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COMMISSION ON HUMAN RIGHTS  
Sixty-first session  
Agenda item 11 (a)

**CIVIL AND POLITICAL RIGHTS, INCLUDING THE QUESTIONS OF:  
(a) TORTURE AND DETENTION**

**Albania\*, Andorra\*, Argentina, Armenia, Australia, Austria\*, Belgium\*, Brazil, Bulgaria\*, Canada, Chile\*, Croatia\*, Cyprus\*, Czech Republic\*, Denmark\*, Estonia\*, Finland, France, Germany, Greece\*, Guatemala, Hungary, Iceland\*, Ireland, Italy, Latvia\*, Lithuania\*, Luxembourg\*, Malta\*, Mexico, Netherlands, New Zealand\*, Norway\*, Panama\*, Paraguay, Poland\*, Portugal\*, Republic of Korea, Romania, San Marino\*, Senegal\*, Serbia and Montenegro\*, Slovakia\*, Slovenia\*, Spain\*, Sweden\*, Switzerland\*, Turkey\*, Ukraine, United Kingdom of Great Britain and Northern Ireland, and United States of America:  
draft resolution**

**2005/... Torture and other cruel, inhuman or  
degrading treatment or punishment**

*The Commission on Human Rights,*

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

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\* In accordance with rule 69, paragraph 3, of the rules of procedure of the functional commissions of the Economic and Social Council.

*Recalling* that freedom from torture and other cruel, inhuman or degrading treatment or punishment is a non-derogable right and must be protected under all circumstances, including in times of international and internal armed conflict or internal disturbance, and that the prohibition of torture and other cruel, inhuman or degrading treatment or punishment is affirmed in relevant international instruments such as the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights and the Convention against Torture, as well as in other relevant international instruments, as set out in the second preambular paragraph of Commission resolution 2001/62 of 25 April 2001,

*Recalling also* that a number of international, regional and domestic courts, including the International Criminal Tribunal for the Former Yugoslavia, have recognized that the prohibition of torture is a peremptory norm of international law,

*Noting* that under the Geneva Conventions, of 12 August 1949, torture 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,

*Emphasizing* the importance of Governments taking persistent action to prevent and combat torture, inter alia by ensuring proper follow-up of recommendations of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment,

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

*Recalling* all relevant resolutions of the General Assembly, the Economic and Social Council and its own resolutions on the subject, in particular Commission resolution 2004/41 of 19 April 2004 and Assembly resolution 59/182 of 20 December 2004,

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 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. *Stresses in particular* that all allegations of torture or other cruel, inhuman or degrading treatment or punishment must be promptly and impartially examined by the competent national authority, that those who encourage, order, tolerate or perpetrate acts of torture must be held responsible and severely punished, including the officials in charge of the place of detention where the prohibited act is found to have been committed, and takes 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 Principles) as a useful tool in efforts to combat torture;

4. *Urges* States to ensure that any statement, that is established to have been made as a result of torture shall not be invoked as evidence in any proceedings, except against a person accused of torture as evidence that the statement was made;

5. *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;

6. *Stresses* that national legal systems should ensure that victims of torture or other cruel, inhuman or degrading treatment or punishment obtain redress, 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;

7. *Reminds* Governments that corporal punishment, including of children, can amount to cruel, inhuman or degrading punishment or even to torture;

8. *Also reminds* Governments that, as described in article 1 of the Convention against Torture, intimidation and coercion, 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;

9. *Reminds* all States that 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;

10. *Recalls* General Assembly resolution 43/173 of 9 December 1988 entitled “Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment”;

11. *Stresses* that all acts of torture must be made 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;

12. *Also stresses* that States must not punish personnel for not obeying orders to commit acts amounting to torture or other cruel, inhuman or degrading treatment or punishment;

13. *Urges* Governments 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;

14. *Emphasizes* that States must ensure 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, and calls upon the United Nations High Commissioner for Human Rights, in conformity with the mandate established in General Assembly resolution 48/141 of 20 December 1993, to provide, at the request of Governments, advisory services in this regard, as well as technical assistance in the development, production and distribution of appropriate teaching material for this purpose;

15. *Invites* donor countries, recipient countries and relevant United Nations organizations, funds and programmes, in particular the Office of the United Nations High Commissioner for Human Rights, to consider, where appropriate, including in their respective bilateral programmes and technical cooperation projects relating to the training of

relevant personnel, inter alia armed forces, security forces, border guards, prison and police personnel and health-care personnel, matters relating to the protection of human rights, including the prevention of torture, while bearing in mind a gender perspective;

16. *Welcomes* the study by the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment concerning the situation of trade in and production of equipment that is specifically designed to inflict torture or other cruel, inhuman or degrading treatment, its origin, destination and forms (see E/CN.4/2005/62), and calls upon Governments to consider taking effective legislative, administrative, judicial and other measures to prohibit the production, trade, export and use of such equipment, as recommended by the Special Rapporteur;

17. *Urges* all States to become parties to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment as a matter of priority;

18. *Calls upon* all States to ensure that no reservation is incompatible with the object and purpose of the Convention and encourages States parties to consider limiting the extent of any reservations they lodge to the Convention, to formulate any reservations as precisely and narrowly as possible and to review regularly any reservations made in respect of the provisions of the Convention, with a view to withdrawing them;

19. *Invites* all States ratifying or acceding to the Convention and those States parties that have not yet done so to make the declarations provided for in articles 21 and 22 of the Convention and urges States parties to notify the Secretary-General of their acceptance of the amendments to articles 17 and 18 of the Convention as soon as possible;

20. *Urges* all States parties to comply strictly with their obligations in accordance with article 19 of the Convention, including their reporting obligations, and, in particular, those States parties whose reports are long overdue to submit their reports forthwith, and invites States parties to incorporate a gender perspective and information concerning children and juveniles when submitting reports to the Committee against Torture;

21. *Calls upon* States parties to give early consideration to signing and ratifying the Optional Protocol to the Convention, providing further measures for use in the fight against and prevention of torture, which was adopted on 18 December 2002 by the General Assembly in its resolution 57/199, and notes in this context that ratification by 20 States is required for the Optional Protocol to enter into force;

22. *Welcomes* the report of the Committee against Torture on its thirty-first and thirty-second sessions (A/59/44);

23. *Also welcomes* the work of the Committee and its practice of formulating concluding observations after the consideration of reports and recognizes the importance of the process of individual communications relating to States that have made the declaration under article 22 of the Convention, as well as its practice of carrying out inquiries into cases where there are indications of the systematic practice of torture within the jurisdiction of States parties, and urges States parties to take fully into account such conclusions and recommendations, as well as views on individual communications;

24. *Takes note with appreciation* of the report of the Secretary-General on the status of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (E/CN.4/2005/53) and requests the Secretary-General to continue to submit an annual report to the Commission;

25. *Welcomes* the report of the Special Rapporteur on the question of torture (E/CN.4/2005/62 and Add.1-3) and the recommendations contained therein;

26. *Underlines* the importance of the mandate of the Special Rapporteur in the elimination of torture and other cruel, inhuman or degrading treatment or punishment, recalls the methods of work of the Special Rapporteur (E/CN.4/1997/7, annex), approved by the Commission in its resolution 2001/62, and draws the attention of the Special Rapporteur to those aspects related to his activities set out in paragraphs 4, 30 and 31 of Commission resolution 2004/41, with a view to his reporting to the Commission as appropriate;

27. *Calls upon* all Governments to cooperate with and assist the Special Rapporteur in the performance of his task, to supply all necessary information requested by him and to react appropriately and expeditiously to his urgent appeals, and urges those Governments that have not yet responded to communications transmitted to them by the Special Rapporteur to answer without further delay;

28. *Also calls upon* all Governments to give serious consideration to responding favourably to the Special Rapporteur's requests to visit their countries and urges them to enter into a constructive dialogue with the Special Rapporteur with respect to the follow-up to his recommendations, so as to enable him to fulfil his mandate even more effectively;

29. *Invites* the Special Rapporteur to submit an interim report to the General Assembly at its sixtieth session on the overall trends and developments with regard to his mandate and a full report to the Commission at its sixty-second session, including as addenda all replies sent by Governments that are received in any of the official languages of the United Nations;

30. *Takes note* of the report of the Secretary-General on the United Nations Voluntary Fund for Victims of Torture (E/CN.4/2005/54 and Corr.1);

31. *Welcomes* the final evaluation report on the Voluntary Fund (E/CN.4/2005/55) and calls on the Fund to continue to implement the recommendations contained therein, including on the reform of its working methods;

32. *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;

33. *Requests* the Secretary-General to continue to include the Fund, on an annual basis, among the programmes for which funds are pledged at the United Nations Pledging Conference for Development Activities and to transmit to all Governments the appeals of the Commission for contributions to the Fund;

34. *Calls upon* the Board of Trustees of the Fund to report to the Commission at its sixty-second session;

35. *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;

36. *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;

37. *Decides* to continue to consider this matter at its sixty-second session, as a matter of priority.

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