

Bringing the perpetrators to justice

EXTERNAL (for general distribution)AI Index: ACT 33/60/93

Distr: SC/CC

No. of words: 11,700

Amnesty International
International Secretariat
1 Easton Street
London WC1X 8DJ
United Kingdom

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

A MANUAL FOR ACTION

@Chapter G-5

Bringing the perpetrators to justice

Pre-Publication Version

October 1993

Chapter G-5

Bringing the perpetrators to justice

Table of Contents

Section

1. The duty to bring those responsible to justice 1
 2. Overcoming impunity 2
 3. Characteristics of the judicial process 3
 4. Independence of the judiciary 4
 5. Establishing the full scope of liability to prosecution: universal jurisdiction; no statute of limitations; liability of superior authorities; no defence of superior orders 5
 6. Establishing state responsibility: the *Velásquez Rodríguez* case 7
 7. Civil suits 8
 8. Compensation, rehabilitation and redress 9
 9. Dealing with abuses committed under past regimes 12
- Notes 17

This is a pre-publication version of Chapter G-5 of the Amnesty International report *"Disappearances" and Political Killings: Human Rights Crisis of the 1990s - A Manual for Action*.

Chapter G-5

Bringing the perpetrators to justice

1. The duty to bring those responsible to justice

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

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

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

- The application of sanctions for the commission of crimes is a normal function of criminal justice systems throughout the world. The law sets forth sanctions corresponding to different crimes, and the criminal justice apparatus devotes its resources to finding wrongdoers, bringing them to trial and punishing them. If the criminal justice system fails to bring to justice people who have been responsible for human rights violations including atrocious crimes, criminal justice is undermined and the notion of justice, an important basis of the social order, is dangerously distorted.
- The impunity of public officials responsible for serious human rights violations undermines the rule of law, the doctrine which holds that officials must not be above the law. Bringing such officials to justice is necessary to restore the rule of law.
- If officials responsible for "disappearances" and extrajudicial executions are not prosecuted and punished, they will remain free to repeat the crimes, and others may do likewise, believing they can violate the law with impunity. Prosecution and punishment break the cycle of crime and impunity. It protects the public from the culprits repeating their crimes and it helps to deter others from committing similar crimes by raising the real threat that they, too, may be caught and punished.

The need to bring the perpetrators of "disappearances" and extrajudicial executions to justice has been established as an obligation under UN human rights instruments. Provisions to that effect are contained in the two leading instruments on "disappearances" and extrajudicial executions - the UN Declaration on the Protection of All Persons from Enforced Disappearance ("Declaration on Disappearances", Article 14) and the UN Principles on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions ("Principles on Extra-legal, Arbitrary and Summary Executions", principle 18) - respectively.

This is the requirement, but the reality is different. The officials responsible for "disappearances" and extrajudicial executions are so intent on preserving their impunity, and the repressive forces at their

"Disappearances" and Political Killings: Human Rights Crisis of the 1990s

command are so strong, that in practice they are very seldom brought to justice. Finding the means to make this happen is one of the great challenges to be met in the effort to eradicate "disappearances" and extrajudicial executions.

2. Overcoming impunity

"Perhaps the single most important factor contributing to the phenomenon of disappearances may be that of impunity. The Working Group's experience over the past 10 years has confirmed the age-old adage that impunity breeds contempt for the law. Perpetrators of human rights violations, whether civilian or military, will become all the more brazen when they are not held to account before a court of law."

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

This statement by the UN Working Group on Disappearances applies equally to extrajudicial executions. Impunity is both a contributing factor and a standard component of any governmental program of "disappearances" or extrajudicial executions. The officials who plan and carry out the crimes will take pains to ensure that the perpetrators are not caught and punished. Their efforts almost always succeed: while investigations by human rights defenders and official bodies have documented many thousands of "disappearances" and extrajudicial executions, very few of the people responsible have ever been brought to justice.

Literally, impunity means exemption from punishment. More broadly, the term conveys a sense of wrongdoers escaping justice or any serious form of accountability for their deeds. Impunity can arise at any stage before, during or after the judicial process: in not investigating the crimes; in not bringing the suspected culprits to trial; in not reaching a verdict or convicting them, despite the existence of convincing evidence which would establish their guilt beyond a reasonable doubt; in not sentencing those convicted, or sentencing them to derisory punishments out of all proportion to the gravity of their crimes; in not enforcing sentences.ⁱⁱ

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

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

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

Bringing the perpetrators to justice

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

Ending impunity is fundamentally a matter of political will. Organizations working to stop "disappearances" and extrajudicial executions must put pressure on governments to develop that will.

3. Characteristics of the judicial process

If the process of bringing those responsible for "disappearances" and extrajudicial executions to justice is to have a satisfactory outcome, it must have certain characteristics. Many of these characteristics have been included as standards in UN human rights instruments, notably the Basic Principles on the Independence of the Judiciary, adopted in 1985.^v In particular, the judicial process should be characterized by:

- **Promptness.** Undue delays can give the impression that nothing will be done, fostering a sense of impunity. Delays in the judicial process can result in valuable evidence being destroyed or lost.
- **Impartiality.** The court must not be biased against the victims and their relatives, or against the accused.^{vi}
- **Effectiveness.** If the court fails to pursue evidence, or fails to convict the accused despite overwhelming evidence, the judicial process will be regarded as ineffective and biased.
- **Fairness** to the accused. Trials must conform to international norms for a fair trial as laid down in international instruments, notably in Articles 9, 14 and 15 of the International Covenant on Civil and Political Rights.
- **Openness.** Trials should be open to the public, including families of the victims, families of the defendant, national and international trial observers and the press. The date, time and place of court hearings should be made known publicly well in advance.

In addition to these characteristics:

- **Trials should be held in the civilian courts.** If special or military courts have jurisdiction over serious human rights violations where these are rife, it is extremely unlikely that the perpetrators will be brought to trial, or - if brought to trial - that they will be convicted. Such courts often use truncated procedures and lack the professional competence and independence of the regular civilian courts. Military courts tend to lack independence and impartiality because they are under the military command structure - often the same structure which is suspected of carrying out human rights violations.^{vii}
- **Prosecutors** should be diligent in the exercise of their functions.^{viii}
- **Victims and their families** should be able to be represented at trials to protect their interests, without prejudicing the rights of the accused.

"Disappearances" and Political Killings: Human Rights Crisis of the 1990s

- The courts must be given the necessary **resources** to carry out their work.^{ix} The most highly qualified and independent judge cannot function effectively if he or she lacks the necessary material resources, such as clerical assistance, a telephone, or transport to visit key places where this is essential for the trial.
- The **sentences** imposed should be commensurate with the gravity of the crimes. Trivial sanctions imposed for serious crimes can contribute to a continuing atmosphere of impunity and bring the judiciary into disrepute. (The death penalty, however, should never be used. Amnesty International holds that the death penalty violates the right to life and is the ultimate cruel, inhuman and degrading punishment.)

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

4. Independence of the judiciary

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

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

An independent judiciary is one of the key institutions for the protection of human rights. As human rights become codified in legal rules, the judiciary is a key institution for ensuring that these rules are observed. The protection of human rights entails providing remedies for people whose rights have been denied: it is through the courts that such remedies are exercised. An independent judiciary can help to counteract the illegal and abusive actions of other branches of government resulting in human rights violations.

It is because of its importance as a defender of human rights that the institution of the judiciary is so often attacked when human rights are being flagrantly violated. A governmental program of "disappearances" and extrajudicial executions is almost always accompanied by efforts to weaken the judiciary and undermine its independence.

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

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

"There shall not be any inappropriate or unwarranted interference with the judicial process, nor shall judicial decisions by the courts be subject to revision. This principle is without prejudice to judicial review or to mitigation or commutation by competent authorities of sentences imposed by the judiciary, in accordance with the law." (principle 4)

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

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

Governments should ensure that those responsible for "disappearances" and extrajudicial executions are brought to justice wherever such people happen to be, wherever the crime was committed, whatever the nationality of the perpetrators or victims and no matter how much time has elapsed since the commission of the crime.

Officials with chain-of-command responsibility who order or tolerate "disappearances" and extrajudicial executions by those under their command should be held criminally responsible for these acts.

An order from a superior officer or a public authority must never be invoked as a justification for taking part in a "disappearance" or an extrajudicial execution.

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

"Disappearances" and extrajudicial executions are crimes of such supreme seriousness that the limitations on prosecution which often apply to other crimes should be removed. Liability to prosecution should be extended fully over *space*, over *time*, and over the *full range of people responsible* - from those who planned, ordered or acquiesced in the crimes to those who carried them out.

Four legal concepts correspond to these respective extensions of liability. These concepts are derived from principles of international law relating to war crimes and crimes against humanity (see Chapter G-2, section 5).

- **Universality of jurisdiction** (extension over space). According to this concept, states other than those where the crime was committed must establish jurisdiction over the crime. If a person allegedly responsible for a "disappearance" or an extrajudicial execution is outside the country where the crime was committed, the authorities must take the person into custody and either extradite the person to another country where he or she can be tried (either the country where the crime was committed or another country where the authorities wish to bring the person to trial), or bring the person to trial themselves. This principle must apply regardless of the nationality of the accused person or of the victim. (However, in accordance with international human rights standards, as discussed in Chapter G-8, a person should not be extradited to another country where he or she risks becoming a victim of torture, "disappearance", or extrajudicial execution. In such cases the authorities should take steps to bring the alleged offender to trial in their own courts. In line with its unconditional opposition to the death penalty, Amnesty International also opposes the forcible return of a person to a country where he or she faces the death penalty.)

- **No statute of limitations** (extension over time). The law should provide that there is no time limit on the liability to prosecution of a person responsible for a "disappearance" or an extrajudicial execution. There must be no provision that such a person is no longer subject to prosecution after a certain length of time.

- **Liability of superior authorities.** The officials behind the crimes - those who planned them, gave the orders, and helped organize them - must be liable to prosecution as well as the people who carried them out. This principle applies also to officials who tolerated or acquiesced in the crimes. These are people who, by virtue of their office, knew or should have known that "disappearances" and extrajudicial executions were being perpetrated and did not try to stop them even though it was within their power to do so.

- **No defence of superior orders.** This concept holds that a person who participates in a "disappearance" or an extrajudicial execution may not escape conviction by pleading that he or she was only following orders. It is related to the principle of the right and duty to disobey an order to participate in a "disappearance" or an extrajudicial execution (see Chapter G-3, section 5).

In recent years the four concepts have begun to be incorporated in UN instruments relating to "disappearances", extrajudicial executions and other human rights violations, as well as in the Statute of the International Tribunal on war crimes in the former Yugoslavia as adopted by the UN Security Council in 1993.

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

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

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

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

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

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

Bringing the perpetrators to justice

Not only must the individuals responsible for "disappearances" and extrajudicial executions be brought to justice: the state itself should be held responsible for killings and "disappearances" which it ordered or in which it has acquiesced.

The Human Rights Committee set up under the International Covenant on Civil and Political Rights has found states responsible for violations of specific human rights in several cases of "disappearances" and extrajudicial executions (see Chapter G-6). However, the most far-reaching pronouncement to date of the principle of state responsibility has been in the judgment of the Inter-American Court of Human Rights in the **Velásquez Rodríguez** case, delivered on 29 July 1988. In this judgment the Court found that the state of Honduras had violated its obligations to respect and ensure the rights of Angel Manfredo Velásquez Rodríguez (Manfredo Velásquez), a Honduran student who "disappeared" in 1981. The principles affirmed by the Court should be seen to apply equally to thousands of other cases of "disappearances" and extrajudicial executions around the world.

On 12 September 1981, between 4:30 and 5:00 pm, several heavily armed men in civilian clothes driving a white Ford vehicle without license plates kidnapped Manfredo Velásquez from a parking lot in downtown Tegucigalpa, the capital of Honduras. In the Court's judgment, the kidnappers were connected with the Honduran Armed Forces or under its direction. Subsequently there were "the same type of denials by his captors and the Armed Forces, the same omissions of the latter and of the Government in investigating and revealing his whereabouts, and the same ineffectiveness of the courts" in responding to *habeas corpus* petitions and criminal complaints as in other cases of what the Court called "the systematic practice of disappearances" in Honduras, where some 100 to 150 people "disappeared" between 1981 and 1984.^{xiii}

As a member of the Organization of American States, Honduras has been a party to the American Convention on Human Rights ("American Convention") since 1977. "Disappearances" violate various provisions of the American Convention including Articles 4 (right to life), 5 (right to personal integrity) and 7 (right to personal liberty). As discussed in Chapter G-6, two institutions established under the Convention are empowered to act on cases of human rights violations: the Inter-American Commission on Human Rights will consider petitions from individuals and groups alleging violations of the Convention by a state party, while the Inter-American Court of Human Rights can issue rulings on the interpretation and application of the Convention in cases submitted to it by the Commission or a state party, if the state party concerned has made a declaration that it accepts as binding the jurisdiction of the Court. Honduras made such a declaration in 1981.

In October 1981 the Inter-American Commission on Human Rights received a petition against the state of Honduras concerning the "disappearance" of Manfredo Velásquez. After protracted consideration, the Commission asked the Court to determine whether Honduras had violated Articles 4, 5 and 7 of the American Convention and to rule that the consequences be remedied and compensation paid to the injured party or parties.

In its judgment, the Inter-American Court decided to rely also on Article 1 (1) of the American Convention, wherein the states parties undertake to respect the rights recognized in the Convention and to ensure the free and full exercise of those rights to all persons subject to their jurisdiction. The Court discussed these two terms:

- Commenting on the obligation to **respect** human rights, the Court said that "... (t)he exercise of public authority has certain limits which derive from the fact that human rights are inherent attributes of human dignity and are, therefore, superior to the power of the State." According to Article 1 (1), the Court wrote, "... any exercise of public power that violates the rights recognized by the Convention is illegal.

"Disappearances" and Political Killings: Human Rights Crisis of the 1990s

Whenever a State organ, official or public entity violates one of those rights, this constitutes a failure of the duty to respect the rights and freedoms set forth in the Convention."^{xiv}

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

In the present case, the Court found, "...the evidence shows a complete inability of the procedures of the State of Honduras, which were theoretically adequate, to carry out an investigation into the disappearance of Manfredo Velásquez, and of the fulfilment of its duties to pay compensation and punish those responsible..." (paragraph 178). The "disappearance" of Manfredo Velásquez was carried out by agents acting under the cover of public authority, but even if this fact had not been proven, "the failure of the State apparatus to act" was a failure by Honduras to fulfil its duty under Article 1 (1) of the American Convention to ensure Manfredo Velásquez the free and full exercise of his human rights (paragraph 182). For these and additional reasons, the Court concluded that "the facts found in this proceeding show that the State of Honduras is responsible for the involuntary disappearance of Angel Manfredo Velásquez Rodríguez. Thus, Honduras has violated Articles 7, 5 and 4 of the Convention." (paragraph 185)

The Court accordingly ruled that Honduras was required to pay fair compensation to the next-of-kin of Manfredo Velásquez.^{xvi}

The *Velásquez Rodríguez* judgment was a victory for the petitioners, but the importance of the ruling goes beyond this one case. The ruling lays down principles of state responsibility; these principles should be taken to apply to the observance of human rights around the world. The Court's strictures on the duty to prevent, investigate, punish and redress human right violations should be followed by all governments.

7. Civil suits

The civil law in many countries provides the possibility to sue a public official for damages caused in the commission of human rights violations, although sometimes this possibility has been abridged under immunity or indemnity measures such as those mentioned above in the discussion of impunity. Despite the practical difficulties, relatives of victims have in recent years been turning to the civil courts to obtain reparation for the injuries suffered through "disappearances" and extrajudicial executions. Often civil suits are the only remedy left when criminal prosecution has been blocked.

A civil suit can bring several benefits:

- In the course of the proceedings, important information may be disclosed.
- It can result in the payment of substantial damages, which are of material benefit to the relatives of the victim.
- Even though the authorities may have refused to acknowledge responsibility for a "disappearance" or a killing, the payment of damages amounts to an admission of responsibility. Thus, a successful civil suit can contribute to the relatives' goal of obtaining justice.

Bringing the perpetrators to justice

The right to sue for damages caused in the commission of human rights violations is a consequence of the right to an effective remedy for human rights violations, as set forth in the leading UN human rights instruments.^{xvii} It entails the principle that both the state and the officials responsible for human rights violations should be held liable at civil law for the harm caused. With regard to "disappearances", this principle has now been established in the UN Declaration on Disappearances. Article 5 of the Declaration states: "In addition to such criminal penalties as are applicable, enforced disappearances render *their perpetrators and the State or State authorities* which organize, acquiesce in or tolerate such disappearances *liable at civil law...*" (emphases added).

In some cases it has proved possible to obtain judgments awarding compensation in international courts or the courts of other countries. Outstanding examples are the *Velásquez Rodríguez* judgment of the Inter-American Court of Human Rights, described above,^{xviii} and the case of *Filártiga v. Peña-Irala* in which a US court, acting under the US Alien Tort Statute, awarded damages to the father and sister of a young man who had been kidnapped and tortured to death in Paraguay in 1976.^{xix}

8. Compensation, rehabilitation and redress

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

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

Victims of "disappearances" and extrajudicial executions and their dependants have suffered grievous wrongs at the hands of the state apparatus. Both the state and the perpetrators individually should be held liable to provide redress.

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

- **Financial compensation**, including payment in money.^{xxi}
- **Rehabilitation**, including medical care and counselling to help the victim cope with the effects of physical and psychological injuries, as well as measures to restore the dignity and reputation of the victim, who may earlier have been branded as - for example - a terrorist or an enemy of the state. Measures such as naming a street or a school after the victim, or building a monument, may help to do this.
- **Restitution**, meaning action taken to restore, to the extent possible, the situation which existed for the victim before the "disappearance" or extrajudicial execution took place. (For a victim who has been killed, restitution is impossible, but for a "disappeared" prisoner who reappears, restitution can include restoring the victim's job or returning property wrongfully seized.)

Other important elements of redress are **verification of the facts** and **full and public disclosure of the truth; public acknowledgement of responsibility** for the human rights violations committed; **bringing**

"Disappearances" and Political Killings: Human Rights Crisis of the 1990s

those responsible to justice; and **preventing** the perpetration of further such human rights violations.

Not only those victims who are still alive, but their dependants and relatives should obtain redress for the injuries they have suffered as a result of a "disappearance" or an extrajudicial execution.

Along with the right to sue for damages, this right to redress is a part of the right to an effective remedy for human rights violations, as established in the leading UN instruments on human rights, referred to in the previous section of this chapter.

Both the UN Declaration on Disappearances and the UN Principles on Extra-Legal, Arbitrary and Summary Executions recognise the right to obtain redress. The Declaration on Disappearances provides that victims and their family "shall obtain redress and shall have the right to adequate compensation, including the means for as complete a rehabilitation as possible", and it establishes also that the dependants of people who die as a result of "disappearances" shall be entitled to compensation (Article 19). The Principles on Extra-Legal, Arbitrary and Summary Executions call for "fair and adequate compensation" to be provided "within a reasonable period of time" to the families and dependants of victims of extrajudicial executions (principle 20). The right to compensation and redress for human rights violations has also been recognized in the UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment^{xxii} and the UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power.^{xxiii}

As mentioned in the preceding section of this chapter, victims or their dependants in several countries have instituted civil suits in the national courts to obtain compensation for "disappearances" and extrajudicial executions. Judgments of compensation have also been made in response to suits in the courts of other countries and to petitions to the Inter-American Commission on Human Rights, and the Human Rights Committee set up under the International Convention on Civil and Political Rights has made recommendations of compensation in several cases (see Chapter G-6).^{xxiv} Compensation and other forms of redress may also be an outcome of the work of commissions set up to investigate human rights violations committed under past regimes.^{xxv}

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

- Compensation and other redress should respond to the needs and wishes of the victims.
- Governments should adapt their laws and procedures as necessary to ensure that the right to redress is readily available and takes into account the potential vulnerability of the victims. They should publicize the procedures for obtaining redress so that potential recipients will know how to invoke them, and should ensure that those who are entitled to redress can receive it with as little difficulty as possible. Once official responsibility has been established, redress should follow. The efforts of victims and their dependants should not be obstructed by over-bureaucratic procedures.
- No absolute figures can be given here, but the amount of compensation should be fair and adequate in view of the seriousness of the damage caused.
- Financial compensation is important both materially and symbolically. Not every victim or dependant will want to accept it, but for those who do, it can contribute to the healing process.^{xxvi}
- Sometimes the authorities will grant compensation by agreement with the victims and their families as a means of ending judicial proceedings which are likely to lead to a judgment unfavourable to the state.

Bringing the perpetrators to justice

The awarding of compensation does not relieve the state of the need to admit responsibility for human rights violations.^{xxvii}

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

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

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

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

- The experience of **relatives of the "disappeared"** is one of stressful uncertainty.^{xxix} The absence of news of the loved one allows the worst fears to be felt, especially where there is a known pattern of brutal or lethal ill-treatment of those who are abducted. Where there is an expectation that the "disappeared" person has been killed, the family is unable to grieve because of the lack of evidence of the death. Even to consider that the "disappeared" person could be dead can sometimes induce strong feelings of guilt.^{xxx}

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

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

9. Dealing with abuses committed under past regimes

The ending of a repressive regime is one of the most hopeful moments in a country's history. There is much to be done at such times. Institutions for the protection of human rights need to be created, rebuilt or strengthened. The truth of what happened under the former government must be made known and officially acknowledged. Those responsible for human rights violations must be brought to justice. The needs of victims must be addressed.

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

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

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

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

- **Chile:** President Patricio Aylwin took office in March 1990, ending 16 years of military rule. One of his first official acts was to create the Comisión Nacional de Verdad y Reconciliación, National Commission on Truth and Reconciliation, to inquire into "disappearances", executions, and deaths under torture committed under the military government, as well as kidnappings and attempts on people's lives committed by individuals under political pretexts. The Commission was mandated to describe how the repressive apparatus worked, to account for every dead and "disappeared" person, and to recommend measures for redress and prevention. It was not mandated to state conclusions about the responsibility of particular individuals for human rights violations; if the Commission received any information on crimes committed, this information was to be turned over to the courts.

Bringing the perpetrators to justice

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

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

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

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

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

In its report, published in May 1992, the Commission estimated that over 40,000 people had died in prison or been executed by the Habré government, leaving widows and orphans whose numbers the Commission estimated at over 30,000 and over 80,000 respectively. It identified the branches of the security forces principally responsible for human rights violations. It recommended that agents transferred from one of these agencies into the intelligence service set up by the new government should be immediately removed from the service, and that those implicated in crimes should be taken into judicial custody to await trial. It cited attempts within Chad and by Chadian exiles to oppose the dictatorship, but found that ordinary citizens had become suspicious of everyone, leading to an attitude of powerlessness, indifference and resignation. It concluded that although international humanitarian organizations such as Amnesty International had tried to draw attention to the atrocities, Western countries regarded Hissein Habré as a strong ally and therefore "turned a blind eye to the terrible crimes committed by him, thus allowing the continuation of a despotic and bloody regime".¹

Among other things, the Commission recommended that the prosecution of those responsible for past human rights violations should begin without delay. A sovereign and independent judiciary should be created, and human rights training should be started in schools, universities, police schools and the army. A monument should be erected for the victims of the repression.^{xxxiii}

- **El Salvador:** One of a series of agreements between the Government of El Salvador and the opposition

1[French original: "Anesthésiés, les pays occidentaux et les Etats-Unis croient avoir trouvé en lui, un allié sûr. Aussi ont-ils fermé les yeux sur les crimes horribles commis par ce dernier, permettant ainsi la pérennisation d'un régime despotique et sanguinaire."]

"Disappearances" and Political Killings: Human Rights Crisis of the 1990s

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

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

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

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

The four commissions described above all did valuable work. Many of the human rights violations described in their reports had earlier been made known by human rights organizations and victims' relatives, but the reports served to confirm officially that those violations had indeed been committed, and to acknowledge the terrible wrongs done to the thousands of victims whose names were listed in the reports.

Once the truth was acknowledged, the perpetrators needed to be brought to justice. Here and in other areas, the actions of the authorities after the publication of the four reports left much to be desired.

Bringing the perpetrators to justice

In **Argentina** nine former members of the military junta accused of instituting procedures which led to "disappearances" were brought to trial before a civilian court in 1985. On 9 December 1985 five of the nine, including two former presidents, were convicted of offences including aggravated homicide, illegal detention and torture and sentenced to terms ranging from four and a half years' imprisonment to life imprisonment. The other four defendants were acquitted.

But in December 1986 Congress approved a law known as the *Ley de Punto Final*, Full Stop Law, setting a 60-day deadline for the formal initiation of new prosecutions of security force officers accused of past human rights violations, and in June 1987 a *Ley de Obediencia Debida*, Law of Due Obedience, was enacted granting immunity to all but the most senior military officers for crimes committed during the period of military rule. In October 1989 the new President, Carlos Menem, pardoned 39 senior military officers who were to have been tried for crimes committed during the period of military rule, and in December 1991 he pardoned and released the former military leaders convicted in 1985. Out of the thousands of cases of "disappearances" documented by the National Commission on Disappeared People, only five military officers have been brought to justice, and all five have now been pardoned and set free.

In **Chile**, prosecution of officials responsible for "disappearances" and killings was impeded by the fact that the military government in 1978 had issued a decree law providing an "amnesty for people who as authors, accomplices or accessories have been involved in crimes under the State of Siege" (1973-1978) and who were not already undergoing trial or had not been sentenced. In August 1990 the Supreme Court rejected an appeal submitted on behalf of relatives of "disappeared" prisoners arguing that the 1978 Amnesty Law was unconstitutional. The ruling upheld the decision of lower military courts to use the Amnesty Law to close investigations into the "disappearance" of 35 people before criminal responsibility could be determined.

Announcing the publication of the report of the National Commission for Truth and Reconciliation in March 1991, President Patricio Aylwin noted that the Commission had passed information on its findings to the courts. He called on the judiciary to carry out full investigations, and said the Amnesty Law should not be an obstacle to such investigations. However, the military courts continued to claim jurisdiction over human rights cases and to close cases on the basis of the Amnesty Law. Several cases not covered by the Amnesty Law were pending at the time of writing of this report. No one has yet been convicted for a "disappearance" or an extrajudicial execution committed under the military regime.

In August 1993 President Aylwin presented a draft law that would further ensure the impunity of scores of perpetrators of human rights violations committed under military rule through application of the 1978 Amnesty Law. Following local and international protests, the Congress rejected the bill.

In **Chad** no one has yet been prosecuted for killings and "disappearances" committed under the Hissein Habré government, despite the recommendations of the Commission of Inquiry. Hundreds of people in different parts of the country have been victims of extrajudicial executions under the present government and many people have "disappeared". The government has not ordered its security forces to stop violating human rights and has not conducted effective investigations into the abuses committed. Members of the security forces have been granted immunity from prosecution for human rights violations committed under the present government.

In **El Salvador** the publication of the report of the Truth Commission set off a storm of protest among the military and the judiciary. The Defence Minister, General Emilio Ponce, who was named in the Truth Commission's report, described it as "unjust, incomplete, illegal, unethical, biased and insolent". The Supreme Court issued a statement accusing the Commission of acting with partiality, and refusing to resign as the Commission had called for. Other judges and the Salvadorian Lawyers' Association issued

"Disappearances" and Political Killings: Human Rights Crisis of the 1990s

statements supporting the court.

Within hours of the publication of the report, a draft amnesty law had been presented by a pro-government party to the Legislative Assembly. One week later, despite widespread protests by opposition parties, the *Ley de Amnistía General para la Consolidación de la Paz*, General Amnesty Law for the Consolidation of Peace, had been passed by the Assembly and ratified by the President.

This sweeping amnesty law, promulgated on 22 March 1993, shields the perpetrators of "disappearances", torture and killings from prosecution. It has resulted in the release of the two military officers convicted of involvement in the killing of the six Jesuit priests referred to above, a major accused of ordering the killing of 10 peasants in 1988, and a former soldier detained for alleged participation in the killing of two peasants during an army operation in 1989, and who later gave testimony about army involvement in "death squads". Two FMLN members acknowledged to have killed two US advisers in 1991 have also been released. Amnesty International has called for the law to be repealed.

Important as the commissions in Argentina, Chile, Chad and El Salvador have been in establishing the truth of what happened, subsequent actions are grounds for disquiet. It is true that some new governments have inherited amnesty laws instituted by their predecessors, as in Chile. It is true that some civilians governments have laboured under the threat of intervention by a still-powerful military: in Argentina, for example, middle-ranking army officers took over an army base in April 1987 in support of a major accused of torture against whom an arrest warrant had been issued, and the Law of Due Obedience was part of the government's response to the rebellion. Yet the cause of justice cannot be served unless the perpetrators of "disappearances" and extrajudicial executions are brought to trial.

A more encouraging outcome of the process of coming to terms with past human rights violations has been that in **Bolivia**, where some 22 people "disappeared" and 52 were victims of extrajudicial executions during the military government of General Luis García Meza, which lasted from July 1980 to August 1981. After a seven-year trial, former President García Meza and 46 others ranging from former government ministers to members of government-sponsored paramilitary groups were convicted by the Bolivian Supreme Court in April 1993 of charges including genocide and assassination of political opponents. They were sentenced by the Supreme Court to prison terms of up to 30 years. An especially important element of the ruling was the Court's rejection of the claim of due obedience argued by some of the defendants.^{xxxvii} Bolivian citizens took to the streets in spontaneous demonstrations of support for the Supreme Court verdict, which was broadcast live on national television and relayed by loud-speakers in universities and trade union headquarters around the country.^{xxxviii}

Amnesty International's position is that those responsible for human rights violations must be brought to justice. They must be held to account even if they are officials of a past or current government and regardless of whether they are members of the security forces or of semi-official paramilitary groups. Those accused of human rights crimes should be tried, and their trials should conclude with a clear verdict of guilt or innocence. All trials should be conducted in full conformity with internationally recognized norms for a fair trial.

Amnesty International takes no position on what sentence should be passed, provided that the death penalty is not imposed. However, the systematic imposition of penalties that bear little relationship to the seriousness of the offences brings the judicial process into disrepute and does not serve to deter further human rights violations. Amnesty laws which prevent the emergence of the truth and accountability before the law are not acceptable. This applies whether the law is passed by those responsible for the violations or by successor governments.

Bringing the perpetrators to justice

It has been argued that the interests of national reconciliation after a period of violence may be served by pardons after conviction: Amnesty International takes no position on this. But it does insist that the truth is revealed and the judicial process completed.

The protection of human rights requires action, not words. Allowing the perpetrators to commit abuses, however clearly prohibited by law, without consequences for themselves, perpetuates their crimes. Ensuring that they are brought to justice transmits throughout a society the clear message that human rights violations will not be permitted to continue.

Notes

iWGEID, 1990 report, paragraph 344.

iiFor examples of impunity in different countries, see Amnesty International, "Crime without punishment", AI Index: ACT 33/52/93, August 1993.

iiiSimilarly, the 1993 progress report on impunity prepared for the UN Sub-Commission on Prevention of Discrimination and Protection of Minorities distinguishes two paths of impunity: "firstly, de facto impunity resulting from the dysfunction of the institutions concerned, which is either directly or indirectly encouraged, or even organized by the authorities; and secondly, impunity legitimized by provisions borrowed from the rule of law and diverted from their purpose." (UN Sub-Commission on Prevention of Discrimination and Protection of Minorities, 45th session, *Progress report on the question of impunity of perpetrators of human rights violations...*, UN document No. E/CN.4/Sub.2/1993/6, 19 July 1993, paragraph 29) See also the discussion of "structural" and "practical" impunity in Colombia in Chapter C-3 of this report.

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

v The Basic Principles on the Independence of the Judiciary were adopted by the Seventh UN Congress on the Prevention of Crime and the Treatment of Offenders (Milan, 26 August - 6 September 1985) and endorsed by the UN General Assembly in resolutions 40/32 of 29 November 1985 and 40/146 of 13 December 1985. They are reproduced in the UN publication *Human Rights; A Compilation of International Instruments* (cited in Chapter G-2).

viSee the Basic Principles on the Independence of the Judiciary, principle 2, quoted in the next section of this chapter.

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

In a comment on the second periodic report of Egypt under the International Covenant on Civil and Political Rights, the Human Rights Committee set up under the Covenant has stated: "...military courts should not have the faculty to try cases which do not refer to offences committed by members of the armed forces in the course of their duties." (Human Rights Committee, 48th session, *Consideration of reports submitted by states parties under Article 40 of the Covenant*, UN document No. CCPR/C/79/Add.23, 9 August 1993, paragraph 9)

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

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

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

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

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

xiThe principle of criminal responsibility of those behind the crimes is incorporated in the Statute of the International Tribunal on war crimes in the former Yugoslavia, cited in Chapter G-2. The Statute also establishes (as did Article 7 of the Charter of the Nuremberg Tribunal) that a person cannot escape prosecution on the grounds of his or her official

capacity, including that of head of state. Article 7 of the Statute states, in part:

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

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

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

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

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

xiii *Velásquez Rodríguez* judgment, paragraph 147. The *Velásquez Rodríguez* judgment is cited in Chapter G-1.

xiv *Ibid.* The passages quoted are from paragraphs 165 and 169 respectively.

xv *Ibid.*, paragraph 166; emphases added.

xvi *Ibid.*, paragraph 194.

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

xviii The Inter-American Court's judgment of compensation in the *Velásquez Rodríguez* case was based on Article 63 of the American Convention on Human Rights. This article establishes the power of the Inter-American Court of Human Rights to order compensation to the injured party when a right protected by the Convention has been violated.

xix The judgment of damages was awarded by the US Eastern District Court in New York in 1984 against Americo Norberto Peña-Irala, who as Inspector General of Police in Asunción, Paraguay, had kidnapped and tortured Joelito Filártiga to death. However, the plaintiffs have hitherto been unable to collect the damages. (*Filártiga v. Peña-Irala*, 577 F Supp. 860 (E.D. N.Y. 1984), on remand from *Filártiga v. Peña-Irala*, 630 F.2d 876 (2d Cir. 1980), excerpted in Frank Newman and David Weissbrodt, *International Human Rights*, Anderson, Cincinnati, 1990, pages 596-601, 651-654)

In 1992 the United States adopted a law, the Torture Victim Protection Act, under which any victim of torture, as well as the legal representative or other person who may be a claimant in an action for the wrongful death of a victim of extrajudicial killing, may file a claim in a US court against any individual who "under actual or apparent authority, or color of law, of any foreign nation" took part in the torture or extrajudicial killing. (See Robert F. Drinan and Teresa T. Kuo, "Putting the World's Oppressors on Trial: The Torture Victim Protection Act", *Human Rights Quarterly*, vol. 15, No. 3, August 1993, pages 605-624. See also Richard B. Lillich, "Damages for Gross Violations of International Human Rights Awarded by US Courts", *Human Rights Quarterly*, vol. 15, No. 2, May 1993, pages 107-229.)

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

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

(UN Sub-Commission on Prevention of Discrimination and Protection of Minorities, 45th session, *Study concerning the right to restitution, compensation and rehabilitation for victims of gross violations of human rights and fundamental freedoms; Final report submitted by Mr. Theo van Boven, Special Rapporteur*, paragraph 13, footnote)

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

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

(a) Physical or mental harm;

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

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

xxii The Body of Principles establishes a requirement to make compensation for human rights violations and provides that official information needed to claim compensation must be made available. Principle 35 of the Body of Principles states:

"1. Damage incurred because of acts or omissions by a public official contrary to the rights contained in these Principles shall be compensated according to the applicable rules on liability provided by domestic law.

"2. Information required to be recorded under these Principles shall be available in accordance with procedures provided by domestic law for use in claiming compensation under this principle."

xxiii Article 8 of this Declaration states that "Offenders or third parties responsible for their behaviour should, where appropriate, make fair restitution to victims, their families or dependants. ..." Article 11 states: "Where public officials or other agents acting in an official or quasi-official capacity have violated national criminal laws, the victims should receive restitution from the State whose officials or agents were responsible for the harm inflicted. In cases where the Government under whose authority the victimizing act or omission occurred is no longer in existence, the State or Government successor in title should provide restitution to the victims." Articles 18 to 19 call for restitution and/or compensation to be provided for "acts or omissions that do not yet constitute violations of national criminal laws but of internationally recognized norms relating to human rights."

The Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power was drafted by the Seventh UN Congress on the Prevention of Crime and the Treatment of Offenders in 1985 and adopted by the UN General Assembly on 29 November 1985 in resolution 40/34. The text is reproduced in the UN publication *Human Rights; A Compilation of International Instruments* (cited in Chapter G-2).

xxiv The Human Rights Committee has held in a number of cases of "disappearances" and killings that the governments concerned should pay compensation. These cases are reviewed in the final report of the UN Special Rapporteur on the right to restitution, *op. cit.*, paragraph 53.

xxv In Chile, where the National Commission on Truth and Reconciliation had recommended that compensation be provided to the families of victims named in its report who had been killed or remained "disappeared" (see the next section of this chapter), a law was enacted in February 1992 creating a *Corporación Nacional de Reparación y Reconciliación*, National Corporation for Reparation and Reconciliation, a public agency responsible for overseeing the carrying out of the Commission's recommendations. The law established a monthly pension of a specified amount, of which fixed percentages were to be allocated to the victim's surviving spouse, mother (or father if the mother was dead), children under 25 years old and disabled children of any age, and father or mother of any natural children. Beneficiaries were also to be entitled to free medical care, and children were to be given educational benefits and exempted from military service if they so requested. The Corporation was also to investigate the cases of further alleged victims of "disappearances" and political violence under the former government; the relatives of those whom it declared to have been victims would be entitled to the same benefits as the relatives of victims named in the Commission's report.

Since then, benefits have been provided in accordance with the 1991 law. The National Commission has completed its investigations and turned the results over to the courts.

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

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

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

XXIXAs mentioned in Chapter G-6, section 6, the decision in the case of *Quinteros v. Uruguay* taken by the Human Rights Committee set up under the International Covenant on Civil and Political Rights gives formal recognition that a close relative of a "disappeared" person suffers torture or ill-treatment.

XXXThe experiences of a group of psychotherapists working with families of "disappeared" people in Argentina have been described in Diana R. Kordon, Lucila I. Edelman y Equipo de Asistencia Psicológica de Madres de Plaza de Mayo, *Efectos Psicológicos de la Represión Política*, Sudamericana/Planeta, Buenos Aires, 1986 (English-language edition: Diana R. Kordon, Lucila I. Edelman et al., *Psychological Effects of Political Repression*, Sudamericana/Planeta, Buenos Aires, 1988).

XXXi*Nunca Más; Informe de la Comisión Nacional Sobre la Desaparición de Personas*, Editorial Universitaria de Buenos Aires, Buenos Aires, 1984. English-language edition: *Nunca Mas (Never Again); A Report by Argentina's National Commission on Disappeared People*, Faber and Faber, London and Boston, 1986.

xxxiiSee the preceding section of this chapter for information on how this recommendation has been carried out.

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

XXXIVAgreement signed in Mexico City on 27 April 1991, in United Nations, *El Salvador Agreements: The Path to Peace* (cited in Chapter G-3).

xxxvThe Commission stated in its report that it decided to name those responsible because "it is not possible to tell the whole truth omitting names... [The Commission] was entrusted with the task of investigating and describing acts of violence of singular importance and of recommending measures intended to prevent a repetition of such acts in the future. This task cannot be fulfilled in the abstract, suppressing information (for example the names of those responsible) when there is faithful testimony..., especially when those identified are high-ranking officials and carrying out official tasks directly related to the violations or covering them up. Not to mention names would reinforce the very cloak of impunity which the Parties charged the Commission with removing." [Spanish original: "No se puede decir toda la verdad omitiendo nombres... A la Comisión ... se le pidió investigar y describir hechos de violencia de singular trascendencia y recomendar medidas destinadas a prevenir la repetición de tales hechos en el futuro. Este comitativo no se puede lograr en abstracto, suprimiendo información (como por ejemplo los nombres de los responsables de estos hechos) cuando se cuenta con testimonio fidedigno sobre la misma, sobre todo cuando las personas identificadas ocupan altos cargos y desempeñan funciones oficiales que guardan relación directa con las violaciones o su encubrimiento. El dejar de mencionar nombres reforzaría ese mismo manto de impunidad que las Partes encargaron a la Comisión levantar."]

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

xxxviiThe Court's rejection of the plea that they were only obeying orders was based on the country's Penal Code which establishes that due obedience is only applicable to orders which are not in contradiction with the Constitution.

xxxviiiFormer President García Meza escaped the country in 1989 and is still at large. Amnesty International knew of 10 other defendants who were arrested and had begun serving their sentences at the time of writing of this report.