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International Convention for the Protection of All Persons from Enforced Disappearance

Report of the Secretary-General

Summary

In its resolution 63/186 on the International Convention for the Protection of All Persons from Enforced Disappearance, the General Assembly called upon States which had not yet done so to consider signing and ratifying the Convention as a matter of priority, as well as to consider the option provided for in articles 31 and 32 of the Convention regarding the Committee on Enforced Disappearances. It also requested the Secretary-General and the United Nations High Commissioner for Human Rights to intensify efforts to assist States to become parties to the Convention and requested United Nations agencies and organizations to continue undertaking efforts to disseminate information on the Convention, to promote understanding of it, to prepare for its entry into force and to assist States parties in implementing their obligations under the instrument. In resolution 63/186, the Assembly also requested the Secretary-General to submit to it, at its sixty-fourth session, a report on the status of the Convention and the implementation of the resolution. The present report is submitted in accordance with that request.

In a note verbale dated 8 May 2009, the Secretariat invited Governments to transmit any information pertaining to the implementation of resolution 63/186. Replies have been received from the Governments of Argentina, Austria, Costa Rica, Greece, Guatemala, Iraq, Kazakhstan, Lebanon, Madagascar, Monaco, the Netherlands, Paraguay, Qatar, Slovenia, Switzerland and Ukraine. The responses of those Governments are summarized in the present report.

* A/64/150.



The present report also includes information on the activities of the Office of the United Nations High Commissioner for Human Rights and the Working Group on Enforced or Involuntary Disappearances in relation to the dissemination and promotion of the International Convention for the Protection of All Persons from Enforced Disappearance.

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I. Introduction

1. In resolution 63/186, entitled “International Convention for the Protection of All Persons from Enforced Disappearance”, the General Assembly underlined its concern about the increase in enforced or involuntary disappearances in various regions of the world, including arrest, detention and abduction, when these are part of or amount to enforced disappearances, and by the growing number of reports concerning harassment, ill-treatment and intimidation of witnesses of disappearances or relatives of persons who have disappeared.

2. In the resolution, the General Assembly welcomed the adoption on 20 December 2006 of the International Convention for the Protection of All Persons from Enforced Disappearance, and looked forward to its entry into force at an early date. The Assembly called upon States which had not yet done so to consider signing and ratifying the Convention as a matter of priority, as well as to consider the option provided for in articles 31 and 32 of the Convention regarding the Committee on Enforced Disappearances.

3. In the same resolution, the General Assembly requested the Secretary-General and the United Nations High Commissioner for Human Rights to intensify efforts to assist States to become parties to the Convention, with a view to achieving universal adherence.

4. The General Assembly also requested United Nations agencies and organizations and invited intergovernmental and non-governmental organizations and the Working Group on Enforced or Involuntary Disappearances, to continue undertaking efforts to disseminate information on the Convention, to promote understanding of it, to prepare for its entry into force and to assist States parties in implementing their obligations under the instrument.

5. In a note verbale dated 8 May 2009, the Secretariat invited Governments to transmit relevant information pertaining to the implementation of the resolution. Replies were received from the Governments of: Argentina, Austria, Costa Rica, Greece, Guatemala, Iraq, Kazakhstan, Lebanon, Madagascar, Monaco, the Netherlands, Paraguay, Qatar, Slovenia, Switzerland and Ukraine. The responses of those Governments are summarized in the present report.

II. Adoption and status of ratifications of the International Convention for the Protection of All Persons from Enforced Disappearance

6. On 29 June 2006, in resolution 1/1, the Human Rights Council adopted the International Convention for the Protection of All Persons from Enforced Disappearance, as annexed to the resolution. In the resolution, the Council also recommended the General Assembly to adopt the International Convention.

7. By resolution 61/177, the General Assembly adopted and opened for signature, ratification and accession the International Convention for the Protection of All Persons from Enforced Disappearance. The Convention will enter into force after the deposit of the twentieth instrument of ratification or accession (article 39, para. 1). As of 24 July 2009, 81 States have signed and 12 have ratified the Convention; 4 States have also recognized the competence of the Committee on Enforced Disappearances to receive and consider communications from or on behalf

of individuals subject to its jurisdiction claiming to be victims of a violation by the State party of provisions of the Convention (article 31) and to receive and consider communications in which a State party claims that another State party is not fulfilling its obligations under the Convention (article 32).

III. Replies received from Governments

Argentina

[Original: Spanish]
[24 June 2009]

According to the information received from the Government, Argentina was the first country to sign — and the second to ratify — the International Convention for the Protection of All Persons from Enforced Disappearance, and it has recognized the competence of the Committee on Enforced Disappearances provided for in articles 31 and 32 of the Convention. It should be noted that the Senate is currently debating a bill which would give precedence to the Convention over domestic law.

When ratifying the Convention, in February 2007, Argentina undertook to lead a campaign to promote it with a view to ensuring that it came into force swiftly. This was because Argentina considered that the Convention was not simply another instrument but a major step forward in the fight to counter impunity and to promote and protect human rights.

In this area it should be noted that:

(a) In May 2008, the Permanent Mission of Argentina to the United Nations organized an event with a view to promoting ratification of the Convention. The event was a round-table meeting at which experts on the subject, representatives of the State and representatives of non-governmental organizations with experience in this area spoke about the issue of enforced disappearance and about the importance of having a binding international instrument on the subject.

(b) In addition, in the General Assembly, Argentina drew up and negotiated a draft resolution designed to promote the ratification and entry into force of the Convention (General Assembly resolution 63/186).

(c) It is the policy of the Foreign Ministry's Directorate General for Human Rights to include a discussion of the contents of the Convention on the agenda of the various bilateral meetings, with a view to promoting its ratification and entry into force.

Austria

[Original: English]
[26 June 2009]

According to the information received from the Government, Austria signed the International Convention for the Protection of All Persons from Enforced Disappearance on 6 February 2007. Currently, the Ministry of Justice is in the process of analysing the need for potentially necessary amendments of domestic laws in order to ratify the Convention.

Costa Rica

[Original: Spanish]

[24 June 2009]

According to the information provided by the Government, Costa Rica signed the International Convention for the Protection of All Persons from Enforced Disappearance on 6 February 2007 because of its deep-seated commitment to human rights and its rejection of the many violations of such rights which the practice of enforced disappearance involves, whatever the area or circumstances.

Although it has yet to complete the ratification process, Costa Rica reiterates that it is very interested in finalizing the process as soon as possible so that we can help bring the Convention into force promptly.

Accordingly, the Convention ranks high on the list of international conventions awaiting ratification and we therefore hope that our Legislative Assembly will move ahead quickly in the next few months to endorse it.

At the same time, Costa Rica is continuing to speak out in the international community in favour of effective protection against enforced disappearance and in favour of the signing, ratification and coming into effect of the Convention.

Accordingly, during the recent meetings of the Human Rights Council, Costa Rica co-sponsored resolutions on the Convention and, at the recent sessions of the General Assembly of the Organization of American States, it successfully put forward resolutions on international humanitarian law which called on the countries of the region to adhere to the Convention and other international instruments.

Likewise, it has participated in international and regional conferences on related issues and has stated Costa Rica's position on the issue. All this follows up on the enthusiastic support that the Costa Rican Government has provided from the very beginning to the work on the negotiation and adoption of the Convention, both in Geneva and in New York.

In any event, it is important to note that Costa Rica currently has a policy framework that guarantees full respect for human rights and protection of integrity of the person, human dignity, liberty and life, all of which are particularly at risk in cases of enforced disappearance.

There is no doubt that, once our country ratifies the Convention and the latter enters into effect for all States parties, this policy framework will be greatly strengthened and enhanced; this will, moreover, mark a further significant step towards the eradication of enforced disappearance and the use of that tactic to the irreparable detriment of the fundamental rights of the individual.

Costa Rica wishes to reiterate again, its firm commitment to the Convention as an instrument of indisputable importance; it will continue to support the latter unreservedly during the current ratification and coming into force stage and during the subsequent implementation.

Greece

[Original: English]
[16 June 2009]

The information provided states that Greece has signed the International Convention for the Protection of All Persons from Enforced Disappearance and has been taking all preparatory measures to start the procedure for its ratification.

Guatemala

[Original: Spanish]
[5 July 2009]

In accordance with the information received from the Government of Guatemala, the Presidential Commission for Coordinating Executive Policy in the field of Human Rights has drawn up a draft legislative agenda with a view to boosting legislative initiatives and amendments to give effect to the commitments assumed in ratifying international human rights instruments.

In November 2007, the Ministry of Foreign Affairs carried out the necessary consultations with the various Governmental and independent institutions to underscore the importance of ratifying the International Convention; based on that it issued the official opinion that was sent to Congress; that opinion has not been considered as yet.

One of the main priorities on the legislative agenda drawn up by the Presidential Commission, is the ratification of the International Convention for the Protection of All Persons from Enforced Disappearance; accordingly, lobbying meetings have been initiated with the various Congressional committees with a view to achieving prompt ratification of the Convention.

Iraq

[Original: Arabic]
[25 June 2009]

Information received from the Government of Iraq states that any act of enforced disappearance is an offence against human dignity and a grave violation of human rights and fundamental freedoms, including: the right to security of person and personal dignity; the right not to be subjected to torture or other forms of cruel treatment or punishment; the right to humane conditions of detention; the right to recognition as a person before the law; the right to a fair trial; and the right to family life since enforced disappearance affects not only the person who disappears but also family members. The practice of enforced disappearance remains a grave problem that threatens social peace, security and stability. Thus, international efforts must be intensified to curb this phenomenon and to assist States in acceding to the Convention.

The crime of enforced disappearance was the most heinous crime to be experienced by Iraqis when the former regime was in power. People were abducted for political, sectarian or ethnic reasons and their relatives were faced with denials

when they tried to find out what had happened to them. The former regime violated all domestic and international laws and treaties that recognize the human right to life, liberty and security of person and to a fair trial. Mass graves most vividly illustrate how the practice of enforced disappearance was used against Iraqis. There were some cases of enforced disappearance after 2003 and the guilty parties were terrorists and outlawed groups that exploited the deteriorating security situation in Iraq at the time. Following its establishment, the Government of Iraq played an important and responsible role in restoring security and stability across the nation, providing training for security services personnel and removing many undesirable elements from the security forces. The establishment of law and order was a key to securing the arrests of many persons involved in abductions, and the Iraqi Parliament adopted a law on accession to the International Convention for the Protection of All Persons from Enforced Disappearance in May 2009 and took the appropriate legislative steps to complete the accession process.

Kazakhstan

[Original: Russian]
[24 June 2009]

According to the information provided by the Government of Kazakhstan, the Ministry of Internal Affairs is taking the necessary steps to prevent and eradicate crimes involving the enforced disappearance of citizens.

In the first five months of 2009, 32 cases of kidnapping (51 in 2008) and 38 cases involving enforced disappearance (41 in 2008) were recorded in the territory of the Republic of Kazakhstan.

Our experience shows that people are generally kidnapped by criminal organizations. In this connection, we have taken aggressive steps resulting in the prosecution of a number of the organizers of these crimes and of active participants in them.

The Ministry devotes special attention to the prevention and eradication of crimes against minors.

Work on ensuring that citizens are protected from enforced disappearance is being carried out constantly and is under the supervision of the Ministry of Internal Affairs.

Lebanon

[Original: Arabic]
[1 July 2009]

The information received from the Government of Lebanon states that the General Directorate for General Security implements the general policies relating to enforced disappearance that are put in place by competent authorities. It also gathers information on behalf of these authorities.

Madagascar

[Original: French]
[8 June 2009]

The Government of Madagascar reports that the National Commission for International Humanitarian Law, which includes representatives from the Ministry of National Defence, the Ministry of Foreign Affairs and the Ministry of Justice, as well as other ministerial departments concerned, plans to begin the process for the ratification of the International Convention for the Protection of All Persons from Enforced Disappearance this year.

Monaco

[Original: French]
[29 June 2009]

According to information received from the Government of Monaco, the ratification of the International Convention for the Protection of All Persons from Enforced Disappearance is currently being considered by the Government of the Principality.

Netherlands

[Original: English]
[10 June 2009]

The Government of the Netherlands informed that it is currently in the process of general approval of the International Convention for the Protection of All Persons from Enforced Disappearance and expects it to be presented to the Parliament for approval shortly after the second quarter of 2009.

On 3 July 2009, the Convention will be on the agenda of the meeting of the Dutch Cabinet of Ministers, after which it will be sent to the Council of State for advice. After the recess scheduled for the second quarter of 2009, the Convention will be presented to the Parliament for approval.

Paraguay

[Original: Spanish]
[19 June 2009]

According to the information provided, the Government of the Republic of Paraguay signed the International Convention for the Protection of All Persons from Enforced Disappearance on 6 February 2007. The latter is currently in the process of being endorsed by the legislature in accordance with the constitutional requirements for entry into force of international treaties.

Qatar

[Original: Arabic]

[16 July 2009]

1. According to the information received from the Government of Qatar, the Human Rights Department and the pertinent departments in the Ministry of the Interior have adopted a standard procedure that is characterized by transparency and credibility in dealing with the United Nations human rights monitoring mechanism, and provides it with all the necessary facilities, commensurate with the link of the issue to the status of human rights in spheres related to the work of the Ministry, regardless of whether the issue concerns international human rights instruments that have been ratified by the State or those that have not, which is the case with regard to the International Convention for the Protection of All Persons from Enforced Disappearance.

2. The annual reports issued by the Qatar National Human Rights Committee since its establishment in 2002 have made it clear that no cases of enforced disappearance have been recorded in Qatar.

3. Qatar has in that manner responded practically to the obligation to cooperate with the Committee on Enforced Disappearances that is mentioned in articles 32 and 33 of the Convention. The question of Qatar recognizing the competence of the Committee as set out in article 32 of the Convention first requires the State to either ratify or accede to the Convention, neither of which it has yet done.

4. We should like to note that we have no objection to acceding to this Convention, but in the light of the information set forth above, when we do, it will be in order to demonstrate our commitment to its provisions, rather than because it is a necessity.

Slovenia

[Original: English]

[11 June 2009]

According to the information received from the Government, the Republic of Slovenia has signed the International Convention for the Protection of All Persons from Enforced Disappearance on 26 September 2007.

The Government of the Republic of Slovenia is currently in the process of examining the compatibility of the Convention with its national legislation. Before the ratification of the Convention a revision of the existing national legislation will probably be necessary.

Switzerland

[Original: French]

[19 June 2009]

According to the information provided by the Swiss Government, the Swiss Federal Council has always supported the Convention, which it considers to be essential for safeguarding the people concerned and for strengthening international human rights law. However, before the instrument can be signed, according to national procedure the text must be submitted to the cantons for their views, since, once ratified, the Convention will have a direct impact on them.

Ukraine

[Original: Russian]

[25 June 2009]

The Government of Ukraine informed that searches are among the most important aspects of the work of law enforcement agencies in fighting crime. Every case of a missing person is treated as an emergency. Accordingly, the machinery of the Ministry of Internal Affairs works constantly to improve its searches for missing persons, including children, in accordance with presidential decree No. 20 of 18 January 2001 on additional measures to prevent the disappearance of people, to improve coordination of tracing activities of law enforcement bodies.

Under this decree, the unit responsible for search operations has been reorganized and reinforced. A missing persons bureau comprising 20 officers has been established in the Criminal Investigations Department, including a section with functional duties. There are search divisions in the provincial bodies and in the city and district line agencies of the Ministry of Internal Affairs.

Searches for missing persons are carried out in strict accordance with the law, as they involve the rights and interests of citizens. The legal basis of the Ministry's search operations is found in the Constitution of Ukraine, the Code of Criminal Procedure, the Police Act, the Investigation and Search Operations Act and the aforementioned presidential decree No. 20 of 18 January 2001.

Furthermore, round-the-clock call centres have been established in the criminal investigation bureaux of the Autonomous Republic of the Crimea, the city of Kyiv and every provincial capital to respond quickly to reports of disappearances. They are mainly responsible for obtaining, compiling, analysing and transmitting information to the legal and natural persons concerned about citizens of Ukraine reported missing following an accident, or who have been detained abroad or have died suddenly, and about the discovery of unidentified corpses or persons moved to medical facilities who cannot provide any information about themselves.

Moreover, in accordance with decree No. 38 of the Ministry of Internal Affairs of 16 January 2004, separate divisions for organizing searches for missing children have been established in the criminal police units responsible for children.

Statements or information concerning missing persons are handled by the agencies of the Ministry on the day such reports are received from the public. These statements are immediately registered by the city and district police stations in the

logbook. A search team is dispatched to inspect the last known whereabouts of the missing person. The inspection is carried out for the purpose of obtaining clues and material evidence and identifying circumstances that may indicate if the missing person has been the victim of a crime, and to help locate his or her whereabouts or identify a corpse.

Within 24 hours of a statement having been taken, a police officer enters the information about the disappearance into the “Armor” search database, which is used by all the divisions of the law enforcement agencies in Ukraine. This makes it possible to verify which persons have been detained for administrative or criminal offences, or are wanted persons, anywhere in the country. In every case of a missing person, the law enforcement agencies launch an investigation and take steps to establish the whereabouts of the person concerned, within 10 days of being notified of the disappearance. Where a child or a person travelling by road has disappeared, the investigation is launched within 24 hours.

Cases of missing persons are considered in the light of possible reasons for the disappearance, namely:

(a) Incidents of a criminal nature, including murder, hit-and-run accidents resulting in a death where the culprit takes steps to remove evidence of the crime; abduction; unlawful deprivation of freedom;

(b) The non-violent death of the missing person, such as by suicide, natural death from old age or illness, sudden death and death caused by an accident. The search for missing persons in such cases entails establishing the identity of a corpse;

(c) Searches not involving a death: a person who is hospitalized in an unconscious state and without identity documents and cannot, because of a mental or other condition, give information about himself or herself; detention or arrest for a criminal offence or an infraction.

A disappearance may also be brought about by social and economic factors, or by migration. It is no secret that some of the missing persons are citizens who have gone abroad to find work because of their vulnerable social position, and may be residing in countries of the Commonwealth of Independent States without having told relatives where they are.

IV. Activities of the Office of the United Nations High Commissioner for Human Rights

8. On 6 February 2007, the High Commissioner for Human Rights attended the ceremony of the opening for signature of the International Convention for the Protection of All Persons from Enforced Disappearance and issued a public statement highlighting some of the most important aspects of the instrument and expressing that early signature and ratification of the Convention would mark a strong step in the promotion of human security.

9. On 18 April 2007, the United Nations High Commissioner for Human Rights issued a statement to the Parliamentary Assembly of the Council of Europe, in which she encouraged all States represented there to ratify, inter alia, the Convention as a sign of firm commitment to effective protection around the world.

10. On 22 May 2008, the United Nations High Commissioner for Human Rights issued a statement during an event held in New York on the promotion of the ratification of the Convention. At the occasion, she called on Member States to ratify the Convention and to ensure that it was promptly implemented in order to clarify the case of abductees, bring perpetrators to justice, provide reparations to victims and ultimately set the historical records straight by avoiding using amnesties for perpetrators of crimes of disappearance in exchange for guarantees of peace.

11. On 3 June 2008, on the occasion of the eighth session of the Human Rights Council, the United Nations High Commissioner for Human Rights issued a statement calling upon States to ratify the Convention.

12. On 22 September 2008, the Deputy High Commissioner for Human Rights participated in an event held in Geneva on missing persons. At the occasion, she called on all States to honour the sixtieth anniversary of the Universal Declaration of Human Rights by ratifying the core human rights treaties, including the Convention on the Protection of All Persons from Enforced Disappearance. She stressed that the adoption of the Convention would be a great step forward in the fight against impunity and that, among other things, would provide for special measures that States parties should adopt in order to prevent disappearances and address related issues.

13. In 2007, the Office of the United Nations High Commissioner for Human Rights issued a publication entitled *The New Core International Human Rights Treaties* reproducing the text of the Convention on the Rights of Persons with Disabilities and its Optional Protocol and of the International Convention for the Protection of All Persons from Enforced Disappearance. The publication is available in the six working languages of the United Nations in printed form and on the website of the Office of the United Nations High Commissioner for Human Rights.

14. The Office of the United Nations High Commissioner for Human Rights has also undertaken the third revision of its fact-sheet No. 6 on enforced or involuntary disappearances. The new version devotes a section to the International Convention for the Protection of All Persons from Enforced Disappearance and another to exploring the future relationship between the proposed Committee on Enforced Disappearances and the Working Group on Enforced or Involuntary Disappearances. It also reproduces the text of the Convention in its entirety. The advanced version of the fact-sheet is already available in English on the website of the Office of the United Nations High Commissioner for Human Rights and it is being translated into the official languages of the United Nations. Its printed form will be available in October 2009.

15. The Office of the United Nations High Commissioner for Human Rights also provides updated information on the status of ratification of the Convention on its website, under the heading "International law", and under the section devoted to the Working Group on Enforced or Involuntary Disappearances.

16. In its 2009 report on the follow-up to the World Conference on Human Rights submitted to the Human Rights Council (A/HRC/10/31), the United Nations High Commissioner for Human Rights stated that her office had strongly encouraged the ratification of the Convention.

V. Activities of the Working Group on Enforced or Involuntary Disappearances

17. Established by resolution 20 (XXXVI) of the Commission on Human Rights and renewed by the Human Rights Council in its resolution 7/12 of 27 March 2008, the Working Group on Enforced or Involuntary Disappearances was the first United Nations human rights thematic mechanism to be established with a global mandate. Since its inception, the Working Group has transmitted more than 52,000 individual cases to Governments in more than 90 countries. The number of cases under active consideration that have not yet been clarified, closed or discontinued stands at 42,393 and concerns 79 States. The Working Group has been able to clarify 1,763 cases over the past five years.

18. The Working Group on Enforced or Involuntary Disappearances participated in all the meetings of the intersessional working group that drafted the Convention.

19. The Working Group issued statements on 31 March, 28 June and 3 November 2006 calling for the adoption of the draft Convention.

20. In May 2007, the Chairperson-Rapporteur of the Working Group, Santiago Corcuera, participated in a workshop held in Paris on the Convention.

21. On 10 March 2008, Mr. Corcuera addressed the Human Rights Council in the framework of the presentation of the 2007 annual report and, on behalf of the Working Group, welcomed the adoption of the Convention and invited all States to ratify it.

22. On 22 May 2008, Mr. Corcuera participated in a panel discussion on the Convention co-sponsored by the Permanent Mission of Argentina to the United Nations and the Office of the United Nations High Commissioner for Human Rights.

23. On 29 August 2008, the Working Group issued a public statement on the occasion of the International Day of the Disappeared, in which it called upon all Governments to ratify the Convention. It further affirmed that the entry into force of the Convention would help strengthen the capacities of the Government of Argentina to prevent and eradicate disappearances and enable victims to obtain their rights to justice and truth.

24. In its annual report to the Human Rights Council (A/HRC/10/9), the Working Group noted with satisfaction that more countries had signed and ratified the Convention. It also expressed its commitment to cooperate with the Committee on Enforced Disappearances upon its establishment and its belief that the Committee would complement its work in preventing enforced disappearances. Furthermore, the Working Group continued to remind Governments of the importance of ratifying the Convention and called on countries that had not signed and/or ratified the Convention to do so and to accept the competence of the Committee to receive and consider individual and inter-State communications (articles 31 and 32 of the Convention).

25. On 5 February 2009, the secretariat of the Working Group participated in a conference on the Convention, organized by the Colegio de España, the Maison de l'Argentine and the Maison de l'Italie, held at the Cité internationale universitaire in Paris.

26. On 26 and 27 February 2009, a member of the Working Group participated in a meeting on the theme “Governance: individual rights, economic development and social progress”, organized by the Amadeus Institute in Marrakech, Morocco. As a result, a call for the ratification of the Convention is included in the final commitment, the “Marrakech engagement”.

27. Every opportunity is used by the members of the Working Group to promote the ratification of the Convention, including during visits undertaken to different countries and during bilateral meetings held with representatives of Governments.
