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CIVIL AND POLITICAL RIGHTS

Joint written statement* submitted by Amnesty International (AI), Human Rights Advocates, The Association for the Prevention of Torture (APT), The International Commission of Jurists (ICJ), The International Federation for Human Rights (FIDH), The International Rehabilitation Council for Torture Victims (IRCT), The International Service for Human Rights (ISHR), The International Society for Traumatic Stress Studies (ISTSS), The World Organization Against Torture (OMCT), non-governmental organizations in special consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[11 February 2005]

* This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

CONCERNING THE PRINCIPLES AND GUIDELINES ON THE RIGHT TO A REMEDY AND REPARATION FOR VICTIMS OF GROSS VIOLATIONS OF INTERNATIONAL HUMAN RIGHTS LAW AND SERIOUS VIOLATIONS OF INTERNATIONAL HUMANITARIAN LAW

Last autumn, the UN High Commissioner for Human Rights held the third consultative meeting with a view to finalizing the *Draft Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law* (the Principles). The meeting was open to all states, as well as intergovernmental organizations, the International Committee of the Red Cross and non-governmental organizations. The Principles were considered exhaustively, and the revised version of 1 October 2004 provides a valuable set of principles, largely reflecting the dispersed law and practice for serious violations of human rights and international humanitarian law.

The first draft of the Principles was presented by the expert of the Sub-Commission, Professor *Theo van Boven*, in 1993.¹ Now, fifteen years later, it is time to adopt the Principles, which have been reviewed extensively. The Commission on Human Rights has an opportunity this year to provide a necessary and invaluable reference text for victims of serious violations of human rights and international humanitarian law, and it should not let it pass. Too many victims have waited in vain for reparations that were due to them morally and in law.

Our organizations strongly believe that it is essential to provide the United Nations System with a universal instrument systematizing the *corpus juris* on the right to a remedy and reparation. The adoption of this instrument will constitute a strong reaffirmation of the victims' right to an effective remedy and reparation and a significant contribution to a better understanding of these rights.

Furthermore, the Principles can serve as a useful tool for States to fulfil their obligations to guarantee an effective remedy, to provide adequate reparations for violations of international human rights and international humanitarian law and to contribute to the prevention of such violations. At the same time, the Principles are drafted to accommodate the diversity of legal and political systems of all States.

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Since the beginning of their drafting, the Principles were meant to embody existing international law, and the version of 1 October 2004 largely reflects the current status of international law on remedies² and reparations³. Even in their draft form, the Principles have served as reference for governments and domestic, regional and international courts.⁴ Their content is firmly enshrined in international treaties, jurisprudence and in other state practice supported by *opinio juris* that the Principles are an embodiment of customary international law. Indeed, it is well-established in international law that the breach of an international obligation entails the duty to make reparations. This principle, already recognized by the Permanent Court of International Justice,⁵ has been upheld by international jurisprudence and reaffirmed as a general rule of international law by the International Law Commission⁶.

The Principles of 1 October 2004 accurately reflect the fact that the right to a remedy and reparation is guaranteed not only in human rights law, but also in international humanitarian

law.⁷ The draft is also consistent with the history of the Principles as well as with the mandate of the Commission on Human Rights in its Resolutions 2003/34 and 2004/34. In addition, in a situation of armed conflict, the same behaviour (for example an act of torture or ill-treatment) may constitute not only a violation of international humanitarian law but also a violation of human rights, since human rights law also apply in times of armed conflict.⁸ It would be artificial and inconsistent with international law, as reflected most recently in Article 75 of the Rome Statute of the International Criminal Court, to separate the question of reparations for human rights and international humanitarian law - especially since the Principles refer to crimes under international law.

This instrument does not deal with the primary international obligation of states and non-state actors with regard to human rights law and international humanitarian law, nor with the elements qualifying these violations. The Principles only codify the forms and modalities of the secondary obligation that arises under international law as a consequence of committing these violations, namely, the obligation to afford effective remedies and adequate reparations.

The term 'crimes under international law' (*delictus jus gentium*) includes such violations as crimes against humanity, genocide, war crimes, torture, enforced disappearances and extrajudicial executions. The crimes encompass violations of international humanitarian law, as well as violations of human rights law, and can be committed in times of peace and in times of armed conflict. Remedies and reparations must be guaranteed for all conduct constituting such crimes.

The Principles also make clear that while they deal with the right to a remedy and reparation for the most serious violations, these rights are guaranteed under international law to all victims of violations of international human rights and international humanitarian law regardless of the gravity of the violation.

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For these reasons, our organizations urge the Commission on Human Rights to adopt the Principles at this session without any weakening amendments and thereby contribute to the consolidation of the international law and practice on remedies and reparations.

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¹ UN Doc E/CN.4/Sub.2/1993/8, para. 137.

² See the provisions in Article 8 of the Universal Declaration of Human Rights; Article 2 (3) of the International Covenant on Civil and Political Rights; Article 13 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; Article 6 of the Convention on the Elimination of Racial Discrimination; Article 6 (2) of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime; Articles 9 and 13 of the Declaration on the Protection of All Persons from Enforced Disappearance; Principles 4 and 16 of the Principles on the Effective Prevention and Investigation of Extra-Legal, Arbitrary or Summary Executions; Principles 4-7 Declaration of

Basic Principles of Justice for Victims of Crime and Abuse of Power; Article 27 of the Vienna Declaration and Programme of Action; Articles 13, 160-162, 165 of the Programme of Action of the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance; Article 9 of the Declaration on Human Rights Defenders; Article 7 (a) of the African Charter on Human and Peoples' Rights; Article 9 of the Arab Charter on Human Rights; Article 13 of the European Convention on Human Rights; Article 47 of the Charter of Fundamental Rights of the European Union; Article 7 (1) (a) 25 of the American Convention on Human Rights; Article XVIII of the American Declaration of the Rights and Duties of Man; Article III (1) of the Inter-American Convention on Forced Disappearance of Persons; Article 8 (1) of the Inter-American Convention to Prevent and Punish Torture.

³ See the provisions in Article 8 of the Universal Declaration of Human Rights; Articles 2 (3), 9 (5) and 15 (6) of the International Covenant on Civil and Political Rights; Article 6 of the International Convention on the Elimination of All Forms of Racial Discrimination; Article 39 of the Convention of the Rights of the Child; Article 14 of the Convention against Torture and other Cruel Inhuman and Degrading Treatment; Articles 5 (5) and 41 of the European Convention on Human Rights; Articles 25 and 63 of the American Convention on Human Rights; Article 21 (2) of the African Charter of Human and Peoples' Rights; Article 12 of the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power; Article 19 of the Declaration on the Protection of all Persons from Enforced Disappearance; Principle 20 of the Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions; Article 68 of the Third Geneva Convention relative to the Treatment of Prisoners of War; Article 91 of the Protocol Additional to the Geneva Conventions and relating to the Protection of Victims of International Armed Conflict.

⁴ See for example, Inter-American Court of Human Rights, *Bámaca Velásquez v. Guatemala*, Reparations, Judgment of 22 February 2002, para. 75; *Castillo Páez v. Peru*, Judgment of 27 November 1998, para. 48; ICC Working Group on Procedural Matters, A/ CONF. 183/ C. 1/ WGPM/ L. 2/ Add. 7; 'Making a Bill of Rights for Northern Ireland', consultation document by the Northern Ireland Human Rights Commission, September 2001.

⁵ Permanent Court of International Law, *Chorzow Factory Case, Poland v. Germany*, P.C.I.J. Series A, No.17 (1928), 47; International Court of Justice: *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. the United States of America)*, Judgment of 13 September 1986, I.C.J. Reports 1986, 14, 114; *Corfu Channel Case (United Kingdom v Albania)*, Judgment of 15 December 1949, I.C.J. Reports 1949, 23.

⁶ See Report of International Law Commission - 53rd session (23 April - 1st June, 1 June and 2nd July - 10 August 2002) Official document of the General Assembly, 56th Session, Addendum No 10 (A/56/10), Chapter IV.

⁷ See, most recently, *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, Advisory Opinion of 9 July 2003, paras. 149-153; *Report of the International Commission of Inquiry on Darfur*, 25 January 2005, paras. 591-600.

⁸ See International Court of Justice, *Legality of the Threat or Use of Nuclear Weapons*, Advisory Opinion of 8 July 1996, I.C.J. Reports 1996, p. 240, para. 25; *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, Advisory Opinion of 9 July 2003, para. 106; See also General Assembly Resolution 2675 of 1970, on "Basic principles of civilian population in armed conflicts"; Human Rights Committee, *General Comment No 31 on the nature of state obligations*, CCPR/C/74/CRP.4/Rev.6/ para. 11; International Criminal Tribunal for the Former Yugoslavia, *Prosecutor v Furundžija*, IT-95-17/1-T, Judgment of the Trial Chamber of 10 December 1998, paras. 143-144.

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