

Amnesty
EXCERPTS

from

**"DISAPPEARANCES"
AND
POLITICAL KILLINGS**

HUMAN RIGHTS CRISIS OF THE 1990s

**A MANUAL FOR
ACTION**

by

AMNESTY INTERNATIONAL

**THIS IS AN ABBREVIATED VERSION [62 PAGES]
OF THE 300 PAGE
COMPREHENSIVE**

**"DISAPPEARANCES" AND POLITICAL KILLINGS
HUMAN RIGHTS CRISIS OF THE 1990s
A MANUAL FOR ACTION**

**by
AMNESTY INTERNATIONAL**

It has been prepared by the NADESAN CENTRE to facilitate wider distribution among persons concerned with the commissions recently appointed to investigate disappearances.

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Table of Contents

List of abbreviations and acronyms	1
Chapter 1: The anatomy of the atrocities	2
1. What is a "disappearance"?	2
2. What is an extrajudicial execution?	3
Chapter 2. Prevention	5
1. The duty of prevention	5
2. Official condemnation	5
3. Prohibition in law	6
4. Chain-of-command control	7
5. The right and duty to disobey	7
6. Restraints on lethal force	8
7. Disbanding "death squads"	8
8. Protection against death threats	8
9. Safeguards on the arrest, detention and release of prisoners	8
10. Safeguards at arrest	9
11. Notification of relatives	9
12. Habeas corpus and other judicial remedies for locating and protecting prisoners	10
13. No secret detention	11
14. Registers of prisoners	12
15. Bringing prisoners before a judicial authority	12
16. Access to prisoners	12
17. Visits of inspection	13
18. Other safeguards during detention	13
19. Safeguards at release	14
20. Dissemination	14
21. Training	15
Chapter 3. Investigation	16
1. The duty to investigate	16
2. Objectives of an official investigation	17
3. Characteristics of the investigating body	18
4. Characteristics of the investigation	18
5. Investigative techniques	20
6. Commissions of inquiry and national human rights commissions	20
7. Investigations by relatives and human rights defenders	21
8. Piecing together a pattern	23
Chapter 4. Bringing the perpetrators to justice	26
1. The duty to bring those responsible to justice	26
2. Overcoming impunity	26
3. Characteristics of the judicial process	27
4. Independence of the judiciary	28
5. Establishing the full scope of liability to prosecution: universal jurisdiction; no statute of limitations; liability of superior authorities; no defence of superior orders	29
6. Establishing state responsibility: the <i>Velásquez Rodríguez</i> case	29
7. Civil suits	30
8. Compensation, rehabilitation and redress	30
9. Dealing with abuses committed under past regimes	32
Chapter 5. Deliberate and arbitrary killings by armed opposition groups	35
1. Amnesty International's policy:	35
2. Armed opposition groups	36

	2
3. Deliberate and arbitrary killings	37
4. International standards	38
5. Action against deliberate and arbitrary killings	38
Notes	40
Appendices	47
1. Declaration on the Protection of All Persons from Enforced Disappearance	47
2. Principles on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions	54
3. Amnesty International 14-Point Program for the Prevention of "Disappearances"	57
4. Amnesty International 14-Point Program for the Prevention of Extrajudicial Executions	60

List of abbreviations and acronyms

Abbreviation/Acronym	Full title
Basic Principles	Basic Principles on the Use of Force and Firearms by Law Enforcement Officials
Body of Principles	Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment
Declaration on Disappearances	Declaration on the Protection of All Persons from Enforced Disappearance
EU	European Union
ICRC	International Committee of the Red Cross
Principles on Extra-Legal, Arbitrary and Summary Executions	Principles on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions
Standard Minimum Rules	Standard Minimum Rules for the Treatment of Prisoners
UN	United Nations
Working Group on Disappearances	Working Group on Enforced or Involuntary Disappearances

Chapter 1: The anatomy of the atrocities

1. What is a "disappearance"?

"The 'disappeared' are people who have been taken into custody by agents of the state, yet whose whereabouts and fate are concealed, and whose custody is denied."

- Amnesty International 14-Point Program for the Prevention of "Disappearances"

Amnesty International considers that a "disappearance" has occurred whenever:

- there are reasonable grounds to believe that a person has been taken into custody by the authorities or their agents, and
- the authorities deny that the victim is in custody, thus concealing his or her whereabouts and fate.¹

Amnesty International puts the term in quotation marks to emphasize that the victim has in reality not simply vanished. The victim's whereabouts and fate, concealed from the outside world, are known by someone. Someone decided what would happen to the victim; someone decided to conceal it. Someone is responsible.

There are several elements to a "disappearance" as described above:

- The victim is deprived of liberty and held prisoner.
- The victim is deprived of liberty by agents of the state. These may be police officers or soldiers in uniform who carry out the arrest openly; the authorities will later deny that the person has been arrested, or acknowledge the arrest but claim that the victim later escaped or was released. They may be intelligence officers or other members of the security forces who wear plain clothes and refuse to identify themselves to onlookers. They may be people who do not formally belong to the security services but are operating by order of the authorities or with their complicity or acquiescence.
- The victim's whereabouts and fate are concealed, and the authorities deny holding the victim. This denial may be in the form of a public statement, a reply to inquiries by the victim's relatives, or a response to a judicial procedure such as *habeas corpus* which has been invoked in an effort to find the victim and ensure his or her safety. The authorities also fail to follow correct procedures for detention such as bringing prisoners promptly before a judicial authority and notifying relatives promptly of their arrest and place of detention.

"Disappearance", torture and extrajudicial execution often go hand in hand. The victim may be arrested or abducted, tortured for such purposes as obtaining information, and then killed. Sometimes the body is dumped in a public place: it may be found and identified, but the "disappearance" will have helped to conceal the authors and circumstances of the torture and killing. In other cases bodies are mutilated beyond recognition or disposed of secretly: the "disappearance" keeps the key facts of the killing hidden, and the fate and whereabouts of the victim remain unknown. "Disappearance" becomes a cover for extrajudicial execution, and extrajudicial execution perpetuates the state of "disappearance".

2. What is an extrajudicial execution?

"Extrajudicial executions are unlawful and deliberate killings, carried out by order of a government or with its complicity or acquiescence."

- Amnesty International 14-Point Program for the Prevention of Extrajudicial Executions

The above description used by Amnesty International serves to distinguish extrajudicial executions from other killings. There are several elements.

- An extrajudicial execution is **deliberate**, not accidental.
- An extrajudicial execution is **unlawful**. It violates national laws such as those which prohibit murder, and/or international standards forbidding the arbitrary deprivation of life, as described in Chapter 8.

Its unlawfulness distinguishes an extrajudicial execution from:

- justifiable killings in **self-defence**;
- deaths resulting from the use of reasonable force in **law enforcement**;
- killings in war which are not forbidden under international laws that regulate the conduct of **armed conflict**;
- the use of the **death penalty**.²

• An extrajudicial execution is **carried out by order of a government or with its acquiescence**. This concept distinguishes extrajudicial executions from killings for private reasons, or killings which are in violation of an enforced official policy. If a soldier kills someone for personal reasons and the authorities, learning of it, arrest and punish the soldier, clearly showing their disapproval, it is not an extrajudicial execution. Extrajudicial executions are not the work of individual soldiers or police officers acting in isolation. Someone else, at some level of government, whether national, state or local, has ordered the killings or acquiesced in them.

The combination of unlawfulness and governmental involvement puts extrajudicial executions in a class of their own. An extrajudicial execution is, in effect, a murder committed or condoned by the state.

The concept of extrajudicial executions brings together several types of killings.

- In most of the cases known to Amnesty International worldwide, the victim is being held prisoner or is in the control of the perpetrator at the time of the killing, as when soldiers order people to come out of their homes and then line them up and kill them.

- Some victims are not in custody but are assassinated in the street or murdered by unknown assailants.

- Some killings are committed by officers performing law enforcement functions. These killings involve a use of force which was disproportionate to any threat posed, although the authorities may claim that this use of force was legitimate. The security forces may open fire on a peaceful demonstration and later claim they were facing a life-threatening riot, for example, or shoot down a criminal suspect who threatened physical harm to no one and then pretend that the victim was violently resisting arrest.

- Some victims are civilians not involved in hostilities who are deliberately shot, bombed or shelled in military operations.³

Some killings are concealed, or presented by the authorities as the work of someone having no official connection. Others are in disputed circumstances: the authorities acknowledge that official forces committed them, but present them as killings which were justified under the circumstances.

If the authorities fail to conduct an impartial and effective investigation, this failure adds to the presumption that a killing was committed with governmental acquiescence.

"The phenomenon of disappearances is a complex form of human rights violation that must be understood and confronted in an integral fashion."

- Inter-American Court of Human Rights, Velásquez Rodríguez judgment⁴

These abuses are never the work of a single person acting alone.

- In a "disappearance", the victim must be taken prisoner, transported to a place of secret detention and held there hidden, with the connivance or acquiescence of public officials.

- An extrajudicial execution involves, at a minimum, the person who carried it out and the officials who ordered, connived or acquiesced in it.

Whatever the form of organization, the mechanics of official murder and "disappearance" are almost certain to be concealed. The pattern only begins to emerge when many bits of information gathered by relatives, lawyers, journalists and human rights organizations are pieced together. Such research is vital: in order to combat "disappearances" and extrajudicial executions effectively, it is necessary to know how they are organized.

Chapter 2. Prevention

1. The duty of prevention

"The State has a legal duty to take reasonable steps to prevent human rights violations and to use the means at its disposal to carry out a serious investigation of violations committed within its jurisdiction, to identify those responsible, to impose the appropriate punishment and to ensure the victim adequate compensation."

"[The obligation of states parties to the American Convention on Human Rights to ensure the exercise of the rights recognized by the Convention] implies the duty of the States Parties to organize the governmental apparatus and, in general, all the structures through which public power is exercised, so that they are capable of juridically ensuring the free and full enjoyment of human rights. As a consequence of this obligation, the States must prevent, investigate and punish any violation of the rights recognized by the Convention and, moreover, if possible attempt to restore the right violated and provide compensation as warranted for damages resulting from the violation."

- Inter-American Court of Human Rights, *Velásquez Rodríguez* judgment (emphases added)⁵

In a narrow sense, prevention consists of measures to be taken so that "disappearances" and extrajudicial executions will not be committed, while investigation and bringing those responsible to justice (the subjects of the next two chapters) are reactions which should follow if they are. In a wider sense, investigation and bringing those responsible to justice contribute to prevention. Public officials who might become involved in programs of "disappearances" and political killings will hesitate to do so if they know that similar deeds by others have been uncovered through investigation and that the perpetrators have been brought to justice. The duty to investigate and the duty to bring those responsible to justice are part of the duty of prevention.⁶ These duties are incumbent both on the state and on its officials.

2. Official condemnation

The highest authorities of every country should demonstrate their total opposition to "disappearances" and extrajudicial executions. They should make clear to all members of the police, military and other security forces that "disappearances" and extrajudicial executions will not be tolerated under any circumstances.

- From Amnesty International's 14-Point Programs for the Prevention of "Disappearances" and Extrajudicial Executions

The eradication of "disappearances" and extrajudicial executions is a matter of political will. The highest authorities of each country are responsible for exercising that will. This is so because:

- The prevention of "disappearances" and extrajudicial executions is part of the state's obligation to protect human rights. That obligation entails a responsibility on the part of the highest authorities of the state, as well as of lower officials.

- In every country the state assumes responsibility for maintaining law and order. This responsibility entails the obligation to suppress breaches

of the law by public officials as well as private citizens. A failure to suppress the commission of the most serious crimes by public officials is a denial of the rule of law, under which public officials are not above the law but must be subject to it just like ordinary citizens.

Statements condemning "disappearances" and extrajudicial executions need to be accompanied by convincing deeds. These include conducting prompt and effective investigations, bringing perpetrators to justice, disbanding organizations which carry out "disappearances" and extrajudicial executions, and repealing emergency regulations which impede normal remedies against "disappearances" and extrajudicial executions or which grant the perpetrators immunity from prosecution.

3. Prohibition in law

"Disappearances" and extrajudicial executions violate national laws proscribing such acts as unlawful detention, kidnapping and murder. But a "disappearance" or an extrajudicial execution involves more than just these acts. The prohibition of "disappearances" and extrajudicial executions involves ensuring that the component parts of the crimes are prohibited.

- Component parts of a "disappearance" are the arrest - which itself is often arbitrary or unlawful - or abduction, the secret detention, the false denial of knowledge of the victim's fate or whereabouts, and the cruel, inhuman and degrading treatment of the victim, often including torture and often leading to the victim being killed.

- An extrajudicial execution involves an unlawful and deliberate killing. It is often accompanied by other human rights violations, including those listed above.

A "disappearance" or an extrajudicial execution is never committed by one person alone. The actions of those who aid in the commission of the crimes and of the higher authorities who order or acquiesce in them include the following:

- ordering or requesting someone to carry out a "disappearance" or a killing;
- deciding on a plan for the crime;
- providing intelligence information which enables the perpetrators to carry out their work, or providing guns, vehicles or other material assistance;
- covering up a crime, by such means as falsifying records;
- turning a blind eye and allowing the crime to proceed, when it is in an official's power to stop it.

In reviewing whether or not a country's laws adequately prohibit "disappearances" and extrajudicial executions, one must review the component parts of these crimes to see whether they are prohibited. The aim must be to ensure that every person at whatever level who is responsible for a "disappearance" or an extrajudicial execution can be brought to justice for violations of the criminal law, and that these violations are punishable by appropriately serious penalties. Offences short of crimes should be punishable by administrative sanctions.

4. Chain-of-command control

The duty to maintain strict chain-of-command control for the prevention of "disappearances" and extrajudicial executions is established in the UN Declaration on Disappearances (Article 12) and the UN Principles on Extra-Legal, Arbitrary and Summary Executions (principle 2). Measures through which chain-of-command control should be exercised include the following:

- ensuring that clear regulations and procedures are established governing arrest, detention and such other areas as the use of lethal force, in conformity with international human rights standards;
- ensuring that these regulations and procedures are known and followed;
- ensuring that there is an effective procedure for the investigation of possible breaches of regulations;
- ensuring that breaches of regulations which could contribute to a "disappearance" or an extrajudicial execution are punished by appropriate sanctions;
- exercising effective supervision through being regularly and accurately informed of the activities of those under the officer's command. In particular, the commanding officer should know the whereabouts and conditions of detention of all prisoners held by officials under his or her command.

Officials sometimes try to escape blame for human rights violations by feigning ignorance or claiming that they cannot control the actions of their subordinates; yet a strong chain of command is a basic feature of police and military forces. The principle of chain-of-command responsibility to prevent human rights violations is a means of counteracting such false claims. It points to the fact that commanding officers who genuinely want to stop "disappearances" and extrajudicial executions can do so by issuing the necessary orders and insisting that they must be obeyed.

5. The right and duty to disobey

Because "disappearances" and extrajudicial executions are unlawful, it follows that members of the security forces must not participate in them. The need to disobey an order to do so should be seen as a duty, taking precedence over the normal duty to obey orders.

By refusing to obey an unlawful order, a soldier or police officer exposes himself or herself to the risk of suffering the - often severe - sanctions normally attached to an act of disobedience by a member of the security forces. To protect the officer from this risk, it is necessary to establish that the duty to disobey an unlawful order entails the right to disobey it. This right needs to be made effective through such means as providing an impartial review body to which the soldier or police officer can appeal if he or she is being punished for disobeying such an order.

The right and duty to disobey an order to participate in a "disappearance" or an extrajudicial execution is connected to the principle that an order from a superior officer may not be invoked as a defence for committing such acts.

6. Restraints on lethal force

Two important instruments setting standards on the use of force by law enforcement officials have been adopted by the UN - the Code of Conduct for Law Enforcement Officials and the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials.

Implementation involves various measures including the following:

- Governments should adopt national standards on the use of force and firearms by law enforcement officials which conform to the standards established by the UN. These national standards need to be incorporated in laws and regulations governing the activities of law enforcement officials.⁷ The texts of the relevant standards should be made available to all law enforcement officials, and their provisions should be made known through training.⁸

- The laws and regulations must cover all officials who perform law enforcement functions - prison guards and military police as well as the regular police.⁹

- In dealing with crowd control, prison disturbances and other violent or threatening situations, law enforcement agencies need to develop tactics which use non-violent means as far as possible.¹⁰

- Law enforcement agencies should be subject to public scrutiny by the judiciary, a review board, or some other independent agency.¹¹ People affected by the use of force and firearms by law enforcement officials should be able to have recourse to a judicial authority.¹²

7. Disbanding "death squads"

Any forces which are necessary for the nation's defence must be put firmly under the established chain of command, so that "disappearances" and extrajudicial executions will be prevented through chain-of-command control. If paramilitary forces are outside the chain of command, they should be prohibited and disbanded.¹³

8. Protection against death threats

The duty to protect potential victims is part of a government's responsibility to prevent extrajudicial executions. This duty is spelled out in the UN Principles on Extra-Legal, Arbitrary and Summary Executions (principle 4). If "death squads" or acknowledged official bodies are threatening to kill people, the authorities must ensure that these threats are not carried out.¹⁴

9. Safeguards on the arrest, detention and release of prisoners¹⁵

The measures described in the above sections of this chapter concern the general prohibition and prevention of "disappearances" and extrajudicial executions, and the safeguards needed to prevent killings outside custody. Those which follow refer to the protection of people who are in custody. It is into custody that people "disappear". Most victims of extrajudicial executions, too, are taken into custody or otherwise apprehended before being killed.

10. Safeguards at arrest

Detailed standards for arrest are spelled out in the UN Body of Principles. These standards are designed to protect the right of freedom from arbitrary arrest, recognized in the Universal Declaration of Human Rights,¹⁶ as well as other human rights which may be threatened if a person is arbitrarily deprived of liberty.

The Body of Principles defines "arrest" very broadly to cover virtually any apprehension of a person which derives from an official source. Under the Body of Principles, "Arrest" means the act of apprehending a person for the alleged commission of an offence or by the action of an authority".

Safeguards established in the Body of Principles include the following:

- Arrest or detention shall only be carried out "strictly in accordance with the provisions of the law" and "by competent officials or persons authorized for that purpose" (Principle 2).¹⁷

- The authorities which arrest a person "shall exercise only the powers granted to them under the law" (Principle 9).

- Anyone arrested must be informed at the time of arrest of the reasons for the arrest (Principle 10).

- The time of the arrest, the reasons for the arrest and the identity of the law enforcement officials concerned must be recorded, and the records must be communicated to the detained person or to his or her lawyer (Principle 12).

Amnesty International has included these provisions in its recommendations to governments, along with other, more detailed, recommendations intended to prevent "disappearances" and extrajudicial executions. Among these are:

- Officials carrying out an arrest should identify themselves to the person arrested and, on demand, to others witnessing the event.

- Police officers and other officials who make arrests should wear name tags or numbers so that they can be clearly identified. Other identifying markings such as the insignia of soldiers' battalions or detachments are also to be recommended.

- Police and military vehicles should be clearly identified as such. They should carry number plates at all times.

- In situations where there is a serious risk of "disappearances" or extrajudicial executions being perpetrated, the authorities carrying out arrests should give certificates of arrest to relatives stating that the individual concerned has been taken into custody, so that there can be no question later about official responsibility for their safe custody.

11. Notification of relatives

- The authorities must ensure that all prisoners are fully able in practice to avail themselves of the right to notify family members or others promptly of their whereabouts. All prisoners should be informed of this right. If they do not have the financial or technical means to send word to their relatives, the authorities must be ready to communicate the message for them.

• The authorities must ensure that accurate information on the arrest, place of detention, transfer and release of prisoners is available promptly in a place where relatives and others concerned can obtain it. They must ensure that relatives are not obstructed from obtaining this information, and that they know or are able to find out where the information can be obtained.

• Where "disappearances" have been reported, there should be an additional requirement that the whereabouts of prisoners must be made known to a person or organization outside the place of detention who can act to ensure the prisoner's safety, without waiting for someone to request the information. Normally that person will be a relative, but in some situations it can be some other person or organization acting on the prisoner's behalf, such as a lawyer, a member of parliament, or an organization dealing with human rights matters. (In situations of armed conflict where relatives cannot easily be notified, notification may be to an impartial body such as the International Committee of the Red Cross (ICRC), which will inform the relatives.)

The provisions described above should be set forth in official regulations governing arrest and detention. Any infraction of these provisions should be punished by appropriate sanctions.

12. *Habeas corpus* and other judicial remedies for locating and protecting prisoners

"Governments should at all times ensure that effective judicial remedies are available which enable relatives and lawyers to find out immediately where a prisoner is held and under what authority, to ensure his or her safety, and to obtain the release of anyone arbitrarily detained."

- Amnesty International 14-Point Program for the Prevention of "Disappearances"

This safeguard is derived from the ancient legal notion of *habeas corpus*. *Habeas corpus* (literally, "that you have the body") is a device in the laws of various countries to test the legality of a detention. Under this procedure, a person can petition a court to issue a writ of *habeas corpus* commanding the authorities to produce the specified prisoner in person (literally, in "body") before the court so that the court can determine the legality of the detention, and to submit to the court's further directives in the matter.

Another relevant legal device is *amparo*, "protection", provided under the laws of many Latin American countries. Its scope is broader than that of *habeas corpus*, as it affords protection not only of the right to liberty but also of other constitutional rights including the rights to life and physical integrity.

The attempt to locate and rescue "disappeared" people by filing petitions of *habeas corpus* and *amparo* has been an important part of the fight against "disappearances".

One example of a law making detailed provision for the functioning of a judicial remedy against "disappearances" is the Act on *Amparo, Habeas Corpus* and Constitutionality (decree number 1-86) which was adopted in Guatemala in 1986 and remains in force. The UN Working Group on Disappearances listed features of the law in its report on its 1987 visit to the country. Among these features are the following:

- Application may be made to any court for a writ of *habeas corpus*, writing, by telephone or orally, by the victim or any other person.
- There is no need for legal representation, and there are formalities of any kind.
- *Habeas corpus* proceedings may also be instituted automatically by a court which has information that a person has been unlawfully arrested, detained, or in any way deprived or threatened with loss of freedom subjected to harassment.
- The writ of *habeas corpus* must be issued as soon as the application has been received or the incident giving rise to it is made known.
- The writ will inform the authority or responsible person when the person concerned must be produced within a period of not more than 24 hours.
- A court which has information concerning incidents giving rise to an application for *habeas corpus* must immediately institute proceedings in the place where the victim is to be found, or - if the place is outside the court's jurisdiction - appoint an executing judge or any other authority person who is qualified to perform such a function.
- If *habeas corpus* is applied for on behalf of missing people, the judge who has ordered the writ of *habeas corpus* has to appear in person at the place where these people are allegedly held, namely a detention centre, a prison or any other place where it has been indicated or suggested that they might be found.
- The court or the executing authority is empowered to conduct a full and immediate investigation into the incidents necessitating the application for *habeas corpus*. The court is, for example, empowered to summon witnesses and experts to the hearing at which *habeas corpus* has been ordered. The executing authority may search for the person concerned in any detention centre or other place where he or she has been told that the person may be found. The executing authority and the court have to do everything in their power to complete the investigation in order to identify those responsible where the facts giving rise to the writ of *habeas corpus* are proved.
- If there is evidence that the person on whose behalf an application of *habeas corpus* was made has "disappeared", the court has to order an immediate investigation of the case, which will continue until the whereabouts of the missing person have been determined.
- It is compulsory immediately to report any wrongful act on the part of officials who fail to comply with orders by the court or by the executing authority, keep the prisoner hidden, refuse to bring the prisoner before the competent court or in any way prevent *habeas corpus* from being guaranteed. Officials who do not observe the provisions of the Act will be punished in accordance with the law.

The Working Group considered the Guatemalan *habeas corpus* procedure "exemplary" in theory but found that it was ineffective in practice, owing to lack of cooperation by military authorities, inability of the judiciary to pursue its aims with the necessary vigour, and failure of witnesses to testify through despondency or fear of reprisals.

13. No secret detention

Up-to-date lists of all officially recognized places of detention should be published in a form that is readily accessible to lawyers and members of the public.

14. Registers of prisoners

The existence of official records that are open to review helps to protect prisoners from "disappearing" or being mistreated. If prisoners are missing, official records may help to trace them and to determine who was responsible for their custody.

Registers of prisoners should be kept in all places of detention including prisons, police stations and military bases. They should be kept in the permanent, tamper-proof form of a bound book with numbered pages. Information to be entered in them should include the following:

- the name and identity of each person detained;
- the reasons for his or her arrest or detention;
- the names and identities of the officials who arrested the prisoner or brought him or her in;
- the date and time of the arrest and of the taking of the arrested person to a place of detention;
- the time of the prisoner's first appearance before a judicial authority;
- precise information concerning the place of custody;
- the date, time and circumstances of the prisoner's release or transfer to another place of detention.

The UN Declaration on Disappearances (Article 10) also provides that registers of all prisoners should be maintained in all places of detention, and it calls for centralized registers as well. It states that the information in these registers must be made available to relatives, lawyers and others.

15. Bringing prisoners before a judicial authority

All prisoners should be brought before a judicial authority in person as a matter of routine whether or not a writ of *habeas corpus* or similar order has been issued. This is a means of ensuring that all detentions are legal and not arbitrary.

16. Access to prisoners

Access to prisoners is a key safeguard against "disappearance", extrajudicial execution and torture. Alongside the measures described earlier, it helps to break down the conditions of isolation in which abuses are committed.

To ensure that visits are an effective safeguard, the following points should be observed:

- Relatives and others should be able to visit a prisoner promptly after he or she is taken into custody, and preferably as soon as possible. This is important because it is often in the first hours or days of detention that prisoners are at greatest risk of being tortured, made to "disappear", or killed.¹⁸
- They should be able to make further visits regularly, and preferably whenever they request, to verify the prisoner's continued well-being.¹⁹

- Not only relatives, but lawyers and independent doctors should be able to visit: lawyers, to ensure that a prisoner's rights are respected and to help prepare the prisoner's defence; doctors, to ascertain that the prisoner is healthy and not suffering from torture or ill-treatment.²⁰

- Prisoners should be able to speak to visitors without having their conversations listened to or recorded. In particular, prisoners should be able to communicate in full confidentiality with their lawyers.²¹ If guards are listening, a prisoner is likely to be impeded from disclosing that he or she has been ill-treated or giving information on the ill-treatment, "disappearance" or execution of other prisoners.

- Prisoners should also be able to correspond regularly with their families and friends.²²

17. Visits of inspection

In order to be effective in preventing "disappearances" and extrajudicial executions, a system of visits of inspection should meet several conditions.

- The inspectors must be independent of the authorities in charge of the place of detention.

- They must be able to visit all places of detention, including police stations and military camps as well as ordinary prisons.

- They must be able to make unannounced visits.

- They must have access to all detainees and be able to interview them freely and without witnesses.

- They must be able to make return visits whenever they wish. Often a single visit has little positive effect in the long run and is not enough to develop a program of protection.

- As a safeguard against subsequent "disappearances", they must be able to draw up a list of prisoners based on the relevant official records and other information they have gathered.

- Where necessary, they should be able to receive information rapidly from the authorities on all transfers of prisoners.

- They should be able to contact and be contacted by relatives of the "disappeared" without fear of reprisals against the relatives. Such contacts may yield information which they can compare with what they learn from other prisoners.

- They must be able to make recommendations to the authorities concerning the treatment of prisoners.²³

18. Other safeguards during detention

Among the most important are:

- The prohibition of torture and other cruel, inhuman and degrading treatment. This prohibition must be strictly enforced.

- Prisoners should be promptly told of their rights, including the right to lodge complaints about their treatment.²⁴

- Prisoners and their lawyers should be promptly informed of any order of detention and the reasons for it.²⁵

- The treatment of prisoners should conform to the standards laid down in the UN Standard Minimum Rules.

19. Safeguards at release

Officials involved in a "disappearance" sometimes try to cover it up by falsely claiming that the victim has been released. To prevent this happening, governments should institute safeguards for the proper release of prisoners, as established in Article 11 of the UN Declaration on Disappearances.

Elements of such safeguards should include the following:

- Prisoners should be handed over to, or released in the presence of, a person or organization that can verify the prisoner's release and assure his or her safety. Normally this will be the prisoner's relatives, but in some situations releases may be made to another person or organization acting to defend the prisoner's vital interests, such as a local human rights organization. In some situations releases are made under the auspices of the ICRC, who can then accompany the released person to a safe place.²⁶

- A certificate of release should be issued in duplicate, signed by the releasing authority and the person to whom release is made or who witnesses the release on behalf of the prisoner, with one copy kept by each.

- Prisoners who "disappear" and are later released must be able to exercise their rights fully, including the right to lodge official complaints about their treatment and the right to obtain compensation and redress.

"Where a detainee/accused/person taken into custody is reportedly released from his custodians or captors in the manner not conforming to the foregoing procedure, and such detainee/accused/person taken into custody thereafter disappears or is found dead, the burden is on his custodians/captors to prove that the missing person was released safely, or that the foregoing procedure for his release was in fact observed and duly witnessed".

20. Dissemination

The dissemination of human rights instruments involves several tasks:

- The full text of the instrument needs to be made available in the languages of different countries to those people who will use it or should do so: to lawyers of victims of human rights violations, to prosecutors and judges, to commanding officers in the security services, to officials in justice and defence ministries. It should be readily available for anyone else who wishes to consult it.

- The principles contained in the instrument should be made widely known - to members of the security forces, to victims of human rights violations and their families and to the general public as part of the task of informing them about human rights.

- Dissemination is a form of communication, and communication is a two-way process. It is not enough to hand out printed texts. Teaching, discussion, and other forms of communication must be included in a program of

dissemination so that people will come to understand the principles of human rights protection and the reasons for them.

21. Training

The knowledge that "disappearances" and extrajudicial executions are prohibited should be transmitted during the formal training courses which all members of the security forces undergo. These courses differ from country to country, but a few general points may be made.

- The training needs to reach all officials involved in arrest and custody, including police and prison officers, all officials authorized to use lethal force, and all members of the armed forces.

- The notion of prevention of "disappearances" and extrajudicial executions needs to be related to the positive goals of the security forces, including the promotion of human rights for everyone and the protection in armed conflict of people not involved in hostilities.

- The training needs to inculcate *knowledge* of the standards of human rights and international humanitarian law,²⁷ the *conviction* that it is necessary to respect these standards, and *motivation* to uphold them. Motivation should be conveyed through leadership and the attitude of trainers and supervisors.

- Practical applications need to be brought in. There should be exercises to show the trainee how the prohibition of "disappearances" and extrajudicial executions should be respected in situations likely to arise in the course of his or her duties.

- Training programs must include a long-term, comprehensive follow-up program with clear goals and evaluation criteria to ensure that security force members incorporate the information learned into their behaviour. Training programs should be continually revised and strengthened in light of such follow-up and evaluation.

All members of the security forces need good training, but training alone will not prevent "disappearances" and extrajudicial executions. The prohibition of "disappearances" and extrajudicial executions must be reflected also in the general regulations and instructions issued to members of the security forces concerning such matters as arrest procedures, treatment of people in detention, crowd control and the use of force and firearms, in the orders issued in particular incidents, and in the words and deeds of superior officers and superior authorities. And if prohibition is to be credible, all members of the security forces must know that any official who becomes involved in the perpetration of a "disappearance" or an extrajudicial execution will be punished.

1. The duty to investigate

"The State is obligated to investigate every situation involving a violation of the rights protected by the [American] Convention [on Human Rights]. If the State apparatus acts in such a way that the violation goes unpunished and the victim's full enjoyment of such rights is not restored as soon as possible, the State has failed to comply with its duty to ensure the free and full exercise of those rights to the persons within its jurisdiction."

- Inter-American Court of Human Rights, Velásquez Rodríguez judgment²⁸

"Measures taken by Governments to open independent and impartial investigations with a view to identifying and bringing to justice those responsible for human rights violations constitute one of the main pillars of the effective protection of human rights. Consequently, a climate of impunity for human rights violators contributes to a great extent to the persistence of - and sometimes even to an increase in - human rights abuses in a number of countries. The Special Rapporteur has received many allegations concerning breaches of the obligation to investigate violations of the right to life. On repeated occasions, he has reminded the Governments concerned of this obligation..."

- UN Special Rapporteur on extrajudicial, summary or arbitrary executions²⁹

"The World Conference on Human Rights, welcoming the adoption by the General Assembly of the Declaration on the Protection of All Persons from Enforced Disappearance, calls upon all States to take effective legislative, administrative, judicial or other measures to prevent, terminate and punish acts of enforced disappearances. The World Conference on Human Rights reaffirms that it is the duty of all States, under any circumstances, to make investigations whenever there is reason to believe that an enforced disappearance has taken place on a territory under their jurisdiction and, if allegations are confirmed, to prosecute its perpetrators."

- World Conference on Human Rights, Vienna Declaration and Programme of Action³⁰

Governments should ensure that all complaints and reports of "disappearances" and extrajudicial executions are investigated promptly, impartially and effectively by a body which is independent of those allegedly responsible.

- From Amnesty International's 14-Point Programs for the Prevention of "Disappearances" and Extrajudicial Executions

The conclusion of an effective investigation, coupled with a clear public condemnation of "disappearances" and extrajudicial executions, helps to show that the authorities are determined to put a stop to these human rights violations. If there is no investigation or if an investigation is not properly done, there will be strong suspicions that the authorities are already full aware of the details of the case, that they themselves have ordered or acquiesced in a terrible crime, that they have decided to let the perpetrators get away with it and are determined that the truth should be covered up.

The standards of investigation set forth in the UN Principles on Extra-Legal, Arbitrary and Summary Executions are supplemented by the UN Manual on

the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions. This *Manual* has been welcomed by the UN Commission on Human Rights,³¹ and it is used by the UN Special Rapporteur on extrajudicial, summary or arbitrary executions as a standard for assessing governmental investigations. It is an invaluable tool for the investigation of extrajudicial executions in different countries.

Even when official investigations are held, the standards laid out in this chapter are unfortunately often not met. Wishing to avoid accountability for their crimes, those responsible for "disappearances" and extrajudicial executions will block investigations by means of techniques ranging from legal restrictions on the investigative process to non-cooperation, harassment, intimidation, death threats, and further "disappearances" and killings. The authorities responsible for ordering an investigation may have no interest in seeing that the investigation reaches a satisfactory conclusion, or they may be under pressure from the security forces and other powerful interests not to allow it to do so.

In the face of these obstacles, internationally recognized standards of investigation assume importance as a yard-stick of governmental behaviour. The wilful failure to meet these standards adds to the evidence of official acquiescence in the crimes. The same inference can be drawn from a failure to investigate "disappearances".

2. Objectives of an official investigation

The main objective of an official investigation is to establish the facts:

- Has a "disappearance" or an extrajudicial execution been perpetrated? If so, by whom?

- If a public official has committed a crime or breach of regulations, was he or she acting under orders or with the acquiescence of other officials?

An investigation of a suspected "disappearance" should, in particular,

- determine the whereabouts and fate of the supposed victim, establishing what happened to him or her from the moment of arrest. Such an investigation should have the power to take the necessary measures to protect the victim's life and safety.

An investigation of a possible extrajudicial execution should:

- identify the victim;
- determine the cause, manner, and time of death and the identity of the person or persons responsible. (Determining the cause and manner of death involves establishing what brought about death; whether the death was natural, accidental or deliberate; if the latter, whether it was a suicide or a homicide and, if a homicide, whether or not it was in self-defence.)

An investigation which may lead to prosecution should collect evidence of any crimes or breaches of regulations, including unlawful arrest or detention, torture or ill-treatment, and unlawful killing. The investigation should recover and preserve any evidentiary material, identify witnesses, and obtain statements from them. Those allegedly responsible for "disappearances" and extrajudicial executions should be identified, arrested, and brought before a competent court.

3. Characteristics of the investigating body

The body carrying out an official investigation into possible "disappearances" or extrajudicial executions should have several characteristics.

- It should be independent of those allegedly responsible.
- It should have the necessary powers and resources.³²
- Those carrying out the investigation and their staff should be professionally competent for the required tasks.
- They should be protected against intimidation and reprisals.³³

Often investigations are ineffective because the investigating body lacks these characteristics. Its members may not be independent. They may lack the power to subpoena evidence or to compel witnesses to testify. They may be bound by procedural constraints which prevent rapid or effective action. They may be denied access to government installations and official records. They may be subjected to murder, threats or other forms of pressure.

The need for independence applies both to the individual investigators and to the investigating body as a whole. This body should be separate from any agency suspected of responsibility for the actions under investigation. Its members and staff should not be associated with any person, governmental entity or political party potentially implicated in the matter.

The investigating body should have the power to:

- respond immediately to complaints and reports of "disappearances" and extrajudicial executions;
- conduct on-site investigative visits, including the power to enter and search any place believed to be connected to "disappearances" or extrajudicial executions, and conduct interviews in private;
- obtain and compel the production of all necessary physical evidence, including government records and medical records;³⁴
- compel the attendance and cooperation of witnesses, and ensure their protection;
- receive evidence from witnesses unable to attend in person, including witnesses located outside the country.

The investigating body should have the resources needed to carry out its tasks, such as laboratory facilities, clerical equipment such as typewriters and computers, and resources to travel and to hold hearings. It should be able to use the services of legal counsel and experts in such fields as ballistics, pathology and forensic science, including, where necessary, experts from other countries. It should have adequate investigative, administrative and clerical staff.

4. Characteristics of the investigation

The investigation itself should have several characteristics.³⁵

- It should be impartial, not weighted in favour of the security services.

- It should be **effective**, obtaining and considering all relevant evidence and reaching conclusions that are as firm as the evidence permits.

- It should be **prompt**. Promptness is necessary to save the victims if possible, and to receive evidence quickly. Undue delays will give rise to fears that the investigation is being blocked or evidence destroyed.

- The **methods** of investigation should be made public in advance and described in the report of the investigation.

- Advance notices should be widely publicized inviting **members of the public** with relevant evidence to submit it to the investigation. Relatives of the victim and anyone else who has relevant information should have an opportunity to present it.

- Relatives should have access to all information relevant to the investigation.³⁶

- Anyone called to give testimony should at the outset be informed of the subject and purpose of the inquiry and of their right to legal counsel and other legal rights.

- There should be an opportunity for the effective questioning of witnesses.

- Complainants, witnesses, lawyers and others involved in the investigation should be **protected** from intimidation and reprisals. Where there is a risk of intimidation or reprisals, the means for protecting witnesses should be publicly announced in advance. Where necessary, these may include such measures as keeping the identity of witnesses confidential and using only such evidence as will not present a risk of identifying the witness. Any ill-treatment, intimidation, reprisal or other interference with the investigation should be appropriately punished.³⁷

- Officials suspected of responsibility for the alleged "disappearance" or extrajudicial execution should be **suspended** from active duty during the investigation, as a precaution against the possibility of their perpetrating further such acts and to ensure the integrity of the investigation. They should be removed from any position of control or power over relatives, witnesses and others involved in the investigation while the investigation is in progress. These measures should be without prejudice to the outcome of the investigation, to the careers of the officers concerned or to any eventual judgment regarding their suspected involvement.³⁸

- The report of the investigation, or at least the findings and recommendations, should be **made public** as soon as the investigation is completed. It should state the evidence on which the findings and recommendations are based.³⁹

- Once the report has been submitted, the government should respond promptly, stating publicly what steps will be taken as a result.⁴⁰ The findings should be **acted on**.

- An investigation into a suspected "disappearance" should **not be cut short** until the fate of the victim is officially clarified.⁴¹ If the victim has been killed, the killing should in turn be investigated and those responsible should be brought to justice.

5. Investigative techniques

Many techniques are needed in investigating "disappearances" and extrajudicial executions. Thus, an investigation into a reported "disappearance" should:

- examine arrest records and records of detention in centres where the presumed victim may have been held;
- collect and examine evidence from eyewitnesses and others, as well as material evidence on such matters as the vehicles or equipment used in the arrest;
- interview officials involved in arrest and detention who may have had contact with the victim or other knowledge of what happened;
- if there are fears that the victim has been killed, attempt to establish his or her fate by searching for places where the body may have been disposed of, and by matching physical details of the prisoner against information on unidentified bodies.

An investigation into a death in custody, a suspicious death at the hands of a public official, or other possible extrajudicial execution should include:

- detailed expert examination of the scene of death;
- collection and examination of material evidence;
- ballistic examination of ammunition and firearms which may have been used in the killing;
- autopsy of the body of the person killed;
- interviews with witnesses and others having knowledge of the death or the surrounding circumstances;
- examination of any order or authorization for the use of force resulting in a killing.

6. Commissions of inquiry and national human rights commissions

Commissions of inquiry should be established when normal procedures for official investigations are not working effectively, or where there is a pattern of human rights violations which is not being tackled effectively on a case-by-case basis.

A commission of inquiry should have all the attributes, powers and resources of an official investigation as described above, but its scope should be broader. Its mandate should include:

- investigating patterns of alleged "disappearances" and extrajudicial executions as well as individual cases;
- making recommendations for the criminal prosecution of those responsible;
- considering the institutional changes needed to prevent further "disappearances" and unlawful killings, including legal changes, changes in

administrative practice and procedures, recruitment, training and accountability of personnel;

- considering means of providing adequate compensation and redress to victims and their families.

The mandate should be formulated in such a way that it does not prevent the commission from examining other matters which appear during the inquiry to be material to the issues under investigation.

The work of a commission of inquiry should be publicized so that its findings will have a positive impact.

7. Investigations by relatives and human rights defenders

Despite the detailed standards adopted by the UN for the official investigation of suspected "disappearances" and extrajudicial executions, there is often no guarantee that they will be followed, or even that there will be any investigation at all. It is for this reason that investigations by relatives, human rights organizations and others are so important.

Domestic human rights organizations in many parts of the world have worked courageously to document cases of "disappearances" and extrajudicial executions in their countries. Not only organizations, but individual journalists, lawyers, and relatives of victims have done valuable investigative work. They have exposed official involvement in individual incidents and patterns of "disappearances" and killings, leading to remedial action. The evidence compiled locally has enabled international human rights organizations and the UN to take action. Often this evidence has been crucial in later official investigations. Such "unofficial" investigations and the procedures developed through them have become vital components of the effort to combat human rights violations nationally and internationally.

Many techniques, often ingenious, have been used in unofficial investigations. There is no single way, but certain minimal kinds of information and evidence should be sought as soon as possible. The aim is to provide as complete a picture of the case as possible.

When a person "disappears", relatives and human rights organizations should immediately try to compile a record of the facts. As part of this process they should obtain personal identity documents, dental records and copies of fingerprints. These precious records often disappear in the course of investigation.

A documented case of a "disappearance" should contain:

- the full name of a missing person, with a photograph if available;
- other information through which the missing person's identity may be established, such as physical characteristics or the clothing worn when the person was last seen;
- the date (day, month and year) and time when the person was arrested, abducted or last seen;
- the place where the person was arrested, abducted or last seen;
- names and details of any witnesses to the arrest or abduction;

- information on the identity of the parties believed to have carried out the arrest or abduction or to hold the person in unacknowledged detention, including physical characteristics, clothing and vehicles used, as well as descriptions of others present at the scene, including uniformed security force personnel;

- an indication of whether the arrest or detention has been denied by the authorities;

- information on the action taken by relatives or others to locate the missing person, such as inquiries with the authorities or *habeas corpus* petitions, including sworn statements by any witnesses and copies of any written communications sent to officials or official bodies.⁴²

- copies of any newspaper reports on the incident.

A documented case of a suspected extrajudicial execution should contain, as a minimum:

- the full name of the victim, or if the victim's identity is not known, a physical description in as much detail as possible, with a photograph if available, as well as other information through which the victim's identity may be established, such as clothing or jewelry worn;

- a record of the sequence and location of events, including the attack and the moment of death. Times should be specified as precisely as possible. The record should indicate how the attack was carried out (if known) and the probable cause of death;

- information on the identity of the person or people believed to have carried out the attack including physical characteristics, clothing and vehicles used, as well as descriptions of others present at the scene;

- names and details of any witnesses to the incident;

- any other evidence indicating that the victim was unlawfully and deliberately killed by a public official, on official orders or with official acquiescence.

If possible, written reports of "disappearances" and killings should be supplemented by photographs of the actual events or of the scene of the events. Dead bodies also should be photographed for purposes of forensic investigation. Photographs should preferably be in colour, as colour photography records details which do not show up in black-and-white photographs. A ruler should be placed alongside bodies or objects when they are being photographed so as to give an indication of scale.

Tools for recording and reporting cases of "disappearances" and suspected extrajudicial executions include the questionnaires prepared by the UN Working Group on Disappearances and international, regional and national organizations such as Amnesty International and the *Federación Latinoamericana de Asociaciones de Familiares de Detenidos-Desaparecidos* (FEDEFAM), Latin American Federation of Associations of Families of the "Disappeared".⁴³

The investigation of a "disappearance" or a suspected extrajudicial execution does not stop here. Organizations and individuals working to resolve these cases should continue to collect information. Continuing investigation involves:

- keeping a file on each case, including any published or official information, including court documents and other legal papers such as sworn statements;

- continuing to make inquiries about the whereabouts and fate of the "disappeared". Notes should be kept on all inquiries and the responses to them;
- placing advertisements in local and national newspapers, and asking radio and television stations to broadcast details of the "disappeared", asking for information and urging witnesses to come forward;
- searching for the "disappeared" in prisons, other places of detention, hospitals and morgues;
- interviewing people released from places of detention where a "disappeared" person is believed to have been held;
- pressing for official investigation by the courts or other competent official bodies, and pressing for investigations already started to be conducted effectively;
- responding quickly to any new evidence that becomes available by recording it, pursuing any leads, and seeking to ensure that it is not destroyed by officials or others implicated in the case;
- if unidentified bodies are discovered, ensuring that they are examined by forensic experts. (If mass graves are discovered, it is imperative to prevent their being disturbed until they can be examined by a person qualified in the techniques of forensic anthropology, so as not to destroy important evidence);
- arranging for expert assistance where forensic investigation or other specialized techniques are needed;
- transmitting information to UN bodies which take action on cases of "disappearances" and suspected extrajudicial executions).

8. Piecing together a pattern

Clear evidence of official responsibility for an abduction or a killing is often hard to come by. But if the known details of different cases are examined side by side, common patterns often emerge. These patterns may suggest that the official security apparatus or some part of it is engaging in a systematic practice of "disappearance" or extrajudicial execution. If new cases conforming to the pattern arise, there will be a presumption that these cases were the product of the same practice.

Human rights organizations compiling cases of "disappearances" and extrajudicial executions have learned to look for possible indicators of governmental responsibility. They include the following.⁴⁴

Information about the victims may suggest that the authorities have selected them for "disappearance" or assassination. The investigator might ask:

- Is there reason to believe that the victim is perceived by the authorities as an enemy, or is the victim a relative of someone wanted by the authorities? Was the victim active politically? Could his or her work, study, or other activity have been deemed subversive or illegal? Did the victim belong to an organization which had been the object of repression or criticism by the government? Had he or she witnessed other human rights violations?

- Had the victim previously been detained? Can this previous detention be connected with the victim "disappearing" or being killed?

- Had the victim been threatened publicly or privately by the authorities? Had he or she been identified in published "death lists" or broadcast threats and branded as a subversive, a traitor or a public enemy?

- Had he or she been under official surveillance? Had his or her home been raided?

- Did the authorities later release information identifying the victim as a criminal or a subversive, implying that the "disappearance" or killing was justified? Did they vilify the victim's family or criticize those who sought to investigate the case?

Information on the methods and circumstances of abductions and killings suggestive of official involvement:

- Did the perpetrators use equipment normally associated with the security forces, such as walkie-talkies or particular types of vehicles or firearms? If unmarked vehicles were used, were they able to pass through security checkpoints unhindered?

- Did the perpetrators use the terminology of the security forces or refer to military or police ranks? (Survivors have often said that subordinates addressed the leaders of those detaining or interrogating them by their titles.)

- Are the cause and manner of death consistent with the known methods of the security services?

- Does the body suggest in any other way that the victim had been held in government custody? (In El Salvador many victims of killings have been found with their hands bound behind their backs by their thumbs, a traditional detention technique of the Salvadorean security forces. In other countries the bodies of "death squad" victims show signs of having been handcuffed.)

- Can practices resulting in "disappearances" and killings be linked to procedures or tactics set forth in military manuals, police force instructions or written orders?

- Do perpetrators appear to have access to official intelligence information on such matters as the identification of suspects, where to find them and how to get at them? (Sometimes plainclothes hit squads are found to carry photographs and surveillance information emanating from government security services.)

- Do members of the regular, uniformed security forces cooperate or stand by passively while "disappearances" and killings are perpetrated? For example, do "death squads" gain entry without difficulty to guarded public buildings, perhaps by displaying official credentials? Do perpetrators openly carry firearms without being challenged by ordinary security personnel?

Geographical concentrations of "disappearances" and killings which can be correlated with governmental or administrative units or with the presence of particular sections of the security forces or the assignment of certain military or police commanders to certain regions. (Two years after mass "disappearances" and extrajudicial executions began in Peru in 1983, all known cases continued to be reported from just 13 of the country's 144 provinces. These 13 adjoining provinces had been placed under a state of emergency and military control shortly before the killings and "disappearances" began. Later, as more provinces were placed under military control, "disappearances" and extrajudicial executions began to be perpetrated there.)

Changes over time which can be correlated with acknowledged changes in official policy - for example, *increases* in "disappearances" and killings in periods when military and police control is increased, as in times of declared public emergency when extraordinary powers are assumed, or *decreases* when the country is under international scrutiny following adverse publicity over human rights violations.

Lack of governmental action to investigate "disappearances" and killings and bring the perpetrators to justice. For example, do the police neglect to go promptly to the scene of abductions, assassinations and bombings, fail to question witnesses or to seek material evidence, or refuse to pursue named suspects? Can their reactions in cases where official involvement is suspected be contrasted with their reaction in similar incidents involving opposition groups? Do they frustrate the legal process by failing to appear in court?

Official condonation of "disappearances" and killings. Do officials speak approvingly of these crimes as examples of "social cleansing" or "fighting fire with fire", or by making statements such as that society has a right to "defend itself"? Do they make statements vilifying the victims and glorifying the perpetrators?

On an individual case, the presence of one or another of the above indicators constitutes circumstantial evidence suggesting official involvement. Often this evidence is not conclusive, but the more evidence there is, the stronger the case becomes. Moreover, among the many cases in which such circumstantial evidence is present, there will often be a few in which there is incontrovertible evidence of state responsibility for "disappearances" or murder.

When cases are examined together, a pattern may emerge of a systematic official practice of "disappearance" or extrajudicial execution. By revealing the pattern, human rights organizations can challenge official denials and break through governmental strategies for avoiding accountability. Well documented information becomes a weapon in the fight against "disappearances" and extrajudicial executions.

Chapter 4. Bringing the perpetrators to justice

1. The duty to bring those responsible to justice

Governments should ensure that those responsible for "disappearances" and extrajudicial executions are brought to justice.

- From Amnesty International's 14-Point Programs for the Prevention of "Disappearances" and Extrajudicial Executions

Those responsible for "Disappearances" and extrajudicial executions must be brought to justice. There are several reasons why this is so:

• The application of sanctions for the commission of crimes is a normal function of criminal justice systems throughout the world. The law sets forth sanctions corresponding to different crimes, and the criminal justice apparatus devotes its resources to finding wrongdoers, bringing them to trial and punishing them. If the criminal justice system fails to bring to justice people who have been responsible for human rights violations including atrocious crimes, criminal justice is undermined and the notion of justice, an important basis of the social order, is dangerously distorted.

• The impunity of public officials responsible for serious human rights violations undermines the rule of law, the doctrine which holds that officials must not be above the law. Bringing such officials to justice is necessary to restore the rule of law.

• If officials responsible for "disappearances" and extrajudicial executions are not prosecuted and punished, they will remain free to repeat the crimes, and others may do likewise, believing they can violate the law with impunity. Prosecution and punishment break the cycle of crime and impunity. It protects the public from the culprits repeating their crimes and it helps to deter others from committing similar crimes by raising the real threat that they, too, may be caught and punished.

2. Overcoming impunity

"Perhaps the single most important factor contributing to the phenomenon of disappearances may be that of impunity. The Working Group's experience over the past 10 years has confirmed the age-old adage that impunity breeds contempt for the law.

- UN Working Group on Enforced or Involuntary Disappearances ("Working Group on Disappearances")⁴⁵

It is convenient to distinguish two types of impunity according to the sources which give rise to it. They may be called *legal* and *practical* (or "*de facto*") impunity.⁴⁶

• *Legal* impunity arises from laws, decrees, or other official measures providing that certain officials, classes of officials, or others carrying out official duties will not be brought to justice. Some of these preclude prosecution; they include the many indemnity, immunity or amnesty laws in force in different countries.⁴⁷ Often these are enacted during states of emergency or other situations where governments claim there is a special threat to law and order; they have also been enacted to avoid bringing prosecutions for acts committed under a previous government, ostensibly to promote national reconciliation. Other measures such as pardons ensure that officials convicted of involvement in "disappearances" and political killings will not be punished. Justice may be blocked also by placing human rights cases under the jurisdiction of military courts which lack independence and impartiality.

- **Practical impunity** stems from weaknesses in the judicial system and from actions of officials which hinder or obstruct the course of justice. In some countries, for example, the judiciary is weak, corrupt, or lacking in independence. Where the judiciary is independent, impunity may come from the institutional resistance of the security forces to judicial proceedings in cases involving the actions of security force personnel in the line of duty. This resistance can take the form of refusal of security force personnel to attend court hearings; falsification of evidence or refusal to provide it; failure to carry out arrests and other court directives; intimidation of judges, lawyers and witnesses.

Legal impunity must be overcome by repealing those legal provisions which afford it, opposing the passage of such provisions, and opposing the granting of pardons before the full facts are revealed in judicial proceedings and criminal responsibility has been established. Practical impunity must be overcome by combating and preventing the actions which give rise to it.

3. Characteristics of the judicial process

If the process of bringing those responsible for "disappearances" and extrajudicial executions to justice is to have a satisfactory outcome, it must have certain characteristics. Many of these characteristics have been included as standards in UN human rights instruments, notably the Basic Principles on the Independence of the Judiciary, adopted in 1985.⁴⁸ In particular, the judicial process should be characterized by:

- **Promptness.** Undue delays can give the impression that nothing will be done, fostering a sense of impunity. Delays in the judicial process can result in valuable evidence being destroyed or lost.

- **Impartiality.** The court must not be biased against the victims and their relatives, or against the accused.

- **Effectiveness.** If the court fails to pursue evidence, or fails to convict the accused despite overwhelming evidence, the judicial process will be regarded as ineffective and biased.

- **Fairness to the accused.** Trials must conform to international norms for a fair trial as laid down in international instruments, notably in Articles 9, 14 and 15 of the International Covenant on Civil and Political Rights.

- **Openness.** Trials should be open to the public, including families of the victims, families of the defendant, national and international trial observers and the press. The date, time and place of court hearings should be made known publicly well in advance.

In addition to these characteristics:

- **Trials should be held in the civilian courts.** If special or military courts have jurisdiction over serious human rights violations where these are rare, it is extremely unlikely that the perpetrators will be brought to trial, or - if brought to trial - that they will be convicted. Such courts often use truncated procedures and lack the professional competence and independence of the regular civilian courts. Military courts tend to lack independence and impartiality because they are under the military command structure - often the same structure which is suspected of carrying out human rights violations.⁴⁹

- **Prosecutors should be diligent in the exercise of their functions.**⁵⁰

- Victims and their families should be able to be represented at trials to protect their interests, without prejudicing the rights of the accused.

- The courts must be given the necessary resources to carry out their work.⁵¹ The most highly qualified and independent judge cannot function effectively if he or she lacks the necessary material resources, such as clerical assistance, a telephone, or transport to visit key places where this is essential for the trial.

- The sentences imposed should be commensurate with the gravity of the crimes. Trivial sanctions imposed for serious crimes can contribute to a continuing atmosphere of impunity and bring the judiciary into disrepute. (The death penalty, however, should never be used. Amnesty International holds that the death penalty violates the right to life and is the ultimate cruel, inhuman and degrading punishment.)

Apart from sentences imposed by the courts for violations of the law, administrative sanctions should also be imposed for violations of administrative regulations.

4. Independence of the judiciary

"The independence of the judiciary shall be guaranteed by the State and enshrined in the Constitution or the law of the country. It is the duty of all governmental and other institutions to respect and observe the independence of the judiciary."

— UN Basic Principles on the Independence of the Judiciary, principle 1

The protection of human rights entails providing remedies for people whose rights have been denied: it is through the courts that such remedies are exercised.

The need for an independent judiciary is recognized in the leading UN human rights instruments.⁵² Its importance has come under increased discussion in recent years. One of the first outcomes of these discussions was the adoption of the *Basic Principles on the Independence of the Judiciary* in 1985. Its provisions include the following:

"The judiciary shall decide matters before them impartially, on the basis of facts and in accordance with the law, without any restrictions, improper influences, inducements, pressures, threats or interferences, direct or indirect, from any quarter or for any reason." (principle 2)

"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 4)

"Persons selected for judicial office shall be individuals of integrity and ability with appropriate training or qualifications in law. Any method of judicial selection shall safeguard against judicial appointments for improper motives. ..." (principle 10)

5. Establishing the full scope of liability to prosecution: universal jurisdiction; no statute of limitations; liability of superior authorities; no defence of superior orders

- Universal jurisdiction over extrajudicial executions is recognized as an obligation under the UN Principles on Extra-Legal, Arbitrary and Summary Executions (principle 18). The UN Declaration on Disappearances says that all states should take "any lawful and appropriate action" to bring to justice "all persons presumed responsible for an act of enforced disappearance, found to be within their jurisdiction or under their control" (Article 14).

- The UN Declaration on Disappearances (Article 17) provides that a "disappearance" shall be considered a continuing offence as long as the victim's fate and whereabouts continue to be concealed and these facts remain unclarified. It says that the statute of limitations should be suspended as long as remedies for "disappearances" are ineffective, and that such statutes of limitation, where they exist, shall be "substantial and commensurate with the extreme seriousness of the offence".

- The principle of liability of superior authorities who failed to prevent extrajudicial executions is recognized in the UN Principles on Extra-Legal, Arbitrary and Summary Executions. Principle 19 states that "...Superiors, officers or other public officials may be held responsible for acts committed by officials under their hierarchical authority if they had a reasonable opportunity to prevent such acts. ..." ⁵³

- The UN Declaration on Disappearances (Article 6) and the UN Principles on Extra-Legal, Arbitrary and Summary Executions (principle 19) establish respectively that a superior order may not be invoked as a justification for a "disappearance" or an extrajudicial execution. ⁵⁴

It is important that both the people behind the crimes and those who carry them out should be brought to justice. Whether high or low in the official hierarchy, these people have committed very serious crimes. If the immediate perpetrators are punished while those above them escape punishment, it will be an injustice. If only higher officials are punished, lower officers will understand that the system protects them, giving a sense that they can continue to commit "disappearances" and extrajudicial executions with impunity.

6. Establishing state responsibility: the *Velásquez Rodríguez* case

The most far-reaching pronouncement to date of the principle of state responsibility has been in the judgment of the Inter-American Court of Human Rights in the *Velásquez Rodríguez* case, delivered on 29 July 1988. In this judgment the Court found that the state of Honduras had violated its obligations to respect and ensure the rights of Angel Manfredo Velásquez Rodríguez (Manfredo Velásquez), a Honduran student who "disappeared" in 1981. The principles affirmed by the Court should be seen to apply equally to thousands of other cases of "disappearances" and extrajudicial executions around the world.

On 12 September 1981, between 4:30 and 5:00 pm, several heavily armed men in civilian clothes driving a white Ford vehicle without number plates kidnapped Manfredo Velásquez from a parking lot in downtown Tegucigalpa, the capital of Honduras. In the Court's judgment, the kidnappers were connected with the Honduran Armed Forces or under its direction. Subsequently there

were "the same type of denials by his captors and the Armed Forces, the same omissions of the latter and of the Government in investigating and revealing his whereabouts, and the same ineffectiveness of the courts" in responding to *habeas corpus* petitions and criminal complaints as in other cases of what the Court called "the systematic practice of disappearances" in Honduras, where some 100 to 150 people "disappeared" between 1981 and 1984.

- Commenting on the obligation to respect human rights, the Court said that "... (t)he exercise of public authority has certain limits which derive from the fact that human rights are inherent attributes of human dignity and are, therefore, superior to the power of the State."

- The obligation to ensure human rights, in the Court's view, "... implies the duty of the States Parties to organize the governmental apparatus and, in general, all the structures through which public power is exercised, so that they are capable of juridically ensuring the free and full enjoyment of human rights. As a consequence of this obligation, the States must prevent, investigate and punish any violation of the rights recognized by the Convention and, moreover, if possible attempt to restore the right violated and provide compensation as warranted for damages resulting from the violation."

7. Civil suits

A civil suit can bring several benefits:

- In the course of the proceedings, important information may be disclosed.

- It can result in the payment of substantial damages, which are of material benefit to the relatives of the victim.

- Even though the authorities may have refused to acknowledge responsibility for a "disappearance" or a killing, the payment of damages amounts to an admission of responsibility. Thus, a successful civil suit can contribute to the relatives' goal of obtaining justice.

The right to sue for damages caused in the commission of human rights violations is a consequence of the right to an effective remedy for human rights violations, as set forth in the leading UN human rights instruments.⁵⁵ It entails the principle that both the state and the officials responsible for human rights violations should be held liable at civil law for the harm caused.

8. Compensation, rehabilitation and redress

The term "redress" refers to measures taken to set right a situation in which a person has been harmed, and to repair the damage done.⁵⁶ There are several forms of redress:

- Financial compensation, including payment in money.⁵⁷

- Rehabilitation, including medical care and counselling to help the victim cope with the effects of physical and psychological injuries, as well as measures to restore the dignity and reputation of the victim, who may earlier have been branded as - for example - a terrorist or an enemy of the state. Measures such as naming a street or a school after the victim, or building a monument, may help to do this.

- Restitution, meaning action taken to restore, to the extent possible, the situation which existed for the victim before the "disappearance" or

extrajudicial execution took place. (For a victim who has been killed, restitution is impossible, but for a "disappeared" prisoner who reappears, restitution can include restoring the victim's job or returning property wrongfully seized.)

Other important elements of redress are verification of the facts and full and public disclosure of the truth; public acknowledgement of responsibility for the human rights violations committed; bringing those responsible to justice; and preventing the perpetration of further such human rights violations.

Several points should be made about financial compensation and other forms of redress:

- Compensation and other redress should respond to the needs and wishes of the victims.

- Governments should adapt their laws and procedures as necessary to ensure that the right to redress is readily available and takes into account the potential vulnerability of the victims. They should publicize the procedures for obtaining redress so that potential recipients will know how to invoke them, and should ensure that those who are entitled to redress can receive it with as little difficulty as possible. Once official responsibility has been established, redress should follow. The efforts of victims and their dependants should not be obstructed by over-bureaucratic procedures.

- No absolute figures can be given here, but the amount of compensation should be fair and adequate in view of the seriousness of the damage caused.

- Financial compensation is important both materially and symbolically. Not every victim or dependant will want to accept it, but for those who do, it can contribute to the healing process.⁵⁸

- Sometimes the authorities will grant compensation by agreement with the victims and their families as a means of ending judicial proceedings which are likely to lead to a judgment unfavourable to the state. The awarding of compensation does not relieve the state of the need to admit responsibility for human rights violations.⁵⁹

Rehabilitation of victims and their families involves a variety of techniques for addressing the range of problems characteristic of "disappearances" and extrajudicial executions.

- "Disappeared" people who reappear have usually been subjected to torture, privation, extreme isolation and the threat of imminent death. Where prisoners are held for a long time, they may develop disorders typical of prolonged periods without exercise, proper nutrition or adequate hygiene, including skin, visual, dental and musculo-skeletal problems.

In such circumstances former "disappeared" people need social support and recognition of the extremely stressful abuse they have experienced. They require careful medical assessment and, where appropriate, medical treatment, as well as measures to address the psychological impact of their experiences.

In some cases men or women reappearing after a period of "disappearance" will manifest symptoms of the type, severity and duration of post-traumatic stress syndrome. Approaches to treatment for severe trauma following torture or other major stresses include psychodynamic psychotherapy, family therapy, group therapy, pharmacotherapy, and behavioural and cognitive therapies.⁶⁰

- The experience of relatives of the "disappeared" is one of stressful uncertainty. The absence of news of the loved one allows the worst fears to be felt, especially where there is a known pattern of brutal or lethal ill-

treatment of those who are abducted. Where there is an expectation that the "disappeared" person has been killed, the family is unable to grieve because of the lack of evidence of the death. Even to consider that the "disappeared" person could be dead can sometimes induce strong feelings of guilt.⁶¹

• Relatives of victims of **extrajudicial executions** are likely to suffer profound grief mixed with fear, anger and anxiety. They will benefit from the activities of support groups and from the availability of legal advice and advocacy. The role of human rights organizations can be of great importance here.

At present there are teams of doctors and mental health workers in over 30 countries offering assistance to victims of torture and other state-organized violence including "disappearances" and political killings. Some of these groups continue to deal with the aftermath of "disappearances" carried out in the 1970s and 1980s.

9. Dealing with abuses committed under past regimes

During the past decade, commissions of inquiry into abuses under former regimes, including "disappearances" and extrajudicial executions, have been set up in several countries as part of an intended process of national reconstruction by new governments or in connection with a transition to a new political order. Four of them are described below.

• **Argentina:** The elected government of President Raúl Alfonsín took office on 10 December 1983, ending seven years of military rule. On 15 December the new government established by decree a *Comisión Nacional Sobre la Desaparición de Personas*, National Commission on Disappeared People, whose aim was to clarify events relating to the "disappearance" of people in Argentina and to investigate their fate or whereabouts. (Its task was not to determine responsibility; it would be the job of the courts, receiving the material from the Commission's investigations, to determine responsibility and to try the guilty parties.) Working with a staff of over 60, its 13 members collected several thousand statements and testimonies, visited secret detention centres where "disappeared" prisoners had been held, and compiled over 50,000 pages of documentation.

In its report, submitted to President Alfonsín in 1984, the Commission concluded that after the military coup of March 1976, tens of thousands of people throughout Argentina were illegally deprived of liberty, of whom 8,960 had not reappeared. Many prisoners had been shot dead, drowned at sea, or killed through torture. The report described the methods used to arrest and abduct victims and gave details of torture, with extracts from personal testimonies. It contained detailed descriptions of 118 secret detention centres, with floor plans of some included, and mentioned a number of others. The testimonies reproduced in the report named military and police officers said by victims to have carried out torture, "disappearances" and killings.

The Commission recommended among other things that the courts urgently investigate the allegations received by the Commission; that laws be passed to declare forced disappearance to be a crime against humanity, to provide relatives of "disappeared" people with economic assistance, and to recognize national human rights organizations; that the judiciary be given the necessary means to investigate human rights violations; and that all repressive legislation still in force be repealed.

• **Chile:** President Patricio Aylwin took office in March 1990, ending 16 years of military rule. One of his first official acts was to create the *Comisión Nacional de Verdad y Reconciliación*, National Commission on Truth and Reconciliation, to inquire into "disappearances", executions, and deaths under torture committed under the military government, as well as kidnappings and

attempts on people's lives committed by individuals under political pretexts. The Commission was mandated to describe how the repressive apparatus worked, to account for every dead and "disappeared" person, and to recommend measures for redress and prevention. It was not mandated to state conclusions about the responsibility of particular individuals for human rights violations; if the Commission received any information on crimes committed, this information was to be turned over to the courts.

Working with a staff of over 60, the Commission travelled around the country to gather testimonies from victims and their relatives. It received information from over 4,000 complainants and had access to official data such as autopsy reports and travel certificates. It sent a questionnaire to international human rights organizations and Chilean political parties, churches and unions asking for their views on redress and preventive measures, and received over 150 responses.

In its report, submitted to President Aylwin in early 1991, the Commission presented a lengthy and systematic account of the repression practised under the military government. An annex to the report contained individual entries on the victims identified by the Commission, with brief details of what happened and the Commission's conclusions on each case. Out of a total of 2,115 extensively documented cases - some involving multiple victims - the Commission found that 1,068 people had died at the hands of agents of the state or others in their service and 957 had "disappeared".

The Commission recommended monetary compensation and health benefits for relatives of victims; symbolic measures, such as monuments to restore the good names of victims; and preventive measures, including changes in the law and measures to ensure the independence of the judiciary.

• **Chad:** On 1 December 1990 a coalition of armed groups swept into N'Djaména, the capital of Chad, overthrowing the government of Hissein Habré, which had held the country in a rule of terror for eight years. On 20 December the new government under President Idriss Déby created a Commission of Inquiry into crimes committed by the Habré government. Its brief included the investigation of kidnappings, murders, "disappearances", torture and other human rights violations.

Composed initially of two magistrates and four police detectives with six support staff, the Commission interviewed over 1,700 people during its 17-month investigation. It exhumed three mass graves near N'Djaména and visited several detention centres and sites of extrajudicial executions.

In its report, published in May 1992, the Commission estimated that over 40,000 people had died in prison or been executed by the Habré government, leaving widows and orphans whose numbers the Commission estimated at over 30,000 and over 80,000 respectively. It identified the branches of the security forces principally responsible for human rights violations. It recommended that agents transferred from one of these agencies into the intelligence service set up by the new government should be immediately removed from the service, and that those implicated in crimes should be taken into judicial custody to await trial. It cited attempts within Chad and by Chadian exiles to oppose the dictatorship, but found that ordinary citizens had become suspicious of everyone, leading to an attitude of powerlessness, indifference and resignation. It concluded that although international humanitarian organizations such as Amnesty International had tried to draw attention to the atrocities, Western countries regarded Hissein Habré as a strong ally and therefore "turned a blind eye to the terrible crimes committed by him, thus allowing the continuation of a despotic and bloody regime".

Among other things, the Commission recommended that the prosecution of those responsible for past human rights violations should begin without delay. A sovereign and independent judiciary should be created, and human rights

training should be started in schools, universities, police schools and the army. A monument should be erected for the victims of the repression.⁶²

• El Salvador: One of a series of agreements between the Government of El Salvador and the opposition *Frente Farabundo Martí para la Liberación Nacional* (FMLN), Farabundo Martí National Liberation Front, ending the armed conflict between them provided among other things for the establishment of a *Comisión de la Verdad*, Commission on the Truth, with the task of "investigating serious acts of violence that have occurred since 1980 and whose impact on society urgently demands that the public should know the truth". Under the agreement, signed in April 1991, the Commission's three members were to be appointed by the UN Secretary-General. The Commission was empowered "to use whatever sources of information it deems useful and reliable", to interview, "freely and in private, any individuals, groups or members of organizations or institutions", to "(v)isit any establishment or place freely without giving prior notice", and to request reports, records or documents from the parties to the agreement and from state authorities and departments. The agreement states that the two parties "undertake to extend to the Commission whatever cooperation it requests of them in order to gain access to sources of information available to them" and that they "undertake to carry out the Commission's recommendations."

Working with an international staff of investigators, legal specialists and other experts, the Truth Commission, whose three members were all non-Salvadorians, received direct testimony concerning 7,000 victims and information from governmental and non-governmental institutions relating to more than 18,000 victims. Many witnesses came forward for the first time. Over 60 per cent of the cases concerned extrajudicial executions and over 25 per cent concerned "disappearances". Personnel of the army, the security forces, and civil defence forces were identified as perpetrators in 60 per cent, 25 per cent and 20 per cent of cases respectively; "death squads" in over 10 per cent of cases; and the opposition FMLN in approximately 5 per cent.

In its report, published on 15 March 1993, the Commission produced overwhelming evidence that former or current high-ranking army officers and other officials had ordered, participated in and covered up extrajudicial executions, "disappearances" and torture. It also established that the FMLN was responsible for a number of arbitrary killings in breach of the international humanitarian law of armed conflict. The report named those responsible for many of the 32 cases it examined in depth.⁶³ It said, for example, that Major Roberto D'Aubuisson, the man who founded El Salvador's present ruling party, ARENA, had ordered the assassination of Archbishop Oscar Arnulfo Romero in 1980 and that two army generals and five other senior officers had ordered the killing of six Jesuit priests, their housekeeper and her daughter in 1989. It cited the judiciary as bearing a great responsibility for the impunity with which the abuses had been committed.

The Commission made a series of recommendations including removal from office of all military and judicial officials named in the report as responsible for human rights violations; banning those people from public office for 10 years, as well as FMLN members held responsible for abuses; extensive reforms to the judiciary; and setting up a fund to provide financial compensation for the victims of past human rights abuses. However, the Commission said it could not recommend prosecution of those responsible because of serious deficiencies in the current Salvadorian judicial system.⁶⁴

Chapter 5. Deliberate and arbitrary killings by armed opposition groups

"Opposing deliberate and arbitrary killings, whether by governments or armed opposition groups, is based on the moral imperative that all parties to a conflict observe basic standards of humane behaviour. These standards are to be found in fundamental provisions of human rights law, the laws of armed conflict (humanitarian law), and the dictates of public conscience..."

"Impartiality being a cardinal principle of the work of human rights organizations, it should be made clear to parties in a conflict and to public opinion that reporting abuses or patterns of abuses by armed opposition groups does not imply a condemnation of the groups as such; neither does it affect the legal status or otherwise constitute recognition of such groups; and that this is in consonance with the practice that opposing human rights violations does not imply passing judgment on the legitimacy of governments which commit them."

"Further it should be made clear that by expanding their work into this field human rights organizations in no way imply that the responsibility of states for the observance of human rights law is diminished. Therefore, the mandate and effectiveness of the human rights mechanisms of the United Nations and of other intergovernmental organizations should not be diluted by taking on abuses by armed opposition groups, and the legitimate choice of other human rights groups to continue to monitor only government violations should be respected."

- Declaration of Amnesty International's International Conference on "Disappearances" and Political Killings, 4-6 September 1992 (extracts)

How should organizations working for human rights react to these abuses by non-governmental agents? What can be done to stop them?

1. Amnesty International's policy:

In 1991 Amnesty International's International Council decided on a significant expansion of the organization's work on non-governmental abuses. Several elements of this decision should be noted here:

- The decision recognized "the seriousness of the human suffering caused by acts against individuals, in contravention of fundamental international standards of humane behaviour, that are perpetrated by political non-governmental entities". This phrase made it clear that - as with human rights violations perpetrated by governments - Amnesty International's concern was for the suffering inflicted on individuals through the practices which the organization opposes.

- The International Council decided "that Amnesty International should continue to regard human rights as the individual's rights in relation to governmental authority". This statement drew an important distinction - discussed below - between the obligations of a government towards individuals, which are violated when a government violates human rights, and the fundamental standards of humane behaviour which an opposition group contravenes when it commits abuses such as the torture or killing of prisoners.

• Under the new policy Amnesty International opposes the following abuses by non-governmental entities:

- torture;
- the taking of hostages;
- the killing of prisoners;

• "other deliberate and arbitrary killings, for example killings of people under the non-governmental entity's immediate control at the time and killings carried out solely by reason of the victims' ethnic origin, sex, colour, language, religion or political views or other beliefs".

• Amnesty International will oppose such acts with any such armed political organization which is accessible to approaches, whether or not that organization has the attributes of a government.

2. Armed opposition groups

Amnesty International's policy and practice since the 1991 decision is to oppose specific abuses perpetrated by armed political entities other than governments. Several points should be noted here.

• The policy addresses abuses by entities ranging from groups which are small, limited in power and devoid of authority to organizations that in practice exercise virtual governmental powers, including those with a limited degree of international recognition as governmental authorities. These include organizations controlling territory and organizations fighting in civil wars where central authority has broken down.

• The actions of armed political organizations that work in association with or with the connivance or tolerance of governments - for example, as paramilitary militias, "death squads" or vigilantes - are opposed through Amnesty International's work to halt governmental violations of human rights, not under this policy. To the extent that governmental responsibility can be determined, such acts entail Amnesty International mandate concerns relating to the obligations of governments. But through its policy on abuses by non-governmental armed groups Amnesty International monitors and acts upon abuses by armed political organizations with suspected but uncertain governmental links, pending confirmation of such links, at which point it will hold the government accountable.

• Whether large or small, the armed groups covered by Amnesty International's policy have a political dimension which distinguishes them from uniquely criminal organizations. This political dimension is indicated by a range of criteria including the stated or apparent purpose of the organization and the nature and motivation of its activities.

• Outside Amnesty International's range of concerns are isolated, politically motivated acts by individuals, as well as acts by groups of individuals where actions cannot be attributed to a specific and clearly defined political entity, no clear focus of authority can be discerned, or there is no clear structure of political responsibility or military command.

• Also outside Amnesty International's scope of concerns are the acts of criminal groups whose activities have no overt political dimension. Criminal organizations outside Amnesty International's scope of concerns may be distinguished by such criteria as a lack of a political program or a lack

of a stated ideology, combined with a dedication primarily to the illicit pursuit of profit for its members.

- Amnesty International offers no special recognition or status to the organizations it monitors or addresses. Amnesty International's appeals and contacts are purely humanitarian in nature - they carry no connotation of recognition.

3. Deliberate and arbitrary killings

The killings which Amnesty International opposes have several characteristics:

- They are deliberate, not accidental.
- They are arbitrary, in that they are not countenanced by any internationally recognized standard of law. They flout even minimum standards of humane conduct applicable to governments and armed opposition groups alike. Their arbitrary character distinguishes them from killings in self-defence or the defence of others from an immediate threat, and from a range of killings in armed conflict which may occur as a consequence of an attack on or a defence of a military objective, such as killings in the course of clashes between violent opposing forces, killings in cross-fire, or attacks in general on military and security personnel.
- They are committed on the authority of an armed opposition group and in accordance with its policy at some level deliberately to eliminate specific individuals, or groupings or categories of individuals, or to allow those under its authority to commit such abuses. This concept distinguishes deliberate and arbitrary killings from killings for private reasons which are shown, for example through preventive measures and disciplinary action, to have been the acts of individuals in violation of enforced higher orders. The involvement or acquiescence of the group's leadership in the killings renders the group accountable for them.

Both governments and opposition groups sometimes maintain that deliberate attacks on civilian populations were legitimate attacks on military objectives. Amnesty International is not generally in a position to assess whether the use of military force is disproportionate, but the organization would condemn acts where it concluded the intention was clearly to kill civilians.

In armed conflicts, people who take no active part in the hostilities must be distinguished from those who do. Civilians, who can be defined as those not taking part in hostilities, must be distinguished from military personnel and others who are directly involved, may influence the course of the conflict, and offer a permanent threat of violence and harm to their adversaries. The deliberate killing of people taking no active part in hostilities and offering no other immediate threat of violence is clearly arbitrary.

The deliberate killing of anyone who has been detained, incapacitated, or - having ceased to offer resistance - seeks to surrender to the forces of a government or an opposition group is always arbitrary. Members of fighting forces in such cases are *no longer* taking part in hostilities.

4. International standards

- The universal prohibition of murder is expressed in national criminal laws. Like extrajudicial executions by governments, deliberate and arbitrary killings violate these laws.

- Deliberate and arbitrary killings are prohibited under the laws of armed conflict dealing with the protection of victims of war, known as international humanitarian law and contained principally in the four Geneva Conventions of 1949 supplemented by the two Additional Protocols of 1977.

- International human rights instruments recognize inherent human rights, including the right to life and the right to security of person. Deliberate and arbitrary killings, torture and other abuses by opposition groups attack and destroy these rights.

Article 3 common to the Geneva Conventions is especially relevant to the prohibition of deliberate and arbitrary killings.

- It applies to "armed conflict not of an international character occurring in the territory of one of the High Contracting Parties".⁶⁵ (Today virtually all states are parties to the Geneva Conventions.)

- Protected persons under common Article 3 are "(p)ersons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed *hors de combat* by sickness, wounds, detention, or any other cause".

- Acts against protected persons prohibited under common Article 3 include "violence to life and person, in particular murder of all kinds", the "taking of hostages" and "mutilation, cruel treatment and torture". These acts "are and shall remain prohibited at any time and in any place whatsoever with respect to the above-mentioned persons".⁶⁶

- The provisions of common Article 3 are stated to be binding on "each Party" to a non-international armed conflict. This means that not only are states parties to the Geneva Conventions bound to respect the provisions of common Article 3 in an internal armed conflict, but the other parties to such a conflict, such as insurgent groups, should also be bound to respect the provisions of common Article 3.⁶⁷

- Common Article 3 also says that the application of the preceding provisions "shall not affect the legal status of the Parties to the conflict." States are usually reluctant to have any official "recognition" conferred on opposition movements fighting against them, as they fear it could bolster claims of legitimacy of the opposition movement's cause. This provision of common Article 3 allows for the protection of victims of conflicts to be extended without being held up by arguments over "recognition".⁶⁸

5. Action against deliberate and arbitrary killings

Armed opposition groups should take steps to ensure that their forces comply with minimum standards of humane behaviour. They should:

- order their fighters to treat humanely prisoners, the wounded and those seeking to surrender, whether such people are civilians or members of the armed forces, and never to kill them;

- prohibit deliberate and arbitrary killings of non-combatants under any circumstances;

- conduct proper investigations into alleged abuses by their combatants in order to determine responsibility;
- ensure that individuals suspected of committing or ordering deliberate and arbitrary killings are removed from any position of authority or duties which bring them into contact with prisoners or others at risk of abuse.

Notes

1. For a discussion of the definition of the term "disappearance", see 'Disappearances': A Workbook, Amnesty International USA, New York, 1981, Chapter VII. See also the description in the third paragraph of the UN Declaration on Disappearances, reproduced in Appendix 6 of this report.

2. As in Article 2 of the European Convention on Human Rights, the use of the death penalty can be described as the execution of a death sentence imposed by a court on a prisoner convicted of a crime for which this penalty is provided by law. International human rights instruments and the international humanitarian law of armed conflict set forth standards to be followed in all death penalty cases, including norms for a fair trial (see *When the State Kills... The Death Penalty v. Human Rights*, Amnesty International Publications, London, 1989). As was noted in Amnesty International's first general report on extrajudicial executions,

"When a government lives up to these standards in imposing a death sentence, the execution is not extrajudicial. However, in some cases governments have formally imposed the death penalty but failed to comply with the procedural safeguards prescribed in international law. In such cases, the government has clearly violated international law, and has illegally and arbitrarily deprived a person of his or her life.

"Whether such cases constitute extrajudicial executions, however, is more difficult to decide. The spectrum ranges from cases with only a single procedural defect to those with such pervasively defective procedures that the accused can be said to have had a trial in name only. There are strong arguments for excluding all such cases from the category of extrajudicial executions. The existence of judicial procedures must be recognized as positive, no matter how defective they may be. International legal standards exist against which the procedures may be judged and pressure can be exerted on a government if it fails to live up to those standards. Institutional structures for dealing with such cases in the country may improve as a result. If, on the other hand, rudimentary or inadequate procedures are dismissed and the resultant executions included in a broad category with government killings where no procedures have been followed, the opportunity to build on and improve existing procedural structures has been lost."

(*Political Killings by Governments*, Amnesty International Publications, London, 1983, pages 89-90)

3. For example, in July 1993 Amnesty International wrote to the leader of Serb forces in Bosnia-Herzegovina expressing concern about reports of the deliberate and arbitrary killing on 12 July of 12 people waiting in a queue to collect water in the Dobrinja district of Sarajevo. On the basis of press reports there appeared to be little doubt that the group of unarmed citizens queuing for water was deliberately targeted and that they were the victims of a mortar shell fired from Serbian positions several hundred yards away.

4. Inter-American Court of Human Rights, Series C, Decisions and Judgments, No. 4, *Velásquez Rodríguez Case: Judgment of July 29, 1988*, Secretariat of the Court, San José, Costa Rica, 1988, paragraph 150.

5. The passages quoted are from paragraphs 174 and 166 respectively. The *Velásquez Rodríguez* judgment is cited in Chapter 1.

6. The responsibility of superior authorities to prevent extrajudicial executions is laid down in principle 19 of the UN Principles on Extra-legal, Arbitrary and Summary Executions. It has been incorporated also in the Statute of the International Tribunal on war crimes in the former Yugoslavia.

7. Principle 1 of the Basic Principles states that governments and law enforcement agencies should adopt rules and regulations on the use of force and firearms by law enforcement officials. Also, the Human Rights Committee set up under the International Covenant on Civil and Political Rights has emphasized the importance of limiting by law the circumstances in which a person may be deprived of life by the authorities. According to the general comment on Article 6 of the International Covenant, adopted on 17 July 1982 by the Human Rights Committee, "The deprivation of life by the authorities of the State is a matter of the utmost gravity. Therefore, the law must strictly control and limit the circumstances in which a person may be deprived of his life by such authorities".

8. In resolution 35/70 on the Code of Conduct for Law Enforcement Officials, adopted on 15 December 1980, the UN General Assembly called on all states "(t)o make the text of the Code of Conduct available to all law enforcement officials in their own language" and "(t)o instruct, in basic training programmes and in all subsequent training and refresher courses, law enforcement officials in the provisions of the national legislations which are connected with the Code of Conduct and other basic texts on human rights".

The resolution of the Eighth UN Congress on the Prevention of Crime and the Treatment of Offenders adopting the Basic Principles states that the Basic Principles should be "brought to the attention of law enforcement officials". Principles 18 to 21 refer to matters to be covered in training, including issues of police ethics and human rights and alternatives to the use of force and firearms.

9. The Commentary to Article 1 of the Code of Conduct for Law Enforcement officials reads, in part:

"(a) The term 'law enforcement officials' includes all officers of the law, whether appointed or elected, who exercise police powers, especially the powers of arrest or detention.

(b) In countries where police powers are exercised by military authorities, whether uniformed or not, or by state security forces, the definition of law enforcement officials shall be regarded as including officers of such services."

10. See the Basic Principles, principles 2 to 4 and 12 to 17, which refer among other things to the use of non-lethal incapacitating weapons and the principles to be followed in policing unlawful assemblies and people in detention. See also the UN Standard Minimum Rules for the Treatment of Prisoners, rule 54, which states: "Officers of the institutions shall not, in their relations with the prisoners, use force except in self-defence or in cases of attempted escape, or active or passive physical resistance to an order based on law or regulations. ..."

11. In resolution 34/169 of 17 December 1979, whereby the Code of Conduct for Law Enforcement Officials was adopted, the UN General Assembly stated that "the actions of law enforcement officials should be responsive to public scrutiny, whether exercised by a review board, a ministry, a procuracy, the judiciary, an ombudsman, a citizens' committee or any combination thereof, or any other reviewing agency".

12. Basic Principles, principle 23.

13. Civil defence forces, which are a type of paramilitary force, have recently come under scrutiny by UN bodies. In its 1992 report the Working Group on Disappearances stated that the question of civil defence units abusing their powers was of concern to it, "particularly as they are reported to be involved in many cases of disappearance and other abuses." (paragraph 378) It noted: "Reports of abuses by such groups are more frequent in situations where civil defence units are seen to be operating without adequate supervision by government forces, or, on the other hand, precisely where they do act in close cooperation with the army or police, for example during combat or search and seizure operations. ... On the whole, the training, discipline and accountability of such outfits are poor, if not lacking. Recruitment and lines of command are often haphazard." (paragraph 379)

The Working Group went on to state its view that

"if abuses by civil defence units, especially disappearances, are to be prevented, the law must lay down a number of minimum conditions for their operations and effective measures must be taken to implement them. First of all, the only objective of civil defence deployment should be self-defence; units should not be involved in operations which would normally be carried out by army or police units, such as combat, search and seizure, 'fishing expeditions', etc. Secondly, recruitment into civil defence must be on a genuinely voluntary basis only, rather than on the basis of conscription. Civil authorities should exercise effective control over recruitment, guarding against any form of duress, real or perceived. Thirdly, public forces should constantly supervise training, arming (if any) and discipline of the units, as well as all operations they carry out. Clear lines of command should be established, as well as levels of responsibility. Fourthly, criteria for accountability should be unequivocal and should be explained to the members. Breaking the rules should be met with disciplinary punishment; abuses, particularly human rights violations, should be pursued before the civil administration of justice with all the necessary vigour." (paragraph 381)

In 1992 the UN Commission on Human Rights recognized "that action by civil defence forces has in some cases jeopardized the enjoyment of human rights and fundamental freedoms" (resolution 1992/57, adopted without a vote on 3 March 1992). The matter remains under discussion by the Commission.

14. The duty of the authorities to suppress the activities of groups issuing death threats has been pointed out by the Director of the UN human rights monitoring mission in El Salvador. In his second report the Director referred to repeated death threats issued by members of a clandestine organization and stated (in paragraph 38) that "effective measures by State agencies are needed to put an end to the activities of these groups, which seem to be operating without restraints of any kind. *The passivity shown by the authorities in these matters is tantamount to a clear dereliction of duty on the part of public officials and could also act as an incentive to the authors of such threats to persist in their activities, which are a breach of human rights.*" (emphasis added)

15. In the present report and in Amnesty International's 14-Point Programs, the term "prisoner" refers to anyone detained or imprisoned, whether or not the person has been arrested on a criminal charge and whether or not the person is serving a sentence of imprisonment imposed by a court.

16. "No one shall be subjected to arbitrary arrest, detention or exile." - Universal Declaration of Human Rights, Article 9.

17. This safeguard is spelled out in more detail in the UN Declaration on Disappearances (Article 12).

18. Principle 18 (3) of the Body of Principles provides for the right for prisoners to be visited by their legal counsel without delay. Principle 18 (3) states: "The right of a detained or imprisoned person to be visited by and to consult and communicate, without delay or censorship and in full confidentiality, with

his legal counsel may not be suspended or restricted save in exceptional circumstances, to be specified by law or lawful regulations, when it is considered indispensable by a judicial or other authority in order to maintain security and good order."

The Basic Principles on the Role of Lawyers, adopted by the Eighth UN Congress on the Prevention of Crime and the Treatment of Offenders in Havana on 7 September 1990, also provide for the right of detainees to prompt access to a lawyer. The Basic Principles on the Role of Lawyers are reprinted in the *Amnesty International Report 1991*, Amnesty International Publications, London, 1991, Appendix X.

19. Rule 37 of the Standard Minimum Rules states: "Prisoners shall be allowed under necessary supervision to communicate with their family and reputable friends at regular intervals, both by correspondence and by receiving visits."

20. See the Body of Principles, Principle 18, on the right of a prisoner to be visited by and to communicate with his or her legal counsel; also the International Covenant on Civil and Political Rights, Article 14 (3)(b) and the Standard Minimum Rules, rule 93 on communications with lawyers, and the Standard Minimum Rules, rules 24 and 91 on visits by doctors.

21. Principle 18 (4) of the Body of Principles states: "Interviews between a detained or imprisoned person and his legal counsel may be within sight, but not within the hearing, of a law enforcement official."

22. Standard Minimum Rules, rule 37 (quoted above); also rule 92. Principle 19 of the Body of Principles also provides for the right of prisoners to correspond with their families.

23. These recommendations are drawn largely from the conditions for ICRC visits as described in Philippe de Sinner and Hernan Reyes, "Visits by the International Committee of the Red Cross to Persons Deprived of their Freedom", ICRC Division for Detention Matters, September 1992.

24. Body of Principles, Principles 13, 33.

25. Body of Principles, Principle 11.

26. Sometimes prisoners' relatives, fearing reprisals, may prefer to have the prisoner released to, or in the presence of, a representative of a reliable non-governmental organization or a reliable public figure such as a member of parliament. The ICRC sometimes receives released prisoners, for example in situations of armed conflict where prisoners' relatives are not able to be present.

27. One expert involved in training programs on the laws of war conducted by the ICRC has written: "This teaching by the dissemination of the law of war cannot be simply a mental or psychic exercise, but must be carried out so that the law of war is effectively observed. In this sense, there is a general feeling that good knowledge of these norms is an essential factor for its effective application... It is a fact that the norms of the law of war will be a dead letter if they are not known, and it is a proven truth, repeated on many occasions, that the majority of the transgressions of proper wartime conduct are not carried out in bad faith, but simply because the norms were not known..." José Luis Fernández-Flores, "The Dissemination of the Law of War", in International Institute of Humanitarian Law, *Yearbook 1989-90*, Milan, Giuffrè Editore, 1992, page 12; emphasis added.

28. Paragraph 176. The *Velásquez Rodríguez* judgment is cited in Chapter 1.

29. SRESAE [Special Rapporteur on extrajudicial, summary or arbitrary executions], 1993 report, paragraph 86.

30. Vienna Declaration and Programme of Action, adopted on 25 June 1993 by the World Conference on Human Rights (Vienna, 14-25 June 1993), United Nations, New York, Department of Public Information, DPI/1394-9399, 1993, part II, paragraph 62.

31. UN Commission on Human Rights, resolution 1993/71, adopted without a vote on 10 March 1993.

32. Declaration on Disappearances, Article 13 (2); Principles on Extra-legal, Arbitrary and Summary Executions, principle 10.

33. Declaration on Disappearances, Article 13 (3); Principles on Extra-legal, Arbitrary and Summary Executions, principle 15.

34. The importance of having adequate authority to obtain evidence is shown by the results which can be obtained when such authority is exercised. One such experience was that of the Commission of Inquiry regarding the Prevention of Public Violence and Intimidation, set up in South Africa in 1991 under the chairmanship of Mr Justice R.J. Goldstone. The Commission stated that it would investigate fully any evidence implicating senior members of the South African security forces in political violence and intimidation. The Commission was given extensive powers of search and seizure, and its staff was reinforced with international police experts seconded from European Community countries.

On 11 November 1992, largely as a result of strong support from these international experts, the Commission with police reinforcements raided a building housing a large operations unit of Military Intelligence and seized five files from a vast store of documentation. The seized files indicated the existence of a secret unit which appeared to be the coordinating structure for a range of clandestine military projects. The files also showed that the chief of staff of Military Intelligence had authorized the hiring in 1991 of a notorious former member of a covert military unit, the Civil Cooperation Bureau (CCB), to run a task force aimed at destabilizing the opposition African National Congress and its military wing. The CCB had been officially disbanded in 1990 after damning evidence had been presented to a judicial commission of inquiry indicating that the unit had been responsible for political killings carried out in the 1980s.

The Goldstone Commission promptly published the findings of the raid, thus pre-empting the possibility that its discoveries would be hushed up. However, the State President of South Africa intervened and ordered an army and a police general to take over further investigation of the seized documents, in coordination with the Commission, thus effectively preventing the Commission from carrying out its own independent investigation. The appointment of such senior army and police investigators prompted fears of an official cover-up. Although 23 military officers were subsequently forced to take early retirement, no prosecutions have been brought against the officials alleged to have committed unlawful acts. Furthermore, the secret unit appears to be still in operation.

35. Most of these characteristics are included in international instruments adopted by the UN. Both the UN Declaration on Disappearances (Article 13) and the UN Principles on Extra-Legal, Arbitrary and Summary Executions (principles 9, 15-17) call for prompt, thorough and impartial investigation.

36. Principles on Extra-legal, Arbitrary and Summary Executions, principle 16.

37. Declaration on Disappearances, Article 13 (3, 5); Principles on Extra-legal, Arbitrary and Summary Executions, principle 15.

38. Declaration on Disappearances, Article 16; Principles on Extra-legal, Arbitrary and Summary Executions, principle 15.

39. Principles on Extra-legal, Arbitrary and Summary Executions, principle 17. With reference to commissions of inquiry, detailed proposals for what should be included in the report are given in the Minnesota Protocol, section D (15).

40. Principles on Extra-legal, Arbitrary and Summary Executions, principle 17.

41. Declaration on Disappearances, Article 13 (6).

The UN Working Group on Disappearances has stated in its 1990 report (paragraph 362):

"Under its terms of reference, the Group will continue to deal with cases as long as they have not been clarified. It believes that the need to insist on investigation of all cases of disappearances lies at the heart of its mandate. It does so bearing in mind the interest of those who will suffer anguish and bitterness as long as they cannot be assured of the fate or whereabouts of their loved ones."

42. Five essential pieces of information - name, date and place of "disappearance", parties considered responsible, and information on steps taken to determine the victim's fate or whereabouts - are minimum elements which a report of a "disappearance" submitted to the UN Working Group on Enforced or Involuntary Disappearances should contain. The Working Group urges those submitting reports to furnish as many details as possible on the identity of the victim (including identity card numbers if available) and the circumstances of the "disappearance". Missing details should not prevent the submission of reports, but the Working Group can only act on clearly identified individual cases containing the five minimum elements described above. ("Enforced or Involuntary Disappearances", *Human Rights Fact Sheets* series, No. 6, UN Centre for Human Rights, Geneva, 1988, pages 10-11, 13-14)

43. The UN Working Group on Disappearances has prepared a four-page questionnaire which local groups and individuals can use in sending reports of "disappearances" to the Working Group. Spaces are provided for details to be filled in under the five heading described above. Copies of the questionnaire may be obtained from the UN Centre for Human Rights in Geneva.

44. For a discussion of the problems of establishing official involvement in the face of governmental denials, see Michael McClintock, "Establishing Accountability for State Violence", in *Human Rights in the Twenty-First Century: A Global Challenge*, proceedings of a conference held in Banff, Alberta, Canada, 1990.

45. WGEID [Working Group on Enforced or Involuntary Disappearances], 1990 report, paragraph 344.

46. Similarly, the 1993 progress report on impunity prepared for the UN Sub-Commission on Prevention of Discrimination and Protection of Minorities distinguishes two paths of impunity: "firstly, de facto impunity resulting from the dysfunction of the institutions concerned, which is either directly or

indirectly encouraged, or even organized by the authorities; and secondly, impunity legitimized by provisions borrowed from the rule of law and diverted from their purpose." (UN Sub-Commission on Prevention of Discrimination and Protection of Minorities, *Progress report on the question of impunity of perpetrators of human rights violations*... UN document No. E/CN.4/Sub.2/1993/6, 19 July 1993, paragraph 29) See also the discussion of "structural" and "practical" impunity in Colombia in Chapter 3 of this report.

47. In India, for example, Section 6 of the Armed Forces (Special Powers) Act reads: "No prosecution, suit or other legal proceeding shall be instituted, except with the previous sanction of the Central Government, against any person in respect of anything done or purported to be done in the exercise of the powers conferred by this Act." The act in question gives the security forces wide powers to shoot to kill. It is currently in force in several Indian states where there is armed insurgency. Another Indian law, adopted in 1991, protects government officers from any prosecutions for actions taken in the course of duty in states which are under direct rule from the central government. ("Legally sanctioned impunity", in *India: Torture, Rape & Deaths in Custody*, Amnesty International Publications, London, 1992, pages 59-61) The decision of the government of newly independent Zimbabwe to grant immunity from prosecution for acts in connection with the war for independence is another example (see above, Chapter 4). Amnesty International has frequently drawn attention to legal provisions preventing the prosecution of officials for human rights violations in different countries and has called for these provisions to be repealed.

48. The Basic Principles on the Independence of the Judiciary were adopted by the Seventh UN Congress on the Prevention of Crime and the Treatment of Offenders (Milan, 26 August - 6 September 1985) and endorsed by the UN General Assembly in resolutions 40/32 of 29 November 1985 and 40/146 of 13 December 1985. They are reproduced in *Human Rights: A Compilation of International Instruments*.

49. With regard to "disappearances", Article 16 (2) of the UN Declaration on Disappearances establishes that alleged perpetrators should not be tried in special or military courts. More generally, principle 5 of the Basic Principles on the Independence of the Judiciary states: "Everyone shall have the right to be tried by ordinary courts or tribunals using established legal procedures. Tribunals that do not use the duly established procedures of the legal process shall not be created to displace the jurisdiction belonging to the ordinary courts or judicial tribunals."

In a comment on the second periodic report of Egypt under the International Covenant on Civil and Political Rights, the Human Rights Committee set up under the Covenant has stated: "...military courts should not have the faculty to try cases which do not refer to offences committed by members of the armed forces in the course of their duties." (Human Rights Committee, *Consideration of reports submitted by states parties under Article 40 of the Covenant*, UN document No. CCPR/C/79/Add.23, 9 August 1993, paragraph 9)

Similarly, the UN Working Group on Disappearances has stated: "...the Working Group wishes to reiterate that military tribunals should be reserved exclusively for those members of the security forces who commit military crimes, a category from which such serious human rights violations as enforced disappearances must be clearly and explicitly excluded." (WGEID, 1992 report, paragraph 367)

In its 1990 report (paragraph 345) the Working Group stated: "Military courts contribute significantly to impunity, in the Working Group's experience. A recurrent theme in times of internal crisis or under the doctrine of national security is that military personnel attested to have engaged in gross misconduct, are almost invariably acquitted or given sentences that are disproportionate to the crime committed. ..."

Of Guideline 15 of the UN Guidelines on the Role of Prosecutors states: "Prosecutors shall give due attention to the prosecution of crimes committed by public officials, particularly corruption, abuse of power, grave violations of human rights and other crimes recognized by international law and, where authorized by law or consistent with local practice, the investigation of such offences." The Guidelines on the Role of Prosecutors were adopted in 1990 by the Eighth UN Congress on the Prevention of Crime and the Treatment of Offenders.

1. Principle 7 of the Basic Principles on the Independence of the Judiciary states: "It is the duty of each member State to provide adequate resources to enable the judiciary to properly perform its functions."

2. Article 10 of the Universal Declaration of Human Rights states: "Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him." (emphasis added) A similar provision appears in Article 14 (1) of the International Covenant on Civil and Political Rights.

3. The principle of criminal responsibility of those behind the crimes is incorporated in the Statute of the International Tribunal on war crimes in the former Yugoslavia. The Statute also establishes (as does Article 7 of the Charter of the Nuremberg Tribunal) that a person cannot escape prosecution on the grounds of his or her official capacity, including that of head of state. Article 7 of the Statute states, in part:

"1. A person who planned, instigated, ordered, committed or otherwise aided and abetted in the planning, preparation or execution of a crime referred to in articles 2 to 5 of the present Statute, shall be individually responsible for the crime.

"2. The official position of any accused person, whether as Head of State or Government or as a responsible Government official, shall not relieve such person of criminal responsibility nor mitigate punishment.

"3. The fact that any of the acts referred to in articles 2 to 5 of the present Statute was committed by a subordinate does not relieve his superior of criminal responsibility if he knew or had reason to know that the subordinate was about to commit such acts or had done so and the superior failed to take the necessary and reasonable measures to prevent such acts or to punish the perpetrators thereof."

54. The concept of no defence of superior orders is contained also in the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials (principle 26) and in the Statute of the International Tribunal on war crimes in the former Yugoslavia. Article 7 (4) of the Statute states:

"The fact that an accused person acted pursuant to an order of a Government or of a superior shall not relieve him of criminal responsibility, but may be considered in mitigation of punishment if the International Tribunal determines that justice so requires."

55. Universal Declaration of Human Rights, Article 8; International Covenant on Civil and Political Rights, Article 2 (3).

56. The term "redress" comes from the French word *redresser*, meaning "to straighten". The UN Special Rapporteur on the right to restitution, compensation and rehabilitation for victims of gross violations of human rights and fundamental freedoms ("Special Rapporteur on the right to restitution") has used the alternative term *reparation*, meaning "repairing". As defined by the Special Rapporteur:

"The word 'reparation' in this study denotes all types of redress, material and non-material, for victims of human rights violations. Consequently, the terms 'restitution', 'compensation' and 'rehabilitation' cover particular aspects of reparation."

(UN Sub-Commission on Prevention of Discrimination and Protection of Minorities, *Study concerning the right to restitution, compensation and rehabilitation for victims of gross violations of human rights and fundamental freedoms; Final report submitted by Mr. Theo van Boven, Special Rapporteur*, paragraph 13, footnote)

57. Under proposed basic principles and guidelines concerning reparation to victims of gross violations of human rights prepared by the UN Special Rapporteur on the right to restitution,

"Compensation shall be provided for any economically assessable damage resulting from human rights violations, such as:

- (a) Physical or mental harm;
- (b) Pain, suffering and emotional distress;
- (c) Lost opportunities, including education;
- (d) Loss of earnings and earning capacity;
- (e) Reasonable medical and other expenses of rehabilitation;
- (f) Harm to property or business, including lost profits;
- (g) Harm to reputation or dignity;
- (h) Reasonable costs and fees of legal or expert assistance to obtain a remedy."

(*Ibid.*, paragraph 137, principle 9)

58. As one psychologist has noted in a study of psychological aspects of redress for human rights violations, financial compensation is a concrete acknowledgement of responsibility and of the wrongfulness of the harm caused. Yael Danieli, "Preliminary Reflections from a Psychological Perspective," in Netherlands Institute of Human Rights, *Seminar on the Right to Restitution, Compensation and Rehabilitation for Victims of Gross Violations of Human Rights and Fundamental Freedoms; Maastricht, 11-15 March 1992, Studie- en Informatiecentrum Mensenrechten, SIM Special No. 12*, Human Rights Project Group, University of Limburg, Maastricht, the Netherlands, 1992, pages 196-213.

59. The Special Rapporteur on the right to restitution has recommended further that claims relating to reparations for gross human rights violations, including "disappearances" and extrajudicial executions, should not be subject to statutes of limitation. (*Op. cit.*, paragraph 137)

60. For discussion of these issues see Metin Başoğlu, ed., *Torture and its Consequences; Current Treatment Approaches*, Cambridge University Press, Cambridge, 1992.

61. The experiences of a group of psychotherapists working with families of "disappeared" people in Argentina have been described in Diana R. Kordon, Lucila I. Edelman y Equipo de Asistencia Psicológica de

Madres de Plaza de Mayo, *Efectos Psicológicos de la Represión Política*, Sudamericana/Planeta, Buenos Aires, 1986 (English-language edition: Diana R. Kordon, Lucila I. Edelman et al., *Psychological Effects of Political Repression*, Sudamericana/Planeta, Buenos Aires, 1988).

62. Republic of Chad, Ministry of Justice, *Rapport de la Commission d'Enquête sur les crimes et détournements commis par l'ex-Président, ses co-auteurs et/ou complices*, N'Djaména, May 1992, pages 5, 11, 77, 94-95, 101, 106-108. For a summary of the Commission's work, see Amnesty International, "Chad: Never Again? Killings Continue into the 1990s", AI Index: AFR 20/04/93, February 1993, pages 23-24.

63. The Commission stated in its report that it decided to name those responsible because "it is not possible to tell the whole truth omitting names... [The Commission] was entrusted with the task of investigating and describing acts of violence of singular importance and of recommending measures intended to prevent a repetition of such acts in the future. This task cannot be fulfilled in the abstract, suppressing information (for example the names of those responsible) when there is faithful testimony..., especially when those identified are high-ranking officials and carrying out official tasks directly related to the violations or covering them up. Not to mention names would reinforce the very cloak of impunity which the Parties charged the Commission with removing."

64. *De la Locura a la Esperanza; La Guerra de 12 Años en El Salvador; Informe de la Comisión de la Verdad para El Salvador* (From Madness to Hope; the 12 Years' War in El Salvador; Report of the El Salvador Commission on the Truth), United Nations, San Salvador and New York, 1993.

65. Noting that the Geneva Conventions do not contain a clear definition of the conflicts covered by common Article 3, the Commentary on the Third Convention published by the International Committee of the Red Cross (ICRC) states the opinion that "the scope of application of the Article must be as wide as possible." (*The Geneva Conventions of 12 August 1949; Commentary published under the general editorship of Jean S. Pictet...*; III Geneva Convention..., International Committee of the Red Cross, Geneva, 1960) The Commentaries have been published by the ICRC in four volumes - one volume on each Convention. The statement quoted above appears also in the Commentary on the Fourth Geneva Convention, and a similar statement appears in the Commentary on the First Convention.

66. Murder, hostage-taking and torture are prohibited also under Article 4 of Additional Protocol II to the Geneva Conventions. Additional Protocol II applies to armed conflicts between the armed forces of a state party to the Protocol and "dissident armed forces or other organized armed groups which, under responsible command, exercise such control over a part of its territory as to enable them to carry out sustained and concerted military operations and to implement this Protocol" (Article 1 (1)).

67. The ICRC Commentary on the First Geneva Convention stresses the advantages of an insurgent party to an armed conflict, "in revolt against the established authority", respecting the provisions of common Article 3, even though such an organization does not "represent a legal entity capable of undertaking international obligations". (One such advantage would be the improvement of their image as an organization which respects minimum standards of humane behaviour.) Furthermore, as the Commentary points out with reference to insurgents in revolt against a state party to the Geneva Conventions, "if the responsible authority at their head exercises effective sovereignty, it is bound by the very fact that it claims to represent the country, or part of the country." The same statement appears in the Commentaries on the Third and Fourth Geneva Conventions, and a similar statement appears in the Commentary on the Second Convention.

68. According to the ICRC Commentaries on the First and Fourth Geneva Conventions, this provision of common Article 3 "makes it absolutely clear that the object of the Convention is a purely humanitarian one, that it is in no way concerned with the internal affairs of States, and that it merely ensures respect for the few essential rules of humanity which all civilized nations consider as valid everywhere and under all circumstances and as being above and outside war itself." A similar statement appears in the Commentary on the Third Convention.

Appendices

Appendix 1. Declaration on the Protection of All Persons from Enforced Disappearance (adopted by the UN General Assembly without a vote on 18 December 1992 in resolution 47/133)

The General Assembly,

Considering that, in accordance with the principles proclaimed in the Charter of the United Nations and other international instruments, recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world,

Bearing in mind the obligation of States under the Charter of the United Nations, in particular Article 55, to promote universal respect for, and observance of, human rights and fundamental freedoms,

Deeply concerned that in many countries, often in a persistent manner, enforced disappearances occur, in the sense that persons are arrested, detained or abducted against their will or otherwise deprived of their liberty by officials of different branches or levels of Government, or by organized groups or private individuals acting on behalf of, or with the support, direct or indirect, consent or acquiescence of the Government, followed by a refusal to disclose the fate or whereabouts of the persons concerned or a refusal to acknowledge the deprivation of their liberty, thereby placing such persons outside the protection of the law,

Considering that enforced disappearance undermines the deepest values of any society committed to respect for the rule of law, human rights and fundamental freedoms, and that the systematic practice of such acts is of the nature of a crime against humanity,

Recalling resolution 33/173 of 20 December 1978, by which the General Assembly expressed concern about the reports from various parts of the world relating to enforced or involuntary disappearances, as well as about the anguish and sorrow caused by those disappearances, and called upon Governments to hold law enforcement and security forces legally responsible for excesses which might lead to enforced or involuntary disappearances of persons,

Recalling also the protection afforded to victims of armed conflicts by the Geneva Conventions of 12 August 1949 and the Additional Protocols of 1977,

Having regard in particular to the relevant articles of the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights, which protect the right to life, the right to liberty and security of the person, the right not to be subjected to torture and the right to recognition as a person before the law,

Having regard further to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, which provides that States parties shall take effective measures to prevent and punish acts of torture,

Bearing in mind the Code of Conduct for Law Enforcement Officials, the Basic Principles on the Use Of Force and Firearms by Law Enforcement Officials, the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power and the Standard Minimum Rules for the Treatment of Prisoners,

Affirming that, in order to prevent enforced disappearances, it is necessary to ensure strict compliance with the Body of Principles for the

Protection of All Persons under Any Form of Detention or Imprisonment contained in its resolution 43/173 of 9 December 1988, and with the Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions, set forth in the annex to Economic and Social Council resolution 1989/65 of 24 May 1989 and endorsed by the General Assembly in its resolution 44/162 of 15 December 1989,

Bearing in mind that, while the acts which comprise enforced disappearance constitute a violation of the prohibitions found in the aforementioned international instruments, it is none the less important to devise an instrument which characterizes all acts of enforced disappearance of persons as very serious offences, setting forth standards designed to punish and prevent their commission,

1. *Proclaims* the present Declaration on the Protection of All Persons from Enforced Disappearance, as a body of principles for all States;

2. *Urges* that all efforts be made so that this Declaration becomes generally known and respected.

Article 1

1. Any act of enforced disappearance is an offence to human dignity. It is condemned as a denial of the purposes of the Charter of the United Nations and as a grave and flagrant violation of the human rights and fundamental freedoms proclaimed in the Universal Declaration of Human Rights and reaffirmed and developed in international instruments in this field.

2. Such act of enforced disappearance places the persons subjected thereto outside the protection of the law and inflicts severe suffering on them and their families. It constitutes a violation of the rules of international law guaranteeing, *inter alia*, the right to recognition as a person before the law, the right to liberty and security of the person and the right not to be subjected to torture and other cruel, inhuman or degrading treatment or punishment. It also violates or constitutes a grave threat to the right to life.

Article 2

1. No State shall practise, permit or tolerate enforced disappearances.

2. States shall act at the national and regional levels and in cooperation with the United Nations to contribute by all means to the prevention and eradication of enforced disappearance.

Article 3

Each State shall take effective legislative, administrative, judicial or other measures to prevent and terminate acts of enforced disappearance in any territory under its jurisdiction.

Article 4

1. All acts of enforced disappearance shall be offences under the criminal law punishable by appropriate penalties which shall take into account their extreme seriousness.

2. Mitigating circumstances may be established in national legislation for persons who, having participated in enforced disappearances, are

instrumental in bringing the victims forward alive or in providing voluntarily information which would contribute to clarifying cases of enforced disappearance.

Article 5

In addition to such criminal penalties as are applicable, enforced disappearances render their perpetrators and the State or State authorities which organize, acquiesce in or tolerate such disappearances liable at civil law, without prejudice to the international responsibility of the State concerned in accordance with the principles of international law.

Article 6

1. No order or instruction of any public authority, civilian, military or other, may be invoked to justify an enforced disappearance. Any person receiving such an order or instruction shall have the right and duty not to obey it.
2. Each State shall ensure that orders or instructions directing, authorizing or encouraging any enforced disappearance are prohibited.
3. Training of law enforcement officials shall emphasize the above provisions.

Article 7

No circumstances whatsoever, whether a threat of war, a state of war, internal political instability or any other public emergency, may be invoked to justify enforced disappearances.

Article 8

1. No State shall expel, return (*refouler*) or extradite a person to another State where there are substantial grounds to believe that he would be in danger of enforced disappearance.
2. For the purpose of determining whether there are such grounds, the competent authorities shall take into account all relevant considerations including, where applicable, the existence in the State concerned of a consistent pattern of gross, flagrant or mass violations of human rights.

Article 9

1. The right to a prompt and effective judicial remedy as a means of determining the whereabouts or state of health of persons deprived of their liberty and/or identifying the authority ordering or carrying out the deprivation of liberty is required to prevent enforced disappearances under all circumstances, including those referred to in article 7.
2. In such proceedings, competent national authorities shall have access to all places holding persons deprived of their liberty and to each part thereof, as well as to any place in which there are grounds to believe that such persons may be found.
3. Any other competent authority entitled under the law of the State or by any international legal instruments to which a State is a party may also have access to such places.

Article 10

1. Any person deprived of liberty shall be held in an officially recognized place of detention and, in conformity with national law, be brought before a judicial authority promptly after detention.
2. Accurate information on the detention of such persons and their place or places of detention, including transfers, shall be made promptly available to their family members, their counsel or to any other persons having a legitimate interest in the information unless a wish to the contrary has been manifested by the persons concerned.
3. An official up-to-date register of all persons deprived of their liberty shall be maintained in every place of detention. Additionally, each State shall take steps to maintain similar centralized registers. The information contained in these registers shall be made available to the persons mentioned in the paragraph above, to any judicial or other competent and independent national authority and to any other competent authority entitled under the law of the State concerned or any international legal instrument to which a State concerned is a party, seeking to trace the whereabouts of a detained person.

Article 11

All persons deprived of liberty must be released in a manner permitting reliable verification that they have actually been released and, further, have been released in conditions in which their physical integrity and ability fully to exercise their rights are assured.

Article 12

Each State shall establish rules under its national law indicating those officials authorized to order deprivation of liberty, establishing the conditions under which such orders may be given, and stipulating penalties for officials who, without legal justification, refuse to provide information on any detention.

Each State shall likewise ensure strict supervision, including a clear chain of command, of all law enforcement officials responsible for apprehensions, arrests, detentions, custody, transfers and imprisonment, and of other officials authorized by law to use force and firearms.

Article 13

Each State shall ensure that any person having knowledge or a legitimate interest who alleges that a person has been subjected to enforced disappearance has the right to complain to a competent and independent State authority and to have that complaint promptly, thoroughly and impartially investigated by that authority. Whenever there are reasonable grounds to believe that an enforced disappearance has been committed, the State shall promptly refer the matter to that authority for an investigation, even if there has been no formal complaint. No measure shall be taken to curtail or impede the investigation.

Each State shall ensure that the competent authority shall have the necessary powers and resources to conduct the investigation effectively, including powers to compel attendance of witnesses and production of relevant documents and to make immediate on-site visits.

3. Steps shall be taken to ensure that all involved in the investigation, including the complainant, counsel, witnesses and those conducting the investigation, are protected against ill-treatment, intimidation or reprisal.

4. The findings of such an investigation shall be made available upon request to all persons concerned, unless doing so would jeopardize an ongoing criminal investigation.

5. Steps shall be taken to ensure that any ill-treatment, intimidation or reprisal or any other form of interference on the occasion of the lodging of a complaint or the investigation procedure is appropriately punished.

6. An investigation, in accordance with the procedures described above, should be able to be conducted for as long as the fate of the victim of enforced disappearance remains unclarified.

Article 14

Any person alleged to have perpetrated an act of enforced disappearance in a particular State shall, when the facts disclosed by an official investigation so warrant, be brought before the competent civil authorities of that State for the purpose of prosecution and trial unless he has been extradited to another State wishing to exercise jurisdiction in accordance with the relevant international agreements in force. All States should take any lawful and appropriate action available to them to bring all persons presumed responsible for an act of enforced disappearance, found to be within their jurisdiction or under their control, to justice.

Article 15

The fact that there are grounds to believe that a person has participated in acts of an extremely serious nature such as those referred to in article 4, paragraph 1, regardless of the motives, shall be taken into account when the competent authorities of the State decide whether or not to grant asylum.

Article 16

1. Persons alleged to have committed any of the acts referred to in article 4, paragraph 1, shall be suspended from any official duties during the investigation referred to in article 13.

2. They shall be tried only by the competent ordinary courts in each State, and not by any other special tribunal, in particular military courts.

3. No privileges, immunities or special exemptions shall be admitted in such trials, without prejudice to the provisions contained in the Vienna Convention on Diplomatic Relations.

4. The persons presumed responsible for such acts shall be guaranteed fair treatment in accordance with the relevant provisions of the Universal Declaration of Human Rights and other relevant international agreements in force at all stages of the investigation and eventual prosecution and trial.

Article 17

1. Acts constituting enforced disappearance shall be considered a continuing offence as long as the perpetrators continue to conceal the fate and the whereabouts of persons who have disappeared and these facts remain unclarified.
2. When the remedies provided for in article 2 of the International Covenant on Civil and Political Rights are no longer effective, the statute of limitations relating to acts of enforced disappearance shall be suspended until these remedies are re-established.
3. Statutes of limitations, where they exist, relating to acts of enforced disappearance shall be substantial and commensurate with the extreme seriousness of the offence.

Article 18

1. Persons who have, or are alleged to have, committed offences referred to in article 4, paragraph 1, shall not benefit from any special amnesty law or similar measures that might have the effect of exempting them from any criminal proceedings or sanction.
2. In the exercise of the right of pardon, the extreme seriousness of acts of enforced disappearance shall be taken into account.

Article 19

The victims of acts of enforced disappearance and their family shall obtain redress and shall have the right to adequate compensation, including the means for as complete a rehabilitation as possible. In the event of the death of the victim as a result of an act of enforced disappearance, their dependants shall also be entitled to compensation.

Article 20

1. States shall prevent and suppress the abduction of children of parents subjected to enforced disappearance and of children born during their mother's enforced disappearance, and shall devote their efforts to the search for, and identification of, such children and to the restitution of the children to their families of origin.
2. Considering the need to protect the best interests of children referred to in the preceding paragraph, there shall be an opportunity, in States which recognize a system of adoption, for a review of the adoption of such children and, in particular, for annulment of any adoption which originated in enforced disappearance. Such adoption should, however, continue to be in force if consent is given, at the time of the review mentioned above, by the child's closest relatives.
3. The abduction of children of parents subjected to enforced disappearance or of children born during their mother's enforced disappearance, and the act of altering or suppressing documents attesting to their true identity, shall constitute an extremely serious offence, which shall be punished as such.
4. For these purposes, States shall, where appropriate, conclude bilateral and multilateral agreements.

Article 21

The provisions of the present Declaration are without prejudice to the provisions enunciated in the Universal Declaration of Human Rights or in any other international instrument, and shall not be construed as restricting or derogating from any of the provisions contained therein.

Appendix 2. Principles on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions
(adopted by the UN Economic and Social Council on 24 May 1989 in resolution 1989/65 and endorsed by the UN General Assembly on 15 December 1989 in resolution 44/162)

Prevention

1. Governments shall prohibit by law all extra-legal, arbitrary and summary executions and shall ensure that any such executions are recognized as offences under their criminal laws, and are punishable by appropriate penalties which take into account the seriousness of such offences. Exceptional circumstances including a state of war or threat of war, internal political instability or any other public emergency may not be invoked as a justification of such executions. Such executions shall not be carried out under any circumstances including, but not limited to, situations of internal armed conflict, excessive or illegal use of force by a public official or other person acting in an official capacity or a person acting at the instigation, or with the consent or acquiescence of such person, and situations in which deaths occur in custody. This prohibition shall prevail over decrees issued by governmental authority.
2. In order to prevent extra-legal, arbitrary and summary executions, Governments shall ensure strict control, including a clear chain of command over all officials responsible for the apprehension, arrest, detention, custody and imprisonment as well as those officials authorized by law to use force and firearms.
3. Governments shall prohibit orders from superior officers or public authorities authorizing or inciting other persons to carry out any such extra-legal, arbitrary or summary executions. All persons shall have the right and the duty to defy such orders. Training of law enforcement officials shall emphasize the above provisions.
4. Effective protection through judicial or other means shall be guaranteed to individuals and groups who are in danger of extra-legal, arbitrary or summary executions, including those who receive death threats.
5. No one shall be involuntarily returned or extradited to a country where there are substantial grounds for believing that he or she may become a victim of extra-legal, arbitrary or summary execution in that country.
6. Governments shall ensure that persons deprived of their liberty are held in officially recognized places of custody, and that accurate information on their custody and whereabouts, including transfers, is made promptly available to their relatives and lawyer or other persons of confidence.
7. Qualified inspectors, including medical personnel, or an equivalent independent authority, shall conduct inspections in places of custody on a regular basis, and be empowered to undertake unannounced inspections on their own initiative, with full guarantees of independence in the exercise of this function. The inspectors shall have unrestricted access to all persons in such places of custody, as well as to all their records.
8. Governments shall make every effort to prevent extra-legal, arbitrary and summary executions through measures such as diplomatic intercession, improved access of complainants to intergovernmental and judicial bodies, and public denunciation. Intergovernmental mechanisms shall be used to investigate reports of any such executions and to take effective action against such practices. Governments, including those of countries where extra-legal, arbitrary and summary executions are reasonably suspected to

occur, shall co-operate fully in international investigations on the subject.

Investigation

9. There shall be a 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 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 summons 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 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 immediately informed. 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.

Legal proceedings

18. Governments shall ensure that persons identified by the investigation as having participated in extra-legal, arbitrary or summary executions in any territory under their jurisdiction are brought to justice. Governments shall either bring such persons to justice or co-operate to extradite any such persons to other countries wishing to exercise jurisdiction. This principle shall apply irrespective of who and where the perpetrators or the victims are, their nationalities or where the offence was committed.

19. Without prejudice to Principle 3 above, an order from a superior officer or a public authority may not be invoked as a justification for extra-legal, arbitrary or summary executions. Superiors, officers or other public officials may be held responsible for acts committed by officials under their hierarchical authority if they had a reasonable opportunity to prevent such acts. In no circumstances, including a state of war, siege or other public emergency, shall blanket immunity from prosecution be granted to any person allegedly involved in extra-legal, arbitrary or summary executions.

20. The families and dependents of victims of extra-legal, arbitrary or summary executions shall be entitled to fair and adequate compensation within a reasonable period of time.

Appendix 3. Amnesty International 14-Point Program for the Prevention of "Disappearances"

The "disappeared" are people who have been taken into custody by agents of the state, yet whose whereabouts and fate are concealed, and whose custody is denied. "Disappearances" cause agony for the victims and their relatives. The victims are cut off from the world and placed outside the protection of the law; often they are tortured; many are never seen again. Their relatives are kept in ignorance, unable to find out whether the victims are alive or dead.

The United Nations has condemned "disappearances" as a grave violation of human rights and has said that their systematic practice is of the nature of a crime against humanity. Yet thousands of people "disappear" each year across the globe, and countless others remain "disappeared". Urgent action is needed to stop "disappearances", to clarify the fate of the "disappeared" and to bring those responsible to justice.

Amnesty International calls on all governments to implement the following 14-Point Program for the Prevention of "Disappearances". It invites concerned individuals and organizations to join in promoting the program. Amnesty International believes that the implementation of these measures is a positive indication of a government's commitment to stop "disappearances" and to work for their eradication worldwide.

1. Official condemnation

The highest authorities of every country should demonstrate their total opposition to "disappearances". They should make clear to all members of the police, military and other security forces that "disappearances" will not be tolerated under any circumstances.

2. Chain-of-command control

Those in charge of the security forces should maintain strict chain-of-command control to ensure that officers under their command do not commit "disappearances". Officials with chain-of-command responsibility who order or tolerate "disappearances" by those under their command should be held criminally responsible for these acts.

3. Information on detention and release

Accurate information about the arrest of any person and about his or her place of detention, including transfers and releases, should be made available promptly to relatives, lawyers and the courts. Prisoners should be released in a way that allows reliable verification of their release and ensures their safety.

4. Mechanism for locating and protecting prisoners

Governments should at all times ensure that effective judicial remedies are available which enable relatives and lawyers to find out immediately where a prisoner is held and under what authority, to ensure his or her safety, and to obtain the release of anyone arbitrarily detained.

5. No secret detention

Governments should ensure that prisoners are held only in publicly recognized places of detention. Up-to-date registers of all prisoners should be maintained in every place of detention and centrally. The information in these registers should be made available to relatives,

lawyers, judges, official bodies trying to trace people who have been detained, and others with a legitimate interest. No one should be secretly detained.

6. Authorization of arrest and detention

Arrest and detention should be carried out only by officials who are authorized by law to do so. Officials carrying out an arrest should identify themselves to the person arrested and, on demand, to others witnessing the event. Governments should establish rules setting forth which officials are authorized to order an arrest or detention. Any deviation from established procedures which contributes to a "disappearance" should be punished by appropriate sanctions.

7. Access to prisoners

All prisoners should be brought before a judicial authority without delay after being taken into custody. Relatives, lawyers and doctors should have prompt and regular access to them. There should be regular, independent, unannounced and unrestricted visits of inspection to all places of detention.

8. Prohibition in law

Governments should ensure that the commission of a "disappearance" is a criminal offence, punishable by sanctions commensurate with the gravity of the practice. The prohibition of "disappearances" and the essential safeguards for their prevention must not be suspended under any circumstances, including states of war or other public emergency.

9. Individual responsibility

The prohibition of "disappearances" should be reflected in the training of all officials involved in the arrest and custody of prisoners and in the instructions issued to them. They should be instructed that they have the right and duty to refuse to obey any order to participate in a "disappearance". An order from a superior officer or a public authority must never be invoked as a justification for taking part in a "disappearance".

10. Investigation

Governments should ensure that all complaints and reports of "disappearances" are investigated promptly, impartially and effectively by a body which is independent of those allegedly responsible and has the necessary powers and resources to carry out the investigation. The methods and findings of the investigation should be made public. Officials suspected of responsibility for "disappearances" should be suspended from active duty during the investigation. Relatives of the victim should have access to information relevant to the investigation and should be entitled to present evidence. Complainants, witnesses, lawyers and others involved in the investigation should be protected from intimidation and reprisals. The investigation should not be curtailed until the fate of the victim is officially clarified.

11. Prosecution

Governments should ensure that those responsible for "disappearances" are brought to justice. This principle should apply wherever such people happen to be, wherever the crime was committed, whatever the nationality of the perpetrators or victims and no matter how much time has elapsed since the commission of the crime. Trials should be in the civilian courts. The perpetrators should not benefit from any legal measures exempting them from criminal prosecution or conviction.

12. Compensation and rehabilitation

Victims of "disappearance" and their dependants should be entitled to obtain fair and adequate redress from the state, including financial compensation. Victims who reappear should be provided with appropriate medical care or rehabilitation.

13. Ratification of human rights treaties and implementation of international standards

All governments should ratify international treaties containing safeguards and remedies against "disappearances", including the International Covenant on Civil and Political Rights and its first Optional Protocol which provides for individual complaints. Governments should ensure full implementation of the relevant provisions of these and other international instruments, including the UN Declaration on the Protection of All Persons from Enforced Disappearance, and comply with the recommendations of intergovernmental organizations concerning these abuses.

14. International responsibility

Governments should use all available channels to intercede with the governments of countries where "disappearances" have been reported. They should ensure that transfers of equipment, know-how and training for military, security or police use do not facilitate "disappearances". No one should be forcibly returned to a country where he or she risks being made to "disappear".

Appendix 4. Amnesty International 14-Point Program for the Prevention of Extrajudicial Executions

Extrajudicial executions are fundamental violations of human rights and an affront to the conscience of humanity. These unlawful and deliberate killings, carried out by order of a government or with its complicity or acquiescence, have been condemned by the United Nations. Yet extrajudicial executions continue, daily and across the globe.

Many of the victims have been taken into custody or made to "disappear" before being killed. Some are killed in their homes, or in the course of military operations. Some are assassinated by uniformed members of the security forces, or by "death squads" operating with official connivance. Others are killed in peaceful demonstrations.

The accountability of governments for extrajudicial executions is not diminished by the commission of similar abhorrent acts by armed opposition groups. Urgent action is needed to stop extrajudicial executions and bring those responsible to justice.

Amnesty International calls on all governments to implement the following 14-Point Program for the Prevention of Extrajudicial Executions. It invites concerned individuals and organizations to join in promoting the program. Amnesty International believes that the implementation of these measures is a positive indication of a government's commitment to stop extrajudicial executions and to work for their eradication worldwide.

1. Official condemnation

The highest authorities of every country should demonstrate their total opposition to extrajudicial executions. They should make clear to all members of the police, military and other security forces that extrajudicial executions will not be tolerated under any circumstances.

2. Chain-of-command control

Those in charge of the security forces should maintain strict chain-of-command control to ensure that officers under their command do not commit extrajudicial executions. Officials with chain-of-command responsibility who order or tolerate extrajudicial executions by those under their command should be held criminally responsible for these acts.

3. Restraints on use of force

Governments should ensure that law enforcement officials use force only when strictly necessary and only to the minimum extent required under the circumstances. Lethal force should not be used except when strictly unavoidable in order to protect life.

4. Action against "death squads"

"Death squads", private armies, criminal gangs and paramilitary forces operating outside the chain of command but with official support or acquiescence should be prohibited and disbanded. Members of such groups who have perpetrated extrajudicial executions should be brought to justice.

5. Protection against death threats

Governments should ensure that anyone in danger of extrajudicial execution, including those who receive death threats, is effectively protected.

6. No secret detention

Governments should ensure that prisoners are held only in publicly recognized places of detention and that accurate information about the arrest and detention of any prisoner is made available promptly to relatives, lawyer's and the courts. No one should be secretly detained.

7. Access to prisoners

All prisoners should be brought before a judicial authority without delay after being taken into custody. Relatives, lawyers and doctors should have prompt and regular access to them. There should be regular, independent, unannounced and unrestricted visits of inspection to all places of detention.

8. Prohibition in law

Governments should ensure that the commission of an extrajudicial execution is a criminal offence, punishable by sanctions commensurate with the gravity of the practice. The prohibition of extrajudicial executions and the essential safeguards for their prevention must not be suspended under any circumstances, including states of war or other public emergency.

9. Individual responsibility

The prohibition of extrajudicial executions should be reflected in the training of all officials involved in the arrest and custody of prisoners and all officials authorized to use lethal force, and in the instructions issued to them. These officials should be instructed that they have the right and duty to refuse to obey any order to participate in an extrajudicial execution. An order from a superior officer or a public authority must never be invoked as a justification for taking part in an extrajudicial execution.

10. Investigation

Governments should ensure that all complaints and reports of extrajudicial executions are investigated promptly, impartially and effectively by a body which is independent of those allegedly responsible and has the necessary powers and resources to carry out the investigation. The methods and findings of the investigation should be made public. The body of the alleged victim should not be disposed of until an adequate autopsy has been conducted by a suitably qualified doctor who is able to function impartially. Officials suspected of responsibility for extrajudicial executions should be suspended from active duty during the investigation. Relatives of the victim should have access to information relevant to the investigation, should be entitled to appoint their own doctor to carry out or be present at an autopsy, and should be entitled to present evidence. Complainants, witnesses, lawyers, judges and others involved in the investigation should be protected from intimidation and reprisals.

11. Prosecution

Governments should ensure that those responsible for extrajudicial executions are brought to justice. This principle should apply wherever such people happen to be, wherever the crime was committed, whatever the nationality of the perpetrators or victims and no matter how much time has elapsed since the commission of the crime. Trials should be in the civilian courts. The perpetrators should not be allowed to benefit from any legal measures exempting them from criminal prosecution or conviction.

12. Compensation

Dependants of victims of extrajudicial execution should be entitled to obtain fair and adequate redress from the state, including financial compensation.

13. Ratification of human rights treaties and implementation of international standards

All governments should ratify international treaties containing safeguards and remedies against extrajudicial executions, including the International Covenant on Civil and Political Rights and its first Optional Protocol which provides for individual complaints. Governments should ensure full implementation of the relevant provisions of these and other international instruments, including the UN Principles on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions, and comply with the recommendations of intergovernmental organizations concerning these abuses.

14. International responsibility

Governments should use all available channels to intercede with the governments of countries where extrajudicial executions have been reported. They should ensure that transfers of equipment, know-how and training for military, security or police use do not facilitate extrajudicial executions. No one should be forcibly returned to a country where he or she risks becoming a victim of extrajudicial execution.

The 14-Point Programs for the Prevention of "Disappearances" and Extrajudicial Executions were adopted by Amnesty International in December 1992 as part of the organization's worldwide campaign for the eradication of "disappearances" and political killings. A similar program is available on the prevention of torture.

The Nadesan Centre for Human Rights through Law provides a library, documentation and information service in international and Sri Lankan human rights law for organisations, lawyers and other individuals working in this field.

*The Centre is named after
the great Sri Lankan human rights lawyer
the late S. Nadesan*

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