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COMMISSION ON HUMAN RIGHTS

Sub-Commission on Prevention of
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THE ADMINISTRATION OF JUSTICE AND THE HUMAN RIGHTS OF DETAINEES

Revised set of basic principles and guidelines on the right to
reparation for victims of gross violations of human rights and
humanitarian law prepared by Mr. Theo van Boven pursuant to
Sub-Commission decision 1995/117

1. In its decision 1995/117 of 24 August 1995 the Sub-Commission on Prevention of Discrimination and Protection of Minorities requested the Special Rapporteur on the right to restitution, compensation and rehabilitation of gross violations of human rights and fundamental freedoms to submit, without financial implications, in time for the Sub-Commission's consideration at its forty-eighth session, a revised set of proposed basic principles and guidelines on the subject in the light of existing relevant international instruments. In the revised set of basic principles and guidelines the comments received from States, intergovernmental organizations and non-governmental organizations (E/CN.4/Sub.2/1994/7 and Add.1 and E/CN.4/Sub.2/1995/17 and Add.1-2) as well as the relevant sections of the reports of the Sub-Commission's working group on the administration of justice and the question of compensation (E/CN.4/Sub.2/1994/22, paras. 18-39, and E/CN.4/Sub.2/1995/16, paras. 10-33) were to be taken into account.

2. In response to the above-mentioned decision of the Sub-Commission, the Special Rapporteur now submits, annexed hereto, the requested revised set of basic principles and guidelines (see annex). In the preparation of this revised document the Special Rapporteur had the benefit of broad expertise

assembled in a workshop organized by the International Commission of Jurists and the Maastricht Centre for Human Rights of the University of Limburg which met in Geneva from 20 to 22 February 1996. The text reproduced in the annex is the result of an in-depth consideration of the subject by the workshop in the light of the comments and reports referred to above. It should be noted that a new title is proposed to reflect the contents of the revised document: Basic Principles and Guidelines on the Right to Reparation for Victims of Gross Violations of Human Rights and Humanitarian Law.

3. The Special Rapporteur expresses the hope that, in accordance with the intention conveyed in Sub-Commission decision 1995/117 of 24 August 1995, as well as in Commission on Human Rights resolution 1996/35 of 19 April 1996, the revised set of basic principles and guidelines hereby submitted will enable the Sub-Commission to make substantial progress on this matter at its forty-eighth session.

Annex

BASIC PRINCIPLES AND GUIDELINES ON THE RIGHT TO REPARATION FOR VICTIMS OF GROSS VIOLATIONS OF HUMAN RIGHTS AND HUMANITARIAN LAW

The duty to respect and to ensure respect for human rights and humanitarian law

1. Under international law every State has the duty to respect and to ensure respect for human rights and humanitarian law.

Scope of the obligation to respect and to ensure respect for human rights and humanitarian law

2. The obligation to respect and to ensure respect for human rights and humanitarian law includes the duty: to prevent violations, to investigate violations, to take appropriate action against the violators, and to afford remedies and reparation to victims. Particular attention must be paid to the prevention of gross violations of human rights and to the duty to prosecute and punish perpetrators of crimes under international law.

Applicable norms

3. The human rights and humanitarian norms which every State has the duty to respect and to ensure respect for, are defined by international law and must be incorporated and in any event made effective in national law. In the event international and national norms differ, the State shall ensure that the norm providing the higher degree of protection shall be applicable.

Right to a remedy

4. Every State shall ensure that adequate legal or other appropriate remedies are available to any person claiming that his or her rights have been violated. The right to a remedy against violations of human rights and humanitarian norms includes the right of access to national and international procedures for their protection.

5. The legal system of every State shall provide for prompt and effective disciplinary, administrative, civil and criminal procedures so as to ensure readily accessible and adequate redress, and protection from intimidation and retaliation.

Every State shall provide for universal jurisdiction over gross violations of human rights and humanitarian law which constitute crimes under international law.

Reparation

6. Reparation may be claimed individually and where appropriate collectively, by the direct victims, the immediate family, dependants or other persons or groups of persons connected with the direct victims.

7. In accordance with international law, States have the duty to adopt special measures, where necessary, to permit expeditious and fully effective reparations. Reparation shall render justice by removing or redressing the consequences of the wrongful acts and by preventing and deterring violations. Reparations shall be proportionate to the gravity of the violations and the resulting damage and shall include restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition.

8. Every State shall make known, through public and private mechanisms, both at home and where necessary abroad, the available procedures for reparations.

9. Statutes of limitations shall not apply in respect of periods during which no effective remedies exist for violations of human rights and humanitarian law. Civil claims relating to reparations for gross violations of human rights and humanitarian law shall not be subject to statutes of limitations.

10. Every State shall make readily available to competent authorities all information in its possession relevant to the determination of claims for reparation.

11. Decisions relating to reparations for victims of violations of human rights and humanitarian law shall be implemented in a diligent and prompt manner.

Forms of reparation

Reparations may take any one or more of the forms mentioned below, which are not exhaustive, viz:

12. Restitution shall be provided to re-establish the situation that existed prior to the violations of human rights and humanitarian law. Restitution requires, inter alia, restoration of liberty, family life, citizenship, return to one's place of residence, employment of property.

13. Compensation shall be provided for any economically assessable damage resulting from violations of human rights and humanitarian law, such as:

(a) Physical or mental harm, including pain, suffering and emotional distress;

(b) Lost opportunities including education;

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

(d) Harm to reputation or dignity;

(e) Costs required for legal or expert assistance.

14. Rehabilitation shall be provided and will include medical and psychological care as well as legal and social services.

15. Satisfaction and guarantees of non-repetition shall be provided, including, as necessary:

- (a) Cessation of continuing violations;
- (b) Verification of the facts and full and public disclosure of the truth;
- (c) An official declaration or a judicial decision restoring the dignity, reputation and legal rights of the victim and/or of persons connected with the victim;
- (d) Apology, including public acknowledgement of the facts and acceptance of responsibility;
- (e) Judicial or administrative sanctions against persons responsible for the violations;
- (f) Commemorations and paying tribute to the victims;
- (g) Inclusion in human rights training and in history textbooks of an accurate account of the violations committed in the field of human rights and humanitarian law;
- (h) Preventing the recurrence of violations by such means as:
 - (i) Ensuring effective civilian control of military and security forces;
 - (ii) Restricting the jurisdiction of military tribunals only to specifically military offences committed by members of the armed forces;
 - (iii) Strengthening the independence of the judiciary;
 - (iv) Protecting the legal profession and human rights defenders;
 - (v) Improving, on a priority basis, human rights training to all sectors of society, in particular to military and security forces and to law enforcement officials.
