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

Argentina, Austria*, Azerbaijan*, Belgium, Bolivia (Plurinational State of), Bosnia and Herzegovina, Brazil, Canada*, Chile, Colombia*, Costa Rica*, Croatia*, Cuba, Cyprus*, Czech Republic*, Denmark*, Dominican Republic*, Ecuador*, Egypt, Finland*, France, Germany*, Greece*, Guatemala*, Hungary, Ireland*, Israel*, Italy, Latvia*, Luxembourg*, Morocco*, Netherlands, Nigeria, Norway, Paraguay*, Peru*, Portugal*, Romania*, Slovenia, South Africa, Spain*, Sweden*, Switzerland*, Ukraine, United Kingdom of Great Britain and Northern Ireland, Uruguay: draft resolution

12/... Right to the truth

The Human Rights Council,

Guided by the Charter of the United Nations, the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the Geneva Conventions of 12 August 1949 and the Protocols Additional thereto of 1977, and other relevant instruments of international human rights law and international humanitarian law, as well as the Vienna Declaration and Programme of Action,

* Non-Member State of the Human Rights Council.

Recognizing the universality, indivisibility, interdependence and interrelatedness of civil, political, economic, social and cultural rights,

Recalling article 32 of Additional Protocol I to the Geneva Conventions of 12 August 1949 relating to the Protection of Victims of International Armed Conflicts, which recognizes the right of families to know the fate of their relatives,

Recalling also that article 33 of Additional Protocol I provides that the parties to an armed conflict shall search for the persons who have been reported missing, as soon as circumstances permit,

Recalling further the International Convention for the Protection of All Persons from Enforced Disappearance, adopted by the General Assembly in its resolution 61/177 of 20 December 2006, in which article 24 (2) sets out the right of victims to know the truth regarding the circumstances of the enforced disappearance, the progress and results of the investigation and the fate of the disappeared person, and sets forth State party obligations to take appropriate measures in this regard, and the preamble that reaffirms the right to freedom to seek, receive and impart information to that end,

Taking into account Commission on Human Rights resolution 2005/66, Council decision 2/105 and resolution 9/11 on the right to the truth,

Taking also into account Council resolution 10/26 of 27 March 2009 on forensic genetics and human rights, in which the Council recognized the importance of the utilization of forensic genetics to deal with the issue of impunity within the framework of investigations related to gross human rights violations and serious violations of international humanitarian law,

Acknowledging the reports of the Office of the United Nations High Commissioner for Human Rights on the right to the truth (E/CN.4/2006/91, A/HRC/5/7) and its significant conclusions related to the right to know the truth about gross violations of human rights and serious violations of international humanitarian law,

Acknowledging also the report of the Office of the High Commissioner on the right to the truth (A/HRC/12/19) and its conclusions regarding the importance of the protection of witnesses within the framework of criminal procedures related to gross human rights violations and serious violations of international humanitarian law, as well as on issues related to the elaboration and management of archives systems to guarantee the effective implementation of the right to the truth,

Stressing that adequate steps to identify victims should also be taken in situations not amounting to armed conflict, especially in cases of massive or systematic violations of human rights,

Recalling the set of principles for the protection and promotion of human rights through action to combat impunity (E/CN.4/Sub.2/1997/20/Rev.1, annex II) and taking note with appreciation of the updated version of those principles (E/CN.4/2005/102/Add.1),

Noting that the Special Rapporteur on the independence of judges and lawyers has recognized the right to the truth, its scope and implementation (E/CN.4/2006/52), and also that the Human Rights Committee and the Working Group on Enforced or Involuntary Disappearances (E/CN.4/1999/62) have recognized the right of the victims of gross violations of human rights and the right of their relatives to the truth about the events that have taken place, including the identification of the perpetrators of the facts that gave rise to such violations,

Acknowledging in cases of gross violations of human rights and serious violations of international humanitarian law the need to study the interrelationship between the right to the truth and the right to access to justice, the right to obtain effective remedy and reparation and other relevant human rights,

Stressing the importance for the international community to endeavour to recognize the right of victims of gross violations of human rights and serious violations of international humanitarian law, and their families and society as a whole, to know the truth regarding such violations, to the fullest extent practicable, in particular, the identity of the perpetrators, the causes and facts of such violations, and the circumstances under which they occurred,

Stressing also that it is important for States to provide appropriate and effective mechanisms for society as a whole and, in particular, for relatives of the victims, to know the truth regarding gross violations of human rights and serious violations of international humanitarian law,

Recalling that a specific right to the truth may be characterized differently in some legal systems as the right to know or the right to be informed or freedom of information,

Emphasizing that the public and individuals are entitled to have access, to the fullest extent practicable, to information regarding the actions and decision-making processes of their Government, within the framework of each State's domestic legal system,

Recognizing the importance of preserving historic memory related to gross human rights violations and serious violations of international humanitarian law through the conservation of archives and other documents related to those violations,

Convinced that States should preserve archives and other evidence concerning gross violations of human rights and serious violations of international humanitarian law to facilitate knowledge of such violations, to investigate allegations and to provide victims with access to an effective remedy in accordance with international law,

1. *Recognizes* the importance of respecting and ensuring the right to the truth so as to contribute to ending impunity and to promote and protect human rights;
2. *Welcomes* the establishment in several States of specific judicial mechanisms and other non-judicial mechanisms, such as truth and reconciliation commissions, that complement the justice system, to investigate violations of human rights and violations of international humanitarian law, and appreciates the elaboration and publication of the reports and decisions of these bodies;
3. *Encourages* the States concerned to disseminate, implement and monitor implementation of the recommendations of non-judicial mechanisms such as truth and reconciliation commissions, and provide information regarding compliance with the decisions of judicial mechanisms;

4. *Encourages* other States to consider establishing specific judicial mechanisms and, where appropriate, truth and reconciliation commissions to complement the justice system, in order to investigate and address gross violations of human rights and serious violations of international humanitarian law;

5. *Encourages* States to provide requesting States the necessary and appropriate assistance regarding the right to the truth by means of, among other actions, technical cooperation and exchange of information concerning administrative, legislative and judicial and non-judicial measures, as well as experiences and best practices that have as a purpose the protection, promotion and implementation of this right, including practices regarding the protection of witnesses and the preservation and management of archives;

6. *Also encourages* States to design programmes and other measures to protect witnesses and individuals who cooperate with judicial bodies and mechanisms of a quasi-judicial or non-judicial nature, such as human rights commissions and truth commissions;

7. *Welcomes* the fact that 81 States have signed and 13 States have ratified the International Convention for the Protection of All Persons from Enforced Disappearance, and encourages all States that have not yet signed, ratified or acceded to the Convention to consider doing so, in order to allow its entry into force as soon as possible;

8. *Requests* the Office of the United Nations High Commissioner for Human Rights to prepare a report, to be presented to the Council at its fifteenth session, on the basis of information, including from States, on programmes and other measures for the protection of witnesses implemented within the framework of criminal procedures related to gross violations of human rights and serious violations of international humanitarian law, with a view to determine the need to develop common standards and promote best practices that would serve as guidelines to States in protecting witnesses and others concerned with providing cooperation in trials for gross human rights violations and serious violations of international humanitarian law;

9. *Invites* the Office of the High Commissioner to convene, within existing resources, a seminar, taking into account different experiences on the importance of the creation, organization and management of public systems of archives as a means to guarantee the right to

the truth, with a view to study the need for guidelines on this issue, and also requests the Office to report on the outcome of the consultation, in the form of a summary of discussions on the above-mentioned issue, to the Council at its seventeenth session;

10. *Invites* special rapporteurs and other mechanisms of the Council, in the framework of their mandates, to take into account, as appropriate, the issue of the right to the truth;

11. *Decides* to consider this matter at its fifteenth session under the same agenda item, or at the corresponding session in conformity with its annual programme of work.
