



# General Assembly

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## Human Rights Council

### Twenty-first 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, Bulgaria\*, Costa Rica, Croatia\*, Cuba, Cyprus\*, Czech Republic, Finland\*, France\*, Germany\*, Greece\*, Honduras\*, Japan\*, Latvia\*, Luxembourg\*, Mexico, Montenegro\*, Morocco\*, Nicaragua\*, Norway, Portugal\*, Romania, Serbia\*, Slovenia\*, Spain, Switzerland, Uruguay: draft resolution**

### 21/... Enforced or involuntary disappearances

*The Human Rights Council,*

*Reaffirming* the relevant articles of the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights that protect the right of life, the right of liberty and security of the person, the right not to be subjected to torture and the right to recognition as a person before the law,

*Recalling* Commission on Human Rights resolution 20 (XXXVI) of 29 February 1980, in which the Commission decided to establish a working group of five members to serve as experts in their individual capacity and to examine questions relevant to enforced or involuntary disappearances, and also all previous resolutions on this subject, in particular Human Rights Council resolution 16/16 of 24 March 2011, in which the Council renewed by consensus the mandate of the Working Group on Enforced or Involuntary Disappearances,

*Acknowledging* the adoption of the International Convention for the Protection of All Persons from Enforced Disappearance by the General Assembly in its resolution 61/177 of 20 December 2006,

*Recalling* 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 States,

*Deeply concerned in particular* by the increase in enforced or involuntary disappearances in various regions of the world, including arrest, detention and abduction, when these are part of or amount to enforced disappearances, and by the growing number

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\* Non-Member State of the Human Rights Council.

of reports concerning harassment, ill-treatment and intimidation of witnesses of disappearances or relatives of persons who have disappeared,

*Recalling* that the Convention sets out the right of victims to know the truth regarding the circumstances of the enforced disappearance, the progress and the result of the investigation and the fate of the disappeared person, and sets forth State party obligations to take appropriate measures in this regard,

*Recalling also* that no exceptional circumstance whatsoever may be invoked as a justification for enforced disappearance,

*Recalling further* that no one shall be held in secret detention,

*Recognizing* that enforced disappearance has special consequences for vulnerable groups, especially women and children, as they most often bear the serious economic hardships that usually accompany a disappearance and, when they are subjected to disappearance themselves, they may become particularly vulnerable to sexual and other forms of violence,

*Acknowledging* the fact that acts of enforced disappearance may amount to crimes against humanity, as defined by the Rome Statute of the International Criminal Court,

## **I. International Convention on the Protection of All Persons from Enforced Disappearance**

1. *Recognizes* that the implementation of the International Convention on the Protection of All Persons from Enforced Disappearance will be a significant contribution to ending impunity and to the promotion and protection of all human rights for all;

2. *Welcomes* the entry into force of the Convention on 23 December 2010 and the work done by the Committee on Enforced Disappearances during its two first sessions, and encourages all States parties to the Convention to support and promote the work of the Committee and to implement its recommendations;

3. *Calls upon* all States that have not yet signed, ratified or acceded to the Convention to consider doing so as a matter of priority, and to also consider the option provided for in articles 31 and 32 of the Convention regarding the Committee on Enforced Disappearances;

4. *Requests* the Secretary-General and the United Nations High Commissioner for Human Rights to continue their intensive efforts to assist States in becoming parties to the Convention, with a view to achieving universal adherence;

## **II. Declaration on the Protection of All Persons from Enforced Disappearance**

5. *Recognizes* the importance of the Declaration on the Protection of All Persons from Enforced Disappearance in that it characterizes all acts of enforced disappearance of persons as very serious offences and sets forth standards designed to punish and prevent their commission, and that it recognizes that victims and their family shall obtain redress and shall have the right to adequate compensation;

6. *Notes* that 2012 marks the twentieth anniversary of the adoption by the General Assembly of the Declaration;

7. *Urges* all States to promote and to give full effect to the Declaration;

8. *Encourages* all States to translate the Declaration into their languages in order to assist its global dissemination and the ultimate goal of preventing enforced disappearances;

### III. Working Group on Enforced or Involuntary Disappearances

9. *Takes note* of the report submitted by the Working Group on Enforced or Involuntary Disappearances<sup>1</sup> and of the recommendations contained therein;

10. *Stresses the importance* of the work of the Working Group, and encourages it to pursue the fulfilment of its mandate as set out in Human Rights Council resolution 16/16;

11. *Welcomes* the cooperation established between the Working Group and the Committee on Enforced Disappearances, within the framework of their respective mandates;

12. *Takes note with interest* of all the general comments of the Working Group, including the most recent one on the right to recognition as a person before the law in the context of enforced disappearances, which are aimed at helping States to apply the Declaration in a way that is most conducive to the protection of all persons from enforced disappearances;

13. *Calls upon* States that have not provided for a long period of time substantive replies concerning claims of enforced disappearances in their countries to do so, and to give due consideration to relevant recommendations concerning this issue made by the Working Group in its reports;

14. *Urges* States to cooperate with the Working Group to help it to carry out its mandate effectively and, in that framework, to give serious consideration to responding favourably to its requests for visits to their countries;

15. *Encourages* the Working Group, in accordance with its working methods, to continue to provide concerned States with relevant and detailed information concerning allegations of enforced disappearances in order to facilitate a prompt and substantive response to these communications without prejudice to the need for concerned States to cooperate with the Working Group;

16. *Expresses*:

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

(b) Its appreciation to the Governments that are investigating, cooperating at the international and bilateral levels, and have developed or are developing appropriate mechanisms to investigate any claims of enforced disappearance brought to their attention, and encourages all the Governments concerned to expand their efforts in this area;

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<sup>1</sup> A/HRC/19/58/Rev.1.

#### IV. General principles

17. *Takes note* of the reports submitted by the Office of the High Commissioner, including their recommendations, on programmes and other measures for the protection of witnesses implemented within the framework of criminal procedures relating to gross violations of human rights and serious violations of international humanitarian law,<sup>2</sup> on the seminar on the importance of archives as a means to guarantee the right to the truth<sup>3</sup> and on the obligation of States to investigate serious violations of human rights, and the use of forensic genetics;<sup>4</sup>

18. *Calls upon States:*

(a) To prevent the occurrence of enforced disappearances, including by guaranteeing that any person deprived of liberty is held solely in officially recognized and supervised places of detention, guaranteeing access to all places of detention by authorities and institutions whose competence in this regard has been recognized by the concerned State, maintaining official, accessible, up-to-date registers and/or records of detainees, and ensuring that detainees are brought before a judicial authority promptly after detention;

(b) To work to eradicate the culture of impunity for the perpetrators of enforced disappearances and to elucidate cases of enforced disappearance as a crucial step in effective prevention;

(c) To prevent and investigate with special attention the enforced disappearance of persons belonging to vulnerable groups, especially children, and the enforced disappearance of women, as they may become particularly vulnerable to sexual violence and other forms of violence, and to bring the perpetrators of those enforced disappearances to justice;

(d) 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 and, if such belief is borne out, to ensure that all the perpetrators of enforced or involuntary disappearances be brought to justice;

(e) To continue their efforts to elucidate the fate of disappeared persons and to ensure that competent authorities in charge of investigation and prosecution are provided with adequate means and resources to resolve cases and bring perpetrators to justice, including after considering establishing, where appropriate, specific judicial mechanisms or truth and reconciliation commissions that complement the justice system;

(f) To consider the use of forensic genetics to contribute to the identification of the remains of the victims of enforced or involuntary disappearances and to address the issue of impunity;

(g) To take steps to provide adequate protection to witnesses of enforced or involuntary disappearances, human rights defenders acting against enforced disappearances, and the lawyers and families of disappeared persons against any intimidation, persecution, reprisals or ill-treatment to which they might be subjected, paying special attention to women as relatives of disappeared persons in the context of their struggle to resolve the disappearance of members of their families;

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<sup>2</sup> A/HRC/15/33.

<sup>3</sup> A/HRC/17/21.

<sup>4</sup> A/HRC/18/25 and Corr.1.

(h) To make provisions in their legal systems for victims of enforced or involuntary disappearances or their families to seek fair, prompt and adequate reparation and, in addition, where appropriate, to consider symbolic measures recognizing the suffering of victims and restoring their dignity and reputation;

(i) To adopt an archival policy that ensures that all archives pertaining to human rights held by all types of institutions are preserved and protected in order to habilitate victims to realize their right to the truth to judicial accountability and non-judicial truth seeking process and for reparations;

(j) To address the specific needs of the families of disappeared persons;

(k) To take appropriate steps to address the legal uncertainty created by the absence of the disappeared person and faced by their family members, the next-of-kin and others connected to him or her, including, among others, by issuing a system of declaration of absence as a result of enforced disappearance;

19. *Decides* to continue consideration of the question of enforced or involuntary disappearances in accordance with its programme of work.

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