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QUESTION OF THE HUMAN RIGHTS OF ALL PERSONS SUBJECTED TO
ANY FORM OF DETENTION OR IMPRISONMENT, IN PARTICULAR
TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT
OR PUNISHMENT

Argentina, Australia*, Austria, Belgium*, Bulgaria*, Canada, Chile,
Cyprus*, Côte d'Ivoire*, Cuba, Czech Republic, Denmark, Finland*,
Germany, Georgia*, Greece*, Hungary*, Ireland, Italy, Liechtenstein*,
Lithuania*, Luxembourg, Madagascar, Netherlands*, New Zealand*,
Norway*, Poland, Portugal*, Republic of Korea, Romania*, San Marino*,
Senegal, Slovakia*, Spain*, Sweden*, Switzerland* and United Kingdom of
Great Britain and Northern Ireland: draft resolution

Question of enforced or involuntary disappearances

The Commission on Human Rights,

Recalling its resolution 20 (XXXVI) of 29 February 1980, in which it decided to establish a working group consisting of five of its members, to serve as experts in their individual capacity, to examine questions relevant to enforced or involuntary disappearances, its resolution 1997/26 of 11 April 1997 and its resolution 1995/75 of 8 March 1995 on cooperation with representatives of United Nations human rights organs,

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

Recalling also General Assembly resolution 47/133 of 18 December 1992, by which the Assembly adopted the Declaration on the Protection of All Persons from Enforced Disappearance as a body of principles for all States, and Assembly resolutions 49/193 of 23 December 1994 and 51/94 of 12 December 1996,

Deeply concerned, in particular, by the intensification of enforced or involuntary disappearances in various regions of the world and by the growing number of reports concerning harassment, ill-treatment and intimidation of witnesses of disappearances or relatives of persons who have disappeared,

Emphasizing that impunity is simultaneously one of the underlying causes of enforced disappearances and one of the major obstacles to the elucidation of cases thereof,

1. Takes note of the report (E/CN.4/1998/43) that the Working Group on Enforced or Involuntary Disappearances has submitted to the Commission on Human Rights in accordance with Commission resolution 1997/26 of 1 April 1997;

2. Encourages the Working Group to continue, in execution of its mandate:

(a) To promote communication between families of disappeared persons and the Governments concerned, with a view to ensuring that sufficiently documented and clearly identified individual cases are investigated and to ascertain whether such information falls under its mandate and contains the required elements;

(b) To observe in its humanitarian task United Nations standards and practices regarding the handling of communications and the consideration of government replies;

(c) To consider the question of impunity in the light of the relevant provisions of the Declaration on the Protection of All Persons from Enforced Disappearance and of the final reports submitted by the rapporteur appointed by the Sub-Commission on Prevention of Discrimination and Protection of Minorities;

(d) To pay particular attention to cases of children subjected to enforced disappearance and children of disappeared persons, and cooperate closely with the Governments concerned in searching for and identifying these children;

(e) To pay particular attention to cases transmitted to it that refer to ill-treatment, serious threatening or intimidation of witnesses of enforced or involuntary disappearances or relatives of disappeared persons;

(f) To pay particular attention to cases of the disappearance of persons working for the promotion and protection of human rights and fundamental freedoms, wherever they occur, and to make appropriate recommendations for preventing such disappearances and improving the protection of such persons;

(g) To continue applying a gender perspective in its reporting process, including in information collection and formulation of recommendations;

(h) To provide appropriate assistance with the implementation by States of the Declaration on the Protection of All Persons from Enforced Disappearance and of the existing international rules;

3. Deplores the fact that some Governments have never provided substantive replies concerning the cases of enforced disappearances in their countries or acted on the recommendations concerning them made in the reports of the Working Group;

4. Urges the Governments concerned:

(a) To cooperate with the Working Group and help it to carry out its mandate effectively, in particular by inviting it freely to visit their countries;

(b) To intensify their cooperation with the Working Group on any action taken pursuant to recommendations addressed to them by the Working Group;

(c) To take steps to protect witnesses of enforced or involuntary disappearances and the lawyers and families of disappeared persons against any intimidation or ill-treatment to which they might be subjected;

(d) That have long had many unresolved cases of disappearances, to continue their efforts to shed light on the fate of the individuals concerned and to set in train with the families of those individuals appropriate settlement machinery;

(e) To make provision in their legal systems for machinery for the seeking by victims of enforced or involuntary disappearances or their families of fair and adequate reparation;

5. Reminds Governments:

(a) That all acts of enforced or involuntary disappearance are crimes punishable by appropriate penalties which should take due account of their extreme seriousness under penal law;

(b) Of the need to ensure that their competent authorities proceed immediately to conduct impartial inquiries in all circumstances where there is reason to believe that an enforced disappearance has occurred in territory under their jurisdiction;

6. Expresses:

(a) Its thanks to the many Governments that have cooperated with the Working Group and replied to its requests for information, and to the Governments that have invited the Working Group to visit their countries, asks them to give all necessary attention to the Working Group's recommendations, and invites them to inform the Working Group of any action they take on those recommendations;

(b) Its commendation of the efforts by Governments which investigate, or develop appropriate mechanisms to investigate, any cases of enforced disappearances which are brought to their attention, and encourages all the Governments concerned to expand their efforts in this area;

7. Invites:

(a) States to take legislative, administrative, legal and other steps, including when a state of emergency has been declared, to take action at the national and regional levels and in cooperation with the United Nations, if appropriate through technical assistance, and to provide the Working Group with concrete information on the measures taken and the obstacles encountered in preventing enforced, involuntary or arbitrary disappearances and in giving effect to the principles set forth in the Declaration on the Protection of All Persons from Enforced Disappearance;

8. Takes note of non-governmental organizations' assistance to the Working Group and activities in support of the implementation of the Declaration, and invites those organizations to continue their cooperation;

9. Requests the Working Group to report on its activities to the Commission at its fifty-fifth session;

10. Requests the Secretary-General:

(a) To ensure that the Working Group receives all the assistance and resources, especially a database on cases of enforced disappearance, that it requires to perform its function, carry out and follow up missions, hold sessions in countries that would be prepared to receive it and update the database;

(b) To keep the Working Group and the Commission on Human Rights regularly informed of the steps he takes for the wide dissemination and promotion of the Declaration on the Protection of All Persons from Enforced Disappearance;

11. Decides to renew for a period of three years the mandate of the Working Group on Enforced or Involuntary Disappearances comprising five independent experts;

12. Decides to consider this matter at its fifty-fifth session under the same agenda item.
