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COMMISSION ON HUMAN RIGHTS  
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**PROMOTION AND PROTECTION OF HUMAN RIGHTS**

**Albania\*, Andorra\*, Argentina, Armenia, Australia, Austria\*, Belgium\*, Bosnia and Herzegovina\*, Canada, Croatia\*, Czech Republic\*, Denmark\*, Estonia\*, Finland, Germany, Greece\*, Guatemala, Honduras, Hungary, Iceland\*, Ireland, Italy, Liechtenstein\*, Luxembourg\*, Malta\*, Mexico, Netherlands, New Zealand\*, Norway\*, Peru, Poland\*, Republic of Korea, Romania, Slovakia\*, Slovenia\*, South Africa, Spain\*, Sweden\*, Switzerland\* and United Kingdom of Great Britain and Northern Ireland:  
draft resolution**

**2005/... Impunity**

*The Commission on Human Rights,*

*Guided* by the Charter of the United Nations, the Universal Declaration of Human Rights, the International Covenants on Human Rights, the Convention on the Prevention and Punishment of the Crime of Genocide, the Geneva Conventions, of 12 August 1949, and the Additional Protocols thereto of 8 June 1977, and other relevant human rights and international humanitarian law instruments, including the Vienna Declaration and Programme of Action, in particular paragraphs 60 and 91 of Part II,

*Recalling* its resolution 2004/72 of 21 April 2004,

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

*Reaffirming* the duty of all States to put an end to impunity and to prosecute or extradite, in accordance with their obligations under international law, those responsible for all violations of human rights and international humanitarian law that constitute crimes, including genocide, crimes against humanity and war crimes, in order to bring them to justice, promote accountability, respect for international law and justice for the victims, deter the commission of such crimes and fulfil the responsibility of States to protect all persons from such crimes,

*Convinced* that impunity for violations of human rights and international humanitarian law that constitute crimes encourages such violations and is a fundamental obstacle to the observance and full implementation without discrimination of any kind of human rights and international humanitarian law,

*Convinced also* that exposing the truth regarding violations of human rights and international humanitarian law that constitute crimes; holding the perpetrators, including their accomplices, accountable; obtaining justice and an effective remedy for, and protecting, their victims; as well as preserving historical records of such violations and restoring the dignity of victims through public acknowledgement and commemoration of their suffering are integral to the promotion and implementation of human rights and international humanitarian law and to the prevention of future violations, as well as a key factor in ensuring a fair and equitable justice system and, ultimately, in promoting a just reconciliation and stability within all societies, including conflict and post-conflict societies and as relevant in the context of transitional processes,

*Welcoming* the appointment by the Secretary-General of a Special Adviser on the Prevention of Genocide as part of his five-point plan to prevent genocide, including action to prevent armed conflict, effective measures to protect civilians, judicial steps to fight impunity, and swift and decisive action to prevent or stop genocide,

*Acknowledging* the importance of the work of the International Criminal Tribunal for the Former Yugoslavia and the International Criminal Tribunal for Rwanda in combating impunity,

*Recognizing* the important contribution of the International Criminal Court to ending impunity, and noting the first referrals by States and the Security Council of situations to the Court and the ongoing investigations by the Prosecutor,

*Recognizing also*, as measures to combat impunity, the establishment of special, regional and national tribunals and judicial proceedings, often with international support, which are bringing to justice the perpetrators of violations of human rights and international humanitarian law that constitute crimes,

*Welcoming* cooperation between international criminal tribunals, including sharing lessons learned and devising effective approaches to meet challenges faced, to advance the common goal of strengthening the international criminal justice system,

1. *Emphasizes* the importance of combating impunity to the prevention of violations of human rights and international humanitarian law and urges States to end impunity for violations that constitute crimes by bringing the perpetrators, including accomplices, to justice in accordance with international law, in particular standards of justice, fairness and due process of law;

2. *Recognizes* that States must prosecute or extradite perpetrators, including accomplices, of international crimes such as genocide, crimes against humanity, war crimes and torture in accordance with their international obligations in order to bring them to justice, and urges all States to take effective measures to implement these obligations;

3. *Also recognizes* that amnesties should not be granted to those who commit violations of human rights and international humanitarian law that constitute crimes, urges States to take action in accordance with their obligations under international law and welcomes the lifting, waiving, or nullification of amnesties and other immunities, and recognizes as well the Secretary-General's conclusion that United Nations-endorsed peace agreements can never promise amnesties for genocide, crimes against humanity, war crimes, or gross violations of human rights;

4. *Acknowledges* that under the Rome Statute genocide, crimes against humanity and war crimes are not subject to any statutes of limitations and prosecutions of persons accused of these crimes shall not be subject to any immunity, and urges States, in accordance with their obligations under applicable international law, to remove remaining statutes of limitations on such crimes and to ensure, if provided for by their obligations under international law, that official immunities *rationae materiae* do not encompass them;

5. *Reaffirms* that States should not grant asylum to any person with respect to whom there are serious grounds for considering that he or she has committed genocide, crimes against humanity, or war crimes;

6. *Urges* all States to ensure that all military commanders and other superiors are aware of the circumstances in which they may be criminally responsible under international law for genocide, crimes against humanity and war crimes, including, under certain circumstances, for these crimes when committed by subordinates under their effective authority and control, and to ensure that all relevant personnel are informed of the limitations that international law places on the defence of superior orders;

7. *Urges* States to bring to justice those responsible for gender-related crimes and crimes of sexual violence, including those that constitute, in defined circumstances, genocide, crimes against humanity, or war crimes;

8. *Also urges* States to assist each other, in accordance with their international obligations and domestic law, in detecting, arresting and bringing to justice persons, including accomplices, suspected of having committed international crimes, including genocide, crimes against humanity and war crimes;

9. *Acknowledges* the historic significance of the entry into force of the Rome Statute of the International Criminal Court on 1 July 2002, recognizes that to date 98 States have ratified or acceded to the Rome Statute and calls upon all States that have not yet done so to consider ratifying or acceding to it;

10. *Recognizes* the fundamental importance of the principle of complementarity in the Rome Statute, and stresses the importance of the implementation by States parties of their obligations under the Statute;

11. *Calls upon* States to continue to support the work of the International Criminal Tribunal for the Former Yugoslavia and the International Criminal Tribunal for Rwanda, and to consider supporting other initiatives to establish judicial mechanisms, as well as truth and reconciliation commissions and other commissions of inquiry that can contribute to ending

impunity, in cooperation with the United Nations, in accordance with international standards of justice, fairness and due process of law, including at the international, regional and national levels;

12. *Urges* States to provide the victims of violations of human rights and international humanitarian law that constitute crimes with a fair, equitable, independent and impartial judicial process through which these violations can be investigated and made public in accordance with international standards of justice, fairness and due process of law, and to encourage victims to participate in judicial as well as truth and reconciliation processes, including by taking appropriate measures to ensure the protection of, and support and assistance to, victims as well as witnesses, such as contact points and child- and gender-sensitive procedures, paying special attention to crimes of sexual violence;

13. *Welcomes* in this regard the establishment in some States of judicial proceedings and commissions of truth and reconciliation and other commissions of inquiry, including international mechanisms and those with international participation, to address violations of human rights and international humanitarian law, welcomes the publication in those States of the reports of such investigations and commissions, urges all those States to make their reports accessible to the public and to implement, and monitor implementation of, their recommendations, and encourages other States where such violations have occurred in the past, including conflict and post-conflict societies and as relevant in the context of transitional processes, to establish appropriate processes to address them, consistent with international standards of justice, fairness and due process of law;

14. *Emphasizes* that the work of truth and reconciliation commissions and other commissions of inquiry can be complementary to the essential role of judicial mechanisms in protecting human rights and combating impunity;

15. *Calls upon* all States to ensure that criminal proceedings are conducted in accordance with the right to a fair and public hearing by a competent, independent, impartial and duly constituted tribunal in accordance with applicable international law, and to ensure that penalties are appropriate and proportionate to the gravity of the crime committed;

16. *Recognizes* that policies to combat impunity that are based on broad consultation can contribute significantly to ensuring public accountability and hence in securing lasting justice, as well as the important role of civil society and free and independent media in combating impunity and exposing the truth regarding violations of human rights and international humanitarian law, and therefore encourages States to involve, as appropriate, all those concerned, including civil society, victims, human rights defenders and persons belonging to minorities and vulnerable groups, in all efforts to combat impunity, including judicial processes and the design of truth and reconciliation commissions and other commissions of inquiry, the selection of commissioners and the drafting of relevant legislation, with efforts to ensure that men and women participate on an equal basis;

17. *Recognizes* the need to undertake a range of measures as part of a comprehensive approach towards combating impunity, urges States to consider institutional and legislative reform as necessary to ensure conformity with their international obligations, in particular to promote and protect human rights, as an enduring foundation for a lasting justice, democracy, the rule of law and the protection of human rights, and encourages States in this regard to consider establishing or strengthening as appropriate institutions of civilian oversight and civil complaint procedures, such as the office of the ombudsman or public advocate and independent national institutions for the promotion and protection of human rights in accordance with the Paris Principles;<sup>1</sup>

18. *Encourages* States to strengthen training of police, investigative, prosecutorial and judicial personnel in human rights and international humanitarian law and to take appropriate measures that are in conformity with international law, in particular standards of justice, fairness and due process of law, to ensure that individuals who are personally responsible for gross violations of human rights do not remain in positions of public authority, as a guarantee of non-recurrence and to prevent future violations;

19. *Takes note with appreciation* of the expert workshops on impunity held in New York on 18 October and in Geneva on 18 and 19 November 2004, organized by the

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<sup>1</sup> Principles relating to the status of national institutions for the promotion and protection of human rights annexed to General Assembly resolution 48/134.

United Nations High Commissioner for Human Rights to contribute cross-regional perspectives to the work of the independent expert appointed by the Secretary-General at the request of the Commission in resolution 2004/72 to update the Set of Principles for the protection and promotion of human rights through action to combat impunity (E/CN.4/Sub.2/1997/20/Rev.1, annex II);

20. *Takes note with appreciation* of the report of the independent expert and the updated Set of Principles for the protection and promotion of human rights through action to combat impunity (E/CN.4/2005/102 and Add.1) as a guideline to assist States in developing effective measures for combating impunity;

21. *Recalls* that the Principles contained in document E/CN.4/Sub.2/1997/20/Rev.1 have already been applied at the regional and national levels, and encourages States, intergovernmental organizations and non-governmental organizations to consider the recommendations and best practices identified in the independent study on impunity (E/CN.4/2004/88) as well as the updated Principles, as appropriate, in developing and implementing effective measures to combat impunity, including efforts to strengthen domestic capacity such as legislative and institutional reform, and in the design of judicial mechanisms and truth and reconciliation commissions and other commissions of inquiry, and to bring them to the attention of all relevant institutions and personnel;

22. *Requests* the High Commissioner for Human Rights to ensure the wide dissemination of the updated Principles, to make them available in an accessible and user-friendly format, including in the United Nations publication *Human Rights: A Compilation of International Instruments*, to take them into account in relevant United Nations activities, especially in the framework of United Nations missions, field presences, as well as human rights, institution-building and capacity-building activities, in cooperation with other parts of the United Nations system, States and other relevant actors, and to continue to support judicial mechanisms and commissions of inquiry and to provide, upon request, technical and legal assistance in developing national legislation and institutions to combat impunity in accordance with international standards of justice, fairness and due process of law;

23. *Invites* the special rapporteurs and other mechanisms of the Commission to continue to give due consideration to the issue of impunity and to the updated Principles in the discharge of their mandates;

24. *Requests* the Secretary-General again to invite States and intergovernmental and non-governmental organizations to provide information, including best practices, on any legislative, administrative or other steps they have taken to combat impunity, including any ways in which the updated Principles have been applied, and to provide information on remedies available to victims;

25. *Also requests* the Secretary-General to report to the Commission at its sixty-second session on the latest developments in international law and practice relevant to combating impunity, including international jurisprudence and State practice, and the work of the High Commissioner for Human Rights and other parts of the United Nations system, taking into account the updated Principles and the independent study, as well as comments received pursuant to the present resolution;

26. *Decides* to continue its consideration of this matter at its sixty-second session under the same agenda item.

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