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COMMISSION ON HUMAN RIGHTS
Sub-Commission on the Promotion
and Protection of Human Rights
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Agenda item 6

SPECIFIC HUMAN RIGHTS ISSUES

**Ms. Betten, Mr. Chen, Mr. Decaux, Mr. Dos Santos Alves, Mr. Eide,
Mr. Guissé, Ms. Hampson, Mr. Kartashkin, Ms. Koufa, Ms. Motoc,
Ms. O'Connor, Mr. Ogurtsov, Mr. Park, Mr. Sattar, Mr. Sorabjee,
Ms. Warzazi, Mr. Weissbrodt, Mr. Yimer and Mr. Yokota:
draft resolution**

2002/... The right to return of refugees and internally displaced persons

The Sub-Commission on the Promotion and Protection of Human Rights,

Recalling Sub-Commission resolutions 1994/24 of 26 August 1994 and 1998/26 of 26 August 1998, and Commission resolutions 1999/47 of 27 April 1999, 2000/53 of 25 April 2000 and 2001/54 of 24 April 2001,

Conscious that serious human rights violations and breaches of international humanitarian law are among the reasons why people flee their homes or places of habitual residence and become refugees or internally displaced persons,

Noting that millions of refugees and displaced persons remain in need of solutions and that voluntary return remains the durable solution sought by the largest number of them,

Concerned that the lack of progress with respect to voluntary repatriation reflects the fact that basic requirements for return, that is, physical, legal and material safety and the restoration of national protection, are not yet in place,

Recognizing that the right of refugees and internally displaced persons to return freely to their original homes or places of habitual residence in safety and dignity coupled with their right to adequate housing and property restitution or, should this not be possible, just compensation or another form of just reparation, form indispensable elements of national reintegration, reconstruction and reconciliation, and that the recognition of such rights, as well as judicial or other mechanisms to ensure the implementation of such rights, should be included in peace agreements ending armed conflicts,

Recognizing also the right of all returnees to the free exercise of their right to freedom of movement and to choose their residence, including the right to re-establish residence in their original homes or places of habitual residence, including issuance of relevant documentation, their right to privacy and respect for the home, their right to reside peacefully in the security of their own home and their right to enjoy access to all necessary social and economic services, in an environment free of any form of discrimination,

Noting that the right to freedom of movement and the right to adequate housing and property restitution include the right of protection for returning refugees and internally displaced persons against being compelled to return to their original homes or places of habitual residence and that the right to return to their original homes or places of habitual residence must be exercised in a voluntary, safe and dignified manner,

Observing that, in the present resolution, “those displaced” and “displaced persons” refer to both refugees and internally displaced persons, unless otherwise indicated, and that nothing in the present resolution affects any disputes with regard to title to territory,

1. *Confirms* that all those displaced have the right to return voluntarily in safety and dignity, as established in international human rights law;

2. *Also confirms* that all displaced persons have a right to return to their original homes or places of habitual residence or to settle voluntarily elsewhere; where authorities send displaced persons to a place other than their habitual residence, this does not affect their right to return to their place of habitual residence, nor their right to restitution or compensation or both;

3. *Reaffirms* that all those displaced have the right to adequate housing and property restitution or, should this not be possible, appropriate compensation or another form of just reparation, and the particular importance of these rights for displaced persons wishing to return to their original homes or places of habitual residence;

4. *Urges* all parties to peace agreements and voluntary repatriation agreements to include implementation of the right to return in safety and dignity, as well as housing and property restitution rights, consistent with the requirements of international law, in all such agreements;
5. *Confirms* that the exercise of the right to return is voluntary and not conditional upon permission or approval; if documentation of any sort is necessary, returnees are entitled to such documentation as of right and free of cost;
6. *Reminds* States of the right of all displaced persons to participate in the return and restitution process and in the development of the procedures and mechanisms put in place to protect these rights;
7. *Urges* all States to guarantee the free and fair exercise of the right to return to one's home or place of habitual residence by all displaced persons and to establish an enabling framework to enable return to take place in conditions of physical, legal and material safety and to restore full national protection of returning displaced persons; in this context, States are urged to take measures to ensure the physical safety of returnees; to remove legal and administrative barriers to return through, inter alia, promulgation of amnesties, exempting returnees, for instance, from discrimination or punishment for having fled the country, as well as other legal guarantees for returnees; and to ensure non-discriminatory access to means of survival and basic services;
8. *Confirms* that the obligation of the State to assist the right of return includes an obligation, without which the right to return cannot be fulfilled, to make good any damage for which the authorities are responsible, including the obligation to restore the infrastructure, including water, sanitation, electricity, gas, roads and land, where it has been damaged or destroyed; in particular, States shall not charge returning displaced persons with the costs for services consumed by those who were temporarily accommodated in the displaced persons' homes;
9. *Reaffirms* the obligation of States to repeal any laws and regulations which are inconsistent with international legal standards, in particular the right to return and the right to adequate housing and property, and in this respect urges States to put in place effective and impartial mechanisms designed to resolve outstanding housing and property problems;

10. *Reminds* States of the need to ensure, in implementing the right to return, that measures are taken to address the special needs of women and children, including effective and equitable access to means of survival and basic services, including education, and the effective implementation of the right of women to full equality with respect to housing and property restitution, in particular in terms of access, control, ownership, possessory and inheritance rights;

11. *Confirms* that where displaced persons voluntarily settle elsewhere, this does not affect their right to return to their home or place of habitual residence, nor their right to housing and property restitution or, should this not be possible, just compensation or other form of just reparation;

12. *Recognizes* that displaced persons may choose voluntarily to exchange their property rights over their original homes or places of habitual residence for the same or similar rights over another property or undertake other possible transactions, on condition that such decisions are knowingly and voluntarily taken;

13. *Also recognizes* that property restitution processes are only effective if the rights of occupants of displaced persons' houses, who themselves are equally affected by displacement and in need of accommodation, are protected, and urges States to provide adequate alternative accommodation; where secondary occupants have no place to return to, States are encouraged to provide affordable social housing;

14. *Encourages* States to seek, through appropriate means, to cooperate with the Office of the United Nations High Commissioner for Refugees with regard to matters concerning refugees and, where appropriate, to internally displaced persons and with all other humanitarian organizations and other appropriate actors, in the exercise of their respective mandates, and to ensure rapid and unimpeded access to displaced persons in order to assist in their voluntary return or voluntary relocation and reintegration;

15. *Decides* to continue its consideration of the question of the right to return of displaced persons in the context of freedom of movement under the same agenda item at its fifty-fourth session;

16. *Recommends* that the Commission on Human Rights adopt the text of the present resolution.