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MISSING PERSONS

***Draft report prepared by the co-Rapporteurs
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I. INTRODUCTION

1. Living in the dark about the fate of friends and relatives is the harsh reality faced by hundreds of thousands of families affected by situations of armed conflict or internal violence. Throughout the world, parents, brothers and sisters, spouses, and children desperately seek men or women with whom they have lost all contact. Without knowing the fate of such individuals, families and communities cannot turn the page on violent, devastating events and move on to rehabilitation and reconciliation. Their anguish can continue for years after conflict ends and peace is restored. Such unhealed wounds can destroy the fabric of society and undermine relations between groups and nations for decades after the events concerned. Societies cannot reconcile themselves to, or draw lessons from, their mistakes if they do not preserve the collective memory of what has happened, and why. Appropriate independent, non-judicial mechanisms at the national level, such as truth commissions, are designed to provide a faithful historical account of such events and thus enable societies to learn from painful moments in their past and avoid the same mistakes in future.

2. Missing persons are not generally among the main concerns of States, international organizations, and non-governmental organizations. And that should not be surprising. In some cases learning the circumstances in which persons have disappeared means uncovering painful truths about the treatment they received or the criminal nature of their disappearance or death. In other cases, the priority given to missing persons and the needs of their friends and relatives is secondary relative to the immediate needs of survivors for food, housing, medical care, and protection.

3. Fundamental rules of international humanitarian law and human rights are designed to prevent disappearances in situations of armed conflict or internal violence. If civilians and members of the armed forces or armed groups who are sick, wounded, captured, deceased, or deprived of their liberty were treated in accordance with these rules, and if humanitarian organizations were allowed access to particularly vulnerable individuals, there would be fewer missing persons and fewer families left in the dark about their fate. To respect international law and the integrity and dignity of all human beings, including the deceased, is to erect a barrier against disappearances. It is incumbent primarily on national authorities to respect international humanitarian law, act with determination to prevent disappearances, clarify the fate of missing persons, and lend assistance to families without news of their relatives.

4. Parliaments can therefore play a leading role in promoting the adoption of coherent national policies to resolve the problem of persons missing as a result of armed conflict,

internal violence or other circumstances, better assist victims' families, and prevent new disappearances.

II. THE PURPOSE OF THIS REPORT

5. Persons disappear in different contexts. This report looks at the legal framework with respect to armed conflict and internal violence. In this context, missing persons can include those with families who are unaware of their fate as well as those reported missing on the basis of reliable information, or both. The term "family" is used in the broad sense, and includes relatives, friends and associates, taking account of the cultural environment.

6. However, disappearances can occur in other contexts, in which the families of missing persons face many of the same problems encountered by families contending with disappearances in times of armed conflict or internal violence. Disappearances may occur, for instance, as a result of natural disasters, migratory movements, or trafficking in human beings. To ensure the best possible protection for missing persons and their families, such situations must be dealt with on the basis of legal considerations appropriate to each case.

III. THE CIRCUMSTANCES OF DISAPPEARANCES

7. The **circumstances** in which disappearances can occur are diverse. Here are some examples:

- Frequently, families lose track of relatives enlisted in the armed services or participating in armed groups, for lack of any means to remain in contact with them;
- Members of armed forces or armed groups can be declared missing in action for not having been provided with the required means of identification, such as identity badges;
- Persons killed upon capture, arrest, or abduction, who die while in detention, or who are secretly detained at unknown locations, can also be reported missing. Often, information about persons deprived of their liberty the date and place of their arrest, transfer, death, or burial may not be on record, or such records may have been concealed or destroyed;
- Massacres are unfortunately still the cause of a large number of disappearances. When such acts are committed, the bodies of victims are abandoned on site, are hastily buried or even destroyed;
- Displaced persons and refugees, as well as isolated populations or populations living in occupied territories, may not be in a position to send word to their relatives. Such situations can lead to long separations;
- It is not rare to encounter unaccompanied children separated from their families while fleeing areas of combat or internal violence, or forcibly enlisted, imprisoned, or even hurriedly adopted;
- Lastly, when bodies are exhumed and subjected to autopsy, evidence permitting confirmation of the identity of the deceased (person) may not always be kept on file or managed appropriately.

8. Several of these circumstances may result from incapacity, negligence, or ignorance among government authorities, or their unwillingness to take appropriate action. It is

therefore important for parliamentarians to act at the national level to strengthen national capacity.

IV. THE IMPACT OF DISAPPEARANCES ON FAMILIES

9. While awaiting information on the fate of their relatives, the families of missing persons must contend with specific problems that can vary according to their personal situation, the local context and their cultural environment. These problems are psychological, legal, administrative, social, and economic in nature.

10. It has been established that families of missing persons suffer more from stress-related problems than other families, including those who know that their relatives are dead. In addition to having lost a relative, most of these families have suffered or witnessed other traumatic events, such as displacement, death threats and physical violence. In addition, without being certain about a missing person's status, and in the absence of a body, the process of psychological and social mourning cannot begin.

11. In most contexts, a missing person's status is not officially recognized as such, leaving families without support. The legal status of a missing person's spouse or offspring can also remain unclear, with consequences in terms of property rights, custody of children, inheritance rights and the ability to remarry. In most cases, families lack information on how to search for their missing relatives, the formalities required to obtain financial or material assistance, and the procedures for obtaining legal support.

12. In some contexts, popular fear and distrust make it impossible for families to bring their situations to light. Families run the risk of political reprisals or ostracism from their communities, thereby forfeiting whatever support might otherwise have been available. They risk social isolation as a result of local culture, their unclear social status, or their own fear or psychological state or again for material reasons, such as physical distance or the lack of money or transport.

13. Economic problems are a function of the missing person's place in the family. Since most missing persons are adult males, numerous families lose their means of financial support, forcing women into the role of heads of household. In many communities and cultures there are limited opportunities for women to earn a living. Moreover, when a missing person's status is not officially recognized, families generally do not receive the support usually provided to families of the deceased.

14. A number of particularly vulnerable groups women and children are usually more likely to encounter the aforementioned problems call for special attention.

V. THE MAIN EXPECTATIONS OF FAMILIES OF MISSING PERSONS

15. Families must be enabled to know the fate of relatives missing in armed conflict, internal violence, or other situations, including their whereabouts, if alive, and the circumstances and causes of their deaths, if not.

16. Families also require material, financial, psychological, and legal assistance to mitigate the impact of a relative's disappearance.

17. In addition, the families of missing persons place particular importance on the determination and recognition of accountability. In the case of forced disappearances, it is

imperative for affected families that those responsible not go unpunished. If social reconciliation is to be achieved, the truth must be acknowledged, and those responsible for disappearances must answer for their acts.

18. Lastly, all families want to be able to honour the memory of their lost relatives in a fitting manner. When all efforts have failed, and it is impossible to determine the fate of persons gone missing in armed conflict, internal violence, or other situations or when death has been confirmed it is necessary for the good of families and communities that human losses be officially recognized and that all the personal effects of missing persons, and their remains whenever possible, be returned to the next of kin.

VI. THE FIVE AREAS FOR ACTION PROPOSED

19. In response to the problems posed by missing persons, five areas for action were identified during the International Conference of Governmental and Nongovernmental Experts on missing persons, held in Geneva from 19 to 21 February 2003, at the invitation of the International Committee of the Red Cross. The same five areas for action have been taken up by other international bodies.

(a) *The prevention of disappearances*

A number of measures can prevent disappearances if taken in time.

(i) **Providing forms of personal identification to members of the armed forces** and organized armed groups is essential to preventing disappearances. Proper identification is critical to finding persons missing in situations of armed conflict or internal violence. All armed forces should provide their members with forms of personal identification, including personnel files, identity cards, and identity badges, which are useful in establishing the status of persons falling into enemy hands and the identity of persons killed or gravely injured. Identity badges are recognized as the only means of identification that is simple, sure, and durable. As a strict minimum, they should therefore be provided to all members of armed forces and organized armed groups.

(ii) **Registration of vulnerable groups and persons exposed to particular risks, while respecting rules for the protection of personal data** is another way of preventing disappearances. Systematic registration of civilian groups at risk of losing contact with their families in situations of conflict or internal violence such as persons deprived of their liberty, young children, the elderly, the disabled, displaced persons, or refugees can help families find relatives and thus prevent their disappearance.

(iii) In addition, **persons deprived of their liberty** in a situation of armed conflict or internal violence are often held in secrecy, in secret locations, or incommunicado. All of these forms of detention are forbidden. The proper registration of persons deprived of their liberty date and place of arrest, place of detention or imprisonment, transfer, death, or burial by competent authorities or persons authorized to perform these functions, in strict accordance with the law, is an essential prerequisite to ensure the security and physical integrity of this at-risk group, and thereby forestall disappearances. Those who violate these rules must be held accountable. The necessary orders or instructions must therefore be issued to ensure that the release of persons deprived of their liberty can be reliably verified and that no prisoners of war are repatriated against their will. In addition, a relative or other person designated for the purpose should be notified by the competent authorities upon the release

of all prisoners. Under all circumstances, persons deprived of their liberty should be allowed to inform their families of their capture or arrest, their address, and the state of their health.

(iv) **Protecting the right to exchange news** is another essential way to forestall disappearances. This right must be reaffirmed as fundamental and of high priority. Government authorities must be reminded of their obligations in this area. Violation of the right to exchange news with relatives and loved ones constitutes a violation of the right to family life and may constitute cruel, inhumane or degrading treatment. The Red Cross and Red Crescent family networks are essential and should receive high priority support from all concerned.

(b) Clarification of the fate of persons unaccounted for

(i) Government authorities are ultimately responsible for providing information on missing persons and investigating their cases. Penal procedures must include sanctions for failure to comply with court orders to disclose evidence and for any deliberate destruction of evidence. All appropriate measures should be taken on behalf of missing persons and their families to obtain information from government authorities and organized armed groups; government authorities hindering access to information or providing incorrect information should be held accountable.

(ii) It is important to ensure that the question of missing persons is not forgotten at the national and international levels. Peace accords, for instance, should systematically include specific mechanisms for ascertaining the fate of missing persons.

(iii) Those situations call for multiple mechanisms (humanitarian, governmental, judicial and non-judicial), communicating with each other within their respective purviews, so as to cover the full range of family and community needs. These mechanisms should not be imposed from the outside. They must be independent and impartial in their approach and methods of work. The mechanisms should be complementary; they should coordinate their activities and exchange information on missing persons subject to rules on the protection of personal data and their respective mandates. At the country level, a centralized database on all missing persons should be administered by a single institution, handling the data collected in accordance with official standards.

Among these mechanisms, the important role of the United Nations Working Group on Enforced or Involuntary Disappearances should be underscored and its field visits facilitated.

(c) Information management and the processing of files on persons unaccounted for

(i) Information should be actively gathered and shared as appropriate, in coordination with all concerned, so as to increase the effectiveness of measures taken to shed light on the fate of persons missing as a result of armed conflict or internal violence.

(ii) The first step is gathering accurate information (establishing the facts). However, this process should never endanger the person concerned or the source of the information. Coordination and information sharing are necessary to increase the effectiveness of measures to prevent disappearances and ascertain what has become of persons reported missing. The preparation and application of standards for the collection and management of information should therefore be encouraged.

(iii) At the outbreak of armed conflict and no later government authorities should establish a national information bureau with responsibility for obtaining and centralizing, without discrimination, all information on the injured, the sick, the displaced, the deceased, protected persons deprived of their liberty, children of unconfirmed identity, and missing persons. In response to all inquiries about such protected persons information should be communicated to the competent authorities and affected families through the intermediary of the International Red Cross or other centralized search agencies. When such information is not in the government's possession, the necessary steps should be taken to obtain it.

(d) *Management of human remains and of information on the dead*

(i) Failure to identify persons having died in armed conflict or internal violence contributes to a significant increase in the number of persons considered missing. In a number of recent instances, armed conflict and internal violence have shown little consideration or respect toward the deceased.

(ii) Government authorities and organized armed groups are ultimately responsible for appropriately managing human remains and information on the dead. Measures must be taken in particular to transport their remains; promptly exhume unidentified remains when necessary; gather as much information on the remains and the events leading to death as possible; preserve all remains not returned to families; inform families about the death of relatives; issue death certificates; and return personal effects and remains whenever possible. The method established for identifying human remains must be adapted to each context and agreed to by all concerned before the identification process begins.

(e) *Support for the families of missing persons*

(i) The government authorities directly concerned bear the ultimate responsibility for addressing the specific material, financial, psychological, and legal needs of families. It is not always possible in emergencies to respond to needs beyond the basic necessities of food, housing, and physical safety. However, even if the armed conflict or internal violence continues, and in any case as soon as circumstances permit, targeted assistance must be provided to these victims, always with due regard for the local context and culture. Of particular concern are persons who must take on the responsibilities of the single head of household, as well as separated children, whose physical and psychological security warrants special attention.

(ii) Family and family association networks can play an important role at several levels. They can in particular provide mutual support, promote the role of families as protagonists (and not only victims), and exert pressure on political decision-makers.

VII. THE ROLE OF PARLIAMENTARIANS

20. Parliamentarians should exert pressure on their national governments through all available means, to live up to their responsibilities and honour their commitments to solve the problem of missing persons, come to the aid of their families, and forestall future disappearances.

21. Parliaments should bring the problem of missing persons to the attention of their respective governments by all means at their disposal, with a view to adopting comprehensive

national policies to solve the problem of missing persons in situations of armed conflict or internal violence, better assist the victims' families and prevent new disappearances.

These national policies entail:

- The adoption and application of national legislation on missing persons, accompanied by the necessary regulatory and administrative measures covering such aspects as the following:
 - Recognition of the family's right to know and to obtain information on the fate of missing relatives;
 - Recognition of a legal status for missing persons;
 - Criminalization under national criminal laws of acts violating provisions of international humanitarian and human rights law applicable to disappearances, and in particular the criminalization of enforced disappearances;
 - Recognition of the rights of the families of disappeared persons for as long as they are missing, with particular regard for vulnerable individuals;
 - The establishment of measures ensuring that all persons, and in particular minors and other vulnerable individuals, have a form of personal identification;
 - The establishment of measures to ensure that members of the armed forces and security forces have, and are required to properly use, personal means of identification, or at a minimum identity badges;
 - The exchange of family news under all circumstances;
 - In the particular case of persons deprived of their liberty, measures should be taken to remain in contact with families and attorneys and to keep them and other legitimately interested persons informed;
 - The right to be registered and detained at an official facility;
 - The protection of persons against the risks of disappearance, particularly in the case of persons deprived of their liberty, by authorizing regular, independent, unannounced visits by the International Committee of the Red Cross or another independent national or international organization;
 - The establishment of an international information bureau responsible for compiling and transmitting information on the injured, the sick, the displaced, and the deceased, as well as persons deprived of their liberty;
 - The proper management of human remains;
- The establishment of national implementation and coordination mechanisms, such as national commissions for the implementation international humanitarian law;
- Review and systematic resolution of the missing persons issue at the end of conflict, as part of the peace process, and establishment whenever necessary of appropriate national judicial and non-judicial mechanisms to elucidate the fate of missing persons and meet family and community needs;
- The establishment of parliamentary bodies to deal with issues of international humanitarian law, including the issue of missing persons;

- Proper training for government agents dealing with missing persons and national law enforcement;
- The approval and disbursement of financing as required.

22. States should extend national policies and their application to other missing person situations to ensure equal protection in all cases for missing persons and their families.

23. In formulating and implementing these policies, parliamentarians can invite the appropriate national authorities to call on the expertise of organizations dealing with missing persons, and in particular the International Committee of the Red Cross.

24. Parliamentarians are invited to support the work of the Working Group on Enforced or Involuntary Disappearances and encourage States to comply with the group's requests to conduct visits.

25. Parliamentarians are invited to contact their National Societies of the International Red Cross and Red Crescent Movement to better understand and support their activities on behalf of missing persons and their families.

26. Parliamentarians are invited to cooperate in sharing and exchanging information, experiences, and expertise on parliamentary activities to ensure implementation of the resolution accompanying this report.

27. The Inter-Parliamentary Union is requested to keep the missing persons issue on the agenda of the committee responsible for promoting respect for international humanitarian law and not only in respect of persons missing as a result of armed conflict or internal violence.

28. The IPU is invited to prepare as soon as possible a handbook for parliamentarians as a tool for the adoption of national legislation on missing persons.

29. The IPU is encouraged to establish a system of inter-parliamentary pledges to support and finance translation of such a parliamentary guidebook into as many languages as possible.