

# E

---

Distr.  
GENERAL

E/CN.4/2006/91  
8 February 2006

ARABIC  
Original: ENGLISH

---



14

.66/2005

2005 /

.2005 /

4	3 - 1	.....	
4	32 - 4	.....	-
10	34-33	.....	-
10	37-35	.....	-
11	40-38	.....	-
12	46-41	.	-
13	54-47	.....	-
14	62-55	.....	-

(6 ) 66/2005 -1  
" ( )

."

2005 / 14 -2

(1)

.2005 / 18 17

-3

-

( ) <sup>(2)</sup>(E/CN.4/2005/102/Add.1) -4

" 2

" 4 "

" 1 "

-5

(3)

-6

32

.1949 / 12

1949 / 12

(4)

(5)"

"

(6)

-7

"

(7)"

(8)

-8

32

(9)1949 / 12

33

(10)

(11)

(12)

-9

(13)

(14)

(15)

	" :	2005 / 23	
	(16)"		
	(17)	/	-10
			-11
		(18)	
1974			-12
	(19)		
	32	" / " " "	
		1949 / 12	
		(20)	
	(21)		
	" "		-13
		(22)	
		(23)	-14
	(24)		
			-15
	(25)		
		(26)	-16
	" 66/2005	(27)	

"

.(1 )

(28)

(29)

-17

(30)

(31)

(32)

"

-18

(33)"

(34)

(35)

(36)

(37)

-19

(38)

(39)

(41)

(40)

-20

(42)

"

"

2005

(43)

2005 /

(44)

-21

(45)

(46)

(2005 / 23-19)





(64)

(65)

(66)

(67)

)

(68) (

23 -27

9 8

(69)

-28

(70)

" "

(71)

13

(72)

(73)

(74)

(75)

-29

(76)

(77)

(78)

(

(79)

-30

8

) 25 ( (80) )

(82)

(81)

-31

(83)

(86)

(84)

(85)

/

-32

(87)

-

12

-33

1949 /

-

-

(88)

-34

(89)

(90)

-

-35

(91)

(93)

(92)

(94)

" "

-36

)  
"

"

(95)"

(96)" ...

(97)

"

"

(98)

(99)

(100)"

"

(103)

(102)

(101)

(104)

-37

(105)

-

-38

-39

(107)

(106)

(108)

(109)

	(110)	
	(111)	-40
	(112)	
	-	
(113)		-41
	(114)	
(115)		-42
	(118)	
	(117)	
	(120)	
	(119)	
	(121)	
		-43
		(122)
	(123)	
	(124)	
		-44
	(125)	
(126)		

(128) / (127) -45

(129)

(130)

(131) -46

(132) -

(133) -47

(134)

(135) -48

(136) " "

(137) -

(138)

40 2005 (139) 1974 -50

(140)

(141)

(142) (143) (144)

-51

-52

(145)

(146)

(147)

( )

(148)

-53

"

"

-54

1997

.2000

-

-55

-56

-57

- -58

: .

.

-59

.

. :

-60

.

.

.

.

-61

.

.

.

-62

.

.

## Notes

<sup>1</sup> Argentina, Belarus, Colombia, Cuba, Georgia, Mauritius, Peru, Slovenia, Togo, Uruguay, Venezuela (Bolivarian Republic of). A reply was also received from the International Committee of the Red Cross.

<sup>2</sup> Recommended by Commission resolution 2005/81.

<sup>3</sup> Article 32 of the Additional Protocol to the Geneva Conventions, of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts.

<sup>4</sup> In particular Geneva Conventions, of 12 August 1949: Geneva Convention relative to the protection of civilian persons in time of war, arts. 16 and 17; Geneva Convention for the amelioration of the condition of wounded, sick and shipwrecked members of armed forces at sea, art. 122 and subsequent provisions; Geneva Convention for the amelioration of the condition of the wounded and sick in armed forces in the field, art. 136 and subsequent provisions.

<sup>5</sup> The concept of “missing” in international humanitarian law is certainly much broader than that of “forced disappearance” as formulated in international human rights law. “Missing” in international humanitarian law covers all those situations in which the fate or whereabouts of a person are unknown.

<sup>6</sup> Resolution II of the XXIV International Conference of the Red Cross and Red Crescent (Manila 1981).

<sup>7</sup> Rule 117 in ICRC, *Customary International Humanitarian Law, Volume I, Rules*, Cambridge Press University, 2005, p. 421.

<sup>8</sup> Argentina, Australia, New Zealand, Spain, United Kingdom of Great Britain and Northern Ireland and United States of America.

<sup>9</sup> First report of the Working Group on Enforced or Involuntary Disappearances, E/CN.4/1435, para. 187; Annual Reports of the Inter-American Commission on Human Rights (IACHR), 1985-1986, OEA/Ser.L/V/II.68, Doc. 8, rev. 1, p. 205.

<sup>10</sup> Louis Joinet, “Rapport general”, in “Le refus de l’oubli - La politique de disparition forcée de personnes”, Colloque de Paris, janvier/février 1981, p. 302.

<sup>11</sup> IACHR, Report No. 136/99, *Case 10.488 Ignacio Ellacuría et al.*, para. 221.

<sup>12</sup> CCPR/C/79/Add.63, para. 25.

<sup>13</sup> See Principles 1, 2, 3 and 4 of the Set of Principles.

<sup>14</sup> Guiding Principles on Internal Displacement, Principle 16 (1) (E/CN.4/1998/53/Add.2).

<sup>15</sup> Principles 11, 22 (b) and 24 of the “Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law” (Basic Principles and Guidelines), Commission resolution 2005/35 and General Assembly resolution 60/147.

<sup>16</sup> E/CN.4/2005/WG.22/WP.1/Rev.4, art. 24, para. 2.

<sup>17</sup> See Declaration on the Protection of All Persons from Enforced Disappearance, art. 13, para. 4, and art. 9, para. 1, and of the Principles on the Effective Prevention and Investigation of Extrajudicial, Arbitrary and Summary Executions, Principle 16.

<sup>18</sup> A/CONF.189/12, para. 98.

<sup>19</sup> General Assembly resolutions 3220 (XXIX), 33/173, 45/165, and 47/132.

<sup>20</sup> ICRC commentary on article 32 of Protocol I of the Geneva Conventions, of 12 August 1949, para. 1211.



- <sup>21</sup> Resolution II of the XXIV International Conference of the Red Cross and Red Crescent.
- <sup>22</sup> General Assembly resolutions 55/118, 57/105 and 57/161 and Security Council resolutions 1468 (2003), 1470 (2003) and 1606 (2005).
- <sup>23</sup> Mexico City Agreements, Agreement No. IV “Truth Commission”, United Nations, DPI/1208-92615-July 1992-7M; and Overview of the Sierra Leone Truth and Reconciliation Commission report - Report of the truth commission, October 2004, para. 27.
- <sup>24</sup> See, for example, the Peace Agreement between the Government of Sierra Leone and the Revolutionary United Front of Sierra Leone (art. XXVI) and the Government of Chile Supreme Decree No. 355 of 25 April 1990, establishing the Truth and Reconciliation Commission.
- <sup>25</sup> See Juan Méndez, “Accountability for past abuses”, in *Human Rights Quarterly*, vol. 19, No. 2, May 1997, pp. 255 *et seq.*, and Priscilla Hayner, *Unspeakable Truths: Confronting State Terror and Atrocity*, ed. Routledge, New York, 2001.
- <sup>26</sup> Commission resolution 1989/62, para. 7 (b).
- <sup>27</sup> Commission resolution 2002/60.
- <sup>28</sup> Chairperson’s statement on the situation of human rights in Colombia of 22 April 2005.
- <sup>29</sup> E/CN.4/1998/39/Add.1, para. 131.
- <sup>30</sup> Sub-Commission resolution 15 (XXXIV).
- <sup>31</sup> E/CN.4/Sub.2/1993/6 and E/CN.4/Sub.2/1991/20.
- <sup>32</sup> E/CN.4/Sub.2/1985/16, p. 19.
- <sup>33</sup> ST/SGB/1999/13.
- <sup>34</sup> Rule 9.8.
- <sup>35</sup> Press release SG/SM/9400 of 1 July 2004.
- <sup>36</sup> “The rule of law and transitional justice in conflict and post-conflict societies”, S/2004/16.
- <sup>37</sup> Report of the United Nations High Commissioner for Human Rights on the situation of human rights in Colombia, E/CN.4/2005/10, para. 5. See also E/CN.4/2005/SR.48, paras. 21 and 33.
- <sup>38</sup> Council of Europe, Parliamentary Assembly, resolution 1056 (1987); Res. 1414 (2004), para. 3, and resolution 1463 (2005), para. 10 (2).
- <sup>39</sup> European Parliament, resolution on missing persons in Cyprus, of 11 January 1983.
- <sup>40</sup> E/CN.4/2005/SR.48, para. 41.
- <sup>41</sup> Conclusions of the Council of the European Union on Colombia, 3 October 2005, Luxemburg, para. 4.
- <sup>42</sup> AG/RES. 666 (XIII-0/83), of 18 November 1983 para. 5, and AG/RES.742 (XIV-0/84), of 17 November 1984, para. 5.
- <sup>43</sup> OAS Permanent Council, Resolution OES/Ser.G CP/CAJP-2278/05/rev.4, 23 May 2005.
- <sup>44</sup> *Comunicado conjunto de los Presidentes de los Estados partes del MERCOSUR y de los Estados asociados*, Asunción (Paraguay), 20 June 2005.
- <sup>45</sup> Argentina, Colombia, Cuba, Mauritius, Peru, Slovenia, Uruguay, Venezuela (Bolivarian Republic of).

<sup>46</sup> IACHR, Report No. 21/00, Case 12.059, *Carmen Aguiar de Lapacó vs. Argentina*, 29 February 2000, para. 18.

<sup>47</sup> E/CN.4/2006/57.

<sup>48</sup> Agreements on Refugees and Displaced Persons (annex 7, art. V) and on the Military Aspects of the Peace Settlement (annex 1A, art. IX).

<sup>49</sup> Law on Missing, Bosnia and Herzegovina *Official Gazette* 50/04. A

<sup>50</sup> Constitutional Court of Colombia, Judgments of 20 January 2003, Case T-249/03 and C-228 of 3 April 2002.

<sup>51</sup> Constitutional Tribunal of Peru, Judgment of 18 March 2004, Case 2488-2002-HC/TC.

<sup>52</sup> See Agreement of 1 September 2003 of the National Chamber for Federal Criminal and Correctional Matters, Case *Suárez Mason, Rol 450* and Case *Escuela Mecánica de la Armada, Rol. 761*.

<sup>53</sup> *Ibid.*

<sup>54</sup> Chamber for Federal Criminal and Correctional Matters, Decision of 18 May 1995, Case *Maria Aguiar Lapacó, Rol. 450*.

<sup>55</sup> Supreme Court of the Nation (Argentina), Judgment of 14 June 2005, S. 1767. XXXVIII, *Simón, Julio Héctor y otros s/ privación ilegítima de la libertad*, Case, Rol. No. 17.768.

<sup>56</sup> *Ibid.*, paras. 15 and 19. See also paras. 50 and 51.

<sup>57</sup> Constitutional Court of Colombia, Judgment C-580 of 2002.

<sup>58</sup> Decision of 11 January 2001, *Palic v. Republika Srpska*, Case No. CH/99/3196.

<sup>59</sup> Decision of 7 March 2003, “*Srebrenica Cases*”, Cases Nos. CH/01/8365 et al., para. 220 (4).

<sup>60</sup> *Ibid.*, paras. 181 and 220 (3).

<sup>61</sup> Seventh Report of the Ad Hoc Working Group on human rights in Chile, A/33/331, para. 418 and following.

<sup>62</sup> Report of the WGEID, E/CN.4/1983/14, para. 134.

<sup>63</sup> General Comment on article 18 of the Declaration on the Protection of All Persons from Enforced Disappearance, para. 2 (c); (see [www.ohchr.org/english/issues/disappear/index/htm](http://www.ohchr.org/english/issues/disappear/index/htm)).

<sup>64</sup> Human Rights Committee, Views of 21 July 1983, Communication No. 107/1981, CCPR/C/19/D/107/1981, para. 14, and CCPR/C/79/Add.90, para. C.

<sup>65</sup> Views of 3 April 2003, Communication No. 887/1999, CCPR/C/77/D/950/2000, para. 9.2.

<sup>66</sup> *Ibid.*, para. 11 and views of 30 March 2005, Communication No. 973/2001, CCPR/C/83/D/973/2001.

<sup>67</sup> Human Rights Committee, CCPR/C/79/Add.63, para. 25.

<sup>68</sup> E/CN.4/Sub.2/1993/6, para. 16.

<sup>69</sup> Report of the Special Rapporteur on the question of human rights and states of emergency, E/CN.4/Sub.2/1991/20, annex I, p. 45.

<sup>70</sup> Judgments of 14 November 2000, *Tas v. Turkey* Case, Application No. 24396/94; and of 10 May 2001, *Cyprus v. Turkey* Case, Application No. 25781/94.

<sup>71</sup> Judgment of 10 May 2001, *Cyprus v. Turkey*, Application No. 25781/94, para. 136.

<sup>72</sup> See Judgments of 18 December 1996, *Aksoy v. Turkey*, Application No. 21987/93.

- <sup>73</sup> *Amnesty International v. Sudan*, Communications No. 48/90, 50/91, 52/91, 89/93 (1999), para. 54.
- <sup>74</sup> African Union, African Commission on Human and Peoples' Rights, DOC/OS (XXX) 247.
- <sup>75</sup> Principle C.
- <sup>76</sup> Annual reports of IACHR, 1985-1986, Doc. Cit., p. 205; and 1987-1988, Doc. Cit., p. 359.
- <sup>77</sup> American Convention on Human Rights, art. 1, para. 1.
- <sup>78</sup> See for example IACHR, Report No. 136/99, *Ignacio Ellacuría et al v. El Salvador*, para. 221 *et seq.*
- <sup>79</sup> Inter-American Court of Human Rights: Judgments of 29 July 1988, *Velásquez Rodríguez* case, para. 181.
- <sup>80</sup> *Ibid.*, Judgments of 24 January 1998, *Blake* case, para. 97.
- <sup>81</sup> See Judgments of 7 September 2004, *Tibi v. Ecuador*.
- <sup>82</sup> *Ibid.*
- <sup>83</sup> See communications to OHCHR from Peru and Venezuela (Bolivarian Republic of).
- <sup>84</sup> *Ibid.*, Mauritius and Slovenia.
- <sup>85</sup> *Ibid.*, Cuba and Uruguay.
- <sup>86</sup> Law No. 975 of Colombia (Law on Justice and Peace), art. 7.
- <sup>87</sup> E/CN.4/2004/88, para. 20.
- <sup>88</sup> See notes 6, 65, 66, 67, 70, 71, 73, 74, 78 and 81.
- <sup>89</sup> See notes 23, 24 and 25.
- <sup>90</sup> See notes 50, 51, 52, 55, 58 and 59.
- <sup>91</sup> See, e.g., Basic Principles and Guidelines, Principle 24 and Set of Principles, Principles 2, 3 and 4.
- <sup>92</sup> See notes 64, 65, 66, 67, 70, 71, 73, 74, 78 and 81.
- <sup>93</sup> See notes 50, 51, 52, 55, 58 and 59.
- <sup>94</sup> See Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, Principle 1, and Basic Principles and Guidelines, Principle 8.
- <sup>95</sup> Principle 22 (b).
- <sup>96</sup> Principle 2.
- <sup>97</sup> E/CN.4/1990/13, para. 339.
- <sup>98</sup> Annual report of IACHR, 1985-1986, doc. cit. p. 205.
- <sup>99</sup> E/CN.4/Sub.2/1997/20, para. 17.
- <sup>100</sup> Judgment of 25 November 2003, *Myrna Mack Chang* case, para. 274.
- <sup>101</sup> Supreme Court of the Nation, Judgment of 14 June 2005, doc. cit.
- <sup>102</sup> Constitutional Tribunal, Judgment of 18 March 2004, doc. cit.
- <sup>103</sup> Constitutional Court, Judgment C-580 of 2002.
- <sup>104</sup> Decision of 7 March 2003, *Srebrenica* cases, doc. cit., para. 212.
- <sup>105</sup> Communications are available at the Secretariat.

- <sup>106</sup> Views of 19 July 1994, Communication No. 322/1988, CCPR/C/51/D/322/1988, paras. 12 (3) and 14.
- <sup>107</sup> Report No. 37/00, case 11.481, *Monseñor Oscar Arnulfo Romero y Galdámez*, para. 148.
- <sup>108</sup> See Judgment of 8 July 2004, case of *the Gómez-Paquiyaury brothers v. Peru*.
- <sup>109</sup> Principle 9.
- <sup>110</sup> *Ibid.*
- <sup>111</sup> For example, the criteria adopted by the South Africa's Truth and Reconciliation Commission, E/CN.4/2004/88, para. 19.
- <sup>112</sup> From madness to hope: the 12-year war in El Salvador: report of the Truth Commission of El Salvador, Security Council, United Nations doc. 2/25500, para. 25.
- <sup>113</sup> Principles 1, 2 and 4.
- <sup>114</sup> European Parliament, resolution on missing persons in Cyprus, of 11 January 1983 and Annual Report of IACHR, 1985-1986, *op. cit.*, p. 205.
- <sup>115</sup> Human Rights Committee (see Views in notes 64, 65 and 66) and, IACHR (see reports cited in note 78).
- <sup>116</sup> See, *inter alia*, IACHR (see reports No. 136/99 and 1/99 cited in note 78) and Inter-American Court (see Judgments cited in notes 80, 81, 100 and 108).
- <sup>117</sup> See, *inter alia*, WGEID (E/CN.4/1435 and E/CN.4/1983/14, para. 134).
- <sup>118</sup> See, *inter alia*, ECHR (see Judgments cited in note 72) and Inter-American Court (see Judgments cited in notes 79, 80, 100, 81 and 108).
- <sup>119</sup> See, *inter alia*, IACHR (see reports No. 136/99 and 1/99 cited in note 78); Inter-American Court of Human Rights. (Judgments cited in notes 80, 81, 100 and 108 and; Judgment of 3 November 1997, *Castillo Páez* case.)
- <sup>120</sup> See Inter-American Court: Judgment of 5 July 2004, *19 Merchants v. Colombia*, para. 186.
- <sup>121</sup> Human Rights Committee (see views and concluding observations cited in notes 64, 65 and 66); ECHR (see judgments cited in note 70); annual report of IACHR - 1978, OEA/Ser.L/II.47, doc. 13/Rev.1; and African Commission on Human and Peoples' Rights *Amnesty International v. Sudan*, Communications No. 48/90, 50/91, 52/91, 89/93 (1999).
- <sup>122</sup> See IACHR, report No. 136/99, *Ignacio Ellacuría* case, *doc. cit.*
- <sup>123</sup> See, also last preambular paragraph of the draft legally binding normative instrument for the protection of all persons from enforced disappearance.
- <sup>124</sup> See, for example, ICCPR, art. 19 (3).
- <sup>125</sup> See, *inter alia*, Human Rights Committee (see views and concluding observations cited in notes Nos. 64, 65 and 66); ECHR (see judgments on *Kurt v. Turkey*, *Tas v. Turkey*, *Cyprus v. Turkey*, cited in note 70).
- <sup>126</sup> Human Rights Committee, general comment No. 29, (2002) on art. 4: Derogations during a state of emergency.
- <sup>127</sup> IACHR report No. 136/99, of 22 December 1999, para. 221.
- <sup>128</sup> European Court of Human Rights (judgments on *Kurt v. Turkey*, *doc. cit.*; *Tas v. Turkey*, *doc. cit.*

<sup>129</sup> Human Rights Committee, general comment No. 20 (1992) on art. 7 ((A/47/40), appendix VI.A); IACHR: report No. 136/99, *Ignacio Ellacuría* case.

<sup>130</sup> Inter-American Court, judgment of 14 March 2001, *Barrios Altos (Peru)* case, para. 41.

<sup>131</sup> Report No. 136/99, para. 224.

<sup>132</sup> Constitutional Tribunal of Peru, judgment, *Piura - Genaro Villegas Namuche* case, doc. cit., para. 15.

<sup>133</sup> Final report of the Commission of Experts established pursuant to Security Council resolution 780 (1992), S/1994/674, annex, para. 320.

<sup>134</sup> Set of Principles, Principle 19.

<sup>135</sup> For example, Colombia, France and Spain.

<sup>136</sup> See note No. 52.

<sup>137</sup> See Constitutional Court of Colombia, judgment of 20 January 2003, case T-249/03.

<sup>138</sup> In Peru, habeas corpus is utilized to establish the fate and whereabouts of the disappeared persons.

<sup>139</sup> Commission of Inquiry into the Disappearances of Peoples in Uganda.

<sup>140</sup> Truth commissions and commissions of inquiry, have been established, inter alia, in: Argentina, Bolivia, Burundi, Chad, Chile, Côte d'Ivoire, Ecuador, El Salvador.

<sup>141</sup> Report of the International Commission of Inquiry on Darfur to the Secretary-General, pursuant to Security Council resolution 1564 (2004), para. 620.

<sup>142</sup> All the mandates of truth commissions and commissions of inquiry are restricted to establish the facts committed during a limited period of time.

<sup>143</sup> Several mandates of truth commissions and commissions of inquiry were limited to certain kinds of human rights violations.

<sup>144</sup> According to the independent study on impunity, "Experience suggests that truth commissions should be given a time-bound mandate, generally lasting no more than two fully-operational years" (E/CN.4/2004/88, para. 19).

<sup>145</sup> The Mexican Federal Act on Access to Information (2002), bars the withholding of documents that describe "grave violations" of human rights. The Government of Argentina has undertaken to create a National Archive for Remembrance within the Department of Human Rights, in which various partial archives and databases will be consolidated.

<sup>146</sup> E/CN.4/Sub.2/1993/6 and E/CN.4/Sub.2/1997/20.

<sup>147</sup> See definition E "Archives" and Principles 14 to 18.

<sup>148</sup> International Council on Archives, *In Defense of Human Rights: Archives So We Do Not Forget*, Paris, May 2004.

- - - - -