

Prevention

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**"DISAPPEARANCES" AND POLITICAL KILLINGS:
HUMAN RIGHTS CRISIS OF THE 1990s**

A MANUAL FOR ACTION

@Chapter G-3

Prevention

Pre-Publication Version

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Chapter G-3

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This is a pre-publication version of Chapter G-3 of the Amnesty International report "*Disappearances and Political Killings: Human Rights Crisis of the 1990s - A Manual for Action*."

Chapter G-3

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)ⁱ

"Disappearances" and extrajudicial executions violate fundamental human rights. The duty to prevent them is a consequence of the duty of governments to respect and ensure human rights to everyone within their jurisdiction, as set forth in Article 2 of the International Covenant on Civil and Political Rightsⁱⁱ. This duty of prevention is set forth in the leading UN instruments on "disappearances" and extrajudicial executions - the **Declaration on the Protection of All Persons from Enforced Disappearance** ("Declaration on Disappearances") (Article 1) and the **Principles on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions** ("Principles on Extra-Legal, Arbitrary and Summary Executions") (principles 1-8) respectively. It is reinforced by judgments and decisions of the Inter-American Court of Human Rights and the Human Rights Committee set up under the International Covenant on Civil and Political Rights.ⁱⁱⁱ

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. These duties are incumbent both on the state and on its officials.^{iv}

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International human rights instruments establish that "disappearances" and extrajudicial executions must be prohibited at all times. It follows that the essential safeguards for their prevention, such as *habeas corpus* or other judicial remedies to locate prisoners and ensure their safety, also must not be suspended under any circumstances, including states of war or other public emergency.^y Without the essential safeguards in place, prohibition will be largely a dead letter.

In an effort to call attention to the official steps needed to end "disappearances" and extrajudicial executions worldwide, Amnesty International has developed **14-Point Programs for the Prevention of "Disappearances" and Extrajudicial Executions**. Most of the measures in these program have already been agreed by the world's governments and incorporated in UN instruments, while others are measures which Amnesty International from its experience believes would be effective.

The relevant points from the two programs are cited in this and the following chapters. These points can serve as tests of governmental behaviour - and good will. The extent to which they are implemented is an indication of a government's commitment to end "disappearances" and extrajudicial executions at home and abroad. That commitment should be demonstrated in each country by the adoption of a comprehensive program for the prevention of "disappearances" and extrajudicial executions, with clear goals and timetables.

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.

Where there are strong allegations that "disappearances" or extrajudicial executions have been perpetrated, the highest authorities should clearly and publicly declare their opposition to these practices. If people have been killed by the security forces in disputed circumstances, the highest authorities should make clear that any unlawful and arbitrary killings will not be tolerated. Such statements should be aimed at deterring any member of the security forces from committing a "disappearance" or an extrajudicial execution. Conversely, a public statement which appears to instigate or condone deliberate and unlawful killings by members of the security forces may encourage further such killings. If this happens, the author of the statement will share the responsibility for the killings.

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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

Governments should ensure that the commission of a "disappearance" or an extrajudicial execution is a criminal offence, punishable by sanctions commensurate with the gravity of the practice.

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

The responsibility of governments to prohibit "disappearances" and extrajudicial executions by law is recognized in international instruments. The UN Declaration on Disappearances (Article 4) and the UN Principles on Extra-Legal, Arbitrary and Summary Executions (principle 1) provide that "disappearances" and extrajudicial executions shall be recognized as offences under the criminal law, punishable by appropriate penalties which take into account the seriousness of such offences.

As stated in Chapter G-2, "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.

Several countries recently have explicitly prohibited "disappearances" or extrajudicial executions under their constitutions or have established them as specific offences in their penal codes, or are considering doing so.^{vi} Such prohibitions can be the occasion for designating "disappearances" and extrajudicial executions as crimes against humanity, entailing the legal consequences of universality of jurisdiction, no statute of limitations and no defence of superior orders (see Chapter G-2, section 5).

4. 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" and extrajudicial executions.

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

Officials in charge of the security forces have the power and the consequent duty to prevent "disappearances" and extrajudicial executions. They must carry out this duty through the means by which their authority is normally exercised: 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

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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

Members of the security forces should be instructed that they have the right and duty to refuse to obey any order to participate in a "disappearance" or an extrajudicial execution.

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

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 (see Chapter G-5, section 5).

In recent years the right and duty to disobey an order to participate in "disappearances" and extrajudicial executions has begun to be incorporated in international instruments. The UN Declaration on Disappearances (Article 6) and the UN Principles on Extra-Legal, Arbitrary and Summary Executions (principle 3) recognize this right and duty. Further, the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials protect the right to disobey by stating that no criminal or disciplinary sanction should be imposed on law enforcement officials who, in compliance with the Basic Principles and the Code of Conduct for Law Enforcement Officials, refuse to carry out an order to use force and firearms.^{vii}

Now that governments have incorporated the right and duty to disobey orders to commit "disappearances" and extrajudicial executions in international instruments, they need to make this right and duty effective nationally. The right and duty to disobey needs to be made known to soldiers, police officers and their superiors. The *duty* to disobey needs to be made a practical possibility through the establishment of the necessary institutional means to protect the *right* to disobey.

6. Restraints on lethal 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."
- Amnesty International 14-Point Program for the Prevention of Extrajudicial Executions

As described in Chapter G-2, 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 ("Basic Principles"). These instruments establish that force should be used only when strictly necessary, that the use of force should not be disproportionate to the legitimate objective to be achieved, and that firearms should not be used except as an extreme measure in a restricted range of situations.

The adoption of these two instruments implies that they should be implemented. 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.^{viii} The texts of the relevant standards should be made available to all law enforcement officials, and their provisions should be made known through training.^{ix}
- The laws and regulations must cover all officials who perform law enforcement functions - prison guards and military police as well as the regular police.^x
- 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.^{xi}
- Law enforcement agencies should be subject to public scrutiny by the judiciary, a review board, or some other independent agency.^{xii} People affected by the use of force and firearms by law enforcement officials should be able to have recourse to a judicial authority.^{xiii}

The use of firearms needs to be surrounded by special safeguards, as established in the Basic Principles. They include the following:

- Official guidelines should regulate the storage and issuing of firearms, so as to ensure that law enforcement officials are accountable for the firearms and ammunition issued to them (principle 11 (d)).
- The guidelines should specify the circumstances under which law enforcement officials are authorized to carry firearms and the types of firearms and ammunition permitted (principle 11 (a)).
- Wherever possible, law enforcement officials should "... identify themselves as such and give a clear warning of their intent to use firearms, with sufficient time for the warning to be observed..." (principle 10).
- Governments should establish a system of reporting to be followed whenever law enforcement officials use firearms in the performance of their duty. If death or serious injury results from the use of force or firearms, a detailed report should be sent promptly to the administrative and judicial authorities responsible for control and review of the forces concerned (principles 11 (f), 22).

7. Disbanding "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 participated in the perpetration of "disappearances" or extrajudicial executions should be brought to justice.

- From Amnesty International's 14-Point Program for the Prevention of Extrajudicial Executions (adapted)

Groups carrying out "disappearances" and extrajudicial executions exist in various forms. In some places they are "death squads", composed for example of off-duty police or military officers. Sometimes they are criminal gangs or private armies which are not part of the security forces but operate with official acquiescence. These groups are manifestly illegal and harmful. They must be prohibited and disbanded.

Sometimes "disappearances" and killings are carried out by paramilitary forces which are legally constituted but operate outside the official chain of command. Such arrangements may suit the purposes of military commanders who use the paramilitaries to do their dirty work and then disclaim responsibility. Here the authorities must make a clear choice. 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.^{xiv}

Other "disappearances" and extrajudicial executions are perpetrated by groups of on-duty officers belonging to regularly constituted police or military agencies, but are passed off as the work of "death squads" outside official control. These officers should be brought to justice. If "disappearances" and extrajudicial executions have become pervasive within an established agency of the security forces, there will be a strong case for disbanding the agency itself, as such pervasive lawless behaviour entails a serious institutional corruption which cannot easily be cleared up by internal reforms.

The obligation to disband "death squads" and other groups carrying out "disappearances" and extrajudicial executions has not yet been explicitly incorporated in international human rights instruments. However, UN bodies have recently begun making this demand for specific countries. For example, the UN Working Group on Enforced or Involuntary Disappearances ("Working Group on Disappearances") noted in its report on its 1990 visit to the **Philippines** that "disappearances" were being perpetrated by - among other agencies - the official paramilitary Citizen Armed Force Geographical Unit (CAFGU), as well as by so-called vigilante groups and civilian volunteer groups backed by military forces. In its recommendations to the Philippine Government the Working Group wrote: "From many quarters ... it has been recommended that the CAFGUs and similar outfits should be disbanded. That would be the Group's preferred option as well. In any event, their deployment should be restricted to defensive action under the continuous supervision of army personnel; strict discipline should be enforced".^{xv}

The disbanding of "death squads" and security force agencies responsible for "disappearances" and extrajudicial executions has recently been contemplated or attempted in a number of countries.

- In the **Philippines**, for example, the government in July 1993 began a drive to disband private armies, some 500 of which were believed to exist in the country. Some of these are under the command of local officials and a number of them have been implicated in political killings and "disappearances". However, the program to disband private armies leaves intact the official paramilitary apparatus, CAFGU, which

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has some 80,000 men under arms. Amnesty International has repeatedly called for the disbanding of CAFGU and vigilante groups, which have committed a growing proportion of political killings and "disappearances" in recent years.

- In **South Africa**, following the statement by a police investigator in January 1990 that the Civil Cooperation Bureau (CCB), a covert unit under the responsibility of the South African Directorate of Military Intelligence, had been responsible for two political killings in 1989 and other human rights violations, the CCB was formally disbanded in July 1990. (However, later evidence indicated that some former members of the CCB had left South Africa after receiving large redundancy and pension payments from the government, and that other former CCB operatives were working for Military Intelligence or the Military's Special Forces.)^{xvi}

The most comprehensive plan yet for disbanding "death squads" and security force units with bad human rights records is in the 1992 Peace Agreement 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.^{xvii} The Peace Agreement provided among other things for:

- dissolution of the National Guard, the Treasury Police and the military's intelligence apparatus, the National Intelligence Department, and their replacement by a new national civilian police force and an intelligence agency under direct civilian control. These agencies had been implicated in "disappearances" and killings on a massive scale throughout the 1980s;
- disbanding of civil defence units and proscription of any paramilitary forces;
- regulation of private security services, including a system for the public registration of their staff, weapons and offices, cancellation of licenses for private individuals to bear weapons that are for the exclusive use of the armed forces and the immediate recall of such weapons;
- purging of the armed forces, entailing the evaluation by an *ad hoc* commission of the past performance of each officer, including "his record of observance of the legal order, with particular emphasis on respect for human rights, both in his personal conduct and in the rigour with which he has ordered the redress and punishment of unlawful acts, excesses or human rights violations committed under his command, especially if there have been serious or systematic omissions in the latter respect".

The implementation of the El Salvador Peace Agreement is being monitored by the UN. As of the writing of this report, these objectives had only partly been met.^{xviii}

8. Protection against death threats

"Governments should ensure that anyone in danger of extrajudicial execution, including those who receive death threats, is effectively protected."
- Amnesty International 14-Point Program for the Prevention of Extrajudicial Executions

Often "death squads" or other groups acting with official involvement or acquiescence issue death threats

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against named individuals or groups. Some threats are made openly by security force agencies. The threats may be communicated in written messages or telephone calls; sometimes they appear as lists of names published in newspapers as a warning or an incitement to kill the people named. A threat may be meant initially to intimidate the victim into acting in a certain way or ceasing to carry out activities which are disliked by those who have issued the threat, but if the victim does not comply, there is a danger that the threat will be carried out.

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 official bodies are threatening to kill people, the authorities must ensure that these threats are not carried out.^{xix}

UN bodies have become increasingly concerned about death threats and other forms of intimidation against people involved in human rights matters.^{xx} In resolution 1991/70, adopted without a vote on 6 March 1991, the UN Commission on Human Rights urged governments to refrain from acts of intimidation or reprisal against individuals and groups who seek to co-operate with the UN and representatives of its human rights bodies, or to use UN human rights procedures. In 1992 the Commission on Human Rights reiterated its appeal, broadening its concern to include relatives of victims and lawyers.^{xxi}

In protecting a person who receives a death threat, the authorities should apprehend and bring to justice the people responsible for the threat and take any other measures necessary to ensure that the threat will not be carried out, including such measures as tracing threatening telephone calls. If the threatened person wishes, he or she should be provided with police protection until the threat is removed. However, some threatened people are reluctant to ask for police protection because they believe the police are behind the threat, or because the presence of police officers would hamper their work. If people who receive death threats believe they and their relatives will be safe only if they leave the area or the country, they should be given assistance to do so until they can safely return.

The authorities should also take steps to stop threats being made, by, for example, banning the publication or broadcasting of death threats.^{xxii}

National organizations have worked in various ways to protect people against death threats. In **Colombia**, for example, the lives and reputations of over 100 human rights workers, trade union and popular leaders were put at risk in July 1993 when the security forces reportedly gave a television station a list of some 150 individuals and institutions deemed by military intelligence to be collaborators or supporters of guerrilla groups. In response, lawyers from the *Comisión Andina de Juristas - sección Colombiana*, Andean Commission of Jurists - Colombian office, presented to the courts an *acción de tutela*, a procedure intended to protect the constitutional rights of individuals. The action requested a judge to prevent publication of the list by the television station or any other public media and to call on the Ministry of Defence and its dependencies to refrain from divulging any information claiming links between individuals or institutions and guerrilla organizations to the news media or to third parties. The action cited rulings of the Constitutional Court which made it clear that information compiled by military intelligence or in the hands of the security forces should not be divulged to the media or to third parties but could only be used by the security forces themselves and in accordance with the constitutional rights of the individuals concerned.

International organizations and UN mechanisms and monitoring operations also have developed methods to help protect people who are at risk of extrajudicial execution.

- As described in Chapter G-6, the UN **Working Group on Disappearances** and the UN **Special Rapporteur on extrajudicial, summary or arbitrary executions** have developed procedures for raising cases urgently with governments when they receive reports of intimidation or reprisals against victims' relatives, lawyers, and people who send the UN information or cooperate with UN human rights procedures.
- Through its **Urgent Action** technique, Amnesty International organizes the sending of thousands of appeals from around the world on behalf of people believed to be at risk of extrajudicial execution after receiving death threats. For example, in the first five months of 1993 Amnesty International issued 22 Urgent Action requests for appeals in response to death threats in eight countries. Several other organizations operate similar techniques.
- People from several organizations have traveled to the countries concerned in order personally to **accompany human rights activists** who receive death threats. The hope is that the people behind the threat will not wish to risk the international embarrassment which would follow if nationals of another country witness a killing or are themselves killed.^{xxiii}
- The UN human rights monitoring mission in **El Salvador** has raised individual cases with the authorities. In one such case, a 21-year-old woman complained to the UN mission that her life had been threatened by members of a local military detachment in civilian clothes who accused her of belonging to the opposition FMLN. The UN mission transmitted the complaint to the headquarters of the military detachment and were informed in writing that three soldiers would be discharged; it was later confirmed that they had been. Another complaint concerned a soldier who had threatened a community repeatedly, sometimes discharging his service firearm and displaying hand grenades which he said he would throw at the local residents. In response, the military authorities informed the UN mission that the soldier would be punished for unauthorized use of his firearm, and it was later confirmed that he was. However, in other cases raised by the mission the authorities failed to take action, while in still other cases people who received death threats were too frightened to lodge a complaint with the authorities or to name the authors of the threat.^{xxiv}

9. Safeguards on the arrest, detention and release of prisoners^{xxv}

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.

Concern for the well-being of prisoners is reflected in the earliest human rights instruments adopted by the UN. Many of the provisions of the Universal Declaration of Human Rights (1948) concern actual or potential prisoners. Among them are its provisions for the right to life, the right to liberty and security of person, the right not to be subjected to arbitrary arrest or detention, the right not to be subjected to torture or cruel, inhuman or degrading treatment, and the right to a fair trial.

Since 1948 the UN has adopted two comprehensive sets of standards on the treatment of prisoners:

- The **Standard Minimum Rules for the Treatment of Prisoners** (cited below as the "Standard

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Minimum Rules"), adopted by the First UN Congress on the Prevention of Crime and the Treatment of Offenders in 1953 and endorsed by the UN Economic and Social Council in 1957 and, as amended, in 1977. The Standard Minimum Rules deal mainly with matters such as food, clothing, accommodation, exercise, medical treatment, punishment and discipline, but they also contain several important provisions for the prevention of "disappearances" and extrajudicial executions. Most of the standards set forth in this instrument apply not only to convicted prisoners and prisoners arrested on a criminal charge but to people arrested or imprisoned without charge, as stated in its rule 95.^{xxvi}

- **The Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment** ("Body of Principles"), adopted by the UN General Assembly in 1988. This instrument contains many important provisions designed to protect prisoners against human rights violations.^{xxvii}

Safeguards for prisoners, many of them similar to the provisions of the Body of Principles, are contained also in the UN Declaration on Disappearances and the UN Principles on Extra-Legal, Arbitrary and Summary Executions, as well as the UN **Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment**, adopted in 1975, and the UN **Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment**, adopted in 1984.

The safeguards described below are drawn from UN instruments and from other measures which Amnesty International has found to be important. They are meant to protect all prisoners from the moment they are apprehended to the moment of release and beyond.

10. Safeguards at arrest

"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."

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

The first stage of a "disappearance" and the first stage of most extrajudicial executions consists of a person being apprehended by agents of the state. This action is often done in an irregular way. For instance, people may be detained without proper cause; officers carrying out an arrest may fail to identify themselves; or victims may be abducted by irregular units linked to the security forces, or by others acting with official support or acquiescence.

Irregular arrest facilitates the perpetration of "disappearances" and extrajudicial executions. It helps the authorities to avoid official responsibility for the welfare of the detained person. It helps to hide the facts and thus evade accountability for the crimes. If correct procedures for arrest are followed, the likelihood that a prisoner will "disappear" or be killed is greatly diminished.

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,^{xxviii} as well as other human rights which may be threatened if a person is arbitrarily deprived of liberty.

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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).^{xxix}
- 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

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.

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

The concealment of prisoners, giving rise to "disappearance", needs to be suppressed by establishing a requirement that the authorities must make accurate information about arrest and place of detention available promptly to prisoners' relatives and others concerned. Prisoners themselves must also have the right to notify relatives promptly of their whereabouts.

Both of these principles are recognized in international human rights instruments. The UN Declaration on Disappearances (Article 10) establishes that accurate information on the detention of all persons deprived of liberty "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." The right of prisoners to notify family members or others promptly of their arrest, transfer, and place of detention is set forth in the UN Body of Principles (Principle 16),^{xxx} while the Standard Minimum Rules for the Treatment of Prisoners (rule 92) state that "(a)n untried prisoner shall be allowed to inform immediately his family of his detention".

The implementation of these principles involves several things:

- 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, who 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"

As stated in the preceding section of this chapter, accurate information about the arrest and whereabouts of prisoners should be made available promptly to relatives, lawyers and the courts, but often it is not. An essential safeguard against "disappearances" is for relatives and others acting on a prisoner's behalf to be able to invoke the power of the courts to locate the prisoner and ensure his or her safety.

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 such as the rights to life and physical integrity.

Over the years, relatives of the "disappeared" in different countries have filed petitions for *habeas corpus* or *amparo* in thousands of cases. This experience has led to an appreciation of the importance of *habeas corpus* and similar remedies as safeguards against "disappearances", torture and extrajudicial executions. As the Inter-American Commission on Human Rights observed in 1986, "the immediate aim of this remedy [*habeas corpus*] is to bring the detainee before a judge, thus enabling the latter to verify whether the detainee is still alive and whether or not he or she has been subjected to torture or physical or psychological abuse. *The importance of this remedy cannot be overstated*, considering that the right to humane treatment recognized in Article 5 of the American Convention on Human Rights is one of the rights that may not be suspended under any circumstances."^{xxxix} (emphasis added) Similarly, the Inter-American Court of Human Rights has referred to the "vital role" of *habeas corpus* in preventing "disappearances", torture and extrajudicial executions.^{xxxix}

The principle of being able to challenge the legality of a detention in the courts has long been recognized in international and regional human rights instruments.^{xxxix} More recently, the right to an effective judicial remedy to locate and establish the well-being of prisoners has been recognized under the UN Declaration on Disappearances. Article 9 of the Declaration speaks of "(t)he 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". This right "is required to prevent enforced disappearances under all circumstances", including states of war or other public emergency. Moreover, in such proceedings there must be "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."

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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". These petitions have helped to document the extent of "disappearances" in different countries. In the vast majority of cases, however, the petitions have been unsuccessful in finding the "disappeared", owing to such factors as official obstruction or failure to respond to the courts' requests; intimidation of petitioners, lawyers and judges; weakness or lack of independence of the judiciary.^{xxxiv}

The provision of an effective judicial remedy for locating and protecting prisoners involves several things, including the following:

- This remedy needs to be established in the laws of all countries where it does not yet exist.
- In accordance with Article 9 of the UN Declaration on Disappearances, the exercise of this remedy must not be suspended under any circumstances.^{xxxv} (In practice, governments often suspend the right of *habeas corpus* during emergencies.)
- Relatives of arrested people need to be genuinely able to use the remedy. They must have easy access to the courts, where they must be able to file petitions quickly and without intimidation or undue or prohibitive expense. The process of applying for the remedy should be as simple as possible. Relatives and others having knowledge of a "disappearance" should be able to apply directly to the courts without having to use the services of a lawyer.
- Because of the risk to prisoners' lives and well-being, the courts must act immediately on receiving a petition. Moreover, if the courts themselves learn that a person may have "disappeared", they must be able to act even if they have not received a petition on the prisoner's behalf. They must have the power to visit any place of detention without prior notice and without any delay, the power to inspect records and the power to summon witnesses and to compel testimony.
- The courts must have the power to determine the legality of a detention, to establish the whereabouts of prisoners, to ensure their safety, and to order the release of anyone arbitrarily detained. They must have the power to compel officials to comply with their orders; and the authorities must ensure that officials do in fact comply with such orders.
- In situations where the courts cannot act effectively in the face of widespread "disappearances", special arrangements should be made to enable relatives to seek help quickly on behalf of "disappeared" prisoners. An extraordinary body should be set up for this purpose, consisting of independent and respected national and/or international figures or members of international organizations. This body should be able to act quickly on the basis of complaints from relatives and other reports of "disappearances". The authorities should cooperate fully.

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*, in writing, by telephone or orally, by the victim or any other person.

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- There is no need for legal representation, and there are no formalities of any kind.
- *Habeas corpus* proceedings may also be instituted automatically by any court which has information that a person has been unlawfully arrested, detained, or in any way deprived or threatened with loss of freedom or 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 any 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 or 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.^{xxxvi}

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.^{xxxvii} A recent study on the operation of *habeas corpus* in Guatemala reached similar conclusions.^{xxxviii}

Like other safeguards for the prevention of "disappearances" and extrajudicial executions, *habeas corpus* and similar remedies depend for their effectiveness both on their technical construction, and on the will of the authorities to ensure that they are carried out. As the Working Group on Disappearances observed in

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its 1990 report (paragraph 346), "*Habeas corpus ... is potentially one of the most powerful legal tools for unearthing the fate or whereabouts of a disappeared person. The most sophisticated rules governing this institution, however, are rendered inoperative in a situation where cooperation stops at the barracks gate.*"

13. 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... No one should be secretly detained."
- Amnesty International 14-Point Program for the Prevention of "Disappearances"

One way in which members of the security forces conceal the whereabouts of the "disappeared" is to hold them in private homes or apartments, "safe houses", or other locations which are not authorized places of detention. In other cases prisoners are held secretly in official places of detention, sometimes in separate sections or buildings which are off limits to ordinary security forces personnel. All such practices of secret detention must be stopped.

The requirement that prisoners must be held only in officially recognized places of detention is established in the UN Declaration on Disappearances (Article 10) and the UN Principles on Extra-Legal, Arbitrary and Summary Executions (principle 7). This requirement should be set forth in national laws. Any infractions should be punished by appropriate sanctions.

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

"Up-to-date registers of all prisoners should be maintained in every place of detention and centrally."
- Amnesty International 14-Point Program for the Prevention of "Disappearances"

Accurate record-keeping is an essential element of the proper administration of prisons and other places of detention. Official records establish where prisoners are held and who is responsible for them. The existence of official records 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 names and identities of relatives and others who have been informed about the 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 maintenance of records on the admission and release of prisoners is required as an international standard for the administration of places of detention under the UN Standard Minimum Rules as well as the UN Body of Principles.^{xxxix} 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.

The requirement of keeping accurate and complete records and making the information available in conformity with UN standards should be incorporated in national laws and regulations. Any breach of these requirements should be punished by appropriate sanctions.

15. Bringing prisoners before a judicial authority

All prisoners should be brought before a judicial authority without delay after being taken into custody.

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

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. It is a safeguard against torture: a judge can see if there are any noticeable signs of ill-treatment and can hear any allegations by the prisoner. It is a means of providing independent supervision of detention through judicial control, removing the absolute power which the officials holding a prisoner might otherwise be able to wield.

The requirement of bringing anyone arrested or detained on a criminal charge promptly before a judicial authority is established in the International Covenant on Civil and Political Rights (Article 9 (3)). In the UN Declaration on Disappearances (Article 10) the requirement is extended to cover all persons deprived of liberty, whether or not they have been arrested or detained on a criminal charge.^{xi}

The word "promptly" is used in the International Covenant and the Declaration on Disappearances. Amnesty International uses the term "without delay" to emphasize that each prisoner should be brought before a judicial authority as soon as possible. Any delay can be an opportunity for a prisoner to be tortured or killed.

16. Access to prisoners

Relatives, lawyers and doctors should have prompt and regular access to prisoners.
- From Amnesty International's 14-Point Programs for the Prevention of "Disappearances" and Extrajudicial Executions

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. By visiting prisoners, relatives and others concerned about their well-being can see where they are held, and in what condition, so as to be able to intervene on their behalf if they are being ill-treated. Once a prisoner is seen by concerned people from outside, there is less chance that he or she will "disappear" or be killed.

The right of access to prisoners has been recognized in international human rights instruments. Principle 19 of the Body of Principles states: "A detained or imprisoned person shall have the right to be visited by ... in particular, members of his family...". Rules 37 and 92 of the Standard Minimum Rules recognize the right of prisoners to receive visits from their family and friends. Rules 37 and 92 apply to all categories of prisoners including people imprisoned without charge.

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.^{xli}
- They should be able to make further visits **regularly**, and preferably whenever they request, to verify the prisoner's continued well-being.^{xlii}
- 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.^{xliii}
- 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.^{xliv} 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.^{xlv}

17. Visits of inspection

There should be regular, independent, unannounced and unrestricted visits of inspection to all places of detention.

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

Visits of inspection are a valuable means of checking the condition of prisoners and ascertaining that places of detention are being run properly. They are an important safeguard against torture, "disappearance" and extrajudicial execution.

National systems of prison inspection exist in a number of countries, while internationally the International Committee of the Red Cross (ICRC) has visited prisoners of war and civilian detainees in armed conflicts and situations of internal disturbance and tension. The practice of visits of inspection has now been accepted by the UN as a requirement for the protection of human rights. Principle 29 of the Body of Principles provides that places of detention must be visited regularly by "qualified and experienced persons". These persons should be appointed by, and responsible to, an authority "distinct from the authority directly in charge" of administration of the place of detention.^{xlvi} More specifically, the UN Principles on Extra-Legal, Arbitrary and Summary Executions (principle 7) provide for visits of inspection, including unannounced visits, as a safeguard against extrajudicial executions.

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.^{xlvii}

18. Other safeguards during detention

Other safeguards established under international human rights instruments also help to protect prisoners from the risk of "disappearance" or extrajudicial execution. 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.^{xlviii}
- Prisoners and their lawyers should be promptly informed of any order of detention and the reasons for it.^{xlix}
- The treatment of prisoners should conform to the standards laid down in the UN Standard Minimum Rules.

19. Safeguards at release

"Prisoners should be released in a way that allows reliable verification of their release and ensures their safety."
- Amnesty International 14-Point Program for the Prevention of "Disappearances"

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 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 International Committee of the Red Cross (ICRC), who can then accompany the released person to a safe place.¹
- A certificate of release should be issued in duplicate, signed by the releasing authority and the person to whom release is made, 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.

An example of a detailed set of safeguards for the release of prisoners is the Memorandum of Agreement in the **Philippines** among the Philippines Commission on Human Rights, the Department of National Defense, the Department of Interior and Local Government and the Department of Justice. The memorandum was adopted in 1991 in response to information received by the UN Working Group on

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Disappearances indicating that people supposedly released by the authorities had actually "disappeared". The memorandum specified that all releases were to be witnessed by a relative, the prisoner's lawyer, a representative of the Philippines Commission on Human Rights or any other person chosen by the prisoner, and in addition by the local fiscal or prosecutor or a representative of the Commission on Human Rights, "the parish priest, pastor, imam or religious leader, or by a well-known and respected member of the community". Releases were to be documented: "All releases must be evidenced by a document that must state clearly the name of the detainee/accused/person taken into custody, the exact date and time of his release, the printed name and signature of the person or persons receiving his living body indicating relationship, if any, to the detainee/accused/person taken into custody, and the independent witness, and the custodian, all of whom must sign over the printed names in the document, with specific designation of their position, rank, unit or office, as the case may be."

The memorandum further established that "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." It stated that failure to observe the established procedures for release "shall make the warden, commander or unit head, together with the custodians and captors or persons concerned" liable to administrative or penal sanctions.^{li}

20. Dissemination

The UN Declaration on Disappearances, the Principles on Extra-Legal, Arbitrary and Summary Executions and other instruments for the protection of human rights adopted by the UN and regional inter-governmental organizations need to be made known if they are to be effective. 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.

In adopting human rights instruments and in returning to the subject in later years, the UN has often expressed the wish that these instruments should be disseminated. Thus in the resolution adopting the Principles on Extra-Legal, Arbitrary and Summary Executions, the UN Economic and Social Council recommended that the Principles "shall be brought to the attention of law enforcement and criminal justice officials, military personnel, lawyers, members of the executive and legislative bodies of the Government and the public in general", while the preambular paragraphs of the Declaration on Disappearances contain a statement in which the UN General Assembly "(u)rges that all efforts be made

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so that this Declaration becomes generally known and respected".

The UN has done some work to publicize information on human rights, but much more effort is needed to distribute key information effectively to officials and the public.

- The UN has been conducting a World Public Information Campaign for Human Rights since 1988. A series of free brochures on human rights issues has been produced in the UN *Human Rights Fact Sheets* series as part of the Campaign. Two of the fact sheets, on "disappearances" and extrajudicial executions, describe the corresponding UN mechanisms - the Working Group on Disappearances and the Special Rapporteur on extrajudicial, summary or arbitrary executions. More effort is needed to ensure that the fact sheets reach the people who need them.^{lii}
- Huge numbers of copies of the Universal Declaration of Human Rights in many languages have been printed for free distribution. The International Covenant on Civil and Political Rights, the Code of Conduct for Law Enforcement Officials and the Body of Principles are also available in free leaflets. Other key instruments also should be issued as free leaflets.
- Other key resources such as the UN *Manual on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions* need to be more widely available. Arrangements should be made to distribute them in other languages in addition to the official UN languages.
- UN Information Centres are now located in the capitals of over 60 countries.^{liii} These centres should conduct programs to disseminate free copies of UN human rights instruments, including those cited above. They should keep important UN documents on human rights and make them readily available for public consultation. These include the annual reports of the Working Group on Disappearances and the Special Rapporteur on extrajudicial, summary or arbitrary executions, the annual reports of the Commission on Human Rights, the Sub-Commission on Prevention of Discrimination and Protection of Minorities and the Human Rights Committee and the Resolutions and Decisions of the General Assembly and the Economic and Social Council.

Even if all this is done, the UN will never have the capacity to disseminate human rights instruments in the multitude of languages spoken around the world. Governments also should disseminate human rights instruments and information as part of their responsibility for promoting human rights.

The importance of governmental action was recognized by the UN Commission on Human Rights in 1992 when it adopted a resolution stating that the Commission "(e)ncourages all Members States ... to accord priority to the dissemination, *in their respective national and local languages*, of the Universal Declaration of Human Rights, the International Covenants on Human Rights and other international instruments, and to provide information and education on the *practical ways in which the rights and freedoms enjoyed under these instruments can be exercised*" (emphases added). The resolution also recognized "the valuable role that non-governmental organizations can play" in improving public knowledge about human rights.^{liv}

21. Training

"As it is in the minds of people that human rights violations are conceived, it is in their minds, and hearts, that consciousness about the inherent dignity of the human person must be instilled. Failing that, it will be quite impossible to end disappearances for all time."

-UN Working Group on Enforced or Involuntary Disappearances^{lv}

The prohibition of "disappearances" and extrajudicial executions should be reflected in the training of members of the security forces and in the instructions issued to them.
- From Amnesty International's 14-Point Programs for the Prevention of "Disappearances" and Extrajudicial Executions

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,^{lvi} 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.

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Notes

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List of UN document numbers

In the notes to this report, certain UN documents are cited as shown below.

The annual reports of the *Special Rapporteur on summary or arbitrary executions* (SRSAE, 1984-1992), the *Special Rapporteur on extrajudicial, summary or arbitrary executions* (SRESAE, from 1993) and the *Working Group on Enforced or Involuntary Disappearances* (WGEID) are issued as documents for the corresponding sessions of the UN Commission on Human Rights, as follows:

Report UN document No. Date

SRSAE, 1990 report E/CN.4/1990/2223 January 1990
SRESAE, 1993 report E/CN.4/1993/4623 December 1992
WGEID, 1981 report E/CN.4/143526 January 1981
WGEID, 1990 report E/CN.4/1990/1324 January 1990
WGEID, 1992 report E/CN.4/1992/1830 December 1991
WGEID, 1993 report E/CN.4/1993/257 January 1993

The reports on *country visits* by the Working Group on Enforced or Involuntary Disappearances are issued separately as annexes to the Working Group's annual reports, as follows:

Country Date of visit UN document No. Date

Guatemala 5-9 October 1987 E/CN.4/1988/19/Add.121 December 1987
Philippines 27 Aug.-7 Sept. 1990 E/CN.4/1991/20/Add.110 January 1991
Sri Lanka 7-18 October 1991 E/CN.4/1992/18/Add.18 January 1992
Sri Lanka 5-15 October 1992 E/CN.4/1993/25/Add.130 December 1992

The annual reports of the *Human Rights Committee* set up under the International Covenant on Civil and Political Rights are published each year as Supplement No. 40 to the Official Records of the UN General Assembly, as follows:

Year UN document No.

1982 A/37/40
1983 A/38/40
1985 A/40/40
1988 A/43/40

The reports of the *Director of the ONUSAL Human Rights Division*, the UN human rights monitoring operation in El Salvador, are issued as joint documents of the UN General Assembly (A/-) and the UN Security Council (S/-), as follows:

Report UN document No. Date

First report A/45/1055 and S/2303716 September 1991
Second report A/46/658 and S/2322215 November 1991
Third report A/46/876 and S/2358019 February 1992
Fifth report A/46/955 and S/2437512 August 1992

Prevention

Sixth report A/47/912 and S/255215 April 1993

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

iiSee Chapter G-2, section 8.

iiiIn the case of Manfredo Velásquez Rodríguez, who "disappeared" in Honduras in 1981, the Inter-American Court of Human Rights ruled that the right to physical integrity and the right of detainees to treatment respectful of their human dignity as provided under the American Convention on Human Rights "require States Parties [to the Convention] to take reasonable steps to prevent situations which are truly harmful to the rights protected" (paragraph 187). Similarly, the right to life and the right not to have one's life taken arbitrarily "imply an obligation on the part of States Parties to take reasonable steps to prevent situations that could result in the violation of that right" (paragraph 188). The *Velásquez Rodríguez* judgment is discussed further in Chapter G-5.

The obligation to prevent "disappearances" and extrajudicial executions is implied also in a decision of the Human Rights Committee set up under the International Covenant on Civil and Political Rights in the case of *Herrera Rubio v. Colombia*. The decision concerned José Herrera and Emma Rubio de Herrera, who "disappeared" in Colombia in March 1981 and were killed soon after. The case was brought by their son. The Committee found that Colombia had violated Article 6 of the International Covenant because it had not taken appropriate measures to prevent the "disappearance" and killing of the two and had not conducted an effective investigation into the responsibility for the killings. (Human Rights Committee, 1988 report, Chapter VII.B)

ivThe 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. See Chapter G-5, section 5.

vSee below, section 12. Several of the safeguards described in this chapter have been included as rights which should never be suspended, even in time of emergency, in the initial draft Guidelines for the Development of Legislation on States of Emergency prepared by the Special Rapporteur on states of emergency of the UN Sub-Commission on Prevention of Discrimination and Protection of Minorities. In his fourth report, the Special Rapporteur proposed that such legislation

"should provide that nothing done pursuant to a state of emergency may affect the following rights:

(a) No person deprived of liberty for whatever reason shall be denied of the following:

- (i) the right to be informed of the reasons for detention promptly and in writing, in a language which he or she understands;
- (ii) the right to have his or her family informed of the detention without delay, and to receive visits;
- (iii) the right of prompt and regular access to a lawyer of his or her choice;
- (iv) the right to challenge the legality of the deprivation of liberty before a court of law by *habeas corpus* or other prompt and effective remedy."

(UN Commission on Human Rights, Sub-Commission on Prevention of Discrimination and Protection of Minorities, 43rd session, *The administration of justice and the human rights of detainees: Question of human rights and states of emergency; Fourth annual report...presented by Mr Leandro Despouy, Special Rapporteur...*, UN document No. E/CN.4/Sub.2/1991/28, 24 June 1991, Annex I, article 8)

viFor example:

Colombia: "No one shall be subjected to enforced disappearance, torture, or cruel, inhuman or degrading treatment or punishment." - Constitution of Colombia, 1991, Article 12. [Spanish original: "Nadie será sometido a desaparición forzada, a torturas ni a tratos o penas crueles, inhumanos or degradantes."]

Paraguay: "No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. Genocide, torture, enforced disappearance and politically motivated kidnapping and murder are not subject to a statute of limitations." - Constitution of Paraguay, 1992, Article 5. [Spanish original: "Nadie será sometido a torturas ni a penas o tratos crueles, inhumanos or degradantes. El genocidio y la tortura, así como la desaparición forzosa de personas, el secuestro y el homicidio por razones políticas son imprescriptibles."]

Peru: "The civil servant or public official who deprives someone of their liberty, ordering or carrying out actions that result in their duly proven disappearance, will be punished with imprisonment of no less than 15 years and rendered unfit for duty" (Decree Law No. 25592, which was published on 2 July 1992 and came into effect on the same day). [Spanish original: "El funcionario o servidor público que prive a una persona de su libertad, ordenando o ejecutando acciones que tengan por resultado su debidamente comprobada desaparición, será reprimido con pena privativa de libertad no menor de 15 años e inhabilitación, conforme al Artículo 36, incisos 10 y 20 del Código Penal"]

viiBasic Principles, principle 25. For the text of the Basic Principles, see Chapter G-2, Appendix 5.

viiiPrinciple 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."

ix 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.

x 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."

xi 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. ..."

xii 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".

xiii Basic Principles, principle 23.

xiv 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.

xv WGEID, *Report on the visit to the Philippines...*, 1991, paragraph 168.

xvi For further details see Amnesty International, *South Africa; State of Fear; Security Force Complicity in Torture and Political Killings, 1990-1992*, Amnesty International Publications, London, 1992, pages 12-17.

xviiPeace Agreement, signed in Mexico City on 16 January 1992, in United Nations, *El Salvador Agreements: The Path to Peace*, United Nations, New York, Department of Public Information, DPI/1208, 1992.

xviiiSee Hemisphere Initiatives, *Endgame; A Progress Report on Implementation of the Salvadorean Peace Accords; December 3, 1992*, Hemisphere Initiatives, Cambridge, Massachusetts, USA, 1992.

xixThe 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)

xxIn his 1990 report the UN Special Rapporteur on summary or arbitrary executions referred to the practice of death threats and subsequent assassinations as a "heinous practice of terror" (paragraph 448) and took note of "a particularly alarming trend" of death threats directed in particular against human rights defenders and people working for social and criminal justice in a society (paragraph 472). He reported that he had received more appeals than in previous years for urgent intervention in cases of death threats (paragraph 447):

"According to the appeals made to the Special Rapporteur, in most cases the authorities had taken no effective measures to protect those who had received death threats or to undertake appropriate investigations. The appeals also indicated the involvement of the Government concerned, either directly, by orders given to officials or the employment of individuals or groups under the control of the Government, or indirectly by connivance in or collusion with such death threats by private individuals or groups. Absence of official investigation, prosecution and/or punishment of those responsible for such threats was the rule rather than the exception." (paragraph 453)

xxiIn resolution 1992/59, adopted without a vote on 3 March 1992, the Commission among other things:

"1. Urges Governments to refrain from all acts of intimidation or reprisal against:

(a) Those who seek to cooperate or have cooperated with representatives of United Nations human rights bodies, or who have provided testimony or information to them;

(b) Those who avail or have availed themselves of procedures established under United Nations auspices for the protection of human rights and fundamental freedoms and all those who have provided legal assistance to them for this purpose;

(c) Those who submit or have submitted communications under procedures established by human rights instruments;

(d) Those who are relatives of victims of human rights violations;

"2. Requests all representatives of United Nations human rights bodies as well as treaty bodies monitoring the observance of human rights to continue to take urgent steps, in conformity with their mandates, to help prevent the hampering of access to United Nations human rights procedures in any way;

"3. Also requests all representatives of United Nations human rights bodies, as well as treaty bodies monitoring the observance of human rights, to continue to take urgent steps, in conformity with their mandates, to help prevent the occurrence of such intimidation and reprisals..."

xxiiIn his fifth report the Director of the UN human rights monitoring mission in El Salvador, where armed forces "hit lists" have appeared in the news media, recommended that the authorities should "adopt regulations prohibiting the radio or television broadcasting of threatening messages, without prejudicing the liberty of the press." (paragraph 94)

xxiiiSee Laurie S. Wiseberg, "Protecting Human Rights Activists and NGOs: What More Can Be Done?", *Human Rights Quarterly*, vol. 13, No. 4, November 1991, pages 525-544.

xxivThird report of the Director of the UN human rights monitoring mission in El Salvador, paragraphs 15-27, 35-36.

xxvIn 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.

xxviThe text of the Standard Minimum Rules is reproduced in the UN publication *Human Rights; A Compilation of International Instruments*, cited in Chapter G-2.

xxviiThe text of the Body of Principles is reproduced in the *Amnesty International Report 1989*, Amnesty International Publications, London, 1989, Appendix IX.

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

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

xxx Principle 16 (1) of the Body of Principles provides:

"Promptly after arrest and after each transfer from one place of detention or imprisonment to another, a detained or imprisoned person shall be entitled to notify or to require the competent authority to notify members of his family or other appropriate persons of his choice of his arrest, detention or imprisonment or of the transfer and of the place where he is kept in custody."

Principle 16 also provides that detained foreigners may communicate with a consul or diplomatic mission of their country; refugees may communicate with the international organization which protects them; and the authorities must themselves make the notification if the prisoner is a juvenile or is incapable of understanding the right of notification.

Principle 16 (4) states: "Any notification referred to in this principle shall be made or permitted to be made without delay. The competent authority may however delay a notification for a reasonable period where exceptional needs of the investigation so require." Even in exceptional circumstances, however, "communication of the detained or imprisoned person with the outside world, and in particular his family or counsel, shall not be denied for more than a matter of days" (Principle 15).

XXXi The passage quoted is from the Inter-American Commission on Human Rights' request to the Inter-American Court of Human Rights for an advisory opinion on whether or not the remedy of *habeas corpus* as provided for under the American Convention on Human Rights could be suspended by states parties to the Convention. (Inter-American Court of Human Rights, Series A: Judgments and Opinions, No. 8, *Advisory Opinion OC-8/87 of January 30, 1987; Habeas Corpus in Emergency Situations...*; Organization of American States, Inter-American Court of Human Rights, Secretariat of the Court, San José, Costa Rica, 1987, paragraph 12)

XXXii The Inter-American Court stated that "*habeas corpus* performs a vital role in ensuring that a person's life and physical integrity are respected, in preventing his disappearance or the keeping of his whereabouts secret and in protecting him against torture or other cruel, inhumane, or degrading punishment or treatment." (*Ibid.*, paragraph 35)

XXXiii Article 9 (4) of the International Covenant on Civil and Political Rights provides that anyone deprived of liberty "by arrest or detention shall be entitled to take proceedings before a court", so that the court can decide on the lawfulness of the detention. The court must make its decision "without delay" and it must order the prisoner's release if the detention is not lawful. The European Convention on Human Rights and the American Convention on Human Rights contain similar provisions. (Nigel S. Rodley has pointed out that although the International Covenant refers only to proceedings being taken by a person who has been deprived of liberty, "no interpretation aimed at effectiveness would deny to others the power to initiate the proceedings on behalf of that person." Rodley, *The Treatment of Prisoners under International Law*, page 267)

XXXiv For early examples of the failure of *habeas corpus* or *amparo* in finding the "disappeared", see Amnesty International, '*Disappearances*'; *A Workbook*, pages 153-161.

XXXv The Inter-American Court of Human Rights also has stated that *habeas corpus* should never be suspended. In the advisory opinion of 30 January 1987 cited above, the Court referred to several articles of the American Convention on Human Rights: Article 7 (6), setting forth the right of *habeas corpus*; Article 25 (1), setting forth the right to judicial protection against human rights violations; and Article 27 (2), under which the right to juridical personality, the right to life and the prohibition of torture may never be suspended. The Court stated that "writs of *habeas corpus* and of *amparo* are among those judicial remedies that are essential for the protection of various rights whose derogation is prohibited by Article 27 (2) and that serve, moreover, to preserve legality in a democratic society" (paragraph 42). Its unanimous opinion was "That, given the provisions of Article 27 (2) of the American Convention on Human Rights, the legal remedies guaranteed in Articles 7 (6) and 25 (1) of the Convention may not be suspended because they are judicial guarantees essential for the protection of the rights and freedoms whose suspension Article 27 (2) prohibits." (paragraph 44)

XXXvi WGEID, *Report on a visit to Guatemala...*, 1987, paragraphs 14-17.

XXXvii *Ibid.*, paragraphs 77, 79.

XXXviii Comisión para la Defensa de los Derechos Humanos en Centroamérica (CODEHUCA), *El Habeas Corpus en Centro América*, Doctrina Sobre Derechos Humanos, Serie Jurídica No 2, CODEHUCA, San José, Costa Rica, 1992, pages 178-179.

xxxix Rule 7 of the Standard Minimum Rules states:

"(1) In every place where persons are imprisoned there shall be kept a bound registration book with numbered pages in which shall be entered in respect of each prisoner received:

- (a) Information concerning his identity;
- (b) The reasons for his commitment and the authority therefor;
- (c) The day and hour of his admission and release.

"(2) No person shall be received in an institution without a valid commitment order of which the details shall have been previously entered in the register."

Under rules 4 and 95 of the Standard Minimum Rules, the requirement set forth in rule 7 applies to all categories of prisoners, untried or convicted, including people detained without charge.

Principle 12 of the Body of Principles states:

"1. There shall be duly recorded:

(a) The reasons for the arrest;

(b) The time of the arrest and the taking of the arrested person to a place of custody as well as that of his first appearance before a judicial or other authority;

(c) The identity of the law enforcement officials concerned;

(d) Precise information concerning the place of custody.

"2. Such records shall be communicated to the detained person, or his counsel, if any, in the form prescribed by law."

xl Similarly, the UN Body of Principles states: "A person shall not be kept in detention without being given an effective opportunity to be heard promptly by a judicial or other authority. ..." (Principle 11)

xli Principle 18 (3) of the Body of Principles provides for the right to 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.

xlii 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."

xliii 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.

xliv 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."

xlv 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.

xlvi Principle 29 of the Body of Principles states:

"1. In order to supervise the strict observance of relevant laws and regulations, places of detention shall be visited regularly by qualified and experienced persons appointed by, and responsible to, a competent authority distinct from the authority directly in charge of the administration of the place of detention or imprisonment.

"2. A detained or imprisoned person shall have the right to communicate freely and in full confidentiality with the persons who visit the places of detention or imprisonment in accordance with paragraph 1, subject to reasonable conditions to ensure security and good order in such places."

xlvii 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.

xlviii Body of Principles, Principles 13, 33.

xlix Body of Principles, Principle 11.

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

li The full text of the memorandum is reproduced in Amnesty International, *Philippines; The Killing Goes On*, Amnesty

International Publications, London, 1992, Appendix V. As of the time of writing of this report it was not clear how vigorously the memorandum was being implemented.

lii For more on the UN campaign, see "World Public Information Campaign for Human Rights", *Human Rights Fact Sheets* series, No. 8, UN Centre for Human Rights, Geneva, 1989.

liii A list of UN Information Centres is available from the Department of Public Information at the UN Secretariat, United Nations, New York, NY 10017, USA.

liv Resolution 1992/38, adopted on 28 February 1992.

lv WGEID, 1990 report, paragraph 365.

lvi 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, Guiffre Editore, 1992, page 12; emphasis added.