

Handout for the group exercise for facilitators

Module 4: Criminalization, prevention, investigation, the search for disappeared persons and the rights of victims

Divide participants into four groups and ask each group to appoint a rapporteur who will summarize your discussions in plenary.

Give all participants 20 minutes to read the scenario and 40 minutes to identify and discuss issues related to the following obligations of States parties under the Convention:

- **Working group 1:** Definition and criminalization of enforced disappearance
- **Working group 2:** Measures to prevent enforced disappearances
- **Working group 3:** Investigation and prosecution of enforced disappearance
- **Working group 4:** Victims' rights and measures of reparation, wrongful removal of children and the search for disappeared persons

Nirvania gained its independence at the end of the 1990s. It ratified the International Convention for the Protection of All Persons from Enforced Disappearance and accepted the competence of the Committee on Enforced Disappearances to receive and examine individual communications in 2011.

Between 2001 and 2018, the political situation in Nirvania was particularly tense, marked with large-scale manifestations and the use of force by the Government against protesters. Various human rights NGOs have reported that, during this period, arbitrary arrests, killings and enforced disappearances were committed in a systematic manner, and several children were removed and separated from their biological families and identity documents were falsified.

In 2002, the President of Nirvania issued an order declaring a state of emergency throughout the entire territory of Nirvania. The order gave the military tribunals exclusive jurisdiction over crimes allegedly committed by State agents. Pursuant to the

order, the case files of the military tribunals are confidential and covered by laws on State secrecy.

In July 2013, the special forces of Nirvania carried out a large-scale operation arresting hundreds of manifestants who were demonstrating in front of the Parliament. Human rights activists, Ms. Alpha and her husband, Mr. Garaba, were among those who were arrested. Both were transferred to a clandestine detention facility and held there together for several days until Mr. Garaba was transferred to another facility and finally released despite his request not to be separated from his pregnant wife. During the first days of detention both were regularly ill-treated. They were also denied the right to have their detention reviewed or to contact their family members or counsel. At no stage was information about them entered in official registers.

From the day of his release, Mr. Garaba started to inquire into the fate or whereabouts of his wife. In 2014, he also established the Association of the Victims of Enforced Disappearance in Nirvania, which brings together families of victims of enforced disappearance. Between 2014 and 2018, the Association's office was repeatedly raided by the special forces of Nirvania. Its members, including Mr. Garaba, have also received threats.

In 2015, Mr. Garaba met Ms. Paleso at the Association. She had been arrested and detained in July 2013 with him and his wife. She mentioned that Ms. Alpha had given birth to a baby boy, who had been taken away by the doctor immediately after birth. Ms. Alpha had been told that her son had died but she had not been allowed to see the body.

Mr. Garaba engaged with various authorities of Nirvania to have his and Ms. Alpha's enforced disappearance and the wrongful removal of their son investigated, and the fate and whereabouts of his wife and child duly established. For years, his attempts to obtain information about the progress of the investigation and the search were unsuccessful. He was not even able to testify or submit any information in relation to the investigation and the search process.

In 2017, he received a note that stated, in response to his claims, that the military courts had heard a case on the alleged misuse of power by a State official (the Criminal Code of Nirvania does not codify enforced disappearance as a separate offence), but the person had been acquitted because guilt could not be established beyond reasonable doubt. As regards the whereabouts of Ms. Alpha, the note specified that the case had been closed because the search had not produced any tangible results; it specified that Mr. Garaba had only the right to initiate proceedings to obtain the death certificate of Ms. Alpha. According to the note, in the absence of a crime perpetrated

by a State official in relation to his claims, no compensation could be paid to Mr. Garaba. The note mentioned that public authorities had no information about the birth of a child by Ms. Alpha, therefore, neither a birth nor a death certificate could be issued.