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Agenda item 10(a)

QUESTIONS OF THE VIOLATION OF HUMAN RIGHTS
ANY FORM OF DISCRIMINATION, IN PARTICULAR:
QUESTIONS OF THE VIOLATION OF HUMAN RIGHTS

Report of the Working Group on the Question of Enforced or Involuntary Disappearances

Annex

1. The Working Group on Enforced or Involuntary Disappearances held a meeting on 8 February 1984 at the United Nations Office at Geneva during the fortieth session of the Commission on Human Rights to review information received since the Group's twelfth session (5 to 9 December 1983). The present document is an addendum to the report to the Commission on Human Rights adopted by the Group at its twelfth session and describes the most important subsequent developments. At its thirty-eighth session, the General Assembly adopted resolution 38/94 entitled "Question of enforced or involuntary disappearances" without a vote on 1 December 1983. The text of the resolution is reproduced in annex I to this addendum.

Information received from Governments

2. Since the adoption of its reports in December 1983, the Working Group has received information from the Governments of Argentina, Bolivia, El Salvador, Guatemala, Honduras, the Philippines, South Africa, and Zaïre. The information provided by these Governments is on file with the Secretariat and available for consultation by members of the Commission.

Argentina

3. In a note verbale dated 25 January 1984, the Permanent Mission of Argentina to the United Nations Office at Geneva informed the Working Group of the establishment of the National Commission on the Disappearance of Persons by Decree no. 187 of 15 December 1982. The setting up of this Commission was one of many legal, administrative and humanitarian measures taken by the Government with a view to clarifying in depth the painful question of disappeared persons; the Permanent Mission cited the preamble to Decree no. 187 as an eloquent statement of the Government's purposes. The Commission is composed of politically independent persons of the highest reputation in their respective fields of activity; the following members have been appointed: Ricardo Colombero (jurist), René Favaloro (cardiologist), Hilario Fernández Long (former vice-rector of the University of Buenos Aires and former dean of the Faculty of Engineering), Carlos L. Gitrinoni (bishop of the Evangelical Methodist Church), Gregorio Klimovsky (University Professor), Marshal Meyer (Rector of the Latin American Political Seminar), Jaime Francisco de Nevares (Bishop of Neuquén), Eduardo Rabossi (jurist), Magdalena Ruiz Guirazú (journalist) and Ernesto Sabato (writer). In addition, both chambers of the legislature were asked to appoint three representatives each as members of the Commission. The Permanent Mission stated that the Government would keep the United Nations and the Working Group informed on the progress and results of the investigations carried out by the National Commission and other constitutional organs.

4. The mandate of the National Commission includes receiving complaints and evidence of disappearances and transmitting them to the courts if they relate to the commission of offences; checking the fate or whereabouts of missing persons and determining the whereabouts of children removed from the care of their parents as a result of measures allegedly taken to combat terrorism, and, where appropriate, submitting such cases to the agencies and courts responsible for protecting minors. The Commission is also to report to the courts any attempt to conceal, remove or destroy evidence concerning disappearances and to issue a final report with a detailed explanation of the events investigated within 180 days of its constitution.

5. In carrying out its mandate, the National Commission is empowered to request reports, information and documents, from all officials of the National Executive Power, its subordinate agencies and autonomous bodies, the armed forces and security forces; the Commission may also request access to whatever premises it decides to visit for its official purposes. The agencies and their officials are under an obligation to provide such information and facilitate such access when requested. Provision is also made for the budgetary arrangements and staff needed for the Commission's work.

6. In a meeting on 6 January 1984 with the Assistant Secretary-General, Centre for Human Rights, and prior to the transmission of the above-mentioned note verbale, a representative of the Government of Argentina provided initial information on the establishment of the National Commission on the Disappearance of Persons. He requested that the Working Group should be informed and that the United Nations and the Working Group should provide assistance to the National Commission to the extent possible within the applicable regulations. Subsequently, in a letter dated 24 January 1984, the National Commission extended an invitation to visit Argentina with a view to providing the National Commission with information and assistance in its work on disappearances. It also requested that the information on disappearances - especially the most complete lists of missing persons - be sent to it as soon as possible to assist it in its investigations. The Working Group decided to thank the National Commission on the Disappearance of Persons for the invitation to visit Argentina and to consider such a visit at its next session, should its mandate be renewed by the Commission on Human Rights and the Economic and Social Council. The Group also decided to make available to the National Commission the information in its files in accordance with the established practice and subject to any requests for confidentiality from the sources; the Group requested the Secretariat to work out the practical details with the National Commission. Because of the importance the Working Group attaches to national bodies established to investigate reports of disappearances (see chapter VII of its report), the text of Decree No. 187 of 15 December 1983 is reproduced in annex II.

Bolivia

7. By letters dated 9 December 1983 and 4 January 1984, the Government of Bolivia transmitted information provided by the Bolivian National Commission for the Investigation of Disappeared Persons on six cases of enforced or involuntary disappearances, four of which had been brought to the attention of the Government by the Working Group. On two cases the Government reiterated information which it had already provided to the United Nations Special Envoy on the situation of human rights in Bolivia: 1/ the body of one person had been found and identified, however, the Government added that, since some relatives had doubts about the identity of the corpse, the investigation was continuing. The other person was at liberty. The Government reported that the investigation was continuing on two other cases. 2/ Finally, with regard to the two cases which had not been dealt with by the Working Group, the Government stated that one person was at liberty and that an investigation was continuing on the other case. To date, the Government has provided information on 10 of the 32 cases transmitted to it by the Working Group; in nine instances the Government's reply has clarified the case.

1/ E/CN.4/1983/22 and Add. 1.

2/ The Working Group has received information on one of these cases from a non-governmental source indicating that the person is at liberty.

El Salvador

8. Since the adoption of its report, the Working Group has received information from the Government of El Salvador on 29 reports transmitted to the Government by it. The breakdown of the information provided by the Government is as follows, 10 persons are at liberty, five are in prison, two are dead, and there are no records of detention on 12 others. The Working Group, to date, has received 284 responses from the Government relating to the 1,782 cases transmitted to it; in 229 instances the Government's answer has clarified the case.

Guatemala

9. By a note verbale dated 13 January 1984, the Permanent Mission of Guatemala to the United Nations Office at Geneva transmitted to the Working Group the observations of the Government concerning 37 reports of enforced or involuntary disappearances that the Working Group had brought to the Government's attention on 31 October 1983. The Government stated that the majority of the events reported were the result of the climate of subversion and political upheaval that Guatemala had suffered in previous years and that had jeopardized the country's internal and international image. The Government also stated that it was making every effort to clarify the facts and that it wished to establish a régime of legality in which human rights would be strictly respected; the observance of human rights was one of the fundamental objectives of the Guatemalan legal system.

Honduras

10. By letters dated 17, 24 and 27 January 1984, the Permanent Mission of Honduras to the United Nations Office at Geneva transmitted information on 18 reports of enforced or involuntary disappearances which had been brought to the Government's attention by the Working Group. On four cases the Government stated that the persons had been handed over to the authorities of a neighbouring country in May 1981. The Working Group has already received the same information from a non-governmental source. The Government reported that it had no information on the person's whereabouts in six cases; the Government had previously transmitted information regarding two of these cases in a letter dated 31 August 1983 stating that the persons had not been arrested. The Government reported that an investigation was continuing on eight cases. In 14 of the 18 cases, the Government stated that it had requested INTERPOL in 13 countries to assist in the investigation. Concerning the exhumation of a corpse believed by some to be that of a foreign national who reportedly disappeared in Honduras, the Permanent Mission, in letters dated 4 January and 24 January 1984, transmitted information provided by the Supreme Court of Honduras indicating that no formal petition of exhumation had been presented. The Government of Honduras has submitted information on all 69 of the cases transmitted to it; in 9 instances the information has clarified the case.

Philippines

11. By a letter dated 8 February 1984 the Permanent Mission of the Philippines to the United Nations Office at Geneva informed the Working Group that on 24 January 1984 the President of the Philippines had released 84 detainees and granted executive clemency to 13 others. The Permanent Mission stated that the names of those persons as well as further information relating to the Philippines would be furnished to the Working Group as soon as they were received.

South Africa

12. By a letter dated 7 January 1982, the Minister of Justice of South Africa to the United Nations Office at Geneva provided information and observations on the legal provisions in the Security Act 1982, in the light of the findings in the Group's report (chapter III). With regard to the legal provision dealt with in the Group's report, the Government did not provide practical evidence in support of allegations that involuntary appearances took place in South Africa. The Government pointed out that it is quite accurate to say that "no one is entitled to receive official information relating to or obtained from a person restricted under section 28 of the Internal Security Act 1982, or detained in terms of section 28 of that Act (see paragraph 118 of the report). With regard to restricted persons, the Government said that in practice they were either restricted to a specified ministerial district or other area prohibited from visiting places within their residential premises during the periods appearing in the restriction notice, restricted persons were further prohibited from communicating with persons in respect of whom prohibitions under the Internal Security Act were also in force in that restriction of communication applied to the persons, next of kin who were restricted might communicate with each other. Thus restricted persons were not prohibited from being in contact with their relatives. The Government further reported that the names of persons held under sections 19 or 28 of the above-mentioned Act are not to be reported to the House of Assembly and the next of kin were informed of detentions under section 28.

13. With regard to detention under section 28 of the Internal Security Act, 1982, the Government stated that the relatives of a detainee must be notified unless the official concerned considered that such notification would hinder the investigation or create danger to the security of the State, the latter provision is not a blanket prohibition. In the majority of cases the next of kin are informed immediately of an arrest. Provision is also made in the Internal Security Act for the detainee to be visited; they are to be visited not less than once a month by a magistrate and a district surgeon, and he must also be visited by a medical officer of police on a regular basis (such visits must take place at least once every 14 days and are unannounced). The Act also provides that the detainee must have access to a detainee with the consent of, and subject to the conditions determined by, the Minister of Justice to be provided for the detainee. The next of kin have been allowed to visit detainees. The Government also pointed out that the reference in the Group's report to the detention of witnesses in terms of section 31 of the Internal Security Act 1982, can not relate to "disappearances", since such disappearances are limited to cases, in the majority of cases witnesses were detained for a short period and, while access to them was not open to the public, their names were not mentioned, the fact of their being detained was generally not known.

14. The Government also referred to section 31 of the Internal Security Act, 1982, which made it impossible for a person to "disappear". The Commissioner of Police is required to report to the Minister of Justice the names of persons possible after an arrest and to provide information on the detention and the place of detention, not necessarily to the next of kin. Section 31 for a period of 14 days except under a certificate of necessity granted by the Minister of Justice. The Commissioner of Police shall report to the Minister once a month with reasons why a detainee should not be released; if the person has not been released within a month, the Commissioner for have to be adduced before a Board of Review. The detainee shall be notified of the

representations to the Minister of Law and Order at any time regarding his detention or release. The Government further stated that administrative measures had been taken whereby the Director of Security Legislation, the magistrate of the district where the person was detained, the district surgeon and the Inspector of Detainees were notified of the detention. Consequently, it was incorrect to infer that a detainee could disappear when so many people had knowledge of an arrest and records thereof were kept by different instances.

15. The Government further stated that the authorities in South Africa are not indifferent to the question of alleged disappearances and, should a formal complaint be lodged in that regard, proper investigation will be conducted by the competent authorities. The Government said that in many cases persons had used false identities or had secretly left the country and were then reported missing.

16. With regard to the specific reports of disappearances in South Africa dealt with by the Working Group, the Government stated that three persons had been arrested and released and no information is available on their whereabouts, with regard to a fourth case, the South African authorities had no knowledge of the persons whereabouts. Concerning the cases reportedly occurring in Namibia, one was before the Windhoek Supreme Court and, since the case was sub judice, the Government could not at present supply further details. With regard to two other disappearances, the State denied the allegations of arrest and detention by the security forces, a high ranking police officer had been charged with investigating the allegations, however, no evidence could be found to implicate the security forces in the disappearances. Finally, the Government reported that the persons detained at Harbapram, Oriental, receive regular visits from the International Committee of the Red Cross and that they were in contact with their next of kin.

Zaire

17. By a letter dated 11 January 1984, the Permanent Mission of Zaire to the United Nations Office at Geneva transmitted information on the cases of enforced or involuntary disappearances which had been brought to the Government's attention by the Working Group. According to the information provided by the Government, the whereabouts of these persons have not been determined. The Government stated that 12 persons were arrested and accused of subversive activities, they were first detained in prison and are now confined to their respective villages where they receive material and financial aid from the local authorities. In two other cases, the Government stated that the persons were at liberty as a result of an Amnesty Law passed by the Government in 1975. In another case the Government reported that the person had been released, the Working Group had already received that information from a non-governmental source. The Government indicated in its response that, as a State where the rule of law prevailed and a full member of the United Nations, the Republic of Zaire could not fail to apply the general principles of law and of the Charter of the United Nations to which it had freely adhered.

Adoption of this addendum

18. On 8 February 1984, the present addendum to the report of the Working Group was adopted by the following members: Viscount Colville of Culross (United Kingdom), Chairman/Rapporteur, Jonas K.D. N'oni (Ghana), Agha Hilaly (Pakistan), and Ivan Tosevski (Yugoslavia). The text of this addendum was approved by Luis A. Varela Quiros (Costa Rica) in a telex dated 10 February 1984.

Annex I

General Assembly Resolution 38/94
(adopted on 16 December 1983)

Question of enforced or involuntary 'disappearances' *

The General Assembly,

Recalling its resolution 33/173 of 20 December 1978, entitled "Disappeared persons", and its resolution 37/180 of 17 December 1982 on the question of enforced or involuntary disappearances,

Bearing in mind Commission on Human Rights resolution 1983/20 of 22 February 1983, by which the Commission decided to extend for one year the term of the mandate of the Working Group on Enforced or Involuntary Disappearances, and Economic and Social Council Decision 1983/141 of 27 May 1983, by which the Council approved the Commission's decision,

Convinced that the action taken, in consultation with the Governments concerned, to promote the implementation of the provisions of General Assembly resolution 33/173 and other United Nations resolutions relevant to the plight of missing or disappeared persons should be continued,

Expressing its emotion at the anguish and sorrow of the families concerned, who should know the fate of their relatives,

1. Welcomes the decision taken by the Commission on Human Rights to extend for one year the term of the mandate of the Working Group on Enforced or Involuntary Disappearances, as laid down in Commission resolution 1983/20;

2. Expresses its appreciation to the Working Group for the work it has done and to those Governments that have co-operated with it;

3. Calls upon the Commission on Human Rights to continue to study this question as a matter of priority and to take any step it may deem necessary to the pursuit of the task of the Working Group when it considers the report to be submitted by the Group at its fortieth session;

4. Appeals to all Governments to provide the Working Group and the Commission on Human Rights with the full co-operation warranted by their strictly humanitarian objectives and their working methods based on discretion;

5. Renews its request to the Secretary-General to continue to provide the Working Group with all necessary assistance.

* The final edited text of this resolution will be published in Official Records of the General Assembly, Thirty-eighth Session, Supplement No. 47 (A/38/47).

Annex II

Decree No. 187 of 15 December 1983 issued by the
Argentine National Executive Power

IN VIEW OF the report of the Ministry of the Interior, and

WHEREAS

The National Executive Power has already given effect, through a number of draft laws and decrees, to its decision that the extremely serious violations of human rights committed in our recent past should be investigated and, if appropriate, punished by the law;

As has repeatedly been stated, however, the question of human rights transcends the governmental sphere and concerns civil society and the international community;

With regard to the latter, its legitimate interest is taken into account in the draft texts submitted to Congress for the approval of a number of international covenants on human rights, which include the compulsory jurisdiction of an international court having competence in that area;

With regard to civil society, it is necessary to satisfy its legitimate interest in playing an active part in shedding light on the tragic events in the course of which thousands of persons disappeared, provided that such participation should not interfere with the activities of the bodies constitutionally empowered to investigate or punish such acts, in other words, the courts;

It is therefore considered appropriate to set up a national commission, consisting of eminent persons known for their zeal in the defence of human rights and their good name in public affairs in the country, to determine what happened to the persons who have disappeared;

It is necessary to invite both Chambers of the Legislative Power, as direct representatives of the people and of the provinces of the nation, to appoint members of the Commission;

In order to ensure that the Commission is a complement to, rather than a substitute for, the work of the judiciary, its functions must be circumscribed to receiving complaints and evidence, which it shall subsequently transmit to the courts when they can be linked to the commission of offences, and to ascertaining the whereabouts of persons who have disappeared, a task which must be dissociated from the determination of responsibilities;

This investigative work must be regulated in such a way that it is not distorted for purposes which have nothing to do with the strict task described above;

To ensure that the Commission is as efficient as possible, all officials of the National Executive Power, and of its subordinate and autonomous agencies, shall be obliged to co-operate in every way, including by the provision of documents and information in their possession and access to certain premises;

The Commission's activities should have a definite time span, to ensure that the tragic need to investigate these events does not extend beyond the necessary period and undermine the efforts that must be made to strengthen in the future a democratic coexistence which respects human dignity;

The Commission must be given the necessary technical, financial and staffing resources to carry out its work effectively;

The Commission should be requested to conclude its work by submitting a report containing a detailed explanation of the events investigated, to enlighten national and international public opinion.

Therefore,

THE PRESIDENT OF THE ARGENTINIAN NATION

DECREES:

ARTICLE 1. A National Commission shall be set up for the purpose of shedding light on the events connected with the disappearance of persons which have occurred in the country.

ARTICLE 2. The Commission's functions shall be confined to the following specific activities:

- (a) To receive complaints and evidence concerning those events and immediately to transmit them to the courts if they relate to the presumed commission of offences;
- (b) To ascertain the whereabouts of the missing persons, as well as all other circumstances connected with their location;
- (c) To determine the whereabouts of children removed from the care of their parents or guardians as a result of actions undertaken for the alleged purpose of the repression of terrorism, and where appropriate to call on the agencies and courts for the protection of juveniles to act.
- (d) To report to the courts any attempt to conceal, remove or destroy evidence concerning the events which it is sought to elucidate.
- (e) To issue a final report with a detailed explanation of the events investigated ONE HUNDRED AND EIGHTY (180) days after being constituted.

The Commission may not express any opinion on events or circumstances falling within the exclusive sphere of competence of the judiciary.

ARTICLE 3. The Commission shall have the power to require all officials of the National Executive Power, of its subordinate agencies, of autonomous bodies and of the armed forces and security forces to submit to it reports, information, and documents, and also to allow it access to whatever premises the Commission decides to visit for its official purposes. Officials and agencies are under the obligation to provide such reports, information and documents and to facilitate such access when requested.

ARTICLE 4. Government officials, including members of the armed forces and security forces, must provide in writing any statement they are called upon to make. Private individuals shall not be under the obligation to make statements.

ARTICLE 5. The Commission shall consist of SIXTEEN (16) members. The persons whose names appear in annex 1 to this Decree are designated for this purpose.

ARTICLE 6. The Chambers of the Honourable Congress of the Nation are invited to appoint THREE (3) representatives each as members of the Commission.

ARTICLE 7. The Commission shall establish its own rules of procedure, elect a chairman who will represent it, and appoint whatever secretaries it considers necessary. It may also appoint whatever technical staff it considers appropriate.

The Commission shall take decisions by simple majority.

The Commission shall be dissolved at the moment of submitting the report referred to in article 2.

ARTICLE 8. The official title of the Commission shall be "National Commission on the Disappearance of Persons" and its headquarters shall be the San Martín Cultural Centre of the City of Buenos Aires.

ARTICLE 9. The budgetary arrangements necessary to carry this Decree into effect shall be made and the equipment and temporary staff needed by the Commission shall be provided.

ARTICLE 10. This Decree shall be issued, published, transmitted to the National Official Records Directorate and filed.

DECREE No. 187.

(signed) Dr. Antonio A. TROCCOLI
Minister of the Interior