

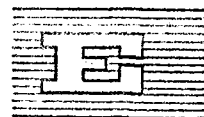
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QUESTION OF THE HUMAN RIGHTS OF ALL PERSONS SUBJECTED TO ANY FORM
OF DETENTION OR IMPRISONEMENT, IN PARTICULAR: QUESTION OF MISSING
AND DISAPPEARED PERSONS

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

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I. REPLIES RECEIVED FROM GOVERNMENTS (continued) 1/
COSTA RICA

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23 February 1981

It is a commonplace to say that countries are concerned almost uninterruptedly to find the best means of suppressing and investigating anti-social and illegal acts, since due to the increase in crime police efficiency is an absolute necessity. Some of the manifestations of crime take the form of offences against the liberty of individuals, and one particular example of this is enforced disappearances of individuals and groups.

As a result of guerilla activities, civil strife and other types of armed confrontation, there is a regrettably large number of missing persons in more than a few regions of the world.

Similarly, a proportion of the population may be deprived of its liberty because of abductions, kidnapping for ransom and similar illegal acts.

The political and socio-economic circumstances which give rise to acts of the kinds mentioned explain our Government's desire to carry out preventive action along with the fight against crime, in the hope of achieving harmonious and fair solutions.

Having sketched the above background to the subject-matter of the United Nations enquiries, we reply to the questions contained in the request for information as follows:

- (a) The adequacy of methods utilized at the domestic and international levels in searching for missing and disappeared persons and undertaking speedy and impartial investigations

With respect to foreigners, if notice of a disappearance is received, the Crime Prevention Department of the Ministry of Public Security transmit the notice for action to the Department of Migration and the Ministry of Foreign Affairs.

With respect to disappearances at the domestic level, the Crime Prevention Department investigates the notice as soon as it receives it.

In the latter case the procedure takes two forms. One is used when the person whose disappearance has been notified is a minor and the other when the person is of age.

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.

In the former case one of the parents notifies the National Children's Welfare Board and the Board contacts the Crime Prevention Department to carry out the investigation.

Most of the notifications concern missing girls (approximately 30 per month) who run away from home with a friend. There are also many cases of elderly people who get lost or wander away, cannot find their homes and remain in that situation for some days.

As far as the effectiveness of the investigation procedures is concerned, it should be pointed out that the simple procedure referred to above was established only recently, the Crime Prevention Department having been responsible for this function for the past three months or so. Before that the Department of Criminal Investigation was responsible for such matters and had only two members of its staff to look after them. The body now responsible has eight former members of the Department of Criminal Investigation who are receiving crime prevention training.

With respect to rapidity and impartiality, we judge the work of our officials to be efficient; there are not many notifications and we know of no charges of negligence against the investigating officials in question.

Lastly, we should like to say that in view of the nature of the reasons for these disappearances, which are simply cases of running away from home, abandoning a spouse or an old person's getting lost, the procedure followed appears to be suitable, since on receiving the notice of disappearance the official asks the informant for the necessary facts (behaviour of the missing person, residence, friendships, health problems, bad habits, etc.), makes the inquiries and, if the person is found, notifies the informant and hands the person over to him. If any crime, kidnapping, abduction or other offence has occurred, the necessary steps are taken to inform the courts.

- (b) 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

Under the Costa Rican legal system every official responsible for security (civil guards, rural guards, narcotics officers, crime prevention officers and, in general, all members of the forces of law and order), are bound by disciplinary and penal rules.

We thus find, among the regulations to the Ministry of Public Security Organization Act, the following provision:

"Article 16. Irregularities committed by police officers may be investigated and punished ex officio or on the application of a member of the public. Any investigation of such irregularities shall be a summary one and be conducted with the utmost dispatch. It shall include in all cases a hearing of the official responsible and the submission of testimony and evidence supporting the proceedings.

"Complaints shall be lodged with the appropriate Directorate-General or senior official, depending on the jurisdiction under which the official complained of falls.

"The Director-General or senior official, as the case may be, shall decide the matter in the first instance. His decision may be appealed by the complainant or the official complained of to the Minister, who shall give the final decision on the matter."

Depending on the decision, the penalties may be as described in article 19 of the Organization Act referred to above.

"Any misdeed committed in the discharge of duty shall be punished by a disciplinary measure appropriate to the seriousness of the misdeed; the measure may be a verbal admonition, a written admonition, two weeks' suspension, relegation to the reserve for up to two weeks, demotion to an inferior post or dismissal depending on the regulations concerned.

In addition, the Penal Code contains an entire section dealing with offences in breach of the duties of public officials, including article 329 on abuse of authority, and a section of offences against individual liberty, including article 192(4) on deprivation of liberty with no intention of profit, but in abuse of authority, punishable by imprisonment for 2 to 10 years.

Conviction for one of these offences results in the offender serving a prison term and making reparation for any loss or damage caused by the offence.

As regards the liability of an official found responsible for an enforced or involuntary disappearance in violation of a person's human rights, liability is enforced by the charging of the alleged offender in the courts, as provided in article 192 of the Penal Code.

- (c) 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

The rule on detention without the traditional requirements of an order from a competent magistrate and due process is laid down in article 37 of the Constitution which reads as follows:

"No one may be detained without there being prima facie evidence that he has committed an offence and, without a written order from a magistrate or authority charged with the maintenance of public order, unless the person concerned is a fugitive from justice or is caught in the act of committing an offence, but in all cases he shall without fail be placed at the disposal of a competent magistrate within 24 hours."

Formulated positively, this means that the existence of prima facie evidence that a person has committed an offence is sufficient for that person to be lawfully detained. Similarly, a person may be arrested if caught in the act of committing an offence. In both cases the person in question is to be placed at the disposal of the judicial authority.

These two cases of emergency preventive measures in which detention is lawful are accompanied by a third, provided for in article 121(7) of the Constitution, which permits the suspension of the individual rights and guarantees specified

in the paragraph in question. As a result, even in cases where there is no prima facie evidence of an offence having been committed, no process pending and no order by a magistrate, the detention of any person on grounds of "clear public necessity" will be lawful, as indicated in that paragraph of the Constitution.

- (d) The adequacy of the protection of persons who provide information about disappeared persons, particularly the protection of witnesses and journalists who furnish such information

Due to the democratic régime in force in Costa Rica, there have been no known notifications of disappearances having political overtones in the last 30 years. As already pointed out, the causes of the individual disappearances currently under investigation are of criminological interest (without prejudice to their importance in other sociological fields), which is why close relatives, the only persons concerned with the disappearance, make the notifications.

At all events, the procedure followed in the investigations does not include any specific means of protection for informants, who enjoy the procedural safeguards available to any citizen who brings a charge in court.

- (e) 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

In answer to the first part of this question, we refer the reader to the reply given to question (b), concerning the administrative and legal provisions governing the Ministry of Public Security.

With regard to the publication of findings concerning denials by the public investigation services, article 30 of the Constitution states that "free access to administrative departments is guaranteed for purposes of information on matters of public interest. State secrets are excluded from this provision."

Furthermore, the system of unrestricted freedom of the press prevailing in the country and the constitutional right to free expression of beliefs guarantees all citizens the opportunity to publish unrestrictedly what they consider fit.

LUXEMBOURG

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(a) At the domestic level

Any adult or minor whose parents or close relatives notify his disappearance to the police becomes the subject of a message circulated to all divisions of the constabulary and all police stations; the message briefly relates the circumstances of the disappearance, as far as they are known, and gives particulars of the identity and a description of the person in question.

The Judicial Documentation and Research opens a file on every person reported missing; this is inserted in alphabetical order into the register of missing persons, which is part of the register of persons sought.

The investigators, on receiving the notification mentioned above, attempt to determine whether the disappearance is simply an escapade or a desperate act which could culminate in suicide. In the latter case, large-scale searches are undertaken where it seems possible to designate a geographical area more or less accurately. In cases where evidence suggests that a disappearance might be the result of criminal behaviour the Public Prosecutor may refer the matter to an examining magistrate with a view to an inquiry being commenced, regardless of whether the offenders are known at the time or not.

At the international level

Persons reported missing by Interpol (ICPO) are not the subject of a message to all police units unless the Interpol report expressly mentions that the person may have taken refuge in Luxembourg.

Files are opened on these persons and contain the same details as mentioned in the opening paragraph, in so far as they are given in the Interpol report. This file is inserted in alphabetical order in the central register.

In general, all missing persons are the subject of a search in the register of unidentified corpses.

(b) First of all, it should be emphasized that the authorities and bodies in charge of public order have no immunity for acts done in the exercise of their functions.

In cases of abuse of these functions the persons responsible, besides having disciplinary measures, including dismissal, taken against them, are liable to penal sanctions.

As to unlawful detention, mention may be made of various provisions of book II, title II, chapter III of the Penal Code, entitled "Interference by public officials with rights guaranteed by the Constitution", namely articles 147, 154, 155, 156, 157 and 159.

It should be clearly understood that, as pointed out above, the officials referred to are punishable by the criminal courts for acts committed by them which infringe the penal laws, in the same way as private individuals.

Article 266 of the Penal Code in fact provides that civil servants and public officials who have been guilty of crimes or offences which they were responsible for preventing, detecting, prosecuting or punishing shall be sentenced to the penalties attaching to those crimes and offences, and that the minimum penalty shall be doubled where the penalty is light imprisonment and raised by two years where it is a term of ordinary or rigorous imprisonment or hard labour.

Article 257 of the Penal Code states that if a civil servant or public official, an administrator, agent or servant of the Government or the police, an officer executing judicial orders or judgements, or a commander-in-chief or subordinate commander of the forces of law and order has without just cause used violence or caused violence to be used against persons in the exercise or in connection with the exercise of his functions, the minimum penalty attaching to those acts shall be raised in conformity with article 266.

(c) Apart from remand in custody, which can only be ordered by the examining magistrate in a substantiated decision on certain legal conditions during a preliminary investigation, and for which the legal system fully guarantees the right of defence (articles 94, 94, 1-2, 113 et seq. of the Code of Criminal Procedure), there is no detention without trial in the form of an emergency preventive measure in Luxembourg.

Article 12 of the Constitution provides that no one can be arrested except in pursuance of a substantiated order by a magistrate, which must be served at the time of arrest or at the latest within 24 hours. No arrest and consequently no detention can take place except as part of a preliminary investigation conducted by a magistrate. The flagrante delicto procedure does not constitute a departure from what has been stated above; even though in this latter case, which is provided for in article 41 of the Code of Criminal Procedure, the Public Prosecutor can have a person against whom there is serious evidence taken into custody or arrested, he must, under article 45, refer the matter without delay to the examining magistrate, who must proceed in accordance with the legal provisions governing preliminary investigations.

(d) Article 282 of the Penal Code provides that outrage or violence to witnesses shall carry the same increased penalties as provided in articles 275 et seq. of the Code with respect to outrage and violence to deputies, members of the Government and administrative and judicial magistrates. Needless to say, this article applies equally whether the victim is a journalist or not; a simple witness's claim in the courts is sufficient.

Article 24 of the Constitution - an item which applies particularly to journalists - guarantees freedom of the press. In this connection it should be noted that respect for constitutional rights and freedoms is imposed not only on private individuals but also on administrative and judicial authorities of every kind and rank.

If a witness or journalist who has given information on a disappearance resulting from a crime or offence is seriously and specifically threatened because of the revelations he had made, the police, as part of its general mission of preventing crime, will be authorized to assume the protection of the person threatened.

The normal functioning of the rules of our democratic system is designed to prevent the situations described under item (e), or at least to remedy them. In particular, parliament has a general right of supervision and review of public affairs which is carried out in accordance with institutional rules.

NICARAGUA

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5 February 1981

We should like to refer to the note of 22 December 1980 by which the National Commissioner for Human Rights and Humanitarian Matters transmitted the reply of the Nicaraguan Minister of the Interior to note No. G/SO 217/1 NIC.CONF dated 29 October 1980. 2/

The Military Offences and Military Penal Procedure Acts to which the above-mentioned reply refers are already in existence and were published in the Diario Oficial La Gaceta of 18 and 23 December respectively, copies are attached. 3/ This military legislation reflects our desire to be loyal to our people and faithful to the basic tenets of Sandinism.

Nicaragua has left behind the dark days of Somoza, which were filled with disappearances. In free Nicaragua only criminals are afraid - of a Sandinista police force which has the ability to apprehend them, does not hide them or conceal them, and detects them and hands them over to the courts. Article 7 of the Sandinista Police (Jurisdictional Functions) Act states as follows: "Where a person is detained on suspicion of being involved in the commission of an act punishable by law, the Sandinista police shall conduct the preliminary inquiries and within 24 hours, depending on the result, either release him or initiate police proceedings. The examining police magistrate shall immediately issue an initiating order with a time-limit of six days. The police, on taking a person into custody, shall explain his rights to him and within 24 hours notify his relatives, his work place or whomsoever he indicates, that he has been arrested."

The Sandinist guerillas fought and died in order to banish disappearances in Nicaragua forever, and today, as institutionalized armed forces, are once more prepared to fight and die for the defence of a revolution built upon humanitarian principles, based on the ideals of international brotherhood and strengthened by the honest practice of civic truth in public affairs.

2/ See E/CN.4/1435/Add.1, para 3 for part of the mentioned note.

3/ Available in the files of the Secretariat for consultation.