



Third Standing Committee
Democracy and Human Rights

C-III/115/DR-pre
23 June 2006

MISSING PERSONS

***Preliminary draft resolution prepared by the co-Rapporteurs
Mrs. Brigitta Gadiant (Switzerland) and Mr. Leonardo Nicolini (Uruguay)***

The 115th Inter-Parliamentary Assembly,

- (1) *Deeply concerned and alarmed* by the suffering caused by persons missing as a result of armed conflict or situations of internal violence and by enforced disappearances;
- (2) *Considering* that the problem of missing persons is a question of both international humanitarian law and international human rights;
- (3) *Guided* by the principles and standards of international humanitarian law, and in particular by the four Geneva Conventions of 12 August 1949 and the two Additional Protocols thereof of 1977; as well as by international human rights and, in particular the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the Convention on the Rights of the Child, and the Vienna Declaration and Programme of Action adopted in June 1993 by the World Conference on Human Rights (A/CONF.157/23);
- (4) *Noting* resolution 2005/66 on "The Right to Truth", adopted by the United Nations Commission on Human Rights on 20 April 2005;
- (5) *Recalling* the Declaration on the Protection of all Persons from Enforced Disappearance adopted by the United Nations General Assembly in its resolution 47/133 of 18 December 1992;
- (6) *Noting* the outcomes of the International Conference of Governmental and Non-Governmental Experts on Missing Persons, held in Geneva, Switzerland, from 19 to 21 February 2003;
- (7) *Noting also* that the 28th International Conference of the Red Cross and Red Crescent, held in Geneva, Switzerland, from 2 to 6 December 2003, adopted the Agenda for Humanitarian Action, and in particular General Objective 1: "Respect and restore the dignity of persons missing as a result of armed conflicts or other situations of armed violence and their families";
- (8) *Considering* the Inter-American Convention on Forced Disappearances adopted on 9 June 1994; resolution AG/RES. 2134 (2005) adopted at the 35th General Assembly of the Organization of American States on persons who have disappeared and assistance to members of their families, and resolution AG/RES. 2231 (2006) on persons who have disappeared and

assistance to members of their families, adopted at the 36th General Assembly of the Organization of American States;

(9) *Convinced* that respect for international humanitarian law by all parties involved in an armed conflict can, in large measure, help forestall enforced disappearances;

(10) *Aware* of the need for States to adopt a comprehensive national policy on missing persons encompassing all the measures needed to forestall disappearances, elucidate the fate of missing persons, meet the needs of the families of missing persons, acknowledge the facts and determine responsibility for events that have led to the disappearances in situations of armed conflict and other situations of internal violence and in the case of enforced disappearances;

(11) *Convinced* that governments are first and foremost responsible for forestalling disappearances and determining the fate of missing persons;

(12) *Affirming* the individual right of families to know and dispose of information about the fate of their loved ones gone missing as a result of armed conflict or other situations of internal conflict, including their whereabouts, and if they are dead, the circumstances and cause of death;

(13) *Reiterating* the importance of combating impunity in preventing violations of international humanitarian law and international human rights;

(14) *Recalling* that the Rome Statute establishing the International Criminal Court, adopted on 17 July 1998, defines the enforced disappearance of persons as constituting a crime against humanity when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack;

(15) *Observing with great concern* that the families, as long as they remain uncertain about the fate of their loved ones, are incapable of rebuilding their lives and community life, which often undermines relationships between communities for several generations;

(16) *Paying tribute* to a number of international, regional and local organizations – both intergovernmental and non-governmental - and in particular the International Red Cross and Red Crescent Movement, which, throughout the world, strives to elucidate the fate of persons missing as a result of armed conflict or situations of internal violence, to maintain and restore family links and support the families of missing persons;

(17) *Convinced* of the critical role that the Inter-Parliamentary Union and parliaments can play in resolving the problem of missing persons:

1. *Urges* all parties to a conflict or situation of internal violence to take all the necessary steps to forestall disappearances in accordance with the applicable rules of international humanitarian law, and urges States to uphold and protect human rights in order to forestall enforced disappearances;
2. *Invites* those States that have not yet subscribed to the above-mentioned treaties to explore or re-explore without delay the possibility of so doing in a timely manner;

3. *Encourages* the United Nations and its competent bodies to continue their work with a view to adopting a draft convention on the protection of all persons against enforced disappearances;

[Or if the convention is open for signature and ratification prior to the 115th IPU Assembly: *Encourages* States to ratify the convention on the protection of all persons against enforced disappearances;]

4. *Requests* parliaments to bring to the attention of their respective governments the problem of missing persons using all the means at their disposal, so that comprehensive national policies are adopted to resolve the problem of missing persons in situations of armed conflict or situations of internal violence, enhance assistance to families of victims and forestall further disappearances;

These national policies should entail:

- a) Passage and enactment of a national law on missing persons, accompanied by the necessary regulatory and administrative measures, which cover notably the following aspects:
 - Recognition of the families' right to know and, therefore, their right to information about the fate of their missing loved ones;
 - Recognition of a legal status for missing persons;
 - Sanctions provided under the national criminal legislation for violations of international humanitarian and international human rights applicable to disappearances, and in particular sanctions for enforced disappearances;
 - Recognition of rights of the families of missing persons while their loved ones are missing, paying particular attention to vulnerable persons;
 - Implementation of measures to ensure that all persons, in particular minors and other vulnerable persons, bear some form of personal identification;
 - Implementation of measures to ensure that members of armed forces and security forces bear a form of personal identification, at least an identity badge, and that these forms of identification are mandatory and properly used;
 - Exchange of family news in all circumstances;
 - In the particular case of persons deprived of their freedom, implementation of measures to guarantee that information is communicated to the families, attorneys or any other person with a legitimate interest in their situation; and contact with families and attorneys;
 - The right to be registered and detained in an official place;
 - Protection of persons against the risk of disappearance, in particular persons deprived of their liberty, by authorizing regular, independent and unrestricted spot visits by the International Committee of the Red Cross or other independent organization be it national or international;
 - Establishment of a national information bureau charged with centralizing and communicating information on the wounded, the sick and the shipwrecked, as well as on persons deprived of their liberty and deceased persons;
 - Proper handling of human remains;

- b) Putting in place national implementation and coordination mechanisms, notably through national commissions charged with implementing international humanitarian law;
 - c) Examination and systematic resolution of the question of missing persons at the end of a conflict in the framework of a process aimed at establishing and maintaining lasting peace and implementation, where necessary, of appropriate national mechanisms of a judicial and non-judicial nature, designed to shed light on the fate of missing persons and meet the needs of families and communities;
 - d) Establishment of competent parliamentary committees on international humanitarian law, responsible *inter alia* for following up the question of missing persons;
 - e) Appropriate training of State agents to address the matter of missing persons both through national legislation and its implementation;
 - f) Voting and allocation of necessary funds;
5. *Requests* States to extend these national policies and their implementation to other contexts of disappearances in order to guarantee in all circumstances equal protection to missing persons and their families;
 6. *Invites* parliaments, in drafting and implementing these policies, to encourage the competent national authorities to seek the expertise of organizations that deal with the issue of disappearances, notably the International Committee of the Red Cross;
 7. *Invites* parliaments to support the work of the United Nations Working Group on Enforced or Involuntary Disappearances and to encourage States to accept the Group's requests to conduct visits;
 8. *Encourages* parliaments to get in contact with their national society of the Red Cross and Red Crescent Movement in order to better familiarize themselves with and support their activities to assist missing persons and their families;
 9. *Invites* parliaments to cooperate through the exchange of information, experiences and expertise on parliamentary action taken to ensure implementation of this resolution;
 10. *Requests* the Inter-Parliamentary Union to keep this question on its agenda, through the Committee in charge of promoting respect for international humanitarian law, not only regarding disappearances resulting from armed conflict or a situation of internal violence;
 11. *Invites* the IPU to develop in a timely manner a handbook for parliamentarians to serve as a tool for passing national laws on missing persons.
 12. *Encourages* the IPU to set up a system of inter-parliamentary pledges to support and finance in as many languages as possible the translation of such a handbook for parliamentarians.