



## Asamblea Permanente por los Derechos Humanos

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Estatus Consultivo Especial ante el ECOSOC de la ONU  
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Mr. Chair,

The Permanent Assembly for Human Rights (APDH) greets the Advisory Committee on progress made in their Report presented to the Council relating to Best Practices on the question of the Missing. However, APDH would like to underline the need to review certain points which we find to be contradictory.

APDH welcomes the definition given in paragraph 10 of the Report which comprehends “Missing” as anyone unaccounted for or whose whereabouts is unknown by family members in the context of armed conflicts, both national or international. We are happy to see that the difference between such a situation and that of “enforced or involuntary disappearances” has been clearly spelled out. We are also in agreement with paragraph 40 of the Report affirming that truth commission mechanisms which search for truth and justice in the building up of a democratic and participative society should be considered as complementary to judicial and penal processes.

Consequently, we cannot but express our deep concern at the contradiction that exists when the Report refers to information gathered and the legal protection of personal data. Specifically paragraph 84 expresses that “States should guarantee that information obtained on missing persons be thorough but limited to the end in mind”. Here there is no clear limit determined between “thorough” and “necessary information” and that opens the way to restricting information which may be central to fully clarifying cases. The paragraph continues: “The gathering and use of information should be subject to the consent of the person involved“. This statement is unclear and moreover impracticable to apply as the person involved is in fact in unknown whereabouts. Furthermore it may undermine the guarantee of State protection for that person with its obligation to inform next-of-kin.

Continuing paragraph 85, an auto-limitation is set in the searching and accessing of information when it says, and I quote, “Data provided should be sufficient, pertinent and not excessive with respect of the objectives for which it is to be used. These objectives should be explicit, legitimate and determined at the moment of processing the information”, end of quote. This phrasing abandons all independent determination of the elements which are “pertinent and not excessive”. We believe that no data which is motivated by the need to defend life and limiting flagrant and systematic violation of human rights can be qualified as “excessive”. The quoted paragraph does not ascertain how objectives are to be determined and temporally reduces the gathering of information.

Similarly APDH considers the following sentence of the same paragraph to be most unfortunate: “Information gathered should be destroyed once those objectives are reached for which it was gathered or when that data is no longer necessary.” Historically, statements such as this have justified the destruction of evidence, names and data thereby condemning to silence those who have been disappeared and deprived of their liberty, and has facilitated impunity for the perpetrators of such crimes.

APDH calls your attention to these issues and urges States to manifest disagreement with paragraphs 84 and 85. It also would request the Advisory Committee to re draft that text so that access to information without restriction be guaranteed which is the way to overcome this scourge of humanity.

Thank you.

APDH, Geneva, June 2010.