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Oral Statement by the International Commission of Jurists
in the Interactive Dialogue with the Working Group on Enforced or
Involuntary Disappearances (item 3)

CRIMINALIZATION OF ENFORCED DISAPPEARANCES IN ASIA

11 September 2017

Mr President,

The ICJ echoes the Working Group's recommendation that States should criminalize all acts of enforced disappearance, including enforced disappearances of migrants, which should be punished by appropriate penalties, taking into account their extreme seriousness.

As noted in the recent ICJ publication, "No more 'missing persons': the criminalization of enforced disappearance in South Asia", despite the region having some of the highest numbers of reported cases of disappearances in the world, enforced disappearance is not presently a distinct crime in any South Asian country.

This is a major obstacle to ensuring justice in cases of enforced disappearance.

In Southeast Asia, the ICJ has highlighted the failure of authorities to effectively investigate cases of alleged enforced disappearance in the absence of national laws criminalizing enforced disappearance, for example with respect to emblematic cases of Sombath Somphone in Lao PDR and Somchai Neelapaijit and Porlajee "Billy" Rakchongcharoen in Thailand.

Where there is no clear national legal framework specifically criminalizing enforced disappearance, unacknowledged detentions by law enforcement agencies are often treated by national authorities as "missing persons" cases.

On rare occasions where criminal complaints are registered against alleged perpetrators, complainants are forced to categorize the crime as “abduction”, “kidnapping” or “unlawful confinement”.

These categories do not recognize the complexity and the particularly serious nature of enforced disappearance, and often do not provide for penalties commensurate to the gravity of the crime.

They also fail to recognize as victims relatives of the “disappeared” person and others suffering harm as a result of the enforced disappearance, as required under international law.

Finally, the ICJ welcomes the Working Group’s migration study; we note that the ICJ *Principles on the Role of Judges & Lawyers in relation to Refugees and Migrants*, published earlier this year, includes key safeguards that could help prevent disappearances in this context.

Thank you.