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HUMAN RIGHTS COUNCIL

Eighth session

Agenda item 3

**PROMOTION AND PROTECTION OF ALL HUMAN RIGHTS, CIVIL,
POLITICAL, ECONOMIC, SOCIAL AND CULTURAL RIGHTS,
INCLUDING THE RIGHT TO DEVELOPMENT**

**Albania*, Argentina*, Austria*, Belgium*, Bosnia and Herzegovina, Bulgaria*,
Canada, Chile*, Costa Rica*, Croatia*, Cyprus*, Czech Republic*, Denmark*,
Estonia*, Finland*, France, Germany, Greece*, Guatemala*, Hungary*,
Ireland*, Italy, Latvia*, Liechtenstein*, Lithuania*, Luxembourg*, Malta,
Mexico, Netherlands, New Zealand*, Norway*, Panama*, Poland*, Portugal*,
Romania, Serbia*, Slovakia*, Slovenia, Spain*, Sweden*, Switzerland, The
former Yugoslav Republic of Macedonia*, United Kingdom of Great Britain
and Northern Ireland, Uruguay: draft resolution**

8/... Torture and other cruel, inhuman or degrading treatment or punishment

The Human Rights Council,

Reaffirming that no one should be subjected to torture as defined in article 1 of the
Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,
or other cruel, inhuman or degrading treatment or punishment,

* Non-member State of the Human Rights Council.

Recalling that freedom from torture and other cruel, inhuman or degrading treatment or punishment is a non-derogable right that must be protected under all circumstances, including in times of international and internal armed conflict or internal disturbance, and that the absolute prohibition of torture and other cruel, inhuman or degrading treatment or punishment is affirmed in the relevant international instruments,

Recalling that the prohibition of torture has been recognized to be a peremptory norm of international law,

Recalling also that a number of international, regional and domestic courts have held the prohibition of cruel, inhuman or degrading treatment or punishment to be customary international law,

Noting that, under the Geneva Conventions of 1949, torture and inhuman treatment is a grave breach and that under the Statute of the International Criminal Tribunal for the Former Yugoslavia, the Statute of the International Criminal Tribunal for Rwanda and the Rome Statute of the International Criminal Court, acts of torture can constitute crimes against humanity and war crimes,

Acknowledging the adoption of the International Convention for the Protection of All Persons from Enforced Disappearances in General Assembly resolution 61/177 of 20 December 2006, as well as its resolution approved at its seventh session on the International Convention for the Protection of All Persons from Enforced Disappearances, and recognizing that the entry into force of the Convention, as soon as possible, through its ratification by 20 States, and its implementation will make a significant contribution to the prevention of torture, including through prohibiting places of secret detention,

Commending the persistent efforts by civil society, in particular non-governmental organizations, to combat torture and to alleviate the suffering of victims of torture,

Bearing in mind paragraph 6 of General Assembly resolution 60/251 of 15 March 2006,

Recalling its resolutions 5/1 on institution-building of the Human Rights Council and 5/2 on the code of conduct for special procedures mandate-holders of the Council of 18 June 2007, and stressing that the mandate-holder shall discharge his or her duties in accordance with those resolutions and the annexes thereto,

Recalling also all relevant resolutions of the General Assembly and the Economic and Social Council and reaffirming the Commission on Human Rights resolutions on the subject,

1. *Condemns* all forms of torture and other cruel, inhuman or degrading treatment or punishment, which are and shall remain prohibited at any time and in any place whatsoever and can thus never be justified, and calls upon all Governments to implement fully the absolute prohibition of torture and other cruel, inhuman or degrading treatment or punishment;

2. *Condemns in particular* any action or attempt by States or public officials to legalize, authorize or acquiesce in torture under any circumstances, including on grounds of national security or through judicial decisions;

3. *Decides* to extend the mandate of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment for a further period of three years:

(a) To seek, receive, examine and act on information from Governments, intergovernmental organizations, civil society organizations, individuals and groups of individuals, regarding issues and alleged cases concerning torture or other cruel, inhuman or degrading treatment or punishment;

(b) To conduct country visits with the consent or at the invitation of Governments;

(c) To study, in a comprehensive manner, trends, developments and challenges in relation to combating and preventing torture and other cruel, inhuman or degrading treatment or punishment, and to make recommendations and observations concerning appropriate measures to prevent and eradicate such practices;

(d) To identify, exchange and promote best practices on measures to prevent, punish and eradicate torture and other cruel, inhuman or degrading treatment or punishment;

(e) To integrate a gender perspective throughout the work of his or her mandate;

(f) To continue to cooperate with the Committee against Torture, the Subcommittee for the Prevention of Torture and relevant United Nations mechanisms and bodies and, as appropriate, regional organizations and mechanisms, national human rights institutions, national preventive mechanisms and civil society, including non-governmental organizations;

(g) To report on his or her activities, observations, conclusions and recommendations to the Council, in accordance with its programme of work, and annually on the overall trends and developments with regard to his or her mandate to the General Assembly;

4. *Welcomes* the report of the Special Rapporteur (A/HRC/7/3) and the recommendations contained therein;

5. *Urges* States:

(a) To cooperate with and assist the Special Rapporteur in the performance of his or her task, to supply all necessary information requested by him or her and to react appropriately and expeditiously to his or her urgent appeals, and those Governments that have not yet responded to communications transmitted to them by the Special Rapporteur to answer without further delay;

(b) To give serious consideration to responding favourably to the Special Rapporteur's requests to visit their countries;

(c) To ensure appropriate follow-up to the recommendations and conclusions of the Special Rapporteur;

6. *Also urges* States:

(a) To implement effective measures to prevent torture and other cruel, inhuman or degrading treatment or punishment, particularly in places of detention and other places where persons are deprived of their liberty, including education and training for personnel, who may be involved in the custody, interrogation or treatment of any individual subjected to any form of arrest, detention or imprisonment;

(b) To take persistent, determined and effective measures to have all allegations of torture or other cruel, inhuman or degrading treatment or punishment promptly and impartially examined by the competent national authority, to hold persons, who encourage, order, tolerate or perpetrate acts of torture responsible, to have them brought to justice and severely punished, including the officials in charge of the place of detention where the prohibited act is found to have been committed, and to take note in this respect of the Principles on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the Istanbul Protocol) as a useful tool in efforts to combat torture;

(c) To ensure that no statement established to have been made as a result of torture is invoked as evidence in any proceedings, except against a person accused of torture as evidence that the statement was made;

(d) Not to expel, return (“refouler”), extradite or in any other way transfer a person to another State where there are substantial grounds for believing that the person would be in danger of being subjected to torture; the Council recognizes in this respect that diplomatic assurances, where used, do not release States from their obligations under international human rights, humanitarian and refugee law, in particular the principle of non-refoulement;

(e) To ensure that victims of torture or other cruel, inhuman or degrading treatment or punishment obtain redress and are awarded fair and adequate compensation and receive appropriate socio-medical rehabilitation, and in this regard encourages the development of rehabilitation centres for victims of torture;

(f) To ensure that all acts of torture are offences under domestic criminal law, and emphasizes that acts of torture are serious violations of international human rights law and humanitarian law and can constitute crimes against humanity and war crimes and that the perpetrators are liable to prosecution and punishment;

(g) Not to punish personnel for not obeying orders to commit acts amounting to torture or other cruel, inhuman or degrading treatment or punishment;

(h) To protect medical and other personnel for their role in documenting torture or any other form of cruel, inhuman or degrading treatment or punishment and in treating victims of such acts;

(i) To ensure appropriate follow-up to conclusions and views on individual communications of the relevant treaty bodies, including the Committee against Torture and the Subcommittee on the Prevention of Torture;

(j) To adopt a gender-sensitive approach in the fight against torture and other cruel, inhuman or degrading treatment or punishment, paying special attention to violence against women;

(k) To become parties to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment as a matter of priority as well as to give early consideration to signing and ratifying its Optional Protocol and, once parties, to designate or establish truly independent and effective national preventive mechanisms;

7. *Reminds* States that:

(a) Corporal punishment, including of children, can amount to cruel, inhuman or degrading punishment or even to torture;

(b) Intimidation and coercion, as described in article 1 of the Convention against Torture, including serious and credible threats, as well as death threats, to the physical integrity of the victim or of a third person, can amount to cruel, inhuman or degrading treatment or to torture;

(c) Prolonged incommunicado detention or detention in secret places may facilitate the perpetration of torture and other cruel, inhuman or degrading treatment or punishment and can in itself constitute a form of such treatment, and urges all States to respect the safeguards concerning the liberty, security and the dignity of the person;

8. *Welcomes* the reports of the Committee against Torture, submitted in accordance with article 24 of the Convention;

9. *Takes note* of the reports of the Secretary-General on the United Nations Voluntary Fund for Victims of Torture and calls upon the Board of the Fund to report to the Council in accordance with the annual programme of work;
10. *Requests* the Secretary-General to ensure, within the overall budgetary framework of the United Nations, the provision of an adequate and stable level of staffing, as well as the necessary technical facilities, for the bodies and mechanisms involved in combating torture and assisting victims of torture, in order to ensure their effective performance commensurate with the strong support expressed by Member States for combating torture and assisting victims of torture;
11. *Recognizes* the global need for international assistance to victims of torture, stresses the importance of the work of the Board of Trustees of the Fund and appeals to all Governments, organizations and individuals to contribute annually to the Fund, preferably with a substantial increase in the contributions and encourages contributions to the Special Fund established by the Optional Protocol to the Convention to help finance the implementation of the recommendations made by the Subcommittee on Prevention, as well as education programmes of the national preventive mechanisms;
12. *Calls upon* all Governments, the United Nations High Commissioner for Human Rights and United Nations bodies and agencies, as well as relevant intergovernmental and non-governmental organizations, to commemorate on 26 June the United Nations International Day in Support of Victims of Torture, as proclaimed by the General Assembly in its resolution 52/149 of 12 December 1997;
13. *Decides* to continue to consider this matter in conformity with its annual programme of work.
