



Ending Torture. Seeking Justice for Survivors

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Amnesty International, International Commission of Jurists and Redress

Draft Guidelines of the Committee of Ministers of the Council of Europe on Eradicating Impunity for Serious Human Rights Violations: Reference Texts

Suggestions for additional references

September 2010

Amnesty International, the International Commission of Jurists and Redress suggest that the following references be added to the **Draft Reference-texts for the Guidelines of the Committee of Ministers of the Council of Europe on Eradicating Impunity for Serious Human Rights Violations** set out in DH-I(2010)09 (30 June 2010).

I. Scope of the Guidelines

3. Definition of “serious human rights violation”

Article 8:

X and Y v the Netherlands, Application no.8978/80 para.27-30:

“ 27.The Court finds that the protection afforded by the civil law in the case of wrongdoing of the kind inflicted on Miss Y [sexual abuse] is insufficient. This is a case where fundamental values and essential aspects of private life are at stake. Effective deterrence is indispensable in this area and it can be achieved only by criminal-law provisions; indeed, it is by such provisions that the matter is normally regulated.

[...]

30. Thus, neither Article 248 ter nor Article 239 para. 2 of the Criminal Code provided Miss Y with practical and effective protection. It must therefore be

concluded, taking account of the nature of the wrongdoing in question, that she was the victim of a violation of Article 8 (art. 8) of the Convention.”

M.C. v Bulgaria: Application no.39272/98, para.153: “the Court considers that States have a positive obligation inherent in Articles 3 and 8 of the Convention to enact criminal-law provisions effectively punishing rape and to apply them in practice through effective investigation and prosecution.”

In *Mentes v Turkey*, Application no.58/1996/677/867, in regard to the destruction of homes or property in violation of Article 8, the Grand Chamber held that “where an individual has an arguable claim that his or her home and possessions have been purposely destroyed by agents of the State, the notion of an “effective remedy” entails, in addition to the payment of compensation where appropriate, a thorough and effective investigation capable of leading to the identification and punishment of those responsible and including effective access for the complainant to the investigative procedure.”

Article 5:

Kurt v Turkey Application no.15/1997/799/1002, para.124: “The Court emphasises in this respect that the unacknowledged detention of an individual is a complete negation of these guarantees and a most grave violation of Article 5. Having assumed control over that individual it is incumbent on the authorities to account for his or her whereabouts. For this reason, Article 5 must be seen as requiring the authorities to take effective measures to safeguard against the risk of disappearance and to conduct a prompt effective investigation into an arguable claim that a person has been taken into custody and has not been seen since.”

Para.4. Definition of victims

UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, Principle 2:

“1. "Victims" means persons who, individually or collectively, have suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights, through acts or omissions that are in violation of criminal laws operative within Member States, including those laws proscribing criminal abuse of power.

2. A person may be considered a victim, under this Declaration, regardless of whether the perpetrator is identified, apprehended, prosecuted or convicted and regardless of the familial relationship between the perpetrator and the victim. The term "victim" also includes, where appropriate, the immediate family or dependants of the direct victim and persons who have suffered harm in intervening to assist victims in distress or to prevent victimization.”

UN Basic Principles and Guidelines on the Right to a Remedy and Reparations for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, Principle 8 and 9:

“8. For purposes of this document, victims are persons who individually or collectively suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights, through acts or omissions that constitute gross violations of international human rights law, or serious violations of international humanitarian law. Where appropriate, and in accordance with domestic law, the term “victim” also includes the immediate family or dependants of the direct victim and persons who have suffered harm in intervening to assist victims in distress or to prevent victimization.

9. A person shall be considered a victim regardless of whether the perpetrator of the violation is identified, apprehended, prosecuted, or convicted and regardless of the familial relationship between the perpetrator and the victim.”

Rules of Procedure and Evidence of the International Criminal Court, Rule 85(a):

““Victims” means natural persons who have suffered harm as a result of the commission of any crime within the jurisdiction of the Court.”

In addition to the above cited standards, the Court’s case law indicates that status of victim does not depend on the identification and punishment of those responsible:

In *Abdulsamet Yaman v Turkey* Application No 32446/96 para. 53 the Court held that in order to constitute a victim of a violation of Article 3, an individual has to present an arguable claim: “Where an individual has an arguable claim that he has been tortured or subjected to serious ill-treatment by agents of the State, the notion of an “effective remedy” entails, in addition to payment of compensation where appropriate, a thorough and effective investigation capable of leading to the identification and punishment of those responsible...”

See also, Assenov v. Bulgaria (Application no. 24760/94) (28 October 1998). In its assessment of the alleged violations of Article 3 the Court considered the adequacy of the investigation and noted:

101. The Court does, however, consider that the medical evidence, Mr Assenov’s testimony, the fact that he was detained for two hours at the police station, and the lack of any account from any witness of Mr Ivanov beating his son with sufficient severity to cause the reported bruising, together raise a reasonable suspicion that these injuries may have been caused by the police.

102. The Court considers that, in these circumstances, where an individual raises an arguable claim that he has been seriously ill-treated by the police or

other such agents of the State unlawfully and in breach of Article 3, that provision, read in conjunction with the State's general duty under Article 1 of the Convention to "secure to everyone within their jurisdiction the rights and freedoms defined in ... [the] Convention", requires by implication that there should be an effective official investigation. This investigation, as with that under Article 2, should be capable of leading to the identification and punishment of those responsible (see, in relation to Article 2 of the Convention, the McCann and Others v. the United Kingdom judgment of 27 September 1995, Series A no. 324, p. 49, § 161, the Kaya v. Turkey judgment of 19 February 1998, Reports 1998-I, p. 324, § 86, and the Yaşa v. Turkey judgment of 2 September 1998, Reports 1998-VI, p. 2438, § 98). If this were not the case, the general legal prohibition of torture and inhuman and degrading treatment and punishment, despite its fundamental importance (see paragraph 93 above), would be ineffective in practice and it would be possible in some cases for agents of the State to abuse the rights of those within their control with virtual impunity.

Guideline I of Council of Europe Guidelines on the Protection of Victims of Terrorist Acts, adopted by the Committee of Ministers on 2 March 2005 at the 917th meeting of the Ministers' Deputies:

1. States should ensure that any person who has suffered direct physical or psychological harm as a result of a terrorist act as well as, in appropriate circumstances, their close family can benefit from the services and measures prescribed by these Guidelines. These persons are considered victims for the purposes of these Guidelines.
2. The granting of these services and measures should not depend on the identification, arrest, prosecution or conviction of the perpetrator of the terrorist act.
3. States must respect the dignity, private and family life of victims of terrorist acts in their treatment.

V. Safeguards to protect persons deprived of their liberty from serious human rights violations

Para.2

Audio and video recording of interviews by the authorities of persons deprived of their liberty has been recognized as an important safeguard against the ill-treatment of detainees which is in the interest of both the detainees and officials .

Committee for the Prevention of Torture (CPT), Extract from the 12th General Report [CPT/Inf General standards at pg 9 – police custody (2002) 15]:

“36. The electronic (i.e. audio and/or video) recording of police interviews represents an important additional safeguard against the ill-treatment of detainees. The CPT is pleased to note that the introduction of such systems is under consideration in an increasing number of countries. Such a facility can provide a complete and authentic record of the interview process, thereby greatly facilitating the investigation of any allegations of ill-treatment. This is in the interest both of persons who have been ill-treated by the police and of police officers confronted with unfounded allegations that they have engaged in physical ill-treatment or psychological pressure. Electronic recording of police interviews also reduces the opportunity for defendants to later falsely deny that they have made certain admissions.”

VI. The duty to investigate

On the general duty to investigate:

UN Set of Principles for the Protection and Promotion of Human Rights Through Action to Combat Impunity, Principle 19:

“States shall undertake prompt, thorough, independent and impartial investigations of violations of human rights...”

Article 2

On the principle that the duty to investigate applies in relation to killings by private actors: *Paul and Audrey Edwards v UK*, Application no. 46477/99 :

74. The Court finds, first of all, that a procedural obligation arose to investigate the circumstances of the death of Christopher Edwards. He was a prisoner under the care and responsibility of the authorities when he died from acts of violence of another prisoner and in this situation it is irrelevant whether State agents were involved by acts or omissions in the events leading to his death. The State was under an obligation to initiate and carry out an investigation which fulfilled the requirements set out above. Civil proceedings, assuming that such were available to the applicants (see below, concerning the applicants' complaints under Article 13 of the Convention) which lie at the initiative of the victim's relatives would not satisfy the State's obligation in this regard.

Article 8:

M.C. v Bulgaria: Application no.39272/98, para.153: “the Court considers that States have a positive obligation inherent in Articles 3 and 8 of the Convention to enact criminal-law provisions effectively punishing rape and to apply them in practice through effective investigation and prosecution.”

Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions ¹

9. There shall be thorough, prompt and impartial investigation of all suspected cases of extra-legal, arbitrary and summary executions, including cases where complaints by relatives or other reliable reports suggest unnatural death in the above circumstances. Governments shall maintain investigative offices and procedures to undertake such inquiries. The purpose of the investigation shall be to determine the cause, manner and time of death, the person responsible, and any pattern or practice which may have brought about that death. It shall include an adequate autopsy, collection and analysis of all physical and documentary evidence and statements from witnesses. The investigation shall distinguish between natural death, accidental death, suicide and homicide.

10. The investigative authority shall have the power to obtain all the information necessary to the inquiry. Those persons conducting the investigation shall have at their disposal all the necessary budgetary and technical resources for effective investigation. They shall also have the authority to oblige officials allegedly involved in any such executions to appear and testify. The same shall apply to any witness. To this end, they shall be entitled to issue summonses to witnesses, including the officials allegedly involved and to demand the production of evidence.

11. In cases in which the established investigative procedures are inadequate because of lack of expertise or impartiality, because of the importance of the matter or because of the apparent existence of a pattern of abuse, and in cases where there are complaints from the family of the victim about these inadequacies or other substantial reasons, Governments shall pursue investigations through an independent commission of inquiry or similar procedure. Members of such a commission shall be chosen for their recognized impartiality, competence and independence as individuals. In particular, they shall be independent of any institution, agency or person that may be the subject of the inquiry. The commission shall have the authority to obtain all information necessary to the inquiry and shall conduct the inquiry as provided for under these Principles.

12. The body of the deceased person shall not be disposed of until an adequate autopsy is conducted by a physician, who shall, if possible, be an expert in forensic pathology. Those conducting the autopsy shall have the right of access to all investigative data, to the place where the body was discovered, and to the

¹ Recommended by Economic and Social Council resolution 1989/65 of 24 May 1989

place where the death is thought to have occurred. If the body has been buried and it later appears that an investigation is required, the body shall be promptly and competently exhumed for an autopsy. If skeletal remains are discovered, they should be carefully exhumed and studied according to systematic anthropological techniques.

13. The body of the deceased shall be available to those conducting the autopsy for a sufficient amount of time to enable a thorough investigation to be carried out. The autopsy shall, at a minimum, attempt to establish the identity of the deceased and the cause and manner of death. The time and place of death shall also be determined to the extent possible. Detailed colour photographs of the deceased shall be included in the autopsy report in order to document and support the findings of the investigation. The autopsy report must describe any and all injuries to the deceased including any evidence of torture.

14. In order to ensure objective results, those conducting the autopsy must be able to function impartially and independently of any potentially implicated persons or organizations or entities.

15. Complainants, witnesses, those conducting the investigation and their families shall be protected from violence, threats of violence or any other form of intimidation. Those potentially implicated in extra-legal, arbitrary or summary executions shall be removed from any position of control or power, whether direct or indirect. over complainants, witnesses and their families, as well as over those conducting investigations.

16. Families of the deceased and their legal representatives shall be informed of, and have access to any hearing as well as to all information relevant to the investigation, and shall be entitled to present other evidence. The family of the deceased shall have the right to insist that a medical or other qualified representative be present at the autopsy. When the identity of a deceased person has been determined, a notification of death shall be posted, and the family or relatives of the deceased shall be informed immediately. The body of the deceased shall be returned to them upon completion of the investigation.

17. A written report shall be made within a reasonable period of time on the methods and findings of such investigations. The report shall be made public immediately and shall include the scope of the inquiry, procedures and methods used to evaluate evidence as well as conclusions and recommendations based on findings of fact and on applicable law. The report shall also describe in detail specific events that were found to have occurred and the evidence upon which such findings were based, and list the names of witnesses who testified, with the exception of those whose identities have been withheld for their own protection.

The Government shall, within a reasonable period of time, either reply to the report of the investigation, or indicate the steps to be taken in response to it.

IX. Criteria for an effective investigation

Standards for the investigation of alleged violations of the right to life and the prohibition against torture and other ill-treatment can be found, respectively, in the *UN Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions* and the *Istanbul Protocol on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*.

Adequacy

Jordan v UK, Application no. 24746/94, para.107

107. The investigation must also be effective in the sense that it is capable of leading to a determination of whether the force used in such cases was or was not justified in the circumstances (e.g. the *Kaya v. Turkey* judgment, cited above, p. 324, § 87) and to the identification and punishment of those responsible (*Öğür v. Turkey*, cited above, § 88). This is not an obligation of result, but of means. The authorities must have taken the reasonable steps available to them to secure the evidence concerning the incident, including inter alia eye witness testimony, forensic evidence and, where appropriate, an autopsy which provides a complete and accurate record of injury and an objective analysis of clinical findings, including the cause of death (see concerning autopsies, e.g. *Salman v. Turkey* cited above, § 106; concerning witnesses e.g. *Tanrikulu v. Turkey* [GC], no. 23763/94, ECHR 1999-IV, § 109; concerning forensic evidence e.g. *Gül v. Turkey*, 22676/93, [Section 4], § 89). Any deficiency in the investigation which undermines its ability to establish the cause of death or the person or persons responsible will risk falling foul of this standard.

*Istanbul Protocol on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*²:

“77. The broad purpose of the investigation is to establish the facts relating to alleged incidents of torture, with a view to identifying those responsible for the incidents and facilitating their prosecution, or for use in the context of other procedures designed to obtain redress for victims. The issues addressed here may also be relevant for other types of investigations of torture. To fulfil this purpose, those carrying out the investigation must, at a minimum, seek to obtain statements from the victims of alleged torture; to recover and preserve evidence, including medical evidence, related to the alleged torture to aid in any potential prosecution of those responsible; to identify possible witnesses and obtain statements from them

² <http://www.ohchr.org/Documents/Publications/training8Rev1en.pdf>

concerning the alleged torture; and to determine how, when and where the alleged incidents of torture occurred as well as any pattern or practice that may have brought about the torture.

78. The following principles represent a consensus among individuals and organizations having expertise in the investigation of torture. The purposes of effective investigation and documentation of torture and other cruel, inhuman or degrading treatment or punishment (hereinafter referred to as torture or other ill-treatment) include the following:

- (a) Clarification of the facts and establishment and acknowledgement of individual and State responsibility for victims and their families;
- (b) Identification of measures needed to prevent recurrence;
- (c) Facilitation of prosecution or, as appropriate, disciplinary sanctions for those indicated by the investigation as being responsible and demonstration of the need for full reparation and redress from the State, including fair and adequate financial compensation and provision of the means for medical care and rehabilitation.

79. States must ensure that complaints and reports of torture or ill-treatment are promptly and effectively investigated. Even in the absence of an express complaint, an investigation should be undertaken if there are other indications that torture or ill-treatment might have occurred. The investigators, who shall be independent of the suspected perpetrators and the agency they serve, must be competent and impartial. They must have access to or be empowered to commission investigations by impartial medical or other experts. The methods used to carry out these investigations must meet the highest professional standards, and the findings must be made public.

80. The investigative authority shall have the power and obligation to obtain all the information necessary to the inquiry. The persons conducting the investigation must have at their disposal all the necessary budgetary and technical resources for effective investigation. They must also have the authority to oblige all those acting in an official capacity allegedly involved in torture or ill-treatment to appear and testify. The same applies to any witness. To this end, the investigative authority is entitled to issue summonses to witnesses, including any officials allegedly involved, and to demand the production of evidence. Alleged victims of torture or ill-treatment, witnesses, those conducting the investigation and their families must be protected from violence, threats of violence or any other form of intimidation that may arise pursuant to the investigation. Those potentially implicated in torture or ill-treatment should be removed from any position of control or power, whether direct or indirect, over complainants, witnesses or their families, as well as those conducting the investigation.”

Public Scrutiny

Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions:³

“16. Families of the deceased and their legal representatives shall be informed of, and have access to, any hearing as well as to all information relevant to the investigation, and shall be entitled to present other evidence. The family of the deceased shall have the right to insist that a medical or other qualified representative be present at the autopsy. When the identity of a deceased person has been determined, a notification of death shall be posted, and the family or relatives of the deceased shall be informed immediately. The body of the deceased shall be returned to them upon completion of the investigation.

17. A written report shall be made within a reasonable period of time on the methods and findings of such investigations. The report shall be made public immediately and shall include the scope of the inquiry, procedures and methods used to evaluate evidence as well as conclusions and recommendations based on findings of fact and on applicable law. The report shall also describe in detail specific events that were found to have occurred and the evidence upon which such findings were based, and list the names of witnesses who testified, with the exception of those whose identities have been withheld for their own protection. The Government shall, within a reasonable period of time, either reply to the report of the investigation, or indicate the steps to be taken in response to it.”

In relation to public inquiries, the Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions state that:

“11. In cases in which the established investigative procedures are inadequate because of lack of expertise or impartiality, because of the importance of the matter or because of the apparent existence of a pattern of abuse, and in cases where there are complaints from the family of the victim about these inadequacies or other substantial reasons, Governments shall pursue investigations through an independent commission of inquiry or similar procedure. Members of such a commission shall be chosen for their recognized impartiality, competence and independence as individuals. In particular, they shall be independent of any institution, agency or person that may be the subject of the inquiry. The commission shall have the authority to obtain all information necessary to the inquiry and shall conduct the inquiry as provided for under these Principles.”

See also the Istanbul Protocol on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment which states:

³ E.S.C. res. 1989/65, annex, 1989 U.N. ESCOR Supp. (No. 1) at 52, U.N. Doc. E/1989/89 (1989)

75. Where investigative procedures are inadequate because of a lack of resources or expertise, the appearance of bias, the apparent existence of a pattern of abuse or other substantial reasons, States shall pursue investigations through an independent commission of inquiry or similar procedure. Members of that commission must be chosen for their recognized impartiality, competence and independence as individuals. In particular, they must be independent of any institution, agency or person that may be the subject of the inquiry.”

69. A written report, made within a reasonable time, must include the scope of the inquiry, procedures and methods used to evaluate evidence as well as conclusions and recommendations based on findings of fact and on applicable law. On completion, this report must be made public. It must also describe in detail specific events that were found to have occurred, the evidence upon which such findings were based and list the names of witnesses who testified with the exception of those whose identities have been withheld for their own protection. The State must, within a reasonable period of time, reply to the report of the investigation and, as appropriate, indicate steps to be taken in response.

82. In cases in which the established investigative procedures are inadequate because of insufficient expertise or suspected bias, or because of the apparent existence of a pattern of abuse, or for other substantial reasons, States must ensure that investigations are undertaken through an independent commission of inquiry or similar procedure. Members of such a commission should be chosen for their recognized impartiality, competence and independence as individuals. In particular, they must be independent of any suspected perpetrators and the institutions or agencies they may serve. The commission must have the authority to obtain all information necessary to the inquiry and shall conduct the inquiry as provided for under these principles.

X. Involvement of victims in the investigation

Para. 1

UN Set of Principles for the Protection and Promotion of Human Rights Through Action to Combat Impunity, Principle 4:

“Irrespective of any legal proceedings, victims and their families have the imprescriptible right to know the truth about the circumstances in which violations took place and, in the event of death or disappearance, the victims’ fate.”

UN Basic Principles and Guidelines on the right to a remedy and reparations for victims of gross violations of International Human Rights Law and Serious Violations of International Humanitarian Law, Principle 24:

“Moreover, victims and their representatives should be entitled to seek and obtain information on the causes leading to their victimization and on the causes and conditions pertaining to the gross violations of international human rights law and serious violations of international humanitarian law and to learn the truth in regard to these violations.”

Abdulsamet Yaman v Turkey, Application no. 32446/96: “The Court reiterates that the nature of the right safeguarded under Article 3 has implications for Article 13. Where an individual has an arguable claim that he has been tortured or subjected to serious ill-treatment by agents of the State, the notion of an “effective remedy” entails, in addition to the payment of compensation where appropriate, a thorough and effective investigation capable of leading to the identification and punishment of those responsible, including an effective access for the complainant to the investigatory procedure (see the above cited Aksoy judgment, para.98).”

Para.2

European Union Council Framework Decision on the standing of victims in criminal proceedings, para.2: “Each Member State shall ensure that victims who have expressed a wish to this effect are kept informed of: (a) the outcome of their complaint; (b) relevant factors enabling them, in the event of prosecution, to know the conduct of the criminal proceedings regarding the person prosecuted for offences concerning them, except in exceptional cases where the proper handling of the case may be adversely affected; (c) the court’s sentence.”

Para.3

UN Set of Principles for the Protection and Promotion of Human Rights Through Action to Combat Impunity, Principle 4 (above).

Article 24 of the International Convention for the Protection of All Persons from Enforced Disappearance, in relevant part reads:

1. For the purposes of this Convention, "victim" means the disappeared person and any individual who has suffered harm as the direct result of an enforced disappearance.
2. Each victim has the right to know the truth regarding the circumstances of the enforced disappearance, the progress and results of the investigation and the fate of the disappeared person. Each State Party shall take appropriate measures in this regard.
3. Each State Party shall take all appropriate measures to search for, locate and release disappeared persons and, in the event of death, to locate, respect and return their remains.

Para.6

Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, Principle 6(c):

“The responsiveness of judicial and administrative processes to the needs of victims should be facilitated by: (c) Providing proper assistance to victims throughout the legal process;”

Para.7

Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, Principle 6(d):

“The responsiveness of judicial and administrative processes to the needs of victims should be facilitated by:(d)Taking measures to minimize inconvenience to victims, protect their privacy, when necessary, and ensure their safety, as well as that of their families and witnesses on their behalf, from intimidation and retaliation;”

UN Basic Principles and Guidelines on the right to a remedy and reparations for victims of gross violations of International Human Rights Law and Serious Violations of International Humanitarian Law:

“10. Victims should be treated with humanity and respect for their dignity and human rights, and appropriate measures should be taken to ensure their safety, physical and psychological well-being and privacy, as well as those of their families. The State should ensure that its domestic laws, to the extent possible, provide that a victim who has suffered violence or trauma should benefit from special consideration and care to avoid his or her re-traumatization in the course of legal and administrative procedures designed to provide justice and reparation.”

Rome Statute of the International Criminal Court, Article 68 (1):

“The Court shall take appropriate measures to protect the safety, physical and psychological well-being, dignity and privacy of victims and witnesses. In so doing, the Court shall have regard to all relevant factors, including age, gender as defined in article 7, paragraph 3, and health, and the nature of the crime, in particular, but not limited to, where the crime involves sexual or gender violence or violence against children. The Prosecutor shall take such measures particularly during the investigation and prosecution of such crimes. These measures shall not be prejudicial to or inconsistent with the rights of the accused and a fair and impartial trial.”

Rome Statute of the International Criminal Court, Article 69 (2):

“The testimony of a witness at trial shall be given in person, except to the extent provided by the measures set forth in article 68 or in the Rules of Procedure and Evidence. The Court may also permit the giving of *viva voce* (oral) or recorded

testimony of a witness by means of video or audio technology, as well as the introduction of documents or written transcripts, subject to this Statute and in accordance with the Rules of Procedure and Evidence. These measures shall not be prejudicial to or inconsistent with the rights of the accused.”

UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT), Article 13:

“Each State Party shall ensure that any individual who alleges that he has been subjected to torture in any territory under its jurisdiction has the right to complain to and to have his case promptly and impartially examined by its competent authorities. Steps shall be taken to ensure that the complainant and witness are protected against all ill-treatment or intimidation as a consequence of his complaint or any evidence given.”

International Convention on the Protection of All Persons from Enforced Disappearance:

Article 14 (1):

“Appropriate steps shall be taken, where necessary, to ensure that the complainant, witnesses, relatives of the disappeared person and their defence counsel, as well as persons participating in the investigation are protected against all ill-treatment or intimidation as a consequence of the complaint or any evidence given.

Article 18 (2):

“Appropriate measures shall be taken, where necessary, to protect the persons referred to in paragraph 1 of this article, as well as persons participating in the investigation, from any ill-treatment, intimidation or sanction as a result of the search for information concerning a person deprived of liberty.”

Istanbul Protocol on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

Para. 80. Alleged victims of torture or ill-treatment, witnesses, those conducting the investigation and their families shall be protected from violence, threats of violence or any other form of intimidation that may arise pursuant to the investigation. Those potentially implicated in torture or ill-treatment shall be removed from any position of control or power, whether direct or indirect, over complainants, witnesses and their families, as well as those conducting the investigation.

81. Alleged victims of torture or ill-treatment and their legal representatives must be informed of, and have access to, any hearing as well as to all information relevant to the investigation and must be entitled to present other evidence.....

(d) Safety of witnesses

95. The State is responsible for protecting alleged victims, witnesses and their families from violence, threats of violence or any other form of intimidation that may arise pursuant to the investigation. Those potentially implicated in torture should be removed from any position

of control or power, whether direct or indirect over complainants, witnesses and their families as well as those conducting investigations. Investigators must give constant consideration to the effect of the investigation on the safety of the person alleging torture and other witnesses.

96. One suggested technique for providing a measure of safety to interviewees, including prisoners in countries in conflict situations, is to write down and keep safe the identities of people visited so that investigators can follow up on the safety of those individuals at a future return visit. Investigators must be allowed to talk to anyone and everyone, freely and in private, and be allowed to repeat the visit to these same persons (thus the need for traceable identities of those interviewed) as the need arises. Not all countries accept these conditions, and investigators may find it difficult to obtain similar guarantees. In cases in which witnesses are likely to be put in danger because of their testimony, the investigator should seek other forms of evidence.

97. Prisoners are in greater potential danger than persons who are not in custody. Prisoners might have different reactions to different situations. In one situation, prisoners may unwittingly put themselves in danger by speaking out too rashly, thinking they are protected by the very presence of the “outside” investigator. This may not be the case. In other situations, investigators may come up against a “wall of silence”, as prisoners are far too intimidated to trust anyone, even when offered talks in private. In the latter case, it may be necessary to start with “group interviews”, so as to be able to explain clearly the scope and purpose of the investigation and subsequently offer to have interviews in private with those persons who desire to speak. If the fear of reprisals, justified or not, is too great, it may be necessary to interview all prisoners in a given place of custody, so as not to pinpoint any specific person. Where an investigation leads to prosecution or another public truth-telling forum, the investigator should recommend measures to prevent harm to the alleged torture victim by such means as expunging names and other information that identifies the person from the public records or offering the person an opportunity to testify through image or voice-altering devices or closed circuit television. These measures must be consistent with the rights of the accused.

XI. Prosecutions

UN Basic Principles and Guidelines on the right to a remedy and reparations for victims of gross violations of International Human Rights Law and Serious Violations of International Humanitarian Law, Principle 4:

“4. In cases of gross violations of international human rights law and serious violations of international humanitarian law constituting crimes under international law, States have the duty to investigate and, if there is sufficient evidence, the duty to submit to prosecution the person allegedly responsible for the violations and, if found guilty, the duty to punish her or him...”

UN Set of Principles for the Protection and Promotion of Human Rights Through Action to Combat Impunity, Principle 19:

“States shall undertake prompt, thorough, independent and impartial investigations of violations of human rights and international humanitarian law and take appropriate measures in respect of the perpetrators, particularly in the area of criminal justice, by ensuring that those responsible for serious crimes under international law are prosecuted, tried and duly punished.

Although the decision to prosecute lies primarily within the competence of the State, victims, their families and heirs should be able to institute proceedings, on either an individual or a collective basis, particularly as *parties civiles* or as persons conducting private prosecutions in States whose law of criminal procedure recognizes these procedures. States should guarantee broad legal standing in the judicial process to any wronged party and to any person or non-governmental organization having a legitimate interest therein.”

In reference to Article 3, in *Gäfgen v Germany*, Application no. 22978/05, para.119, the Court held that

“In cases of wilful ill-treatment the breach of Article 3 cannot be remedied only by an award of compensation to the victim. This is so because, if the authorities could confine their reaction to incidents of wilful ill-treatment by State agents to the mere payment of compensation, while not doing enough to prosecute and punish those responsible, it would be possible in some cases for agents of the State to abuse the rights of those within their control within virtual impunity, and the general legal prohibition of torture and inhuman and degrading treatment, despite its fundamental importance, would be ineffective in practice.”

XII. Court proceedings

Para.1

UN Basic Principles on the Independence of the Judiciary:

Principle 4:

“There shall not be any inappropriate or unwarranted interference with the judicial process, nor shall judicial decisions by the courts be subject to revision. This principle is without prejudice to judicial review or to mitigation or commutation by competent authorities of sentences imposed by the judiciary, in accordance with the law.”

Principle 16:

“Without prejudice to any disciplinary procedure or to any right of appeal or to compensation from the State, in accordance with national law, judges should enjoy personal immunity from civil suits for monetary damages for improper acts or omissions in the exercise of their judicial functions.”

Set of Principles for the Protection and Promotion of Human Rights Through Action to Combat Impunity, Principle 30:

“The principle of irremovability, as the basic guarantee of the independence of judges, must be observed in respect of judges who have been appointed in conformity with the requirements of the rule of law. Conversely, judges unlawfully appointed or who derive their judicial power from an act of allegiance may be relieved of their functions by law in accordance with the principle of parallelism. They must be provided an opportunity to challenge their dismissal in proceedings that meet the criteria of independence and impartiality with a view toward seeking reinstatement.”

Para.3

Jurisdiction of military tribunals:

Draft Principles Governing the Administration of Justice through Military Tribunals, adopted by the Sub-Commission on the Promotion and protection of Human Rights, 52nd session, 2005, Principle 7: “The jurisdiction of military courts should be limited to offences of a strictly military nature committed by military personnel”...; Principle 8: “In all circumstances, the jurisdiction of military courts should be set aside in favour of the jurisdiction of the ordinary courts to conduct inquiries into serious human rights violations such as extrajudicial executions, enforced disappearances and torture, and to prosecute and try persons accused of such crimes.”

XIII. Sentences

The UN Convention against Torture, Article 4.2, provides in relation to offences of torture that: “Each State Party shall make these offences punishable by appropriate penalties which take into account their grave nature.”

Council of Europe Convention on Action against Trafficking in Human Beings, Article 23.1 and 23.2:

“1 Each Party shall adopt such legislative and other measures as may be necessary to ensure that the criminal offences established in accordance with Articles 18 to 21 are punishable by effective, proportionate and dissuasive sanctions. These sanctions shall include, for criminal offences established in accordance with Article 18 when committed by natural persons, penalties involving deprivation of liberty which can give rise to extradition.

2 Each Party shall ensure that legal persons held liable in accordance with Article 22 shall be subject to effective, proportionate and dissuasive criminal or non-criminal sanctions or measures, including monetary sanctions.”

In respect of the adequacy of the sentence, the Court held in the case of *Nikolova and Velichkova v. Bulgaria*, Application no. 7888/03, para.63:

“It is not the Court’s task to verify whether the judgments correctly applied domestic criminal law; what is in issue in the present proceedings is not the individual criminal-law liability of the officers, but the international-law responsibility of the State (see *Tanli v. Turkey*, no 26129/95, £111, ECHR 2001-III (extracts)). However, the Court cannot overlook the fact that, while the Bulgarian Criminal Code of 1968 gave the domestic courts the possibility of meting out up to twelve years’ imprisonment for the offence committed by the officers (see paragraph 37 above), they chose to impose the minimum penalty allowed by law – three years’ imprisonment-, and further to suspend it. In this context, it should also be noted that no disciplinary measures were taken against the officers (see paragraph 23 above). ... In the Court’s view, such a reaction to a serious instance of deliberate police ill-treatment which resulted in death cannot be considered adequate. By punishing the officers with suspended terms of imprisonment, more than seven years after their wrongful act, and never disciplining them, the State in effect fostered the law-enforcement officers’ “sense of impunity” and their “hope that all [would] be covered up”.”

The Committee of Ministers of the Council of Europe (in Interim Resolution ResDH (2009)98) has underscored the importance of appropriate and proportion sanctions to establish “sufficiently deterring minimum prison sentences for persons found guilty of grave abuses such as torture and ill-treatment,” and, in Interim Resolution ResDH (2005)43, has welcomed “the enhanced accountability of the security forces” ... “as a result of the introduction of minimum prison sentences for crimes of ill-treatment and torture, which may no longer be converted into fines or suspended.”

In addition to criminal sanctions, the Court has underlined in *Abdulsamet Yaman v Turkey* (cited above), para.55, “the importance of the suspension from duty of the agent under investigation or on trial as well as his dismissal if he is convicted (see Conclusions and Recommendations of the United Nations Committee against Torture: Turkey, 27 May 2003, CAT/C/CR/30/5).”

In its judgment in *Prosecutor v. Kordic & Cerkez* the ICTY Appeals Chamber stated that:

The unfortunate legacy of wars shows that until today many perpetrators believe that violations of binding international norms can be lawfully committed, because they are fighting for a “just cause.” Those people have to understand that international law is applicable to everybody, in particular during times of war. Thus, the sentences rendered by the International Tribunal have to demonstrate the fallacy of the old Roman principle of *inter arma silent leges* (amid the arms of war the laws are silent) in relation to the crimes under the International Tribunal’s jurisdiction. *Prosecutor v. Kordic & Cerkez*, ICTY, Case No. IT-95-14/2-A, Judgment (Appeals Chamber), December 17, 2004. para. 1082.

In its judgment in *Prosecutor v. Blaskic* the ICTY Appeals Chamber explained that [A] finding that a 'chaotic' context might be considered as a mitigating factor in circumstances of combat operations risks mitigating the criminal conduct of all personnel in a war zone. Conflict is by its nature chaotic, and it is incumbent on the participants to reduce that chaos and to respect international humanitarian law. While the circumstances in Central Bosnia in 1993 were chaotic, the Appeals chamber sees neither merit nor logic in recognizing the mere context of war itself as a factor to be considered in the mitigation of the criminal conduct of its participants *Prosecutor v. Blaskic*, ICTY, Case No. IT-95-14-A, Sentencing Judgment (Appeals Chamber), July 29, 2004, para. 711

XV. International Co-operation

Para.1:

UN Basic Principles and Guidelines on the right to a remedy and reparations for victims of gross violations of International Human Rights Law and Serious Violations of International Humanitarian Law, Principle 5:

5. To that end, where so provided in an applicable treaty or under other international law obligations, States shall incorporate or otherwise implement within their domestic law appropriate provisions for universal jurisdiction. Moreover, where it is so provided for in an applicable treaty or other international legal obligations, States should facilitate extradition or surrender offenders to other States and to appropriate international judicial bodies and provide judicial assistance and other forms of cooperation in the pursuit of international justice, including assistance to, and protection of, victims and witnesses, consistent with international human rights legal standards and subject to international legal requirements such as those relating to the prohibition of torture and other forms of cruel, inhuman or degrading treatment or punishment."

Set of Principles for the Protection and Promotion of Human Rights Through Action to Combat Impunity, Principle 21:

"States should undertake effective measures, including the adoption or amendment of internal legislation, that are necessary to enable their courts to exercise universal jurisdiction over serious crimes under international law in accordance with applicable principles of customary and treaty law. States must ensure that they fully implement any legal obligations they have assumed to institute criminal proceedings against persons with respect to whom there is credible evidence of individual responsibility for serious crimes under international law if they do not extradite the suspects or transfer them for prosecution before an international or internationalized tribunal."

Rome Statute of the International Criminal Court, Preamble:

“Affirming that the most serious crimes of concern to the international community as a whole must not go unpunished and that their effective prosecution must be ensured by taking measures at the national level and by enhancing international cooperation,”

International Law Commission, Responsibility of States for Internationally Wrongful Acts, Article 41:

1. “States shall cooperate to bring to an end through lawful means any serious breach within the meaning of article 40.”

Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), Article 88:

1. “The High Contracting Parties shall afford one another the greatest measure of assistance in connexion with criminal proceedings brought in respect of grave breaches of the Convention or of this Protocol.

Cooperation with International Criminal Courts and Tribunals:

Article 29 of the International Criminal Tribunal for the Former Yugoslavia states:

1. States shall co-operate with the International Tribunal in the investigation and prosecution of persons accused of committing serious violations of international humanitarian law.
2. States shall comply without undue delay with any request for assistance or an order issued by a Trial Chamber, including, but not limited to:
 - (a) the identification and location of persons;
 - (b) the taking of testimony and the production of evidence;
 - (c) the service of documents;
 - (d) the arrest or detention of persons;
 - (e) the surrender or the transfer of the accused to the International Tribunal.

Rome Statute of the International Criminal Court, Article 86:

“States Parties shall, in accordance with the provisions of this Statute, cooperate fully with the Court in its investigation and prosecution of crimes within the jurisdiction of the Court.”

para.2:

Committee of Ministers, Guidelines on Human Rights in the Fight Against Terrorism

“XIII. Extradition

1. Extradition is an essential procedure for effective international co-operation in the fight against terrorism.
2. The extradition of a person to a country where he/she risks being sentenced to the death penalty may not be granted. A requested State may however grant an extradition if it has obtained adequate guarantees that:
 - (i) the person whose extradition has been requested will not be sentenced to death; or
 - (ii) in the event of such a sentence being imposed, it will not be carried out.
3. Extradition may not be granted when there is serious reason to believe that:
 - (i) the person whose extradition has been requested will be subjected to torture or to inhuman or degrading treatment or punishment;
 - (ii) the extradition request has been made for the purpose of prosecuting or punishing a person on account of his/her race, religion, nationality or political opinions, or that that person's position risks being prejudiced for any of these reasons.
4. When the person whose extradition has been requested makes out an arguable case that he/she has suffered or risks suffering a flagrant denial of justice in the requesting State, the requested State must consider the well-foundedness of that argument before deciding whether to grant extradition.”

Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), Article 88:

1. Subject to the rights and obligations established in the Conventions and in Article 85, paragraph 1 of this Protocol, and when circumstances permit, the High Contracting Parties shall co-operate in the matter of extradition. They shall give due consideration to the request of the State in whose territory the alleged offence has occurred.

UN Basic Principles and Guidelines on the right to a remedy and reparations for victims of gross violations of International Human Rights Law and Serious Violations of International Humanitarian Law, Principle 5 (quoted above in relation to Guideline XV.1).

Convention against Torture and other Cruel, Inhuman and Degrading Treatment or Punishment, Article 3:

- “1. No State Party shall expel, return (“*refouler*”) or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture.”

The prohibition of sending, expelling, returning or otherwise transferring (*refoulement*) a refugee to “territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group” is recognised in Article 33(1) of the 1951 UN Convention on the Status of Refugees and its 1967 protocol.

XVI. Command responsibility and superior orders

In Parliamentary Assembly Resolution 1675 (2009) on “The state of human rights in Europe: the need to eradicate impunity”, in which it insisted that all perpetrators of serious human rights violations must be held to account for their actions, the Parliamentary Assembly stated that:

“2. This shall also apply to the instigators and organisers of such crimes, as recently affirmed by the Assembly in Resolution 1645 (2009) with respect to the Gongadze case.

2. The Assembly further recalls that it is internationally recognised, since the Nuremberg and Tokyo trials held in the wake of the Second World War, that the excuse of simply following order or instructions from one’s superiors is not valid for cases of serious human rights violations.”

Article 8 of the Nuremberg Charter: “The fact that the Defendant acted pursuant to order of his Government or of a superior shall not free him from responsibility, but may be considered in mitigation of punishment, if the Tribunal determines that justice so requires.”

XVII. Restrictions and limitations

Yetter v Turkey, Application no.33750/03 para.70: “when an agent of the State is accused of crimes that violate Article 3, the criminal proceedings and sentencing must not be time –barred and the granting of an amnesty or pardon should not be permissible.”

In *Ould Dah v France*, Application no. 13113/03, the Court held “that an amnesty law was generally incompatible with the duty on States to investigate acts of torture or barbarity.”

The ICTY, *Prosecutor v Furundzija*, 1T-95-17/1, para.155, held that:

“The fact that torture is prohibited by a peremptory norm of international law has other effects at the inter-state and individual levels. At the inter-state level, it serves to internationally de-legitimise any legislative, administrative or judicial act authorising torture. It would be senseless to argue, on the one hand, that on account of the jus cogens value of the prohibition against torture, treaties or customary rules providing for torture would be null and void ab initio,¹⁷¹ and then be unmindful of a State say, taking national measures authorising or condoning torture or absolving its perpetrators through an amnesty law.¹⁷² If such a situation were to arise, the national measures, violating the general principle and

any relevant treaty provision, would produce the legal effects discussed above and in addition would not be accorded international legal recognition.”

At para.157, it held that, as a consequence of the *jus cogens* nature of the prohibition on torture, “torture may not be covered by a statute of limitations and must not be excluded from extradition under any political offence exemption.”

World Conference on Human Rights, Vienna Declaration and Programme of Action, 14-25 June 1993, U.N. Doc. A/CONF.157/23, 12 July 1993, para. 60. “[s]tates should abrogate legislation leading to impunity for those responsible for grave violations of human rights such as torture and prosecute such violations, thereby providing a firm basis for the rule of law.”

UN Human Rights Committee, General Comment No.20 concerning the prohibition on torture and cruel treatment or punishment, para.15: “Amnesties [in respect of acts of torture] are generally incompatible with the duty of States to investigate such acts; to guarantee freedom from such acts within their jurisdiction; and to ensure that they do not occur in the future. States may not deprive individuals of the right to an effective remedy, including compensation and such full rehabilitation as may be possible.”

UN Human Rights Committee, General Comment No.31, para.18: “...where public officials or State agents have committed violations of the Covenant rights referred to in this paragraph, the States Parties concerned may not relieve perpetrators from personal responsibility, as has occurred with certain amnesties (see General Comment 20 (44)) and prior legal immunities and indemnities. Furthermore, no official status justifies persons who may be accused of responsibility for such violations being held immune from legal responsibility. Other impediments to the establishment of legal responsibility should also be removed, such as the defence of obedience to superior orders or unreasonably short periods of statutory limitation in cases where such limitations are applicable. States parties should also assist each other to bring to justice persons suspected of having committed acts in violation of the Covenant that are punishable under domestic or international law.”

Convention on Enforced Disappearance, Article 8.1: “A State Party which applies a statute of limitations in respect of enforced disappearance shall take the necessary measures to ensure that the term of limitation for criminal proceedings:
(a) Is of long duration and is proportionate to the extreme seriousness of this offence;
(b) Commences from the moment when the offence of enforced disappearance ceases, taking into account its continuous nature.”

Set of Principles for the Protection and Promotion of Human Rights Through Action to Combat Impunity, Principle 22:

“22. States should adopt and enforce safeguards against any abuse of rules such as those pertaining to prescription, amnesty, right to asylum, refusal to extradite,

non bis in idem, due obedience, official immunities, repentance, the jurisdiction of military courts and the irremovability of judges that fosters or contributes to impunity.

23. Prescription - of prosecution or penalty - in criminal cases shall not run for such period as no effective remedy is available. Prescription shall not apply to crimes under international law that are by their nature imprescriptible. When it does apply, prescription shall not be effective against civil or administrative actions brought by victims seeking reparation for their injuries.”

See also in relation to serious violations of human rights which amount to crimes under international law including war crimes or crimes against humanity:

Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity, Article 1: “No statutory limitation shall apply to the following crimes, irrespective of the date of their commission:

(a) War crimes as they are defined in the Charter of the International Military Tribunal, Nürnberg, of 8 August 1945 and confirmed by resolutions 3 (I) of 13 February 1946 and 95 (I) of 11 December 1946 of the General Assembly of the United Nations, particularly the "grave breaches" enumerated in the Geneva Conventions of 12 August 1949 for the protection of war victims;

(b) Crimes against humanity whether committed in time of war or in time of peace as they are defined in the Charter of the International Military Tribunal, Nürnberg, of 8 August 1945 and confirmed by resolutions 3 (I) of 13 February 1946 and 95 (I) of 11 December 1946 of the General Assembly of the United Nations, eviction by armed attack or occupation and inhuman acts resulting from the policy of apartheid , and the crime of genocide as defined in the 1948 Convention on the Prevention and Punishment of the Crime of Genocide, even if such acts do not constitute a violation of the domestic law of the country in which they were committed.”

Report of the Secretary General on the establishment of a Special Court for Sierra Leone, 4 October 2000, S/2000/915, para. 22:

“While recognizing that amnesty is an accepted legal concept and a gesture of peace and reconciliation at the end of a civil war or an internal armed conflict, the United Nations has consistently maintained the position that amnesty cannot be granted in respect of international crimes, such as genocide, crimes against humanity or other serious violations of international humanitarian law.”³⁴

Rome Statute, Preamble: “Recognizing that it is the duty of every state to exercise its criminal jurisdiction over those responsible for international crimes.”

Rome Statute, Article 29: “The crimes within the jurisdiction of the Court shall not be subject to any statute of limitations.”

Principles of International Cooperation in the Detection, Arrest, Extradition and Punishment of Persons Guilty of War Crimes and Crimes against Humanity, GA Res. 3074 (XXVIII) (1973), para. 8: “States shall not take any legislative or other measures which may be prejudicial to the international obligations they have assumed in regard to the detection, arrest, extradition and punishment of persons guilty of war crimes and crimes against humanity.”

XIX. Reparations

The right to reparations is elaborated in the UN Basic Principles and Guidelines on the right to a remedy and reparations for victims of gross violations of International Human Rights Law and Serious Violations of International Humanitarian Law, in particular Principles 15-24, and the Set of Principles for the Protection and Promotion of Human Rights Through Action to Combat Impunity, Principle 31-34.

It is further affirmed by a wide range of treaties such as the International Covenant on Civil and Political Rights (ICCPR) (1966):

Article 2 (3):

“Each State Party to the present Covenant undertakes:

(a) To ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity;

(b) To ensure that any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy;

(c) To ensure that the competent authorities shall enforce such remedies when granted.”

Article 9 (5):

“Anyone who has been the victim of unlawful arrest or detention shall have an enforceable right to compensation.”

Article 14 (6):

“When a person has by a final decision been convicted of a criminal offence and when subsequently his conviction has been reversed or he has been pardoned on the ground that a new or newly discovered fact shows conclusively that there has been a miscarriage of justice, the person who has suffered punishment as a result of such conviction shall be compensated according to law, unless it is proved that the non-disclosure of the unknown fact in time is wholly or partly attributable to him.”

Similarly, the ECHR sets out in Article 5 (5) that

“Everyone who has been the victim of arrest or detention in contravention of the provisions of this article shall have an enforceable right to compensation.”

And in Article 13:

“Everyone whose rights and freedoms as set forth in this Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity.”

Article 41 of the ECHR provides that

“If the Court finds that a decision or a measure taken by a legal authority or any other authority of a High Contracting Party, is completely or partially in conflict with the obligations arising from the present convention, and if the internal law of the said Party allows only partial reparation to be made for the consequences of this decision or measure, the decision of the Court shall, if necessary, afford just satisfaction to the injured party.”

Convention on Enforced Disappearances, Article 24.5:

5. The right to obtain reparation referred to in paragraph 4 of this article covers material and moral damages and, where appropriate, other forms of reparation such as:

- (a) Restitution;
- (b) Rehabilitation;
- (c) Satisfaction, including restoration of dignity and reputation;
- (d) Guarantees of non-repetition.

Council of Europe Convention on Action Against Trafficking in Human Beings:

Article 12.1:

“Each Party shall adopt such legislative or other measures as may be necessary to assist victims in their physical, psychological and social recovery;

Article 15:

“3 Each Party shall provide, in its internal law, for the right of victims to compensation from the perpetrators.

4 Each Party shall adopt such legislative or other measures as may be necessary to guarantee compensation for victims in accordance with the conditions under its internal law, for instance through the establishment of a fund for victim compensation or measures or programmes aimed at social assistance and social integration of victims, which could be funded by the assets resulting from the application of measures provided in Article 23.”

The UN Convention on the Rights of the Child , Article 39: ” States Parties shall take all appropriate measures to promote physical and psychological recovery and social reintegration of a child victim...”

The UN Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (1984), Article 14 provides: “

1. Each State Party shall ensure in its legal system that the victim of an act of torture obtains redress and has an enforceable right to fair and adequate compensation including the means for as full rehabilitation as possible. In the event of the death of the victim as a result of an act of torture, his dependents shall be entitled to compensation.
2. Nothing in this article shall affect any right of the victim or other person to compensation which may exist under national law.

The Rome Statute of the International Criminal Court in Article 75 provides that

1. The Court shall establish principles relating to reparations to, or in respect of, victims, including restitution, compensation and rehabilitation. On this basis, in its decision the Court may, either upon request or on its own motion in exceptional circumstances, determine the scope and extent of any damage, loss and injury to, or in respect of, victims and will state the principles on which it is acting.

2. The Court may make an order directly against a convicted person specifying appropriate reparations to, or in respect of, victims, including restitution, compensation and rehabilitation. Where appropriate, the Court may order that the award for reparations be made through the Trust Fund provided for in article 79.

On the principle that remedies should be effective in practice as well as in law: *Aksoy v Turkey*, Application no.21987/93, para.95

“The Court observes that Article 13 (art. 13) guarantees the availability at national level of a remedy to enforce the substance of the Convention rights and freedoms in whatever form they might happen to be secured in the domestic legal order. The effect of this Article (art. 13) is thus to require the provision of a domestic remedy allowing the competent national authority both to deal with the substance of the relevant Convention complaint and to grant appropriate relief, although Contracting

States are afforded some discretion as to the manner in which they conform to their obligations under this provision (art. 13) (see the *Chahal* judgment cited at paragraph 62 above, pp. 1869-70, para. 145). The scope of the obligation under Article 13 (art. 13) varies depending on the nature of the applicant's complaint under the Convention (see the above-mentioned *Chahal* judgment, pp. 1870-71, paras. 150-51). Nevertheless, the remedy required by Article 13 (art. 13) must be "effective" in practice as well as in law, in particular in the sense that its exercise must not be unjustifiably hindered by the acts or omissions of the authorities of the respondent State."

Council of Europe Recommendation (2004)⁶ of Committee of Ministers to member state on the improvement of domestic remedies, adopted at its 14th session, recommends that member states:

- I. "ascertain, through constant review, in the light of case-law of the Court, that domestic remedies exist for anyone with an arguable complaint of a violation of the Convention, and that these remedies are effective, in that they can result in a decision on the merits of the complaint and adequate redress for any violation found."

Claims for reparation for serious human rights violations should not be subject to a statute of limitations.

"The Special Rapporteur [on torture] prepared a study on the question of the right to restitution, compensation and rehabilitation for victims of gross violations of human rights and fundamental freedoms, in which he had noted: "the application of statutory limitations often deprives victims of gross violations of human rights of the reparations that are due to them. The principle should prevail that claims relating to reparations for gross violations of human rights shall not be subject to a statute of limitations. In this connection, it should be taken into account that the effects of gross violations of human rights are linked to the most serious crimes to which, according to authoritative legal opinion, statutory limitations shall not apply. Moreover, it is well established that for many victims of gross violations of human rights, the passage of time has no attenuating effect; on the contrary, there is an increase in post-traumatic stress, requiring all necessary material, medical, psychological and social assistance and support over a long period of time" (E/CN.4/Sub.2/1993/8, para. 135)." Report to the GA in 2004 (A/54/324)

Examples of good practices of reparation

UN Human Rights Committee, General Comment 31: Nature of the general obligation imposed on States Parties to the Covenant, 26 May 2004, paragraph 16:

"Article 2, paragraph 3, requires that States Parties make reparation to individuals whose Covenant rights have been violated. Without reparation to individuals whose

Covenant rights have been violated, the obligation to provide an effective remedy, which is central to the efficacy of article 2, paragraph 3, is not discharged. In addition to the explicit reparation required by articles 9, paragraph 5, and 14, paragraph 6, the Committee considers that the Covenant generally entails appropriate compensation. The Committee notes that, where appropriate, reparation can involve restitution, rehabilitation and measures of satisfaction, such as public apologies, public memorials, guarantees of non-repetition and changes in relevant laws and practices, as well as bringing to justice the perpetrators of human rights violations.”

UN Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian law, principles 18-23:

18. In accordance with domestic law and international law, and taking account of individual circumstances, victims of gross violations of international human rights law and serious violations of international humanitarian law should, as appropriate and proportional to the gravity of the violation and the circumstances of each case, be provided with full and effective reparation, as laid out in principles 19 to 23, which include the following forms: restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition.

19. *Restitution* should, whenever possible, restore the victim to the original situation before the gross violations of international human rights law or serious violations of international humanitarian law occurred. Restitution includes, as appropriate: restoration of liberty, enjoyment of human rights, identity, family life and citizenship, return to one’s place of residence, restoration of employment and return of property.

20. *Compensation* should be provided for any economically assessable damage, as appropriate and proportional to the gravity of the violation and the circumstances of each case, resulting from gross violations of international human rights law and serious violations of international humanitarian law, such as:

(a) Physical or mental harm;

(b) Lost opportunities, including employment, education and social benefits;

(c) Material damages and loss of earnings, including loss of earning potential;

(d) Moral damage;

(e) Costs required for legal or expert assistance, medicine and medical services, and psychological and social services.

21. *Rehabilitation* should include medical and psychological care as well as legal and social services.

22. *Satisfaction* should include, where applicable, any or all of the following:

- (a) Effective measures aimed at the cessation of continuing violations;
- (b) Verification of the facts and full and public disclosure of the truth to the extent that such disclosure does not cause further harm or threaten the safety and interests of the victim, the victim's relatives, witnesses, or persons who have intervened to assist the victim or prevent the occurrence of further violations;
- (c) The search for the whereabouts of the disappeared, for the identities of the children abducted, and for the bodies of those killed, and assistance in the recovery, identification and reburial of the bodies in accordance with the expressed or presumed wish of the victims, or the cultural practices of the families and communities;
- (d) An official declaration or a judicial decision restoring the dignity, the reputation and the rights of the victim and of persons closely connected with the victim;
- (e) Public apology, including acknowledgement of the facts and acceptance of responsibility;
- (f) Judicial and administrative sanctions against persons liable for the violations;
- (g) Commemorations and tributes to the victims;
- (h) Inclusion of an accurate account of the violations that occurred in international human rights law and international humanitarian law training and in educational material at all levels.

23. *Guarantees of non-repetition* should include, where applicable, any or all of the following measures, which will also contribute to prevention:

- (a) Ensuring effective civilian control of military and security forces;
- (b) Ensuring that all civilian and military proceedings abide by international standards of due process, fairness and impartiality;
- (c) Strengthening the independence of the judiciary;
- (d) Protecting persons in the legal, medical and health-care professions, the media and other related professions, and human rights defenders;
- (e) Providing, on a priority and continued basis, human rights and international humanitarian law education to all sectors of society and training for law enforcement officials as well as military and security forces;

(f) Promoting the observance of codes of conduct and ethical norms, in particular international standards, by public servants, including law enforcement, correctional, media, medical, psychological, social service and military personnel, as well as by economic enterprises;

(g) Promoting mechanisms for preventing and monitoring social conflicts and their resolution;

(h) Reviewing and reforming laws contributing to or allowing gross violations of international human rights law and serious violations of international humanitarian law.