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COMMISSION ON HUMAN RIGHTS
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QUESTION OF THE HUMAN RIGHTS OF ALL PERSONS SUBJECTED TO ANY
FORM OF DETENTION OR IMPRISONMENT

Argentina*, Austria, Belgium*, Finland*, France, Germany,
Hungary, Ireland*, Portugal*, Sweden* and Switzerland*:
draft resolution

1996/... Question of arbitrary detention

The Commission on Human Rights,

Recalling its resolution 1985/16 of 11 March 1985, in which it requested the Sub-Commission on Prevention of Discrimination and Protection of Minorities to analyse the available information concerning the practice of administrative detention without charge or trial, and to make appropriate recommendations on the use of this practice,

Reaffirming articles 3, 9, 10 and 29, as well as other relevant provisions of the Universal Declaration of Human Rights,

* In accordance with rule 69, paragraph 3, of the rules of procedure of the functional commissions of the Economic and Social Council.

Recalling articles 9, 10, 11 and 14 to 22 of the International Covenant on Civil and Political Rights,

Having taken note, at its forty-seventh session, of the revised report of Mr. Louis Joinet on the practice of administrative detention (E/CN.4/Sub.2/1990/29 and Add.1) and of the recommendations formulated therein,

Recalling its resolutions 1991/42 of 5 March 1991, 1992/28 of 28 February 1992, 1993/36 of 5 March 1993, 1994/32 of 4 March 1994 and 1995/59 of 7 March 1995,

Bearing in mind that, in accordance with resolution 1991/42, the task of the Working Group on Arbitrary Detention is to investigate cases of detention imposed arbitrarily or otherwise inconsistently with the relevant international standards set forth in the Universal Declaration of Human Rights, or in the relevant international legal instruments accepted by the States concerned,

Having considered the report of the Working Group (E/CN.4/1996/40 and Add.1),

Having heard the comments made during the fifty-second session of the Commission,

1. Takes note of the work of the Working Group on Arbitrary Detention and its efforts to revise its methods of work, and underlines the initiatives it has taken to strengthen cooperation and dialogue with States, and the new cooperation with all those concerned by the cases submitted to it for consideration, in accordance with its mandate;

2. Takes note also of the report of the Working Group (E/CN.4/1996/40 and Add.1);

3. Requests the Working Group to continue, in discharging its mandate, to seek and gather information from Governments and intergovernmental and non-governmental organizations, as well as from the individuals concerned, their families or their legal representatives;

4. Also requests the Working Group, which in conformity with resolution 1991/42, has a mandate to investigate cases of detention imposed arbitrarily or otherwise inconsistently with the relevant international standards set forth in the Universal Declaration of Human Rights or in the relevant international legal instruments accepted by the States concerned, to take duly into consideration the distinction between detention and

imprisonment made, inter alia, by General Assembly resolution 43/173 of 9 December 1988, and to submit to the Commission, at its fifty-third session, its conclusions and recommendations on this question;

5. Further requests the Working Group, in discharging its mandate, to apply the treaties relevant to the case under consideration only to the States which are parties to them;

6. Invites the Working Group to continue to take account of the need to carry out its task with discretion, objectivity, impartiality and independence, within the framework of its mandate, and invites the experts to continue to perform their task with rigour, in the light of the very specific nature of their mandate, which is notably to investigate cases, and to respond effectively to credible and reliable information that comes before them;

7. Emphasizes the need for the Working Group to take gender-specificity into account in its reports, including in the collection of information and in its recommendations;

8. Takes note in this context of the importance that the Working Group attaches to coordination with other mechanisms of the Commission on Human Rights and with the treaty monitoring bodies, as well as to the strengthening of the role of the Centre for Human Rights in such coordination, and encourages the Working Group to continue to avoid any unnecessary duplication;

9. Expresses its profound thanks to Governments which have extended their cooperation to the Working Group and responded to its requests for information, and asks all Governments concerned to demonstrate the same spirit of cooperation;

10. Welcomes the fact that the Working Group has been informed of the release of many individuals whose situation had been brought to its attention;

11. Requests Governments concerned to give the necessary attention to the "urgent appeals" addressed to them by the Working Group on a strictly humanitarian basis and without prejudging the nature of the detention;

12. Invites Governments concerned to take note of the Working Group's decisions and, where necessary, to take appropriate steps and to inform the Working Group of the steps they have taken;

13. Encourages Governments to pay attention to the recommendations of the Working Group concerning persons mentioned in its report, who have been detained for a number of years;

14. Regrets that the Working Group was unable, despite the invitation received, to undertake the field mission envisaged for 1995, and encourages all Governments to invite the Working Group to their countries in order that it may fulfil its mandate even more effectively;

15. Expresses its concern at the fact that, according to the data of the Working Group, most cases of arbitrary deprivation of liberty are motivated by denial of the exercise of the right to freedom of opinion and expression, and recalls the need to pay due attention to cases of arbitrary detention motivated by violation of other human rights and fundamental freedoms;

16. Notes with concern that, according to the Working Group, the practice of arbitrary detention is facilitated and aggravated by several factors such as abuse of states of emergency, exercise of the powers specific to states of emergency without a formal declaration, non-observance of the principle of proportionality between the gravity of the measures taken and the situation concerned, too vague a definition of offences against State security, and the existence of special or emergency jurisdictions;

17. Encourages States to take appropriate measures in order to ensure that their legislation in these fields is in conformity with the relevant international instruments, and not to extend states of emergency beyond what is strictly required by the situation, or to limit their effects;

18. Requests the Secretary-General and the Special Rapporteur of the Sub-Commission on Prevention of Discrimination and Protection of Minorities responsible for studying the question of human rights and states of emergency to extend their assistance to Governments expressing the wish to receive it, as well as to special rapporteurs and working groups, with a view to ensuring promotion and observance of the guarantees relating to states of emergency that are laid down in the relevant international instruments;

19. Requests the Secretary-General to ensure that the Working Group receives all necessary assistance, particularly in regard to staffing and resources needed to discharge its mandate, and notably with respect to field missions;

20. Requests the Working Group to submit to it a report at its fifty-third session, and to make to it any suggestions and recommendations

which would enable it to discharge its task in the best possible way, in cooperation with Governments, and to continue its consultations to that end within the framework of its terms of reference;

21. Decides to continue its consideration of the question at its fifty-third session under the agenda item entitled "Question of the human rights of all persons subjected to any form of detention or imprisonment".
