



**Economic and Social  
Council**

Distr.  
GENERAL

E/CN.4/2006/91  
8 February 2006

Original: ENGLISH

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COMMISSION ON HUMAN RIGHTS  
Sixty-second session  
Item 17 of the provisional agenda

**PROMOTION AND PROTECTION OF HUMAN RIGHTS**

**Study on the right to the truth**

**Report of the Office of the United Nations High Commissioner  
for Human Rights**

### **Summary**

This report is submitted pursuant to Commission on Human Rights resolution 2005/66. A note verbale was sent on 14 July 2005 to all States and relevant intergovernmental and non-governmental organizations, requesting information on the right to the truth. A number of States provided statements to the Office of the United Nations High Commissioner for Human Rights (OHCHR) and their views have been reflected in this study. The study also benefited from the expert workshop on the right to the truth organized by OHCHR in October 2005.

The study concludes that the right to the truth about gross human rights violations and serious violations of human rights law is an inalienable and autonomous right, linked to the duty and obligation of the State to protect and guarantee human rights, to conduct effective investigations and to guarantee effective remedy and reparations. This right is closely linked with other rights and has both an individual and a societal dimension and should be considered as a non-derogable right and not be subject to limitations.

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## **Introduction**

1. This study is pursuant to Commission on Human Rights resolution 2005/66 (para. 6), in which the Office of the United Nations High Commissioner for Human Rights (OHCHR) was requested: “to prepare a study on the right to the truth, including information on the basis, scope, and content of the right under international law, as well as best practices and recommendations for effective implementation of this right, in particular, legislative, administrative or any other measures that may be adopted in this respect, taking into account the views of States and relevant intergovernmental and non-governmental organizations, for consideration at its sixty-second session.”

2. On 14 July 2005, OHCHR sent a note verbale to all States and relevant intergovernmental and non-governmental organizations (NGOs), requesting their views on the subject. A number of States provided statements to OHCHR.<sup>1</sup> The study also benefited from the contributions of participants at the expert workshop on the right to the truth held on 17 and 18 October 2005, which was organized by OHCHR. These views have been reflected in the present study.

3. The right to the truth is often invoked in the context of gross violations of human rights and grave breaches of humanitarian law. Victims of summary executions, enforced disappearance, missing persons, abducted children, torture, claim to know what happened to them or their relatives. The right to the truth implies knowing the full and complete truth as to the events that transpired, their specific circumstances, and who participated in them, including knowing the circumstances in which the violations took place, as well as the reasons for them.

## **I. LEGAL AND HISTORICAL BASIS FOR THE RIGHT TO THE TRUTH**

### **Recognition of truth as a right**

4. The updated Set of principles for the protection and promotion of human rights through action to combat impunity (E/CN.4/2005/102/Add.1)<sup>2</sup> (hereinafter Set of Principles) reaffirm the inalienable right to know the truth vis-à-vis gross human rights violations and serious crimes under the international law. Principle 2 declares that “[e]very people has the inalienable right to know the truth about past events concerning the perpetration of heinous crimes and about the circumstances and reasons that led, through massive or systematic violations, to the perpetration of those crimes”. Principle 4 articulates that “[i]rrespective 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”. Principle 1 states that it is an obligation of the State “to ensure the inalienable right to know the truth about violations”.

5. The concept of a right to the truth owed to the victims of human rights violations and their families has taken on increasing importance in recent decades. Historically, this concept finds its roots in international humanitarian law, in particular, in regard to the right of families to know the fate of their relatives, together with the obligation of parties to armed conflict to search for missing persons.<sup>3</sup>

6. The principle of the right to the truth for relatives of missing persons, including the victims of forced disappearance, is explicitly codified in international humanitarian law in article 32 of the Additional Protocol I to the Geneva Conventions, of 12 August 1949. The Geneva Conventions, of 12 August 1949, also incorporate various provisions that impose obligations on belligerent parties to respond to the problem of missing combatants and establish a central search agency.<sup>4</sup> The Geneva Conventions, of 12 August 1949 and the Additional Protocol I, cover the issues of “missing” persons.<sup>5</sup> The International Red Cross and Red Crescent Movement has also made clear that the right to know the truth about the fate suffered by victims of forced disappearance applies both to situations of international armed conflict as well as those of internal armed conflict.<sup>6</sup>
7. The International Committee of the Red Cross (ICRC) concluded that the right to truth is a norm of customary international law applicable in both international and non-international armed conflict, according to which “each party to the conflict must take all feasible measures to account for persons reported missing as a result of armed conflict and must provide their family members with any information it has on their fate”.<sup>7</sup> Military manuals and national laws of several countries also make reference to the right of the families to know the fate of their missing relatives.<sup>8</sup>
8. With the emergence of the practice of enforced disappearances in the 1970s, the concept of the right to the truth became the object of increasing attention from international and regional human rights bodies and special procedures mandate-holders. In particular, the ad hoc working group on human rights in Chile, the Working Group on Enforced or Involuntary Disappearances (WGEID) and the Inter-American Commission on Human Rights (IACHR) developed an important doctrine on this right with regard to the crime of enforced disappearances. These mechanisms initially based the legal source for this right upon articles 32 and 33 of the Additional Protocol to the Geneva Conventions, of 12 August 1949.<sup>9</sup> Commentators have taken the same approach.<sup>10</sup> However, although this right was initially referred to solely within the context of enforced disappearances, it has been gradually extended to other serious human rights violations, such as extrajudicial executions and torture.<sup>11</sup> The Human Rights Committee has urged a State party to the International Covenant on Civil and Political Rights to guarantee that the victims of human rights violations know the truth with respect to the acts committed and know who the perpetrators of such acts were.<sup>12</sup>
9. More recently, the right to the truth has been explicitly recognized in several international instruments and by intergovernmental mechanisms. The right to the truth has been cited in relation to combating impunity,<sup>13</sup> the rights of internally displaced persons to know the fate of relatives,<sup>14</sup> and in the context of the remedies and reparation for serious human rights violations.<sup>15</sup> The draft international convention for the protection of all persons from enforced disappearance adopted by the Inter-Sessional Open-ended Working Group to elaborate a draft legally binding normative instrument for the protection of all persons from enforced disappearance on 23 September 2005, provides that: “[e]ach 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.”<sup>16</sup>

10. Other international instruments, while not explicitly making reference to the right to know the truth, implicitly address this issue in terms of the right of concerned persons to have access to the results of an investigation and/or to ensure a prompt and effective judicial remedy.<sup>17</sup>

11. Intergovernmental conferences such as the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance have also made declarations attesting to the importance of teaching about the facts and truth of the history, with a view to achieving a comprehensive and objective cognizance of the tragedies of the past.<sup>18</sup>

12. The General Assembly has addressed issues related to the right to the truth in numerous resolutions since 1974 regarding missing persons or those subjected to enforced disappearances.<sup>19</sup> These resolutions often refer to “the desire to know” as “a basic human need” and prompted the elaboration of article 32 of the Additional Protocol I to the Geneva Conventions, of 12 August 1949, which codifies the right of families to know the fate of their relatives.<sup>20</sup> While the General Assembly does not always refer explicitly to the right to know or right to the truth, it repeatedly expresses its profound concern with the anguish and sorrow of the families concerned. For this reason, these resolutions have been considered as forming part of the legal basis for the right to know.<sup>21</sup>

13. Another factor that impacted greatly upon the development of the right to the truth was the establishment of “truth commissions” or other similar mechanisms in the aftermath of conflict or authoritarian rule resulting in massive violations of human rights. On various occasions, the Security Council and General Assembly have both reiterated that the establishment of the truth about crimes against humanity, genocide, war crimes and gross human rights violations is necessary for the consolidation of peace and part of the process of reconciliation.<sup>22</sup>

14. The right to the truth, in its individual or collective dimension, has been explicitly cited as a legal basis in several instruments establishing truth commissions or other similar mechanisms.<sup>23</sup> Generally, legal acts establishing truth commissions ground themselves in the need of the victims, their relatives and the general society to know the truth about what has taken place; to facilitate the reconciliation process; to contribute to the fight against impunity; and to reinstall or to strengthen democracy and the rule of law.<sup>24</sup>

15. These mechanisms have varied greatly in terms of mandate, procedure, composition and purpose. Most have sought to investigate events and to analyze the reasons for them, with a view to making a credible historical record and thereby to prevent the recurrence of such events. Some provide a cathartic forum for victims, perpetrators and the broader society to publicly discuss violations, often with the ultimate aim of reconciliation and sometimes to achieve a measure of justice.<sup>25</sup>

16. The Commission has also made reference to the right to know or right to the truth. This has been invoked in relation to blanket amnesty laws that block the revelation of the truth<sup>26</sup> as well as in regard to missing persons and the right of family members to know their fate and

whereabouts.<sup>27</sup> Commission resolution 2005/66 recognizes “the importance of respecting and ensuring the right to the truth so as to contribute to ending impunity and to promote and protect human rights” (para. 1). It has also been noted that the legal framework governing the disarmament, demobilization and reintegration process of illegal armed groups should guarantee the rights to truth, justice and reparations.<sup>28</sup> In addition to the Working Group on Enforced or Involuntary Disappearances, other special procedures of the Commission have affirmed the existence of the right to the truth.<sup>29</sup>

17. The then Sub-Commission on the Prevention of Discrimination and Protection of Minorities reiterated the right of the families to know the fate of their relatives in relation to the human rights of persons subjected to any form of detention or imprisonment,<sup>30</sup> the rights of relatives of victims of forced disappearance,<sup>31</sup> and in regard to issues on amnesty laws covering gross violations of human rights.<sup>32</sup>

18. The right to the truth has also been recognized by the Secretary-General. The Secretary-General’s bulletin on “Observance by United Nations Forces of international humanitarian law”<sup>33</sup> lays down the rule that United Nations forces shall respect the right of the families to know about the fate of their sick, wounded and deceased relatives.<sup>34</sup> The Secretary-General has also indicated that in peace processes the rights of truth, justice and reparations for victims must be fully respected,<sup>35</sup> and has highlighted the importance of the truth in the framework of transitional justice.<sup>36</sup> The High Commissioner for Human Rights has also reiterated the right to the truth of victims of gross violations of human rights and their relatives.<sup>37</sup>

19. The right to the truth has also been recognized at the regional level. The Parliamentary Assembly of the Council of Europe has passed a series of recommendations regarding the right of family members to know the truth about the fate of those who had disappeared.<sup>38</sup> The European Union has also reaffirmed the right to the truth in its resolutions on missing persons<sup>39</sup> and in reference to the process of disarming and demobilizing paramilitary groups<sup>40</sup> and in the context of peace talks.<sup>41</sup>

20. The General Assembly of the Organization of American States (OAS), in various resolutions, while not always using the term “right to the truth”, has urged States to inform relatives concerning the fate of the victims of forced disappearance.<sup>42</sup> In 2005, the Permanent Council of OAS adopted a resolution urging the members of OAS to take all measures necessary to prevent enforced disappearances and to ensure the right to truth of the relatives of disappeared.<sup>43</sup> In the XXVIII Summit, in Asunción in June 2005, the member States and States associated with the Common Market of the South/Mercado Común del Sur (MERCOSUR) adopted a declaration which reaffirmed the right to the truth of victims of human rights violations and their relatives.<sup>44</sup>

21. In response to the note verbale of OHCHR, several countries expressed the view that the right to the truth is an autonomous right in international law.<sup>45</sup> In the context of friendly settlements of cases before international human rights bodies, at least one State has also explicitly recognized the right to the truth.<sup>46</sup> During the final session of the Inter-Sessional Open-ended Working Group to elaborate a draft legally binding normative instrument for the

protection of all persons from enforced disappearance (19-23 September 2005), Argentina, Chile, Italy, Mexico, Uruguay, and the Latin American and Caribbean Group made statements reaffirming the right to the truth of the victims and their relatives in cases of enforced disappearance.<sup>47</sup>

22. Some peace agreements have also enshrined the right of families to know the fate of persons unaccounted for, and have instituted mechanisms to ensure that relevant information is provided to such persons. The General Framework Agreement for Peace in Bosnia and Herzegovina may be cited as an example of this development.<sup>48</sup> In 2004, the Parliament of Bosnia and Herzegovina adopted a law on missing persons, which reaffirms the right of the families to know the fates of their missing relatives.<sup>49</sup>

23. National courts at the highest level have also recognized the right to the truth. The Constitutional Courts of Colombia<sup>50</sup> and Peru,<sup>51</sup> and the Federal Criminal Courts of Argentina<sup>52</sup> have developed important jurisprudence recognizing and affirming the right to know the truth of victims of gross human rights violations. The Courts of Argentina, in the so-called truth trials, has found that in cases of enforced disappearances the right to the truth is based on the right to mourning (*derecho al duelo*),<sup>53</sup> and as one of the components of the right to justice,<sup>54</sup> as well as the need for historical clarification, individual and societal healing and the prevention of future violations.<sup>55</sup> The right to the truth has also been considered as a means to ensure a democratic State based on the rule of law.<sup>56</sup> Courts have also noted the contribution of knowing the truth to eradicating impunity.<sup>57</sup>

24. The Human Rights Chamber for Bosnia and Herzegovina has based the right of families to know the truth about the fate and whereabouts of missing persons on the rights established in the Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights), in particular, the right not to be subjected to torture or ill-treatment, the right to family life and the State's duty to conduct effective investigations.<sup>58</sup> In a case concerning the 1995 massacre of Srebrenica, the Human Rights Chamber found that the failure of Republika Srpska authorities "to inform the applicants about the truth of the fate and whereabouts of their missing loved ones" including their failure to conduct a "meaningful and effective investigation into the massacre", violated article 3 of the European Convention on Human Rights<sup>59</sup> and failure to disclose information concerning some 7,500 missing men violated the applicants' right to respect for their private and family life.<sup>60</sup>

### **The nature of the right to the truth**

25. The right to the truth has also been raised in connection with the State's duty to conduct effective investigations into serious violations of human rights and the right to an effective judicial remedy (*amparo*),<sup>61</sup> as well as the right to family and the right to health.<sup>62</sup> In its general comment on article 18 of the Declaration on the Protection of All Persons from Enforced Disappearance (2005), the Working Group on Enforced or Involuntary Disappearances stated that the right to truth and information can be inferred from Articles 4 (2) and 9 of the Declaration on the Protection of All Persons from Enforced Disappearance.<sup>63</sup>



26. The Human Rights Committee has expressly recognized the right to the truth for families of victims of enforced disappearance, in connection with the right not to be subjected to torture or ill-treatment given the psychological torture which relatives of missing persons undergo.<sup>64</sup> The Committee has followed the same approach in cases concerning secret execution, where the family was not informed of the date, the hour, or the place of the family member's execution, neither was the family informed of the exact place of subsequent burial.<sup>65</sup> The Committee also found that States parties are under an obligation to provide an effective remedy, which includes information about the violation or, in cases of death of a missing person, the location of the burial site.<sup>66</sup> The Committee has also urged States parties to allow the victims of human rights violations to find out the truth about those acts in order to combat impunity.<sup>67</sup> Such a view has been supported by the Special Rapporteur on the question of the impunity of perpetrators of violations of human rights (civil and political rights) of the Sub-Commission.<sup>68</sup>

27. The right to know the truth has also been invoked in relation to protection of the family guaranteed in article 23 of the International Covenant on Civil and Political Rights, the right of the child to preserve his or her identity, including nationality, name and family relations as contained in Article 8 of the Convention on the Rights of the Child, the right of the child not to be separated from its parents provided in article 9 of the Convention on the Rights of the Child, and other dispositions of that Convention.<sup>69</sup>

28. The European Court of Human Rights (ECHR) has not addressed the issue of right to know the truth explicitly but has inferred such a right as part of the right to be free from torture or ill-treatment, the right to an effective remedy and the right to an effective investigation and to be informed of the results.<sup>70</sup> In addition, the Court has held that a State's failure to conduct an effective investigation "aimed at clarifying the whereabouts and fate" of "missing persons who disappeared in life-threatening circumstances" constitutes a continuing violation of its procedural obligation to protect the right to life.<sup>71</sup> In cases of enforced disappearances, torture and extrajudicial executions, ECHR has highlighted that the notion of an effective remedy for the purposes of article 13 of the European Convention on Human Rights 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 relatives to the investigatory procedure.<sup>72</sup> The African Commission on Human and Peoples' Rights has followed a similar approach to ECHR.<sup>73</sup> In its Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa,<sup>74</sup> the African Commission infers that the right to the truth forms a constitutive part of the right to an effective remedy.<sup>75</sup>

29. The Inter-American Commission on Human Rights has long recognized the right to the truth both generally for the victims of human rights violations and their relatives, as well as specifically with regard to forced disappearances.<sup>76</sup> However, in case of gross violations of human rights, such as torture and extrajudicial executions, IACHR has found that the right to truth arises essentially from the general duty of the States to respect and guarantee human rights,<sup>77</sup> the right to a hearing by a competent, independent and impartial tribunal, the right to an effective remedy and judicial protection and, the right to seek information.<sup>78</sup>

30. The Inter-American Court of Human Rights (Inter-American Court) has repeatedly recognized the right of relatives of the victims of forced disappearance to know their fate and whereabouts.<sup>79</sup> The Inter-American Court linked the right to the truth with the right of the victim or his next of kin to obtain clarification of the facts relating to the violations and the corresponding responsibilities of the competent State organs, through the investigation and prosecution established in articles 8 (right to a hearing by a competent, independent and impartial tribunal) and 25 (right to an effective remedy and judicial protection) of the American Convention on Human Rights.<sup>80</sup> The Inter-American Court considered that the right to the truth is not limited to cases of enforced disappearances but also applies to any kind of gross human rights violation.<sup>81</sup> The Inter-American Court highlighted that the right to the truth is also based in the State's duty to respect and guarantee human rights and, in particular, its duty to conduct effective investigation on gross human rights violations.<sup>82</sup>

31. The right to the truth of victims of human rights violations and their relatives has not generally been explicitly recognized in national constitutions. Even though, for some countries the right to the truth is implicitly protected under its constitutions.<sup>83</sup> However, the majority of constitutional acts recognize and protect freedom of information, including the right to seek information. In several countries, the right to seek and impart information is the legal basis of the right to the truth.<sup>84</sup> The right to access to justice, together with the right to a remedy and reparation may also constitute a domestic means of ensuring the right to the truth.<sup>85</sup> Some countries have passed national legislation recognizing and guaranteeing the right to the truth.<sup>86</sup>

32. Legislation on access to information and/or habeas data constitutes an important step to ensuring the right to the truth. For example, the United States of America Freedom of Information Act (FOIA) and the South African Promotion of Access to Information Act were utilized to disclose the truth on human rights violations committed, for example in El Salvador, Guatemala, Peru and South Africa, and to help the work of truth commissions.<sup>87</sup>

## **II. THE MATERIAL SCOPE OF THE RIGHT TO THE TRUTH**

33. International human rights instruments, as well as the Additional Protocol I to the Geneva Conventions, of 12 August 1949, give indications of the material scope of the right to the truth. In terms of the human rights violations for which the question of the right to the truth arises, international human rights bodies have recognized the right to the truth in cases of gross violations of human rights - in particular enforced disappearances, extrajudicial executions and torture - and serious violations of international humanitarian law. This is supported by the jurisprudence of international and regional human rights bodies and courts.<sup>88</sup>

34. From the experience of truth commissions, it is possible to conclude that the right to the truth applies to all gross human rights violations and serious breaches of international humanitarian law.<sup>89</sup> The jurisprudence of domestic courts has also recognized the right to the truth for victims of gross human rights violations and serious breaches of international humanitarian law and their relatives.<sup>90</sup>

### III. ENTITLEMENT TO THE RIGHT TO THE TRUTH

35. International human rights instruments give indications as to who is entitled to the right to the truth. All of these texts confer the right to the truth on victims and their relatives or their representatives.<sup>91</sup> This is supported both by the jurisprudence of international human rights courts and treaty monitoring bodies<sup>92</sup> as well as domestic courts.<sup>93</sup>

36. However, the notion of “victim” may have a collective dimension.<sup>94</sup> In this sense, the right to the truth may be understood as both an individual and a collective right. The 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 (hereinafter Basic Principles and Guidelines) state that one of the modalities of reparation, as part of satisfaction, is the “[v]erification of the facts and full and public disclosure of the truth”.<sup>95</sup> The Set of Principles declare that “every people has the inalienable right to know the truth about past events ...”.<sup>96</sup> The right of society to the truth has been recognized by other human rights bodies, such as the Working Group on Enforced or Involuntary Disappearances,<sup>97</sup> IACHR<sup>98</sup> and the Independent expert to update the Set of Principles to reflect recent developments in international law and practice, including international jurisprudence and State practice.<sup>99</sup> The Inter-American Court has also held that “society as a whole must be informed of everything that has happened in connection with said violation”.<sup>100</sup> This view has been affirmed by the highest courts of law in Argentina,<sup>101</sup> Peru,<sup>102</sup> and Colombia.<sup>103</sup> The Human Rights Chamber for Bosnia and Herzegovina also noted the importance of making the truth about the events surrounding the Srebrenica massacre known to the public and ordered the Republika Srpska to do so.<sup>104</sup>

37. In response to the OHCHR note verbale, Argentina, the Bolivarian Republic of Venezuela, Cuba, Peru and Uruguay, all put forward the view that society is entitled to know the truth about serious human rights violations.<sup>105</sup>

### IV. THE CONTENT OF THE RIGHT TO THE TRUTH

38. Given that historically the right to the truth was initially linked to the missing and disappeared, the content was focused on knowing the fate and whereabouts of disappeared persons. However, as international law on the right to the truth has evolved to apply in all situations of serious violations of human rights, the material scope of the right to the truth has also expanded to include other elements. These may be summarized as the entitlement to seek and obtain information on: the causes leading to the person’s victimization; the causes and conditions pertaining to the gross violations of international human rights law and serious violations of international humanitarian law; the progress and results of the investigation; the circumstances and reasons for the perpetration of crimes under international law and gross human rights violations; the circumstances in which violations took place; in the event of death, missing or enforced disappearance, the fate and whereabouts of the victims; and the identity of perpetrators.

39. The question of whether the right to the truth entails a right to know the identity of perpetrators raises some difficulties. There is considerable support for including this element in

the material scope of the right to the truth in the jurisprudence of the Human Rights Committee,<sup>106</sup> IACHR<sup>107</sup> and the Inter-American Court.<sup>108</sup> By listing guarantees for persons implicated particularly with regard to the principle of the presumption of innocence, the Set of Principles also suggest that the right to the truth includes knowing the identity of perpetrators.<sup>109</sup> Indeed, if the right to the truth is addressed in the frame of criminal judicial procedures or after the determination of criminal responsibilities by a tribunal, there is no conflict between the right to the truth and the principle of the presumption of innocence. There is a potential problem, nevertheless, where perpetrators are named pursuant to an extrajudicial mechanism, such as a truth commission, given that not all truth-seeking processes apply due process guarantees. On this issue, the Set of Principles offer guidelines to safeguard the interests of implicated persons.<sup>110</sup>

40. This principle incorporates the experiences of national truth and reconciliation commissions.<sup>111</sup> The Truth Commission of El Salvador adopted strict criteria based on the degree of reliability of evidence.<sup>112</sup> The Secretariat for Human Rights in the Ministry of Justice of Argentina, depository for the archives of disappeared persons where those accused of being responsible for illegal repression are held, decided that any person whose reputation is affected in the archives could include their version of events in the records.

## **V. THE NATURE OF THE RIGHT TO THE TRUTH AND ITS RELATIONSHIP WITH OTHER RIGHTS AND OBLIGATIONS OF STATES**

41. The right to the truth has been characterized as an inalienable right by the Set of Principles<sup>113</sup> and in the jurisprudence of various intergovernmental bodies and courts at international, regional and national levels.<sup>114</sup>

42. The right to the truth is closely linked to the right to an effective remedy;<sup>115</sup> the right to legal and judicial protection;<sup>116</sup> the right to the family life;<sup>117</sup> the right to an effective investigation;<sup>118</sup> the right to a hearing by a competent, independent, and impartial tribunal;<sup>119</sup> and the right to obtain reparation.<sup>120</sup> The Human Rights Committee, ECHR, IACHR and the African Commission on Human and Peoples' Rights have all considered that the failure to give information about the fate and whereabouts of disappeared persons or of the circumstances of an execution and the exact place of burial of the executed persons can amount to torture or ill-treatment.<sup>121</sup> Nonetheless, the right to the truth remains an autonomous right with its own legal basis.

43. The right to the truth and freedom of expression, which includes the right to seek and impart information, are linked.<sup>122</sup> During the expert workshop on the right to the truth, organized by OHCHR, the participants concluded that the right to seek information may be an instrumental right to realize the right to the truth, but both constitute different and separate rights.<sup>123</sup> As the right to freedom of information can be restricted for certain reasons under international law,<sup>124</sup> there is the question of whether the right to the truth could be restricted under any circumstances.

44. The inalienable character of the right together with its material scope militates against derogation in any circumstances. A large number of courts at national and regional levels have

characterized the State's failure to inform the victims' relatives about the fate and whereabouts of a victim of a disappearance as amounting to torture or ill-treatment, which is universally recognized as a non-derogable prohibition.<sup>125</sup> One could also argue that the judicial remedies that protect fundamental rights, such as habeas corpus and *amparo*, which may also be used as procedural instruments to implement the right to the truth, have now come to be understood as non-derogable.<sup>126</sup>

45. As was stated before, the right to the truth is linked to the State's duty to protect and guarantee human rights,<sup>127</sup> in particular the State's obligation to conduct an effective investigation.<sup>128</sup> For this reason, amnesty laws and similar measures that prevent the investigation and/or prosecution of authors of human rights violations may violate the right to the truth. Human rights bodies have generally rejected amnesties for serious violations of human rights<sup>129</sup> as have some national and international courts, based on the need to combat impunity for these crimes and to ensure that victims and their relatives know the truth.<sup>130</sup>

46. The right to the truth may also be linked to the principle of transparency and good governance adopted by some governments. IACHR has concluded that the right to know the truth is essential for the workings of democratic systems.<sup>131</sup> In the same line, the Constitutional Tribunal of Peru has concluded that the right to the truth is a concrete expression of the constitutional principles of human dignity, rule of law and a democratic form of government.<sup>132</sup>

## **VI. INSTITUTIONAL AND PROCEDURAL MECHANISMS TO IMPLEMENT THE RIGHT TO THE TRUTH**

47. International and national experiences have led to several diverse institutional and procedural mechanisms to implement the right to the truth. International criminal tribunals, such as the International Criminal Tribunal for the former Yugoslavia, the International Criminal Tribunal for Rwanda and the International Criminal Court constitute one way to establish the truth.<sup>133</sup>

48. National criminal judicial proceedings and trials provide one way to uphold the right to the truth. Tribunals deal out justice but also test the truth according to rigorous evidential and procedural standards and lay down the facts in a court record. In promoting the right to the truth, States should guarantee broad legal standing in the judicial process to any wronged party and to any person or NGOs having a legitimate interest therein.<sup>134</sup> National criminal procedures allow victims and their relatives to participate and intervene in the criminal judicial proceedings. Several countries also allow third persons and NGOs to intervene in criminal proceedings.<sup>135</sup>

49. Other judicial procedures limited to investigation and documentation such as the so-called "truth trials" in Argentina may provide an important way to implement the right to the truth without necessarily entailing prosecution and punishment.<sup>136</sup> Judicial procedures - such as habeas corpus and *amparo* - can help to ensure the exercise of the right to truth,<sup>137</sup> particularly in cases of enforced disappearances and unlawful detention.<sup>138</sup>

50. Since 1974, when the first truth commission was established in Uganda,<sup>139</sup> up to 2005, around 40 truth commissions or commissions of inquiry have been created in different regions of the world.<sup>140</sup> Truth commissions have played an important role in promoting justice, uncovering truth, proposing reparations, and recommending reforms of abusive institutions,<sup>141</sup> however, experience shows that these commissions are often subjected to several constraints often due to restrictions in the mandate regarding time periods under investigation,<sup>142</sup> material scope<sup>143</sup> and the lifespan of the commission.<sup>144</sup>

51. National human rights institutions can play an important role in ensuring the enjoyment of the right to the truth for victims, their relatives and the society. Through fact-finding investigations and public reports both on individual cases and more generally, human rights violations practices, national human rights institutions contribute to exposing the truth.

52. Access to information and, in particular, to official archives, is crucial to the exercise of the right to the truth.<sup>145</sup> The importance of archives has been underlined by the independent expert to update the Set of Principles to reflect recent developments in international law and practice, including international jurisprudence and State practice<sup>146</sup> and in the Set of Principles, which provides guidelines on access.<sup>147</sup> It is also relevant to note the work done on this issue by the International Council on Archives in association with United Nations Educational, Scientific and Cultural Organization (UNESCO), and the handbook for NGOs they produced on archives and human rights.<sup>148</sup>

53. Administrative and civil proceedings may also facilitate access to the truth. The International Commission on Missing Persons, Bosnia and Herzegovina, is an example of an institutional and procedural mechanism to implement the right to know for relatives of missing persons in the former Yugoslavia.

54. Historical projects, such as the UNESCO-led project “Writing the history of Burundi”, can also contribute to implementing the right to the truth. This project, which originated at the 1997 Conference on the History of Burundi convened by UNESCO, was designed to establish an official, scientific and agreed account of history of Burundi from its origin until 2000.

## VII. CONCLUSIONS AND RECOMMENDATIONS

55. **The right to the truth about gross human rights violations and serious violations of humanitarian law is an inalienable and autonomous right, recognized in several international treaties and instruments as well as by national, regional and international jurisprudence and numerous resolutions of intergovernmental bodies at the universal and regional levels.**

56. **The right to the truth is closely linked to the State’s duty to protect and guarantee human rights and to the State’s obligation to conduct effective investigations into gross human rights violations and serious violations of humanitarian law and to guarantee effective remedies and reparation. The right to the truth is also closely linked to the rule of law and the principles of transparency, accountability and good governance in a democratic society.**

57. **The right to the truth is closely linked with other rights, such as the right to an effective remedy, the right to legal and judicial protection, the right to family life, the right to an effective investigation, the right to a hearing by a competent, independent, and impartial tribunal, the right to obtain reparation, the right to be free from torture and ill-treatment; and the right to seek and impart information. Truth is fundamental to the inherent dignity of the human person.**

58. **In cases of gross human rights violations - such as torture, extrajudicial executions and enforced disappearance - serious violations of humanitarian law and other crimes under international law, victims and their relatives are entitled to the truth. The right to the truth also has a societal dimension: society has the right to know the truth about past events concerning the perpetration of heinous crimes, as well as the circumstances and the reasons for which aberrant crimes came to be committed, so that such events do not reoccur in the future.**

59. **The right to the truth implies knowing the full and complete truth as to the events that transpired, their specific circumstances, and who participated in them, including knowing the circumstances in which the violations took place, as well as the reasons for them. In cases of enforced disappearance, missing persons, children abducted or during the captivity of a mother subjected to enforced disappearance, secret executions and secret burial place, the right to the truth also has a special dimension: to know the fate and whereabouts of the victim.**

60. **The right to the truth as a stand-alone right is a fundamental right of the individual and therefore should not be subject to limitations. Giving its inalienable nature and its close relationship with other non-derogable rights, such as the right not to be subjected to torture and ill-treatment, the right to the truth should be treated as a non-derogable right. Amnesties or similar measures and restrictions to the right to seek information must never be used to limit, deny or impair the right to the truth. The right to the truth is intimately linked with the States' obligation to fight and eradicate impunity.**

61. **International criminal tribunals, truth commissions, commissions of inquiry, national criminal tribunals, national human rights institutions and other administrative bodies and proceedings may constitute important tools for ensuring the right to the truth. Judicial criminal proceedings, with a broad legal standing in the judicial process for any wronged party and to any person or non-governmental organization having a legitimate interest therein, are essential to ensuring the right to the truth. Judicial remedies, such as habeas corpus, are also important mechanisms to protect the right to the truth.**

62. **The Office of the High Commissioner for Human Rights recommends that they continue to examine the content and scope of the right to the truth. Further studies could explore in depth the societal and individual dimension of this right.**

**Notes\***

<sup>1</sup> Argentina, Belarus, Colombia, Cuba, Georgia, Mauritius, Peru, Slovenia, Togo, Uruguay, Venezuela (Bolivarian Republic of). A reply was also received from the International Committee of the Red Cross.

<sup>2</sup> Recommended by Commission resolution 2005/81.

<sup>3</sup> Article 32 of the Additional Protocol to the Geneva Conventions, of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts.

<sup>4</sup> In particular Geneva Conventions, of 12 August 1949: Geneva Convention relative to the protection of civilian persons in time of war, arts. 16 and 17; Geneva Convention for the amelioration of the condition of wounded, sick and shipwrecked members of armed forces at sea, art. 122 and subsequent provisions; Geneva Convention for the amelioration of the condition of the wounded and sick in armed forces in the field, art. 136 and subsequent provisions.

<sup>5</sup> The concept of “missing” in international humanitarian law is certainly much broader than that of “forced disappearance” as formulated in international human rights law. “Missing” in international humanitarian law covers all those situations in which the fate or whereabouts of a person are unknown.

<sup>6</sup> Resolution II of the XXIV International Conference of the Red Cross and Red Crescent (Manila 1981).

<sup>7</sup> Rule 117 in ICRC, *Customary International Humanitarian Law, Volume I, Rules*, Cambridge Press University, 2005, p. 421.

<sup>8</sup> Argentina, Australia, New Zealand, Spain, United Kingdom of Great Britain and Northern Ireland and United States of America.

<sup>9</sup> First report of the Working Group on Enforced or Involuntary Disappearances, E/CN.4/1435, para. 187; Annual Reports of the Inter-American Commission on Human Rights (IACHR), 1985-1986, OEA/Ser.L/V/II.68, Doc. 8, rev. 1, p. 205.

<sup>10</sup> Louis Joinet, “Rapport general”, in “Le refus de l’oubli - La politique de disparition forcée de personnes”, Colloque de Paris, janvier/février 1981, p. 302.

<sup>11</sup> IACHR, Report No. 136/99, *Case 10.488 Ignacio Ellacuría et al.*, para. 221.

<sup>12</sup> CCPR/C/79/Add.63, para. 25.

<sup>13</sup> See Principles 1, 2, 3 and 4 of the Set of Principles.

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\* The endnotes have been summarily copy-edited without being fully referenced by United Nations editing services.



- <sup>14</sup> Guiding Principles on Internal Displacement, Principle 16 (1) (E/CN.4/1998/53/Add.2).
- <sup>15</sup> Principles 11, 22 (b) and 24 of the “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” (Basic Principles and Guidelines), Commission resolution 2005/35 and General Assembly resolution 60/147.
- <sup>16</sup> E/CN.4/2005/WG.22/WP.1/Rev.4, art. 24, para. 2.
- <sup>17</sup> See Declaration on the Protection of All Persons from Enforced Disappearance, art. 13, para. 4, and art. 9, para. 1, and of the Principles on the Effective Prevention and Investigation of Extralegal, Arbitrary and Summary Executions, Principle 16.
- <sup>18</sup> A/CONF.189/12, para. 98.
- <sup>19</sup> General Assembly resolutions 3220 (XXIX), 33/173, 45/165, and 47/132.
- <sup>20</sup> ICRC commentary on article 32 of Protocol I of the Geneva Conventions, of 12 August 1949, para. 1211.
- <sup>21</sup> Resolution II of the XXIV International Conference of the Red Cross and Red Crescent.
- <sup>22</sup> General Assembly resolutions 55/118, 57/105 and 57/161 and Security Council resolutions 1468 (2003), 1470 (2003) and 1606 (2005).
- <sup>23</sup> Mexico City Agreements, Agreement No. IV “Truth Commission”, United Nations, DPI/1208-92615-July 1992-7M; and Overview of the Sierra Leone Truth and Reconciliation Commission report - Report of the truth commission, October 2004, para. 27.
- <sup>24</sup> See, for example, the Peace Agreement between the Government of Sierra Leone and the Revolutionary United Front of Sierra Leone (art. XXVI) and the Government of Chile Supreme Decree No. 355 of 25 April 1990, establishing the Truth and Reconciliation Commission.
- <sup>25</sup> See Juan Méndez, “Accountability for past abuses”, in *Human Rights Quarterly*, vol. 19, No. 2, May 1997, pp. 255 *et seq.*, and Priscilla Hayner, *Unspeakable Truths: Confronting State Terror and Atrocity*, ed. Routledge, New York, 2001.
- <sup>26</sup> Commission resolution 1989/62, para. 7 (b).
- <sup>27</sup> Commission resolution 2002/60.
- <sup>28</sup> Chairperson’s statement on the situation of human rights in Colombia of 22 April 2005.
- <sup>29</sup> E/CN.4/1998/39/Add.1, para. 131.
- <sup>30</sup> Sub-Commission resolution 15 (XXXIV).

<sup>31</sup> E/CN.4/Sub.2/1993/6 and E/CN.4/Sub.2/1991/20.

<sup>32</sup> E/CN.4/Sub.2/1985/16, p. 19.

<sup>33</sup> ST/SGB/1999/13.

<sup>34</sup> Rule 9.8.

<sup>35</sup> Press release SG/SM/9400 of 1 July 2004.

<sup>36</sup> “The rule of law and transitional justice in conflict and post-conflict societies”, S/2004/16.

<sup>37</sup> Report of the United Nations High Commissioner for Human Rights on the situation of human rights in Colombia, E/CN.4/2005/10, para. 5. See also E/CN.4/2005/SR.48, paras. 21 and 33.

<sup>38</sup> Council of Europe, Parliamentary Assembly, resolution 1056 (1987); Res. 1414 (2004), para. 3, and resolution 1463 (2005), para. 10 (2).

<sup>39</sup> European Parliament, resolution on missing persons in Cyprus, of 11 January 1983.

<sup>40</sup> E/CN.4/2005/SR.48, para. 41.

<sup>41</sup> Conclusions of the Council of the European Union on Colombia, 3 October 2005, Luxemburg, para. 4.

<sup>42</sup> AG/RES. 666 (XIII-0/83), of 18 November 1983 para. 5, and AG/RES.742 (XIV-0/84), of 17 November 1984, para. 5.

<sup>43</sup> OAS Permanent Council, Resolution OES/Ser.G CP/CAJP-2278/05/rev.4, 23 May 2005.

<sup>44</sup> *Comunicado conjunto de los Presidentes de los Estados partes del MERCOSUR y de los Estados asociados*, Asunción (Paraguay), 20 June 2005.

<sup>45</sup> Argentina, Colombia, Cuba, Mauritius, Peru, Slovenia, Uruguay, Venezuela (Bolivarian Republic of).

<sup>46</sup> IACHR, Report No. 21/00, Case 12.059, *Carmen Aguiar de Lapacó vs. Argentina*, 29 February 2000, para. 18.

<sup>47</sup> E/CN.4/2006/57.

<sup>48</sup> Agreements on Refugees and Displaced Persons (annex 7, art. V) and on the Military Aspects of the Peace Settlement (annex 1A, art. IX).

<sup>49</sup> Law on Missing, Bosnia and Herzegovina *Official Gazette* 50/04. A

- <sup>50</sup> Constitutional Court of Colombia, Judgments of 20 January 2003, Case T-249/03 and C-228 of 3 April 2002.
- <sup>51</sup> Constitutional Tribunal of Peru, Judgment of 18 March 2004, Case 2488-2002-HC/TC.
- <sup>52</sup> See Agreement of 1 September 2003 of the National Chamber for Federal Criminal and Correctional Matters, Case *Suárez Mason, Rol 450* and Case *Escuela Mecánica de la Armada*, Rol. 761.
- <sup>53</sup> *Ibid.*
- <sup>54</sup> Chamber for Federal Criminal and Correctional Matters, Decision of 18 May 1995, Case *Maria Aguiar Lapacó*, Rol. 450.
- <sup>55</sup> Supreme Court of the Nation (Argentina), Judgment of 14 June 2005, S. 1767. XXXVIII, *Simón, Julio Héctor y otros s/ privación ilegítima de la libertad*, Case, Rol. No. 17.768.
- <sup>56</sup> *Ibid.*, paras. 15 and 19. See also paras. 50 and 51.
- <sup>57</sup> Constitutional Court of Colombia, Judgment C-580 of 2002.
- <sup>58</sup> Decision of 11 January 2001, *Palic v. Republika Srpska*, Case No. CH/99/3196.
- <sup>59</sup> Decision of 7 March 2003, “*Srebrenica Cases*”, Cases Nos. CH/01/8365 et al., para. 220 (4).
- <sup>60</sup> *Ibid.*, paras. 181 and 220 (3).
- <sup>61</sup> Seventh Report of the Ad Hoc Working Group on human rights in Chile, A/33/331, para. 418 and following.
- <sup>62</sup> Report of the WGEID, E/CN.4/1983/14, para. 134.
- <sup>63</sup> General Comment on article 18 of the Declaration on the Protection of All Persons from Enforced Disappearance, para. 2 (c); (see [www.ohchr.org/english/issues/disappear/index/htm](http://www.ohchr.org/english/issues/disappear/index/htm)).
- <sup>64</sup> Human Rights Committee, Views of 21 July 1983, Communication No. 107/1981, CCPR/C/19/D/107/1981, para. 14, and CCPR/C/79/Add.90, para. C.
- <sup>65</sup> Views of 3 April 2003, Communication No. 887/1999, CCPR/C/77/D/950/2000, para. 9.2.
- <sup>66</sup> *Ibid.*, para. 11 and views of 30 March 2005, Communication No. 973/2001, CCPR/C/83/D/973/2001.
- <sup>67</sup> Human Rights Committee, CCPR/C/79/Add.63, para. 25.
- <sup>68</sup> E/CN.4/Sub.2/1993/6, para. 16.

- <sup>69</sup> Report of the Special Rapporteur on the question of human rights and states of emergency, E/CN.4/Sub.2/1991/20, annex I, p. 45.
- <sup>70</sup> Judgments of 14 November 2000, *Tas v. Turkey* Case, Application No. 24396/94; and of 10 May 2001, *Cyprus v. Turkey* Case, Application No. 25781/94.
- <sup>71</sup> Judgment of 10 May 2001, *Cyprus v. Turkey*, Application No. 25781/94, para. 136.
- <sup>72</sup> See Judgments of 18 December 1996, *Aksoy v. Turkey*, Application No. 21987/93.
- <sup>73</sup> *Amnesty International v. Sudan*, Communications No. 48/90, 50/91, 52/91, 89/93 (1999), para. 54.
- <sup>74</sup> African Union, African Commission on Human and Peoples' Rights, DOC/OS (XXX) 247.
- <sup>75</sup> Principle C.
- <sup>76</sup> Annual reports of IACHR, 1985-1986, Doc. Cit., p. 205; and 1987-1988, Doc. Cit., p. 359.
- <sup>77</sup> American Convention on Human Rights, art. 1, para. 1.
- <sup>78</sup> See for example IACHR, Report No. 136/99, *Ignacio Ellacuría et al v. El Salvador*, para. 221 *et seq.*
- <sup>79</sup> Inter-American Court of Human Rights: Judgments of 29 July 1988, *Velásquez Rodríguez* case, para. 181.
- <sup>80</sup> *Ibid.*, Judgments of 24 January 1998, *Blake* case, para. 97.
- <sup>81</sup> See Judgments of 7 September 2004, *Tibi v. Ecuador*.
- <sup>82</sup> *Ibid.*
- <sup>83</sup> See communications to OHCHR from Peru and Venezuela (Bolivarian Republic of).
- <sup>84</sup> *Ibid.*, Mauritius and Slovenia.
- <sup>85</sup> *Ibid.*, Cuba and Uruguay.
- <sup>86</sup> Law No. 975 of Colombia (Law on Justice and Peace), art. 7.
- <sup>87</sup> E/CN.4/2004/88, para. 20.
- <sup>88</sup> See notes 6, 65, 66, 67, 70, 71, 73, 74, 78 and 81.
- <sup>89</sup> See notes 23, 24 and 25.

<sup>90</sup> See notes 50, 51, 52, 55, 58 and 59.

<sup>91</sup> See, e.g., Basic Principles and Guidelines, Principle 24 and Set of Principles, Principles 2, 3 and 4.

<sup>92</sup> See notes 64, 65, 66, 67, 70, 71, 73, 74, 78 and 81.

<sup>93</sup> See notes 50, 51, 52, 55, 58 and 59.

<sup>94</sup> See Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, Principle 1, and Basic Principles and Guidelines, Principle 8.

<sup>95</sup> Principle 22 (b).

<sup>96</sup> Principle 2.

<sup>97</sup> E/CN.4/1990/13, para. 339.

<sup>98</sup> Annual report of IACHR, 1985-1986, doc. cit. p. 205.

<sup>99</sup> E/CN.4/Sub.2/1997/20, para. 17.

<sup>100</sup> Judgment of 25 November 2003, *Myrna Mack Chang* case, para. 274.

<sup>101</sup> Supreme Court of the Nation, Judgment of 14 June 2005, doc. cit.

<sup>102</sup> Constitutional Tribunal, Judgment of 18 March 2004, doc. cit.

<sup>103</sup> Constitutional Court, Judgment C-580 of 2002.

<sup>104</sup> Decision of 7 March 2003, *Srebrenica* cases, doc. cit., para. 212.

<sup>105</sup> Communications are available at the Secretariat.

<sup>106</sup> Views of 19 July 1994, Communication No. 322/1988, CCPR/C/51/D/322/1988, paras. 12 (3) and 14.

<sup>107</sup> Report No. 37/00, case 11.481, *Monseñor Oscar Arnulfo Romero y Galdámez*, para. 148.

<sup>108</sup> See Judgment of 8 July 2004, case of *the Gómez-Paquiyaury brothers v. Peru*.

<sup>109</sup> Principle 9.

<sup>110</sup> *Ibid.*

<sup>111</sup> For example, the criteria adopted by the South Africa's Truth and Reconciliation Commission, E/CN.4/2004/88, para. 19.

<sup>112</sup> From madness to hope: the 12-year war in El Salvador: report of the Truth Commission of El Salvador, Security Council, United Nations doc. 2/25500, para. 25.

<sup>113</sup> Principles 1, 2 and 4.

<sup>114</sup> European Parliament, resolution on missing persons in Cyprus, of 11 January 1983 and Annual Report of IACHR, 1985-1986, op. cit., p. 205.

<sup>115</sup> Human Rights Committee (see Views in notes 64, 65 and 66) and, IACHR (see reports cited in note 78).

<sup>116</sup> See, inter alia, IACHR (see reports No. 136/99 and 1/99 cited in note 78) and Inter-American Court (see Judgments cited in notes 80, 81, 100 and 108).

<sup>117</sup> See, inter alia, WGEID (E/CN.4/1435 and E/CN.4/1983/14, para. 134).

<sup>118</sup> See, inter alia, ECHR (see Judgments cited in note 72) and Inter-American Court (see Judgments cited in notes 79, 80, 100, 81 and 108).

<sup>119</sup> See, inter alia, IACHR (see reports No. 136/99 and 1/99 cited in note 78); Inter-American Court of Human Rights. (Judgments cited in notes 80, 81, 100 and 108 and; Judgment of 3 November 1997, *Castillo Páez* case.)

<sup>120</sup> See Inter-American Court: Judgment of 5 July 2004, *19 Merchants v. Colombia*, para. 186.

<sup>121</sup> Human Rights Committee (see views and concluding observations cited in notes 64, 65 and 66); ECHR (see judgments cited in note 70); annual report of IACHR - 1978, OEA/Ser.L/II.47, doc. 13/Rev.1; and African Commission on Human and Peoples' Rights *Amnesty International v. Sudan*, Communications No. 48/90, 50/91, 52/91, 89/93 (1999).

<sup>122</sup> See IACHR, report No. 136/99, *Ignacio Ellacuría* case, doc. cit.

<sup>123</sup> See, also last preambular paragraph of the draft legally binding normative instrument for the protection of all persons from enforced disappearance.

<sup>124</sup> See, for example, ICCPR, art. 19 (3).

<sup>125</sup> See, inter alia, Human Rights Committee (see views and concluding observations cited in notes Nos. 64, 65 and 66); ECHR (see judgments on *Kurt v. Turkey*, *Tas v. Turkey*, *Cyprus v. Turkey*, cited in note 70).

<sup>126</sup> Human Rights Committee, general comment No. 29, (2002) on art. 4: Derogations during a state of emergency.

<sup>127</sup> IACHR report No. 136/99, of 22 December 1999, para. 221.

<sup>128</sup> European Court of Human Rights (judgments on *Kurt v. Turkey*, doc. cit.; *Tas v. Turkey*, doc. cit.

<sup>129</sup> Human Rights Committee, general comment No. 20 (1992) on art. 7 ((A/47/40), appendix VI.A); IACHR: report No. 136/99, *Ignacio Ellacuría* case.

<sup>130</sup> Inter-American Court, judgment of 14 March 2001, *Barrios Altos (Peru)* case, para. 41.

<sup>131</sup> Report No. 136/99, para. 224.

<sup>132</sup> Constitutional Tribunal of Peru, judgment, *Piura - Genaro Villegas Namuche* case, doc. cit., para. 15.

<sup>133</sup> Final report of the Commission of Experts established pursuant to Security Council resolution 780 (1992), S/1994/674, annex, para. 320.

<sup>134</sup> Set of Principles, Principle 19.

<sup>135</sup> For example, Colombia, France and Spain.

<sup>136</sup> See note No. 52.

<sup>137</sup> See Constitutional Court of Colombia, judgment of 20 January 2003, case T-249/03.

<sup>138</sup> In Peru, habeas corpus is utilized to establish the fate and whereabouts of the disappeared persons.

<sup>139</sup> Commission of Inquiry into the Disappearances of Peoples in Uganda.

<sup>140</sup> Truth commissions and commissions of inquiry, have been established, inter alia, in: Argentina, Bolivia, Burundi, Chad, Chile, Côte d'Ivoire, Ecuador, El Salvador.

<sup>141</sup> Report of the International Commission of Inquiry on Dafur to the Secretary-General, pursuant to Security Council resolution 1564 (2004), para. 620.

<sup>142</sup> All the mandates of truth commissions and commissions of inquiry are restricted to establish the facts committed during a limited period of time.

<sup>143</sup> Several mandates of truth commissions and commissions of inquiry were limited to certain kinds of human rights violations.

<sup>144</sup> According to the independent study on impunity, "Experience suggests that truth commissions should be given a time-bound mandate, generally lasting no more than two fully-operational years" (E/CN.4/2004/88, para. 19).

<sup>145</sup> The Mexican Federal Act on Access to Information (2002), bars the withholding of documents that describe “grave violations” of human rights. The Government of Argentina has undertaken to create a National Archive for Remembrance within the Department of Human Rights, in which various partial archives and databases will be consolidated.

<sup>146</sup> E/CN.4/Sub.2/1993/6 and E/CN.4/Sub.2/1997/20.

<sup>147</sup> See definition E “Archives” and Principles 14 to 18.

<sup>148</sup> International Council on Archives, *In Defense of Human Rights: Archives So We Do Not Forget*, Paris, May 2004.

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