

DRAFT BODY OF PRINCIPLES FOR THE PROTECTION OF ALL PERSONS
UNDER ANY FORM OF DETENTION OR IMPRISONMENT

ISSUE

Canadian position on the above draft body of principles.

BACKGROUND

The Draft Body of Principles (DBP) originated in 1978 in the Sub-Commission on the Prevention of Discrimination and Protection of Minorities. A working group of the Third Committee considered the DBP at the 35th session of UNGA and then referred the issue to the Sixth Committee where an open-ended working group, chaired by Italy, has considered the matter since UNGA 36. At the conclusion of UNGA 41, 35 principles, plus a section defining key terms, were provisionally adopted.

At UNGA 42, the Working Group continued its second reading of the principles and its consideration of the definition of other key terms. During the sessions, the Working Group received separate correspondence from the Sub-Commission on Prevention of Discrimination and Protection of Minorities, the International Commission of Jurists and Amnesty International, expressing the view that the provisions in the DBP did not provide sufficient protection for detained persons and in some cases fell below existing standards in other international human rights instruments. Particular concerns were expressed that (1) the DBP might not apply to all detained persons; (2) the lack of a definition for certain key terms, such as "judicial or other authority", left the principles open to abuse by government officials; and, (3) that the provisions concerning habeas corpus and incommunicado detention were deficient. The Working Group took note of these concerns and in some instances started to modify the DBP accordingly.

Although it was thought that the Working Group would complete its work at UNGA 42, several key issues were left unresolved and the Working Group will resume its sessions at UNGA 43. Foremost among those issues unresolved was the definition of several important terms. For example, "judicial or other authority" appears in a number of articles in the DBP, and refers to the entity which, inter alia, is responsible for ordering or prolonging detentions and undertaking investigations where allegations of mistreatment have been made. The issue which has thus far prevented a consensus is whether the definition should be specific enough to ensure that the term applies only to those persons who exercise judicial functions, or whether it should be a general definition which could include administrative officers who exercise quasi-judicial functions.

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