

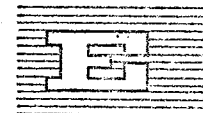
UNITED NATIONS
ECONOMIC
AND
SOCIAL COUNCIL



Distr.
GENERAL

E/CN.4/1434/Add.1
9 February 1981

ENGLISH
Original: ENGLISH/SPANISH



COMMISSION ON HUMAN RIGHTS
Thirty-seventh session
2 February - 13 March 1981
Item 10 (b) of the provisional agenda

QUESTION OF THE HUMAN RIGHTS OF ALL PERSONS SUBJECTED TO ANY FORM
OF DETENTION OR IMPRISONMENT, IN PARTICULAR: QUESTION OF MISSING
AND DISAPPEARED PERSONS

Report by the Secretary-General prepared in accordance with
Resolution 18 (XXXIII) of the Sub-Commission on Prevention
of Discrimination and Protection of Minorities

Addendum

CONTENTS

	<u>Page</u>
I. Replies received from Governments: (continued)	
Grenada	2
Mexico	3
Panama	7
IV. Replies received from non-governmental organizations: (continued)	
Amnesty International	8

I. REPLIES RECEIVED FROM GOVERNMENTS (continued) 1/

GRENADA

[Original: English]
[18 December 1980]

The People's Revolutionary Government of Grenada, which came into power on 13 March 1979, suspended the Constitution but pledged in the Declaration of the Revolution "to observe the fundamental rights and freedoms of our people subject to certain measures necessary to -

- (i) The maintenance of stability, peace, order and good government;
- (ii) The final eradication of Gairyism; and
- (iii) The protection of the People's Revolution".

It is in this spirit that the revolutionary government has consistently acted during the past twenty-one (21) months. There have been no cases of persons disappearing without trace in Grenada since this government came into power, as happened previously.

In furtherance of the three objectives noted above there are laws which provide for preventive detention. However, in such circumstances the detainee is entitled under the law "to be furnished with a statement in writing in a language that he understands specifying the grounds on which he is detained". (Section 3 (3) of People's Law No. 21 of 1979).

For those detainees who have a grievance that they are unlawfully detained, the right to apply for habeas corpus still exists. There is also a Preventive Detention Tribunal to which they may apply for a review of their cases within 14 days of their being detained and then every two months after the previous application.

Detainees have the right to receive regular visits from their families. They have constant access to medical attention whenever required. They are brought to the St. George's General Hospital if hospitalization is necessary.

The People's Revolutionary Government of Grenada firmly supports resolution 18 (XXXIII) adopted by the Sub-Commission on Prevention of Discrimination and Protection of Minorities and pledges that "enforced or involuntary disappearances of persons" will never become a feature of life in this country.

1/ In accordance with editorial directives issued by the Economic and Social Council, notably in resolution 1979/41, and endorsed by the General Assembly, the contents of the replies have been slightly summarized. The full texts are on file in the Secretariat and are available to any member of the Commission who may wish to consult them.

MEXICO

[Original: Spanish]
[20 January 1981]

It should first of all be stated with regard to the prevention of discrimination and protection of minorities that, in Mexico, the legal and social situation is such that every individual enjoys the guarantees afforded by the Political Constitution of the United Mexican States. These guarantees are also the subject of secondary legislation and are applicable throughout the national territory, in which all individuals are equal without distinction as to race, religion, economic situation, political ideology, etc. This constitutional principle is embodied in article 1 and amplified in article 2, which forbids slavery and states that slaves who enter the national territory from abroad shall, by this act alone, recover their freedom and enjoy the protection afforded by the laws. Similarly, under the Federal Constitution, no treaty shall be authorized for the extradition of political or non-political offenders who have been slaves in the country where the offence was committed. Nor shall any agreement or treaty be entered into which modifies the guarantees and rights which the Constitution grants to the individual and to the citizen (Constitution, art. 15). Consequently, the guarantee of equality is reaffirmed, not only in the precepts referred to, but also in article 12, which states: "No titles of nobility or prerogatives or hereditary honours shall be granted in the United Mexican States, nor shall any effect be given to those granted by other countries". Article 13 also refers to the right of equality and establishes in particular that: "No one may be tried under a special law or by a special court ...".

The guarantees of freedom are based on articles 4, 5, 6, 7, 8, 9, 10, 11, 24 and 25, inter alia, of the Constitution, and the guarantees of legal security are to be found in articles 14, 15, 16, 17, 18, 19, 20, 21, 22, 23 and 26 of the Constitution. It therefore follows that our Constitution provides the legal framework for the essential freedoms of every individual, such as freedom of employment, expression, publishing, the press, petition, assembly and association, movement, religion, travel throughout the national territory, competition, etc., which together determine legal security through, inter alia, article 14 of the Constitution, which establishes that: 1. No law shall be given retroactive effect to the detriment of any person whatsoever; 2. No person shall be deprived of life, liberty, property, possessions or rights without a trial; 3. Exact application of the law, which includes in criminal law the principle of nullum crimen sine lege, shall be guaranteed. The principle of legality is fully expressed in article 16 of the Constitution, which prohibits the detention of persons without a written order by a judicial authority. Article 18 governs the pre-trial detention of individuals and the penal system on a basis of work, training of the offender and social rehabilitation. Article 19 sets out the guarantees to be enjoyed by the individual under criminal procedure, and articles 20 to 23 determine the guarantees which are to be enjoyed by every individual who, as a result of anti-social conduct, is subject to legal proceedings. It should be noted in this respect that article 22 prohibits punishment by mutilation, degrading treatment, branding, flogging, beating with sticks or torture of any kind, excessive fines and any other unusual or disproportionate penalty. These guarantees reflect the concern of the authors of the Constitution to establish that, regardless of whether a person has committed an offence, he should not lose his personal dignity, and that the penalty and treatment imposed should be aimed at rehabilitating the individual and reincorporating him in society. The predominant idea underlying constitutional legislation on this subject is that the Mexican State is more interested in preventing offences than punishing offenders.

On a different subject but still with regard to the Mexican citizen's rights and enjoyment of freedoms, article 26 of the Constitution states that "No member of the army may in time of peace be quartered in a private dwelling without the consent of the owner, nor may such member impose any obligation whatsoever". This provision makes it clear that the armed forces are required to respect the civilian population, and that within the national community, the Mexican military forces adhere to the principle of the protection of national territory and sovereignty, working together with civilians and civilian authorities in the event of natural disasters.

It can therefore be truthfully stated that our Constitution and the legislation deriving from it establish precautionary measures of a substantive and procedural nature to guarantee the rights of every individual in any aspect of their social and private life.

Comments are made below on paragraph 4 of the resolution to be considered by the Sub-Commission at its thirty-fourth session.

With regard to subparagraph (a) on "the adequacy of methods utilized at the domestic and international levels in searching for missing and disappeared persons and in undertaking speedy and impartial investigations", it can be stated that at the domestic level in Mexico our constitutional law and the legislation deriving from it establish the procedure for reporting to the Office of the Government Attorney and police institutions in order that they may make the appropriate investigations and determine the appropriate legal proceedings. It should be noted that, in the administrative field, the authorities have established a system for locating persons known as "LOCATEL" which immediately provides information on missing persons. In Mexico it is not feasible to speak of "enforced or involuntary disappearances" since they do not exist, the country being governed by the rule of law which creates freedom, law and order, and legal security for all its inhabitants. This system is guaranteed by appropriate legislation, so that even citizens who are subject to criminal proceedings are judged according to the principle of constitutional legality. Similarly our Substantive and Procedural Penal Codes establish, among other guarantees for persons brought to trial, that hearings shall be public, so that there can be no concealment of any proceedings and the procedure established by law for passing sentence is respected (Constitution art. 17). Court proceedings are free of charge and the court must act speedily and impartially to ascertain the truth and pass sentence in accordance with the evidence produced at the trial and, of course, on the basis of the strict rules of law established by the applicable law. It may therefore be concluded that, in Mexico, the legal system guarantees the appropriateness of the methods used in searching for missing and disappeared persons, and even for persons who, as a result of their conduct, are subject to trial and sentencing. In all these cases there are legal provisions for speedy and impartial investigation.

With regard to the methods used at the international level to search for missing or disappeared persons, the Mexican Foreign Service, within the limits authorized by international law and by the treaties and conventions in force, has an obligation to protect Mexicans abroad, and one of the ways of doing this is to take the necessary steps to locate them.

With regard to subparagraph (b) concerning "the adequacy of methods for ensuring that law enforcement and security authorities or organizations are fully accountable especially in law, in the discharge of their duties, taking into account, as stated by the General Assembly, that such accountability includes legal responsibility for unjustifiable excesses which might lead to enforced or involuntary disappearances and to other violations of human rights", it should be noted that, in accordance with the

country's legal structures, based on the Federal Constitution, not only is the adequacy of the methods for ensuring the responsibility of law enforcement authorities guaranteed, but severe penalties are applicable for any abuse in the application of the law by officials responsible for law enforcement. Enforced or involuntary disappearances or other human-rights violations cannot therefore occur. In this context, reference may be made to the Act relating to the Responsibilities of Officials and Employees of the Federation and the Federal District, and Senior Officials of the States of the Republic, which guarantees the adequacy of methods for ensuring responsible application of the law by such officials. Reference may also be made to the fact that our Penal Code contains chapters concerning offences committed by public officials in the administration of justice, offences against life and physical integrity, and offences involving illegal deprivation of liberty and other guarantees. It therefore follows that the conduct of any official is regulated and controlled to ensure that it remains within legal bounds, and in such conditions no unjustifiable excesses can be committed when persons are detained or brought to trial and no human rights violations of any kind can occur.

With regard to subparagraph (c) which concerns "procedures for regarding as official the detention without trial as an emergency preventive measure of any person held on premises whether or not intended for that purpose", article 16 of the Constitution states that no order of arrest or detention shall be issued against any person other than by the competent judicial authority, and unless the order is preceded by a charge, accusation or complaint, concerning a specific act punishable by imprisonment, supported by an affidavit of a credible party or by such other evidence as would point to the probable guilt of the accused, except in cases of flagrante delicto where any person may arrest the offender and his accomplices, turning them over without delay to the nearest authorities. Only in urgent cases, when there is no judicial authority available and prosecution is automatic, may the administrative authorities, on their strictest accountability, order the detention of the accused, turning him over immediately to the judicial authorities. This constitutional guarantee is also objectively applied in the legislation deriving from the Constitution, the Federal Code of Penal Procedure (arts. 193 and 194) and the Code of Penal Procedure for the Federal District (arts. 267 and 268), which define cases of flagrante delicto and urgent cases of detention, and establish in greater detail the requirements and circumstances for application of this guarantee. Similarly, article 18 of the Constitution establishes the form and conditions of detention in custody and stipulates that such detention shall be effected in places different from those in which individuals who have already been tried serve their sentences. Thus Mexican law prohibits private prisons.

With regard to subparagraph (d) concerning "the adequacy of the protection of persons who provide information about disappeared persons, particularly the protection of witnesses and journalists who furnish such information", it should be noted that any person who provides information on missing persons and witnesses in any type of proceedings are duly protected by the general legal structure and, in particular, by penal regulations concerning substance and procedure. The Mexican State takes a fundamental interest not only in persons who are missing or have disappeared as a result of an act which the law might define as an offence, but also in the witnesses in any penal procedure. With a view to discovering the truth and applying the law in a specific case, it establishes the duty of every individual to provide the authorities with any information which he may have and which may serve to clarify the facts and ultimately restore the right which has been violated. Furthermore article 190 of the Code of Penal Procedure for the Federal District states that during

the preliminary investigation, the judge may not omit to examine the witnesses called by the parties, and article 191 stipulates that any person, whatever his age, sex, social condition or background, shall be examined as a witness provided he can throw some light on the investigation of the offence. Similar provisions are found in article 240 of the Federal Code of Penal Procedure and, in connection with the topic under consideration, article 247, section III, of the Penal Code establishes that the act of bribing a witness to lie in court or forcing him or making him promise to lie by threatening him in any way is an offence. It therefore follows that our laws establish a legal framework which guarantees adequate means for the protection of any person who provides information about criminal acts, and this obviously includes the problem of missing or disappeared persons, which does not occur under the legal system in force.

With regard to subparagraph (e) concerning "procedures for effective reporting, monitoring and appraisal of cases of missing persons and of enforced and involuntary disappearances, including cases in which an authority implicated on the basis of relevant facts contents itself with replying by denials without due investigation and without showing itself ready to investigate and to set up an inquiry for the purpose, and when such situations occur, procedures providing for publication of findings relating to such situations", it should be repeated that, in accordance with the legal structure in force in Mexico, such a case cannot occur because the procedures for reporting any act or providing any information leading to the location of any missing person and the action to be taken are determined by law, even in cases where offences are committed and the Office of the Government Attorney, as the institution which under Mexican law represents society in general and the strictest application of the law, intervenes immediately to investigate. Therefore any request by individuals that a particular authority should investigate any situation of which the authority is aware or which falls within its competence is supported and provided for in article 8 of the Federal Constitution which compels any authority to respond to and take a decision on any legally presented request and to give an answer to the individual making the request within a brief period. Furthermore, any interested person may, of course, request information on any public legal proceeding brought before the Office of the Government Attorney or other legal authority. It may therefore be stated that guarantees are provided for all the situations referred to in subparagraph (e) (with the exception of "forced or involuntary disappearance", since our legal system does not permit this) by means of the legal security implied by strict application of the law.

The opinions expressed in this reply describe the constitutional guarantees which are reflected in the secondary legislation also referred to and which, as described, protect the person, property and rights of every citizen within the national territory. In addition, however, amparo proceedings are considered to be the strongest bastion of Mexican law, and are provided for in articles 103 and 107 of the Political Constitution of the United Mexican States and outlined in greater detail in the corresponding Amparo Act. The right to request in this way the support and protection of federal justice means that, even if any authority at any level violated a guarantee, appropriate means would be available to every individual within the national territory to reclaim the right that had been violated. This confirms the statements that Mexican law fortunately provides all the necessary legal machinery for preventing violations of human rights.

PANAMA

[Original: Spanish]
[15 January 1981]

With regard to the provisions of resolution 18 (XXXIII), entitled "Question of the human rights of persons subjected to any form of detention or imprisonment", adopted by the Sub-Commission on Prevention of Discrimination and Protection of Minorities on 11 September 1980, the Government of Panama is of the opinion that the resolution adequately expresses the international community's concern about the extremely complex problem of missing persons, and is therefore pleased to note and participate in the study of this subject. With regard to paragraph 4 of the resolution, the Government of Panama considers that one effective way of preventing such acts is closely related to observance of the principle of strict application of the law and observance of penal and procedural guarantees, including the right of defence. Similarly, the Government considers it advisable to strengthen non-governmental organizations with a view to implementing paragraph 4 (d).

IV. REPLIES RECEIVED FROM NON-GOVERNMENTAL ORGANIZATIONS
(continued) 2/

AMNESTY INTERNATIONAL

[Original: ENGLISH]
[25 January 1981]

PART I. The problem of "disappearances" and the need for continuing action

1. Part II of this document gives details of seven cases that are intended to illustrate the issue of "disappearances". Although the cases are typical for the country concerned, they have not been selected as being the "worst" cases Amnesty International knows of. So far, Amnesty International has submitted to the Working Group on Enforced or Involuntary Disappearances cases of "disappearances" in Argentina, Brazil, East Timor, El Salvador, Ethiopia, Guatemala, Mexico and the Philippines. But even that cannot be taken as an exhaustive list of countries that have resorted to the practice of "disappearances" during recent years.

2. Although the circumstances of the seven cases are slightly different, there are several characteristics they have in common. In each case there are strong grounds for concluding that the victim has been taken into custody by the authorities or by groups acting in collusion with the authorities. In each case the authorities have denied that the "disappeared" person is in their custody. In each case, there are strong grounds for disbelieving this denial. Because of this and because of what has happened in similar cases in the country concerned, there are serious fears for the physical safety of the victim.

3. The individual cases in the context of the background described together with them, permits the following comments on the points referred to in operative paragraph 4 of Sub-Commission resolution 18 (XXXIII) of 11 September 1980.

(a) In countries where "disappearances" occur frequently, there are no adequate methods at the domestic level to search for missing and "disappeared" persons or to undertake speedy or impartial investigations. The bodies that make people "disappear" and are permitted or encouraged to do so are normally beyond the reach of the legal and administrative institutions that would normally be responsible for such searches and investigations. They may even be the same bodies. Unless the authorities at the domestic level co-operate it is impossible for international machinery successfully to search for missing persons. Nevertheless, international bodies have a role to play, especially in drawing the attention of the authorities to the fact that these bodies are aware of the cases in question. Thus, for example, Amnesty International will immediately appeal to the authorities to account for an individual - as it has done on all the cases referred to in Part II - whenever it hears of the case of that individual "disappearing". No doubt, similar actions by the chairman of the Commission's Working Group may have contributed to saving the persons in question. It is essential that the Working Group remain in existence and continue such actions.

2/ These cases are on file in the Secretariat and available for consultation

(b) The very technique of the "disappearance", taking place, as it does, outside the law and frequently by bodies or agencies that are not part of the normal law enforcement operation, is designed to ensure the avoidance of legal accountability by such bodies or agencies. Sometimes, when the evidence is irresistible that particular persons or bodies have been involved in making people "disappear" the government may grant an amnesty to such persons or bodies.

(c) Resort to emergency measures, often the pre-requisite for unfettered abduction of persons, usually means that no procedures are demanded for making a detention official, other than the issuance of the order itself wherever the detained person may have been seized.

(d) One of the reasons some persons "disappear" is precisely because they provide information about other "disappeared" persons including relatives. The web of terror created by systematic resort to "disappearances" is thus made complete.

(e) Sometimes countries permit public reporting, for example by the press, of "disappearances", sometimes not. It may well depend on whether the authorities determine that there is more advantage in openly intimidating the population or in creating terrorized confusion by allowing information and rumour to circulate by whisper. The essence of the "disappearance", however, resides in the refusal of those charged by law with the duty to account for the fate of "disappeared" persons to avow any knowledge of the case, much less set up enquiries aimed at genuinely clarifying the facts.

4. One of the presumed purposes of resort to "disappearances" is to create a climate of mystery both internally and internationally. Internally, the families of "disappeared" persons can turn to no one for hard information. Legal institutions are paralysed, nobody knows anything officially. Internationally, the responsible governments seek and sometimes succeed in portraying the "disappearances" as anything from lies to the uncontrollable activities of criminal groups. It is essential that the veil of mystery be drawn back and that the manifest reality, described in paragraph 2 above, and illustrated in Part II below, be exposed.

5. Therefore, Amnesty International respectfully urges the Commission to decide to extend the mandate of its Working Group on Enforced or Involuntary Disappearances, so that the group can continue to seek information on new cases of alleged "disappearances", to analyse the nature of the practice of "disappearances" in various countries, to work towards a proper accounting for the fate of "disappeared" persons, to seek proper legal accountability for those individuals and bodies responsible for carrying out "disappearances" and to ensure that compensation is awarded to the families of "disappeared" persons. For even where there is evidence that "disappeared" persons are no longer alive, the families of such persons deserve no less by way of what can only be partial alleviation of their misery.

PART II Sample cases of "disappearances"

The following seven cases of "disappearances" are offered to illustrate the continuing nature of the phenomenon. They show that the practice is not the prerogative of any region or ideology. They are recent and demonstrate the need for continuing efforts by the international community to eradicate the practice. They are merely examples of a practice whose especial cruelty extends to the thousands of families of the thousands of victims. a/

a/ These cases are on file in the Secretariat and available for consultation