

UNCLASSIFIED

COMMISSION ON HUMAN RIGHTS

E/CN.4/2004/WG.22/Misc.21

Working Group on a draft legally binding
normative instrument for the protection of
all persons from enforced disappearance
Geneva, 12-23 January 2004

16 January 2004

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RELEASED IN PART
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UNITED STATES DEPARTMENT OF STATE
REVIEW AUTHORITY: JOHN S BLODGETT
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PROPOSAL OF
THE UNITED STATES

E/CN.4/2004/WG.22/Misc.21

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FP 1164

United States Proposals on "Access to Information" (January 16, 2004)**Article 7**

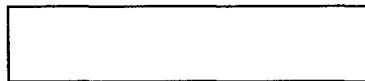
Delete the following sentence: "In particular, the right to obtain accurate and full information on the fate of disappeared persons is guaranteed in all circumstances." [*Unnecessary in light of what follows.*]

Article 12 [as shortened]

1. (same)
2. (same)
3. (same)

New Consolidated Chapter on – "Access to Information"**Article 12 bis [New]**

1. Each State Party, *subject to Article 12 ter(4)*, shall provide to family members, and to other persons with a legitimate interest, information concerning the whereabouts and fate of a disappeared person, including information resulting from an investigation into the disappearance.
2. *At a minimum, such information shall include:*
 - (a) *The authority to whom the person has been referred;*
 - (b) *The whereabouts of the person deprived of liberty, including in case of transfer;*
 - (c) *The identity of the person responsible for the deprivation of liberty and of the person in whose hands the person deprived of liberty has been placed.*
[Former Art. 16(2)]
3. Each State Party shall prepare and maintain one or several official registers of persons deprived of liberty. [*Former Art. 16(3); however, the 2nd sentence would become unnecessary in view of Art. 12 bis.*]

Article 12 ter [New]

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1. In implementing their obligations under this [instrument], States Parties shall respect the fundamental need of family members, and other persons with a legitimate interest, to obtain information promptly and regularly regarding the whereabouts and the fate of a disappeared person.
2. States Parties shall adopt, if they have not yet done so, the necessary domestic legal measures to ensure appropriate access to such information.
3. States Parties shall be guided by the principle that furnishing such information shall in no circumstances be unreasonably denied.
4. Such access shall be subject only to privacy, law enforcement, national security, or other similar considerations duly justified under law.

Article 17

[The necessity of this article would need to be reevaluated, in light of provisions in the new "Access to Information" Chapter].

Article 19 [as revised]

Each State Party shall take the necessary measures to prevent or punish the following conduct:

- (a) Any unlawful delay or obstruction in providing the access to information envisioned by Article 12 bis and Article 12 ter. [*delete reference to Art. 17*]
- (b) same
- (c) same

Article 12 ter [New][01/21/04]

1. In implementing their obligations under [this instrument], States Parties, subject to their constitutional and legal requirements, shall adopt/take such measures as may be necessary that will respect the fundamental need of family members, and other persons with a legitimate interest, to obtain, **upon request**, prompt and regular information regarding the whereabouts and fate of a disappeared person.

2. States Parties shall be guided by the principle that furnishing such information shall in no circumstances be unreasonably denied.

Article 12 ter [New][01/21/04]

1. In implementing their obligations under [this instrument], States Parties, subject to their constitutional and legal requirements, shall adopt/take such measures as may be necessary that will respect the fundamental need of family members, and other persons with a legitimate interest, to obtain, **upon request**, prompt and regular information regarding the whereabouts and fate of a disappeared person.

2. States Parties shall be guided by the principle that furnishing such information shall in no circumstances be unreasonably denied.