



General Assembly

Distr.: Limited
19 March 2010

Original: English

Human Rights Council

Thirteenth session

Agenda item 3

**Promotion and protection of all human rights, civil,
political, economic, social and cultural rights,
including the right to development**

**Argentina, Austria*, Belgium, Brazil, Bulgaria*, Chile, Costa Rica*, Croatia*,
Cyprus*, Czech Republic*, Denmark*, Estonia*, Finland*, France, Germany*,
Greece*, Hungary, Ireland*, Latvia*, Lithuania*, Luxembourg*, Malta*, Mexico,
Monaco*, Netherlands, Norway, Peru*, Poland*, Portugal*, Romania*, Slovakia,
Slovenia, Spain*, Sweden*, Switzerland*, United Kingdom of Great Britain and
Northern Ireland, Uruguay: draft resolution**

13/...

**Torture and other cruel, inhuman or degrading treatment or
punishment: the role and responsibility of judges, prosecutors and
lawyers**

The Human Rights Council,

Recalling all resolutions on torture and other cruel, inhuman or degrading treatment or punishment, as well as all resolutions on the independence and impartiality of the judiciary, jurors and assessors and the independence of lawyers adopted by the General Assembly, the Commission on Human Rights and the Council,

Reaffirming that no one shall be subjected to torture or to other cruel, inhuman or degrading treatment or punishment,

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 during states of emergency and in times of international or internal armed conflicts or disturbance and that the absolute prohibition of torture and other cruel, inhuman or degrading treatment or punishment is affirmed in relevant international instruments, stressing that legal and procedural safeguards against such acts must not be subject to measures that would circumvent this right, and emphasizing that judges, prosecutors and lawyers play a critical role in safeguarding this right,

* Non-Member State of the Human Rights Council.

Convinced that an independent and impartial judiciary, an independent legal profession and the integrity of the judicial system are essential for the protection of the right not to be subjected to torture and other cruel, inhuman or degrading treatment or punishment,

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

2. *Emphasizes* that States must take persistent, determined and effective measures to prevent and combat all acts of torture and other cruel, inhuman or degrading treatment or punishment, and stresses that all acts of torture must be made offences under domestic criminal law, and encourages States to prohibit under domestic law acts constituting cruel, inhuman or degrading treatment or punishment;

3. *Urges* States to respect and ensure respect for the critical role that judges, prosecutors and lawyers play in the prevention of torture and other cruel, inhuman or degrading treatment or punishment, including with respect to arbitrary detention, due process safeguards and fair trial standards, and bringing perpetrators to justice;

4. *Also urges* States to adopt, implement and fully comply with legal and procedural safeguards against torture and other cruel, inhuman or degrading treatment or punishment, as well as to ensure that the judiciary, and where relevant the prosecution, can effectively review implementation of and compliance with such safeguards;

5. *Stresses* that ensuring that any individual arrested or detained is brought promptly before a judge or other independent judicial officer in person, permitting prompt and regular medical care and legal counsel and visits by relatives or third parties, as well as the right to take proceedings before a court to enable the court to decide without delay on the lawfulness of detention and treatment, constitute effective legal and procedural safeguards for the prevention of torture and other cruel, inhuman or degrading treatment or punishment;

6. *Calls upon* States in the context of criminal proceedings to ensure access to lawyers from the outset of custody and during all interrogations and judicial proceedings, as well as access of lawyers to appropriate information in sufficient time to enable them to provide effective legal assistance to their clients;

7. *Strongly urges* States to ensure that no statement, including statements provided or obtained by officials of another State, that is 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, and calls upon States to consider extending that prohibition to statements made as a result of other cruel, inhuman or degrading treatment or punishment, and recognizes that adequate corroboration of statements, including confessions, used as evidence in any proceedings constitutes one safeguard for the prevention of torture and other cruel, inhuman or degrading treatment or punishment;

8. *Urges* States 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, and stresses the importance of effective review in this regard;

9. *Condemns* any action or attempt by States or public officials to legalize, authorize or acquiesce in torture and other cruel, inhuman or degrading treatment or

punishment under any circumstances, including on grounds of national security or through judicial decisions;

10. *Calls* upon States to ensure accountability for acts of torture and other cruel, inhuman or degrading treatment or punishment, and stresses that the competent domestic authority must promptly, effectively, independently and impartially investigate all allegations of such acts and wherever there is reasonable ground to believe that such acts have been committed and that those who encourage, order, tolerate or perpetrate such acts must be held responsible, brought to justice and punished in a manner commensurate with the severity of the offence;

11. *Urges* States to ensure that any person who has been subjected to torture or cruel, inhuman or degrading treatment or punishment has access to an effective remedy and that victims will receive adequate, effective and prompt reparations, where appropriate;

12. *Emphasizes* that it is essential for the ability of judges, prosecutors and lawyers to play their role in safeguarding the right not to be subjected to torture and other cruel, inhuman or degrading treatment or punishment that the States ensure the proper functioning of the administration of justice, particularly by:

(a) Ensuring that the judiciary is fully independent from the executive and legislative branches of Government and that judges can exercise their judicial functions impartially and professionally;

(b) Taking effective measures so that no unlawful interference of any kind occurs, such as threats, harassment, intimidation and assaults on judges, prosecutors and lawyers, as well as ensuring that any such interference is promptly, effectively, independently and impartially investigated with a view to bringing those responsible to justice;

(c) Taking effective measures for combating corruption in the administration of justice, establishing proper legal aid programmes and adequate selection, training and remuneration of judges, prosecutors, police and prison officials;

13. *Invites* all States to establish or maintain independent and effective mechanisms with qualified legal and other relevant expertise to undertake effective monitoring visits to places of detention, including with a view to preventing acts of torture or other cruel, inhuman or degrading treatment or punishment;

14. *Calls upon* States to ensure that education and information regarding the absolute prohibition of torture and other cruel, inhuman or degrading treatment or punishment are fully included in the education and training of all judges, prosecutors and lawyers;

15. *Invites* the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment to take the present resolution into account in his or her future work and, in particular:

(a) To continue to seek, receive, examine and act on information regarding conduct by State officials who are members of the legal profession that is alleged to constitute torture and other cruel, inhuman or degrading treatment or punishment, or complicity or participation therein;

(b) To examine information on obstacles that lawyers, prosecutors or judges face when upholding legal and procedural safeguards and fostering respect for the prohibition on torture and other cruel, inhuman or degrading treatment or punishment;

and invites other relevant special procedures also, within their respective mandates, to take the present resolution into account;

16. *Requests* States to cooperate fully and in good faith with the relevant special procedures;
 17. *Takes note with appreciation* of the report of the Special Rapporteur (A/HRC/13/39);
 18. *Calls upon* the Office of the United Nations High Commissioner for Human Rights to continue to provide advisory services to States for the prevention of torture and other cruel, inhuman or degrading treatment or punishment.
-