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Held at Headquarters, New York, on Monday, 24 October 2016, at 10 a.m.

Chair: Ms. Mejía Vélez (Chair) (Colombia)
later: Mr. Eriza (Vice-Chair) (Indonesia)
later: Mr. Glossner (Vice-Chair) (Germany)

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The meeting was called to order at 10 a.m.

Agenda item 68: Promotion and protection of human rights (*continued*) (A/71/40 and A/C.3/71/4)

(b) Human rights questions, including alternative approaches for improving the effective enjoyment of human rights and fundamental freedoms (*continued*) (A/71/56, A/71/254,

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(c) Human rights situations and reports of special rapporteurs and representatives (*continued*) (A/71/379-S/2016/788, A/71/540-S/2016/839, A/71/308, A/71/361, A/71/374, A/71/394, A/71/402, A/71/418, A/71/439, A/71/554 and A/C.3/71/5)

1. **Mr. Cannataci** (Special Rapporteur on the right to privacy), introducing his report on the right to privacy (A/71/368), said that, during the first year of his mandate, he had received positive feedback on an action plan that had led to the identification of five priority areas: big data and open data; security and surveillance; health data; personal data processed by corporations; and a better understanding of privacy. Each of those areas would be addressed by means of a Thematic Action Stream (TAS) through the establishment of a “TASK force” for each, composed of volunteers. They would assist in preparation of a report to the Human Rights Council and the General Assembly.

2. Security and surveillance was high on his list of priorities. The first edition of the International Intelligence Oversight Forum had been held in Bucharest in October 2016 with the participation of two dozen oversight agencies, parliamentary committees and intelligence services. Themes discussed included respect for fundamental human rights, the need for standardization and professionalization of oversight activities, safeguards without borders and remedies across borders, accountability and transparency, good

and bad practices, and the need for more forums in which high-level discussions could be held. The Forum would become a regular event which would provide constant input for reports, recommendations and other initiatives.

3. **Ms. Johnston** (United States of America) said that her country had undertaken legal reforms in recent years to improve transparency and focus intelligence practices on the protection of personal information and exercise of the freedoms of expression, peaceful assembly and association. Noting the proposed establishment of a TASK force to assist the Special Rapporteur in clarifying the right to privacy, and that such bodies did not have a specific mandate from the United Nations, she asked what would happen to the TASK force in the coming years, and beyond his current mandate.

4. **Mr. Koehler** (Germany) said that any limitation of the right to privacy or interference with private communications was subject to the rule of law, legality, necessity and proportionality. In Germany and elsewhere, there was fierce debate on where to draw the line between freedom of expression and hate speech, particularly in view of anonymous online postings. He asked for an assessment of the issue with respect to the right to privacy.

5. **Mr. Shearman** (United Kingdom) said that the report contained some misunderstandings regarding the Investigatory Powers Bill currently under consideration in parliament. That bill made clear the electronic surveillance powers available to the State and subjected their use to mandatory judicial approval. Private companies were not required to weaken encryption; rather, the bill would require companies to remove encryption where practicable and feasible, in tightly defined circumstances. The right to silence remained enshrined in national law, but electronic devices must be available as evidence in some circumstances, including the investigation and prevention of child sexual exploitation online. The United Kingdom would be happy to provide any further explanations necessary to avoid misunderstanding or misinterpretation.

6. **Ms. Kirianoff Crimmins** (Switzerland) said that the formulation of a binding and universally accepted definition of privacy was required to enable its full legal protection as a right, and should be a primary

goal for the Special Rapporteur. The risk of abuse of bulk collection data by State actors and private companies must be clearly re-evaluated. International dialogue was needed on the collection and management of personal data by companies. She asked which forums could be used to strengthen dialogue between the relevant stakeholders with a view to utilizing technical advances in enhancing the exercise of human rights, and how the Special Rapporteur felt that his work had contributed to discussions on the need of States to harmonize their surveillance legislation and practices with international human rights standards. She also asked how to implement independent, effective control regimes and effective remedies.

7. **Mr. Forax** (Observer for the European Union) said that States had agreed that the core principles for protecting and promoting the right to privacy in the digital age applied both online and offline, and that there should be no arbitrary or unlawful interference with an individual's privacy. He asked when the Special Rapporteur planned to present the first findings of the thematic studies he would be undertaking, and for his view on finding the right balance between security and privacy in light of increased safety and international terrorism concerns that set legitimate security interests against the right to privacy.

8. **Ms. Karimdoost** (Islamic Republic of Iran) said that government mass surveillance was becoming a harmful practice rather than an exceptional measure, and that practices in some Western States in particular threatened individual rights, including the right to privacy. Under the guise of national security or counterterrorism, those States were intruding into people's private lives and targeting heads of State or Government without due process, meaningful oversight, necessity, legitimacy or proportionality. They were also regularly tracking calls, messages and emails of ordinary people in many sovereign territories abroad. As national and extraterritorial electronic surveillance could violate both international law and the human rights of individuals surveyed, the report had been expected to elaborate more on many of the current persistent and intrusive surveillance practices, particularly where applied extraterritorially.

9. **Mr. Al-Hussaini** (Iraq) said that the right to privacy in the digital age was a fundamental human right. Nonetheless, in the light of global developments

and challenges, particularly those related to terrorism, a balance must be struck between upholding the right to privacy and preventing the abuse of that right by certain actors, including in particular actors operating as fronts for terrorist organizations. Such organizations had established numerous forums, websites and webpages on social media to radicalize and recruit ordinary people, including children, and, since 2001, Al-Qaida, Nusrah Front and Islamic State in Iraq and the Levant (ISIL) had established thousands of online forums under the banner of "online jihad".

10. In that connection, he asked what steps could be taken to ensure that upholding the right to privacy did not undermine the security of citizens, or impede legal and other measures adopted by States to prevent terrorist cells and networks from using the Internet to coordinate their activities and recruit adherents.

11. **Mr. Rabi** (Morocco) said that his delegation was particularly interested in the proposal to set up teams to assist the Special Rapporteur. He asked what the criteria were for choosing the people to join those teams and, considering his United Nations mandate, how he would ensure that those recruited to the teams would respect United Nations principles. As the mandate required special commitment from the private sector, he asked how that cooperation would be established on the sensitive issue of the right to privacy, and how he would work with other United Nations mechanisms interested in his human rights mandate.

12. *Mr. Eriza (Indonesia), Vice-Chair, took the Chair.*

13. **Ms. Moreira Costa Pittella** (Brazil) asked how States and enterprises could provide adequate oversight and remedies to protect the right to privacy, in both the short and long terms.

14. **Mr. Cannataci** (Special Rapporteur on the right to privacy), said that he was looking forward to engaging with the United States of America on the reform of surveillance laws there. The question raised by Germany regarding freedom of expression related to parts of article 12 of the Universal Declaration of Human Rights and article 17 of the International Covenant on Civil and Political Rights that were often forgotten, but referred to the rights to privacy and one's reputation. Those rights were affected by issues of jurisdiction and territoriality that the

legal framework was currently inadequate to handle satisfactorily, particularly in the case of online postings. Further work was needed in that area by one of the TAsK forces.

15. He welcomed the willingness of the United Kingdom to work with the mandate and hoped any misunderstandings could be cleared up, but suspected that there were also disagreements on matters of substance. His concerns matched those published in October 2016 by the country's Investigatory Powers Tribunal. The United Kingdom was rightly attempting to address those matters, but with regard to its report on the operational case for bulk surveillance, he was of the opinion that the wording of United Kingdom law did not yet match the case studies seen. Countries such as the United Kingdom, France, Germany and the United States of America, whose laws served as legislative models for well over 100 other States, must set the best possible example.

16. Replying to Switzerland, he said that discussions on the use of data by companies were partially influenced by his previous role coordinating the MAPPING (Managing Alternatives for Privacy, Property and Internet Governance) project for the European Union. He planned to include interim findings of the international intelligence oversight forum in his report to the Human Rights Council in March 2017. Progress would be slow but thorough, and he hoped to present the first interim report on big data and open data by October 2017.

17. Iraq had expressed concern about online terrorism and jihadism. Again, that involved issues of freedom of expression, and was addressed in studies dealing with radicalization. Part of the solution was contained in a paper published by the Netherlands intelligence agencies called "Jihadism on the Web", which proposed increased infiltration of jihadist groups rather than engaging in what appeared to be censorship.

18. In response to questions regarding the composition of the TAsK forces, he said that it would be his responsibility to select the unpaid TAsK force members, and that they would be subject to United Nations staff vetting. He was examining various means of cooperation to continue his privacy and security work after the end of his mandate. Some countries and corporations had already offered to help fund and

support that initiative, and he welcomed any further offers of assistance.

19. Finally, Brazil had commented that the current legal framework was inadequate, and interim findings of the Special Rapporteur showed that many international stakeholders concurred. He had already begun looking for legal instruments in some areas, and hoped to be able to report on progress in the next 12 to 18 months.

20. *Mr. Glossner (Germany), Vice-Chair, took the Chair.*

21. **Mr. Corcuera Cabezut** (Chair, Committee on Enforced Disappearances), introducing the report of the Committee on Enforced Disappearances ([A/71/56](#)), said that, since the end of the period covered by the report, Sri Lanka had ratified the International Convention for the Protection of All Persons from Enforced Disappearance, and the Central African Republic had acceded to it. In addition, Austria, Japan, Peru and Portugal had submitted their reports under article 29 of the Convention. With the slowly increasing number of ratification of the Convention, the Committee had a backlog of reports which would require additional meeting time and human resources, as envisaged in the report of the Secretary-General on the Status of the human rights treaty body system. For the benefits of General Assembly resolution [68/268](#) to be sustainable, the treaty body system needed to have adequate resources.

22. With regard to urgent action requests, the number of requests received by the Committee under article 30 of the Convention reflected the situations of great concern in certain countries, notwithstanding that few cases were reported to the Committee in comparison to the actual number of enforced disappearances. The Committee had begun to issue its first views under the individual communications procedure in article 31 of the Convention; it encouraged all States parties to consent to receive individual communications in order for the procedure to be fully operational. Moreover, the Committee had continued to work closely with other treaty bodies and international organizations, including the Working Group on Enforced or Involuntary Disappearances.

23. The Committee welcomed the webcasting of the opening session and dialogues with countries at its

eleventh session in October 2016, as it enhanced the accessibility and visibility of its work. Webcasting was highly useful to States and stakeholders in elaborating reports, responding to issues and preparing for constructive dialogues. As five members of the Committee would soon be completing their mandates, States were encouraged to nominate truly independent and impartial experts of high moral standing with recognized competence and experience in the field covered by the Convention in order to consolidate the future work and operational efficiency of the Committee.

24. The Committee called on countries to protect and respect human rights defenders, particularly those whose activities were linked to supporting the relatives of the disappeared. All Member States should ratify the Convention, which contained a series of preventive measures, including, *inter alia*, rights and guarantees for detainees and persons deprived of their liberty. The Convention would be of particular use to Member States where the practice of enforced disappearance occurred as it provided for the adoption of effective measures for its eradication.

25. **Ms. Fujiwara** (Japan) said that her Government had contributed to increasing the ratification of the International Convention for the Protection of All Persons from Enforced Disappearance, to which there were still only 53 States parties, including by recommending ratification at universal periodic reviews. She asked what the obstacles were to ratification and what concrete measures could be taken to surmount them.

26. **Mr. Forax** (Observer for the European Union) said that the first Conference of the States Parties to the International Convention for the Protection of All Persons from Enforced Disappearance would provide an opportunity to evaluate the work of the Committee on Enforced Disappearances and assess the major challenges to ratification and implementation of the Convention. He expressed the hope that the Conference would reaffirm the essential nature of the Committee's work, and asked what could be done to raise awareness about the Convention, increase ratification and strengthen its application in those countries that had already ratified it.

27. **Mr. de la Mora Salcedo** (Mexico) said that his Government had strengthened its legal and institutional framework to better address enforced disappearances.

In 2015 a new law on the prevention and sanctioning of crimes related to the disappearance of persons had been sent to Congress. The law would facilitate the establishment of a public policy on locating missing persons. Also in 2015, an official protocol on seeking missing persons and investigating enforced disappearances had entered into force, and a special prosecutor's office dedicated to enforced disappearances had been established within the national Office of the Attorney General.

28. **Mr. Al-Hussaini** (Iraq) said that his country remained committed to upholding the Convention on Enforced Disappearance, and that the relevant Iraqi authorities had cooperated with the Committee on Enforced Disappearances in response to its requests for information regarding persons alleged to have disappeared in the country. Those authorities, however, had sometimes found it difficult to carry out research or respond to the Committee in a timely manner because of ambiguities in the documents they had received or because they had not been provided with the full names of the individuals in question or other relevant information that would have facilitated investigations into their fate.

29. Turning to the allegation made in the report of the Committee, ([A/71/56](#)), that a certain individual had been prevented from providing the Committee with information, he asked for an investigation to be conducted into the veracity of that allegation. The Iraqi authorities stood ready to address that and all other concerns in a transparent manner.

30. The former dictatorial regime's heavy legacy of enforced disappearances and mass graves, and the brutal crimes perpetrated by ISIL and other terrorists, which included massacres and the abduction, disappearance and murder of thousands of Iraqi civilians and military recruits, had seriously overstretched Iraq's capacity to respond effectively to complaints and requests for information involving cases of enforced disappearances. The Iraqi Government therefore required significant technical assistance from the international community to facilitate its efforts to locate those who had been abducted by ISIL, especially given the discovery of an increasing number of mass graves containing the bodies of ISIL victims. In that regard, he asked if there were any advanced technologies or tools that could be used to ascertain the

fate of those abducted by ISIL and to identify mass graves in areas formerly under its control. He also asked how Iraq could enhance its cooperation with her office to further its efforts to that end.

31. **Mr. Marani** (Argentina) expressed the hope that a high-level plenary meeting of the General Assembly would be held to commemorate the tenth anniversary of the adoption of the Convention, in accordance with General Assembly resolution 70/160, which should spur new ratifications. He asked what States could do to increase ratification of the Convention.

32. **Ms. Charrier** (France) said that the Convention was still young, but, in the States that had ratified it, the Convention had proven its value. The work of the Committee was essential; it provided the legal underpinnings for the activities that the Working Group on Enforced or Involuntary Disappearances carried out in coordination with States. She asked how he planned to make the Convention better known and facilitate its adoption by States.

33. **Mr. Rabi** (Morocco) said that his country shared the general concern regarding the low number of countries that had ratified the Convention and asked how his country could help the Committee to boost ratification.

34. **Mr. Corcuera Cabezut** (Chair, Committee on Enforced Disappearances) said that the Convention was relatively young, and the flow of ratifications was slow but steady. However, given the purpose of the Convention, no State could have a valid reason not to ratify it. It was of particular concern that only a very low number of countries in the Asian region had ratified the Convention because there was no Asian regional system for the protection of human rights as in other regions: for citizens of Asian countries universal human rights instruments, such as the Convention, were the primary means of remedying human rights violations. Moreover, in various countries in that region there were cases of enforced disappearance that remained unsolved. It was likewise important for countries in other regions, such as Africa, the Americas and the Caribbean, to join.

35. States where the abominable practice of enforced disappearance was not a problem were to be congratulated, but should not consider that an excuse for not ratifying the Convention. Not only would their

ratification send a positive message to other countries, but the Convention also contained preventive measures. When States ratified the Convention, the Committee would support them to address the problem of enforced disappearances.

36. The Conference of States Parties to be held in December 2016 would give the Committee the opportunity to report on its excellent work over the preceding five-year period. The Committee and the Working Group had been complementing each other well and avoiding duplication of work.

37. He thanked the Government of Iraq for its cooperation in connection with the communications sent to it by the Committee regarding urgent actions to be taken. It had demonstrated its commitment to working with the Committee to bring to light the fates of those individuals brought to its attention by the Committee, and progress was being made. Strictly defined, the term “enforced disappearance” denoted a disappearance perpetrated by States, or entities or individuals acting on their behalf; the Convention distinguished clearly between enforced disappearances and identical acts committed by non-State actors. It had a section which specifically addressed disappearances perpetrated by non-State actors, obliging governments to investigate such cases and prosecute and punish the perpetrators.

38. **Ms. Es-Slami** (Chair-Rapporteur of the Working Group on Enforced or Involuntary Disappearances) said that during the previous reporting period, the number of cases of disappearances transmitted by the Working Group to States under the urgent action procedure had tripled to 483. That was only the tip of the iceberg as underreporting was a significant problem. For instance, the Independent International Commission of Inquiry on the Syrian Arab Republic estimated that there were thousands of instances of enforced disappearances in that country, but the Working Group had fewer than 200 cases under active consideration. She reiterated the call for the Security Council to consider referring the situation in the Syrian Arab Republic to the International Criminal Court.

39. It was alarming that victims of enforced disappearances, their family members, witnesses and human rights defenders working on such cases continued to face threats, intimidation and reprisals. Other causes for concern were short-term enforced

disappearances, which were often linked to efforts to combat terrorism; enforced disappearances in the context of migration, including human trafficking and people smuggling; and abductions carried out by non-State actors, including paramilitary groups, militias and criminal organizations, occasionally with the support of States.

40. In order to address those challenges, she called upon all States to cooperate fully with the Working Group by providing detailed responses to the communications transmitted by the Working Group and responding favourably to requests for country visits. In the previous reporting period, the Working Group had carried out visits to Peru, Sri Lanka and Turkey. While much remained to be done in Peru, the recent adoption of an act on the search for persons who had disappeared during the period of violence from 1980 to 2000 was a step in the right direction. Turning to Sri Lanka, she welcomed the ratification of the International Convention for the Protection of All Persons from Enforced Disappearance and the Government's proposal to create an office for missing persons. Lastly, Turkey must come to terms with and address past instances of enforced disappearance.

41. The Working Group would continue to work closely with the Committee on Enforced Disappearances. She called upon all States to ratify the Convention and recognize the competence of the Committee to receive and consider communications from or on behalf of individuals and States parties, as set out in articles 31 and 32 of the Convention.

42. **Mr. Rabi** (Morocco) said that Morocco was committed to working closely with the Working Group and had hosted its 108th session in Rabat in February 2016. He asked how the Working Group coped with its considerable workload, given its limited resources and the sheer number of cases, and wondered what States could do assist. He welcomed the Working Group's decision to address enforced disappearances in the context of migration.

43. **Ms. Brooke** (United States of America) said that the sharp increase in the number of cases transmitted by the Working Group under the urgent action procedure during the previous reporting period — amounting to more than one case per day — was a cause for concern, as was the increasing pattern of short-term disappearances in certain countries. It was

also worrying that the families of individuals who had disappeared, civil society organizations and those defending the rights of victims of enforced disappearance were often threatened and intimidated. She asked how the international community could encourage States with high numbers of reported disappearances to cooperate with the Working Group to investigate such cases and bring the perpetrators to justice.

44. **Ms. Charrier** (France) said that her delegation shared the concerns of the Working Group regarding the emergence of new types of enforced or involuntary disappearances, new victims and new perpetrators, including non-State actors. She would be interested to know how the Working Group and the Committee on Enforced Disappearances planned to work together to respond to those emerging challenges.

45. According to the report of the Working Group on Enforced or Involuntary Disappearances ([A/HRC/33/51](#)), many States did not respond to requests for country visits, in breach of their obligations under the Declaration on the Protection of All Persons from Enforced Disappearance and the relevant resolutions of the General Assembly. She wondered what additional measures could be taken by the Working Group and the Committee to remind States of their obligations.

46. **Mr. Marani** (Argentina) asked, in view of the increases in the number of forced disappearances and in the involvement in that practice of particularly vulnerable groups such as refugees and migrants, what could be done to address the specific vulnerabilities of different groups at risk of enforced disappearance.

47. **Mr. Forax** (Observer for the European Union) encouraged all countries to accept country visits and implement the Working Group's recommendations. The European Union was collaborating with the Working Group to revise the Congolese penal code, in line with recommendations made by the Working Group to the Congolese authorities. How could the European Union contribute to creating favourable conditions to implement those recommendations? As the practice of "short term" enforced disappearances was becoming more systematic in certain countries, he asked what the Working Group, in collaboration with civil society, could do to resolve that issue.

48. **Mr. Yang Junzhi** (China) said that China had been taking action to prevent human rights violations. The Constitution and relevant laws, as well as the national action plan on human rights, stipulated that all Chinese citizens enjoyed personal freedom, which could not be illegally restricted by any institution or person, or revoked as punishment. Prevention, resolution, emergency assistance and compensation must be carried out in strict compliance with national laws. China had replied in good faith to all correspondence and recommendations made by the Working Group, which should conduct its work in line with the Charter of the United Nations and the standards of special procedural mechanisms. China should hold constructive dialogues with governments in line with the principles of fairness and objectivity, and on the basis of reliable and verifiable evidence.

49. **Ms. Es-Slami** (Chair-Rapporteur of the Working Group on Enforced or Involuntary Disappearances), acknowledging the Working Group's considerable workload, said that an action plan had been drawn up to clear the backlog, with a view to closing all pending cases by 2017. Good progress was being made, thanks in part to voluntary contributions from a number of States, which had helped to secure additional human resources to deal with cases promptly.

50. Turning to the report on enforced disappearances in the context of migration, she said that the first stage of the consultation process would be an expert group meeting, to be held in the Republic of Korea in February 2017. During the second phase, questionnaires would be distributed to non-governmental organizations and other stakeholders to gather information for the final report, due in 2017.

51. Two years after each country visit, the Working Group produced a follow-up report. Pakistan had assisted with the preparation of its follow-up report, but no response had been received from the Congo. She was glad to hear that the European Union was assisting the Congo with the revision of its penal code. The Working Group would be pleased to provide technical support and advice to ensure that the code was in line with the Convention and the Declaration.

52. The role of the Working Group was limited to uncovering what had happened to victims of enforced or involuntary disappearances. The Working Group used country reports and communications to ask States

about the measures taken to ensure that perpetrators were held to account.

53. The emergence of new types of enforced or involuntary disappearances had indeed brought new challenges. The Working Group was trying to identify ways to address them through consultations, studies and questionnaires.

54. The lack of invitations from States was a major issue, with only one country visit — to Albania — confirmed for 2017. The Working Group had begun conducting one-on-one meetings with States, with a view to raising awareness of the importance of country visits and reassuring States that the Working Group was not seeking to point fingers but to provide technical support.

55. The Working Group cooperated closely with civil society. It examined reports received from non-governmental organizations, which on occasion formed the basis for communications to States. It also strived to respond favourably to invitations from non-governmental organizations, as such meetings were important for increasing the profile of the Working Group.

56. Lastly, she stressed that the five members of the Working Group were wholly independent and impartial. There were strict methods of work to ensure that the Group was impartial, no matter which State was being examined.

The meeting rose at 12.10 p.m.