

**Conference: 50 years after the coup d'État; impunity threatens democracy
DondeEstán? – 24 June, Paris**

A. The Mandate of the Working Group on Enforced or Involuntary Disappearances

The Working Group was established in 1980 with the mandate to assist families in determining the fate or whereabouts of their family members who are reportedly disappeared. In that humanitarian capacity, the Working Group serves as a channel of communication between family members of victims of enforced disappearance and other sources reporting cases of disappearances, and the Governments concerned. To achieve this, the Group, inter alia, receives, examines and transmits to Governments reports of enforced disappearances submitted by relatives of disappeared persons or human rights organizations acting on their behalf.

Since 1992 with the adoption of the Declaration on the Protection of all Persons from Enforced Disappearances in December 1992, in addition to its humanitarian mandate the Working Group was also entrusted with monitoring the progress of States in fulfilling their obligations deriving from the Declaration and to provide to Governments assistance in its implementation. This is done both while carrying out country visits and by providing advisory services to Governments, when requested.

B. The Working Group Visit to Uruguay

The Working Group conducted a country visit to Uruguay in July last and will present the report on the visit to the Human Rights Council in later in September. While the final country report is not available yet, I would like to share with you today some of preliminary observations.

As background, it is important to note that there are 20 cases of forced disappearance presented to the WG with respect to Uruguay, of which 19 are still pending resolution. (However, this figure does not reflect all cases of enforced disappearances perpetrated during the period 1968-1985. The figure officially recognized by the associations of relatives of disappeared persons and the Uruguayan authorities is 197 disappeared persons (either in Uruguay or in other States of the Southern Cone that have participated in "Operation Condor", most of them in Argentina) whose fate and whereabouts are unknown to date.)

During its visit, the Working Group has focused mainly on the forced disappearances that began to be carried out during the period 1968-1985 and the corresponding State obligations.

In general, after the recovery of the democratic system in 1985, Uruguay managed to make significant progress in the protection of human rights, having ratified, to date, each and every one of the United Nations international human rights instruments, progressively adapting its national legislation in accordance with international human rights standards and thus becoming an important benchmark at the international level.

The Working Group recognized some progress the progress made in terms of justice and the fight against impunity for crimes committed during the period of illegitimate action by the State and dictatorship, between 1968 and 1985, by creating of the Special Prosecutor for Crimes Against Humanity.

In this sense, the Working Group expresses its deep admiration for the tireless struggle of the families of disappeared persons and its solidarity with them. Their constant suffering is tangible proof that forced disappearance is a permanent crime and a continuous violation of human rights until the fate and whereabouts of the victim have been clarified. The Working Group notes with deep concern that in recent years many people have died without having been able to find out the truth about what happened to their loved ones or obtain justice. The State has a historical debt pending for almost five decades and must assume it as a task that cannot be postponed and put an end to the suffering and anguish that have accompanied thousands of people for decades and that now, in some cases, due to their advanced age, they must also deal with the fear of dying without having their rights guaranteed.

The Working Group cannot fail to point out that the progress made is undoubtedly due to the tenacious effort, commitment, and courage of the victims and relatives of disappeared persons for five decades to search for their loved ones, identify, and punish the perpetrators, responsible, preserve historical memory and ensure guarantees of non-repetition. In this sense, the progress that has been made in the last two decades, both with respect to the legislative framework and the institutional framework, has been achieved thanks to initiatives promoted or carried out by relatives of victims or by civil society. In many cases, the responsibility for carrying out all activities related to the search for disappeared persons and crime investigations has fallen on the victims and their families, due to the lack of a proactive attitude on the part of the authorities.

The relatives with whom the Working Group has met have expressed their anguish at the passage of time without appreciable results. It is therefore imperative that the State assume as its own the urgency experienced at every moment of the last 50 years by the next of kin and that a clear and unequivocal that this task must be assumed collectively with seriousness, proactivity and urgency.

In many of the meetings of the Working Group, reference has been made to the existence of a "pact of silence" that prevents progress in clarifying the truth and in the tasks of justice, reparation and memory. The lack of progress over more than five decades in locating the persons disappeared during the dictatorship shows the imperative need to obtain reliable information without delay – both from testimonial and documentary sources – that will allow progress in the search, in investigation and prosecution of those responsible.

TRUE

The Working Group has observed that, to date, in Uruguay there has not been a comprehensive exercise to clarify and reconstruct the truth with respect to the human rights violations perpetrated in the period 1968-1985. The Working Group recognize the work that is being done by the National Institute for Human Rights in the search for the disappeared persons. The Institute enjoys a high degree of credibility and trust on the part of the victims, largely due to its independence

However, the Working Group received information received about the repeated episodes tending to discredit and the public questioning of its members and of the institution itself, formulated by political exponents and taken up by some media.

Still on the right to truth, the Working Group considered that all necessary measures must be taken to guarantee access to all relevant information, including that contained in the records and files of military, police and intelligence bodies.

Justice

The Working Group would like to acknowledge the measures taken in terms of criminal prosecution by creating a Special Prosecutor's Office for Crimes Against Humanity, and a Unit dedicated to Victims and Witnesses in the Office of the Attorney General of the Nation. However, the combination of a deficient legislative framework, the existence of an amnesty law and a judiciary that has not interpreted the law in light of international law, has maintained a pattern of impunity for cases of enforced disappearances initiated during the period 1968-1985.

Although the legislative and institutional reforms that have taken place in the last decade have allowed some progress, *the ongoing investigations and trials are characterized by their extreme slowness.*

Likewise, taking into account that in several cases almost 50 years have passed since the events, a timely administration of justice is of paramount importance. In this sense, any measure that can expedite the processing of cases related to the period 1968-1985 must be adopted without delay, including measures that prevent the *multiplicity of appeals* filed from stopping the processes, the digitalization of files and the systematic use of the early decision mechanism by the competent judicial authorities in resolving the corresponding appeals.

Likewise, the Working Group would like to endorse the provisions of the judgment of the Inter-American Court of Justice in the case of *Maidanik et al.* Uruguay regarding the strengthening of the capacity of the Office of the Special Prosecutor for Crimes against Humanity. In addition, the Group emphasizes that its stability and sufficient human, technical and financial resources must be guaranteed.

The Working Group has also identified difficulties in the access of victims to justice, specifically in their real possibilities of knowing the progress of the investigations, of offering and taking part in the production of evidence and of being able to appeal the measures that affect them.

In addition, the Working Group recommends carrying out a process of permanent education and training in human rights for justice operators, as well as awareness-raising.

Finally, the Group regrets that, to date, no follow-up has been given to any of the reparation measures ordered by the Court in the judgment on the *Maidanik et al.* case, summoned to family members and their legal representatives and encourages the State to form an inter-institutional commission, with the participation of the victims, to expedite the execution of the sentence.

Likewise, the Group regrets that the measures ordered by the Inter-American Court in the case of *Gelman et al. v. Uruguay*. In general, taking into account the imminent examination of Uruguay by the Committee against Enforced Disappearance, and the final observations adopted by other treaty bodies or the recommendations of special procedures, the Working Group considers it important that the State guarantee the existence of an effective mechanism aimed at coordinating the different instances and competent authorities to comply with the recommendations made.

At the time of the visit, the Working Group learned about the parliamentary process of the bill on the replacement of custodial sentences with house arrest for defendants and convicted persons over 65 years of age, because said legislation would be contrary to the law of human rights, and especially, to the limits imposed on the granting of amnesties, pardons, reduction or benefits in the execution of the sentence, or other similar measures to defendants and convicted of serious violations of human rights and international crimes, including enforced disappearances.

Article 18 of the Declaration establishes that the perpetrators or alleged perpetrators of acts of enforced disappearance will not benefit from any special amnesty law or other similar measures that have the effect of exonerating them from any criminal proceeding or sanction. Likewise, article 16, para. 3 of the 1992 Declaration provides that privileges, immunities or special dispensations will not be admitted in such processes.

The Working Group considers that, since there are legal mechanisms in the Uruguayan criminal procedure that guarantee the rights of defendants and convicted persons to access house arrest, the mere processing of the project is unnecessary and only tends to give a social message that affects the process of memory, truth and justice in the country, so it is essential that the authorities of the Parliament file the project as soon as possible.

Finally,

The Working Group considered that a public and formal call for a truthful and genuine collaboration of all people by the highest authority of the State would contribute to overcoming this situation of stagnation. Along these lines, it is urgent that a State policy be adopted in Uruguay that involves all political parties and sectors, that breaks the silence and contributes to improving the collection of information from human sources as well as documentaries, and takes effective measures to ensure management, digitization and access to files both in Uruguay and abroad.