных встречах. В третьей главе доклада изложен политический и исторический контекст насильственных исчезновений в Гондурасе.

В четвертой главе представлено общее описание конституционных и законодательных положений, действующих в отношении насильственных исчезновений в Гондурасе. В ней анализируются признание прав человека в Конституции, средства правовой защиты и законные процедуры, предусмотренные в Конституции, международные договоры, участником которых является Гондурас, и тот факт, что насильственное исчезновение не отнесено к числу уголовных преступлений в гондурасском Уголовном кодексе.

В последних двух главах перечисляются шаги, предпринятые правительством Гондураса как для прояснения обстоятельств дел, так и для применения положений Декларации в стране. Кроме того, в этих главах упоминаются существующие в стране препятствия, мешающие осуществлению Декларации.

В пятой главе рассматриваются вопросы безнаказанности и прав на установление истины и достижение справедливости. При рассмотрении вопросов безнаказанности упоминаются полученные Рабочей группой сообщения о том, что лица, предположительно совершившие серьезные нарушения прав человека, находятся на свободе, в их отношении не возбуждено расследований и не вынесено приговоров, а в некоторых случаях такие лица занимают государственные должности.

Что касается прав на установление истины и отправление правосудия, то упоминается тот факт, что к настоящему времени не было выдано ни одного ордера на арест в связи с нераскрытыми делами о насильственном исчезновении. В докладе также подчеркивается обязанность правительства Гондураса расследовать преступления и наказывать виновных в них лиц как в уголовных, так и в гражданских судах. В этой связи рассматриваются меры, принятые для проведения расследования и соблюдения обязательств государства перед международными органами.

В шестой главе говорится об усилиях, направленных на розыск исчезнувших лиц, и о праве на полное возмещение. В этой главе отмечаются похвальные усилия Гондураса по розыску исчезнувших лиц и содействию соблюдению прав родственников жертв насильственного исчезновения на справедливое и адекватное возмещение. Тем не менее, Рабочая группа считает целесообразным учредить государственную программу или план поисковых операций. Этот план должен осуществляться при активном участии гражданского общества и предусматривать полный доступ к соответствующей информации в осуществление права на установление истины. Наконец, Рабочая группа рекомендует создать систему обработки сообщений о насильственных исчезновениях, благодаря которой будет возможно в полной мере применять положения в области семейного права и наследования без ущерба для прав на установление истины и на достижение справедливости и получение справедливого и адекватного возмещения.

На основе сделанных Рабочей группой выводов был вынесен ряд рекомендаций, которые, как следует надеяться, будут в ближайшее время учтены и выполнены правительством Гондураса.

Среди рекомендаций, содержащихся в докладе, Рабочая группа особо отмечает следующие:

а) парламенту Гондураса рекомендуется включить насильственное исчезновение в Уголовный кодекс Гондураса в качестве отдельного преступления и принять новое законодательство, согласно которому:

- i) устанавливаются меры наказания, соразмерные с особой тяжестью этого преступления;
 - ii) соблюдается принцип, состоящий в том, что основным признаком противоправного поведения заключается в делящемся характере преступления;
 - iii) приказы вышестоящего начальника и чрезвычайные ситуации не рассматриваются в качестве обстоятельств для снятия ответственности с виновного лица или снижения таковой, а также учитываются положения пункта 3 статьи 17 Декларации и статьи VII Межамериканской конвенции о насильственных исчезновениях лиц, касающиеся исковой давности указанного преступления;
 - iv) предусматривается, что дела лиц, виновных в насильственном исчезновении, рассматриваются только в компетентных обычных судах каждого государства, а не в каких-либо других специальных трибуналах, в частности военных судах;
- b) Рабочая группа почтительно предлагает Гондурасу стать участником Международной конвенции для защиты всех лиц от насильственных исчезновений;
- c) Рабочая группа хотела бы рекомендовать правительству Гондураса предпринять шаги для реализации положений статьи 5 Декларации, согласно которой помимо уголовных санкций предполагаемые виновные в совершении насильственных исчезновений несут также общую гражданскую ответственность. Иными словами, они обязаны возместить жертвам нанесенный ущерб и должны понести административное наказание в виде отстранения от исполнения служебных обязанностей, согласно пункту 1 статьи 16 Декларации;
- d) несмотря на похвальные усилия, предпринимаемые правительством Гондураса для розыска исчезнувших лиц, Рабочая группа считает, что более ощутимого прогресса и лучших результатов можно было бы добиться благодаря созданию институционального механизма розыска исчезнувших лиц. Рекомендуются создать такой механизм в рамках законодательного акта, соблюдая Парижские принципы и обеспечив полный доступ к соответствующей информации во исполнение права на установление истины;
- e) В контексте предложенного в предыдущем пункте механизма Рабочая группа считает, что надлежит предусмотреть механизм комплексного возмещения, включающего

соответствующую компенсацию и другие средства, обеспечивающие, например, максимально возможную реабилитацию, при полном уважении права на правосудие и установление истины;

f) Рабочая группа настоятельно призвала правительственные и неправительственные организации укреплять сотрудничество в интересах решения проблем, связанных с теми случаями насильственного исчезновения, обстоятельства которых еще не выяснены. Она также рекомендовала ассоциациям родственников жертв исчезновений и другим правозащитным организациям поддерживать тесные контакты и координировать свои усилия в целях активизации деятельности и надлежащего решения поставленных задач.

Annex
Report of the Working Group on Enforced or Involuntary Disappearances

MISSION TO HONDURAS

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I. INTRODUCTION

1. At the invitation of the Government of Honduras, the Working Group on Enforced or Involuntary Disappearances visited the country from 31 January to 2 February 2007. The Working Group was represented by its Chairman-Rapporteur, Santiago Corcuera, and one of its members, Darko Götlicher. The mission was part of a regional visit to four Central American countries with high numbers of cases awaiting clarification: Guatemala, Honduras, El Salvador and Nicaragua. The Working Group visited Guatemala in September 2006 and, immediately following the visit to Honduras, went to El Salvador. As for Nicaragua, the Working Group is pursuing its dialogue with the authorities.

2. The purposes of the mission were, firstly, to gather information which might serve as a basis for clarifying as many as possible of the cases of enforced disappearance in Honduras which are still pending in the Working Group's files. The second purpose was to discuss possible efforts which might be made by the Government, in cooperation with the Working Group, to deal with cases of enforced disappearance in the light of international human rights standards, especially the Declaration on the Protection of All Persons from Enforced Disappearance ("the Declaration"), issued by the General Assembly in resolution 47/133 of 18 December 1992.

II. GENERAL OBSERVATIONS

3. During the visit the Working Group held interviews with representatives of the National Commissioner for Human Rights, the Secretariat of Security, the Office of the Attorney-General, the Supreme Court, including the Constitutional Court, the Congress's Human Rights Commission, the Ministry of the Interior and Justice, the Ministry of Security and the Ministry of Foreign Affairs. Before holding a press conference at the end of the visit, the Working Group informed the Ministry of Foreign Affairs of its observations and preliminary conclusions.

4. The Working Group also interviewed members of various organizations representing civil society and the relatives of victims of enforced disappearance, with whom it held an open and objective dialogue. In order to obtain a balanced picture, the Working Group considers it essential to hold information-gathering meetings with both official and civil-society sources, especially those concentrating on the search for victims of enforced disappearance.

5. The Working Group expressed its deep appreciation for the considerable support provided by the Government of Honduras in order to ensure the success of the mission. Similarly, the Group was able to note a constructive attitude on the part of the public officials it encountered towards the task of devising legal machinery and government policies aimed at clarifying the cases of enforced disappearance, and implementing a national policy of respect for human rights.

III. HISTORICAL AND POLITICAL CONTEXT

6. Honduras is situated in the centre of the Central American isthmus, and covers an area of 112,492 square kilometres. It shares borders with the republics of El Salvador, Guatemala and Nicaragua, and is bounded to the north by the Atlantic Ocean and the Caribbean Sea and to the south by the Pacific Ocean.

7. Honduras is a democratic and constitutional republic. The President of the Republic heads the executive and is directly elected by simple majority vote for a term of four years. The 1957 Constitution abolished the office of Vice-President, which was reinstated in 2002. The single-chamber Congress consists of 128 deputies and an equal number of alternates, elected for a term of four years. The judiciary consists of the Supreme Court of Justice, courts of appeal and the courts and other judicial bodies established by law.

8. Since its independence in 1821, Honduras has witnessed a number of rebellions and changes of government, especially those led by the armed forces during the twentieth century. A first coup d'état took place in 1956, carried out by a military junta. Owing to the tremendous power of the armed forces in Honduras at that time, the 1956 coup was followed by another in 1963, another in 1972, the fourth in 1975 and the last in 1978.

9. Only in 1980 were presidential elections held in the country, nearly 30 years after the armed forces seized power. Yet the armed forces retained a decisive role in the life of the country, until in 1999 the high command handed over control of the armed forces to the President, putting an end to the military's freedom of action which had lasted over 40 years.

10. As a result of the armed conflicts which took place in El Salvador and Nicaragua during the 1970s and 1980s, the armed forces in Honduras stepped up their counter-insurgency activities. Between 1980 and 1984, Honduran security forces carried out a systematic campaign of human rights violations, principally arbitrary detentions, torture, enforced disappearances and extrajudicial executions in the country. The most frequent targets were political activists, who were thought to be linked to the revolutionary movements in the region.

11. Testimony given by officers involved in these incidents indicates that most of these human rights violations were carried out by rebellious military units and the famous "Battalion 316", a death squad under the command of military intelligence officials.

12. During the 1980s, Honduras also became a launching pad for the anti-Sandinist forces known as the Contras, who were fighting the Marxist Government of Nicaragua. According to reports, the Contras were operating with support from the Salvadoran armed forces which were

fighting leftist guerrillas in that country. It has also been reported that the Contras were responsible for some of the enforced disappearances in Honduras.

13. On 29 December 1993, Honduras's National Commissioner for Human Rights released a report entitled "Los hechos hablan por sí mismos: informe preliminar sobre los desaparecidos en Honduras 1980-1993" ["The facts speak for themselves: Preliminary report on missing persons in Honduras, 1980-1993"]. This report was a landmark in the modern history of Honduras, constituting the first acknowledgement of the Government's responsibility for the disappearance of over 180 Hondurans and foreigners during the 1980s.

14. The report assigns responsibility for those disappearances to members of the Honduran armed forces and the Nicaraguan rebels operating in Honduras, and also states that some Argentine and United States intelligence units were instrumental in training the alleged perpetrators. The report also includes a controversial military document according to which the chief of the armed forces in 1993, General Luis Alonzo Discua, was commander of Battalion 316 in 1984. The report deplores the fact that at the time of its release none of the cases had been investigated, and no one had been punished.

15. Following the publication of the report, the Government undertook to prosecute those responsible for the violations, and to that end instructed the Special Attorney for Human Rights to investigate them. This post was created in 1994 as part of a series of government reforms designed, among other things, to reduce the army's political influence and reform the police.

16. At the international level, the Inter-American Court of Human Rights, in an unprecedented action, found in 1988 that a practice of disappearances carried out or tolerated by the Honduran authorities existed between 1981 and 1984, and that Honduras bore responsibility for involuntary disappearance in a specific case. The Court also found that the disappearances constituted a failure by the Government to guarantee the human rights affected by that practice, namely, the right to personal liberty, the right to personal integrity and the right to life.¹ Meanwhile, the Working Group has received 203 cases of enforced disappearance for consideration. Most of these disappearances were allegedly committed by members of the National Office of Investigations. Over the years, the Working Group has received communications from the Government containing information on the investigations carried out in the country to find the victims of enforced disappearance. However, and despite the Government's efforts, a large number of cases have not been clarified, owing to the fact that, if the Working Group is to be able to declare a case clarified, the fate or whereabouts of the victim must have been established. Sources have kept the Working Group informed of efforts made by the families of the victims to ascertain the whereabouts of their loved ones. Currently 125 cases are awaiting clarification.

IV. CONSTITUTIONAL AND LEGAL FRAMEWORK APPLYING TO ENFORCED DISAPPEARANCES

A. Recognition of human rights in the Constitution

17. The Constitution of Honduras enshrines many of the rights set out in international human rights law. Title III, on declarations, rights and guarantees, lists individual rights, social rights, children's rights and rights in the fields of labour, social security, health, education and culture and housing.

18. The Constitution makes no specific mention of enforced disappearance. However, it does safeguard all the rights which are violated when this offence is committed, such as the right to life, the right to personal liberty, the right to due process, physical, psychological and moral integrity, including the prohibition of torture or other cruel, inhuman or degrading punishment or treatment and the prohibition of arbitrary detention.

B. Legal remedies or safeguards offered by the Constitution

1. The remedy of *amparo* and habeas corpus

19. The Constitution also sets out safeguards, including the remedy of habeas corpus and *amparo*, as well as the option to seek a declaration of unconstitutionality and the review of legislation. A habeas corpus application may be made when a person is unlawfully detained or deprived of the right to enjoy individual liberty or, while in detention, suffers mistreatment, torture or any coercion, restriction or disturbance which is not necessary to ensure his or her individual security or order in the prison. An *amparo* application may be lodged in order to uphold or recover the rights acknowledged in the Constitution, or to secure a declaration, in specific cases, that a law or act of authority is not applicable because it violates the rights acknowledged in the Constitution.

20. The Constitutional Justice Act entered into force on 23 September 2005. Its purpose is to "elaborate on constitutional safeguards and measures upholding the constitutional legal order". The Act also regulates such measures as *amparo*, habeas corpus, habeas data and applications for constitutional review. Under article 2 of the Act, its provisions must be interpreted and applied in accordance with international human rights instruments which are in force in Honduras.

¹ *Velásquez Rodríguez* case. Judgement of 29 July 1988. Series C, No. 4, para. 148.

21. It is important to emphasize that the Constitutional Justice Act specifies the right to lodge an *amparo* application in order to uphold or recover not only the rights set out in the Constitution, but also those laid down in “treaties, conventions and other international instruments”.² In this regard, both the rights acknowledged in the Constitution and those set forth in international law enjoy protection under the law.

2. National Commissioner for Human Rights

22. In 1994 the Constitution was amended to set up the office of National Commissioner for Human Rights. The role of the National Commissioner is to guarantee the rights acknowledged in the Constitution and in the international treaties to which Honduras is a party. The functions and structure of the office are set out in the National Commissioner for Human Rights Act of 21 November 1995.

3. Legal status of international treaties

23. The Constitution lays down that international treaties entered into by Honduras form part of domestic law, and that in the event of conflict between the treaty and the laws, the international treaty shall prevail. In article 17, the Constitution also states that “when an international treaty affects a constitutional provision, it must be adopted through the same procedure as that governing an amendment to the Constitution before being ratified by the executive branch”.

24. In that regard, it is important to emphasize the content of paragraphs 3 and 4 of article 76 of the Constitutional Justice Act, relating to international treaties. Paragraph 3 provides that the application may be made “when at the time of approval of an international treaty which affects a provision of the Constitution, the procedure laid down in article 17 of the Constitution is not followed”, while paragraph 4 provides that the application may be made “when an ordinary statute contradicts the provisions of an international treaty or convention to which Honduras is a party”. As regards the international treaties in force in the country, and in particular the Inter-American Convention on Forced Disappearance of Persons, it should be mentioned that none was ratified in accordance with the provisions of article 17.

² Constitutional Justice Act, art. 41.1.

4. Amnesty Act

25. In 1991 a broad-ranging Amnesty Act entered into force, which applies to all persons who have been convicted, accused or investigated for political offences or related ordinary offences. In that regard, the Supreme Court has handed down two decisions. The first indicates that an amnesty cannot be granted before the judicial authorities have properly investigated the case. In the second, the Court declared the Act unconstitutional because its provisions were too vague and did not apply to ordinary offences.

C. International human rights treaties

26. Honduras is a party to the seven principal human rights treaties - the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the International Convention on the Elimination of All Forms of Racial Discrimination, the Convention on the Elimination of All Forms of Discrimination against Women, the Convention on the Rights of the Child and the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.

27. Honduras has also ratified the first Optional Protocol to the International Covenant on Civil and Political Rights, the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict and the Optional Protocol on the sale of children, child prostitution and child pornography. In July 2002, Honduras ratified the Rome Statute of the International Criminal Court.

28. At the regional level, Honduras is a party to the American Convention on Human Rights, the “Pact of San José”, the Inter-American Convention on Forced Disappearance of Persons and the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women, the “Convention of Belem do Para”.

D. Failure to class enforced disappearance as an offence in the Criminal Code

29. Carrying out enforced disappearance is not classified as a separate offence in the Honduran Criminal Code, as required by the Declaration (art. 3) and the Inter-American Convention on Forced Disappearance of Persons (art. 1, para. (d)).

30. Honduras submitted its initial report on the implementation of the International Covenant on Civil and Political Rights to the Human Rights Committee in 2005. In its concluding observations adopted on 13 December 2006 (eighty-eighth session), the Committee expressed its concern that the fact that enforced disappearance is not qualified as a crime in the Criminal Code has contributed to impunity, and recommended that Honduras should amend the Criminal Code in order to include the crime of enforced disappearance.³

31. During its meetings with government officials and members of the legislature, the Working Group raised this issue and observed a positive attitude towards the resolution of the problem of the lack of criminal legislation in relation to enforced disappearance. Both in the press release issued at the end of the mission and in the preliminary note submitted to the Human Rights Council on 20 March 2007, the Working Group referred to this situation, and drew great hope from the fact that the Honduran delegation, which was participating as a concerned State at that session of the Council, stated that it had already taken steps leading towards the drafting of a bill or amendments to criminal legislation, and for that purpose was even working towards the signing of a technical assistance agreement with the Office of the United Nations High Commissioner for Human Rights.

1. Elements required for the categorization of enforced disappearance as an offence

32. The Working Group considers that, in order for the categorization of enforced disappearance to be in keeping with international instruments in this field, it should display the following features.

33. As regards the punishment which should be set for this offence, the Working Group wishes to refer to the provision of article 4 of the Declaration that the punishment should be commensurate with the extreme seriousness of the offence. Accordingly, it is advisable that when considering the punishment which should be set, a comparative study of Honduran criminal law should be carried out, in order to ensure that less serious offences than enforced disappearance do not incur more severe punishments than that which is to be set for enforced disappearance.

34. Concerning the categorization of the offence of enforced disappearance, the Working Group wishes to point out that, as article 17 of the Declaration states, the essential characteristic of the unlawful act is that it is a continuing offence, in that when this behaviour occurs, its

³ Document CCPR/C/HND/CO/1, para. 5.

effects make themselves felt continuously, from the time when the first act is performed, such as detention, arrest or any other form of deprivation of liberty, followed by a refusal to acknowledge the perpetration of the act or to supply information on the fate or whereabouts of the victim, and until such time as the fate or whereabouts of the victim are clearly determined.

35. Concerning the perpetrator of the offence, it is important for the legislation in question to mention the content of article 6, paragraph 1, and article 7 of the Declaration, to the effect that “[n]o order or instruction of any public authority, civilian, military or other, may be invoked to justify an enforced disappearance ...” and that “[n]o circumstances whatsoever, whether a threat of war, a state of war, internal political instability or any other public emergency, may be invoked to justify enforced disappearances”.

36. Concerning the question of the possibility that criminal responsibility for the commission of this offence may cease as a result of prescription, the Working Group wishes to draw attention to the provisions of article 17, paragraph 3, of the Declaration, to the effect that “[s]tatutes of limitations, where they exist, relating to acts of enforced disappearance shall be substantial and commensurate with the extreme seriousness of the offence”. Nevertheless, it is obviously preferable for criminal legislation to rule out the possibility that this extremely serious offence might not be subject to prescription, as may be inferred from article VII of the Inter-American Convention on Forced Disappearance of Persons.

37. When this offence is committed in a context or situation in which it becomes a crime against humanity, it should not be subject to prescription in any circumstances. In this regard, it is recommended that Honduras should become a party to the Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity.

38. It is also recommended that the legal reform in this area should be in keeping with the provision of article 16, paragraph 2, of the Declaration that persons who have perpetrated enforced disappearances “shall be tried only by the competent ordinary courts in each State, and not by any other special tribunal, in particular military courts”, which is in conformity with the provisions of article IX of the Inter-American Convention on Forced Disappearance of Persons.

39. The Working Group wishes to remind Honduras, in order that it should be borne in mind in the legal reform in this area, that under article 5 of the Declaration, in addition to the applicable criminal penalties, the alleged perpetrators of enforced disappearances bear general civil liability, that is, they must compensate the victims for harm caused and must suffer administrative disqualification, in accordance with article 16, paragraph 1, of the Declaration. That is the case without prejudice to the international responsibility which Honduras bears in accordance with

the principles of international law, in the light of the above-mentioned article 5 of the Declaration.

40. The Working Group expresses the hope that the legislative process announced by the Government of Honduras will be duly completed and that the legislation in this area will not be confined to categorizing the offence of enforced disappearance as a separate offence, but will also address the other issues recommended in this report.

V. IMPUNITY AND THE RIGHT TO TRUTH AND JUSTICE

41. As already mentioned, the Working Group was informed that in 1991 a broad-ranging Amnesty Act entered into force, which applies to all persons who have been convicted, accused or investigated for political offences or related ordinary offences. In that regard, the Supreme Court has handed down two decisions. The first indicates that an amnesty cannot be granted before the judicial authorities have properly investigated the case. In the second, the Court declared the Act unconstitutional because the laws are too vague and do not apply to ordinary offences.

42. Although article 205, paragraph 16, of the Constitution does not allow the adoption of amnesty laws for offences other than political and related offences,⁴ the Working Group is concerned because, using the yardstick of the Declaration, certain similar measures exist in Honduras which result in a de facto amnesty for persons responsible for serious violations of human rights, including enforced disappearances.

43. In this regard, the Working Group was informed that alleged perpetrators of serious violations of human rights, including disappearances, are not only at large, but in addition are not the subject of any effective investigation, still less any conviction by a court. What is more, according to reliable reports, some of the alleged perpetrators of enforced disappearance (repeated reference was made to former members of “Battalion 316”) are still active, and in some cases occupy public posts in various organizations, a situation contrary to the provisions of article 16.1 of the Declaration.

44. In connection with the above, the Working Group was informed that to date no arrest warrants have been issued in the cases of enforced disappearance which the Working Group still has pending in its files, a situation contrary to the provisions of article 13, paragraph 6, of the Declaration.

⁴ Article V of the Inter-American Convention on Forced Disappearance of Persons states that “the forced disappearance of persons shall not be considered a political [offence] for purposes of extradition”.

45. In this regard, it is pertinent to mention that primary responsibility for investigating cases of enforced disappearance and punishing those responsible for this offence is borne by the State, so that even if civil-society organizations might display reluctance or lack of interest in cooperating by providing information on pending cases, the State should not suspend its investigations or close the cases in question, but on the contrary open State-run channels of information which might still be protected.

46. Under article 5 of the Declaration, in addition to the applicable criminal penalties, the alleged perpetrators of enforced disappearances bear general civil liability, that is, they must compensate the victims for harm caused and must suffer administrative disqualification, in accordance with article 16, paragraph [1], of the Declaration. That is the case without prejudice to the international responsibility which Honduras bears in accordance with the principles of international law, in the light of the above-mentioned article 5 of the Declaration.

47. In order to overcome the prevailing situation of impunity, there is a clear need to bring the legal framework applying to enforced disappearances into line with international human rights law, as recommended in this report.

48. According to official reports, progress has been made in the investigations, and it was pointed out to the Working Group that, despite the material and economic difficulties involved, the Government is making considerable efforts. For example, it was emphasized that in the field of forensic medicine *ante mortem* information is being updated and a forensic team from a South American country has been engaged to help in identifying the bodies which have been exhumed. It was emphasized that 68 skeletons have been recovered and 4 sets of human remains have been identified and returned to the families concerned.

49. The Working Group was also informed of the existence and operation of the Inter-agency Human Rights Group, which is coordinated by the Deputy Procurator-General and the representatives of the Ministries of Labour, the Honduran Institute for the Family (INHFA) and the Honduran Institute for Women (INAHM). It was also reported to have representatives of the Attorney-General, the Public Prosecutor, the Supreme Court and the Ministry of Foreign Affairs, in its capacity as Executive Secretariat. The purpose of this machinery, according to reports, is to focus on the State's commitments *via-a-vis* international organizations, in terms of the drafting and presentation of reports, as well as dealing with cases pending in the inter-American system and maintaining channels of communication with civil-society organizations in relation to human rights.

50. Notwithstanding the above, there is a need for the Government of Honduras to display greater resolve to initiate and sustain effective investigations into alleged perpetrators of

enforced disappearances. To that end, as in any case involving offences committed by State officials, it is advisable that the attorneys or ministerial authorities responsible for carrying out such investigations, as well as those with the power to arrest the alleged perpetrators and bring them before the judicial authorities, should be independent of the executive branch and possess material resources and adequate staff who are well trained to perform their tasks.

51. The launching of a special attorney's office with the above-mentioned features would allay the concerns expressed to the Working Group by various non-official stakeholders, who argued in particular for the Criminal Investigation Directorate to operate functionally under the Public Prosecutor's office, but fall administratively under the Ministry of Public Security.

VI. THE SEARCH FOR MISSING PERSONS AND THE RIGHT TO FULL, FAIR AND ADEQUATE REPARATION

52. Since its establishment, the Working Group has received for consideration 203 cases of enforced disappearance in Honduras, dating principally from 1981-1984. The Working Group still has 125 cases pending clarification as to the whereabouts or fate of the victims in these cases. As already mentioned, the main purpose of this mission was to gather information which might serve as a basis for clarifying as many as possible of the cases which are still pending in its files. The Working Group wishes to express its satisfaction at having gathered information from official and non-governmental sources which may possibly help to clarify some of these cases. On the basis of information supplied by the Government of Honduras, the Working Group decided, at its eighty-second session, that two cases would be considered to have been clarified if, within six months of having been informed of the response, the relatives do not make comments which call for further consideration by the Working Group.

53. However, during the visit, the Working Group received a new request for acceptance of a case of enforced disappearance which occurred in December 2006. The case was transmitted to the Government of Honduras after being studied by the Working Group, and it is hoped that the authorities will launch appropriate investigations with a view to clarification.

54. The Working Group found that the Government of Honduras is engaged in some praiseworthy efforts to search for disappeared persons. The Working Group also noted the praiseworthy efforts of the Government of Honduras to ensure respect for the right of the relatives of victims of enforced disappearances to fair and adequate reparation.

55. However, the Working Group is convinced that greater progress could be made and better results obtained through the launching of a search mechanism for missing persons which constitutes a genuine State-run plan or programme.

56. For that purpose, the search plan or programme should be entrusted to a body created by act of parliament which displays the characteristics of a national human rights institution, along the lines set out in the Principles relating to the Status of National Institutions for the promotion and protection of human rights (the Paris Principles). In other words, it should benefit from the involvement of civil-society organizations, and particularly that of the relatives and loved ones of missing persons, in accordance with article 13, paragraphs 1 and 4, of the Declaration.

57. This body should also benefit from the active involvement of any authorities which might possess important information on pending cases and might still be under the cloak of State secrecy for security reasons.

58. The Working Group learned that the Transparency and Access to Public Information Act had recently been enacted. Article 17 of the Act lists cases in which public information must be classed as restricted. Notwithstanding any restriction which may exist under Honduran law, it would be essential for the body to be set up to implement the search plan or programme for missing persons to have full access to all important information, on the understanding that the body should maintain the necessary confidentiality when a specific case so demands, especially with regard to criminal investigations being carried out by the competent investigating body, which, as has already been pointed out, must also be independent of the executive branch.

59. The search plan or programme suggested in the above paragraphs should not stand in the way of the introduction of a system of enforced disappearance declarations, which would not entail the suspension or halting of investigations to determine the fate or whereabouts of the victims and punish those responsible, but would make it possible to properly apply relevant rules in relation to family law and inheritance, as well as opening up the possibility that the State might acknowledge responsibility and embark on the development of a programme of comprehensive redress for the relatives and loved ones of the missing persons, in keeping with article 19 of the Declaration; in other words, one which should include adequate compensation and other reparation such as the fullest possible rehabilitation, in a spirit of full respect for the right to justice and truth.

VII. CONCLUSIONS AND RECOMMENDATIONS

60. **Firstly, the members of the Working Group wish to express their deep appreciation for the considerable support provided by the Government of Honduras in order to ensure the success of this mission. The Working Group was able to perform its tasks quite freely, interviewing senior officials of the Government of Honduras and members of various non-governmental organizations and organizations of relatives of victims of enforced disappearance, with whom it held an open and objective dialogue. In order to obtain**

a balanced picture, the Working Group considers it essential to hold information-gathering meetings with both official and civil-society sources, especially those concentrating on the search for victims of enforced disappearance.

61. The principal purposes of the visit were to gather information which might serve as a basis for clarifying cases of enforced disappearance in Honduras and to discuss possible efforts which might be made by the Government, in cooperation with the Working Group, to deal with cases of enforced disappearance in the light of international human rights standards, especially the Declaration.

62. As regards clarification of cases pending before the Working Group, it may be concluded that, despite some praiseworthy efforts on the part of the Government to clarify some of these cases, those efforts appear to have been isolated and unsystematic, underlining the clear lack of a comprehensive search plan for missing persons.

63. The same conclusion may be drawn with regard to a few favourable outcomes in relation to redress for relatives of victims of enforced disappearance.

64. Concerning the legal framework in Honduras applying to enforced disappearances, the Working Group concludes that major gaps remain, particularly in relation to the lack of a separate statutory definition which adequately covers the offence of enforced disappearance. The Working Group welcomes reports that Honduras has established contact with the Office of the United Nations High Commissioner for Human Rights in order to secure the technical assistance required to implement the necessary legislative reforms in this area.

65. As a result of the existing legal loopholes, and other limitations detailed in this report, a climate of impunity has prevailed in Honduras equivalent to the measures referred to in article 18 of the Declaration, which should be avoided.

66. In the light of the above, the Working Group wishes to put forward the following recommendations, while expressing the hope that they will be taken up and put into effect by the Government of Honduras as soon as possible.

(a) It is recommended for the attention of the Honduran Parliament that enforced disappearance should be classed as a separate offence in the Criminal Code, and that the legislation to be adopted should:

- (i) Specify penalties which are commensurate with the extremely serious nature of the offence;**
- (ii) Respect the principle that the essential characteristic of the unlawful conduct is that it is a continuing offence;**
- (iii) Not class orders from a superior or emergency situations as factors which relieve the perpetrator of responsibility or diminish it, but take account of the provisions of article 17, paragraph 3, of the Declaration and article VII of the Inter-American Convention on Forced Disappearance of Persons, in relation to the statute of limitations for the offence in question;**
- (iv) Stipulate that those responsible for the offence of enforced disappearance shall be tried only by the competent ordinary courts, in each State, and not by any other special tribunal, in particular military courts;**

(b) The Working Group respectfully suggests that Honduras should become a party to the new International Convention for the Protection of All Persons from Enforced Disappearance;

(c) The Working Group wishes to recommend to the Government of Honduras that it should take steps to put into effect the provisions of article 5 of the Declaration, which provides that, in addition to the applicable criminal penalties, the alleged perpetrators of enforced disappearances bear general civil liability. That is, they must compensate the victims for harm caused and must suffer administrative disqualification, in accordance with article 16, paragraph 1, of the Declaration;

(d) Despite the praiseworthy efforts made by the Government of Honduras to search for missing persons, the Working Group considers that greater progress could be made and better results obtained if there was an institutional search mechanism for missing persons. It is desirable that such a mechanism should be set up through legislation, that it should comply with the Paris Principles and that it should enjoy full access to important information in pursuance of the right to truth;

(e) In the context of the mechanism suggested in the preceding paragraph, the Working Group considers that a comprehensive programme of redress should be instituted, to include adequate compensation and other means of redress, such as the fullest possible rehabilitation, in a spirit of full respect for the right to justice and truth;

(f) The Working Group urges the governmental and non-governmental bodies to establish cooperative links with a view to solving the problems related to cases of enforced disappearance which have not yet been clarified. It also recommends that the organizations of relatives of missing persons and other human rights organizations should maintain close links and coordination so as to strengthen their activities and ensure the achievement of their objectives;

(g) The Working Group invites the Government of Honduras to submit to the Working Group, within 90 days from the date of publication of this report, a timetable indicating the steps that will be taken to put into effect the recommendations of the Working Group, the dates scheduled for each of these steps and the dates on which it is expected to complete the implementation of the recommendations.
