

## General allegation

101st session (4–13 November 2013)

### Guatemala

55. The Working Group received information from reliable sources on obstacles encountered in the implementation in Guatemala of the Declaration on the Protection of All Persons from Enforced Disappearance.

56. It is alleged that, during the armed conflict in Guatemala (1962–1996), the enforced disappearance of persons was a systematic practice of the State security forces. According to the information received, more than 45,000 people were forcibly disappeared; few of those cases have been resolved, with those responsible duly tried and convicted.

57. The source notes that, since 2009, significant progress has been made with respect to the investigation, arrest and punishment of some of the persons responsible for serious human rights violations committed during the internal armed conflict, including enforced disappearances. The sources cite the example of the convictions in the cases of Choatalúm (2009), el Jute (2009) and Edgar Fernando García (2010), for the crime of enforced disappearance.

58. According to the allegations, that progress was a result of the constant and resolute momentum sustained by the victims and their representatives, as well as the crucial role of prosecutors and certain magistrates and judges. In that regard, the source emphasized the District Attorney's request and the subsequent decision of the Criminal Chamber of the Supreme Court that the judgements of the Inter-American Court of Human Rights with regard to the State of Guatemala should be self-executing in cases of serious human rights violations, including enforced disappearances, and the authorities should be ordered to reopen or continue the investigation of those cases, which have been suspended for several years. Additionally, 2009 saw the creation of both the Court of First Instance and the Court of Criminal, Drug-Trafficking and Environmental Crimes of Guatemala City, also known as "High Risk" or "High Impact" tribunals, which have jurisdiction to hear cases on such crimes committed in any part of the State. Since 2011, these courts have issued several convictions against police, military and paramilitary agents involved in serious crimes and human rights violations, including several persons responsible for the Plan de Sánchez massacre and those responsible for the enforced disappearances of Edgar Enrique Sáenz Calito (2012) and Edgar Leonel Paredes Chegüen (2013).

59. Notwithstanding the foregoing, the source adds that this scant progress is at risk of stalling, given the State's new judicial stance, under which criminal investigations into enforced disappearance do not proceed and the judgements of the Inter-American Court of Human Rights on international State responsibility for enforced disappearances should be disobeyed.

60. In particular, according to the source, Guatemala claims that it is not possible to investigate enforced disappearances committed during the armed conflict, given that the crime of enforced disappearance was not punishable by law during the period of armed conflict and because such cases would be subject to a statute of limitations. According to the source, Guatemala argued before both the Committee against Torture and the Inter-American Court of Human Rights that alleged incidents reported as crimes of enforced disappearance are impossible to define in criminal law, because they occurred prior to the enactment of the decree that modifies the Penal Code and criminalizes enforced disappearances (Decree 33-96); this with consideration and full respect for procedural rights relating to the retroactivity of criminal law.

61. The source further alleges that the State maintains that the criminal investigation of disappearances would be prohibited by the amnesty law. According to the State, as documented by the source, the peace negotiations allowed for historical

research, without judicial ramifications, and an amnesty agreement had been negotiated between the Government and the guerrillas which included United Nations participation in the negotiations and the support of friendly countries. That amnesty was publicly debated and approved by the Congress. If that agreement had not been signed, there would not have been peace or an end to the armed conflict. Following the adoption of the amnesty agreement, judicial proceedings began and they were interpreted as outside of the context of what was negotiated and agreed on regarding exceptions contained in the text of the amnesty agreement. According to the source, that position has also meant that the State refuses to comply with the judgements of the Inter-American Court of Human Rights relating to enforced disappearances, wherein the Court ordered the adoption of a series of reparation measures. Those measures included a thorough investigation of the facts in order to identify, prosecute and punish those responsible. The State also argues that the Inter-American Court of Human Rights was not competent in that regard for reasons of *ratione temporis*.

62. The source adds that the State's position before the aforementioned bodies is not isolated or accidental, but represents the "new" position of the Guatemalan authorities on grave human rights violations that occurred in the armed conflict. According to the authorities, both international and national bodies would lack jurisdiction to hear cases of enforced disappearance.

63. The source further expressed its concern over the Constitutional Court ruling of 20 May 2013, by which the conviction of Efraín Ríos Montt for the crime of genocide and crimes against humanity was reversed. The source alleges that there is a deep sense of frustration on the part of victims and their families, who, six months after the annulment of the judgement, are still awaiting a new trial.

64. Finally, the source maintains that in Guatemala there is no system for obtaining genetic information that would permit the determination of the whereabouts and the clarification of the identity of disappeared persons. Nor, the source alleges, is there sufficient State support for the search for, exhumation and identification of disappeared persons.