

Peay, Michael T

From: Brancato, Gilda M (L-HRR)  
 Sent: Saturday, September 25, 2004 2:27 AM  
 To: Witten, Samuel M (SBU); Jacobson, Linda (SBU); Manning, Denise (SBU); Dorosin, Joshua L (L-PM); Brooks, Waldo W (L-PM); Peay, Michael T; Solomon, Steven A; Harris, Robert K (L-HRR); Cummings, Edward R (L-ACV); Gorove, Katherine M (L-HRR); Brancato, Gilda M (L-HRR)  
 Subject: FW: Latest draft: forced disappearances treaty text

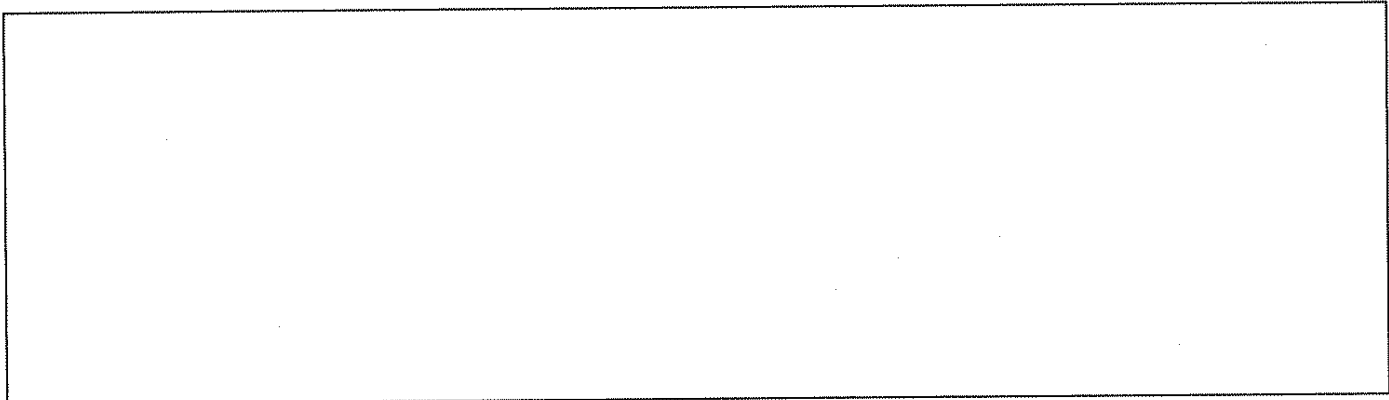


un.forced.disappea  
 rance.doc  
 FYI.

-----Original Message-----

From: Thomas.Burrows@usdoj.gov [mailto:Thomas.Burrows@usdoj.gov]  
 Sent: Friday, September 24, 2004 5:12 PM  
 To: 'molly.groom@dhs.gov'; 'BRANCATOGM@state.gov'  
 Cc: 'Regina.Hart@dhs.gov'; Molly.Warlow@usdoj.gov; 'HarrisRK2@state.gov'  
 Subject: RE: Latest draft: forced disappearances treaty text

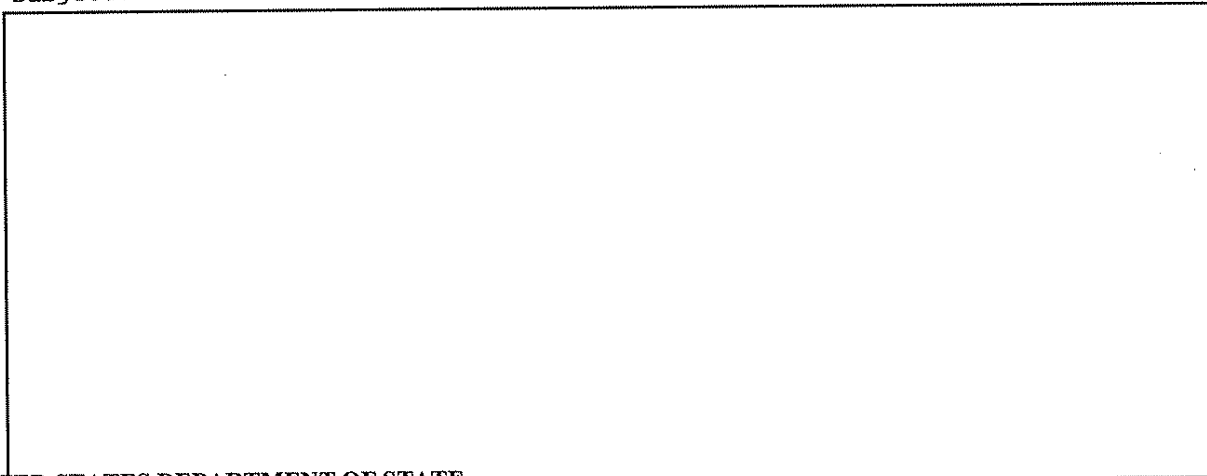
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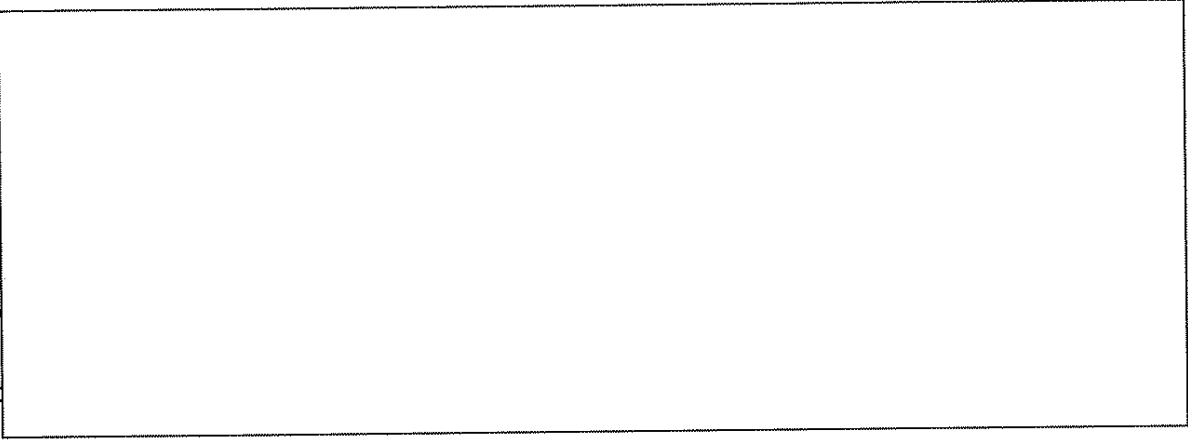
From: BRANCATOGM@state.gov [mailto:BRANCATOGM@state.gov]  
 Sent: Wednesday, September 08, 2004 12:03 PM  
 To: Burrows, Thomas; molly.groom@dhs.gov  
 Cc: HarrisRK2@state.gov  
 Subject: FW: Latest draft: forced disappearances treaty text

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FP0960

GE134

Peay, T. Michael

**From:** Kovar, Jeffrey D (SBU)  
**Sent:** Tuesday, January 13, 2004 10:18 PM  
**To:** Brancato, Gilda M (SBU); Carlson, Mary H (SBU); Pfund, Peter H(CA/OCS/CI); Mason, Peter W (SBU)  
**Cc:** Peay, T. Michael(Geneva); Harris, Robert K (SBU); Brown, Catherine W (Legal) (SBU); Gaw, Monica A(CA/OCS/PRI); Bernier-Toth, Michelle(CA/OCS/CI); Terrill, Damon A (SBU)  
**Subject:** RE: Child abduction provisions in forced disappearances convention/consular notification provision

[Redacted]

B5

-----Original Message-----

**From:** Brancato, Gilda M (SBU)  
**Sent:** Tuesday, January 13, 2004 3:30 PM  
**To:** Carlson, Mary H (SBU); Pfund, Peter H(CA/OCS/CI); Kovar, Jeffrey D (SBU); Mason, Peter W (SBU)  
**Cc:** Peay, T. Michael(Geneva); Harris, Robert K (SBU)  
**Subject:** Child abduction provisions in forced disappearances convention/consular notification provision

[Redacted]

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**CHILD ABDUCTION PROVISIONS**

**ARTICLE 23.**

Each state party shall take the necessary measures to prevent and punish under its criminal law:

- (a) the abduction or appropriation of children one of whose parents is the victim of an enforced disappearance;
- (b) The falsification or destruction of documents attesting to the true identity of the child referred to in para (a).

**ARTICLE 24.** State parties shall assist one another in the search for and identification and location of minors who have been abducted or appropriated in the circumstances described in article 23(a).

**ARTICLE 25.**

(1) When a child who has been abducted or appropriated in the circumstances described in article 23(a) is found on the territory of a State party, the question of the child's return to his or her family of origin shall be resolved either under the domestic law of that state party, or under bilateral or multilateral agreements which that State has entered into with another State in which the family of origin lives.

(2) In all cases, the best interests of the child are a primary consideration, and a child who is capable of judgment shall have the right to express his or her views freely and to have them given due weight in the light of his or her age and level of maturity.

**CONSULAR NOTIFICATION.**

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Thank you all!

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E/CN.4/2004/WG.22/Misc.2

RELEASED IN PART  
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GE150

**Text Proposed by the United States Delegation**

**[Chapter 2 – Offenses and penalties]**

**Article 2**



1. Each State Party shall take the necessary measures to ensure that ~~[new/~~ the acts which comprise] enforced disappearance, ~~[new:~~ for purposes of this instrument], constitute ~~[new:]~~ a punishable offense under its criminal law ~~[or alternatively:~~ is subject to criminal sanction under its criminal law]. ~~[New sentence:~~ The same shall apply to an attempt to commit an enforced disappearance and to an act that constitutes complicity or participation in, or a conspiracy to commit, an enforced disappearance.]

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UNITED STATES DEPARTMENT OF STATE  
REVIEW AUTHORITY: ARCHIE M BOLSTER  
CLASSIFICATION: UNCLASSIFIED  
DATE/CASE ID: 24 JUL 2009 200706444

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E/CN.4/2004/WG.22/Misc.2

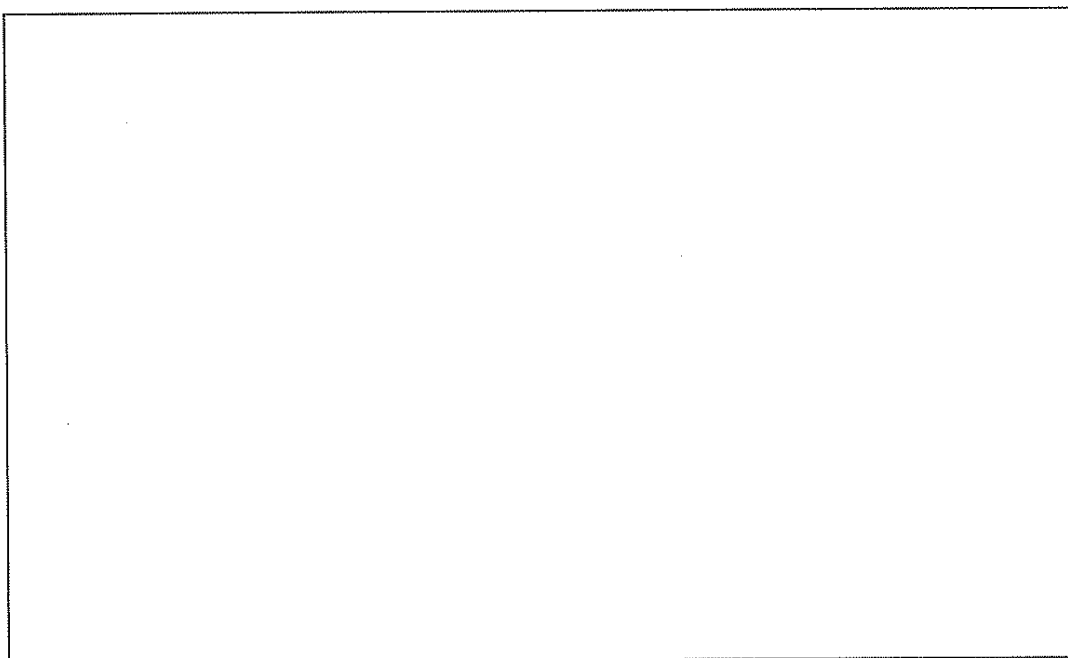
Text proposed by United States delegation

GE/51

Article 1.

RELEASED IN PART  
B5

**“For purposes of this instrument, an enforced disappearance is considered to be an arrest, detention, or abduction of a person by, or with the authorization, support or acquiescence of, a State, followed by its refusal to acknowledge that deprivation of freedom or to give information on the fate or whereabouts of such person, with the intention of removing that person from the protection of the law for a prolonged period of time.”**



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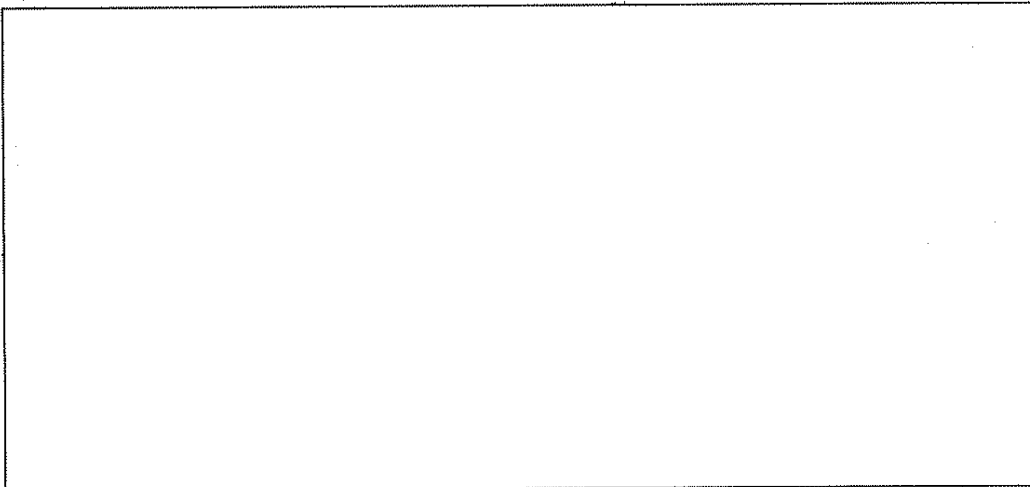
RELEASED <sup>in part</sup> IN PART  
B5

Text proposed by United States delegation

GE152

Article 1.

**“For purposes of this instrument, an enforced disappearance is considered to be an arrest, detention, or abduction of a person by, or with the authorization, support or acquiescence of, a State, followed by its refusal to acknowledge that deprivation of freedom or to give information on the fate or whereabouts of such person, with the intention of removing that person from the protection of the law for a prolonged period of time.”**



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UNITED STATES DEPARTMENT OF STATE  
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DATE/CASE ID: 24 JUL 2009 200706444

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B6, B5





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Subject: Re: Enforced Disappearances Negotiations (12-23 January 2004)

To: "Michael Peay" 



From: "Carmen Rueda" 

Date: Mon, 26 Jan 2004 17:37:07 +0100

GE153

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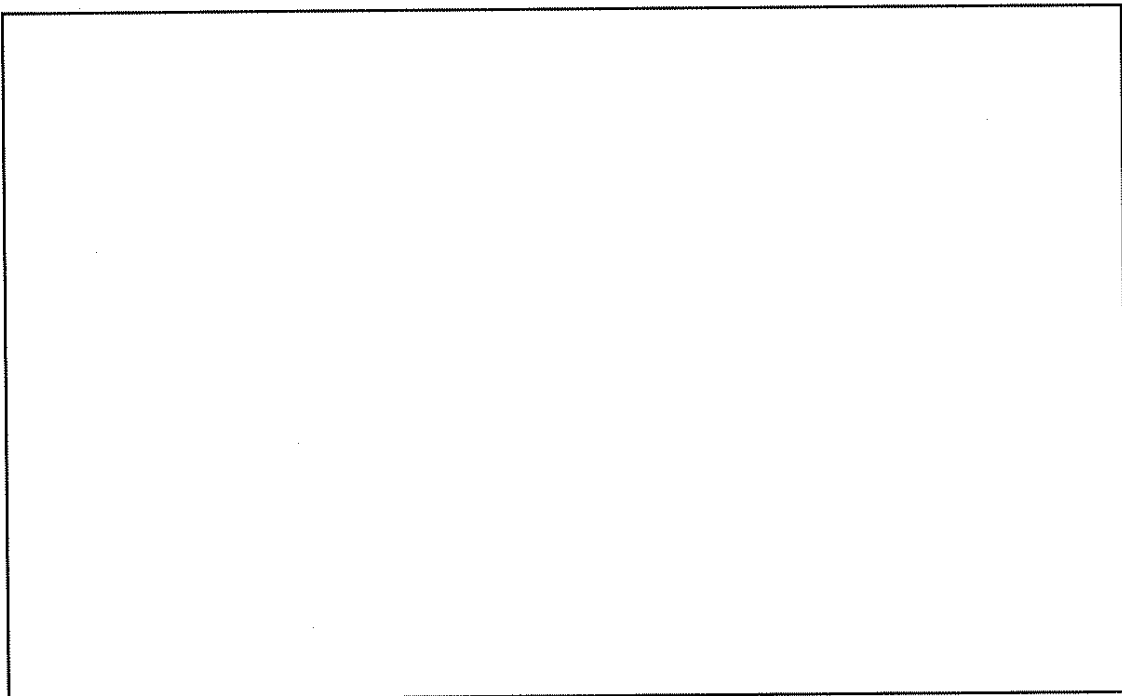
Dear Michael,  
 Thanks very much for your kind words and for sending me your observations.  
 It certainly facilitates my work, as it is not always easy to take accurate notes during the meeting. It is my recollection also that they were accepted by the Chair.  
 Best regards,  
 Carmen

Michael Peay  
  
 crueda   
 hoo.com>  
 peaytm@state.gov, brancatogm@state.gov  
 Disappearances Negotiations (12-23  
 26.01.2004 13:28

To:  
 cc:  
 Subject: Enforced  
 January 2004)

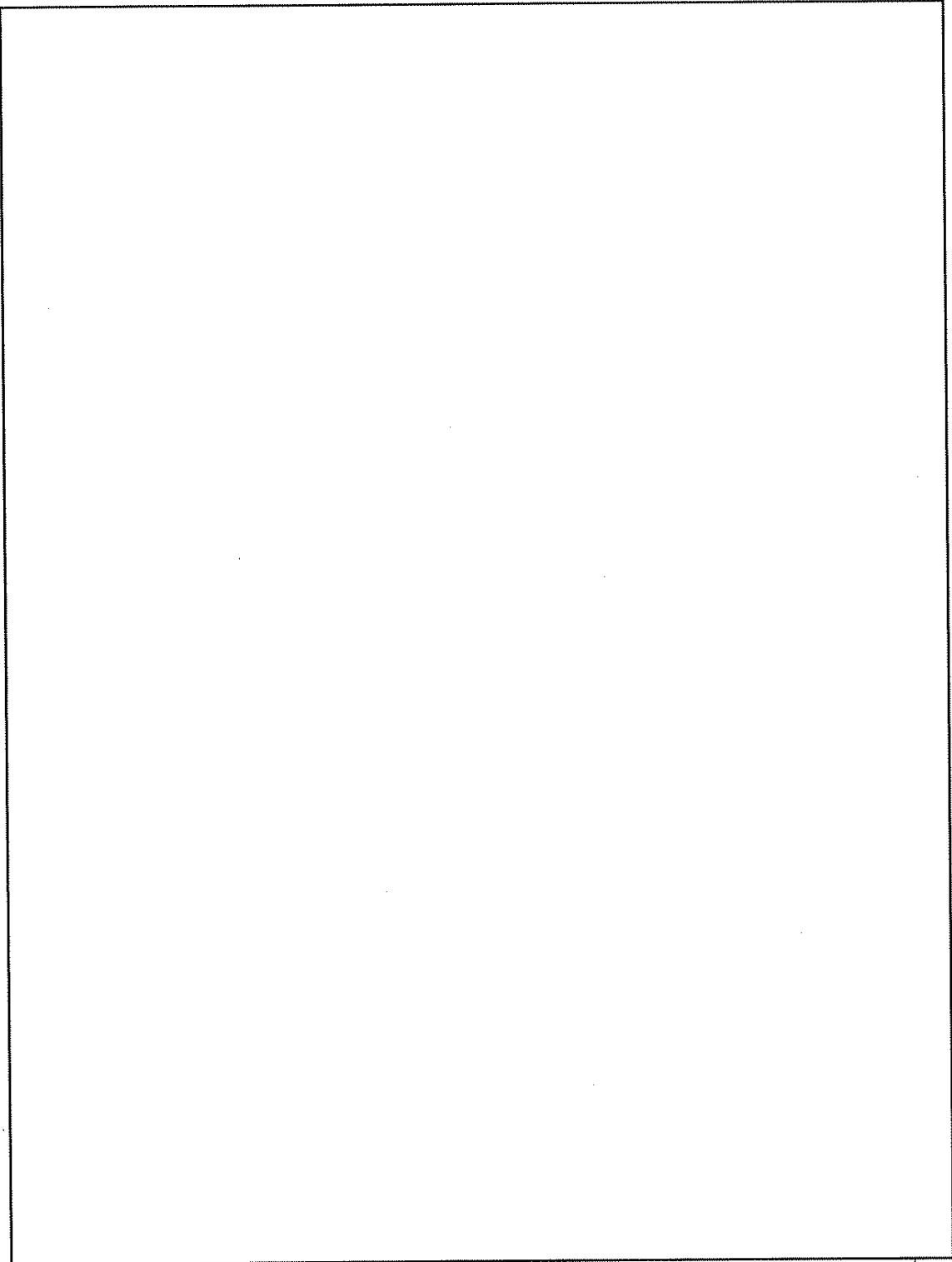
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UNITED STATES DEPARTMENT OF STATE  
 REVIEW AUTHORITY: ARCHIE M BOLSTER  
 DATE/CASE ID: 23 JUN 2009 200706444



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I hope these clarifications will assist you in preparing a final Draft Report. Again, Carmen, I particularly appreciate this opportunity to ensure our interventions are included for the benefit of all delegations that will be providing further comments on the Draft Report you are preparing. Please contact me if you have any questions.

Best personal regards to you and your staff.

T. Michael Peay  
Legal Adviser  
U.S. Mission Geneva  
022-749-4316  
(fax) 022-749-4343

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COMMISSION ON HUMAN RIGHTS

~~B5~~ N.4/2004/WG.22/Misc.38

20 January 2004

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

GE155

PROPOSITION DE LA PRESIDENCE

ART.5

A/F

- 1. Tout Etat partie qui, à l'égard de la disparition forcée, applique un régime de prescription, prend les mesures nécessaires pour que le délai de prescription de l'action pénale:

[Redacted]

- a) soit de longue durée et proportionné à l'extrême gravité de cette infraction ;
- b) ne commence pas à courir tant que les auteurs de la disparition forcée dissimulent le sort réservé à la personne disparue et le lieu où elle se trouve, et que les faits n'ont pas été élucidés.

B5

- 2. Le délai de prescription de l'action pénale prévu au paragraphe 1 est suspendu aussi longtemps que, dans un Etat partie, toute personne dont les droits civils et politiques ont été violés ne dispose pas d'un recours utile.

\*\*\*\*\*

- 1. Each State Party who uses a limitation with regard to enforced disappearances shall take the necessary measures to ensure that the term of limitation as regards criminal proceedings shall :

- a) be of a long duration and proportionate to the extreme gravity of the offence;
- b) not commence as long as the authors of the enforced disappearance conceal the fate and the whereabouts of the disappeared person and the facts remain unclarified.

- 2. The term of limitation of criminal proceedings, as foreseen in paragraph 1, shall be suspended as long as, within a State Party, any person whose civil and political rights have been violated does not have effective remedy.

↗

[Redacted]

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UNITED STATES DEPARTMENT OF STATE  
REVIEW AUTHORITY: ARCHIE M BOLSTER  
CLASSIFICATION: UNCLASSIFIED  
DATE/CASE ID: 24 JUL 2009 200706444

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GE156

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# ENFORCED DISAPPEARANCES

## Working Lunch

September 24<sup>th</sup>, 2004

UNITED STATES DEPARTMENT OF STATE  
REVIEW AUTHORITY: ARCHIE M BOJSTER  
DATE/CASE ID: 24 JUL 2009 200706444

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- **Part I**

- ***Article 1***

- For the purposes of *[the present instrument]* enforced disappearance is considered to be the deprivation of a person's liberty, in whatever form, committed by agents of the State or by persons or groups of persons acting with the authorization, support or acquiescence of the State, followed by refusal to acknowledge the deprivation of liberty or concealment of the fate or whereabouts of the disappeared person, which places such person outside the protection of the law. Does not include non-state actors

• *Article Ibis (new)*

1. No one shall be subjected to enforced disappearance.
2. *(from former UI-E)* No circumstances whatsoever, whether a state of war or threat of war, internal political instability or any other state of emergency, may be invoked as a justification of enforced disappearance

• *Article 2 (modified) creates stand-alone crime and number 2 addresses non-state actors*

1. Each State Party shall take the necessary measures to ensure that enforced disappearance, as defined in article 1, constitutes an offence under its criminal law.
2. Each State Party shall take equivalent measures when persons or groups of persons acting without the authorization, support or acquiescence of the State are responsible for dealings defined in article 1.

**•Article 2 bis (new)**

The widespread or systematic practice of enforced disappearance constitutes a crime against humanity and shall attract the consequences provided for under international law.



**•Article 3 (reorganised)**

1. Each State Party shall take the necessary measures to pursue and punish those who commit or contribute to the commission of an enforced disappearance.

2. The following shall be punished :

- a) the perpetrators of and accessories in an enforced disappearance.
- b) the attempt to commit an enforced disappearance,
- c) the conspiracy to commit an enforced disappearance,

3. The following shall also be punished :

- a) persons who order or encourage the commission or attempted commission of such an offence, and persons who facilitate its commission or attempted commission by aiding, abetting or otherwise assisting in it, including providing the means for its commission or attempted commission, shall be punished,

b) a superior officer who:

(i) either knew, or consciously disregarded information which clearly indicated, that subordinates were committing or about to commit an enforced disappearance, and who

(ii) failed to take all necessary and reasonable measures within his or her power to prevent or repress the enforced disappearance or to submit the matter to the competent authorities for investigation and prosecution.

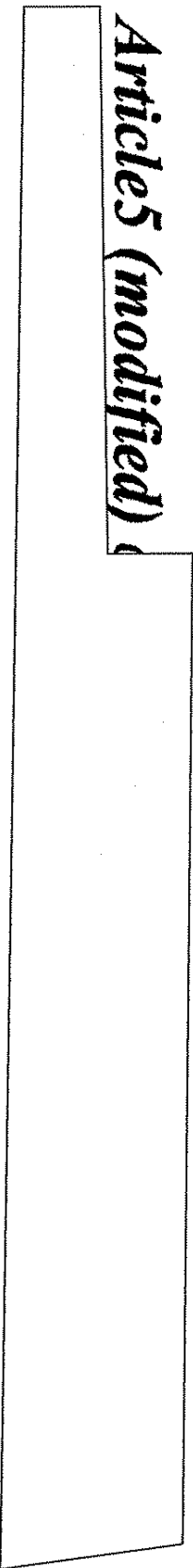
**4. (former 6)** An order of a superior officer or a public authority may not be invoked as a justification of an enforced disappearance.

• *Article 4*

1. Each State Party shall make enforced disappearance punishable by appropriate penalties which take into account its extreme seriousness.
2. Each State Party may establish:
  - a) mitigating circumstances inter alia for persons who, having been involved in the commission of an enforced disappearance, effectively contribute to bringing the disappeared person forward alive, or contribute to elucidating cases of enforced disappearance or identifying the perpetrators of an enforced disappearance.

a) (*complemented*) Aggravating circumstances inter alia in the event of death of the victim or the commission of an enforced disappearance in respect of pregnant women, minors or other particularly vulnerable persons.

- *Articles (modified)*



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Without prejudice to article 2 bis,

1. Each State Party which applies a statute of limitations in respect of enforced disappearances shall take the necessary measures to ensure that the term of limitation for criminal proceedings

- a) is of long duration and proportionate to the extreme seriousness of the offence;
- b) shall commence from the moment when the offence of enforced disappearance ceases and the fate of the disappeared person is established.

2. The statute of limitations for criminal proceedings under paragraph 1 shall be suspended in a State Party as long as any victim of enforced disappearance does not have an effective remedy.

*Article 6 (see 3,3)*

*Article 7 (deleted)*

*Article 8 (deleted)*



***Article 9 (reorganized and modified)***

1. Each State Party shall take such measures as may be necessary to establish its jurisdiction over an enforced disappearance:

- a) when the offence is committed within any territory under its jurisdiction or on board a vessel flying its flag or an aircraft registered in accordance with its law at the time of the facts;
- b) when the alleged perpetrator of the offence is one of its nationals or a stateless person habitually residing in its territory;
- c) when the disappeared person is one of its nationals and the State deems it appropriate to do so.

2. Each State Party shall also take the necessary measures to establish its jurisdiction over an enforced disappearance when the alleged perpetrator of the offence is in a territory under its jurisdiction, unless the State extradites him or her or transfers him or her to another State or surrenders him or her to an international criminal tribunal whose jurisdiction it has recognised.
3. *[The present instrument]* does not exclude any criminal jurisdiction exercised in accordance with national laws.

• *Article 10*

1. Upon being satisfied, after an examination of information available to it, that the circumstances so warrant, any State Party in whose territory a person alleged to have committed an enforced disappearance is present, shall take him or her into custody or take other legal measures to ensure his or her presence. The custody and other legal measures shall be as provided in the law of that State but may be continued only for such time as is necessary to enable any criminal or extradition proceedings to be instituted.

2. The State Party which has taken the measures referred to in paragraph 1 shall immediately make an investigation into the facts. It shall notify the States Parties which may have jurisdiction in accordance with paragraph 1 of article 9 of the measures which it has taken under paragraph 1 of this article, particularly of the fact that such person is in custody and of the circumstances which warrant his or her detention, the findings of its investigation and shall indicate to those States whether it intends to exercise jurisdiction.

3. Any person in custody pursuant to paragraph 1 shall be assisted in communicating immediately with the nearest appropriate representative of the State of which he or she is a national, or, if he or she is a stateless person, with the representative of the State where he or she usually resides.

• *Article 11*

1. The State Party in the territory under whose jurisdiction a person alleged to have committed any enforced disappearance is found shall, if it does not extradite him or her or transfer him or her to another State or surrender him or her to an international criminal tribunal whose jurisdiction it has recognised, submit the case to its competent authorities for the purpose of prosecution.

2. These authorities shall take their decision in the same manner as in the case of any ordinary offence of a serious nature under the law of that State. In the cases referred to in paragraph 2 of article 9, the standards of evidence required for prosecution and conviction shall in no way be less stringent than those which apply in the cases referred to in paragraph 1 of article 9.

3. *(modified)* Any person charged with an offence of enforced disappearance shall be tried by an independent and impartial court, duly established by law, which guarantees the right to a fair trial.

4. *(new)* Any person regarding whom proceedings are brought in connection with an enforced disappearance shall be guaranteed fair treatment at all stages of the proceedings.



• *Article 12 (modified)*

1. Each State Party shall ensure that any person who alleges that someone has been subjected to enforced disappearance has the right to complain to a competent authority, which thoroughly investigates the complaint immediately and impartially. Appropriate steps shall be taken, where necessary, to ensure that the complainant, witnesses, the relatives of the disappeared person and their defence counsel as well as those participating in the investigation are protected against all ill-treatment or intimidation as a consequence of the complaint or any evidence given.

2. Whenever there are reasonable grounds to believe that a person has been subjected to enforced disappearance, any State Party shall refer the matter to the authority referred to in paragraph 1 for it to launch an investigation, even if there has been no formal complaint.

3. *(new)* Each State Party shall ensure that the authority referred to in paragraph 1:

- a) has the necessary powers and resources to conduct the investigation, including the power to compel suspected perpetrators and witnesses to appear before it,
- b) is communicated the necessary information for its investigation;
- c) has access to any place where it is suspected that a disappeared person is present.

4. *(former 12.6, complemented)* Each State Party shall take the necessary measures to prevent and punish acts of such a kind as to inhibit the progress of investigations. It shall ensure, particularly, that persons suspected of having committed an enforced disappearance are not in a position to influence the progress of the investigations by means of pressure or acts of intimidation or reprisal against the complainant, the witnesses, the relatives of the disappeared person, the defence counsel as well as those participating in the investigation..

5. *(new)* The investigation pursuant to the present article shall be conducted in conformity with international principles for investigations on human rights violations, torture, search of disappeared persons, forensic examination and identification.

• *Article 13 (modified)*

1. For purposes of extradition between States Parties, enforced disappearance shall be considered to be neither a political offence, nor an offence related to a political offence or an offence prompted by political motives. Consequently, a request for extradition based on enforced disappearance cannot be refused solely because it concerns a political offence, an offence related to a political offence or an offence prompted by political motives.

2. Enforced disappearance shall automatically be included among the extraditable offences in every extradition treaty concluded between States Parties before the entry into force *[of the present instrument]*.

3. States Parties undertake to include the offence of enforced disappearance among the extraditable offences in every extradition treaty to be concluded subsequently between them.

4. If a State Party which makes extradition conditional on the existence of a treaty receives a request for extradition from another State Party with which it has no extradition treaty, it may consider *[the present instrument]* as the legal basis for extradition in respect of enforced disappearance.

5. Any State Party which does not make extradition conditional on the existence of a treaty shall recognise the offence of enforced disappearance as extraditable.



6. Extradition shall, in all cases, be subject to the conditions provided by the law of the requested State Party or by applicable extradition treaties, including, *inter alia*, conditions in relation to the minimum penalty requirement for extradition and the grounds upon which the requested State Party may refuse extradition or subject extradition to conditions.

7. No provision *[of the present instrument]* shall be interpreted as imposing an obligation on the requested State Party to extradite if that State has serious grounds to believe that the request was put forward for the purpose of prosecuting or punishing a person on account of his or her gender, race, religion, nationality, ethnic origin or political opinions, or that to allow the request would cause harm to that person for any one of those reasons.

• *Article 14 (modified)*

1. States Parties shall provide one another the greatest measure of legal assistance in connection with any criminal investigation or proceedings brought in respect of enforced disappearance, including the supply of all evidence at their disposal that are necessary for the proceedings.
2. Such legal assistance is subject to the conditions provided by the domestic law of the requested State Party or by applicable treaties on mutual legal assistance, including, particularly, concerning the grounds on which the requested State Party may refuse to provide legal assistance or subject such assistance to conditions.

**•Article 15 (modified)**

States Parties shall co-operate with one another and shall provide one another the greatest measure of assistance with a view to assisting victims of enforced disappearance, and in searching, locating and releasing disappeared persons and, in the event of death, in their exhumation, identification and restitution of their remains.

• *Article 15 bis (former 21)*

1. No State Party shall expel, return ("*refouler*") or extradite a person to another State where there are substantial grounds for believing that he/she would be in danger of being subjected to an enforced disappearance.
2. For the purpose of determining whether there are such grounds, the competent authorities shall take into account all relevant considerations, including, where applicable, the existence in the State concerned of a consistent pattern of gross, flagrant or mass violations of human rights or of humanitarian law.

- *Article 16 (reorganised and modified, see 16 bis below) National legislation defines victim*
  1. Each State Party shall, under its law,
    - a) indicate those officials who are authorised to order deprivation of liberty;
    - b) establish the conditions under which such orders may be given;
    - c) guarantee that any person deprived of liberty shall be held solely in an officially recognised and controlled place;

- d) guarantee access of the judicial authorities to places of deprivation of liberty;
- e) guarantee that any person deprived of liberty, in all circumstances, shall have the right to bring proceedings before a court which shall rule without delay on the lawfulness of the deprivation of liberty and order his or her release if that deprivation of liberty is unlawful.

2. Each State Party shall compile and maintain one or several official up-to-date registers of persons deprived of liberty. The information contained in these registers shall include at least the following :

- a) the identity of the person deprived of liberty,
- b) the authority having decided the deprivation of liberty,
- c) the authority controlling the deprivation of liberty,
- d) the date and time of admission in the place of detention and the authority responsible for the place of detention,
- e) the date and time of liberation or transfer to another place of detention, the destination and authority in charge of the transfer.



• ***Article 16 bis***

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1. Each State Party shall guarantee the person deprived of liberty, his or her relatives, their legal representatives, their counsel, and any person authorised by them, as well as any person able to claim a legitimate interest access, as a minimum, to the following information:

- a) the authority to which the person has been handed over;
- b) the authority having decided the deprivation of liberty;
- c) the authority controlling the person deprived of liberty;
- d) the whereabouts of the person deprived of liberty, including in case of transfer;
- e) date and place of release;
- f) state of health and, in the event of death, circumstances and causes of the death.

2. Appropriate measures shall be taken, where necessary, to ensure the protection of the persons mentioned in paragraph 1 as well as the persons participating in the investigation against all ill-treatment; intimidation or any sanction on the grounds of the search of information concerning a person deprived of liberty.

3. *(new)* In order not to jeopardise the privacy of the persons concerned, the information transmitted pursuant to paragraph 1 of the present article shall be adequate and pertinent with respect to the purpose pursued and shall not be used for other purposes than the search of the person deprived of liberty.

**•Article 17**

Without prejudice to consideration of the lawfulness of a deprivation of liberty, States Parties shall guarantee to the relatives of the person deprived of liberty or of a disappeared person, their legal representatives, their counsel and any person authorised by the person deprived of liberty or the disappeared person or by his/her relatives, as well as any other person able to claim a legitimate interest the right to a prompt and effective remedy as a means of obtaining without delay the information referred to article 16 bis. This right to a remedy may not be suspended or restricted in any circumstances.

***•Article 18 (complemented)***

Each State Party shall take the necessary measures to ensure that the release of persons shall proceed in a manner that allows reliable verification that they have actually been released. Each State Party shall also take the necessary measures so that the physical integrity of all such persons and their ability to exercise fully their rights are assured at the time of release, without prejudice to the obligations to which such persons may be subject in accordance with the law.

• *Article 19*

Each State Party shall take the necessary measures to prevent and punish the following actions:

- a) delaying or obstructing the remedy referred to in article 17;
- b) failure to the obligation to register every deprivation of liberty and registration of information which the official responsible of the register knows or should know to be inaccurate;

- c) refusal by an official to provide information on the deprivation of liberty of a person, or the provision of inaccurate information, even though the legal conditions for this information to be provided have been fulfilled.

- ***Article 20 (complemented)***

1. Each State Party shall ensure that the training of law enforcement personnel, civil or military, medical personnel, public officials and other persons who may be involved in the custody or treatment of any person deprived of liberty shall include the necessary education and information on the provisions *[of the present instrument]*, in order to:
  - a) prevent the involvement of these officials in enforced disappearances;



- b) draw attention to the importance of prevention and investigations concerning enforced disappearances;
- c) ensure that the urgent need to resolve cases of enforced disappearance is acknowledged.

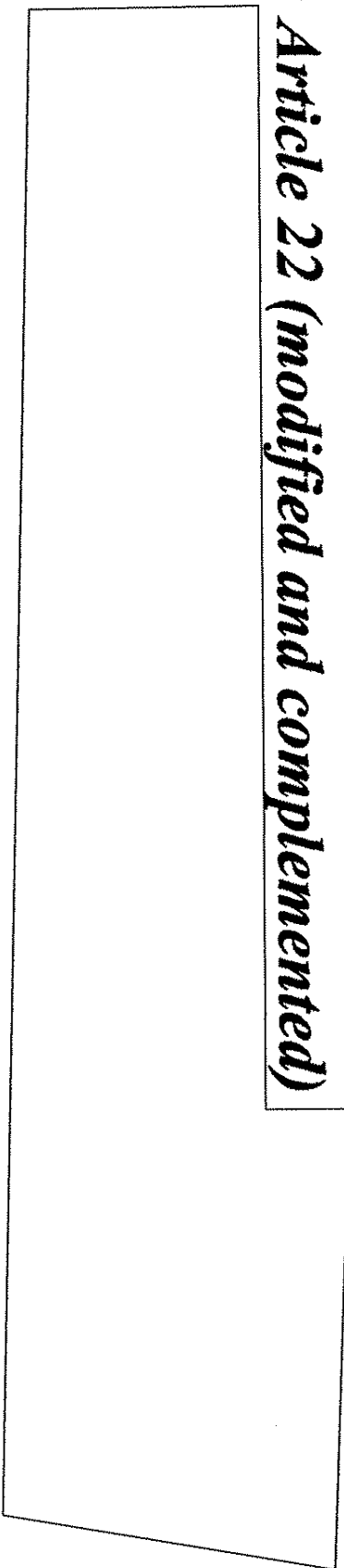
2. Each State shall prohibit orders or instructions commanding, authorising or encouraging enforced disappearance. Each State Party shall guarantee that a person refusing to obey such order will not be subject to sanction.

3. Each State Party shall take the necessary measures to ensure that the persons referred to in paragraph 1 who have reasons to believe that act enforced disappearance has occurred or is planned communicate the matter to their superior authorities and, when necessary, to competent authorities or organs with reviewing or remedial power.

- *Article 21 (see 15 bis)*

- *Article 22 (modified and complemented)*

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1. For the purposes of *[the present instrument]*, "victim" means the disappeared person and any natural person who has suffered direct harm as a result of that disappearance.

2. Each State Party shall take the necessary measures so that any victim knows the truth concerning the circumstances of the enforced disappearance and the fate of the disappeared person. It shall, in particular, take the necessary measures to search for, locate and release disappeared persons and, in the event of death, return the human remains.

3. Each State Party shall guarantee the right to obtain prompt, fair and adequate reparation for the harm caused to victims of enforced disappearance.

4. The right to obtain reparation referred to in paragraph 3 includes integral compensation for material and non-material damage. It may also include, in particular:
- a) restitution,
  - b) rehabilitation,
  - c) satisfaction,
  - d) restoration of honour and reputation.

5. Without prejudice to the obligation to continue the investigation until the fate of the disappeared person is elucidated, each State Party shall take the necessary measures with regard to the legal situation of the disappeared persons who's fate has not been elucidated and of their relatives in fields such as social protection, financial matters, custody of children and property rights. **NEW PARAGRAPH**

• *Article 23 (complemented)*

1. Each State Party shall take the necessary measures to prevent and punish in a criminal court:
  - a) the abduction or appropriation of children victims of enforced disappearance, children whose father or mother is victim of enforced disappearance or children born during the detention of their disappeared mother;
  - b) the falsification or suppression of documents attesting to the true identity of a child referred to in subparagraph (a).



2. Each State Party shall take the necessary measures to search for and identify children referred to in subparagraph (a) and (b).

• *Article 24*

State Parties grant each other assistance in the search for, the identification and the location of children referred to in article 23.

• *Article 25*

1. When a child who has been abducted or appropriated in the circumstances described in article 23, paragraph (a), is found on the territory of a State party, the question of the child's return to his or her family of origin shall be resolved either under the domestic law of that State party, or under the bilateral or multilateral agreement which that State has entered into with another State in which the family of origin lives.

2. In all cases, the best interests of the child are a primary consideration, and a child who is capable of judgement shall have the right to express his or her views freely and to have them given due weight in the light of his or her age and level of maturity.

**Part II                      Article 0**

**(new)**

1. A *[monitoring body]* shall ensure the implementation of the *[present instrument]* and the respect by State Parties of their commitments.
2. While exercising their mandate, the members of the *[monitoring body]* shall be entitled to privileges and immunities as laid down in the Convention on Privileges and Immunities of the United Nations.
3. Each State Party shall undertake to co-operate with the *[monitoring body]* and to grant assistance to its members in the exercise of their mandate.

• *Article II-A (modified)*

1. Each State Party shall submit to *[the monitoring body]*, through the Secretary-General of the United Nations, a report on the measures taken to give effect to its undertakings under *[the present instrument]*, within one year after the entry into force *[of the present instrument]* in respect of the State concerned.
2. The Secretary-General of the United Nations shall transmit the reports to all States Parties.

3. Each report shall be considered by *[the monitoring body]*, which may make such comments, observations, recommendations and warnings as it considers appropriate. The State Party concerned shall receive communication of such comments, observations, recommendations and warnings, to which that State may respond, on its own initiative or at the request *[of the monitoring body]*.

• ***Article II-B (modified)***

1. Each State Party or the relatives of a disappeared person, their legal representatives, their counsel, and any person authorised by them, as well as any person able to claim a legitimate interest may submit a request to *[the monitoring body]* to seek and find a person who has disappeared within the meaning of article 1.

2. Should *[the monitoring body]* consider that a request submitted under paragraph 1 is not manifestly unfounded, that it does not constitute an abuse of the right of submission and that it is not incompatible with the provisions *[of the present instrument]* *[the monitoring body]* shall request any State Party to provide information on the situation of that person, within a time-limit set by *[the monitoring body]*.



3. In the light of the response provided by the State Party concerned in accordance with paragraph 2, *[the monitoring body]* shall make a recommendation or give a warning to that State. *[The monitoring body]* may also instruct that State to take appropriate measures and to report to it on those measures, within a time-limit set by *[the monitoring body]*,

4. *[The monitoring body]* shall establish its conclusions and forward them to any State Party which has been requested to provide information and to the author of the request referred to in paragraph 1.
5. The procedure under this article is confidential.

• **Article II-C (modified)**

1. If *[the monitoring body]* considers that a visit to the territory of a State Party under whose jurisdiction a disappeared person could be is essential in order to respond to the request submitted to it in accordance with Article H-B, *[the monitoring body]* may request one or more of its members to undertake an investigation mission and to report back without delay. The member or members *[of the monitoring body]* conducting the mission may be accompanied if necessary by interpreters, secretaries and experts. No member of the delegation, with the exception of the Interpreters, may be a national of the State Party to which the visit is to be made.

2. *[The monitoring body]* shall notify the State Party concerned in writing of its intention to organise an investigation mission, indicating the composition of the delegation. The State Party shall inform *[the 10 monitoring body]* without delay of its agreement or opposition to the investigation mission in the territory over which it has jurisdiction.

3. If the State Party agrees to the investigation mission, it shall provide *[the monitoring body]* with all the necessary facilities to enable the mission to be carried out. *[The monitoring body]* may, inter alia:

- a) make such visits as it may consider necessary to search for and find the person who has disappeared;
- b) make contact freely with any person whom it believes may provide useful information on the fate of the person who has disappeared;
- c) have the person who has allegedly disappeared brought to it and discuss with "him or her in private.

4. *[The monitoring body]* shall inform the following of the findings of the investigation mission:
  - a) the State Party in whose territory the investigation mission was carried out;
  - b) the author of the request referred to in paragraph 1 of article II-B.
5. The procedure under this article is confidential.

- **Article II-C bis (new)**

- [The monitoring body]* considers a communication presented by the relatives of a disappeared person, their legal representatives, their counsel, and any person authorised by them, as well as any person able to claim a legitimate interest alleging grave breaches in the implementation of the commitments taken under the *[present instrument]* unless
- a) the communication lacks sufficient motivation or is obviously unfounded;
  - b) the same matter is being examined under another procedure of international investigation or settlement;
  - c) the complainant has not exhausted all available effective domestic remedies.

2. If the *[the monitoring body]* assesses that the communication fulfils the conditions under paragraph 1, *[the monitoring body]* transmits the communication to the State Party concerned and requests this State Party to provide observations and comments within a time-limit set by the *[monitoring body]*.

3. On the basis of the answer of the State Party, *[the monitoring body]* may decide :

- a) to close the matter of the communication;
- b) to continue its examination;
- c) to make a recommendation to the State Party.



4. The procedure under the present article comes to an end when the *[monitoring body]* communicates the conclusions of its investigation to the State Party and to the author of the communication.
5. The procedure under this article is confidential.

• *Article II-C ter (new)*

If the *[monitoring body]* receives reliable information which appears to it to contain well-founded indication that enforced disappearance is being practised in a systematic or general manner in the territory of a State Party, the *[monitoring body]* may seize the Secretary General of the United Nations, after having enquired with the State Party concerned about any pertinent information and the measures taken to put an end immediately to such practises.

*Article II-D (integrated in II-O§2)*

• ***Article II-E (complemented)***

1. *[The monitoring body] has competence solely in respect of deprivations of liberty which commenced after the entry into force [of this instrument].*
2. Should a State become party to *[this instrument]* after its entry into force, the obligations of that State towards *[the monitoring body]* concern only deprivations of liberty which commenced after the entry into force *[of this instrument]* in respect of the State concerned.

3. *(new)* Each State Party may at any time declare that, in its own respect, it recognises that the *[monitoring body]* has competence in respect of enforced disappearances which commenced before entry into force of the *[present instrument]*.

• **Article II-F (modified)**

1. The *[monitoring body]* shall submit an annual report on its activities *[under the present instrument]* to the States Parties and to the General Assembly of the United Nations.

2. *(new)* If, in the procedures under articles II-B and II-C bis, a State Party concerned obviously refuses to co-operate or if the procedures yield to no effective result, the *[monitoring body]* may decide to make an observation public, with regard to the matter or the situation at stake.

3. *(new)* The State Party concerned shall be informed in advance of the publication of an observation under paragraph 2 of the present article. This observation shall be published together with the answers, comments or observations transmitted by the State Party within the time-limit set by the *[monitoring body]*.

## Part III

### • *Article III-O (former 2.2)*

*[The present instrument] is without prejudice to any other international instrument or national legislation that does or may contain provisions of broader application.*

#### • *Article III-O bis (new)*

Personal data, including medical or genetic data, which are transmitted in the framework of the search of a disappeared person shall not be used for other purposes than that of the search of the disappeared person.

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• **Article III-A**

1. *[The present instrument]* is open for signature by [...].
2. *[The present instrument]* is subject to ratification. Instruments of ratification shall be deposited with the Secretary-General of the United Nations.
3. *[The present instrument]* is open to accession by [...]. Accession shall be effected by the deposit of an instrument of accession with the Secretary-General of the United Nations.



• **Article III-B**

1. *[The present instrument]* shall enter into force on the t  
hirtieth day after the date of deposit of the *[Xth]*  
instrument of ratification or accession.
  
2. For each State ratifying *[the present instrument]* or  
acceding to it after the deposit of the *[Xth]* instrument  
of ratification or accession, *[the present instrument]*  
shall enter into force on the thirtieth day after the date  
of deposit of its own instrument of ratification or  
accession.

**•Article III-C**

The Secretary-General of the United Nations shall inform all States Members of the United Nations and all States which have signed [*the present instrument*] or acceded to it of the following:

- a) Signatures, ratifications and accessions under article III-A;
- b) The date of entry into force of [*the present instrument*] under article III-B.

**•Article III-D**

The provisions of *[the present instrument]* shall apply, without limitation or exception, to all parts of federal States.

**•Article III-D bis (new)**

1. Any State, upon signature, ratification or accession, may declare that *[the present instrument]* will be extended to any territory for which it is responsible with regard to international relations. Such a declaration will take effect when *[the present instrument]* enters into force for the State concerned.

2. At any time, such an extension may be notified to the Secretary General of the United Nations and will take effect (...) days after it has been received by the Secretary General.

- *Article III-E (integrated in 1 bis, paragraph 2)*

**• Article III-F**

*[The present instrument] is without prejudice to the provisions of international humanitarian law, including the obligations of the High Contracting Parties to the four Geneva Conventions of 12 August 1949 and the Additional Protocols thereto of 8 June 1977, or the option available to any State to authorise the International Committee of the Red Cross to visit places of detention in cases for which international humanitarian law does not provide.*

**•Article III-G**

Any State Party to *[the present instrument]* may propose an amendment and file it with the Secretary-General of the United Nations. The Secretary-General shall thereupon communicate the proposed amendment to the States Parties to *[the present instrument]* with a request that they notify him or her whether they favour a conference of States Parties for the purpose of considering and voting upon the proposal.

In the event that within four months from the date of such communication at least one third of the States Parties favours such a conference, the Secretary-General shall convene the conference under the auspices of the United Nations. Any amendment adopted by a majority of two thirds of the States Parties present and voting at the conference shall be submitted by the Secretary-General to all the States Parties for acceptance

2. An amendment adopted in accordance with paragraph 1 of this article shall enter into force when two thirds of the State Parties to *[the present instrument]* have accepted it in accordance with their respective constitutional processes.
3. When amendments enter into force, they shall be binding on those States Parties, which have accepted them, other States Parties still being bound by the provisions of *[the present instrument]* and any earlier amendments which they have accepted.



• *Article III-H*

1. *[The present instrument]*, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations.
2. The Secretary-General of the United Nations shall transmit certified copies of *[the present instrument]* to all States.

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COMMISSION ON HUMAN RIGHTS  
Sub-Commission on Prevention of  
Discrimination and Protection  
of Minorities  
Fiftieth session  
Item 9 of the agenda  
Working Group on the Administration of Justice

THE ADMINISTRATION OF JUSTICE AND HUMAN RIGHTS

Report of the sessional working group on the  
administration of justice

Chairman-Rapporteur: Mr. Louis Joinet

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1. In accordance with the decision taken by the Sub-Commission on 4 August 1998, a sessional working group of the Sub-Commission on the administration of justice held its first meeting on 4 August 1998. The following experts were appointed as members of the working group on 4 August 1998: Mr. Héctor Fix Zamudio (Latin America), Mr. Rajendra Kalidas Wimala Goonesekere (Asia), Mr. Louis Joinet (Western European and other States), Mr. Joseph Oloka-Onyango (Africa) and Mr. Teimuraz Ramishvili (Eastern Europe).

2. The working group held three public meetings on 4, 7 and 17 August, and two additional meetings, also public but without interpretation, on 11 and 12 August 1998.

3. A representative of the Office of the High Commissioner for Human Rights opened the session of the working group.

4. The working group designated Mr. Louis Joinet as Chairman-Rapporteur for its 1998 session.

5. The following members of the Sub-Commission not members of the working group also took part in the discussion: Mr. Alfonso Martínez (1st, 2nd and 5th meetings), Mr. Eide (1st meeting), Mr. Guissé (1st meeting), Ms. Hampson (1st and 2nd meetings), Mr. Kartashkin (2nd and 5th meetings), Mr. Park (2nd and 5th meetings), Mr. Sik Yuen (2nd and 5th meetings), Mr. Sorabjee (1st meeting), Ms. Warzazi (1st and 2nd meetings), Mr. David Weissbrodt (1st, 2nd, 3rd, 4th and 5th meetings), Mr. Yokota (2nd meeting) and Mr. Zhong (1st, 2nd and 5th meetings).

6. The following non-governmental organizations also made statements: Amnesty International (2nd meeting) and the International Commission of Jurists (2nd and 5th meetings).

7. The working group had before it the following documents relating to its provisional agenda:

Report of the sessional working group on the administration of justice on its 1997 session (E/CN.4/Sub.2/1997/21);

Expanded working paper submitted by Mr. Stanislav Chernichenko in accordance with decision 1996/116 of the Sub-Commission on recognition of gross and massive violations of human rights perpetrated on the orders of Governments or sanctioned by them as an international crime (E/CN.4/Sub.2/1997/29);

Working paper submitted by Mr. Miguel Alfonso Martínez concerning the study of the issue of the privatization of prisons (E/CN.4/Sub.2/1991/56);

Outline prepared by Ms. Claire Palley pursuant to Sub-Commission decision 1992/107 on the possible utility, scope and structure of a special study on the issue of privatization of prisons (E/CN.4/Sub.2/1993/21);

Note by the secretariat on juvenile justice (E/CN.4/Sub.2/1996/WG.1/CRP.1);

Conference room paper prepared by the secretariat on habeas corpus, amparo and similar procedures as a non-derogable right (E/CN.4/Sub.2/1998/WG.1/CRP.1);

Note by the secretariat on follow-up measures to the Declaration on the Protection of All Persons from Enforced Disappearance containing the text of a draft convention on the subject (E/CN.4/Sub.2/1998/WG.1/CRP.2);

Conference room paper prepared by Mr. El-Hadji Guissé on issues related to the deprivation of the right to life (E/CN.4/Sub.2/1998/WG.1/CRP.3).

#### Adoption of the agenda

8. At its 1st meeting, the working group considered the provisional agenda. At the suggestion of the Chairman-Rapporteur, based on formal and informal consultations with other members of the working group, the working group decided to adopt the following agenda:

1. Follow-up measures to the Declaration on the Protection of all Persons from Enforced Disappearance.

2. Issues related to the deprivation of the right to life, with special reference to:

(a) Imposition of the death penalty on persons of less than 18 years of age and on the mentally and physically disabled;

(b) Summary, arbitrary and extrajudicial executions.

3. Habeas corpus as a non-derogable right [and as one of the requirements for the right to a fair trial].

4. Measures to be taken to give full effect to the Convention on the Prevention and Punishment of the Crime of Genocide.

5. Juvenile justice.

6. Privatization of prisons.

7. Recognition of gross and massive violations of human rights perpetrated on the orders of Governments or sanctioned by them as an international crime.

8. Provisional agenda for the next session.

9. Adoption of the report of the working group to the Sub-Commission.

#### I. FOLLOW-UP MEASURES TO THE DECLARATION ON THE PROTECTION

## OF ALL PERSONS FROM ENFORCED DISAPPEARANCE

9. For the benefit of newly-elected members of the Sub-Commission and those participating in the work of the working group for the first time, the Chairman-Rapporteur, Mr. Joinet, went over the background to the preliminary draft international convention for the protection of all persons against forced disappearance (E/CN.4/Sub.2/1998/WG.1/CRP.2) (see annex).

10. The drafting of a convention on forced disappearance was an initiative dating from the 1980s. The Sub-Commission had first asked the working group to prepare a draft declaration on enforced disappearance. After being submitted to the Sub-Commission and then to the Commission on Human Rights and the Economic and Social Council, the draft had been adopted by the General Assembly in its resolution 47/133 of 18 December 1992 entitled "Declaration on the Protection of All Persons from Enforced Disappearance". In June 1994, the General Assembly of the Organization of American States had itself adopted the Inter-American Convention on Forced Disappearance of Persons. The persistence of the practice of enforced disappearance, its complexity and its extreme gravity as a crime meant the need for a universal convention on the question had taken on increasing importance, not to say urgency.

11. At the request of the working group, Mr. Joinet had submitted to it, at its forty-eighth session, a preliminary draft convention in the form of a working paper. However, no text had been proposed for the part concerning the monitoring mechanism, as the Chairman-Rapporteur had taken the view that, given the importance of the question, it would be preferable to wait for the working group itself to consider the various options and decide on the main outline. As a result, the working group had considered only the first part of the preliminary draft and decided to continue consideration of the remaining part at its forty-ninth session (see E/CN.4/Sub.2/1996/16). The working group also requested Mr. Joinet to make the necessary contacts to determine the conditions under which the Centre for Human Rights could organize a meeting of experts on the preliminary draft. Failing that, the Rapporteur would contact Governments and non-governmental organizations with a view to organizing such a meeting.

12. As a number of the difficulties encountered would have prevented the holding of such a meeting within a reasonable time, the Chairman-Rapporteur had approached Amnesty International and the International Commission of Jurists, which had kindly agreed to organize the meeting. The meeting had been held on 16 and 17 June 1996 with the Chairman-Rapporteur attending, together with the persons responsible for the thematic procedures concerned, namely, the Special Rapporteur on the question of torture, Mr. Nigel Rodley (written contribution); the Special Rapporteur on extrajudicial, summary or arbitrary executions, Mr. Bacre Ndiaye; the Vice-Chairman of the Working Group on Arbitrary Detention, Mr. Roberto Garretón; and a member of the secretariat of the Working Group on Enforced or Involuntary Disappearances. The meeting had also been attended by a representative of the International Committee of the Red Cross (ICRC) and experts who had taken part in the drafting of the Inter-American Convention on Forced Disappearance of Persons. The short time available for the meeting meant that not all the preliminary draft could be considered.

13. At its forty-ninth session, the working group was informed by the Chairman-Rapporteur of the difficulties encountered and it was decided to postpone consideration of the preliminary draft until the working group's fiftieth session.

14. In November 1997, a meeting on the preliminary draft convention, organized by Amnesty International, the International Commission of Jurists, the Latin American Federation of Associations of Relatives of Disappeared Detainees (FEDEFAM), and the International Service for Human Rights, had been held in Geneva and attended by the Chairman-Rapporteur. In addition to the non-governmental

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organizations invited, and with the Chairman-Rapporteur of the working group, the meeting had been attended by a member of the Working Group on Enforced or Involuntary Disappearances (Mr. Jonas Foli), the Special Rapporteur on the question of torture, the Special Rapporteur on extrajudicial, summary or arbitrary executions, representatives of ICRC and experts who, in the past, had taken part in the drafting of the Inter-American Convention on Forced Disappearance of Persons.

15. The Chairman-Rapporteur recalled that the preliminary draft submitted to the working group at the current session was based largely on the Declaration on the Protection of All Persons From Enforced Disappearance and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, particularly as far as the monitoring mechanism was concerned. Particular care had been taken to ensure that the text of the preliminary draft departed from the wording of the Declaration and the Convention only to take account of the special nature - which had often been emphasized, particularly by the Working Group on Enforced or Involuntary Disappearances - of the practice of enforced disappearance in the light of innovative proposals intended mainly to respond to the international considerations involved in such protection. Mr. Joinet explained that, in preparing the preliminary draft, he had also taken into consideration: (a) the International Covenant on Civil and Political Rights; (b) the Convention on the Elimination of All Forms of Discrimination against Women; (c) the Convention on the Rights of the Child; (d) the Convention on the Prevention and Punishment of the Crime of Genocide; (e) the Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity; (f) the Convention relating to the Status of Refugees; (g) the Code of Conduct for Law Enforcement Officials; (h) the Body of Principles for the Protection of All Persons Under Any Form of Detention or Imprisonment; (i) the draft optional protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, article 8 (3) (E/CN.4/1998/42, annex II); and (j) at regional level, the Inter-American Convention on Forced Disappearance of Persons, adopted by the Organization of American States in June 1994.

Preliminary draft of the international convention on the protection of all persons from forced disappearance

16. The Chairman-Rapporteur suggested that the working group should first take up the part of the draft convention which had not yet been considered, concerning the structure, membership and functioning of an implementation and monitoring committee. In view of the presence of a number of newly elected members of the Sub-Commission, the group then decided to re-examine the first part of the preliminary draft by holding additional meetings, which would be public but without interpretation, and to use the second reading to ensure consistency of the substance and, in particular, of the terms used, in the English, French and Spanish versions of that part of the text. The general comments and amendments which produced a consensus at those meetings concerned the following points:

General comments

17. Mr. Weissbrodt expressed concern at the increasing number of reporting procedures of which this draft convention provided an additional one. He mentioned that States already had too many reporting obligations and were considering consolidating treaty reporting obligations rather than focusing on the establishment of new reporting mechanisms. Mr. Weissbrodt also expressed his concern with regard to the means by which the Commission on Human Rights was going to take the draft convention forward in the light of the large number of new drafting exercises it had already been entrusted with, and that it might therefore be useful to have an indication as to whether the Sub-Commission would be ready to undertake the drafting of the convention.

18. With reference to the next steps to be taken at Commission level, Mr. Sang Yong Park wondered whether the view of Governments, other treaty bodies and intergovernmental organizations should be

sought. Mr. Zhong Shukong added firstly that draft conventions were a very serious undertaking and would be legally binding and therefore the views of all Member States should be solicited and secondly that the draft convention should now be transmitted to the Commission on Human Rights for comments by member States and relevant intergovernmental and non-governmental organizations. The Chairman-Rapporteur agreed with Mr. Zhong Shukong. He confirmed that States would of course be consulted, but on the following basis: if the Sub-Commission approved in plenary the preliminary draft adopted by the working group, it could decide to transmit it to the Commission on Human Rights for consideration. The Commission would then itself consult Governments, in accordance with its usual practice. That would be the way in which communication would take place, in accordance with the wish expressed by Mr. Zhong Shukong.

Substance/general comments \* The text of the draft convention as adopted appears in the annex.\*

19. In order to ensure consistency of the term "forced disappearance" referred to throughout the text of the draft convention, it was suggested that the wording of the title be changed from "enforced disappearance" to "forced disappearance". Mr. Joinet pointed out that the title of the preliminary draft had been chosen to ensure consistency with the terminology used in the Declaration on the Protection of All Persons from Enforced Disappearance, as well as in the Inter-American Convention on Forced Disappearance of Persons.

20. The Chairman-Rapporteur, after verifying the terms used in the Declaration on the Protection of All Persons from Enforced Disappearance, noted the use of the words "crime" in the French version, "offence" in the English version and "delito" in the Spanish version. A number of speakers suggested that "crime" should be used in all three versions, while others proposed the term "infracción criminelle" in the French version, or "delito" or "crimen de lesa humanidad" in the Spanish version. The Chairman-Rapporteur suggested keeping to the terminology of the Declaration so as to facilitate the adoption of the draft convention by the Commission on Human Rights.

### Preamble

21. Mr. Sik Yuen proposed that the words "offence to" should be replaced by "outrage to". \* All the proposals referred to in this section were adopted by the working group by consensus.\*

### Article 1

22. Mr. Joinet proposed that the words "especially with regard to forced disappearances perpetrated by groups or individuals other than those referred to in paragraph 1 of this article" should be inserted at the end of paragraph 2.

### Article 2

23. Ms. Hampson proposed inserting after the words "the offence of forced disappearance", the words "or of any constituent element of the offence", and inserting the following sentence after the words "shall be punished": "The perpetrators or other participants in a constituent element of the offence as defined in article 1 of the Convention should be charged with a forced disappearance where they knew or ought to have known that the offence was about to be or was in the process of being committed."

24. In order to ensure consistency between the languages, it was suggested that in article 2 (b), the word "association" be replaced with the word "collusion" in the English version.

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Article 3

25. Ms. Hampson suggested that current article 3 be renumbered article 3 (1) and new article 3 (2) inserted to read as follows: "Where persons are suspected of having perpetrated or participated in an offence, as defined in articles 1 and 2, they should be charged with a crime against humanity where they knew or ought to have known that this act was part of a systematic or widespread practice of forced disappearances, however limited the character of their participation."

Article 5

26. Ms. Hampson proposed inserting in paragraph 1, line 3, after the words "in article 1 of this Convention" the words "and to define a crime against humanity, as defined in article 3 of this Convention, as a separate offence". She also suggested replacing the words "its extreme gravity" with the words "their extreme gravity".

27. Ms. Hampson suggested deleting paragraph 3.

Article 6

28. In paragraph 1 (b), Ms. Hampson proposed deleting the words "and if any State does not proceed to extradite them" and inserting after the words "where the offence took place" the words "unless the State extradites or transfers them to an international criminal tribunal".

Article 7

29. In paragraph 1 Ms. Hampson suggested inserting, after the words "a person suspected of having committed" the words "a forced disappearance or".

30. In paragraph 1, it was suggested that "continued" should be inserted after the words "necessary measures to ensure the", and the words "in the territory" after the words "of that person".

Article 9

31. In paragraph 3, Mr. Joinet suggested that the word "conclude" be deleted and replaced with the word "know" and the words "might be committed" be replaced with the words "was about to be committed".

Article 10

32. Mr. Joinet suggested replacing the words "without prejudice" in paragraph 2 by "subject".

33. In paragraph 3, Mr. Joinet suggested inserting after the words "from criminal responsibility" the words "including where" and deleting the words "this provision shall be applied even if".

Article 11

34. Ms. Hampson suggested that paragraph 1 end after the words "investigated by that authority" and paragraph 2 begin with the words "Whenever there are grounds to believe" and that the remaining paragraphs be renumbered accordingly.

Article 12



35. Mr. Joinet proposed that, in the French version of paragraph 5, the word "parties" should be inserted after "Les Etats" and "punissable d'extradition" should be replaced by "susceptible d'extradition".

#### Article 15

36. Mr. Joinet proposed replacing "Aucun Etat" in paragraph 1 by "Aucun Etat partie" and inserting the word "Party" after the words "No State" in the English version.

37. Ms. Hampson suggested inserting the words "or any other serious human rights violation" after "in danger of being subjected to forced disappearance" in paragraph 1.

#### Article 16

38. The Chairman-Rapporteur proposed reverting to the earlier wording which was more in keeping with the concepts of crime against humanity and statutory limitation. In paragraph 1, statutory limitation applied to crimes of forced disappearance which constituted crimes against humanity. Paragraph 2 referred to crimes of forced disappearance which did not, under article 3 of the Convention, constitute crimes against humanity, and for which the prescription period was to be the longest period laid down in national legislation.

#### Article 17

39. In paragraph 1, it was suggested that the words "prior to their trial, and where applicable, conviction" should be inserted after the words "from any amnesty measure or similar measures".

40. Mr. Joinet proposed deleting from paragraph 2 the words "which may only be granted for humanitarian reasons after conviction of the person responsible for any of the acts referred to in article 2 of this Convention".

#### Article 20

41. In paragraph 1, it was suggested that the brackets should be deleted.

#### Article 21

42. In paragraph 4, Ms. Hampson suggested inserting, after the words "that are recognized", the words "binding upon".

43. In paragraph 6, Mr. Joinet suggested deleting the words "national or international".

#### Article 22

44. Ms. Hampson suggested that the words "any person deprived of liberty" in paragraph 1 be replaced with the words "where any person is deprived of liberty, he or she".

45. After paragraph 3, Ms. Hampson suggested inserting an additional paragraph which would read as follows: "States Parties shall identify who is the responsible person in national law for the integrity and accuracy of the custody record. Without prejudice to the provisions of articles 1, 2 and 3 of this Convention, States Parties shall make it a criminal offence for the responsible person, as defined in national law, to fail to register the deprivation of liberty of any person or to record information which is

or should be known to be inaccurate in the custody record."

Article 23

46. Mr. Joinet proposed that the words "in a manner" should be replaced by "according to a procedure".

Article 24

47. In paragraph 4, Ms. Hampson suggested inserting, after the words "referred to in article 2", the words "and 3".

Article 25

48. The Chairman-Rapporteur recalled that, in all United Nations human rights Conventions providing for a monitoring mechanism such as a committee, procedural arrangements were entrusted to the Secretary-General of the United Nations as depositary of the instrument in question. In the preliminary draft, the relevant provisions were:

Article 25, paragraphs 3, 4, 5 and 7 (procedure for the election of members of Committee);

Article 26, paragraphs 3 (material assistance) and 4 (convening of the initial meeting);

Article 27, paragraphs 1 and 2 (procedure for the submission of reports by States parties).

49. During the preparation of the preliminary draft, a number of NGOs had expressed the view that, as the High Commissioner for Human Rights was responsible in particular for the question of human rights within the United Nations system, that role should now be assigned to the Office of the High Commissioner. With the agreement of the working group, the Chairman-Rapporteur had held consultations on the legal and other aspects of this question. As a result, the legal implications of this innovative proposal were to be considered in more detail. For example, the depositary of the instrument, as in fact provided in article 39, paragraph 1, of the preliminary draft, was the Secretary-General and not the High Commissioner for Human Rights. This raised the question of coordination between the two mandates which it would be premature to resolve in the consideration of a draft convention, since a general question of principle was involved. Mr. Joinet therefore proposed reverting to the wording currently in effect and replacing the words "High Commissioner for Human Rights" by "Secretary-General of the United Nations" in paragraphs 3 (second line), 4 (third and fifth lines) and 7 (first line) of article 25, and in article 26, paragraphs 3 and 4 (first lines), and article 27, paragraphs 1 (first and second lines) and 2 (first line). It was so decided.

50. In paragraph 1 Ms. Hampson, Mr. Kartashkin, Mr. Goonesekere, Mr. Oloka-Onyango, Mr. Sang Yong Park and Mr. Weissbrodt discussed the interpretation of the words "civil servant" at line 6, the status of which differed from one country to the next. The working group adopted the proposal of Mr. Sik Yuen that the words "the status of civil servant or any other" be deleted from the text so that the sentence reads as follows: "Membership of the Committee is incompatible with any other post or function subject to the hierarchical structure of the executive authority of a State Party."

51. In paragraph 2, line 3, Mr. Weissbrodt proposed that the word "one" be deleted and replaced with the word "three" following the example of the European Court of Human Rights. Mr. Alfonso Martínez stressed the desirability that the State party be in a position to have the option, rather than the obligation, to nominate "up to three persons". Mr. Sik Yuen and Mr. Zhong Shukong made comments in this

connection. The Chairman-Rapporteur suggested the working group should opt for the text of article 29 of the International Covenant on Civil and Political Rights, which stipulated "Each State Party to the present Covenant may nominate not more than two persons."

52. In paragraph 4, line 8, Mr. Yokota suggested that the word "relevant" be inserted before the words "intergovernmental organizations" and Mr. Weissbrodt suggested that it be inserted before the words "non-governmental organizations".

53. In paragraph 6, Mr. Yokota suggested inserting the words "or her" after the words "perform his" and the words "which nominated him".

#### Article 26

54. Mr. Joinet suggested that, in paragraphs 3 and 4, the words "High Commissioner for Human Rights" should be replaced by "Secretary-General of the United Nations".

#### Article 27

55. Mr. Joinet also proposed replacing the words "en question" in the French version of paragraph 1 by "concerné".

56. In paragraph 1, Ms. Hampson suggested replacing the words "the Committee may make a visit to the territory of that State Party" with the words "the Committee may make a visit to the territory under the control of that State".

57. In paragraph 1, Mr. Yokota proposed to insert the following sentence after the second sentence: "The State Party concerned shall provide all the necessary facilities for such a visit including the entry into the country and visiting such places and meeting with such persons as may be required for carrying out the mission of the visit."

#### Article 28

58. In paragraph 1, Ms. Hampson suggested inserting after the words "in the territory" the words "under the control of".

59. In paragraph 3, Ms. Hampson suggested inserting, after the words "may include a visit to its territory" the words "under its control", and inserting after the words "include visits to the territory" the words "under the control".

60. Mr. Joinet made a proposal concerning paragraph 4 which did not affect the English text.

#### Article 30

61. Mr. Joinet proposed replacing "petitions" in paragraph 1 by "communications" and changing "communication" in the first line of paragraph 2 to "communications".

#### Article 36

62. In paragraph 1, Mr. Kartashkin expressed concern that by giving States the option to make reservations concerning the articles which provided for the supervisory mechanism, the effectiveness of the entire draft convention would be called into question. He proposed that no reservations be possible



encountered with regard to the abolition of the death penalty in that part of the world and the way it affected the criminal process. The Chairman-Rapporteur asked the secretariat to provide Mr. Guissé with the aforementioned Council of Europe documents.

69. Mrs. WARZAZI suggested that the working group should consider the plight of children whose mothers had been executed. While working for the gradual abolition of the death penalty, it should clearly define the cases for which the death penalty was required.

70. Mr. Sorabjee stated that the death penalty should be abolished in view of the miscarriages of justice which occurred, the use of the death penalty for political ends, recourse to special courts which failed to guarantee due process of law and, above all, in view of the fact that the execution of a death sentence was irrevocable.

71. Mr. Oloka-Onyango agreed with Mr. Sorabjee that in view of the discriminatory manner in which the death penalty was being applied, often disproportionately affecting individuals on the basis of race, ethnicity and economic status, abolition was the only appropriate course of action. He drew attention to the Second Optional Protocol to the International Covenant on Civil and Political Rights, which he suggested the Sub-Commission should encourage States to sign.

72. Ms. Hampson recalled the danger of wrongful convictions, which were all the more likely in cases in which individuals were convicted of terrible criminal offences compounded with pressure of public opinion to punish the perpetrators. She stressed that it was an obligation of States to educate public opinion to fully respect human rights, including the right to life, and due process of law, in conformity with article 6 (6) of the International Covenant on Civil and Political Rights which states that nothing shall be invoked to delay or to prevent the abolition of capital punishment by any State party.

73. Mr. Zhong Shukong highlighted that the abolition of the death penalty should be considered a gradual process, as long as it was carried out in conformity with the rule of law, and that it was important to bear in mind country-specific conditions which might influence the timetable for the abolition of the death penalty.

74. Mr. Alfonso Martínez suggested that paragraphs 18 to 22 of Mr. Guissé's report reflected also an increase in the recourse to the death penalty in cases in which the author of the offence belonged to a vulnerable group and the victim not, particularly in cases when the author was a Black or an immigrant from a third world country.

75. The Chairman-Rapporteur of the working group thanked Mr. Guissé for his excellent report and suggested that he should submit an updated follow-up report at the next session. That report should cover:

The approach specified in Commission on Human Rights resolution 1998/8;

The measures taken by various United Nations bodies, both in Geneva and in Vienna;

Progress in the signing or ratification of the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty;

Information provided by NGOs on the situation of women and minors sentenced to death or executed.

76. Mr. Guissé thanked the working group for its helpful suggestions and agreed to submit a follow-up report on this important question at the following session.

## III. HABEAS CORPUS AS A NON-DEROGABLE RIGHT

77. Mr. Weissbrodt recalled that in 1993 the Sub-Commission had requested the Secretary-General to send to the Human Rights Committee the draft third optional protocol to the International Covenant on Civil and Political Rights. The Sub-Commission suggested the advisability of elaborating such a protocol to make the right to a fair trial, habeas corpus and amparo non-derogable rights. The Committee responded that perhaps the developing jurisprudence under article 4, which dealt with non-derogable rights contained in the Covenant, and other jurisprudence on articles 9 and 14 would be a more effective way of achieving those objectives. The Sub-Commission suggested that in accordance with decision 1997/1 15 the Committee consider preparing a revised general comment on article 4 of the Covenant, reaffirming the developing consensus that habeas corpus and the related aspects of amparo should be considered as non-derogable rights. The Committee agreed to this proposal and began a very early process of revising its existing General Comment 5 on article 4 of the Covenant. In his view, this development also demonstrated an increased cooperation between the Sub-Commission and treaty bodies and thus responded to requests made by the Commission on Human Rights to the Sub-Commission during the last three years to enhance cooperation with mechanisms of the Commission and human rights treaty bodies. Therefore, the work of the working group had been successfully completed in this area.

78. Mr. Sorabjee stated that habeas corpus had been the most effective safeguard for life and liberty. Its absence during several months of state of emergency proclaimed in India in 1975 had resulted in a number of arbitrary detentions and various abuses of basic human rights. He was of the opinion that military tribunals should not take the place of non-military courts during periods of emergency, since a court should be an impartial and independent court of justice. This was particularly important because habeas corpus and similar procedures were often the most effective way to protect other rights which could not be derogated from in any circumstances, including a state of emergency. These considerations should be taken into account by the Committee in the process of revising its general comment on article 4.

79. Mr. Guissé pointed out that, even though the term "habeas corpus" did not exist in the francophone African legal system, the principle was applied. For example, constitutions provided detainees with guarantee mechanisms by making detention measures transparent and reducing their length. Similar procedures should also be taken into account in any revision of the general comment on article 4.

IV. MEASURES TO BE TAKEN TO GIVE FULL EFFECT TO THE  
CONVENTION ON THE PREVENTION AND PUNISHMENT  
OF THE CRIME OF GENOCIDE

80. Ms. Warzazi noted the adoption of the Statute for the International Criminal Court which would have jurisdiction in the punishment of the crime of genocide. In the light of this, Mr. Eide suggested that the working group address issues pertaining to the administration of justice within the framework of the activities of the International Criminal Court.

81. In the light of the proposals made, the Chairman-Rapporteur suggested that the title of the agenda item should be amended to read "Action to combat genocide: from the 1948 Convention to the International Criminal Court, review and prospects".

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## V. JUVENILE JUSTICE

82. Mr. Joinet said that, as Ms. Lucy Gwanmesia had not been re-elected as a member of the Sub-Commission, she had been unable to submit a working paper on the topic. He drew attention to Economic and Social Council resolution 1997/30 on the administration of juvenile justice. He stressed the need for better coordination of the activities of the Sub-Commission with those of the Commission on Crime Prevention and Criminal Justice and between their respective secretariats, so as to avoid duplication of their work and to enable each to benefit from the others' experience.

83. Mr. Alfonso Martínez supported this suggestion. However, he drew the attention of the group to the differences between the terms of reference of relevant organs and entities and the large number of activities involved. Coordination of pertinent activities should be further encouraged, described and taken into account by the working group.

84. The representative of the secretariat stated that, in compliance with Economic and Social Council resolution 1997/30 a Coordination Panel on Technical Advice and Assistance in Juvenile Justice was established. The first meeting of the Panel took place on 25 and 26 June 1998 and was opened by the High Commissioner for Human Rights. At the meeting the Office of the High Commissioner for Human Rights presented its preliminary survey on technical advice and assistance under the Convention on the Rights of the Child. In addition, the meeting provided a good framework to establish a link between the work of the Plan of Action regarding its mandate and follow-up of the recommendations of the Committee on the Rights of the Child addressed to States parties, including in the area of juvenile justice. Members of the Panel would take appropriate measures and coordinate their action to establish new and reinforce existing technical assistance projects in the area of juvenile justice. The members of the Panel would review the draft training manual on juvenile justice. At the country level, UNICEF representatives would follow up the recommendations made by the Committee following its consideration of State party reports during its seventeenth and eighteenth sessions, especially in the field of juvenile justice. In view of the many ongoing initiatives in this area, the working group decided to delete this item from its agenda.

## VI. PRIVATIZATION OF PRISONS

85. At the first meeting, the Chairman-Rapporteur introduced this agenda item, which had been on the agenda since 1989, by going over the background to it for the benefit of newly-elected members of the working group:

At its forty-first session, by decision 1989/110, the Sub-Commission had requested Mr. Miguel Alfonso Martínez to prepare a working paper which would contain proposals on the best way for the Sub-Commission to study further the issue of privatization of prisons and to submit the working paper to it at its forty-second session;

At its forty-third, forty-fourth and forty-fifth sessions respectively, the Sub-Commission had had before it the working paper submitted by Mr. Alfonso Martínez (E/CN.4/Sub.2/1991/56), a working paper submitted by the Secretary-General (E/CN.4/Sub.2/1992/21) and an outline prepared by Mrs. Claire Palley (E/CN.4/Sub.2/1993/21);

At its forty-fifth session, the Sub-Commission had, in its decision 1993/109, requested the Commission on Human Rights to authorize the Sub-Commission at its forty-sixth session to appoint one of its

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members to undertake a special study;

At its fiftieth session, by decision 1994/103, the Commission had requested the Sub-Commission to reconsider its decisions to recommend new studies and related efforts, including the study mentioned above. The Commission had also decided that it was unnecessary or premature to make any determination on those studies and related efforts and had requested the Sub-Commission to present its recommendations to the Commission at its fifty-first session;

The Sub-Commission had taken no decision on the question at its forty-sixth or forty-eighth sessions;

At its forty-ninth session, the Sub-Commission, in its resolution 1997/26, had decided to request its parent bodies to authorize it to appoint Mr. Ali Khan as special rapporteur in order to undertake an in-depth study on all issues relating to the privatization of prisons, including the obligation to respect and implement the legislation in force in the country concerned and the possible civil responsibility of enterprises and their employees, a study which should be completed in time for consideration by the Sub-Commission at its fifty-second session.

86. The Chairman then read out an excerpt from Commission on Human Rights resolution 1998/32 in which the Commission had requested the Sub-Commission to reconsider its recommendation to appoint a special rapporteur on the privatization of prisons. The Chairman-Rapporteur wondered whether that resolution covered the principle of the study itself or simply the appointment of a rapporteur. Mr. Alfonso Martínez believed that the latter was the case and that the item should therefore be kept on the working group's agenda.

87. Mr. Guissé underlined the importance of the question of privatization of prisons, which involved the abandonment of public service activities linked specifically with the functions of the State. Mr. Alfonso Martínez also supported this point of view and suggested continuing the consideration of this issue.

88. Mr. Zhong Shukong stated that prisons were part of the State structure. This issue needed to be reviewed, but this did not mean approval of the privatization of prisons.

89. The Chairman-Rapporteur suggested that Mr. Alfonso Martínez prepare an annually updated working paper on the privatization of prisons. Both Mr. Alfonso Martínez and the working group approved the suggestion.

90. Ms. Warzazi wondered whether the agenda item should not be broadened to cover other aspects relating to prisons. For example, the working group could look more carefully into the idea of making the material conditions of prisoners, which were linked with the country's level of development, as a separate issue and concentrating on violations of the integrity of the individual (ill-treatment in all its forms), which, by definition, were unrelated to the country's level of development. She suggested that the NGO Observatoire international des prisons, which had the advantage of dealing with all categories of prisoners, including customary-law prisoners, should be approached in that connection. She asked the Chairman-Rapporteur to make the necessary contacts.

91. At the suggestion of the Chairman-Rapporteur, it was then decided to postpone discussion of the item until the end of the session, so as to accord priority to and, if possible, given the time available, complete consideration of the preliminary draft convention on forced disappearance.

92. At the second meeting, the Chairman-Rapporteur informed the working group that he had contacted Observatoire international des prisons, as suggested by Ms. Warzazi. The Chairman of that organization had sent the working group a memorandum containing the following proposals, subject to consultation



with its Executive Council and availability of the necessary funding:

- (a) Draw a clearer distinction between prisons in developed countries and those in developing countries, particularly the poorest of those countries;
- (b) Adopt a consistently firm stance towards physical or mental ill-treatment, but take account of the poverty factor in assessing prison conditions;
- (c) Accord much greater importance to children's issues: child detainees; children born and raised in prison with their detainee mother; visiting rooms where children saw their parents detained in degrading conditions.

#### VII. RECOGNITION OF GROSS AND MASSIVE VIOLATION OF HUMAN RIGHTS PERPETRATED ON THE ORDERS OF GOVERNMENTS OR SANCTIONED BY THEM AS AN INTERNATIONAL CRIME

93. Mr. Joinet referred to Commission on Human Rights decision 1996/105, by which the Commission decided to postpone the decision on forwarding to the Economic and Social Council the draft decision of the Sub-Commission authorizing the preparation of a report on the subject in order to be able to take into account the work of other United Nations bodies in this field, including that of the International Law Commission. A relevant request was sent to this Commission but the Commission had not replied. In view of the above, the working group decided to delete this item from the agenda.

#### VIII. PROVISIONAL AGENDA FOR THE NEXT SESSION

94. At its fifth session, the working group considered the provisional agenda for the next session. The Chairman-Rapporteur drew the attention of the group to the wish of Mr. Fix Zamudio to undertake a study entitled "Improvement and efficiency of the judicial instruments for the protection of human rights at the national level and their impact at the international level". The working group agreed that to this end, an additional item with the same title be included in the provisional agenda for the next session, and requested Mr. Fix Zamudio to prepare a working paper on this subject for the next session.

95. At its 3rd meeting, the working group adopted the following provisional agenda for its next session:

1. Election of officers.
2. Adoption of the agenda.
3. Issues related to the deprivation of the right to life, with special reference to:
  - (a) Imposition of the death penalty;
  - (b) Summary, arbitrary and extrajudicial executions.
4. Privatization of prisons.
5. Action to combat genocide: from the 1948 Convention to the International Criminal Court, results and

prospects.

6. Improvement and efficiency of the judicial instruments for the protection of human rights at the national level and their impact at the international level.

7. Provisional agenda for the next session.

8. Adoption of the report of the working group to the Sub-Commission.

## IX. ADOPTION OF THE REPORT OF THE WORKING GROUP TO THE SUB-COMMISSION

96. At its 5th meeting, on 17 August 1998, the working group unanimously adopted the present report to the Sub-Commission.

### Annex

## DRAFT INTERNATIONAL CONVENTION ON THE PROTECTION OF ALL PERSONS FROM FORCED DISAPPEARANCE

### PREAMBLE

The States Parties to this Convention,

Considering that, in accordance with the principles proclaimed in the Charter of the United Nations and other international instruments, recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world,

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Bearing in mind the obligation of States under the Charter, in particular Article 55, to promote universal respect for, and observance of, human rights and fundamental freedoms,

Taking into account that any act of forced disappearance of a person constitutes an offence to human dignity, is a denial of the purposes of the Charter and is a gross and flagrant violation of the human rights and fundamental freedoms proclaimed in the Universal Declaration of Human Rights, and reaffirmed and developed in other international instruments in this field,

In view of the fact that any act of forced disappearance of a person constitutes a violation of the rules of international law guaranteeing the right to recognition as a person before the law, the right to liberty and security of the person, and the right not to be subjected to torture and other cruel, inhuman or degrading treatment or punishment,

Considering that forced disappearance undermines the deepest values of any society committed to the respect of the rule of law, human rights and fundamental freedoms, and that the systematic or widespread practice of such acts constitutes a crime against humanity,

Recognizing that forced disappearance violates the right to life or puts it in grave danger and denies individuals the protection of the law,

Taking into account the Declaration on the Protection of All Persons from Enforced Disappearance

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adopted by the General Assembly of the United Nations,

Recalling the protection afforded to victims of armed conflicts by the Geneva Conventions of 12 August 1949 and the Additional Protocols thereto of 1977, B5

Having regard in particular to the relevant articles of the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights, which protect the right to life, the right to 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,

Having regard also to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, which provides that States Parties shall take effective measures to prevent and punish acts of torture,

Bearing in mind the Code of Conduct for Law Enforcement Officials, the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, the Standard Minimum Rules for the Treatment of Prisoners, and the Principles of international cooperation in the detection, arrest, extradition and punishment of persons guilty of war crimes and crimes against humanity,

Affirming that, in order to prevent acts that contribute to forced disappearances it is necessary to ensure strict compliance with the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, adopted by the General Assembly on 9 December 1988, and the Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions, endorsed by the General Assembly on 15 December 1989,

Taking into account also the Vienna Declaration and Programme of Action adopted by the World Conference on Human Rights on 25 June 1993,

Wishing to increase the effectiveness of the struggle against forced disappearances of persons throughout the world,

Have agreed as follows:

PART I

Article 1



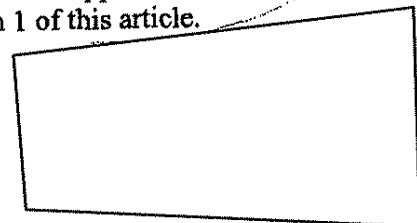
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1. For the purposes of this Convention, forced disappearance is considered to be the deprivation of a person's liberty, in whatever form or for whatever reason, brought about by agents of the State or by persons or groups of persons acting with the authorization, support or acquiescence of the State, followed by an absence of information, or refusal to acknowledge the deprivation of liberty or information, or concealment of the fate or whereabouts of the disappeared person.

2. This article is without prejudice to any international instrument or national legislation that does or may contain provisions of broader application, especially with regard to forced disappearances perpetrated by groups or individuals other than those referred to at paragraph 1 of this article.

Article 2

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1. The perpetrator of and other participants in the offence of forced disappearance or of any constituent element of the offence, as defined in article 1 of this Convention, shall be punished. The perpetrators or other participants in a constituent element of the offence as defined in article 1 of this Convention shall be punished for a forced disappearance where they knew or ought to have known that the offence was about to be or was in the process of being committed. The perpetrator of and other participants in the following acts shall also be punished:

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(a) Instigation, incitement or encouragement of the commission of the offence of forced disappearance;

(b) Conspiracy or collusion to commit an offence of forced disappearance;

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(c) Attempt to commit an offence of forced disappearance; and

(d) Concealment of an offence of forced disappearance.

2. Non-fulfilment of the legal duty to act to prevent a forced disappearance shall also be punished.



Article 3

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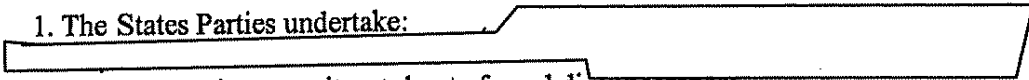
1. The systematic or massive practice of forced disappearance constitutes a crime against humanity.

2. Where persons are suspected of having perpetrated or participated in an offence, as defined in articles 1 and 2 of this Convention, they should be charged with a crime against humanity where they knew or ought to have known that this act was part of a systematic or massive practice of forced disappearances, however limited the character of their participation.

Article 4

1. The States Parties undertake:

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(a) Not to practise, permit or tolerate forced disappearance;

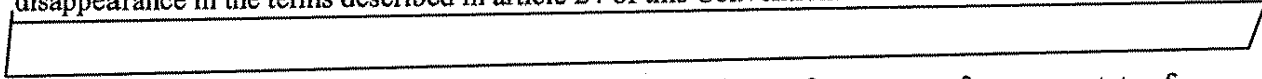
(b) To investigate immediately and swiftly any complaint of forced disappearance and to inform the family of the disappeared person about his or her fate and whereabouts;

(c) To impose sanctions, within their jurisdiction, on the offence of forced disappearance and the acts or omissions referred to in article 2 of this Convention;

(d) To cooperate with each other and with the United Nations to contribute to the prevention, investigation, punishment and eradication of forced disappearance;

(e) To provide prompt and appropriate reparation for the damage caused to the victims of a forced disappearance in the terms described in article 24 of this Convention.

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2. No circumstance - whether internal political instability, threat of war, state of war, any state of emergency or suspension of individual guarantees - may be invoked in order not to comply with the obligations established in this Convention.

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3. The States Parties undertake to adopt the necessary legislative, administrative, judicial or other measures to fulfil the commitments into which they have entered in this Convention.

Article 5

[Redacted]

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1. The States Parties undertake to adopt the necessary legislative measures to define the forced disappearance of persons as an independent offence, as defined in article 1 of this Convention, and to define a crime against humanity, as defined in article 3 of this Convention, as separate offences, and to impose an appropriate punishment commensurate with their extreme gravity. The death penalty shall not be imposed in any circumstances. This offence is continuous and permanent as long as the fate or whereabouts of the disappeared person have not been determined with certainty.

2. The State Parties may establish mitigating circumstances for persons who, having been implicated in the acts referred to in article 2 of this Convention, effectively contribute to bringing the disappeared person forward alive, or voluntarily provide information that contributes to solving cases of forced disappearance or identifying those responsible for an offence of forced disappearance.

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[Redacted]

Article 6

[Redacted]

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1. Forced disappearance and the other acts referred to in article 2 of this Convention shall be considered as offences in every State Party. Consequently, each State Party shall take the necessary measures to establish jurisdiction in the following instances:

(a) When the offence of forced disappearance was committed within any territory under its jurisdiction;

(b) When the alleged perpetrator or the other alleged participants in the offence of forced disappearance or the other acts referred to in article 2 of this Convention are in the territory of the State Party, irrespective of the nationality of the alleged perpetrator or the other alleged participants, or of the nationality of the disappeared person, or of the place or territory where the offence took place unless the State extradites them or transfers them to an international criminal tribunal.

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2. This Convention does not exclude any jurisdiction exercised by an international criminal tribunal.

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Article 7

[Redacted]

1. Any State Party on whose territory a person suspected of having committed a forced disappearance or an act referred to in article 2 of this Convention is present shall, if, after considering the information at its disposal, it deems that the circumstances so warrant, take all necessary measures to ensure the continued presence of that person in the territory and if necessary take him or her into custody. Such detention and measures shall be exercised in conformity with the legislation of that State, and may be continued only for the period necessary to enable any criminal or extradition proceedings to be instituted.

2. Such State shall immediately make a preliminary investigation of the facts.

3. When a State, pursuant to this article, gathers evidence of a person's responsibility but does not exercise its jurisdiction over the matter, it shall immediately notify the State on whose territory the offence was committed, informing it of the circumstances justifying the presumption of responsibility, in order to allow that State to request extradition.

Article 8



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1. States Parties shall afford one another the greatest measure of legal assistance in connection with any criminal investigation or proceedings relating to the offence of forced disappearance, including the supply of all the evidence at their disposal that is necessary for the proceedings.
2. States Parties shall cooperate with each other, and shall afford one another the greatest measure of legal assistance in the search for, location, release and rescue of disappeared persons or, in the event of death, in the return of their remains.
3. States Parties shall carry out their obligations under paragraphs 1 and 2 of this article, without prejudice to the obligations arising from any treaties on mutual legal assistance that may exist between them.

Article 9



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1. No order or instruction of any public authority - civilian, military or other - may be invoked to justify a forced disappearance. Any person receiving such an order or instruction shall have the right and duty not to obey it. Each State shall prohibit orders or instructions commanding, authorizing or encouraging a forced disappearance.
2. Law enforcement officials who have reason to believe that a forced disappearance has occurred or is about to occur shall communicate the matter to their superior authorities and, when necessary, to competent authorities or organs with reviewing or remedial power.
3. Forced disappearance committed by a subordinate shall not relieve his superiors of criminal responsibility if the latter failed to exercise the powers vested in them to prevent or halt the commission of the crime, if they were in possession of information that enabled them to know that the crime was being or was about to be committed.

Article 10



1. The alleged perpetrators of and other participants in the offence of forced disappearance or the other acts referred to in article 2 of this Convention shall be tried only in the courts of general jurisdiction of each State, to the exclusion of all courts of special jurisdiction, and particularly military courts.

2. No privileges, immunities or special exemptions shall be granted in such trials, subject to the provisions of the Vienna Convention on Diplomatic Relations

3. The perpetrators of and other participants in the offence of forced disappearance or the other acts referred to in article 2 of this Convention shall in no case be exempt from criminal responsibility including where such offences or acts were committed in the exercise of military or police duties or in the course of performing these functions.

4. The States Parties guarantee a broad legal standing in the judicial process to any wronged party, or any person or national or international organization having a legitimate interest therein.

Article 11



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1. Each State Party shall ensure that any person who alleges that someone has been subjected to forced disappearance has the right to complain to a competent and independent State authority and to have that complaint immediately, thoroughly and impartially investigated by that authority.

2. Whenever there are grounds to believe that a forced disappearance has been committed, the State shall refer the matter to that authority without delay for such an investigation, even if there has been no formal complaint. No measure shall be taken to curtail or impede the investigation.

3. Each State Party shall ensure that the competent authority has the necessary powers and resources to conduct the investigation, including powers to compel attendance of the alleged perpetrators or other participants in the offence of forced disappearance or other acts referred to in article 2 of this Convention, and of witnesses, and the production of relevant evidence. Each State shall allow immediate and direct access to all documents requested by the competent authority, without exception.

4. Each State Party shall ensure that the competent authority has access, without delay or prior notice, to any place, including those classified as being places of national security or of restricted access, where it is suspected that a victim of forced disappearance may be held.

5. Each State Party shall take steps to ensure that all persons involved in the investigation - including the complainant, the relatives of the disappeared person, legal counsel, witnesses and those conducting the investigation - are protected against ill-treatment and any acts of intimidation or reprisal as a result of the complaint or investigation. Anyone responsible for such acts shall be subject to criminal punishment.

6. The findings of a criminal investigation shall be made available upon request to all persons concerned, unless doing so would gravely hinder an ongoing investigation. However, the competent authority shall communicate regularly and without delay to the relatives of the disappeared person the results of the inquiry into the fate and whereabouts of that person.



7. It must be possible to conduct an investigation, in accordance with the procedures described above, for as long as the fate or whereabouts of the disappeared person have not been established with certainty.

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8. The alleged perpetrators of and other participants in the offence of forced disappearance or other acts referred to in article 2 of this Convention shall be suspended from any official duties during the investigation.

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Article 12

1. Forced disappearance shall not be considered a political offence for purposes of extradition.

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2. Forced disappearance shall be deemed to be included among the extraditable offences in every extradition treaty entered into between States Parties.

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3. States Parties undertake to include the offence of forced disappearance among the extraditable offences in every extradition treaty they conclude.

B5

4. Should a State Party that makes extradition conditional on the existence of a treaty receive a request for extradition from another State Party with which it has no extradition treaty, it may consider this Convention as the necessary legal basis for extradition with respect to the offence of forced disappearance.

B5

5. States Parties which do not make extradition conditional on the existence of a treaty shall recognize the said offence as extraditable. [redacted] B5

6. Extradition shall be subject to the procedures established in the law of the requested State. Article 13 [redacted] B5

When a State Party does not grant the extradition or is not requested to do so, it shall submit the case to its competent authorities as if the offence had been committed within its jurisdiction, for the purposes of investigation and, when appropriate, for criminal proceedings, in accordance with its national law. Any decision adopted by these authorities shall be communicated to the State requesting extradition.

Article 14 [redacted] B5

Forced disappearance shall not be considered a political offence, nor related to a political offence, for purposes of asylum and refuge. States Parties to this Convention shall not grant diplomatic or territorial asylum or refugee status to any person if there are substantiated grounds for believing that he or she has taken part in a forced disappearance. [redacted] B5 B5 B5

Article 15 [redacted] B5

1. No State Party shall expel, return (refouler) or extradite a person to another State if there are grounds for believing that he or she would be in danger of being subjected to forced disappearance, or any other serious human rights violation in that other State. [redacted] B5

2. For the purpose of determining whether such grounds exist, the competent authorities shall take into account all relevant considerations, including, where applicable, the existence in the State in question of situations indicating gross, systematic or widespread violations of human rights. [redacted]

Article 16

1. No statutory limitation shall apply to criminal proceedings and any punishment arising from forced disappearances, when the forced disappearance constitutes a crime against humanity, in accordance with article 3 of this Convention. B5

2. When the forced disappearance does not constitute a crime against humanity in accordance with article 3 of this Convention, the statute of limitation for the offence and the criminal proceedings shall be equal to the longest period laid down in the law of each State Party, starting from the moment when the fate or whereabouts of the disappeared person is established with certainty. When the remedies described in article 2 of the International Covenant on Civil and Political Rights are no longer effective, the prescription for the offence of forced disappearance shall be suspended until the efficacy of these remedies has been restored. B5

3. States Parties shall adopt any legislative or other measures necessary to bring their law into conformity with the provisions of the preceding paragraphs.

Article 17 [redacted] B5



1. The perpetrators or suspected perpetrators of and other participants in the offence of forced disappearance or the acts referred to in article 2 of this Convention shall not benefit from any amnesty/measure or similar measures prior to their trial and, where applicable, conviction that would have the effect of exempting them from any criminal action or penalty.

2. The extreme seriousness of the offence of forced disappearance shall be taken into account in the granting of pardon.

Article 18



B5

1. Without prejudice to articles 2 and 5 of this Convention, States Parties shall prevent and punish the abduction of children whose parents are victims of forced disappearance and of children born during their mother's forced disappearance, and shall search for and identify such children. As a general rule, the child will be returned to his or her family of origin. Here the best interests of the child must be taken into account and the views of the child shall be given due weight in accordance with the age and maturity of the child.

2. States Parties shall give each other assistance in the search for, identification, location and return of minors who have been removed to another State or held therein. For these purposes, States shall, as needed, conclude bilateral or multilateral agreements.

3. States Parties whose laws provide for a system of adoption shall establish through their national law the possibility of reviewing adoptions, and in particular the possibility of annulment of any adoption which has arisen from a forced disappearance. Such adoption may, however, continue in force if consent is given, at the time of the review, by the child's closest relatives. In any event, the best interests of the child should prevail and the views of the child should be given due weight in accordance with the age and maturity of the child.

4. States Parties shall impose penalties in their criminal law on the abduction of children whose parents are victims of forced disappearance or of children born during their mother's forced disappearance, and on the falsification or suppression of documents attesting to the child's true identity. The penalties shall take into account the extreme seriousness of these offences.

Article 19

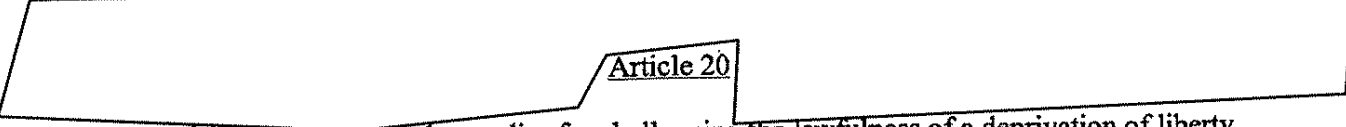


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States Parties shall ensure that the training of public law enforcement personnel and officials includes the necessary education on the provisions of this Convention.

B5

Article 20



1. Without prejudice to any legal remedies for challenging the lawfulness of a deprivation of liberty, States Parties shall guarantee the right to a prompt, simple and effective judicial remedy as a means of determining the whereabouts or state of health of persons deprived of their liberty and/or identifying the authority that ordered the deprivation of liberty and the authority that carried it out. This remedy, as well as that of habeas corpus and similar remedies, may not be suspended or restricted, even in the circumstances described in article 4, paragraph 2, of this Convention.

2. In the framework of this remedy, and without prejudice to the powers of any judicial authority, judges acting in these cases shall enjoy the power to summon witnesses, to order the production of evidence,

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and to have unrestricted access to places where it may be presumed that a person deprived of liberty might be found.

3. Any delay to or obstruction of this remedy shall result in criminal penalties.

B5

[Redacted]

Article 21

[Redacted]

1. States Parties shall establish norms under their national law indicating those officials who are authorized to order the deprivation of liberty, establishing the conditions under which such orders may be given, and stipulating the penalties for officials who do not or refuse to provide information on the deprivation of liberty of a person.

2. Each State Party shall likewise ensure strict supervision, in accordance with a clear chain of command, of all officials responsible for apprehensions, arrests, detentions, police custody, transfers and imprisonment, and of all other law enforcement officials.

3. Arrest, detention or imprisonment shall only be carried out strictly in accordance with the provisions of the law and by the competent authorities or persons authorized for that purpose.

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B5

4. There shall be no restriction upon or derogation from any of the human rights of persons under any form of deprivation of liberty that are recognized, binding upon or in force in any State pursuant to law, conventions, regulations or custom on the pretext that this Convention does not recognize such rights or that it recognizes them to a lesser extent.

[Redacted]

5. Any form of deprivation of liberty and all measures affecting the human rights of a person under any form of deprivation of liberty shall be ordered by, or be subject to the effective control of, a judicial or other competent authority.

6. Competent authorities shall have access to all places where there is reason to believe that persons deprived of their liberty might be found.

B5

[Redacted]

Article 22

1. States Parties guarantee that any person deprived of liberty shall be held solely in an officially recognized and controlled place of detention and be brought before a judge or other competent judicial authority without delay, who will also be informed of the place where the person is being deprived of liberty.

2. Accurate information on the deprivation of liberty of any person and on his or her whereabouts, including information on any transfer, the identity of those responsible for the deprivation of liberty, and the authority in whose hands the person has been placed, shall be made immediately available to the person's counsel or to any other persons having a legitimate interest in the information.

3. In every place where persons deprived of liberty are held, States Parties shall maintain an official up-to-date register of such persons. Additionally, they shall maintain similar centralized registers. The information contained in these registers shall be made available to the persons and authorities mentioned in the preceding paragraph.

4. States Parties shall identify who is the responsible person in national law for the integrity and accuracy of the custody record. Without prejudice to the provisions of articles 1, 2 and 3 of this

Convention, States Parties shall make it a criminal offence for the responsible person, as defined in national law, to fail to register the deprivation of liberty of any person or to record information which is or should be known to be inaccurate in the custody record.

5. States Parties shall periodically publish lists that name the places where persons are deprived of liberty. Such places must be visited regularly by qualified and experienced persons named by a competent authority, different from the authority directly in charge of the administration of the place.

Article 23



B5

States Parties guarantee that all persons deprived of liberty shall be released in a manner that allows reliable verification that they have actually been released and, further, have been released in conditions in which their physical integrity and their ability fully to exercise their rights are assured.

Article 24



B5

1. States Parties guarantee, in all circumstances, the right to reparation for the harm caused to the victims of forced disappearance.

2. For the purposes of this Convention, the right to reparation comprises restitution, compensation, rehabilitation, satisfaction, and the restoration of the honour and reputation of the victims of the offence of forced disappearance. The rehabilitation of victims of forced disappearance will be physical and psychological as well as professional and legal.

3. For the purposes of this Convention, the term "victim of the offence of forced disappearance" means the disappeared person, his or her relatives, any dependant who has a direct relationship with her or him, and anyone who has suffered harm through intervening in order to prevent the forced disappearance or to shed light on the whereabouts of the disappeared person.

4. In addition to such criminal penalties as are applicable, the acts referred to in articles 2 and 3 of this Convention shall render the State liable under civil law, and the State may bring an action against those responsible in order to recover what it has had to pay, without prejudice to the international responsibility of the State concerned in accordance with the principles of international law.

PART II

Article 25



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1. There shall be established a Committee against Forced Disappearance (hereinafter referred to as the Committee) which shall carry out the functions hereinafter provided. The Committee shall consist of 10 experts of high moral standing and recognized competence in the field of human rights, who shall serve in a personal and independent capacity. Membership of the Committee is incompatible with any post or function subject to the hierarchical structure of the executive authority of a State Party. The experts shall be elected by the States Parties, consideration being given to equitable geographical distribution and to the usefulness of the participation of some persons having legal experience.

2. The members of the Committee shall be elected by secret ballot from a list of persons nominated by States Parties. Each State Party may nominate not more than two persons from among its own nationals.

3. Elections of the members of the Committee shall be held at biennial meetings of States Parties convened by the Secretary-General of the United Nations. At those meetings, for which two thirds of the States Parties shall constitute a quorum, the persons elected to the Committee shall be those who obtain the largest number of votes and an absolute majority of the votes of the representatives of States Parties present and voting.

4. The initial election shall be held no later than six months after the date of the entry into force of this Convention. At least eight months before the date of each election, the Secretary-General of the United Nations shall address a letter to the States Parties inviting them to submit their nominations within three months. The Secretary-General of the United Nations shall prepare a list in alphabetical order of all the persons thus nominated, indicating the States Parties which have nominated them, and shall submit it to the States Parties, the relevant intergovernmental organizations and the relevant non-governmental organizations that enjoy consultative status with the Economic and Social Council.

5. The members of the Committee shall be elected for a term of four years. They shall be eligible for re-election if renominated. However, the term of five of the members elected at the first election shall expire at the end of two years; immediately after the first election the names of these five members shall be chosen by lot by the chairman of the meeting referred to in paragraph 3 of this article.

6. If a member of the Committee dies or resigns or for any other cause can no longer perform his Committee duties, the State Party which nominated him shall appoint another expert from among its nationals to serve for the remainder of his term, subject to the approval of the majority of the States Parties. The approval shall be considered given unless half of the States Parties respond negatively within six weeks after having been informed by the Secretary-General of the United Nations of the proposed appointment.

7. The United Nations shall be responsible for the expenses incurred by the application of this Convention.

#### Article 26

1. The Committee shall elect its officers for a term of two years. They may be re-elected.
2. The Committee shall establish its own rules of procedure, but these rules shall provide, *inter alia*, that:
  - (a) Six members shall constitute a quorum;
  - (b) Decisions of the Committee shall be made by a majority vote of the members present.
3. The Secretary-General of the United Nations shall provide the necessary staff and facilities for the effective performance of the functions of the Committee under this Convention.
4. The Secretary-General of the United Nations shall convene the initial meeting of the Committee. After its initial meeting, the Committee shall meet at such times as shall be provided in its rules of procedure.
5. With the approval of the General Assembly, the members of the Committee shall receive emoluments from United Nations resources on such terms and conditions as the Assembly may decide in the light of the importance of the functions of the Committee.

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Article 27

1. The States Parties shall submit to the Committee, through the Secretary-General of the United Nations, reports on the measures they have taken to give effect to their undertakings under this Convention, within one year after the entry into force of the Convention for the State Party concerned. In connection with the submission of the first report of each State Party concerned, the Committee may make a visit to the territory under the control of that State Party. The State Party concerned shall provide all the necessary facilities for such a visit including the entry into the country and access to such places and meeting with such persons as may be required for carrying out the mission of the visit. Thereafter the States Parties shall submit supplementary reports at the request of the Committee.
2. The Secretary-General of the United Nations shall transmit the reports to all States Parties.
3. Each report shall be considered by the Committee which may make such comments, observations and recommendations as it may consider appropriate and shall forward the said comments, observations and recommendations to the State Party concerned. That State Party may respond with any observations it chooses to the Committee.
4. The Committee may, at its discretion, decide to include any comments, observations and recommendations made by it in accordance with paragraph 3 of this article, together with the observations thereon received from the State Party concerned, in its annual report made in accordance with article 33. If so requested by the State Party concerned, the Committee may also include a copy of the report submitted under paragraph 1 of this article.

Article 28

1. If the Committee receives reliable information which appears to it to contain well-founded indications that forced disappearance is being systematically or widely practised in the territory under the control of a State Party, the Committee shall invite that State Party to cooperate in the examination of the information and to this end to submit observations with regard to the information concerned.
2. Taking into account any observations which may have been submitted by the State Party concerned, as well as any other relevant information available to it, the Committee may, if it decides that this is warranted, designate one or more of its members to make an inquiry and to report to the Committee urgently.
3. If an inquiry is made in accordance with paragraph 2 of this article, the Committee shall seek the cooperation of the State Party concerned. In agreement with that State Party, such an inquiry may include a visit to the territory under its control. At least one member of the Committee, who may be accompanied if necessary by interpreters, secretaries and experts, shall be responsible for conducting the missions which include visits to the territory under the control of the State Party. No member of the delegation, with the exception of the interpreters, may be a national of the State to which the visit is to be made.
4. The Committee shall notify the Government of the State Party concerned in writing of its intention to organize a mission, indicating the composition of the delegation. During its mission the Committee may make such visits as it may consider necessary in order to fulfil its commitments. If one of the two parties so desires, the Committee and the State Party concerned may, before a mission is carried out, hold consultations in order to define the practical arrangements for the mission without delay. The consultations concerning the practical arrangements for the mission may not include negotiations

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concerning the obligations for a State Party arising out of this Convention.

5. After examining the report submitted by its member or members in accordance with paragraph 2 of this article, the Committee shall transmit its report to the State Party concerned, together with its conclusions, observations and recommendations.

6. After the proceedings have been completed with regard to an inquiry made in accordance with paragraph 2, the Committee may, after consultation with the State Party concerned, include the results of the proceedings together with the conclusions, observations and recommendations in its annual report made in accordance with article 33.

Article 29

A State Party to this Convention may submit to the Committee communications to the effect that another State Party is not fulfilling its obligations under this Convention. Communications received under this article shall be dealt with in accordance with the following procedure:

- (a) If a State Party considers that another State Party is not giving effect to the provisions of this Convention, it may, by written communication, bring the matter to the attention of that State Party. Within three months after the receipt of the communication the receiving State shall afford the State which sent the communication an explanation or any other statement in writing clarifying the matter, which should include, to the extent possible and pertinent, reference to domestic procedures and remedies taken, pending or available in the matter;
- (b) If the matter is not adjusted to the satisfaction of both States Parties concerned within six months after the receipt by the receiving State of the initial communication, either State shall have the right to refer the matter to the Committee, by notice given to the Committee and to the other State;
- (c) The Committee shall deal with a matter referred to it under this article only after it has ascertained that all domestic remedies have been invoked and exhausted in the matter, in conformity with the generally recognized principles of international law. This shall not be the rule where the application of the remedies is unreasonably prolonged or is unlikely to bring effective relief to the person who is the victim of the violation of this Convention;
- (d) The Committee shall hold closed meetings when examining communications under this article;
- (e) Subject to the provisions of subparagraph (c), the Committee shall make available its good offices to the State Parties concerned with a view to a friendly solution of the matter on the basis of respect for the obligations provided for in this Convention. For this purpose, the Committee may, when appropriate, set up an ad hoc conciliation commission;
- (f) In any matter referred to it under this article, the Committee may call upon the States Parties concerned, referred to in subparagraph (b), to supply any relevant information;
- (g) The States Parties concerned, referred to in subparagraph (b), shall have the right to be represented when the matter is being considered by the Committee and to make submissions orally and/or in writing;
- (h) The Committee shall, within 12 months after the date of receipt of notice under subparagraph (b), submit a report:

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- (i) If a solution within the terms of subparagraph (e) is reached, the Committee shall confine its report to a brief statement of the facts and of the solutions reached;
- (ii) If a solution within the terms of subparagraph (e) is not reached, the Committee shall confine its report to a brief statement of the facts; the written submissions and record of the oral submissions made by the States Parties concerned shall be attached to the report. In every matter, the report shall be communicated to the States Parties concerned.

### Article 30

1. Any person or group of persons under the jurisdiction of a State Party or any non-governmental organization may submit communications to the Committee concerning a violation of the provisions of this Convention by a State Party.
2. The Committee shall consider inadmissible any communication under this article which is anonymous or which it considers to be an abuse of the right of submission of such communications or to be incompatible with the provisions of this Convention.
3. Subject to the provisions of paragraph 2, the Committee shall bring any communications submitted to it under this article to the attention of the State Party to this Convention which is alleged to be violating any provisions of the Convention. Within six months, the receiving State shall submit to the Committee written explanations or statements clarifying the matter and the remedy that may have been taken by that State.
4. The Committee shall consider communications received under this article in the light of all information made available to it by or on behalf of the author of the communication referred to in paragraph 1 and by the State Party concerned. The Committee may, if it deems it necessary, organize hearings and investigation missions. For these purposes the Committee shall be governed by paragraphs 3 and 4 of article 28.
5. The Committee shall not consider any communications from an individual under this article unless it has been ascertained that:
  - (a) The same matter has not been, and is not being, examined under another procedure of international investigation or settlement;
  - (b) The author of the communication has exhausted all domestic remedies. This shall not be the rule if, in the domestic legislation of the State Party, there is no effective remedy to protect the right alleged to have been violated, if access to domestic remedies has been prevented, if the application of the remedies is unreasonably prolonged or if it is unlikely that application of the remedies would improve the situation of the person who is the victim of the violation.
6. The Committee shall hold closed meetings when examining communications under this article.
7. In urgent cases the Committee may request the State Party concerned to take whatever protective measures it may deem appropriate, when there is a need to avoid irreparable damage. When the Committee is carrying out its functions of considering communications submitted to it, the request to adopt such measures and their adoption shall not prejudice its final decision.
8. The Committee shall forward its views to the State Party concerned and to the individual.

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Article 31

1. The Committee may undertake any effective procedure to seek and find persons who have disappeared within the meaning of this Convention, either on its own initiative or at the request of a State Party, an individual, a group of individuals or a non-governmental organization.
2. The Committee shall consider inadmissible any request received under this article which is anonymous or which it considers to be an abuse of the right of submission of such requests or to be incompatible with the provisions of this Convention. In no case may the exhaustion of domestic remedies be required.
3. The Committee may, if it decides that this is warranted, appoint one or more of its members to undertake an investigation mission and to report to the Committee urgently. The Committee shall be governed by the provisions of paragraphs 3 and 4 of article 28 of this Convention.
4. The Committee shall discharge this function in a strictly neutral and humanitarian capacity.

Article 32

The members of the Committee and persons accompanying them on mission in the territory of the States Parties referred to in articles 28, 29 and 31 shall be entitled to the facilities, privileges and immunities of experts on mission for the United Nations as laid down in the relevant sections of the Convention on the Privileges and Immunities of the United Nations.

Article 33

1. The Committee shall submit an annual report on its activities under this Convention to the States Parties and to the General Assembly of the United Nations.
2. To ensure that its observations and recommendations are followed up, the Committee shall include in the report referred to in paragraph 1 of this article the measures taken by the States Parties to guarantee effective compliance with the observations and recommendations made in accordance with articles 27, 28, 29, 30 and 31 of this Convention.

PART III

Article 34

1. This Convention is open for signature by all States.
2. This Convention is subject to ratification. Instruments of ratification shall be deposited with the Secretary-General of the United Nations.

Article 35

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This Convention is open to accession by all States. Accession shall be effected by the deposit of an instrument of accession with the Secretary-General of the United Nations.

Article 36

1. No State can, at the time of signature or ratification of this Convention or accession thereto, make reservations concerning articles 1 to 24 and article 31 of this Convention, nor make a reservation the effect of which would inhibit the operation of any of the bodies established by this Convention.

2. Any State Party having made a reservation in accordance with paragraph 1 of this article may, at any time, withdraw this reservation by notification to the Secretary-General of the United Nations.

Article 37

1. This Convention shall enter into force on the thirtieth day following the date of deposit of the tenth instrument of ratification or accession.

2. For each State ratifying or acceding to this Convention after the deposit of the tenth instrument of ratification or accession, the Convention shall enter into force on the thirtieth day after the deposit by such State of its instrument of ratification or accession.

Article 38

The Secretary-General of the United Nations shall inform all States Members of the United Nations and all States which have signed this Convention or acceded to it of the following:

- (a) Signatures, ratifications and accessions under articles 34 and 35;
- (b) The date of entry into force of this Convention under article 37.

Article 39

1. This Convention, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations.

2. The Secretary-General of the United Nations shall transmit certified copies of this Convention to all States.

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21/06/04 – Traduction de courtoisie

Indications such as "new", "complemented", etc, are intended to ease the comparison with document E/CN.4/2004/WG22/WP.1/Rev.1 of 1 december 2003.

Preamble (new)

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The States Parties to the [present instrument],

Recalling the Declaration on the Protection of all Persons from Enforced Disappearances adopted by the General Assembly of the United Nations in its resolution 47/133 of 18 December 1992;

Conscious of the extreme gravity of enforced disappearance which constitute a crime and, in certain circumstances, a crime against humanity;

Determined to fight against the impunity of the crime of enforced disappearance ;

Affirming the right of victims to know the truth about the circumstances of an enforced disappearance and the fate of the disappeared person ;

Have agreed as follows :

Part I

Article 1

For the purposes of [the present instrument] enforced disappearance is considered to be the deprivation of a person's liberty, in whatever form, committed by agents of the State or by persons or groups of persons acting with the authorization, support or acquiescence of the State, followed by refusal to acknowledge the deprivation of liberty or concealment of the fate or whereabouts of the disappeared person, which places such person outside the protection of the law.

Article Ibis (new)

- 1. No one shall be subjected to enforced disappearance.
- 2. (from former III-E) No circumstances whatsoever, whether a state of war or threat of war, internal political instability or any other state of emergency, may be invoked as a justification of enforced disappearance.

Article 2 (modified)

- 1. Each State Party shall take the necessary measures to ensure that enforced disappearance, as defined in article I, [redacted] constitutes an offence under its criminal law.
- 2. Each State Party shall take equivalent measures when persons or groups of persons acting without the authorization, support or acquiescence of the State are responsible for [redacted] defined in article 1

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Article 2 bis (new)

[redacted]

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The widespread or systematic practice of enforced disappearance constitutes a crime against humanity and shall attract the consequences provided for under international law.

Article 3 (reorganised)

1. Each State Party shall take the necessary measures to pursue and punish those who commit or contribute to the commission of an enforced disappearance.

2. The following shall be punished [redacted]

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a) the perpetrators of and accessories [redacted] an enforced disappearance.

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b) the attempts to commit an enforced disappearance [redacted]

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c) the conspiracy to commit an enforced disappearance [redacted]

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3. The following shall also be punished [redacted] with the domestic [redacted]

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a) persons who order or encourage [redacted] the commission or attempted commission of such an offence, and persons who facilitate its commission or attempted commission by aiding, abetting or otherwise assisting in it, including providing the means for its commission or attempted commission, shall be punished, [redacted]

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b) a superior officer who:

(i) either knew, or consciously disregarded information which clearly indicated, that subordinates were committing or about to commit an enforced disappearance, and who

(ii) failed to take all necessary and reasonable measures within his or her power to prevent or repress the enforced disappearance or to submit the matter to the competent authorities for investigation and prosecution.

4. (former 6) An order of a superior officer or a public authority may not be invoked as a justification of an enforced disappearance.

Article 4

1. Each State Party shall make enforced disappearance punishable by appropriate penalties which take into account its extreme seriousness.

2. Each State Party may establish :

a) mitigating circumstances inter alia for persons who, having been involved in the commission of an enforced disappearance, effectively contribute to bringing the disappeared person forward alive, or contribute to elucidating cases of enforced disappearance or identifying the perpetrators of an enforced disappearance.

b) (complemented) Aggravating circumstances inter alia in the event of death of the victim or the commission of an enforced disappearance in respect of pregnant women, minors or other particularly vulnerable persons.

Article 5 (modified)

Without prejudice to article 2 [redacted] his,

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1. Each State Party which applies a statute of limitations in respect of enforced disappearances shall take the necessary measures to ensure that the term of limitation for criminal proceedings :

a) is of long duration and proportionate to the extreme seriousness of the offence;

b) shall commence from the moment when [the offence of enforced disappearance ceases and] the fate of the disappeared person is established [redacted]

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- 2. The statute of limitations for criminal proceedings under paragraph 1 shall be suspended in a State Party as long as any victim of enforced disappearance does not have an effective [redacted] remedy.

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Article 6 (see 3,3)

Article 7 (deleted) [redacted]

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Article 8 (deleted) [redacted]

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Article 9 (reorganised and modified)

- 1. Each State Party shall take such measures as may be necessary to establish its jurisdiction over an enforced disappearance :
  - a) when the offence is committed within any territory under its jurisdiction or on board a vessel flying its flag or an aircraft registered in accordance with its law at the time of the [redacted] facts;
  - b) when the alleged perpetrator of the offence is one of its nationals / [redacted]
  - c) when the disappeared person is one of its nationals and the State deems it appropriate to do so [redacted]
- 2. Each State Party shall also take the necessary measures to establish its jurisdiction over an enforced disappearance when the alleged perpetrator of the offence is in a territory under its jurisdiction, unless the State extradites him or her or transfers him or her to another State or surrenders him or her to an international criminal tribunal whose jurisdiction it has recognised.
- 3. [The present instrument] does not exclude any criminal jurisdiction exercised in accordance with national laws.

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Article 10 [redacted]

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- 1. Upon being satisfied, after an examination of information available to it, that the circumstances so warrant, any State Party in whose territory a person alleged to have committed an enforced disappearance is present, shall take him or her into custody or take other legal measures to ensure his or her presence. The custody and other legal measures shall be as provided in the law of that State but may be continued only for such time as is necessary to enable any criminal or extradition proceedings to be instituted.
- 2. The State Party which has taken the measures referred to in paragraph 1 shall immediately make an investigation into the facts. It shall notify the States Parties which may have jurisdiction in accordance with paragraph 1 of article 9 of the measures which it has taken under paragraph 1 of this article, particularly of the fact that such person is in custody and of the circumstances which warrant his or her detention, the findings of its investigation and shall indicate to those States whether it intends to exercise jurisdiction.
- 3. Any person in custody pursuant to paragraph 1 shall be assisted in communicating immediately with the nearest appropriate representative of the State of which he or she is a national, or, if he or she is a stateless person, with the representative of the State where he or she usually resides.

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Article 11 [redacted]

- 1. The State Party in the territory under whose jurisdiction a person alleged to have committed any enforced disappearance is found shall, if it does not extradite him or her or transfer him or her to another State or surrender him or her to an international criminal tribunal whose jurisdiction it has recognised, submit the case to its competent authorities for the purpose of prosecution.
- 2. These authorities shall take their decision in the same manner as in the case of any ordinary offence of a serious nature under the law of that State. In the cases referred to in paragraph 2 of article 9, the standards of

evidence required for prosecution and conviction shall in no way be less stringent than those which apply in the cases referred to in paragraph 1 of article 9.

3. *(modified)* Any person charged with an offence of enforced disappearance shall be tried by an independent and impartial court, duly established by law, which guarantees the right to a fair trial/ [redacted]

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4. *(new)* Any person regarding whom proceedings are brought in connection with an enforced disappearance shall be guaranteed fair treatment at all stages of the proceedings [redacted]

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**Article 12 (modified)**

1. Each State Party shall ensure that any person who alleges that someone has been subjected to enforced disappearance has the right to complain to a competent authority, which thoroughly investigates the complaint immediately and impartially. Appropriate steps shall be taken, where necessary, to ensure that the complainant, witnesses, the relatives of the disappeared person and their defence counsel as well as those participating in the investigation are protected against all ill-treatment or intimidation as a consequence of the complaint or any evidence given.
2. Whenever there are reasonable grounds to believe that a person has been subjected to enforced disappearance, any State Party shall refer the matter to the authority referred to in paragraph 1 for it to launch an investigation, even if there has been no formal complaint.
3. *(new)* Each State Party shall ensure that the [redacted] authority referred to in paragraph 1:
  - a) has the necessary powers and resources to conduct the investigation, including the power to compel suspected perpetrators and witnesses to appear before it,
  - b) is communicated the necessary information for its investigation;
  - c) has access to any place where it is suspected that a disappeared person is present.
4. *(former 12.6, complemented)* Each State Party shall take the necessary measures to prevent and punish acts of such a kind as to inhibit the progress of investigations. It shall ensure, particularly, that persons suspected of having committed an enforced disappearance are not in a position to influence the progress of the investigations by means of pressure or acts of intimidation or reprisal against the complainant, the witnesses, the relatives of the disappeared person, the defence counsel as well as those participating in the investigation..
5. *(new)* The investigation pursuant to the present article shall be conducted in conformity with international principles for investigations on human rights violations, torture, search of disappeared persons, forensic examination and identification. [redacted]

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**Article 13 (modified)**

1. For purposes of extradition between States Parties, enforced disappearance shall be considered to be neither a political offence, nor an offence related to a political offence or an offence prompted by political motives. Consequently, a request for extradition based on enforced disappearance cannot be refused solely because it concerns a political offence, an offence related to a political offence or an offence prompted by political motives.
2. Enforced disappearance shall automatically be included among the extraditable offences in every extradition treaty concluded between States Parties before the entry into force [of the present instrument].
3. States Parties undertake to include the offence of enforced disappearance among the extraditable offences in every extradition treaty to be concluded subsequently between them.

4. If a State Party which makes extradition conditional on the existence of a treaty receives a request for extradition from another State Party with which it has no extradition treaty, it may consider [*the present instrument*] as the legal basis for extradition in respect of enforced disappearance.
5. Any State Party which does not make extradition conditional on the existence of a treaty shall recognise the offence of enforced disappearance as extraditable.
6. Extradition shall, in all cases, be subject to the conditions provided by the law of the requested State Party or by applicable extradition treaties, including, inter alia, conditions in relation to the minimum penalty requirement for extradition and the grounds upon which the requested State Party may refuse extradition or subject extradition to conditions.
7. No provision [*of the present instrument*] shall be interpreted as imposing an obligation on the requested State Party to extradite if that State has serious grounds to believe that the request was put forward for the purpose of prosecuting or punishing a person on account of his or her gender, race, religion, nationality, ethnic origin or political opinions, or that to allow the request would cause harm to that person for any one of those reasons.

**Article 14 (modified)**

1. States Parties shall provide one another the greatest measure of legal assistance in connection with any criminal investigation or proceedings brought in respect of enforced disappearance, including the supply of all evidence at their disposal that are necessary for the proceedings.
2. Such legal assistance is subject to the conditions provided by the domestic law of the requested State Party or by applicable treaties on mutual legal assistance, including, particularly, concerning the grounds on which the requested State Party may refuse to provide legal assistance or subject such assistance to conditions.

**Article 15 (modified)**

States Parties shall co-operate with one another and shall provide one another the greatest measure of assistance with a view to assisting victims of enforced disappearance, and in searching for, locating and releasing disappeared persons and, in the event of death, in their exhumation, identification and restitution of their remains.

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**Article 15 bis (former 21)**

1. No State Party shall expel, return ("*refouler*") or extradite a person to another State where there are substantial grounds for believing that he/she would be in danger of being subjected to an enforced disappearance.
2. For the purpose of determining whether there are such grounds, the competent authorities shall take into account all relevant considerations, including, where applicable, the existence in the State concerned of a consistent pattern of gross, flagrant or mass violations of human rights or of humanitarian law.

**Article 16 (reorganised and modified, see 16 bis below)**

1. Each State Party shall, under its law,
  - a) indicate those officials who are authorised to order deprivation of liberty;
  - b) establish the conditions under which such orders may be given;
  - c) guarantee that any person deprived of liberty shall be held solely in an officially recognised and controlled place;
  - d) guarantee access  of the judicial authorities to places of deprivation of liberty;

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- e) guarantee that any person deprived of liberty, in all circumstances, shall have the right to bring proceedings before a court which shall rule without delay on the lawfulness of the deprivation of liberty and order his or her release if that deprivation of liberty is unlawful.
2. Each State Party shall compile and maintain one or several official up-to-date registers of persons deprived of liberty. The information contained in these registers shall include at least the following :
- a) the identity of the person deprived of liberty,
  - b) the authority having decided the deprivation of liberty,
  - c) the authority controlling the deprivation of liberty,
  - d) the date and time of admission in the place of detention and the authority responsible for the place of detention,
  - e) The date and time of liberation or transfer to another place of detention, the destination and authority in charge of the transfer.

**Article 16 bis**

1. Each State Party [redacted] shall guarantee the person deprived of liberty, his or her relatives, their legal representatives, their counsel, and any person authorised by them, as well as any person able to claim a legitimate interest access, as a minimum, to the following information :
- a) the authority to which the person has been handed over;
  - b) the authority having decided the deprivation of liberty;
  - c) the authority controlling the person deprived of liberty;
  - d) the whereabouts of the person deprived of liberty, including in case of transfer;
  - e) date and place of release;
  - f) state of health and, in the event of death, circumstances and causes of the death.
2. Appropriate measures shall be taken, where necessary, to ensure the protection of the persons mentioned in paragraph 1 as well as the persons participating in the investigation against all ill-treatment; intimidation or any sanction on the grounds of the search of information concerning a person deprived of liberty.
3. *(new)* In order not to jeopardise the privacy of the persons concerned, the information transmitted pursuant to paragraph 1 of the present article shall [redacted] shall not be used for other purposes than the search of the person deprived of liberty.

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B5  
B5**Article 17**

Without prejudice to consideration of the lawfulness of a deprivation of liberty, States Parties shall guarantee to the relatives of the person deprived of liberty or of a disappeared person, their legal representatives, their counsel and any person authorised by the person deprived of liberty or the disappeared person or by his/her relatives, as well as any other person able to claim a legitimate interest the right to a prompt and effective remedy as a means of obtaining without delay the information referred to article 16 bis. This right to a remedy may not be suspended or restricted in any circumstances.

**Article 18 (complemented)**

Each State Party shall take the necessary measures to ensure that the release of persons shall proceed in a manner that allows reliable verification that they have actually been released. Each State Party shall also take



the necessary measures so that the physical integrity of all such persons and their ability to exercise fully their rights are assured at the time of release, without prejudice to the obligations to which such persons may be subject in accordance with the law.

**Article 19**

Each State Party shall take the necessary measures to prevent and punish the following actions:

- a) delaying or obstructing the remedy referred to in article 17;
- b) failure to the obligation to register every deprivation of liberty and registration of information which the official responsible of the register knows or should know to be inaccurate;
- c) refusal by an official to provide information on the deprivation of liberty of a person, or the provision of inaccurate information, even though the legal conditions for this information to be provided have been fulfilled.

**Article 20 (complemented)**

1. Each State Party shall ensure that the training of law enforcement personnel, civil or military, medical personnel, public officials and other persons who may be involved in the custody or treatment of any person deprived of liberty shall include the necessary education and information on the provisions [of the present instrument], in order to:
  - a) prevent the involvement of these officials in enforced disappearances;
  - b) draw attention to the importance of prevention and investigations concerning enforced disappearances;
  - c) ensure that the urgent need to resolve cases of enforced disappearance is acknowledged.
2. Each State shall prohibit orders or instructions commanding, authorising or encouraging enforced disappearance. Each State Party shall guarantee that a person refusing to obey such order will not be subject to sanction.
3. Each State Party shall take the necessary measures to ensure that the persons referred to in paragraph 1 who have reasons to believe that an enforced disappearance has occurred or is planned communicate the matter to their superior authorities and, when necessary, to competent authorities or organs with reviewing or remedial power.

**Article 21 (see 15 bis)**

**Article 22 (modified and complemented)**

1. For the purposes of [the present instrument], "victim" means the disappeared person and any natural person who has suffered direct harm as a result of that disappearance.
2. Each State Party shall take the necessary measures so that any victim knows the truth concerning the circumstances of the enforced disappearance and the fate of the disappeared person. It shall, in particular, take the necessary measures to search for, locate and release disappeared persons and, in the event of death, return the human remains.
3. Each State Party shall guarantee the right [to obtain]  prompt, fair and adequate reparation for the harm caused to victims of enforced disappearance.
4. The right to obtain reparation referred to in paragraph 3 includes [integral] compensation for material and non-material damage. It may also include, in particular:
  - a) restitution,

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- b) rehabilitation,
  - c) satisfaction,
  - d) restoration of honour and reputation.
5. Without prejudice to the obligation to continue the investigation until the fate of the disappeared person is elucidated, each State Party shall take the necessary measures with regard to the legal situation of the disappeared persons whose fate has not been elucidated and of their relatives in fields such as social protection, financial matters, custody of children and property rights.

**Article 23 (complemented)**

1. Each State Party shall take the necessary measures to prevent and to  which in a criminal court :
- a) the abduction or appropriation of children victims of enforced disappearance, children whose father or mother is victim of enforced disappearance or children born during the detention of their disappeared mother;
  - b) the falsification or suppression of documents attesting to the true identity of a child referred to in subparagraph (a).
2. Each State Party shall take the necessary measures to search for and identify children referred to in subparagraph (a) and (b).

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**Article 24**

State Parties  grant each other assistance in the search for, the identification and the location of children referred to in article 23.

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**Article 25**

1. When a child who has been abducted or appropriated in the circumstances described in article 23, paragraph (a), is found on the territory of a State party, the question of the child's return to his or her family of origin shall be resolved either under the domestic law of that State party, or under the bilateral or multilateral agreement which that State has entered into with another State in which the family of origin lives.
2. In all cases, the best interests of the child are a primary consideration, and a child who is capable of judgement shall have the right to express his or her views freely and to have them given due weight in the light of his or her age and level of maturity.

Part II

*Article 0 (new)*

1. A [monitoring body] shall be established to assist, as appropriate, in ensure the implementation of the [present instrument] and the respect by State Parties of their commitments. [A monitoring body] [redacted]
2. When carrying out their While exercising their mandate [redacted] he members of the [monitoring body] shall be entitled to privileges and immunities [redacted] as laid down in the Convention on Privileges and Immunities of the United Nations.
3. Each State Party shall undertake to co-operate with the [monitoring body] and to grant assistance to its members in the exercise of their mandate.

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*Article II-A (modified)*

1. Each State Party shall submit to [the monitoring body], through the Secretary-General of the United Nations, a report on the measures taken [redacted] to give effect to its undertakings under [the present instrument], within one year after the entry into force [of the present instrument] in respect of the State concerned.
2. The Secretary-General of the United Nations shall transmit the reports to all States Parties.
3. Each report shall be considered by [the monitoring body], which may make such comments, observations, recommendations and warnings as it considers appropriate. The State Party concerned shall receive communication of such comments, observations, recommendations and warnings, to which that State may respond, on its own initiative or at the request [of the monitoring body].

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*Article II-B (modified)*

1. Each State Party or the relatives of a disappeared person, their legal representatives, their counsel, and any person authorised by them, as well as any person able to claim a legitimate interest may submit a request to [the monitoring body] to seek and find a person who has disappeared within the meaning of article 1.
2. Should [the monitoring body] consider that a request submitted under paragraph 1 is not manifestly unfounded, that it does not constitute an abuse of the right of submission and that it is not incompatible with the provisions [of the present instrument] [the monitoring body] shall request any State Party to provide information on the situation of that person, within a time-limit set by [the monitoring body].
3. In the light of the response provided by the State Party concerned in accordance with paragraph 2, [the monitoring body] shall make a recommendation or [redacted] give a warning [redacted] to that State. [The monitoring body] may also [instruct] [urge] that State to take appropriate measures and to report to it on those measures, within a time-limit set by [the monitoring body].
4. [The monitoring body] shall establish its conclusions and forward them to any State Party which has been requested to provide information and to the author of the request referred to in paragraph 1.
5. The procedure under this article is confidential.

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*Article II-C (modified) [redacted]*

[redacted]

1. If [the monitoring body] considers that a visit to the territory of a State Party under whose jurisdiction a disappeared person could be is essential in order to respond to the request submitted to it in accordance with Article II-B, [the monitoring body] may request one or more of its members to undertake an investigation mission and to report back without delay. The member or members [of the monitoring body] conducting the mission may be accompanied if necessary by interpreters, secretaries and experts. No member of the delegation, with the exception of the interpreters, may be a national of the State Party to which the visit is to be made.
2. [The monitoring body] shall notify the State Party concerned in writing of its intention to organise an investigation mission, indicating the composition of the delegation. The State Party shall inform [the monitoring body] without delay of its agreement or opposition to the investigation mission in the territory over which it has jurisdiction.
3. If the State Party agrees to the investigation mission, it shall provide [the monitoring body] with all the necessary facilities to enable the mission to be carried out. [The monitoring body] may, inter alia:
  - a) make such visits as it may consider necessary to search for and find the person who has disappeared;
  - b) make contact freely with any person whom it believes may provide useful information on the fate of the person who has disappeared;
  - c) have the person who has allegedly disappeared brought to it and discuss with him or her in private.
4. [The monitoring body] shall inform the following of the findings of the investigation mission:
  - a) the State Party in whose territory the investigation mission was carried out;
  - b) the author of the request referred to in paragraph 1 of article II-B.
5. The procedure under this article is confidential.

**Article II-C bis (new)**

1.  [The monitoring body] considers ~~s~~ a communication presented by the relatives of a disappeared person, their legal representatives, their counsel, and any person authorised by them, as well as any person able to claim a legitimate interest ~~alleging grave breaches~~ in the implementation of the commitments taken under the [present instrument]  unless
  - a) the communication lacks sufficient motivation or is obviously unfounded;
  - b) the same matter is being examined under another procedure of international investigation or settlement;
  - c) the complainant has not exhausted all available effective domestic remedies.
2. If the [the monitoring body] assesses that the communication fulfils the conditions under paragraph 1, [the monitoring body] transmits the communication to the State Party concerned and requests this State Party to provide observations and comments within a time-limit set by the [monitoring body].
3. On the basis of the answer of the State Party, [the monitoring body] may decide :
  - a) to close the matter of the communication;
  - b) to continue its examination;
  - c) to make a recommendation to the State Party.
4. The procedure under the present article comes to an end when the [monitoring body] communicates the conclusions of its investigation to the State Party and to the author of the communication.

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5. The procedure under this article is confidential.

*Article II-C ter (new)*

If the [monitoring body] receives reliable information which appears to it to contain well-founded indication that enforced disappearance is being practised in a systematic or general manner in the territory of a State Party, the [monitoring body] may seize the Secretary General of the United Nations, after having enquired with the State Party concerned about any pertinent information and the measures taken to put an end immediately to such practises.

*Article II-D (integrated in II-O§2)*

*Article II-E (complemented)*

1. [The monitoring body] has competence solely in respect of deprivations of liberty which commenced after the entry into force [of this instrument].
2. Should a State become party to [this instrument] after its entry into force, the obligations of that State towards [the monitoring body] concern only deprivations of liberty which commenced after the entry into force [of this instrument] in respect of the State concerned.
3. (new) Each State Party may at any time declare that, in its own respect, it recognises that the [monitoring body] has competence in respect of enforced disappearances which commenced before entry into force of the [present instrument].

*Article II-F (modified)*

1. The [monitoring body] shall submit an annual report on its activities [under the present instrument] to the States Parties and to the General Assembly of the United Nations.
2. (new) If, in the procedures under articles II-B and II-C bis, a State Party concerned obviously refuses to cooperate or if the procedures yield to no effective result, the [monitoring body] may decide to make an observation public, with regard to the matter or the situation at stake.
3. (new) The State Party concerned shall be informed in advance of the publication of an observation under paragraph 2 of the present article. This observation shall be published together with the answers, comments or observations transmitted by the State Party within the time-limit set by the [monitoring body].

**PART III****Article III-O (former 2.2)**

[*The present instrument*] is without prejudice to any other international instrument or national legislation that does or may contain provisions of broader application.

**Article III-O bis (new)**

Personal data, including medical or genetic data, which are transmitted in the framework of the search of a disappeared person shall not be used for other purposes than that of the search of the disappeared person.

**Article III-A**

1. [*The present instrument*] is open for signature by [...].
2. [*the present instrument*] is subject to ratification. Instruments of ratification shall be deposited with the Secretary-General of the United Nations.
3. [*The present instrument*] is open to accession by [...]. Accession shall be effected by the deposit of an instrument of accession with the Secretary-General of the United Nations.

**Article III-B**

1. [*The present instrument*] shall enter into force on the thirtieth day after the date of deposit of the [*Xth*] instrument of ratification or accession.
2. For each State ratifying [*the present instrument*] or acceding to it after the deposit of the [*Xth*] instrument of ratification or accession, [*the present instrument*] shall enter into force on the thirtieth day after the date of deposit of its own instrument of ratification or accession.

**Article III-C**

The Secretary-General of the United Nations shall inform all States Members of the United Nations and all States which have signed [*the present instrument*] or acceded to it of the following:

- a) Signatures, ratifications and accessions under article III-A;
- b) The date of entry into force of [*the present instrument*] under article III-B.

**Article III-D**

The provisions of [*the present instrument*] shall apply, without limitation or exception, to all parts of federal States.

**Article III-D bis (new)**

1. Any State, upon signature, ratification or accession, may declare that [*the present instrument*] will be extended to any territory for which it is responsible with regard to international relations. Such a declaration will take effect when [*the present instrument*] enters into force for the State concerned.
2. At any time, such an extension may be notified to the Secretary General of the United Nations and will take effect (...) days after it has been received by the Secretary General.

**Article III-E (integrated in I bis, paragraph 2)****Article III-F**

[*The present instrument*] is without prejudice to the provisions of international humanitarian law, including the obligations of the High Contracting Parties to the four Geneva Conventions of 12 August 1949 and the Additional Protocols thereto of 8 June 1977, or the option available to any State to authorise the International Committee of the Red Cross to visit places of detention in cases for which international humanitarian law does not provide.

**Article III-G**

1. Any State Party to [*the present instrument*] may propose an amendment and file it with the Secretary-General of the United Nations. The Secretary-General shall thereupon communicate the proposed amendment to the States Parties to [*the present instrument*] with a request that they notify him or her whether they favour a conference of States Parties for the purpose of considering and voting upon the proposal. In the event that within four months from the date of such communication at least one third of the States Parties favours such a conference, the Secretary-General shall convene the conference under the auspices of the United Nations. Any amendment adopted by a majority of two thirds of the States Parties present and voting at the conference shall be submitted by the Secretary-General to all the States Parties for acceptance.
2. An amendment adopted in accordance with paragraph 1 of this article shall enter into force when two thirds of the State Parties to [*the present instrument*] have accepted it in accordance with their respective constitutional processes.
3. When amendments enter into force, they shall be binding on those States Parties which have accepted them, other States Parties still being bound by the provisions of [*the present instrument*] and any earlier amendments which they have accepted.

**Article III-H**

1. [*The present instrument*], of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations.
2. The Secretary-General of the United Nations shall transmit certified copies of [*the present instrument*] to all States.

[Redacted] B5

21/06/04 - Traduction de courtoisie

Indications such as "new", "complemented", etc, are intended to ease the comparison with document E/CN.4/2004/WG.22/WP.1/Rev.1 of 1 december 2003.

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Preamble (new)

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The States Parties to the [present instrument] [Redacted]

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Recalling the Declaration on the Protection of all Persons from Enforced Disappearances adopted by the General Assembly of the United Nations in its resolution 47/133 of 18 December 1992;

Conscious of the extreme gravity of enforced disappearance which constitutes a crime and, in certain circumstances, a crime against humanity;

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Determined to fight against the impunity of the crime of enforced disappearance;

Affirming the right of victims to know the truth about the circumstances of an enforced disappearance and the fate of the disappeared person;

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Have agreed as follows :

**Parti**

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**Article 1**

For the purposes of [the present instrument] enforced disappearance is considered to be the deprivation of a person's liberty, in whatever form, committed by agents of the State or by persons or groups of persons acting with the authorization, support or acquiescence of the State, followed by refusal to acknowledge the deprivation of liberty or concealment of the fate or whereabouts of the disappeared person, which places such person outside the protection of the law

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**Article Ibis (new)**

1. No one shall be subjected to enforced disappearance.
2. (from former ~~B-E~~) No circumstances whatsoever, whether a state of war or threat of war, internal political instability or any other state of emergency, may be invoked as a justification of enforced disappearance.

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**Article 2 (modified) creates stand-alone crime and number 2 addresses non-state actors**

1. Each State Party shall take the necessary measures to ensure that enforced disappearance, as defined in article 1, constitutes an offence under its criminal law.
2. Each State Party shall take equivalent measures when persons or groups of persons acting without the authorization, support or acquiescence of the State are responsible for dealings defined in article 1.

**Article 2 bis (new)**

The widespread or systematic practice of enforced disappearance constitutes a crime against humanity and shall attract the consequences provided for under international law.

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**Article 3 (reorganised)**

1. Each State Party shall take the necessary measures to pursue and punish those who commit or contribute to the commission of an enforced disappearance.

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2. The following shall be punished :



- a) the perpetrators of and accessories in an enforced disappearance.
- b) the attempt to commit an enforced disappearance,
- c) the conspiracy to commit an enforced disappearance,



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3. The following shall also be punished :

a) persons who order or encourage the commission or attempted commission of such an offence, and persons who facilitate its commission or attempted commission by aiding, abetting or otherwise assisting in it, including providing the means for its commission or attempted commission, shall be punished,

b) a superior officer who:



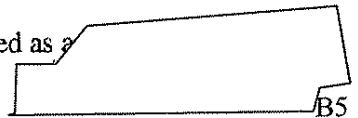
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(i) either knew, or consciously disregarded information which clearly indicated, that subordinates were committing or about to commit an enforced disappearance, and who

(ii) failed to take all necessary and reasonable measures within his or her power to prevent or repress the enforced disappearance or to submit the matter to the competent authorities for investigation and prosecution.

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4. (former 6) An order of a superior officer or a public authority may not be invoked as a justification of an enforced disappearance.



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Article 4



1. Each State Party shall make enforced disappearance punishable by appropriate penalties which take into account its extreme seriousness.

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2. Each State Party may establish:

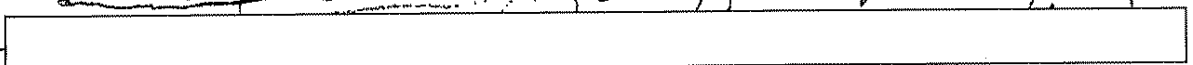
a) mitigating circumstances, inter alia for persons who, having been involved in the commission of an enforced disappearance, effectively contribute to bringing the disappeared person forward alive, or contribute to elucidating cases of enforced disappearance or identifying the perpetrators of an enforced disappearance.

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b) (complemented) Aggravating circumstances, inter alia in the event of death of the victim or the commission of an enforced disappearance in respect of pregnant women, minors or other particularly vulnerable persons.

*no specific provisions; elderly; handicapped*

Articles



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Without prejudice to article 2 bis,



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1. Each State Party which applies a statute of limitations in respect of enforced disappearances shall take the necessary measures to ensure that the term of limitation for criminal proceedings :

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a) is of long duration and proportionate to the extreme seriousness of the offence;

b) shall commence from the moment when the offence of enforced disappearance ceases and the fate of the disappeared person is established.

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2. The statute of limitations for criminal proceedings under paragraph 1 shall be suspended in a State Party as long as any victim of enforced disappearance does not have an effective remedy.

Article 6 (see 3,4)

Article 7 (deleted)

Article 8 (deleted)

Article 9 (reorganised and modified)

1. Each State Party shall take such measures as may be necessary to establish its jurisdiction over an enforced disappearance:
  - a) when the offence is committed within any territory under its jurisdiction or on board a vessel flying its flag or an aircraft registered in accordance with its law at the time of the facts;
  - b) when the alleged perpetrator of the offence is one of its nationals or a stateless person habitually residing in its territory;
  - c) when the disappeared person is one of its nationals and the State deems it appropriate to do so. [redacted]
2. Each State Party shall also take the necessary measures to establish its jurisdiction over an enforced disappearance when the alleged perpetrator of the offence is in a territory under its jurisdiction, unless the State extradites him or her or transfers him or her to another State or surrenders him or her to an international criminal tribunal whose jurisdiction it has recognised. [redacted]
3. [The present instrument] does not exclude any criminal jurisdiction exercised in accordance with national laws. [redacted]

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Article 10

1. Upon being satisfied, after an examination of information available to it, that the circumstances so warrant, any State Party in whose territory a person alleged to have committed an enforced disappearance is present, shall take him or her into custody or take other legal measures to ensure his or her presence. The custody and other legal measures shall be as provided in the law of that State but may be continued only for such time as is necessary to enable any criminal or extradition proceedings to be instituted.
2. The State Party which has taken the measures referred to in paragraph 1 shall immediately make an investigation into the facts. It shall notify the States Parties which may have jurisdiction in accordance with paragraph 1 of article 9 of the measures which it has taken under paragraph 1 of this article, particularly of the fact that such person is in custody and of the circumstances which warrant his or her detention, the findings of its investigation and shall indicate to those States whether it intends to exercise jurisdiction.
3. Any person in custody pursuant to paragraph 1 shall be assisted in communicating immediately with the nearest appropriate representative of the State of which he or she is a national, or, if he or she is a stateless person, with the representative of the State where he or she usually resides.

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Article 11

1. The State Party in the territory under whose jurisdiction a person alleged to have committed any enforced disappearance is found shall, if it does not extradite him or her or transfer him or her to another State or surrender him or her to an international criminal tribunal whose jurisdiction it has recognised, submit the case to its competent authorities for the purpose of prosecution.
2. These authorities shall take their decision in the same manner as in the case of any ordinary offence of a serious nature under the law of that State. In the cases referred to in paragraph 2 of article 9, the standards of evidence required for prosecution and conviction

shall in no way be less stringent than those which apply in the cases referred to in paragraph 1 of article 9.

- 3. (modified) Any person charged with an offence of enforced disappearance shall be tried by an independent and impartial court, duly established by law, which guarantees the right to a fair trial.
- 4. (new) Any person regarding whom proceedings are brought in connection with an enforced disappearance shall be guaranteed fair treatment at all stages of the proceedings.

Article 12 (modified)

[Redacted]

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1. Each State Party shall ensure that any person who alleges that someone has been subjected to enforced disappearance has the right to complain to a competent authority, which thoroughly investigates the complaint immediately and impartially. Appropriate steps shall be taken, where necessary, to ensure that the complainant, witnesses, the relatives of the disappeared person and their defence counsel as well as those participating in the investigation are protected against all ill-treatment or intimidation as a consequence of the complaint or any evidence given.

[Redacted]

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2. Whenever there are reasonable grounds to believe that a person has been subjected to enforced disappearance, any State Party shall refer the matter to the authority referred to in paragraph 1 for it to launch an investigation, even if there has been no formal complaint.

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3. (new) Each State Party shall ensure that the authority referred to in paragraph 1:

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a) has the necessary powers and resources to conduct the investigation, including the power to compel suspected perpetrators and witnesses to appear before it,

b) is communicated the necessary information for its investigation;

[Redacted]

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c) has access to any place where it is suspected that a disappeared person is present.

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4. (former 12.6, complemented) Each State Party shall take the necessary measures to prevent and punish acts of such a kind as to inhibit the progress of investigations. It shall ensure, particularly, that persons suspected of having committed an enforced disappearance are not in a position to influence the progress of the investigations by means of pressure or acts of intimidation or reprisal against the complainant, the witnesses, the relatives of the disappeared person, the defence counsel as well as those participating in the investigation..

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5. (new) The investigation pursuant to the present article shall be conducted in conformity with international principles for investigations on human rights violations, torture, search of disappeared persons, forensic examination and identification.

[Redacted]

Article 13 (modified)

[Redacted]

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1. For purposes of extradition between States Parties, enforced disappearance shall be considered to be neither a political offence, nor an offence related to a political offence or an offence prompted by political motives. Consequently, a request for extradition based on enforced disappearance cannot be refused solely because it concerns a political offence, an offence related to a political offence or an offence prompted by political motives.

2. Enforced disappearance shall automatically be included among the extraditable offences in every extradition treaty concluded between States Parties before the entry into force [of the

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[Redacted]

present instrument]

3. States Parties undertake to include the offence of enforced disappearance among the extraditable offences in every extradition treaty to be concluded subsequently between them.
4. If a State Party which makes extradition conditional on the existence of a treaty receives a request for extradition from another State Party with which it has no extradition treaty, it may consider [the present instrument] as the legal basis for extradition in respect of enforced disappearance.
5. Any State Party which does not make extradition conditional on the existence of a treaty shall recognise the offence of enforced disappearance as extraditable.
6. Extradition shall, in all cases, be subject to the conditions provided by the law of the requested State Party or by applicable extradition treaties, including, inter alia, conditions in relation to the minimum penalty requirement for extradition and the grounds upon which the requested State Party may refuse extradition or subject extradition to conditions.
7. No provision [of the present instrument] shall be interpreted as imposing an obligation on the requested State Party to extradite if that State has serious grounds to believe that the request was put forward for the purpose of prosecuting or punishing a person on account of his or her gender, race, religion, nationality, ethnic origin or political opinions, or that to allow the request would cause harm to that person for any one of those reasons.

Article 14 (modified)

1. States Parties shall provide one another the greatest measure of legal assistance in connection with any criminal investigation or proceedings brought in respect of enforced disappearance, including the supply of all evidence at their disposal that are necessary for the proceedings.
2. Such legal assistance is subject to the conditions provided by the domestic law of the requested State Party or by applicable treaties on mutual legal assistance, including, particularly, concerning the grounds on which the requested State Party may refuse to provide legal assistance or subject such assistance to conditions.

Article 15 (modified)

States Parties shall co-operate with one another and shall provide one another the greatest measure of assistance with a view to assisting victims of enforced disappearance, and in searching, locating and releasing disappeared persons and, in the event of death, in their exhumation, identification and restitution of their remains.

Article 15 bis (former 21)

1. No State Party shall expel, return (refouler) or extradite a person to another State where there are substantial grounds for believing that he/she would be in danger of being subjected to an enforced disappearance.
2. For the purpose of determining whether there are such grounds, the competent authorities shall take into account all relevant considerations, including, where applicable, the existence in the State concerned of a consistent pattern of gross, flagrant or mass violations of human rights or of humanitarian law.

Article 16 (reorganised and modified, see 16 bis below)

1. Each State Party shall, under its law,

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- a) indicate those officials who are authorised to order deprivation of liberty; .B5
- b) establish the conditions under which such orders may be given;
- c) guarantee that any person deprived of liberty shall be held solely in an officially recognised and controlled place;
- d) guarantee access of the judicial authorities to places of deprivation of liberty; B5
- e) guarantee that any person deprived of liberty, in all circumstances, shall have the right to bring proceedings before a court which shall rule without delay on the lawfulness of the deprivation of liberty and order his or her release if that deprivation of liberty is unlawful.

2. Each State Party shall compile and maintain one or several official up-to-date registers of persons deprived of liberty. The information contained in these registers shall include at least the following :
- a) the identity of the person deprived of liberty,
  - b) the authority having decided the deprivation of liberty,
  - c) the authority controlling the deprivation of liberty,
  - d) the date and time of admission in the place of detention and the authority responsible for the place of detention,
  - e) The date and time of liberation or transfer to another place of detention, the destination and authority in charge of the transfer.

*Article 16 bis*

1. Each State Party shall guarantee the person deprived of liberty, his or her relatives, their legal representatives, their counsel, and any person authorised by them, as well as any person able to claim a legitimate interest access, as a minimum, to the following information:

- a) the authority to which the person has been handed over;
  - b) the authority having decided the deprivation of liberty;
  - c) the authority controlling the person deprived of liberty;
  - d) the whereabouts of the person deprived of liberty, including in case of transfer;
  - e) date and place of release;
  - f) state of health and, in the event of death, circumstances and causes of the death.
2. Appropriate measures shall be taken, where necessary, to ensure the protection of the persons mentioned in paragraph 1 as well as the persons participating in the investigation against all ill-treatment; intimidation or any sanction on the grounds of the search of information concerning a person deprived of liberty.
3. (new) In order not to jeopardise the privacy of the persons concerned, the information

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transmitted pursuant to paragraph 1 of the present article shall be adequate and pertinent with respect to the purpose pursued and shall not be used for other purposes [redacted] the search of the person deprived of liberty. [redacted]

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Article 17

Without prejudice to consideration of the lawfulness of a deprivation of liberty, States Parties shall guarantee to the relatives of the person deprived of liberty or of a disappeared person, their legal representatives, their counsel and any person authorised by the person deprived of liberty or the disappeared person or by his/her relatives, as well as any other person able to claim a legitimate interest the right to a prompt and effective remedy as a means of obtaining without delay the information referred to article 16 bis. This right to a remedy may not be suspended or restricted in any circumstances.

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Article 18 (complemented)

Each State Party shall take the necessary measures to ensure that the release of persons shall proceed in a manner that allows reliable verification that they have actually been released. Each State Party shall also take the necessary measures so that the physical integrity of all such persons and their ability to exercise fully their rights are assured at the time of release, without prejudice to the obligations to which such persons may be subject in accordance with the law.

Article 19

Each State Party shall take the necessary measures to prevent and punish the following actions:

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- a) delaying or obstructing the remedy referred to in article 17;
- b) failure to the obligation to register every deprivation of liberty and registration of information which the official responsible of the register knows or should know to be inaccurate;
- c) refusal by an official to provide information on the deprivation of liberty of a person, or the provision of inaccurate information, even though the legal conditions for this information to be provided have been fulfilled.

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Article 20 (complemented)

1. Each State Party shall ensure that the training of law enforcement personnel, civil or military, medical personnel, public officials and other persons who may be involved in the custody or treatment of any person deprived of liberty shall include the necessary education and information on the provisions [of the present instrument] , in order to:

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- a) prevent the involvement of these officials in enforced disappearances;
- b) draw attention to the importance of prevention and investigations concerning enforced disappearances;
- c) ensure that the urgent need to resolve cases of enforced disappearance is acknowledged.

2. Each State shall prohibit orders or instructions commanding, authorising or encouraging enforced disappearance. Each State Party shall guarantee that a person refusing to obey such order will not be subject to sanction.

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- 3. Each State Party shall take the necessary measures to ensure that the persons referred to in paragraph 1 who have reasons to believe that/act enforced disappearance has occurred or is planned communicate the matter to their superior authorities and, when necessary, to competent authorities or organs with reviewing or remedial power.

*Article 21 (see 15 bis)*

*Article 22 (modified and complemented)*

- 1. For the purposes of [the present instrument], "victim" means the disappeared person and any natural person who has suffered direct harm as a result of that disappearance.
- 2. Each State Party shall take the necessary measures so that any victim knows the truth concerning the circumstances of the enforced disappearance and the fate of the disappeared person. It shall, in particular, take the necessary measures to search for, locate and release disappeared persons and, in the event of death, return the human remains.
- 3. Each State Party shall guarantee the right to obtain prompt, fair and adequate reparation for the harm caused to victims of enforced disappearance.
- 4. The right to obtain reparation referred to in paragraph 3 includes integral compensation for material and non-material damage. It may also include, in particular:
  - a) restitution,
  - b) rehabilitation,
  - c) satisfaction,
  - d) restoration of honour and reputation.
- 5. Without prejudice to the obligation to continue the investigation until the fate of the disappeared person is elucidated, each State Party shall take the necessary measures with regard to the legal situation of the disappeared persons who's fate has not been elucidated and of their relatives in fields such as social protection, financial matters, custody of children and property rights.

*Article 23 (complemented)*

- 1. Each State Party shall take the necessary measures to prevent and punish in a criminal court:
  - a) the abduction or appropriation of children victims of enforced disappearance, children whose father or mother is victim of enforced disappearance or children born during the detention of their disappeared mother;
  - b) the falsification or suppression of documents attesting to the true identity of a child referred to in subparagraph (a).
- 2. Each State Party shall take the necessary measures to search for and identify children referred to in subparagraph (a) and (b).

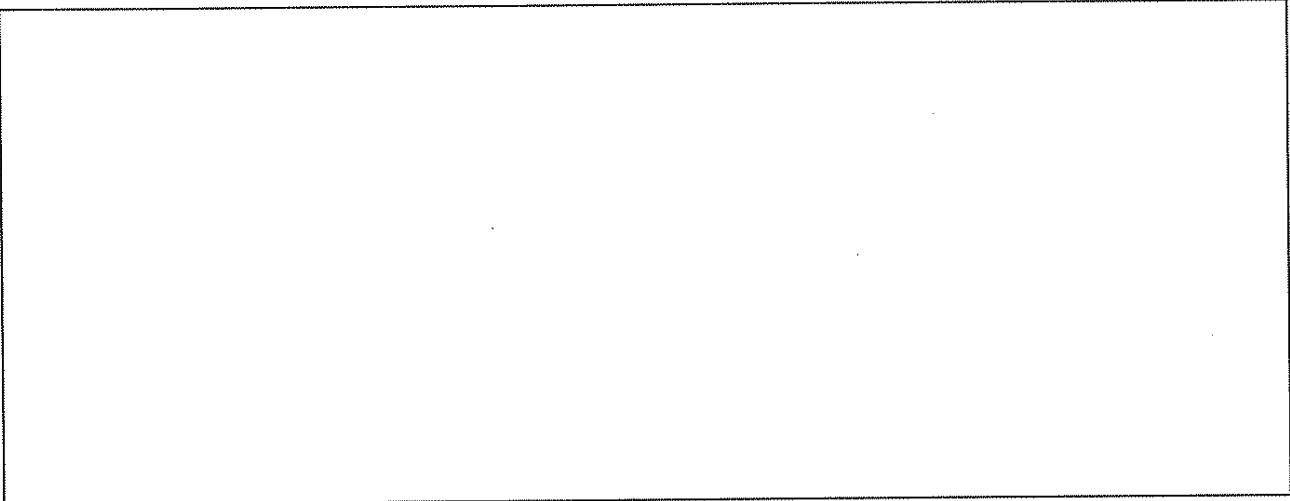
*Article 24*

State Parties grant each other assistance in the search for, the identification and the location of children referred to in article 23.

*Article 25*

1. When a child who has been abducted or appropriated in the circumstances described in article 23, paragraph (a), is found on the territory of a State party, the question of the child's return to his or her family of origin shall be resolved either under the domestic law of that State party, or under the bilateral or multilateral agreement which that State has entered into with another State in which the family of origin lives.
2. In all cases, the best interests of the child are a primary consideration, and a child who is capable of judgement shall have the right to express his or her views freely and to have them given due weight in the light of his or her age and level of maturity.





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Article 0

(new)

1. A [monitoring body] shall ensure the implementation of the \present instrument] and the respect by State Parties of their commitments.
2. While exercising their mandate, the members of the [monitoring body] shall be entitled to privileges and immunities as laid down in the Convention on Privileges and Immunities of the United Nations.
3. Each State Party shall undertake to co-operate with the [monitoring body] and to grant assistance to its members in the exercise of their mandate.

Article II-A (modified)



1. Each State Party shall submit to [the monitoring body], through the Secretary-General of the United Nations, a report on the measures taken to give effect to its undertakings under [the present instrument], within one year] after the entry into force [of the present instrument] in respect of the State concerned.
2. The Secretary-General of the United Nations shall transmit the reports to all States Parties.
3. Each report shall be considered by [the monitoring body], which may make such comments, observations, recommendations and warnings as it considers appropriate. The State Party concerned shall receive communication of such comments, observations, recommendations and warnings, to which that State may respond, on its own initiative or at the request [of the monitoring body].

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Article II-B (modified)



1. Each State Party or the relatives of a disappeared person, their legal representatives, their counsel, and any person authorised by them, as well as any person able to claim a legitimate interest may submit a request to [the monitoring body] to seek and find a person who has disappeared within the meaning of article I.
2. Should [the monitoring body] consider that a request submitted under paragraph 1 is not manifestly unfounded, that it does not constitute an abuse of the right of submission and that it is not incompatible with the provisions [of the present instrument] [the monitoring body] shall request any State Party to provide information on the situation of that person, within a time-limit set by [the monitoring body].

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3. In the light of the response provided by the State Party concerned in accordance with paragraph 2, [the monitoring body] shall make a recommendation or give a warning to that State. [The monitoring body] may also instruct that State to take appropriate measures and to report to it on those measures, within a time-limit set by [the monitoring body],
4. [The monitoring body] shall establish its conclusions and forward them to any State Party which has been requested to provide information and to the author of the request referred to in paragraph 1.
5. The procedure under this article is confidential.

Article II-C (modified)

1. If [the monitoring body] considers that a visit to the territory of a State Party under whose jurisdiction a disappeared person could be is essential in order to respond to the request submitted to it in accordance with Article H-B, [the monitoring body] may request one or more of its members to undertake an investigation mission and to report back without delay. The member or members [of the monitoring body] conducting the mission may be accompanied if necessary by interpreters, secretaries and experts. No member of the delegation, with the exception of the interpreters, may be a national of the State Party to which the visit is to be made.
2. [The monitoring body] shall notify the State Party concerned in writing of its intention to organise an investigation mission, indicating the composition of the delegation. The State Party shall inform [the monitoring body] without delay of its agreement or opposition to the investigation mission in the territory over which it has jurisdiction.

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3. If the State Party agrees to the investigation mission, it shall provide [the monitoring body] with all the necessary facilities to enable the mission to be carried out. [The monitoring body] may, inter alia:

- a) make such visits as it may consider necessary to search for and find the person who has disappeared;
  - b) make contact freely with any person whom it believes may provide useful information on the fate of the person who has disappeared;
  - c) have the person who has allegedly disappeared brought to it and discuss with "him" or her in private.
4. [The monitoring body] shall inform the following of the findings of the investigation mission:
    - a) the State Party in whose territory the investigation mission was carried out;
    - b) the author of the request referred to in paragraph 1 of article II-B.
  5. The procedure under this article is confidential.

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Article II-C bis (new)

1. [The monitoring body] considers a communication presented by the relatives of a disappeared person, their legal representatives, their counsel, and any person authorised by them, as well as any person able to claim a legitimate interest alleging grave breaches in the implementation of the commitments taken under the [present instrument] unless
  - a) the communication lacks sufficient motivation or is obviously unfounded;
  - b) the same matter is being examined under another procedure of international investigation or

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settlement;

- c) the complainant has not exhausted all available effective domestic remedies.
2. If the *[the monitoring body]* assesses that the communication fulfils the conditions under paragraph 1, *[the monitoring body]* transmits the communication to the State Party concerned and requests this State Party to provide observations and comments within a time-limit set by the *[monitoring body]*.
3. On the basis of the answer of the State Party, *[the monitoring body]* may decide :
- to close the matter of the communication;
  - to continue its examination;
  - to make a recommendation to the State Party.
4. The procedure under the present article comes to an end when the *[monitoring body]* communicates the conclusions of its investigation to the State Party and to the author of the communication.

5. The procedure under this article is confidential.

*Article II-C ter (new)*

If the *[monitoring body]* receives reliable information which appears to it to contain well-founded indication that enforced disappearance is being practised in a systematic or general manner in the territory of a State Party, the *[monitoring body]* may seize the Secretary General of the United Nations, after having enquired with the State Party concerned about any pertinent information and the measures taken to put an end immediately to such practises.

*Article II-D (integrated in II-O§2)*

*Article II-E (complemented)*

- [The monitoring body]* has competence solely in respect of deprivations of liberty which commenced after the entry into force *[of this instrument]*.
- Should a State become party to *[this instrument]* after its entry into force, the obligations of that State towards *[the monitoring body]* concern only deprivations of liberty which commenced after the entry into force *[of this instrument]* in respect of the State concerned.
- (new)* Each State Party may at any time declare that, in its own respect, it recognises that the *[monitoring body]* has competence in respect of enforced disappearances which commenced before entry into force of the *[present instrument]*.

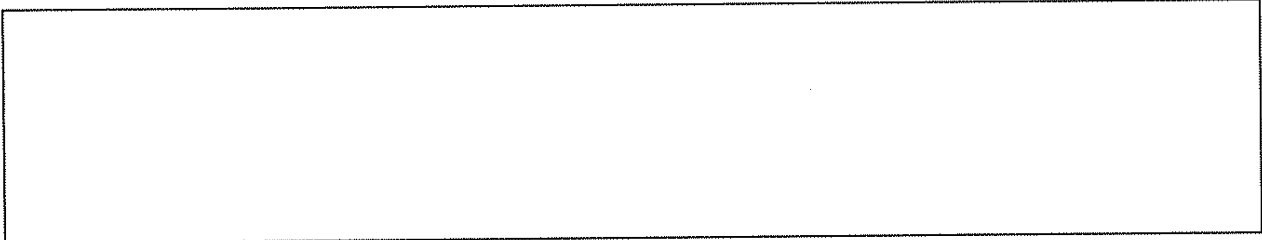
*Article II-F (modified)*

- The *[monitoring body]* shall submit an annual report on its activities *[under the present instrument]* to the States Parties and to the General Assembly of the United Nations.
- (new)* If, in the procedures under articles II-B and II-C bis, a State Party concerned obviously refuses to cooperate or if the procedures yield to no effective result, the *[monitoring body]* may decide to make an observation public, with regard to the matter or the situation at stake.

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3. *(new)* The State Party concerned shall be informed in advance of the publication of an observation under paragraph 2 of the present article. This observation shall be published together with the answers, comments or observations transmitted by the State Party within the time-limit set by the *[monitoring body]*.

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*Article III-O (former 2.2)*

*[The present instrument]* is without prejudice to any other international instrument or national legislation that does or may contain provisions of broader application.

*Article III-O bis (new)*

Personal data, including medical or genetic data, which are transmitted in the framework of the search of a disappeared person shall not be used for other purposes than that of the search of the disappeared person.

*Article III-A*

1. *[The present instrument]* is open for signature by [...].
2. *[the present instrument]* is subject to ratification. Instruments of ratification shall be deposited with the Secretary-General of the United Nations.
3. *[The present instrument]* is open to accession by [...]. Accession shall be effected by the deposit of an instrument of accession with the Secretary-General of the United Nations.

*Article III-B*

1. *[The present instrument]* shall enter into force on the thirtieth day after the date of deposit of the *[Xth]* instrument of ratification or accession.
2. For each State ratifying *[the present instrument]* or acceding to it after the deposit of the *[Xth]* instrument of ratification or accession, *[the present instrument]* shall enter into force on the thirtieth day after the date of deposit of its own instrument of ratification or accession.

*Article III-C*

The Secretary-General of the United Nations shall inform all States Members of the United Nations and all States which have signed *[ the present instrument ]* or acceded to it of the following:

- a) Signatures, ratifications and accessions under article III-A;
- b) The date of entry into force of *[the present instrument]* under article III-B.

*Article III-D*

The provisions of *[the present instrument]* shall apply, without limitation or exception, to all parts of federal States.

*Article III-D bis (new)*

1. Any State, upon signature, ratification or accession, may declare that *[the present instrument]*

will be extended to any territory for which it is responsible with regard to international relations. Such a declaration will take effect when *[the present instrument]* enters into force for the State concerned.

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2. At any time, such an extension may be notified to the Secretary General of the United Nations and will take effect (...) days after it has been received by the Secretary General.

*Article III-E (integrated in I bis, paragraph 2)*

*Article III-F*

*[The present instrument]* is without prejudice to the provisions of international humanitarian law, including the obligations of the High Contracting Parties to the four Geneva Conventions of 12 August 1949 and the Additional Protocols thereto of 8 June 1977, or the option available to any State to authorise the International Committee of the Red Cross to visit places of detention in cases for which international humanitarian law does not provide.

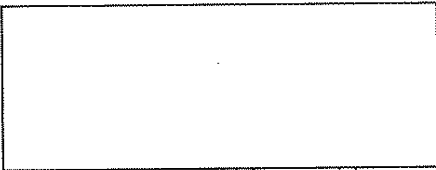
*Article III-G*

1. Any State Party to *[the present instrument]* may propose an amendment and file it with the Secretary-General of the United Nations. The Secretary-General shall thereupon communicate the proposed amendment to the States Parties to *[the present instrument]* with a request that they notify him or her whether they favour a conference of States Parties for the purpose of considering and voting upon the proposal. In the event that within four months from the date of such communication at least one third of the States Parties favours such a conference, the Secretary-General shall convene the conference under the auspices of the United Nations. Any amendment adopted by a majority of two thirds of the States Parties present and voting at the conference shall be submitted by the Secretary-General to all the States Parties for acceptance.
2. An amendment adopted in accordance with paragraph 1 of this article shall enter into force when two thirds of the States Parties to *[the present instrument]* have accepted it in accordance with their respective constitutional processes.
3. When amendments enter into force, they shall be binding on those States Parties, which have accepted them, other States Parties still being bound by the provisions of *[the present instrument]* and any earlier amendments which they have accepted.

*Article III-H*

1. *[The present instrument]*, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations.
2. The Secretary-General of the United Nations shall transmit certified copies of *[the present instrument]* to all States.

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21/06/04 - Traduction de courtoisie

Indications such as "new", "complemented", etc, are intended to ease the comparison with document E/CN.4/2004/WG22/WP.1/Rev.1 of 18 December 2003.

Preamble (new)

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The States Parties to the [present instrument]



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Recalling the Declaration on the Protection of all Persons from Enforced Disappearances adopted by the General Assembly of the United Nations in its resolution 47/133 of 18 December 1992;

Conscious of the extreme gravity of enforced disappearance which constitute a crime and, in certain circumstances, a crime against humanity;

Determined to fight against the impunity of the crime of enforced disappearance;

Affirming the right of victims to know the truth about the circumstances of an enforced disappearance and the fate of the disappeared person;

Have agreed as follows :

**Parti**

*Article 1*

For the purposes of [the present instrument] enforced disappearance is considered to be the deprivation of a person's liberty, in whatever form, committed by agents of the State or by persons or groups of persons acting with the authorization, support or acquiescence of the State, followed by refusal to acknowledge the deprivation of liberty or concealment of the fate or whereabouts of the disappeared person, which places such person outside the protection of the law



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*Article Ibis (new)*

1. No one shall be subjected to enforced disappearance.
2. (from former UI-E) No circumstances whatsoever, whether a state of war or threat of war, internal political instability or any other state of emergency, may be invoked as a justification of enforced disappearance.

*Article 2 (modified)*



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1. Each State Party shall take the necessary measures to ensure that enforced disappearance, as defined in article 1, constitutes an offence under its criminal law.
2. Each State Party shall take equivalent measures when persons or groups of persons acting without the authorization, support or acquiescence of the State are responsible for dealings defined in article 1.

*Article 2 bis (new)*

The widespread or systematic practice of enforced disappearance constitutes a crime against humanity and shall attract the consequences provided for under international law.

*Article 3 (reorganised)*

1. Each State Party shall take the necessary measures to pursue and punish those who commit or contribute to the commission of an enforced disappearance.
2. The following shall be punished :

UNITED STATES DEPARTMENT OF STATE  
REVIEW AUTHORITY: ARCHIE M BOLSTE  
DATE/CASE ID: 23 JUN 2009 200706444

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- a) the perpetrators of and accessories in an enforced disappearance.
  - b) the attempt to commit an enforced disappearance,
  - c) the conspiracy to commit an enforced disappearance,
3. The following shall also be punished :
- a) persons who order or encourage the commission or attempted commission of such an offence, and persons who facilitate its commission or attempted commission by aiding, abetting or otherwise assisting in it, including providing the means for its commission or attempted commission, shall be punished,
  - b) a superior officer who:
    - (i) either knew, or consciously disregarded information which clearly indicated, that subordinates were committing or about to commit an enforced disappearance, and who
    - (ii) failed to take all necessary and reasonable measures within his or her power to prevent or repress the enforced disappearance or to submit the matter to the competent authorities for investigation and prosecution.
4. (former 6) An order of a superior officer or a public authority may not be invoked as a justification of an enforced disappearance.

Article 4

1. Each State Party shall make enforced disappearance punishable by appropriate penalties which take into account its extreme seriousness.
2. Each State Party may establish:
  - a) mitigating circumstances inter alia for persons who, having been involved in the commission of an enforced disappearance, effectively contribute to bringing the disappeared person forward alive, or contribute to elucidating cases of enforced disappearance or identifying the perpetrators of an enforced disappearance.
  - b) (complemented) Aggravating circumstances inter alia in the event of death of the victim or the commission of an enforced disappearance in respect of pregnant women, minors or other particularly vulnerable persons.

Articles Article 5 (modified)



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Without prejudice to article 2 bis,

1. Each State Party which applies a statute of limitations in respect of enforced disappearances shall take the necessary measures to ensure that the term of limitation for criminal proceedings :
  - a) is of long duration and proportionate to the extreme seriousness of the offence;
  - b) shall commence from the moment when the offence of enforced disappearance ceases and the fate of the disappeared person is established.
2. The statute of limitations for criminal proceedings under paragraph 1 shall be suspended in a State Party as long as any victim of enforced disappearance does not have an effective remedy.

Article 6 (see 3,3)

Article 7 (deleted)

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## Article 8 (deleted)

## Article 9 (reorganised and modified)

1. Each State Party shall take such measures as may be necessary to establish its jurisdiction over an enforced disappearance:
  - a) when the offence is committed within any territory under its jurisdiction or on board a vessel flying its flag or an aircraft registered in accordance with its law at the time of the facts;
  - b) when the alleged perpetrator of the offence is one of its nationals or a stateless person habitually residing in its territory;
  - c) when the disappeared person is one of its nationals and the State deems it appropriate to do so.
2. Each State Party shall also take the necessary measures to establish its jurisdiction over an enforced disappearance when the alleged perpetrator of the offence is in a territory under its jurisdiction, unless the State extradites him or her or transfers him or her to another State or surrenders him or her to an international criminal tribunal whose jurisdiction it has recognised.
3. *[The present instrument]* does not exclude any criminal jurisdiction exercised in accordance with national laws.

## Article 10

1. Upon being satisfied, after an examination of information available to it, that the circumstances so warrant, any State Party in whose territory a person alleged to have committed an enforced disappearance is present, shall take him or her into custody or take other legal measures to ensure his or her presence. The custody and other legal measures shall be as provided in the law of that State but may be continued only for such time as is necessary to enable any criminal or extradition proceedings to be instituted.
2. The State Party which has taken the measures referred to in paragraph 1 shall immediately make an investigation into the facts. It shall notify the States Parties which may have jurisdiction in accordance with paragraph 1 of article 9 of the measures which it has taken under paragraph 1 of this article, particularly of the fact that such person is in custody and of the circumstances which warrant his or her detention, the findings of its investigation and shall indicate to those States whether it intends to exercise jurisdiction.
3. Any person in custody pursuant to paragraph 1 shall be assisted in communicating immediately with the nearest appropriate representative of the State of which he or she is a national, or, if he or she is a stateless person, with the representative of the State where he or she usually resides.

## Article 11

1. The State Party in the territory under whose jurisdiction a person alleged to have committed any enforced disappearance is found shall, if it does not extradite him or her or transfer him or her to another State or surrender him or her to an international criminal tribunal whose jurisdiction it has recognised, submit the case to its competent authorities for the purpose of prosecution.
2. These authorities shall take their decision in the same manner as in the case of any ordinary offence of a serious nature under the law of that State. In the cases referred to in paragraph 2 of article 9, the standards of evidence required for prosecution and conviction

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shall in no way be less stringent than those which apply in the cases referred to in paragraph 1 of article 9.

3. *(modified)* Any person charged with an offence of enforced disappearance shall be tried by an independent and impartial court, duly established by law, which guarantees the right to a fair trial.
4. *(new)* Any person regarding whom proceedings are brought in connection with an enforced disappearance shall be guaranteed fair treatment at all stages of the proceedings.

### *Article 12 (modified)*

1. Each State Party shall ensure that any person who alleges that someone has been subjected to enforced disappearance has the right to complain to a competent authority, which thoroughly investigates the complaint immediately and impartially. Appropriate steps shall be taken, where necessary, to ensure that the complainant, witnesses, the relatives of the disappeared person and their defence counsel as well as those participating in the investigation are protected against all ill-treatment or intimidation as a consequence of the complaint or any evidence given.
2. Whenever there are reasonable grounds to believe that a person has been subjected to enforced disappearance, any State Party shall refer the matter to the authority referred to in paragraph 1 for it to launch an investigation, even if there has been no formal complaint.
3. *(new)* Each State Party shall ensure that the authority referred to in paragraph 1:
  - a) has the necessary powers and resources to conduct the investigation, including the power to compel suspected perpetrators and witnesses to appear before it,
  - b) is communicated the necessary information for its investigation;
  - c) has access to any place where it is suspected that a disappeared person is present.
4. *(former 12.6, complemented)* Each State Party shall take the necessary measures to prevent and punish acts of such a kind as to inhibit the progress of investigations. It shall ensure, particularly, that persons suspected of having committed an enforced disappearance are not in a position to influence the progress of the investigations by means of pressure or acts of intimidation or reprisal against the complainant, the witnesses, the relatives of the disappeared person, the defence counsel as well as those participating in the investigation..
5. *(new)* The investigation pursuant to the present article shall be conducted in conformity with international principles for investigations on human rights violations, torture, search of disappeared persons, forensic examination and identification.

### *Article 13 (modified)*

1. For purposes of extradition between States Parties, enforced disappearance shall be considered to be neither a political offence, nor an offence related to a political offence or an offence prompted by political motives. Consequently, a request for extradition based on enforced disappearance cannot be refused solely because it concerns a political offence, an offence related to a political offence or an offence prompted by political motives.
2. Enforced disappearance shall automatically be included among the extraditable offences in every extradition treaty concluded between States Parties before the entry into force *[of the*

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*present instrument*].

3. States Parties undertake to include the offence of enforced disappearance among the extraditable offences in every extradition treaty to be concluded subsequently between them.
4. If a State Party which makes extradition conditional on the existence of a treaty receives a request for extradition from another State Party with which it has no extradition treaty, it may consider *[the present instrument]* as the legal basis for extradition in respect of enforced disappearance.
5. Any State Party which does not make extradition conditional on the existence of a treaty shall recognise the offence of enforced disappearance as extraditable.
6. Extradition shall, in all cases, be subject to the conditions provided by the law of the requested State Party or by applicable extradition treaties, including, inter alia, conditions in relation to the minimum penalty requirement for extradition and the grounds upon which the requested State Party may refuse extradition or subject extradition to conditions.
7. No provision *[of the present instrument]* shall be interpreted as imposing an obligation on the requested State Party to extradite if that State has serious grounds to believe that the request was put forward for the purpose of prosecuting or punishing a person on account of his or her gender, race, religion, nationality, ethnic origin or political opinions, or that to allow the request would cause harm to that person for any one of those reasons.

*Article 14 (modified)*

1. States Parties shall provide one another the greatest measure of legal assistance in connection with any criminal investigation or proceedings brought in respect of enforced disappearance, including the supply of all evidence at their disposal that are necessary for the proceedings.
2. Such legal assistance is subject to the conditions provided by the domestic law of the requested State Party or by applicable treaties on mutual legal assistance, including, particularly, concerning the grounds on which the requested State Party may refuse to provide legal assistance or subject such assistance to conditions.

*Article 15 (modified)*

States Parties shall co-operate with one another and shall provide one another the greatest measure of assistance with a view to assisting victims of enforced disappearance, and in searching, locating and releasing disappeared persons and, in the event of death, in their exhumation, identification and restitution of their remains.

*Article 15 bis (former 21)*

1. No State Party shall expel, return ("*refouler*") or extradite a person to another State where there are substantial grounds for believing that he/she would be in danger of being subjected to an enforced disappearance.
2. For the purpose of determining whether there are such grounds, the competent authorities shall take into account all relevant considerations, including, where applicable, the existence in the State concerned of a consistent pattern of gross, flagrant or mass violations of human rights or of humanitarian law.

*Article 16 (reorganised and modified, see 16 bis below)*

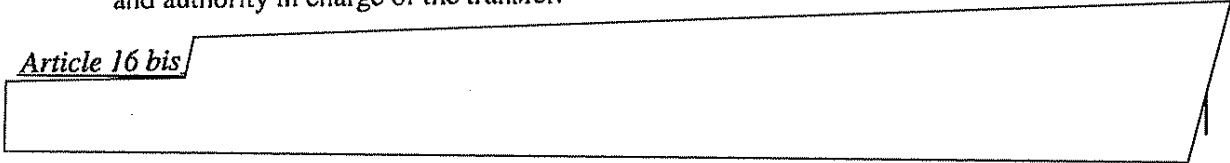
1. Each State Party shall, under its law,

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- a) indicate those officials who are authorised to order deprivation of liberty;
  - b) establish the conditions under which such orders may be given;
  - c) guarantee that any person deprived of liberty shall be held solely in an officially recognised and controlled place;
  - d) guarantee access of the judicial authorities to places of deprivation of liberty;
  - e) guarantee that any person deprived of liberty, in all circumstances, shall have the right to bring proceedings before a court which shall rule without delay on the lawfulness of the deprivation of liberty and order his or her release if that deprivation of liberty is unlawful.
2. Each State Party shall compile and maintain one or several official up-to-date registers of persons deprived of liberty. The information contained in these registers shall include at least the following :
- a) the identity of the person deprived of liberty,
  - b) the authority having decided the deprivation of liberty,
  - c) the authority controlling the deprivation of liberty,
  - d) the date and time of admission in the place of detention and the authority responsible for the place of detention,
  - e) The date and time of liberation or transfer to another place of detention, the destination and authority in charge of the transfer.

Article 16 bis



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1. Each State Party shall guarantee the person deprived of liberty, his or her relatives, their legal representatives, their counsel, and any person authorised by them, as well as any person able to claim a legitimate interest access, as a minimum, to the following information:
  - a) the authority to which the person has been handed over;
  - b) the authority having decided the deprivation of liberty;
  - c) the authority controlling the person deprived of liberty;
  - d) the whereabouts of the person deprived of liberty, including in case of transfer;
  - e) date and place of release;
  - f) state of health and, in the event of death, circumstances and causes of the death.
2. Appropriate measures shall be taken, where necessary, to ensure the protection of the persons mentioned in paragraph 1 as well as the persons participating in the investigation against all ill-treatment; intimidation or any sanction on the grounds of the search of information concerning a person deprived of liberty.
3. (new) In order not to jeopardise the privacy of the persons concerned, the information

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transmitted pursuant to paragraph 1 of the present article shall be adequate and pertinent with respect to the purpose pursued and shall not be used for other purposes than the search of the person deprived of liberty.

## *Article 17*

Without prejudice to consideration of the lawfulness of a deprivation of liberty, States Parties shall guarantee to the relatives of the person deprived of liberty or of a disappeared person, their legal representatives, their counsel and any person authorised by the person deprived of liberty or the disappeared person or by his/her relatives, as well as any other person able to claim a legitimate interest the right to a prompt and effective remedy as a means of obtaining without delay the information referred to article 16 bis. This right to a remedy may not be suspended or restricted in any circumstances.

## *Article 18 (complemented)*

Each State Party shall take the necessary measures to ensure that the release of persons shall proceed in a manner that allows reliable verification that they have actually been released. Each State Party shall also take the necessary measures so that the physical integrity of all such persons and their ability to exercise fully their rights are assured at the time of release, without prejudice to the obligations to which such persons may be subject in accordance with the law.

## *Article 19*

Each State Party shall take the necessary measures to prevent and punish the following actions:

- a) delaying or obstructing the remedy referred to in article 17;
- b) failure to the obligation to register every deprivation of liberty and registration of information which the official responsible of the register knows or should known to be inaccurate;
- c) refusal by an official to provide information on the deprivation of liberty of a person, or the provision of inaccurate information, even though the legal conditions for this information to be provided have been fulfilled.

## *Article 20 (complemented)*

1. Each State Party shall ensure that the training of law enforcement personnel, civil or military, medical personnel, public officials and other persons who may be involved in the custody or treatment of any person deprived of liberty shall include the necessary education and information on the provisions *[of the present instrument]*, in order to:
  - a) prevent the involvement of these officials in enforced disappearances;
  - b) draw attention to the importance of prevention and investigations concerning enforced disappearances;
  - c) ensure that the urgent need to resolve cases of enforced disappearance is acknowledged.
2. Each State shall prohibit orders or instructions commanding, authorising or encouraging enforced disappearance. Each State Party shall guarantee that a person refusing to obey such order will not be subject to sanction.

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3. Each State Party shall take the necessary measures to ensure that the persons referred to in paragraph 1 who have reasons to believe that act enforced disappearance has occurred or is planned communicate the matter to their superior authorities and, when necessary, to competent authorities or organs with reviewing or remedial power.

*Article 21 (see 15 bis)*

*Article 22 (modified and complemented)*

1. For the purposes of *[the present instrument]*, "victim" means the disappeared person and any natural person who has suffered direct harm as a result of that disappearance.
2. Each State Party shall take the necessary measures so that any victim knows the truth concerning the circumstances of the enforced disappearance and the fate of the disappeared person. It shall, in particular, take the necessary measures to search for, locate and release disappeared persons and, in the event of death, return the human remains.
3. Each State Party shall guarantee the right to obtain prompt, fair and adequate reparation for the harm caused to victims of enforced disappearance.
4. The right to obtain reparation referred to in paragraph 3 includes integral compensation for material and non-material damage. It may also include, in particular:
  - a) restitution,
  - b) rehabilitation,
  - c) satisfaction,
  - d) restoration of honour and reputation.
5. Without prejudice to the obligation to continue the investigation until the fate of the disappeared person is elucidated, each State Party shall take the necessary measures with regard to the legal situation of the disappeared persons who's fate has not been elucidated and of their relatives in fields such as social protection, financial matters, custody of children and property rights.

*Article 23 (complemented)*

1. Each State Party shall take the necessary measures to prevent and punish in a criminal court:
  - a) the abduction or appropriation of children victims of enforced disappearance, children whose father or mother is victim of enforced disappearance or children born during the detention of their disappeared mother;
  - b) the falsification or suppression of documents attesting to the true identity of a child referred to in subparagraph (a).
2. Each State Party shall take the necessary measures to search for and identify children referred to in subparagraph (a) and (b).

*Article 24*

State Parties grant each other assistance in the search for, the identification and the location of children referred to in article 23.

*Article 25*

1. When a child who has been abducted or appropriated in the circumstances described in article 23, paragraph (a), is found on the territory of a State party, the question of the child's return to his or her family of origin shall be resolved either under the domestic law of that State party, or under the bilateral or multilateral agreement which that State has entered into with another State in which the family of origin lives.
2. In all cases, the best interests of the child are a primary consideration, and a child who is capable of judgement shall have the right to express his or her views freely and to have them given due weight in the light of his or her age and level of maturity.

*Article 0*

*(new)*

1. A *[monitoring body]* shall ensure the implementation of the *[present instrument]* and the respect by State Parties of their commitments.
2. While exercising their mandate, the members of the *[monitoring body]* shall be entitled to privileges and immunities as laid down in the Convention on Privileges and Immunities of the United Nations.
3. Each State Party shall undertake to co-operate with the *[monitoring body]* and to grant assistance to its members in the exercise of their mandate.

*Article II-A (modified)*

1. Each State Party shall submit to *[the monitoring body]*, through the Secretary-General of the United Nations, a report on the measures taken to give effect to its undertakings under *[the present instrument]*, within one year after the entry into force *[of the present instrument]* in respect of the State concerned.
2. The Secretary-General of the United Nations shall transmit the reports to all States Parties.
3. Each report shall be considered by *[the monitoring body]*, which may make such comments, observations, recommendations and warnings as it considers appropriate. The State Party concerned shall receive communication of such comments, observations, recommendations and warnings, to which that State may respond, on its own initiative or at the request *[of the monitoring body]*.

*Article II-B (modified)*

1. Each State Party or the relatives of a disappeared person, their legal representatives, their counsel, and any person authorised by them, as well as any person able to claim a legitimate interest may submit a request to *[the monitoring body]* to seek and find a person who has disappeared within the meaning of article 1.
2. Should *[the monitoring body]* consider that a request submitted under paragraph 1 is not manifestly unfounded, that it does not constitute an abuse of the right of submission and that it is not incompatible with the provisions *[of the present instrument]* *[the monitoring body]* shall request any State Party to provide information on the situation of that person, within a time-limit set by *[the monitoring body]*.



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3. In the light of the response provided by the State Party concerned in accordance with paragraph 2, [the monitoring body] shall make a recommendation or give a warning to that State. [The monitoring body] may also instruct that State to take appropriate measures and to report to it on those measures, within a time-limit set by [the monitoring body],
4. [The monitoring body] shall establish its conclusions and forward them to any State Party which has been requested to provide information and to the author of the request referred to in paragraph 1.
5. The procedure under this article is confidential.

Article II-C (modified)

1. If [the monitoring body] considers that a visit to the territory of a State Party under whose jurisdiction a disappeared person could be is essential in order to respond to the request submitted to it in accordance with Article H-B, [the monitoring body] may request one or more of its members to undertake an investigation mission and to report back without delay. The member or members [of the monitoring body] conducting the mission may be accompanied if necessary by interpreters, secretaries and experts. No member of the delegation, with the exception of the interpreters, may be a national of the State Party to which the visit is to be made.
2. [The monitoring body] shall notify the State Party concerned in writing of its intention to organise an investigation mission, indicating the composition of the delegation. The State Party shall inform [the monitoring body] without delay of its agreement or opposition to the investigation mission in the territory over which it has jurisdiction.
3. If the State Party agrees to the investigation mission, it shall provide [the monitoring body] with all the necessary facilities to enable the mission to be carried out. [The monitoring body] may, inter alia:
  - a) make such visits as it may consider necessary to search for and find the person who has disappeared;
  - b) make contact freely with any person whom it believes may provide useful information on the fate of the person who has disappeared;
  - c) have the person who has allegedly disappeared brought to it and discuss with him or her in private.
4. [The monitoring body] shall inform the following of the findings of the investigation mission:
  - a) the State Party in whose territory the investigation mission was carried out;
  - b) the author of the request referred to in paragraph 1 of article II-B.
5. The procedure under this article is confidential.

Article II-C bis (new)

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1. [The monitoring body] considers a communication presented by the relatives of a disappeared person, their legal representatives, their counsel, and any person authorised by them, as well as any person able to claim a legitimate interest alleging grave breaches in the implementation of the commitments taken under the [present instrument] unless
    - a) the communication lacks sufficient motivation or is obviously unfounded;
    - b) the same matter is being examined under another procedure of international investigation or

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settlement;

- c) the complainant has not exhausted all available effective domestic remedies.
2. If the *[the monitoring body]* assesses that the communication fulfils the conditions under paragraph 1, *[the monitoring body]* transmits the communication to the State Party concerned and requests this State Party to provide observations and comments within a time-limit set by the *[monitoring body]*.
  3. On the basis of the answer of the State Party, *[the monitoring body]* may decide :
    - a) to close the matter of the communication;
    - b) to continue its examination;
    - c) to make a recommendation to the State Party.
  4. The procedure under the present article comes to an end when the *[monitoring body]* communicates the conclusions of its investigation to the State Party and to the author of the communication.
  5. The procedure under this article is confidential.

*Article II-C ter (new)*

If the *[monitoring body]* receives reliable information which appears to it to contain well-founded indication that enforced disappearance is being practised in a systematic or general manner in the territory of a State Party, the *[monitoring body]* may seize the Secretary General of the United Nations, after having enquired with the State Party concerned about any pertinent information and the measures taken to put an end immediately to such practises.

*Article II-D (integrated in II-O§2)*

*Article II-E (complemented)*

1. *[The monitoring body]* has competence solely in respect of deprivations of liberty which commenced after the entry into force *[of this instrument]*.
2. Should a State become party to *[this instrument]* after its entry into force, the obligations of that State towards *[the monitoring body]* concern only deprivations of liberty which commenced after the entry into force *[of this instrument]* in respect of the State concerned.
3. *(new)* Each State Party may at any time declare that, in its own respect, it recognises that the *[monitoring body]* has competence in respect of enforced disappearances which commenced before entry into force of the *[present instrument]*.

*Article II-F (modified)*



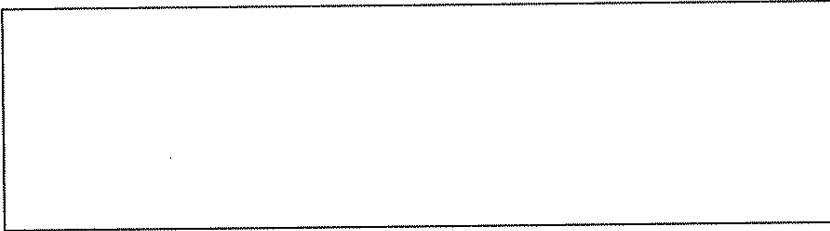
1. The *[monitoring body]* shall submit an annual report on its activities *[under the present instrument]* to the States Parties and to the General Assembly of the United Nations.
2. *(new)* If, in the procedures under articles II-B and II-C bis, a State Party concerned obviously refuses to cooperate or if the procedures yield to no effective result, the *[monitoring body]* may decide to make an observation public, with regard to the matter or the situation at stake.

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3. *(new)* The State Party concerned shall be informed in advance of the publication of an observation under paragraph 2 of the present article. This observation shall be published together with the answers, comments or observations transmitted by the State Party within the time-limit set by the *[monitoring body]*.

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*Article III-O (former 2.2)*

*[The present instrument]* is without prejudice to any other international instrument or national legislation that does or may contain provisions of broader application.

*Article III-O bis (new)*

Personal data, including medical or genetic data, which are transmitted in the framework of the search of a disappeared person shall not be used for other purposes than that of the search of the disappeared person.

*Article III-A*

1. *[The present instrument]* is open for signature by [...].
2. *[the present instrument]* is subject to ratification. Instruments of ratification shall be deposited with the Secretary-General of the United Nations.
3. *[The present instrument]* is open to accession by [...]. Accession shall be effected by the deposit of an instrument of accession with the Secretary-General of the United Nations.

*Article III-B*

1. *[The present instrument]* shall enter into force on the thirtieth day after the date of deposit of the *[Xth]* instrument of ratification or accession.
2. For each State ratifying *[the present instrument]* or acceding to it after the deposit of the *[Xth]* instrument of ratification or accession, *[the present instrument]* shall enter into force on the thirtieth day after the date of deposit of its own instrument of ratification or accession.

*Article III-C*

The Secretary-General of the United Nations shall inform all States Members of the United Nations and all States which have signed *[the present instrument]* or acceded to it of the following:

- a) Signatures, ratifications and accessions under article III-A;
- b) The date of entry into force of *[the present instrument]* under article III-B.

*Article III-D*

The provisions of *[the present instrument]* shall apply, without limitation or exception, to all parts of federal States.

*Article III-D bis (new)*

1. Any State, upon signature, ratification or accession, may declare that *[the present instrument]*

will be extended to any territory for which it is responsible with regard to international relations. Such a declaration will take effect when *[the present instrument]* enters into force for the State concerned

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2. At any time, such an extension may be notified to the Secretary General of the United Nations and will take effect (...) days after it has been received by the Secretary General.

*Article III-E (integrated in I bis, paragraph 2)*

*Article III-F*

*[The present instrument]* is without prejudice to the provisions of international humanitarian law, including the obligations of the High Contracting Parties to the four Geneva Conventions of 12 August 1949 and the Additional Protocols thereto of 8 June 1977, or the option available to any State to authorise the International Committee of the Red Cross to visit places of detention in cases for which international humanitarian law does not provide.

*Article III-G*

1. Any State Party to *[the present instrument]* may propose an amendment and file it with the Secretary-General of the United Nations. The Secretary-General shall thereupon communicate the proposed amendment to the States Parties to *[the present instrument]* with a request that they notify him or her whether they favour a conference of States Parties for the purpose of considering and voting upon the proposal. In the event that within four months from the date of such communication at least one third of the States Parties favours such a conference, the Secretary-General shall convene the conference under the auspices of the United Nations. Any amendment adopted by a majority of two thirds of the States Parties present and voting at the conference shall be submitted by the Secretary-General to all the States Parties for acceptance.
2. An amendment adopted in accordance with paragraph 1 of this article shall enter into force when two thirds of the State Parties to *[the present instrument]* have accepted it in accordance with their respective constitutional processes.
3. When amendments enter into force, they shall be binding on those States Parties, which have accepted them, other States Parties still being bound by the provisions of *[the present instrument]* and any earlier amendments which they have accepted.

*Article III-H*

1. *[The present instrument]*, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations.
2. The Secretary-General of the United Nations shall transmit certified copies of *[the present instrument]* to all States.

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Indications such as "new", "complemented", etc, are intended to ease the comparison with document E/CN.4/2004/WG22/WP.1/Rev.1 of 1 december 2003.

**Preamble (new)**

The States Parties to the *[present instrument]*,

Recalling the Declaration on the Protection of all Persons from Enforced Disappearances adopted by the General Assembly of the United Nations in its resolution 47/133 of 18 December 1992;

Conscious of the extreme gravity of enforced disappearance which constitute a crime and, in certain circumstances, a crime against humanity;

Determined to fight against the impunity of the crime of enforced disappearance ;

Affirming the right of victims to know the truth about the circumstances of an enforced disappearance and the fate of the disappeared person ;

Have agreed as follows :

**Part I**

**Article 1**

For the purposes of *[the present instrument]* enforced disappearance is considered to be the deprivation of a person's liberty, in whatever form, committed by agents of the State or by persons or groups of persons acting with the authorization, support or acquiescence of the State, followed by refusal to acknowledge the deprivation of liberty or concealment of the fate or whereabouts of the disappeared person, which places such person outside the protection of the law.

**Article Ibis (new)**

1. No one shall be subjected to enforced disappearance.
2. *(from former III-E)* No circumstances whatsoever, whether a state of war or threat of war, internal political instability or any other state of emergency, may be invoked as a justification of enforced disappearance.

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**Article 2 (modified)**

1. Each State Party shall take the necessary measures to ensure that enforced disappearance, as defined in article 1, constitutes an offence under its criminal law.
2. Each State Party shall take equivalent measures when persons or groups of persons acting without the authorization, support or acquiescence of the State are responsible for dealings defined in article 1.

**Article 2 bis (new)**

The widespread or systematic practice of enforced disappearance constitutes a crime against humanity and shall attract the consequences provided for under international law.

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**Article 3 (reorganised)**

1. Each State Party shall take the necessary measures to pursue and punish those who commit or contribute to the commission of an enforced disappearance.
2. The following shall be punished

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- a) the perpetrators of and accessories to an enforced disappearance.
- b) the attempt to commit an enforced disappearance.
- c) the conspiracy to commit an enforced disappearance.

3. The following shall also be punished

- a) persons who order or encourage the commission or attempted commission of such an offence, and persons who facilitate its commission or attempted commission by aiding, abetting or otherwise assisting in it, including providing the means for its commission or attempted commission shall be punished.
- b) a superior officer who:
  - (i) either knew, or consciously disregarded information which clearly indicated, that subordinates were committing or about to commit an enforced disappearance, and who
  - (ii) failed to take all necessary and reasonable measures within his or her power to prevent or repress the enforced disappearance or to submit the matter to the competent authorities for investigation and prosecution.

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4. (former 6) An order of a superior officer or a public authority may not be invoked as a justification of an enforced disappearance.

Article 4

1. Each State Party shall make enforced disappearance punishable by appropriate penalties which take into account its extreme seriousness.
2. Each State Party may establish :
  - a) mitigating circumstances inter alia for persons who, having been involved in the commission of an enforced disappearance, effectively contribute to bringing the disappeared person forward alive, or contribute to elucidating cases of enforced disappearance or identifying the perpetrators of an enforced disappearance.

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b) (complemented) Aggravating circumstances inter alia in the event of death of the victim or the commission of an enforced disappearance in respect of pregnant women, minors or other particularly vulnerable persons.

Article 5 (modified)

Without prejudice to article 2 bis,

1. Each State Party which applies a statute of limitations in respect of enforced disappearances shall take the necessary measures to ensure that the term of limitation for criminal proceedings :
  - a) is of long duration and proportionate to the extreme seriousness of the offence;
  - b) shall commence from the moment when the offence of enforced disappearance ceases and the fate of the disappeared person is established.
2. The statute of limitations for criminal proceedings under paragraph 1 shall be suspended in a State Party as long as any victim of enforced disappearance does not have an effective remedy.

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Article 6 (see 3,3)

Article 7 (deleted)

Article 8 (deleted)

[Redacted]

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Article 9 (reorganised and modified)

1. Each State Party shall take such measures as may be necessary to establish its jurisdiction over an enforced disappearance :

[Redacted]

- a) when the offence is committed within any territory under its jurisdiction or on board a vessel flying its flag or an aircraft registered in accordance with its law at the time of the facts;
- b) when the alleged perpetrator of the offence is one of its nationals or a stateless person habitually residing in its territory;
- c) when the disappeared person is one of its nationals and the State deems it appropriate to do so.

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2. Each State Party shall also take the necessary measures to establish its jurisdiction over an enforced disappearance when the alleged perpetrator of the offence is in a territory under its jurisdiction, unless the State extradites him or her or transfers him or her to another State or surrenders him or her to an international criminal tribunal whose jurisdiction it has recognised.

3. [The present instrument] does not exclude any criminal jurisdiction exercised in accordance with national laws.

Article 10

[Redacted]

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1. Upon being satisfied, after an examination of information available to it, that the circumstances so warrant, any State Party in whose territory a person alleged to have committed an enforced disappearance is present, shall take him or her into custody or take other legal measures to ensure his or her presence. The custody and other legal measures shall be as provided in the law of that State but may be continued only for such time as is necessary to enable any criminal or extradition proceedings to be instituted.

[Redacted]

2. The State Party which has taken the measures referred to in paragraph 1 shall immediately make an investigation into the facts. It shall notify the States Parties which may have jurisdiction in accordance with paragraph 1 of article 9 of the measures which it has taken under paragraph 1 of this article, particularly of the fact that such person is in custody and of the circumstances which warrant his or her detention, the findings of its investigation and shall indicate to those States whether it intends to exercise jurisdiction.

3. Any person in custody pursuant to paragraph 1 shall be assisted in communicating immediately with the nearest appropriate representative of the State of which he or she is a national, or, if he or she is a stateless person, with the representative of the State where he or she usually resides.

Article 11

[Redacted]

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1. The State Party in the territory under whose jurisdiction a person alleged to have committed any enforced disappearance is found shall, if it does not extradite him or her or transfer him or her to another State or surrender him or her to an international criminal tribunal whose jurisdiction it has recognised, submit the case to its competent authorities for the purpose of prosecution.

2. These authorities shall take their decision in the same manner as in the case of any ordinary offence of a serious nature under the law of that State. In the cases referred to in paragraph 2 of article 9, the standards of evidence required for prosecution and conviction shall in no way be less stringent than those which apply in the cases referred to in paragraph 1 of article 9.

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3. (modified) Any person charged with an offence of enforced disappearance shall be tried by an independent and impartial court, duly established by law, which guarantees the right to a fair trial.

4. (new) Any person regarding whom proceedings are brought in connection with an enforced disappearance shall be guaranteed fair treatment at all stages of the proceedings.

[Redacted]

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Article 12 (modified)

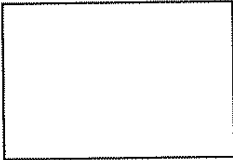




1. Each State Party shall ensure that any person who alleges that someone has been subjected to enforced disappearance has the right to complain to a competent authority, which thoroughly investigates the complaint immediately and impartially. Appropriate steps shall be taken, where necessary, to ensure that the complainant, witnesses, the relatives of the disappeared person and their defence counsel as well as those participating in the investigation are protected against all ill-treatment or intimidation as a consequence of the complaint or any evidence given.
2. Whenever there are reasonable grounds to believe that a person has been subjected to enforced disappearance, any State Party shall refer the matter to the authority referred to in paragraph 1 for it to launch an investigation, even if there has been no formal complaint.
3. (new). Each State Party shall ensure that the authority referred to in paragraph 1:
  - a) has the necessary powers and resources to conduct the investigation, including the power to compel suspected perpetrators and witnesses to appear before it,
  - b) is communicated the necessary information for its investigation;
  - c) has access to any place where it is suspected that a disappeared person is present.
4. (former 12.6, complemented) Each State Party shall take the necessary measures to prevent and punish acts of such a kind as to inhibit the progress of investigations. It shall ensure, particularly, that persons suspected of having committed an enforced disappearance are not in a position to influence the progress of the investigations by means of pressure or acts of intimidation or reprisal against the complainant, the witnesses, the relatives of the disappeared person, the defence counsel as well as those participating in the investigation.
5. (new) The investigation pursuant to the present article shall be conducted in conformity with international principles for investigations on human rights violations, torture, search of disappeared persons, forensic examination and identification.

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*Article 13 (modified)*

1. For purposes of extradition between States Parties, enforced disappearance shall be considered to be neither a political offence, nor an offence related to a political offence or an offence prompted by political motives. Consequently, a request for extradition based on enforced disappearance cannot be refused solely because it concerns a political offence, an offence related to a political offence or an offence prompted by political motives.
2. Enforced disappearance shall automatically be included among the extraditable offences in every extradition treaty concluded between States Parties before the entry into force [of the present instrument].
3. States Parties undertake to include the offence of enforced disappearance among the extraditable offences in every extradition treaty to be concluded subsequently between them.
4. If a State Party which makes extradition conditional on the existence of a treaty receives a request for extradition from another State Party with which it has no extradition treaty, it may consider [the present instrument] as the legal basis for extradition in respect of enforced disappearance.
5. Any State Party which does not make extradition conditional on the existence of a treaty shall recognise the offence of enforced disappearance as extraditable.
6. Extradition shall, in all cases, be subject to the conditions provided by the law of the requested State Party or by applicable extradition treaties, including, inter alia, conditions in relation to the minimum penalty requirement for extradition and the grounds upon which the requested State Party may refuse extradition or subject extradition to conditions.
7. No provision [of the present instrument] shall be interpreted as imposing an obligation on the requested State Party to extradite if that State has serious grounds to believe that the request was put forward for the

purpose of prosecuting or punishing a person on account of his or her gender, race, religion, nationality, ethnic origin or political opinions, or that to allow the request would cause harm to that person for any one of those reasons.

*Article 14 (modified)*

1. States Parties shall provide one another the greatest measure of legal assistance in connection with any criminal investigation or proceedings brought in respect of enforced disappearance, including the supply of all evidence at their disposal that are necessary for the proceedings.
2. Such legal assistance is subject to the conditions provided by the domestic law of the requested State Party or by applicable treaties on mutual legal assistance, including, particularly, concerning the grounds on which the requested State Party may refuse to provide legal assistance or subject such assistance to conditions.

*Article 15 (modified)*

States Parties shall co-operate with one another and shall provide one another the greatest measure of assistance with a view to assisting victims of enforced disappearance, and in searching, locating and releasing disappeared persons and, in the event of death, in their exhumation, identification and ~~restitution~~ of their remains.

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*Article 15 bis (former 21)*

1. No State Party shall expel, return ("*refouler*") or extradite a person to another State where there are substantial grounds for believing that he/she would be in danger of being subjected to an enforced disappearance.
2. For the purpose of determining whether there are such grounds, the competent authorities shall take into account all relevant considerations, including, where applicable, the existence in the State concerned of a consistent pattern of gross, flagrant or mass violations of human rights or of humanitarian law.

*Article 16 (reorganised and modified, see 16 bis below)*

1. Each State Party shall, under its law,
  - a) indicate those officials who are authorised to order deprivation of liberty;
  - b) establish the conditions under which such orders may be given;
  - c) guarantee that any person deprived of liberty shall be held solely in an officially recognised and controlled place;
  - d) guarantee access of the judicial authorities to places of deprivation of liberty;
  - e) guarantee that any person deprived of liberty, in all circumstances, shall have the right to bring proceedings before a court which shall rule without delay on the lawfulness of the deprivation of liberty and order his or her release if that deprivation of liberty is unlawful.
2. Each State Party shall compile and maintain one or several official up-to-date registers of persons deprived of liberty. The information contained in these registers shall include at least the following :
  - a) the identity of the person deprived of liberty,
  - b) the authority having decided the deprivation of liberty,
  - c) the authority controlling the deprivation of liberty,
  - d) the date and time of admission in the place of detention and the authority responsible for the place of detention.

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- e) The date and time of liberation or transfer to another place of detention, the destination and authority in charge of the transfer.

*Article 16 bis*

1. Each State Party shall guarantee the person deprived of liberty, his or her relatives, their legal representatives, their counsel, and any person authorised by them, as well as any person able to claim a legitimate interest access, as a minimum, to the following information :
- the authority to which the person has been handed over;
  - the authority having decided the deprivation of liberty;
  - the authority controlling the person deprived of liberty;
  - the whereabouts of the person deprived of liberty, including in case of transfer;
  - date and place of release;
  - state of health and, in the event of death, circumstances and causes of the death.
2. Appropriate measures shall be taken, where necessary, to ensure the protection of the persons mentioned in paragraph 1 as well as the persons participating in the investigation against all ill-treatment; intimidation or any sanction on the grounds of the search of information concerning a person deprived of liberty.
3. *(new)* In order not to jeopardise the privacy of the persons concerned, the information transmitted pursuant to paragraph 1 of the present article shall be adequate and pertinent with respect to the purpose pursued and shall not be used for other purposes than the search of the person deprived of liberty.

*Article 17*

Without prejudice to consideration of the lawfulness of a deprivation of liberty, States Parties shall guarantee to the relatives of the person deprived of liberty or of a disappeared person, their legal representatives, their counsel and any person authorised by the person deprived of liberty or the disappeared person or by his/her relatives, as well as any other person able to claim a legitimate interest the right to a prompt and effective remedy as a means of obtaining without delay the information referred to article 16 bis. This right to a remedy may not be suspended or restricted in any circumstances.

*Article 18 (complemented)*

Each State Party shall take the necessary measures to ensure that the release of persons shall proceed in a manner that allows reliable verification that they have actually been released. Each State Party shall also take the necessary measures so that the physical integrity of all such persons and their ability to exercise fully their rights are assured at the time of release, without prejudice to the obligations to which such persons may be subject in accordance with the law.

*Article 19*

Each State Party shall take the necessary measures to prevent and punish the following actions:

- delaying or obstructing the remedy referred to in article 17;
- failure to the obligation to register every deprivation of liberty and registration of information which the official responsible of the register knows or should know to be inaccurate;
- refusal by an official to provide information on the deprivation of liberty of a person, or the provision of inaccurate information, even though the legal conditions for this information to be provided have been fulfilled.

*Article 20 (complemented)*

1. Each State Party shall ensure that the training of law enforcement personnel, civil or military, medical personnel, public officials and other persons who may be involved in the custody or treatment of any person deprived of liberty shall include the necessary education and information on the provisions *[of the present instrument]*, in order to:
  - a) prevent the involvement of these officials in enforced disappearances;
  - b) draw attention to the importance of prevention and investigations concerning enforced disappearances;
  - c) ensure that the urgent need to resolve cases of enforced disappearance is acknowledged.
2. Each State shall prohibit orders or instructions commanding, authorising or encouraging enforced disappearance. Each State Party shall guarantee that a person refusing to obey such order will not be subject to sanction.
3. Each State Party shall take the necessary measures to ensure that the persons referred to in paragraph 1 who have reasons to believe that an enforced disappearance has occurred or is planned communicate the matter to their superior authorities and, when necessary, to competent authorities or organs with reviewing or remedial power.

*Article 21 (see 15 bis)**Article 22 (modified and complemented)*

1. For the purposes of *[the present instrument]*, "victim" means the disappeared person and any natural person who has suffered direct harm as a result of that disappearance.
2. Each State Party shall take the necessary measures so that any victim knows the truth concerning the circumstances of the enforced disappearance and the fate of the disappeared person. It shall, in particular, take the necessary measures to search for, locate and release disappeared persons and, in the event of death, return the human remains.
3. Each State Party shall guarantee the right to obtain prompt, fair and adequate reparation for the harm caused to victims of enforced disappearance.
4. The right to obtain reparation referred to in paragraph 3 includes integral compensation for material and non-material damage. It may also include, in particular:
  - a) restitution,
  - b) rehabilitation,
  - c) satisfaction,
  - d) restoration of honour and reputation.
5. Without prejudice to the obligation to continue the investigation until the fate of the disappeared person is elucidated, each State Party shall take the necessary measures with regard to the legal situation of the disappeared persons whose fate has not been elucidated and of their relatives in fields such as social protection, financial matters, custody of children and property rights.

*Article 23 (complemented)*

1. Each State Party shall take the necessary measures to prevent and punish in a criminal court :

- a) the abduction or appropriation of children victims of enforced disappearance, children whose father or mother is victim of enforced disappearance or children born during the detention of their disappeared mother;
  - b) the falsification or suppression of documents attesting to the true identity of a child referred to in subparagraph (a).
2. Each State Party shall take the necessary measures to search for and identify children referred to in subparagraph (a) and (b).

*Article 24*

State Parties grant each other assistance in the search for, the identification and the location of children referred to in article 23.

*Article 25*

1. When a child who has been abducted or appropriated in the circumstances described in article 23, paragraph (a), is found on the territory of a State party, the question of the child's return to his or her family of origin shall be resolved either under the domestic law of that State party, or under the bilateral or multilateral agreement which that State has entered into with another State in which the family of origin lives.
2. In all cases, the best interests of the child are a primary consideration, and a child who is capable of judgement shall have the right to express his or her views freely and to have them given due weight in the light of his or her age and level of maturity.

Part II

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*Article 0 (new)*

1. A [monitoring body] shall ensure the implementation of the [present instrument] and the respect by State Parties of their commitments.
2. While exercising their mandate, the members of the [monitoring body] shall be entitled to privileges and immunities as laid down in the Convention on Privileges and Immunities of the United Nations.
3. Each State Party shall undertake to co-operate with the [monitoring body] and to grant assistance to its members in the exercise of their mandate.

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*Article II-A (modified)*

1. Each State Party shall submit to [the monitoring body], through the Secretary-General of the United Nations, a report on the measures taken to give effect to its undertakings under [the present instrument], within one year after the entry into force [of the present instrument] in respect of the State concerned.
2. The Secretary-General of the United Nations shall transmit the reports to all States Parties.
3. Each report shall be considered by [the monitoring body], which may make such comments, observations, recommendations and warnings as it considers appropriate. The State Party concerned shall receive communication of such comments, observations, recommendations and warnings, to which that State may respond, on its own initiative or at the request [of the monitoring body].

*Article II-B (modified)*

1. Each State Party or the relatives of a disappeared person, their legal representatives, their counsel, and any person authorised by them, as well as any person able to claim a legitimate interest may submit a request to [the monitoring body] to seek and find a person who has disappeared within the meaning of article 1.
2. Should [the monitoring body] consider that a request submitted under paragraph 1 is not manifestly unfounded, that it does not constitute an abuse of the right of submission and that it is not incompatible with the provisions [of the present instrument] [the monitoring body] shall request any State Party to provide information on the situation of that person, within a time-limit set by [the monitoring body].
3. In the light of the response provided by the State Party concerned in accordance with paragraph 2, [the monitoring body] shall make a recommendation or give a warning to that State. [The monitoring body] may also instruct that State to take appropriate measures and to report to it on those measures, within a time-limit set by [the monitoring body].
4. [The monitoring body] shall establish its conclusions and forward them to any State Party which has been requested to provide information and to the author of the request referred to in paragraph 1.
5. The procedure under this article is confidential.

*Article II-C (modified)*

1. If [the monitoring body] considers that a visit to the territory of a State Party under whose jurisdiction a disappeared person could be is essential in order to respond to the request submitted to it in accordance with Article II-B, [the monitoring body] may request one or more of its members to undertake an investigation mission and to report back without delay. The member or members [of the monitoring body] conducting the mission may be accompanied if necessary by interpreters, secretaries and experts. No member of the delegation, with the exception of the interpreters, may be a national of the State Party to which the visit is to be made.
2. [The monitoring body] shall notify the State Party concerned in writing of its intention to organise an investigation mission, indicating the composition of the delegation. The State Party shall inform [the



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*monitoring body*] without delay of its agreement or opposition to the investigation mission in the territory over which it has jurisdiction.

3. If the State Party agrees to the investigation mission, it shall provide [*the monitoring body*] with all the necessary facilities to enable the mission to be carried out. [*The monitoring body*] may, inter alia:
  - a) make such visits as it may consider necessary to search for and find the person who has disappeared;
  - b) make contact freely with any person whom it believes may provide useful information on the fate of the person who has disappeared;
  - c) have the person who has allegedly disappeared brought to it and discuss with him or her in private.
4. [*The monitoring body*] shall inform the following of the findings of the investigation mission:
  - a) the State Party in whose territory the investigation mission was carried out;
  - b) the author of the request referred to in paragraph 1 of article II-B.
5. The procedure under this article is confidential.

**Article II-C bis (new)**

1. [*The monitoring body*] considers a communication presented by the relatives of a disappeared person, their legal representatives, their counsel, and any person authorised by them, as well as any person able to claim a legitimate interest alleging grave breaches in the implementation of the commitments taken under the [*present instrument*], unless

- a) the communication lacks sufficient motivation or is obviously unfounded;
  - b) the same matter is being examined under another procedure of international investigation or settlement;
  - c) the complainant has not exhausted all available effective domestic remedies.
2. If the [*the monitoring body*] assesses that the communication fulfils the conditions under paragraph 1, [*the monitoring body*] transmits the communication to the State Party concerned and requests this State Party to provide observations and comments within a time-limit set by the [*monitoring body*].
  3. On the basis of the answer of the State Party, [*the monitoring body*] may decide :
    - a) to close the matter of the communication;
    - b) to continue its examination;
    - c) to make a recommendation to the State Party.
  4. The procedure under the present article comes to an end when the [*monitoring body*] communicates the conclusions of its investigation to the State Party and to the author of the communication.
  5. The procedure under this article is confidential.

**Article II-C ter (new)**

If the [*monitoring body*] receives reliable information which appears to it to contain well-founded indication that enforced disappearance is being practised in a systematic or general manner in the territory of a State Party, the [*monitoring body*] may seize the Secretary General of the United Nations, after having enquired with the State Party concerned about any pertinent information and the measures taken to put an end immediately to such practises.

**Article II-D (integrated in II-O§2)**

*Article II-E (complemented)*

1. [The monitoring body] has competence solely in respect of deprivations of liberty which commenced after the entry into force [of this instrument].
2. Should a State become party to [this instrument] after its entry into force, the obligations of that State towards [the monitoring body] concern only deprivations of liberty which commenced after the entry into force [of this instrument] in respect of the State concerned.
3. (new) Each State Party may at any time declare that, in its own respect, it recognises that the [monitoring body] has competence in respect of enforced disappearances which commenced before entry into force of the [present instrument].

*Article II-F (modified)*

1. The [monitoring body] shall submit an annual report on its activities [under the present instrument] to the States Parties and to the General Assembly of the United Nations.
2. (new) If, in the procedures under articles II-B and II-C bis, a State Party concerned obviously refuses to cooperate or if the procedures yield to no effective result, the [monitoring body] may decide to make an observation public, with regard to the matter or the situation at stake.
3. (new) The State Party concerned shall be informed in advance of the publication of an observation under paragraph 2 of the present article. This observation shall be published together with the answers, comments or observations transmitted by the State Party within the time-limit set by the [monitoring body].



**PART III****Article III-O (former 2.2)**

[The present instrument] is without prejudice to any other international instrument or national legislation that does or may contain provisions of broader application.

**Article III-O bis (new)**

Personal data, including medical or genetic data, which are transmitted in the framework of the search of a disappeared person shall not be used for other purposes than that of the search of the disappeared person.

**Article III-A**

1. [The present instrument] is open for signature by [...].
2. [The present instrument] is subject to ratification. Instruments of ratification shall be deposited with the Secretary-General of the United Nations.
3. [The present instrument] is open to accession by [...]. Accession shall be effected by the deposit of an instrument of accession with the Secretary-General of the United Nations.

**Article III-B**

1. [The present instrument] shall enter into force on the thirtieth day after the date of deposit of the [Xth] instrument of ratification or accession.
2. For each State ratifying [the present instrument] or acceding to it after the deposit of the [Xth] instrument of ratification or accession, [the present instrument] shall enter into force on the thirtieth day after the date of deposit of its own instrument of ratification or accession.

**Article III-C**

The Secretary-General of the United Nations shall inform all States Members of the United Nations and all States which have signed [the present instrument] or acceded to it of the following:

- a) Signatures, ratifications and accessions under article III-A;
- b) The date of entry into force of [the present instrument] under article III-B.

**Article III-D**

The provisions of [the present instrument] shall apply, without limitation or exception, to all parts of federal States.

**Article III-D bis (new)**

1. Any State, upon signature, ratification or accession, may declare that [the present instrument] will be extended to any territory for which it is responsible with regard to international relations. Such a declaration will take effect when [the present instrument] enters into force for the State concerned.
2. At any time, such an extension may be notified to the Secretary General of the United Nations and will take effect (...) days after it has been received by the Secretary General.

**Article III-E (integrated in 1 bis, paragraph 2)****Article III-F**

[*The present instrument*] is without prejudice to the provisions of international humanitarian law, including the obligations of the High Contracting Parties to the four Geneva Conventions of 12 August 1949 and the Additional Protocols thereto of 8 June 1977, or the option available to any State to authorise the International Committee of the Red Cross to visit places of detention in cases for which international humanitarian law does not provide.

**Article III-G**

1. Any State Party to [*the present instrument*] may propose an amendment and file it with the Secretary-General of the United Nations. The Secretary-General shall thereupon communicate the proposed amendment to the States Parties to [*the present instrument*] with a request that they notify him or her whether they favour a conference of States Parties for the purpose of considering and voting upon the proposal. In the event that within four months from the date of such communication at least one third of the States Parties favours such a conference, the Secretary-General shall convene the conference under the auspices of the United Nations. Any amendment adopted by a majority of two thirds of the States Parties present and voting at the conference shall be submitted by the Secretary-General to all the States Parties for acceptance.
2. An amendment adopted in accordance with paragraph 1 of this article shall enter into force when two thirds of the State Parties to [*the present instrument*] have accepted it in accordance with their respective constitutional processes.
3. When amendments enter into force, they shall be binding on those States Parties which have accepted them, other States Parties still being bound by the provisions of [*the present instrument*] and any earlier amendments which they have accepted.

**Article III-H**

1. [*The present instrument*], of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations.
2. The Secretary-General of the United Nations shall transmit certified copies of [*the present instrument*] to all States.

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Peay, T. Michael

From: Michael Peay [redacted]  
Sent: Sunday, November 23, 2003 8:30 PM  
To: Pankaj Saran  
Subject: Re: Meeting

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November 23, 2003

Pankaj,

906-8686

Many thanks for your kind note and suggestion. I would be quite pleased to meet with you to discuss the upcoming WG on Disappearances. Tomorrow, I'll review my office calendar for this upcoming week to see what looks possible. I'm sure it will be useful whenever we are able to meet to exchange views.

I will be away from Geneva on Thursday and Friday, so it'll have to be early in the week. In any event, I look forward to being in touch with you. Best regards,

Michael Peay

--- Pankaj Saran [redacted]  
> Dear Michael,  
>  
> I was wondering whether we should not meet, perhaps  
> over lunch, to exchange notes on the WG on  
> Disappearances.  
>  
> We could set up something for next week if that is  
> OK with you.  
>  
> Sincerely,  
>  
> Pankaj Saran,  
> Counsellor,  
> Indian Mission  
>  
>  
>  
>  
> -----  
> Do you Yahoo!?  
> Free Pop-Up Blocker - Get it now

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E/CN.4/2003/WG.22/CRP.3/Rev.1  
16 January 2003

ENGLISH  
Original: FRENCH

COMMISSION ON HUMAN RIGHTS  
Intersessional open-ended Working Group to elaborate  
a draft legally binding normative instrument for the  
protection of all persons from enforced disappearance  
First session  
Geneva, 6-17 January 2003

**DRAFT REPORT**

**VI. DISCUSSION ON SUBSTANTIVE PROVISIONS**

**A. Definition**

1. The delegations took the view that the definition of enforced disappearance should contain at least three constituent elements:

- (a) Deprivation of liberty in whatever form;
- (b) Refusal to acknowledge that deprivation of liberty;
- (c) Removal of the disappeared person from the protection of the law.

2. The definition must also take into consideration the perpetrators of the enforced disappearance. In this respect, many delegations considered that the instrument should in the first place refer to agents of the State and ~~related persons~~. Some delegations thought it would be worth examining the role

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and situation of persons commonly called "non-State actors". For most delegations, States bore the prime responsibility for preventing and punishing enforced disappearances, including those perpetrated by non-State actors, ~~and~~ ensure reparation.

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3. Other aspects were mentioned: the duration of enforced disappearances, the implementation of the instrument in time of warfare, and ~~the~~ possible causes of exemption in case of internal disturbances.

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**B. Definition of offences and penalties**

**Enforced disappearance as an independent offence in domestic criminal law**

4. According to some delegations, States should ensure that each act leading to an enforced disappearance constitute an offence under their criminal law. In the view of the other participants, States should have to define enforced disappearance as an independent offence in their domestic criminal law. That would better reflect the complexity of enforced disappearances, would make criminal sanctions more effective and would make it easier to establish rules concerning specific aspects on the offence, such as statutory limitation, exemption of responsibility and extradition. It was recalled that the institution of independent offences in domestic law was supported by the Committee against Torture, the Special Rapporteur on torture and the Working Group on Enforced Disappearances.

5. In the opinion of several delegations, the future instrument should take account of the diversity of national law systems.

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**Enforced disappearance as a crime against humanity**

6. Most speakers wished that the systematic or massive practice of enforced disappearances should be referred to in the instrument as a crime against humanity. Several speakers pointed out that the systematic nature of violations implied forward planning.

**The subjective element as a constituent element of the offence of enforced disappearance**

7. According to article 2, paragraph 1, of the Sub-Commission's draft, the perpetrators of the offence of forced disappearance should be punishable only if they knew or ought to have known that the offence was about to be or was in the process of being committed. In the same

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spirit, article 3, paragraph 2, of the draft suggested that the perpetrators of forced disappearances constituting crimes against humanity should be charged only where they knew or ought to have known that the act was part of a systematic or massive practice of forced disappearances. Several speakers took the view that, for the sake of the effectiveness of criminal justice, such limitations should not be included in the future instrument. Other participants, on the other hand, thought that the clause was worth preserving.

8. The Chairperson concluded the debate in the following way:

- Enforced disappearances constitute crimes. However, the question remained of defining the offence of enforced disappearance as an independent offence in domestic law;
- The Working Group will have to specify under what circumstances, if any, certain enforced disappearances should be considered as crimes against humanity (massive, systematic, or widespread character);
- The Working Group identified the main elements of incrimination (attempt, conspiracy, collusion, instigation and incitement). It should consider with greater detail the issues of dissimulation, responsibility incurred for the failure to act, and the responsibility of hierarchical superiors;
- With regard to sanctions, the Working Group might use the sort of wording used in existing texts, and in the Sub-Commission's draft, whereby penalties should be adequate and proportional to the gravity of the offence.

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COMMISSION ON HUMAN RIGHTS  
Intersessional open-ended Working Group to elaborate  
a draft legally binding normative instrument for the  
protection of all persons from enforced disappearance  
Geneva, 6-17 January 2003

**DRAFT REPORT**

**VI. DISCUSSION ON SUBSTANTIVE PROVISIONS (continued)**

**C. Protection against impunity**

1. Several speakers asked whether it was possible to include a general clause requiring States to take the necessary steps to combat impunity. In the view of the other participants, it was preferable to indicate clearly in the future instrument the various measures that should be taken in that regard, in order to set out States' obligations clearly.

**1. Statute of limitations**

2. Emphasis was placed on the non-applicability of statutory limitations to forced disappearances that constituted crimes against humanity.

3. In the case of forced disappearances that did not constitute crimes against humanity, most speakers considered that, in view of the continuing nature of the offence, the limitation period should begin from the moment when the case was clarified. However, some participants considered that the period should run from the moment of commission of the offence. Another delegation considered that, in the case of persons who had revealed their participation in committing the offence, the period should begin from the moment of the confession.

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UNITED STATES DEPARTMENT OF STATE  
REVIEW AUTHORITY: ARCHIE M BOLSTER  
DATE/CASE ID: 23 JUN 2009 200706444

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4. Most of the participants considered that the length of the limitation period should be the longest of those provided for in domestic law. In the view of one delegation, such an approach could be adopted only if forced disappearances were regarded as separate offences in domestic law.

5. The need to allow for the possibility of suspending limitation periods, in cases where effective remedies were rendered impossible by the situation in the country, was raised.

### 2. Immunity and special courts

6. The question was raised of whether the future instrument should ban special courts, especially military courts, from trying cases of forced disappearance. For some delegations, special courts could be useful in speedily resolving cases in certain circumstances, or were acceptable as long as they remained impartial and respected the principles of the right to a fair trial. However, several speakers pointed out that international law was tending increasingly to rule out the use of such courts to try serious violations of human rights. It was underlined that the use of military courts very often led to situations of impunity.

7. The 1992 Declaration and the 1998 draft provided that no privileges, immunities or special exemptions should be admitted in trials of persons responsible for forced disappearances. However, some delegations considered that exceptions should be allowed for perpetrators who agreed to reveal information of use in establishing the truth. One delegation considered that other grounds for plea bargaining available in domestic law might also be used. Several participants considered that plea bargaining should not lead to complete exoneration from responsibility. Lastly, it was noted that some legal systems allowed agreements to be reached between perpetrators and victims. One delegation considered that the future instrument should stipulate that no privileges, immunities or exemptions would be allowed, except insofar as they were in keeping with its aim and purpose, and without prejudice to the privileges, immunities or exemptions recognized in international law, including the Vienna Convention on Diplomatic Relations.

### 3. Asylum

8. Several delegations emphasized the need to link the obligation not to grant asylum or shelter to persons suspected of participation in a forced disappearance with the obligation not to return (*refouler*) such persons to a State where they would run the risk of being subjected to serious human rights violations. It was pointed out that the draft Convention included such a guarantee. However, some delegations considered that the obligation not to return (*refouler*)



contained in article 15, paragraph 1 of the draft Convention should be limited to cases where there was a risk of enforced disappearance. The risk of grave violations of human rights was considered too large. HCR presented to the working group the exclusion clause contained in article 1F of the 1951 Geneva Convention relating to the Status of Refugees.

9. Some speakers considered that it was difficult to provide for a total ban on the granting of asylum to persons responsible for forced disappearances, particularly in the case of those who agreed to reveal information of use in establishing the truth.

#### 4. Amnesty and pardons

10. Some delegations considered that, instead of banning amnesty for those responsible for forced disappearances, as in the 1998 draft, States should be recommended to take into consideration the extreme seriousness of acts leading to forced disappearances. Several participants said that they were not opposed to amnesty in cases of forced disappearance which did not constitute crimes against humanity. Others, however, considered that before amnesty was granted, a number of conditions must be fulfilled: an inquiry leading to the establishment of the truth; adequate compensation for the victims; and sanctions against the perpetrators.

#### 5. Other grounds for exemption from criminal responsibility, mitigation and aggravation

11. Some delegations considered that it should not be possible for orders from a superior to constitute a ground for exemption from responsibility, nor a mitigating circumstance, either in peacetime or in wartime. Several participants considered that the responsibility of the superior should be established, independently of the subjective element referred to in article 9, paragraph 3 of the draft Convention.

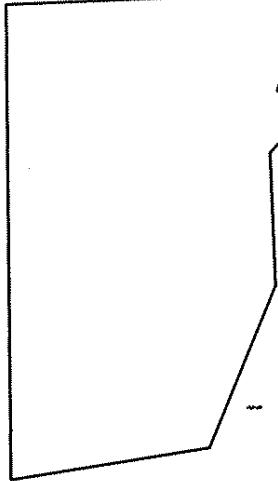
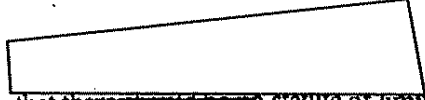
12. One delegation considered that mitigating circumstances might be accepted, but that they should be more strictly defined than in article 5, paragraph 2 of the draft Convention.

13. Some participants considered that severer penalties should be applicable when the victims were vulnerable persons (the disabled, the elderly, pregnant women, children etc.).

14. The Chairperson summed up the discussions as follows:

- It had to be decided whether the instrument should contain a general obligation or more specific protection measures against impunity;

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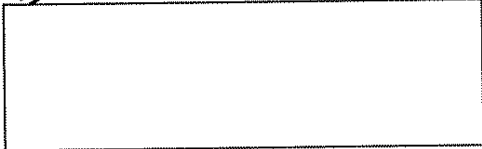


- There was a strong convergence of views that ~~there should be no~~ statute or limitations on forced disappearances which constituted crimes against humanity. Where differences under the ordinary law were concerned, ~~it seemed no one disputed that the~~ longest limitation period stipulated in domestic law should be applied. There remained the question of the point when the limitation period should begin; The Working Group considered that immunity should be restricted to the maximum possible extent. However, the issue of immunities which were based on international law should be ~~addressed as a means of applying immunities which were based~~ on domestic law;
- Amnesty and pardons should not have the result of preventing fair material compensation and non-pecuniary damages;
- The use of special courts, especially military courts, prompted much concern;
- In the matter of the granting of asylum or shelter to persons suspected of forced disappearances, the Working Group's goal should be to eliminate sanctuaries which could be exploited by those responsible for forced disappearances;
- Several delegations raised the question of measures to be taken in respect of persons who had cooperated with the judicial authorities. That covered both the issue of immunity or reduced sentences and that of territorial asylum;
- It was suggested that the future instrument should set forth a form of "duty to disobey" orders and instructions relating to forced disappearances.

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E/CN.4/2003/WG.22/CRP.5/Rev.1  
16 January 2003

ENGLISH  
Original: FRENCH

COMMISSION ON HUMAN RIGHTS

Intersessional open-ended Working Group to elaborate  
a draft legally binding normative instrument for the  
protection of all persons from enforced disappearance

First session

Geneva, 6-17 January 2003

DRAFT REPORT

VI. DISCUSSION ON SUBSTANTIVE PROVISIONS (continued)

D. Domestic prosecution and international cooperation

1. Establishment of the jurisdiction of domestic courts

1. Several participants came out in favour of the wording contained in articles 6 of the 1998 draft and 5 of the Convention against Torture. That would lead the State to establish its jurisdiction, in the matter of enforced disappearance, in cases where the offence is committed within that State's territory, where the offender or victim is a national of the State, or where the offender is present in the territory of the State and is not being extradited by the latter. This concerns the question of the universal or quasi-universal jurisdiction.
2. Some delegations commented that torture often arose in cases of enforced disappearance. In the future instrument, therefore, the basic rules regarding the jurisdiction of States should at least be similar to those provided in article 5 of the Convention against Torture.
3. Some participants commented that it was always preferable to hold trials in States where the enforced disappearance had occurred, especially for the sake of the victims. The jurisdiction of other States was provided only as an additional facility. States should also be encouraged to investigate and prosecute under their own legislation.

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UNITED STATES DEPARTMENT OF STATE  
REVIEW AUTHORITY: ARCHIE M BOLSTER  
DATE/CASE ID: 02 JUL 2009 200706444

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4. Several delegations made the point that the question of jurisdiction was directly related to that of the definition of the offence of disappearance, and that the group had still not agreed on a position in that respect.

## 2. Extradition and judicial cooperation

5. Several participants were in favour of including precise rules regarding extradition in the instrument, in order to avoid any possible gaps in that respect and to ensure better application of the principle *aut dedere aut judicare*. It was pointed out that in the draft Convention, the obligation to judge existed, even when no extradition had been requested.

6. According to the draft Convention, enforced disappearance was not considered as a political offence for the purposes of extradition. According to some speakers, even though that clause was not specifically stipulated in the 1992 Declaration, it did appear in many other international and regional instruments. The provision had been drafted because many extradition treaties forbade extraditions for political offences.

7. One delegation stressed the need to discuss the question of death penalty in the context of the debate regarding extradition.

e / Some speakers said that the draft Convention, which restricted judicial cooperation to the penal field, needed improving in that respect. Other areas of cooperation should be added, especially in civil matters (of particular importance for disappeared children). Furthermore, several delegations felt that, as with the provisions on extradition, the future instrument, in the absence of any treaty of judicial cooperation between the States concerned, could serve as a legal basis for such cooperation. It would therefore be worth drawing up a list of minimum investigatory measures which a State party could request of another State party, for instance in terms of gathering evidence, or carrying out searches or seizures. It was also pointed out that the need for judicial cooperation in the area of forced ~~trans-frontier~~ disappearances was essential.

9 / The Chairperson summed up the discussion as follows:

- The establishment of the broadest possible jurisdiction for domestic criminal courts with respect to enforced disappearance appeared to be essential if the future instrument was to be effective. Consideration might be given in that respect to the quasi-universal jurisdiction mechanism used by several other multilateral instruments;

- With regard to international cooperation, extradition and judicial cooperation were two basic mechanisms, the use of which should be facilitated and encouraged. In the absence of a bilateral treaty, the future instrument could serve as a legal basis for extradition;
- The principle of *aut dedere aut judicare* was mentioned several times: the idea was to eliminate access to sanctuaries for the perpetrators of forced disappearances.

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Intersessional open-ended Working Group to elaborate  
a draft legally binding normative instrument for the  
protection of all persons from enforced disappearance

First session

Geneva, 6-17 January 2003

**DRAFT REPORT**

**VI. DISCUSSION ON SUBSTANTIVE PROVISIONS (continued)**

**D. Prevention**

**1. Supervision of detentions**

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1. On the basis of the draft Convention and the proposals drawn up by the independent expert Manfred Nowak, the participants prepared an initial list of State obligations as regards the supervision of detentions (see below).

**Prohibition of incommunicado detention and of secret places of detention**

2. The participants considered that this prohibition should be absolute.

**Register of detainees**

3. Several participants considered that such registers should be made available to anyone with a legitimate interest in obtaining such information.

4. A few delegations pointed out that the specific structure of some States, for example federal States or States which had devolved a certain amount of power to their provinces, might make it difficult to keep a central register. Several solutions were put forward: the registers

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could be maintained by the federated States, or a register of places of detention could be kept at the federal level. In any event, it was vital that registration of detainees should be carried out at two levels, which was the only way to cross-check information, and hence ensure efficient supervision.

**Respect for the right of detainees to notify their lawyers, families and any persons with a legitimate interest of their situation**

5. A few delegations considered that immediate notification of a lawyer and persons with a legitimate interest, as provided for in the draft Convention, might constitute an excessively onerous requirement, bearing in mind provisions in domestic law that a certain amount of time should elapse between arrest and notification, especially in serious cases.

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6. A discussion took place on the need to guarantee the right to respect for the privacy of the detainee, without enabling the authorities to conceal the detention, against the wishes of the detainee. Some speakers considered that the right to respect for privacy was not affected insofar as the information was communicated confidentially to specific individuals.

**Institution of mechanisms of habeas corpus and other guarantees against arbitrary detention**

7. The importance of such mechanisms was emphasized. It was also pointed out that under the draft Convention there was no derogation from the right to a remedy.

8. The importance of judicial supervision of detention was emphasized. The draft Convention provided that other authorities would be competent to perform that function. In that regard, it was suggested that use might be made of the formula "other officer authorized by law to exercise judicial power" from article 9 of the International Covenant on Civil and Political Rights.

**Obligation to conduct an investigation**

9. Attention was drawn to the special importance of investigations, which could halt the process of disappearance.

10. Several participants considered that it should be possible for the investigation to be initiated not only at the request of the family but also automatically when there were grounds for believing that a person had been the victim of a forced disappearance.

11. According to several speakers, the body responsible for the investigation must be independent from the institution being accused, and must be capable of conducting an impartial investigation. It must be provided with the requisite resources and powers, as well as sufficient

authority to conduct the investigation speedily and efficiently. Lastly, one delegation emphasized that article 11 of the draft Convention, under which the authority receiving the complaint must immediately proceed to an investigation, took no account of the fact that some authorities, such as national parliaments, might not have the power both to receive complaints and to investigate. B5

**The need to punish agents of the State who are guilty of obstruction**

12. In the view of most of the participants, the penalties laid down could include non-penal sanctions. The draft Convention could also ensure that no objective criminal responsibility on the part of agents was created. B5

**The need to suspend persons suspected of forced disappearances from all official duties for the duration of the investigation**

13. In the view of several participants, this obligation should take into account the right of the suspected persons to the presumption of innocence. Some delegations pointed out that in the case of high-level personnel such a provision would raise difficulties, bearing in mind the procedures involved, which were sometimes dictated by the Constitution. A more flexible wording, placing an obligation on States to guarantee that investigation procedures would not be influenced by the suspected persons, might be preferable. Several participants emphasized that international law had already adopted the principle that persons who might exercise authority over the complainants, the witnesses and their families, and over the persons carrying out the investigation, should be suspended. There was also a need to ensure that the suspected persons were not in a position to embark on additional violations.

**2. Education and training**

14. Many speakers emphasized the need to strengthen the draft Convention in this area. It should stipulate that the personnel concerned included police and prison staff as well as judges, procurators and lawyers. The precise aims of training should be spelled out: specific mention was made of preventing the involvement of personnel in acts of forced disappearance, and recognition by the personnel of the importance of preventing such acts, investigating and urgently solving cases of forced disappearance. Agents of the State should also be informed of their duty to disobey and of the unlawfulness of orders to carry out a forced disappearance. Training in the specific features of investigations into forced disappearances should also be provided. Lastly, members of the public as a whole should be informed of their rights, as recognized in international law, but also in domestic law. B5



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15. One delegation submitted the following proposal:

"States parties shall ensure that the training of public law enforcement staff and supervisors includes the necessary education concerning the provisions of this convention, in order:

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"(a) To prevent the involvement of such staff and supervisors in forced disappearances;

"(b) To ensure that the importance of prevention and of investigations into forced disappearances is recognized;

"(c) To ensure that the urgent need to solve cases of this type is recognized."

16. The Chairperson summed up the discussions as follows:

- In advance of any judicial investigation, provision must be made for the initiation of inquiries into the fate of the person alleged to have disappeared. The question of identifying the independent authorities responsible for such inquiries should be further studied;
- States should guarantee a simple, rapid and effective remedy before a judicial authority. Penal or other sanctions should be laid down for those who hinder access to such remedies;
- All steps should be taken by States to prohibit secret places of detention and incommunicado detention. This implies the taking of an inventory of all detainees and all places of detention. The question arises of how federal States will address this requirement. It will also be necessary to ensure effective supervision of places of detention by the judicial authorities, as well as notification of lawyers and families concerning steps taken with regard to detained persons and the places where they are located;
- The authorities responsible for holding persons in detention should be properly trained. The proposal put forward by one delegation is in keeping with this objective. Mention was made of the need to create awareness among the public concerning the offence of forced disappearance.

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*File: Enforced  
Disappearance*

**Peay, T Michael**

**Subject:**

FW: FOR CLEARANCE/Disappearances talking points

GE105

RELEASED IN FULL

-----Original Message-----

**From:** Brancato, Gilda M (Main State)  
**Sent:** Thursday, June 23, 2005 12:42 AM  
**To:** Kovar, Jeffrey D; Johnson, Thomas A; Camponovo, Christopher N (DRL); Harris, Robert K; Brooks, Waldo W; Manning, Denise; Peay, T Michael  
**Cc:** Barton, Paula J; Danles, Joel D; Gale, Hanny; Witten, Samuel M; Sicade, Lynn M (DRL); Lucas, William E; Brancato, Gilda M (Main State)  
**Subject:** FOR CLEARANCE/Disappearances talking points



LEGAL-#122616-v1  
-Talkers-\_forc...

Mission Geneva is meeting the French chair of the negotiations on June 24 and requested talking points. The attached paper draws from earlier cleared points prepared for the most recent negotiating round in February 2005. Please provide clearance by Thursday COB, as I will need to send to Geneva Thursday evening. I will provide copies of the February 16, 2005 treaty text on Thursday morning.  
Thank you all, Gilda

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RELEASED IN PART GE139A

**Peay, T Michael**

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**From:** Brancato, Gilda M  
**Sent:** Friday, August 08, 2003 10:33 PM  
**To:** Johnson, Thomas A; Camponovo, Christopher N (DRL); Brooks, Waldo W;

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**Cc:** Witten, Samuel M; Harris, Robert K; Gorove, Katherine M; Buchwald, Todd F; Sicade, Lynn M; Jacobson, Linda; Brancato, Gilda M; DeLaurentis, Jeffrey (Geneva); Peay, T Michael (Geneva); Solomon, Steven A (Geneva);

**Subject:** Forced disappearances convention/draft INSTRUCTIONS TO THE UNITED STATES DELEGATION TO THE UNCHR WORKING GROUP SESESSION ON FORCED DISAPPEARANCES:

To those on the "TO" line: The attached draft instructions, which revise and expand instructions prepared for the first session of the Working Group on a Forced Disappearances convention in January 2003, are for your comments and clearance. You may recall that this is a UN exercise to draft a convention to prohibit and prevent forced disappearances. The French Ambassador in Geneva chairs the WG, and Latin states are vocal in support of a broad convention. Please provide clearance on the attached draft instructions by Tuesday August 26, as the one-week UN session on the



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proposed convention is scheduled to start in Geneva on Monday September 1. Thank you. Gilda

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RELEASED IN PART GE197

Peay, T Michael

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**From:** Brancato, Gilda M  
**Sent:** Monday, December 16, 2002 9:07 PM  
**To:** Surena, Andre M; Manning, Denise; Johnson, Thomas A; Camponovo, Christopher N (DRL); Danies, Joel D(Geneva)  
**Cc:** Witten, Samuel M; Jacobson, Linda; Dolan, JoAnn; Peay, T Michael(Geneva); Solomon, Steven A(Geneva); Sicade, Lynn M; Legal-L-HRR-dl  
**Subject:** #108020 v1 - Instructions; WG on forced disappearances

The attached is for your clearance, please. I will send to Justice and Defense as well. This draft may serve as a basis for our L meeting tomorrow and for a meeting with Justice tentatively scheduled for Wednesday. May I hear from you by Thursday COB please. Thank you.  
As noted earlier, I will circulate shortly for clearance a draft commenting on specific provisions of the 1998 UNHCR sub-commission draft disappearances convention.

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[Redacted] Thank you all. Gilda

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Gale, Hanny

From: Kovar, Jeffrey D  
Sent: Friday, August 12, 2005 9:04 PM  
To: Gale, Hanny  
Subject: One more, please

RELEASED IN FULL

-----Original Message-----

From: Brancato, Gilda M (Main State)  
Sent: Thursday, June 23, 2005 7:00 PM  
To: Brooks, Waldo W; Kovar, Jeffrey D; Johnson, Thomas A; Camponovo, Christopher N (DRL); Harris, Robert K; Manning, Denise; Peay, T Michael; Jacobson, Linda  
Cc: Barton, Paula J; Danies, Joel D; Gale, Hanny; Witten, Samuel M; Sicade, Lynn M (DRL); Lucas, William E; Dalton, Robert E; Legal-L-HRR-dl  
Subject: RE: Treaty/Forced Disappearances talking points & Annex

Mike, as requested, Attached are talkers and an Annex addressing outstanding core issues for the USG. Best of luck tomorrow, and please send us an email report.  
All the best, Gilda

-----Original Message-----

From: Brooks, Waldo W  
Sent: Thursday, June 23, 2005 8:06 AM  
To: Brancato, Gilda M (Main State); Kovar, Jeffrey D; Johnson, Thomas A; Camponovo, Christopher N (DRL); Harris, Robert K; Manning, Denise; Peay, T Michael  
Cc: Barton, Paula J; Danies, Joel D; Gale, Hanny; Witten, Samuel M; Sicade, Lynn M (DRL); Lucas, William E  
Subject: RE: FOR CLEARANCE/Disappearances talking points

Clear.

-----Original Message-----

From: Brancato, Gilda M (Main State)  
Sent: Wednesday, June 22, 2005 6:40 PM  
To: Kovar, Jeffrey D; Johnson, Thomas A; Camponovo, Christopher N (DRL); Harris, Robert K; Brooks, Waldo W; Manning, Denise; Peay, T Michael  
Cc: Barton, Paula J; Danies, Joel D; Gale, Hanny; Witten, Samuel M; Sicade, Lynn M (DRL); Lucas, William E; Brancato, Gilda M (Main State)  
Subject: FOR CLEARANCE/Disappearances talking points

<< File: LEGAL-#122616-v1-Talkers-\_forced\_disappearances\_-\_June\_2005\_.doc >> Mission Geneva is meeting the French chair of the negotiations on June 24 and requested talking points. The attached paper draws from earlier cleared points prepared for the most recent negotiating round in February 2005. Please provide clearance by Thursday COB, as I will need to send to Geneva Thursday evening. I will provide copies of the February 16, 2005 treaty text on Thursday morning.



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Thank you all, Gilda

UNITED STATES DEPARTMENT OF STATE  
REVIEW AUTHORITY: JOHN S BLODGETT  
DATE/CASE ID: 18 AUG 2009 200706444

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