

## **COMMITTEE ON ENFORCED DISAPPEARANCE**

### **STATEMENT ON ENFORCED DISAPPEARANCE AND MILITARY JURISDICTION**

1. The right to justice for the victims of the crime of enforced disappearance implies the respect of the principles of independence and impartiality of the Courts. The jurisdiction of military courts in case of gross violations of human rights, whether the victims are military or civilians, has become an important question confronting the Committee on Enforced Disappearances (the Committee) as it performs its duty, notably in its review of States parties reports under article 29 of the International Convention for the Protection of All Persons from Enforced Disappearance (the Convention). In this context, the Committee organized a public debate on enforced disappearances and military courts on 25 March 2014 during its sixth session.
2. The Committee makes the following statement with a view to clarifying its guidance to States parties in relation to its review of the measures to give effect to States parties' obligations to implement the Convention. The Committee notes that the Convention establishes obligations in the areas of investigations, prosecutions and trials. The Committee's opinion is that military jurisdiction could limit the effectiveness of investigations and prosecutions of enforced disappearances.
3. Investigations must be comprehensive and impartial and steps shall be taken to ensure the protection of complainants, witnesses and relatives (art. 12.1) as well as the victims' access to documentation and other information relevant to the investigations (art. 12.3.a). Furthermore, guarantees must be provided that the persons suspected of having committed an offence of enforced disappearance are not in a position to influence an investigation by means of pressure or acts of intimidation or reprisal (12.4).
4. The Convention also requires that any person tried for an offence of enforced disappearance shall benefit from a fair trial before a competent, independent and impartial court established by law (art. 11.3).
5. In approaching the provisions of the Convention and with a view to ensuring a fair trial before an independent and impartial court, the Committee has recommended in its concluding observations to States parties, when relevant, that all cases of enforced disappearance remain expressly outside military jurisdiction and be investigated and prosecuted by, or under control of, civil authorities and tried only by ordinary courts.
6. The Committee notes the practice of other human rights treaty bodies, notably the Human Rights Committee, when considering the role of military jurisdiction in relation to prosecutions of gross human rights violations.
7. The Committee takes into account the 1992 Declaration on the Protection of All Persons from Enforced Disappearance, in particular article 14, and also bears in mind

the approach of the Working Group on Enforced or Involuntary Disappearance of the Human Rights Council in this regard.

8. The Committee is aware of other developments in international law, in particular the Inter-American Convention on Forced Disappearance of Persons (article IX) which states that ‘persons alleged to be responsible for the acts constituting the offence of forced disappearance of persons may be tried only in the competent jurisdictions of ordinary law in each State, to the exclusion of all other special jurisdictions, particularly military jurisdictions’.
9. The Committee is also aware of the Updated Set of Principles for the Protection and Promotion of Human Rights through Action to Combat Impunity (E/CN.4/2005/102/Add.1, Principle 29) which restricts the jurisdiction of military tribunals to specifically military offences committed by military personnel, to the exclusion of human rights violations; and, the draft Principles Governing the Administration of Justice through Military Tribunals of the Sub-Commission for the Promotion and the Protection of Human Rights (E/CN.4/2006/58, Principle 9) which states that the jurisdiction of military courts should be set aside in favour of the jurisdiction of ordinary courts to conduct inquiries into serious human rights violations such as enforced disappearance and to prosecute and try persons accused of such crimes.
10. Taking into account the provisions of the Convention and the progressive development of international law and with a view to providing clearer guidance to States parties, in order to assure the consistency in the implementation of international standards, the Committee reaffirms that military jurisdiction ought to be excluded in cases of gross human rights violations, including enforced disappearance.