



# 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

**Andorra<sup>\*</sup>, Argentina<sup>\*</sup>, Austria, Belgium, Bolivia (Plurinational State of)<sup>\*</sup>, Bosnia and Herzegovina<sup>\*</sup>, Bulgaria<sup>\*</sup>, Colombia<sup>\*</sup>, Costa Rica, Croatia<sup>\*</sup>, Cuba, Cyprus<sup>\*</sup>, Czech Republic, Denmark<sup>\*</sup>, Estonia<sup>\*</sup>, France<sup>\*</sup>, Greece<sup>\*</sup>, Guatemala, Ireland<sup>\*</sup>, Italy, Latvia<sup>\*</sup>, Mexico, Paraguay<sup>\*</sup>, Peru, Portugal<sup>\*</sup>, Serbia<sup>\*</sup>, Spain, Switzerland, Tunisia<sup>\*</sup>, Uruguay, Venezuela (Bolivarian Republic of)<sup>\*</sup>: draft resolution**

### 21/... 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 Additional Protocols I and II 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,

*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 by an adverse party 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, article 24 (2) of which 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 to the Convention, which

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<sup>\*</sup> Non-Member State of the Human Rights Council.

reaffirms the right to freedom to seek, receive and impart information to that end, and welcoming the entry into force of the Convention on 23 December 2010,

*Taking into account* Commission on Human Rights resolution 2005/66 of 20 April 2005, Human Rights Council decision 2/105 of 27 November 2006, and Council resolutions 9/11 of 18 September 2008 and 12/12 of 1 October 2009 on the right to the truth,

*Taking also into account* Human Rights Council resolutions 10/26 of 27 March 2009 and 15/5 of 29 September 2010 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 relating to gross human rights violations and serious violations of international humanitarian law,

*Welcoming* the creation of the mandate of Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence by the Human Rights Council in its resolution 18/7 of 29 September 2011, and the appointment of a mandate holder by the Council at its nineteenth session,

*Noting with interest* the general comment of the Working Group on Enforced or Involuntary Disappearances on the right to the truth in relation to enforced disappearance,

*Acknowledging* the reports of the Office of the United Nations High Commissioner for Human Rights on the right to the truth<sup>1</sup> and their significant conclusions relating 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<sup>2</sup> and its conclusions regarding the importance of the protection of witnesses within the framework of criminal procedures relating to gross human rights violations and serious violations of international humanitarian law, as well as on issues relating to the elaboration and management of archive 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,<sup>3</sup> and taking note with appreciation of the updated version of those principles,<sup>4</sup>

*Noting* that the Special Rapporteur on the independence of judges and lawyers has recognized the right to the truth, its scope and implementation,<sup>5</sup> and also that the Human Rights Committee and the Working Group on Enforced or Involuntary Disappearances 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,<sup>6</sup>

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<sup>1</sup> E/CN.4/2006/91, A/HRC/5/7, A/HRC/15/33.

<sup>2</sup> A/HRC/12/19.

<sup>3</sup> E/CN.4/Sub.2/1997/20/Rev.1, annex II.

<sup>4</sup> E/CN.4/2005/102/Add.1.

<sup>5</sup> E/CN.4/2006/52.

<sup>6</sup> E/CN.4/1999/62.

*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, the right to be informed, or freedom of information,

*Emphasizing* that the general 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 relating to gross human rights violations and serious violations of international humanitarian law through the conservation of archives and other documents relating 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 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 such non-judicial mechanisms as truth and reconciliation commissions, and to 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 and international organizations to provide requesting States with necessary and appropriate assistance regarding the right to the truth by means of, among other actions, technical cooperation and the 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. *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. *Calls upon* States to work in cooperation with the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence in accordance with his mandate, including by extending invitations to the Special Rapporteur;

8. *Welcomes* the entry into force of 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;

9. *Takes note with appreciation* of the report of the Office of the United Nations High Commissioner for Human Rights on the right to the truth<sup>7</sup> and, in accordance with its conclusions, calls upon all States to consider developing comprehensive witness protection programmes covering all types of crimes, including gross human rights violations and serious violations of international humanitarian law;

10. *Also takes note with appreciation* of the report of the Office of the High Commissioner on the seminar on experience of archives as a means to guarantee the right to the truth,<sup>8</sup> which outlined the importance of archives to the ability of victims to realize their right to the truth, to judicial accountability and non-judicial truth-seeking processes, and for reparations, and, in accordance with its concluding observations, encourages States that have not yet done so to establish a national archival policy that ensures that all archives pertaining to human rights are preserved and protected, and to enact legislation that declares that the nation's documentary heritage is to be retained and preserved, and creates the framework for managing State records from their creation to destruction or preservation;

11. *Requests* the Office of the High Commissioner to invite, from within existing resources, Member States, United Nations organs, intergovernmental organizations, national human rights institutions and non-governmental organizations to provide information on good practices in the establishment, preservation and provision of access to national archives on human rights, and to make the information received publically available in an online database;

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

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

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<sup>7</sup> A/HRC/15/33.

<sup>8</sup> A/HRC/17/21.