

IN THE EUROPEAN COURT OF HUMAN RIGHTS

App. No. 47063/08

B E T W E E N:

MUJKANOVIC and 10 other applications

Applicants

-and-

BOSNIA AND HERZEGOVINA

Respondent

-and-

**THE REDRESS TRUST ('REDRESS') and WORLD ORGANISATION AGAINST
TORTURE ('OMCT')**

Interveners

APPLICATION NUMBER 47063/08

SUBMISSIONS OF REDRESS and OMCT

INTRODUCTION

1. The Redress Trust ('REDRESS') and the World Organisation Against Torture ('OMCT') (together, 'the Organisations') make these submissions pursuant to the leave granted by the President of the Chamber on 5 December 2012 in accordance with Rule 44 § 3 of the Rules of the Court.¹
 2. As is set out in the Court's statement of facts, this case concerns 18 separate applications to the Court concerning the disappearance of individuals during the 1992-1995 war in the former Yugoslavia. The applicants complain, on behalf of their missing relatives, that Bosnia and Herzegovina has failed to fulfil its procedural obligation to investigate their enforced disappearance, torture and death. Among other things, they further submit that the authorities have, for many years, refused to engage, acknowledge or assist in their efforts to find out what happened to their loved ones, and that this amounts to a violation of Article 3 of the European Convention on Human Rights (the 'Convention', ECHR), the prohibition of torture and ill-treatment.
 3. The Organisations intervene in this case in order to address the following legal issues:
 - (a) The nature of the link between enforced disappearance and the prohibition of torture and other ill-treatment; and
 - (b) The relationship between the continuing nature of enforced disappearance and the content of effective remedy and reparation for relatives of those who have been disappeared.
 4. The intervention therefore focuses on the following submissions:
 - (a) International human rights law presumes that direct next-of-kin of disappeared persons are victims of torture and ill-treatment;
 - (b) International human rights law holds that persons who are forcibly disappeared are victims of a violation of the prohibition of torture and ill-treatment;
 - (c) International human rights law obliges States to provide victims with an effective remedy, including a prompt, independent and effective investigation to end continuing violations and a right to the truth and to provide victims with full and effective reparation beyond compensation, including restitution, rehabilitation, satisfaction and guarantees of non-repetition.
- A. INTERNATIONAL HUMAN RIGHTS LAW PRESUMES DIRECT NEXT-OF-KIN OF DISAPPEARED PERSONS ARE VICTIMS OF TORTURE OR ILL-TREATMENT**
5. The International Convention for the Protection of All Persons from Enforced Disappearance ('CPED') defines 'enforced disappearance' as:

the arrest, detention, abduction or any other form of deprivation of liberty by agents of the State or by persons or groups of persons acting with the authorization, support or acquiescence of the State, followed by a refusal to acknowledge the deprivation of liberty or by concealment of the fate or whereabouts of the disappeared person, which place such a person outside the protection of the law.²
 6. The practice of enforced disappearance is not only aimed at silencing opponents, but also at punishing family members and spreading fear among communities. By concealing evidence and repressing information, family members of disappeared persons are explicitly kept in the dark about the whereabouts of the disappeared person. Family members therefore suffer anguish and stress. They are torn between hope and despair that does not vanish with the passage of time, because they do not know the fate of the disappeared person, because those responsible are not punished and because they feel indignation, frustration and even terror in the face of the authorities' failure to investigate.³

¹ Letters sent by the Section Registrar, Mr Early, to REDRESS and OMCT on 5 December 2012. Details of the Organisations are set out in the Annex to these comments.

²International Convention for the Protection of All Persons from Enforced Disappearance, entered into force 23 December 2010 ('CPED'), Article 2.

³See, e.g. Inter-American Court of Human Rights (IACtHR), *Chitay Nech et al v. Guatemala*, Judgment, 25 May 2010, (Ser. C) No. 212, para. 225; European Court of Human Rights (ECtHR), *Varnava and Others v. Turkey*, (Appl. No. 16064/90), Judgment,, 18 September 2009, para. 200.

7. International human rights law recognises that until the fate and whereabouts of a disappeared person are established, it amounts to a continuing crime.⁴ It is further recognised in international human rights law jurisprudence and declaratory instruments that family members of the disappeared are themselves victims of enforced disappearance, and entitled to a remedy and reparation.⁵

(i) International law automatically presumes close family members to be victims of torture or ill-treatment where there is enforced disappearance

8. Enforced disappearance by definition involves a “*refusal to acknowledge the deprivation of liberty or ...concealment of the fate or whereabouts of the disappeared person*”.⁶ This will in itself cause severe suffering to a family member of the disappeared person, who should therefore automatically be regarded as a victim of torture or ill-treatment.⁷

9. Indeed, as affirmed in the Declaration on the Protection of all Persons from Enforced Disappearance (the “Declaration”), the international community acknowledges that “[a]ny act of enforced disappearance places the persons subjected thereto outside the protection of the law and inflicts severe suffering on them and their families”, and that it “constitutes a violation of the rules of international law guaranteeing, inter alia ... the right not to be subjected to torture and other cruel, inhuman or degrading treatment or punishment”.⁸ In this regard, the Working Group on Enforced and Involuntary Disappearances has stressed that a State “cannot restrict the right to know the truth about the fate and the whereabouts of the disappeared as such restriction only adds to, and prolongs, the continuous torture inflicted upon the relatives”.⁹

10. This is also reflected in the jurisprudence of the IACtHR, which has held that direct next-of-kin, namely mothers, fathers, children, siblings, spouses and permanent companions should automatically be presumed to be victims of violations of the prohibition.¹⁰ That Court has stated that “the absence of effective domestic remedies must be considered per se as a source of insecurity, frustration and powerlessness for victims of gross human rights violations and their relatives, amounting to inhuman and degrading treatment”.¹¹ In the judgment of *Anzualdo Castro v. Peru*, the IACtHR further held that “the continued deprivation of the truth regarding the fate of a disappeared person constitutes cruel, inhuman and degrading treatment against close next of kin”.¹²

11. This too is consistent with the United Nation’s Human Rights Committee’s (UN HRC) case law,¹³ the jurisprudence of the African Commission on Human and Peoples’ Rights (ACmHPR)¹⁴ and recent developments in this Court’s jurisprudence.¹⁵

(ii) This Court’s jurisprudence is consistent with such a presumption, without requiring additional factors

12. This Court recognised early on that forced disappearance imposes a particular burden on relatives of missing persons, which could amount to a violation of Article 3 ECHR.¹⁶ Although different chambers of the Court have referred to different factors which may lead to such a finding, the Grand Chamber has stressed that, “the essence of such a violation lies in the authorities’ reactions

⁴*Varnava and Others v. Turkey*, para. 147–49; see also, e.g. United Nations Declaration on the Protection of All Persons from Enforced Disappearance (the “Declaration”), para. 17(1); Working Group on Enforced or Involuntary Disappearances (WGEID), ‘General Comment on Enforced Disappearance as a Continuous Crime’.

⁵The CPED, Art. 24; Declaration, Art. 19; see discussion of UN Human Rights Committee and Inter-American Court of Human Rights cases below at paras.10–11.

⁶CPED, Article 2.

⁷Declaration, Art. 1(2).

⁸Declaration, Art. 1(2).

⁹WGEID, ‘General Comment on the Right to the Truth in Relation to Enforced Disappearances’.

¹⁰See e.g. *Chitay Nech et al v. Guatemala*, para. 220; IACtHR, *Masacres de Ituango v. Colombia*, Judgment, 1 July 2006, (Ser. C) No. 148, para. 264.

¹¹See, inter alia, IACtHR, *Anzualdo Castro v. Peru*, Judgment, 22 September 2009, (Ser. C) No. 202, para. 113.

¹²IACtHR, *Anzualdo Castro v. Peru*, para. 113; also IACtHR, *Trujillo-Oroza v. Bolivia*, Reparations and Costs, Judgment, 27 February 2002, (Ser. C) No. 92, para. 114.

¹³See, e.g. UN HRC, *Sharma v. Nepal*, 28 October 2008, Communication No. 1469/2006 (2008), para.7.9; UN HRC, *Maria del Carmen Almeida de Quinteros et al v. Uruguay*, 21 July 1983, Communication No. 107/1981, para. 14.

¹⁴ACmHPR, *Mouvement Burkinabé des Droits de l’Homme et des Peuples v. Burkina Faso*, Comm. No. 204/97 (2001), para. 44.

¹⁵ECtHR, *Aslakhanova v. Russia*, (Appl. nos. 2944/06 and 8300/07, 50184/07, 332/08, 42509/10), Judgment, 18 December 2012, para. 133.

¹⁶See e.g. *Varnava and Others v. Turkey*, para. 200; ECtHR, *Cyprus v. Turkey* (Appl. No. 25781/94), Judgment, 10 Mai 2001, para. 155.

and attitudes to the event of disappearance”.¹⁷ This case law has further been confirmed in the cases of *Umayevy v Russia*¹⁸ and *Palić v Bosnia and Herzegovina*¹⁹, where the refusal of the authorities to engage, acknowledge or assist in efforts to find out what had happened to the disappeared persons was the sole factor taken into account when deciding whether there was a violation of Article 3 ECHR.

13. Because of the special nature of the suffering recognised as being endured by relatives of disappeared persons, other factors, such as the extent to which the family member witnessed the events, is only of very limited relevance.²⁰ For example, in the case of *Cyprus v Turkey*, this Court held that it did not consider “*the fact that certain relatives may not have actually witnessed the detention of family members or complained about such to the authorities of the respondent State deprives them of victim status under Article 3*”.²¹
14. This Court has stressed that the finding of a violation of Article 3 may also be made where the respondent State is not responsible for the disappearance, but has failed to respond to the quest for information by the relatives or the obstacles placed in their way, leaving them to bear the brunt of the efforts to uncover any facts.²² In the recent case of *Aslakhanova v Russia*, the Court explained that:

Article 3 of the Convention requires the respondent State to exhibit a compassionate and respectful approach to the anxiety of the relatives of the deceased or disappeared person and to assist the relatives in obtaining information and uncovering relevant facts. The silence of the authorities of the respondent State in the face of the real concerns of the relatives can only be categorised as inhuman treatment.²³

15. This Court has found in numerous cases that State Parties have failed to respond appropriately to family members’ allegations of disappearance, and that the State is therefore responsible for a violation of Article 3.²⁴ However, it is clear that even if a State Party does eventually respond, where that response is not sufficiently prompt, or complete (see further below), it does not undo the violation of Article 3 initially inflicted on the relatives by the further prolongation of the disappearance.²⁵

B. INTERNATIONAL HUMAN RIGHTS LAW HOLDS THAT PERSONS WHO ARE FORCIBLY DISAPPEARED ARE VICTIMS OF A VIOLATION OF THE PROHIBITION OF TORTURE AND ILL-TREATMENT

16. In order for forced disappearance to amount to a violation of Article 3 ECHR with regard to the disappeared person, the Court has required that ill-treatment attains a minimum level of severity that can be proved “beyond reasonable doubt”.²⁶ It is submitted, however, that in the light of international declaratory instruments and jurisprudence, it is widely accepted that prolonged incommunicado detention as part of enforced disappearance *per se* amounts to ill-treatment, and there are good grounds to extend this conclusion to even relatively brief periods of detention. This position is also supported by the reasoning and conclusions of the Grand Chamber in the recent judgment in *El Masri v. The Former Yugoslav Republic of Macedonia*.²⁷
17. Article 1(2) of the Declaration, which was adopted by consensus, stresses that “[a]ny act of enforced disappearance... constitutes a violation of the rules of international law guaranteeing ... the right not to be subjected to torture and ill-treatment”. This position has also been adopted by

¹⁷ ECtHR, *Tahsin Acar v. Turkey*, (Appl. No. 26307/95), Judgment, 8 April 2004, para. 238.

¹⁸ ECtHR, *Umayevy v. Russia*, (Appl. No. 47354/07), Judgment, 12 June 2012, paras. 101–103.

¹⁹ ECtHR, *Palić v. Bosnia and Herzegovina*, (Appl. No. 4704/04), Judgment, 15 February 2011 paras. 74–76.

²⁰ See e.g. ECtHR, *Beksultanova v. Russia*, (Appl. 31564/07), Judgment, 27 September 2011, para. 106; but contrast ECtHR, *Bazorkina v. Russia* (Appl. No. 69481/01), Judgment, 27 July 2006, para. 139.

²¹ *Cyprus v. Turkey*, para. 157.

²² *Varnava and Others v. Turkey*, para. 200.

²³ *Aslakhanova v. Russia*, para. 215.

²⁴ See, e.g. *Aslakhanova v. Russia*, para. 133; ECtHR, *Sambiyeva v. Russia*, (Appl. No. 20205/07), Judgment, 8 November 2011; *Varnava and Others v. Turkey*.

²⁵ As to the importance of the length of time, see *Varnava and Others v. Turkey*, para. 202; compare ECtHR, *Palić v. Bosnia and Herzegovina*, para. 70. As to what is required to relieve the victims’ anguish, the finding of the body will not be sufficient: see for example *Chitay Nech et al v. Guatemala*, para. 222, where the IACtHR considered that the effects, both psychological as well as physical, suffered by relatives of disappeared persons, “understood comprehensively in the complexity of the phenomenon of a forced disappearance, will remain while the factors of verified impunity persist”.

²⁶ ECtHR, *Çiçek v. Turkey* (Appl. No. 25704/94), Judgment, 27 February 2001, para. 155.

²⁷ ECtHR, *El-Masri v. The Former Yugoslav Republic of Macedonia* (Appl. No. 39630/09), Judgment, 13 December 2012.

the UN HRC, which has repeatedly stressed that any act of enforced disappearance “constitutes a violation of many of the rights enshrined in the Covenant, including ... the right not to be subjected to torture or to cruel, inhuman or degrading treatment or punishment (art. 7)”.²⁸ In the case of *Celis Laureano v. Peru*, the Committee further added that “the abduction and disappearance of the victim and prevention of contact with her family and with the outside world constitute cruel and inhuman treatment.”²⁹

18. The IACtHR has taken a similar position. It held in the landmark case of *Velasquez Rodriguez v. Honduras* that prolonged isolation and deprivation of communications are in themselves cruel and inhuman treatment, even if it is not known what has actually happened during the prolonged isolation of the particular individual.³⁰ According to the IACtHR, therefore, it is “evident that a victim of forced disappearance has had their personal integrity violated in all its dimensions.”³¹ This is also supported by statements of the Committee Against Torture, which has held that “detaining persons indefinitely without charge constitutes per se a violation of the Convention”.³²
19. This Court has repeatedly stated that for treatment to amount to torture or ill-treatment contrary to Article 3, it must attain a minimum level of severity and that all the circumstances of the case, such as duration, treatment, physical or mental health of the victim etc. need to be taken into account. Further factors include the motivation and purpose for which ill treatment was inflicted.³³ The Court accepted as ill-treatment or torture not only violent acts against victims, but also deprivation of sleep, forced feeding of a prisoner in hunger strike,³⁴ the lack of effective mentoring of a prisoner who was known to be a suicide risk³⁵ and the destruction of the elderly applicants’ home and property which deprived them of their livelihood and caused them great distress.³⁶ In addition, the Court acknowledged that deprivation of liberty incommunicado, beyond the control of judicial authorities for a period from twelve days up to more than one year with reports of ill-treatment and torture amounts to a violation of Article 3 ECHR.³⁷
20. In the very recent *El-Masri* judgment, the Grand Chamber concluded that forcible incommunicado incarceration for 23 days in a hotel by agents of the Macedonian security forces amounted to a violation of Article 3 ECHR.³⁸ The Court reiterated that Article 3 “does not refer exclusively to the infliction of physical pain but also of mental suffering, which is caused by creating a state of anguish and stress by means other than bodily assault”.³⁹ According to the Court there was:

no doubt that the applicant's solitary incarceration in the hotel intimidated him on account of his apprehension as to what would happen to him next and must have caused him emotional and psychological distress. The applicant's prolonged confinement in the hotel left him entirely vulnerable. He undeniably lived in a permanent state of anxiety owing to his uncertainty about his fate...⁴⁰
21. It is submitted that the Court’s conclusions in *El Masri* support the position that enforced disappearance meets the minimum level required for Article 3. The Court found that “the applicant’s solitary incarceration in the hotel “*must have caused him emotional and psychological distress*” (emphasis added), that his “*prolonged confinement ... left him entirely vulnerable*” and that he “*undeniably lived in a permanent state of anxiety owing to his uncertainty about his fate*” (emphasis added).⁴¹ Although in that case the Court did consider the evidence of the applicant (who, unlike many victims of enforced disappearance was eventually released and therefore able

²⁸ See e.g. UN HRC, *S. Jegatheeswara Sarma v. Sri Lanka*, 16 July 2003, Communication No. 950/2000 (2003), para. 9.3 and para. 9.5; UN HRC, *Boucherf v. Algeria*, 30 March 2006, Communication No. 1196/2003 (2006), para. 9.2 and see also UN HRC, *El-Megreisi v. Libyan Arab Jamahiriya*, 23 March 1994, Communication No. 440/1990 (1990), para. 5.4.

²⁹ UN HRC, *Celis Laureano v. Peru*, 4 July 1994, Communication No. 540/1993 (1996), para. 8.5.

³⁰ IACtHR, *Velasquez Rodriguez v. Honduras*, Judgment, 29 July 1988, (Ser. C) No. 4, para. 187; see also, *Chitay Nech et al v. Guatemala*, para. 94, and citations.

³¹ *Chitay Nech et al v. Guatemala*, para. 94, and citations; see also IACtHR, *Godinez-Cruz v. Honduras*, Judgment, 20 January 1989, (Ser. C) No. 5, para. 164.

³² Committee Against Torture (CAT), ‘Conclusions and Recommendations of the Committee against Torture: United States of America’, 25 July 2006, UN Doc. CA T/C/USA/CO/2 (2006), para. 22.

³³ ECtHR, *El-Masri v. The Former Yugoslav Republic of Macedonia*, para. 196.

³⁴ ECtHR, *Nevmerzhtsky v. Ukraine*, (Appl. No. 54825/00), Judgment, 5 April 2005, paras. 98–99.

³⁵ ECtHR, *Kennan v. the United Kingdom*, (Appl. No. 27229/95) Judgment, 3 April 2001, para. 116.

³⁶ ECtHR, *Selcuk and Asker v. Turkey* (Appl. No. 23184/94), Judgment, 24 April 1998.

³⁷ ECtHR, *Labsi v. Slovakia*, (Appl. No. 33809/08), Judgment, 15 May 2012, paras. 121–132.

³⁸ *El-Masri v. The Former Yugoslav Republic of Macedonia*, paras. 200–204.

³⁹ *Ibid.*, para. 202.

⁴⁰ *Ibid.*

⁴¹ *Ibid.*

to give evidence), it is submitted that the Grand Chamber, like other international tribunals, was prepared to accept that abduction and detention by state forces outside the protection of the law inevitably gives rise to uncertainty, and consequent anxiety and distress, that will rise to the level of torture or ill-treatment.

22. The very essence of forced disappearance is the deprivation of liberty without criminal charges, without contact to the outside world and with unknown prospect of liberation. As the Inter-American Court has held, “*it is inherent in human nature that all those subjected to arbitrary detention, incommunicado, torture and forced disappearance experienced intense suffering, anguish, terror, and feelings of powerlessness and insecurity*”.⁴²
23. It follows that enforced disappearance is *per se* ill treatment and does not require proof of further inhuman or degrading treatment or punishment to violate Article 3. An arguable claim that a disappearance has occurred therefore gives rise to procedural obligations under Article 3.

C. THE RELATIONSHIP BETWEEN ENFORCED DISAPPEARANCE AS CONTINUING VIOLATION AND THE REMEDIES TO BRING THE VIOLATION TO AN END AND THE RIGHTS OF VICTIMS TO FULL AND EFFECTIVE REPARATION

(i) *Victims of enforced disappearance have a right to remedy and reparation under international law*

24. As a matter of general public international law, any violation of an international law obligation gives rise to a duty to make reparation.⁴³ The right to remedy and to reparation is enshrined in a range of treaties,⁴⁴ and declarative instruments⁴⁵ and has been confirmed by UN bodies⁴⁶ and regional courts.⁴⁷ In the context of the Convention, everyone whose rights and freedoms under the Convention have been violated has a right to an effective remedy under Article 13.⁴⁸ A judgment of this Court finding a violation of the Convention gives rise to the obligations attaching to a finding of a breach of international law, namely an obligation to abide by the judgment by virtue of Article 46 and to afford reparation, including just satisfaction in accordance with Article 41.
25. There is a wealth of jurisprudence that has set out the nature of the right to a remedy and reparation in cases of enforced disappearance.⁴⁹ The goal of remedy and reparation is *restitutio in integrum* and, where that is not possible, compensation and other adequate and appropriate forms of reparation.⁵⁰ As part of the right to remedy and reparation, victims, in the majority of cases, the immediate family members, have a right “*to know the truth regarding the circumstances of the enforced disappearance, the progress and results of the investigation and the fate of the disappeared person*”.⁵¹

⁴²IACtHR, *Goiburú et al. v. Paraguay*, Judgment, 22 September 2006, (Ser. C) No. 221, para. 157.

⁴³Permanent Court of International Justice, *The Factory at Chorzów (Claim for Indemnity) case, (Germany v. Poland)*, Merits, (Ser. A) No. 17, 1928, p. 29.

⁴⁴ E.g. the International Covenant of Civil and Political Rights (ICCPR) (1966) (Arts. 2(3), 9(5) and 14(6)), International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) (1965) (Art. 6), Convention of the Rights of the Child (1989) (Art. 39), Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1984) (UNCAT) (Art. 14), and Rome Statute for an International Criminal Court (1998) (art. 75). It has also figures in regional instruments, e.g. European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) (1950) (Arts. 5(5), 13 and 41), the American Convention on Human Rights (ACHR) (1969) (Arts. 25, 63(1) and 68) and the African Charter on Human and Peoples’ Rights (ACHPR) (1981) (Art. 21(2)); CPED, (Art. 24).

⁴⁵*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*, Resolution 2005/35 (UN Doc. No. E/CN.4/RES/2005/35 (2005)) and General Assembly (GA) Res’n 60/147 (UN Doc. A/RES/60/147 (2006)) (the ‘Basic Principles and Guidelines’); see also the UN *Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power*, adopted by General Assembly resolution 40/34 of 29 Nov. 1985; and the Universal Declaration of Human Rights (UDHR) (1948) (Art. 8).

⁴⁶See, e.g., UN HRC, General Comment No. 31 [80] *Nature of the General Legal Obligation Imposed on States Parties to the Covenant* 26/05/2004, U.N. Doc. CCPR/C/21/Rev.1/Add.13, at paras. 15–17; CAT, General Comment No. 2, *Implementation of Article 2 by States Parties*, U.N. Doc. CAT/C/GC/2/CRP.1/Rev.4 (2007) at para. 15.

⁴⁷See, e.g., IACtHR, *Velasquez Rodríguez v. Honduras*, para. 174; see also ECtHR, *Papamichalopoulos v. Greece*, (Art. 50) (Appl. No. 14556/89), Judgment, 31 October 1995, para. 36.

⁴⁸In addition to the right to an effective remedy inherent in procedural aspects of Articles 2 and 3.

⁴⁹IACtHR, *Velasquez Rodríguez v. Honduras*, para. 27.

⁵⁰In enforced disappearance cases *restitutio in integrum* will require the release of the victim (where they are still alive), and may require, for example, the reinstatement to a prior position of employment and reinstatement of pension rights: see, eg. IACtHR, *Loayza-Tamayo v. Peru*, Judgment, September 17 1997, (Ser. C) No. 33, para. 46(1). Release also constitutes a primary obligation to cease the violation.

⁵¹CPED, Article 24 (1).

26. While the scope of the obligation under Article 13 varies depending on the circumstances of the case, the remedy required under Article 13 must be ‘effective’. This Court has made clear that

where relatives have an arguable claim that a member of their family has disappeared at the hand of the authorities, or where a right with as fundamental an importance as the right to life is at stake, Article 13 requires, in addition to the payment of compensation where appropriate, a thorough and effective investigation, capable of leading to the identification and punishment of those responsible and including effective access for the relatives to the investigatory procedure.⁵²

(ii) *The right to a remedy includes the State obligation to investigate and to end a continuing violation*

27. States have a procedural obligation to investigate alleged violations of the Convention in cases of enforced disappearance *ex officio* or following a complaint.⁵³ The investigation must be independent and effective in the sense that it is capable of establishing the facts, leading to the identification and punishment of those responsible, affording a sufficient element of public scrutiny, including being accessible to the victim’s family, and must be carried out promptly and expeditiously throughout.⁵⁴

28. This Court has held (in the context of a violation of Article 3) that due to the “*irreversible nature of the harm that might occur if the risk of ill-treatment materialised and the importance the Court attaches to Article 3, the notion of an effective remedy under Article 13 requires independent and rigorous scrutiny of the claim that there exist substantial grounds for fearing a real risk of treatment contrary to Article 3*”.⁵⁵ Furthermore, “*the remedy required under Article 13 must be ‘effective’ in practice as well as in law, in particular in the sense its exercise must not be unjustifiably hindered by the acts or the omissions of the authorities of the respondent state*”.⁵⁶

29. Because of the severity of the suffering endured by relatives of disappeared persons, the standard of response required of State Parties is high. This Court has stressed that an investigation must secure:

the effective implementation of the domestic laws which protect the right to life and, in those cases involving State agents or bodies, to ensure their accountability for deaths occurring under their responsibility. Even where there may be obstacles which prevent progress in an investigation in a particular situation, a prompt response by the authorities is vital in maintaining public confidence in their adherence to the rule of law and in preventing any appearance of collusion in or tolerance of unlawful acts.⁵⁷

30. This is particularly relevant in the context of enforced disappearance, where the obligation of a State to investigate will persist as long as the fate of the person is unaccounted for.⁵⁸ An investigation of enforced disappearance therefore not only serves the purpose of establishing the circumstances of the violation under the Convention such as killing contrary to Article 2 or torture and ill-treatment contrary to Article 3 and to punish the perpetrator, but also to end the violation. As has been held by this Court in reference to the distinct purpose of an investigation in the context of enforced disappearance:

the crucial difference in investigations into disappearances is that, by conducting an investigation, the authorities also aim to find the missing person, or find out what happened to him or her.⁵⁹

⁵² ECtHR, *Tanis and others v. Turkey*, (Appl. No. 65899/01), Judgment, 2 August 2005 para. 235; see also ECtHR, *Aksoy v. Turkey*, (Appl. No. 100/1995/606/694), Judgment, 18 December 1996, para. 98.

⁵³ See e.g. *Varnava and Others v. Turkey*, para. 191.

⁵⁴ See e.g. ECtHR, *Assenov and Others v. Bulgaria*, (Appl.No. 24760/94), Judgment, 28 October 1998, para.102; 14th General Report of the Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) Activities, covering the period of 1 August 2003 to 31 July 2004, paras. 32–36; see also UN Economic and Social Council, ‘Principles on the effective prevention and investigation of extra-legal, arbitrary and summary executions’, Resolution 1989/65, 24 May 1989, paras. 9–17.

⁵⁵ ECtHR, *Jabari v Turkey* (Appl. No. 40035/98), Judgment, 11 October 2000, para. 50.

⁵⁶ ECtHR, *Ipek v. Turkey* (Appl. No. 25760/94), Judgment, 17 February 2004, para. 197, referring to ECtHR, *Aksoy v. Turkey*.

⁵⁷ *Varnava and Others v. Turkey*, para. 191.

⁵⁸ *Aslakhanova v. Russia*, para. 214; see also WGEID, ‘General Comment on Enforced Disappearance as a Continuous Crime’, para. 1; *Varnava and Others v. Turkey*, para. 148.

⁵⁹ ECtHR, *Er and Others v. Turkey*, (Appl. No. 23016/04), Judgment, 31 July 2012, para. 56; see also *Varnava and Others v. Turkey*, para. 148.

31. An ongoing failure to carry out an investigation will therefore “*be regarded as a continuing violation*”⁶⁰ and States must take special steps to end the violation distinct from and additional to steps taken to repair violations that have already ended.
32. This Court has recently ruled that in cases where there is a systemic failure to investigate disappearances, a State should take steps with “*the aim of putting an end to the continued suffering of the relatives of the disappeared persons, conducting effective investigations...and ensuring that the families of the victims are awarded adequate redress*”.⁶¹
33. According to this Court’s recent jurisprudence, the special steps a State should consider taking in addressing ongoing violations include:
 - a. the creation of a “*single, sufficiently high-level body in charge of solving disappearances...which would work on the basis of trust and partnership with the relatives of the disappeared;*”
 - b. the allocation of specific and adequate resources to carry out large scale forensic and scientific work on the ground;
 - c. payment of substantial financial compensation, coupled with a clear and unequivocal admission of State responsibility for the relatives’ frustrating and painful situation;
 - d. ‘unilateral remedial offers to relatives of disappeared specifically where an investigation into the disappearance fell short of what is necessary under the Convention. Such an offer should include the question of compensation and “*at the very least an admission to that effect, combined with an undertaking by the respondent Government to conduct an investigation that is in full compliance with the requirements of the Convention as defined by the Court.*”⁶²

(iii) Victims have a right to the truth as a component of the right to a remedy and reparation

34. An integral component of the right to an effective remedy is the victim’s right to the truth, that is, the right to an “*accurate account of the suffering endured and the role of those responsible for that ordeal*”.⁶³ The right to the truth is now widely recognised in international law,⁶⁴ and while it is not limited to enforced disappearances, it is particularly relevant in this context given the secrecy of a disappeared person’s fate. The Convention provides:

[e]ach victim has the right to know the truth regarding the circumstances of the enforced disappearance, the progress and results of the investigation and the fate of the disappeared person. Each State Party shall take appropriate measures in this regard.⁶⁵

35. The right to truth entails the right of victims to access relevant information about the alleged enforced disappearance and to meaningful participation in proceedings. This approach has been supported by the Committee of Ministers of the Council of Europe,⁶⁶ the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT),⁶⁷ and is included in the EU Council Framework on the Standing of Victims in Criminal Proceedings.⁶⁸

⁶⁰Ibid.

⁶¹*Aslakhanova v. Russia*, para. 221.

⁶²Ibid, paras. 223–228; see also *Tahsin Acar v Turkey*, para. 84.

⁶³*El-Masri v. The Former Yugoslav Republic of Macedonia*, Joint Concurring Opinion of Judges Tulkens, Spielmann, Sicilianos and Keller, para. 1.

⁶⁴*Velásquez Rodríguez v. Honduras*, para. 177; IACtHR, *Myrna Mack Chang v. Guatemala*, Judgment, 25 November 2003, (Ser.C) No. 101 (2003), para. 274; Office of the UN High Commissioner for Human Rights, ‘Study on the Right to the Truth, UN Doc. E/CN.4/2006/91 (2006); CAT, Concluding Observations on Colombia, UN Doc. CAT/C/COL/CO/4 (2010), para. 27; Basic Principles and Guidelines, para. 24; UN Updated Set of Principles for the protection and promotion of human rights through action to combat impunity, U.N. Doc E/CN.4/2005/102/Add.1 (2005), principles 1, 4; WGEID, ‘General Comment on the Right to the Truth in Relation to Enforced Disappearances’.

⁶⁵CPED, Art. 24(2).

⁶⁶Guidelines of the Committee of Ministers of the Council of Europe on eradicating impunity for serious human rights violations, 30 March 2011, Guideline VII.

⁶⁷CPT, 14th General Report, Activities, covering the period of 1 August 2003 to 31 July 2004, para. 36.

⁶⁸Council Framework Decision of 15 March 2001 on the standing of victims in criminal proceedings, 2001/220/JHA, Article 4, para. 2.

This Court has consistently held that a victim should “*be able to participate effectively in the investigation in one form or another*”.⁶⁹

36. The IACtHR has also recognised that, in so far as allegations of torture are concerned, “*the victim must have full access and be able to act in all stages and levels of investigation*”.⁷⁰ The right to the truth is extended in the Inter-American jurisprudence to the family members of victims of serious human rights violations.⁷¹
37. The right to truth is, however, not only relevant for the victim, but also the general public, who, as this Court confirmed, have a “*right to know what had happened*”.⁷² This is essential to maintain public confidence in a State’s adherence to the rule of law and “*in preventing the appearance of collusion in or tolerance of unlawful acts*”.⁷³
38. The victims’ right to the truth is closely connected to the victims’ right to have the circumstances of the violations of their rights effectively investigated by the State and to the right to an effective remedy.⁷⁴ This Court has inferred a right to the truth as part of the right to be free from torture or ill-treatment, the right to an effective remedy, and the right to an effective investigation and to be informed of the results.⁷⁵ In a recent judgment, this Court has considered that one of the measures a State can take in regards to enforced disappearance is to “*set a rule that victims would have access to the case files where the investigation has been suspended for failure to identify the suspects*”.⁷⁶
39. The right to know the truth as a constitutive part of the right to an effective remedy is also reflected in the jurisprudence of the ACmHPR, the IACtHR and the UN HRC.⁷⁷ The Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa provide that “[t]he right to an effective remedy includes: (1) access to justice; (2) reparation for the harm suffered; and (3) access to factual information concerning the violations”.⁷⁸ This right was also endorsed in the UN 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 (‘UN Basic Principles’).⁷⁹

(iv) Full and effective reparation includes compensation, restitution, rehabilitation, satisfaction and guarantees of non-repetition

40. The Convention on Enforced Disappearance provides that:

Each State Party shall ensure in its legal system that the victims of enforced disappearance have the right to obtain reparation and prompt, fair and adequate compensation.

The right to obtain reparation referred to in paragraph 4 of this article covers material and moral damages and, where appropriate, other forms of reparation such as: (a) Restitution; (b) Rehabilitation; (c) Satisfaction, including restoration of dignity and reputation; (d) Guarantees of non-repetition.⁸⁰

⁶⁹*El-Masri v. The Former Yugoslav Republic of Macedonia*, para. 185, referring to this Court’s case law in *Ogur v. Turkey*, (Appl. No. 21594/93), Judgment, 20 Mai 1999, paras. 91–92; *Mehmet Emin Yüksel v Turkey*, (Appl. No. 40154/98), Judgment, 20 July 2004, para. 37.

⁷⁰See IACtHR, *Tibi v. Ecuador*, Judgment, 7 September 2004, (Ser. C) No. 114, para. 258.

⁷¹See IACtHR, *Moiwana Community v. Suriname*, Judgment, 15 June 2005, (Ser. C) No. 124, para. 204; IACtHR, *Gomez-Paquiayauri Brothers v. Peru*, Judgment, 8 July 2004, (Ser. C) No. 110, para. 230.

⁷²*El-Masri v. The Former Yugoslav Republic of Macedonia*, para. 191.

⁷³*Ibid.*, para. 192.

⁷⁴UN Human Rights Council, Report of the Special Rapporteur on the Promotion and Protection of Human Rights While Countering Terrorism, U.N. Doc. A/HRC/10/3 (2009).

⁷⁵See, *inter alia*, ECtHR, *Kurt v. Turkey*, (Appl. No. 15/1997/799/1002), Judgment, 25 May 1998, paras. 140–142 and 175; ECtHR, *Taş v. Turkey*, (Appl. no. 24396/94), Judgment, 14 November 2000, paras. 91–93 and 102–103; and ECtHR, *Cyprus v. Turkey*, as above, at Section III (Alleged Violations of the Rights of Greek-Cypriot Missing Persons and their Relatives).

⁷⁶*Aslakhanova and Others v. Russia*, para. 236.

⁷⁷ACmHPR, *Mouvement Burkinabé des Droits de l’Homme et des Peuples v. Burkina Faso*, Comm. No. 204/97 (2001), Recommendations; IACtHR, *Velasquez Rodriguez Case*, Judgment, 29 July 1988, (Ser. C) No. 4, para. 181; IACtHR, *Bamaca Velasquez v Guatemala*, Reparations and Costs, Judgment, 22 February 2002, (Ser. C) No. 70; IACtHR, *La Cantuta v Peru*, Merits, Reparations and Costs, Judgment, 29 November 2006, (Ser. 3) No. 172, paras. 221–242; UN HRC, *Maria del Carmen Almeida de Quinteros et al v Uruguay*, Communication No. 107/1981, UN Doc CCPR/C/OP/2 at 138 (1990).

⁷⁸ACmHPR, ‘Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa’ (Doc/OS (XXX) (247)).

⁷⁹UN Basic Principles and Guidelines, para. 22(b).

⁸⁰CPED, Art. 24(4)–(5); see also, Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I) (Adopted 8 June 1977; entered into force 7 December 1979) at Art. 32 where “the

41. Where this Court finds a violation of a Convention right, Article 41 of the Convention provides for an obligation on the State to put an end to the breach and to make reparation. While Article 46 (2) of the Convention leaves it up to the State to choose the means by which it will implement the judgment of the Court, notably, this Court has proceeded in its analysis of some cases, particularly those indicating systemic violations, to specify what measures States should take in discharging their obligations under Article 46.⁸¹
42. The Court takes into account a number of factors when determining just satisfaction.⁸² While initially, it considered the very finding of a violation of a person's right as sufficient just satisfaction for non-pecuniary damages, it is now common practice of the Court to award compensation in cases where it finds a state responsible for an enforced disappearance. According to the Court,
- the distress, frustration and uncertainty suffered by the applicant, flowing in part from the lack of an effective domestic investigation into the disappearance [...] must be regarded as inflicting non-pecuniary damage which cannot be compensated solely by findings of violations.⁸³
43. In awarding compensation, this Court takes into account factors such as the seriousness of the violation involved and the length of time over which the violations continued. Case law of this Court indicates that unlawful killings by the state, torture and unlawful expropriation are amongst those violations for which this Court has regularly afforded monetary compensation.⁸⁴ In *Scozzari and Giunta v Italy*, the Court noted that “[t]hose circumstances taken as a whole have caused the first applicant substantial anxiety and suffering that have increased with the passage of time (emphasis added).”⁸⁵
44. According to this Court, there is no scale of damages that should be awarded in disappearance cases; rather, this Court seems to take into account the factors above to award damages on a case by case basis.⁸⁶ This has led to significantly different amounts of compensation awarded in disappearance cases, ranging from anything between 12.000 Euro for each applicant in the case of *Varnava and Others v Turkey*,⁸⁷ to up to a total of 480.000 Euro in total for 16 applicants in *Aslakhanova and Others v Russia*.⁸⁸
45. The Court's case law suggests that when determining the appropriateness of just satisfaction, neither the number of potential beneficiaries nor the potential financial implications on the State are taken into account.⁸⁹
46. The Court has also considered measures of just satisfaction other than compensation under Article 41, particularly in the context of ongoing violations. For example, in two cases in 2004, the Grand Chamber of this Court, under Article 41, has ordered the release of applicants who remained in custody in unlawful circumstances with a view to putting an end to the violation (of Article 5 (1) and Article 6 (1)). The Court recognised that “*by its very nature, the violation found in the instant case does not leave any real choice as to the measures required to remedy it*”.⁹⁰ In *Arici & Others v Turkey* this Court ordered that the respondent State “*must conclude the preliminary investigation*

right of families to know the fate of their relatives” is cited as the basis upon which the section relating to “Missing and Dead Persons” is to be implemented by the parties to the Protocol, the parties to the conflict and international humanitarian organisations.

⁸¹ See further above, p.8; *Tahsin Acar v Turkey*, para. 84; *Broniowski v Poland*, para. 193.

⁸² *Varnava and Others v. Turkey*, para. 224.

⁸³ ECtHR, *Sarli v. Turkey* (Appl. No. 24490/94), Judgment, 22 May 2001, para. 90.

⁸⁴ ECtHR, *Salman v. Turkey* (Appl. No. 21986/93) Judgment, 27 June 2000, para. 140; *Ilhan v. Turkey*, (Appl. No. 22277/93) Judgment, 27 June 2000, para. 101; *Aksoy v. Turkey*, para. 113; *Aydin v. Turkey* (Appl. No. 57/1996/676/866) Judgment, 25 September 1997, para. 131.

⁸⁵ Other factors taken into account by the Court include age and health of the complainants, as well as the duration of the proceedings on a national level, as well as before this Court, see ECtHR, *Hutten-Czapska v. Poland*, (Appl. No. 35014/97), Judgment, 28 April 2008, para. 248.

⁸⁶ *Varnava and Others v. Turkey*, para.225.

⁸⁷ Ibid, point 9 (a) (i) of the Court's decision.

⁸⁸ *Aslakhanova and Others v Turkey*, point 10 (a) and Annex II of the Court's decision.

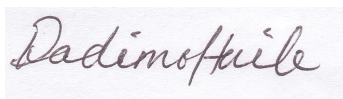
⁸⁹ ECtHR, *Assanidze v. Georgia*, (Appl.No. 71503/01), Judgment (Grand Chamber), (8 April 2004), para. 203.

⁹⁰ Ibid, para.202; see also *Ilascu and Others v. Moldova and Russia*, (Appl. no. 48787/99), Judgment, 8 July 2004, para. 490.

*without delay and take the appropriate action regarding the compensation to be awarded to the applicants”.*⁹¹

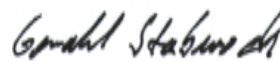
47. There are good reasons to go beyond awarding solely compensation as a measure of reparation in cases of gross human rights violations, including in particular ongoing violations such as enforced disappearances. According to the UN Basic Principles, reparation “*should be proportional to the gravity of the violations and the harm suffered*” and victims should be provided with full and effective reparation, including: restitution; compensation; rehabilitation; satisfaction and guarantees of non-repetition.⁹²
48. Recognising the limits of compensation as the sole measure of reparation, the IACtHR has ordered States to acknowledge in public their responsibility for the violations, to investigate within a reasonable time and to prosecute those responsible,⁹³ to locate the bodies of the disappeared and to return them to their next of kin.⁹⁴ Other reparation measures ordered by the Court in cases of disappearance included representation of the victims in a public memorial; provision of psychological and medical treatment for the next of kin of the victims and human rights training for judges, police, armed forces and prosecutors.⁹⁵
49. The Human Rights Committee has ordered that a State party, in addition to paying compensation, take immediate and effective steps to establish what happened to the victim of enforced disappearance, secure their release if still alive, bring to justice any persons found to be responsible for the disappearance and ill-treatment, ensure that similar violations do not occur in the future,⁹⁶ and inform relatives of the location of the grave of the victim.⁹⁷
50. The Committee Against Torture has also stressed in its recent General Comment 3 on Article 14 of the Convention Against Torture that reparation must be adequate, effective and comprehensive, tailored to the needs of the victim. The Committee explicitly endorsed the elements of full redress under international law and practice as outlined in the UN Basic Principles. The Committee further stressed that “*the provision of monetary compensation only is inadequate for a State party to comply with its obligations under article 14*”.⁹⁸
51. In sum, it is submitted that this Court should explicitly consider a range of reparation measures, according to the circumstances of the case and the needs of the victims, including the gravity of the violations and the harm suffered by the victims. Reparation should not be restricted to compensation. Other forms of reparation to be considered by the court include just satisfaction, guarantees of non-repetition, symbolic reparations such a public apology, diligent investigation and prosecution, and access to rehabilitation.

REDRESS



Dadimos Haile,
Interim Director, REDRESS

OMCT



Gerald Staberock,
Secretary General, OMCT

⁹¹ ECtHR, *Nihayet Arici and Others v. Turkey*, (Appl. Nos. 24604/04, 16855/05), Judgment, 23 October 2012.

⁹² UN Basic Principles and Guidelines, principle 9, para.15.

⁹³ *Chitay Nech et al v. Guatemala*, para. 235; IACtHR, *Baldeón García v. Perú*, Merits, Reparations and Costs, Judgment, 6 April 2006, (Ser. C) No. 147, para. 199; IACtHR, *Kenneth Ney Anzualdo Castro v. Perú*, Judgment, 22 September 2009 No. 202, para.181 and IACtHR, “*Las Dos Erres*” *Massacre v. Guatemala*, Judgement, 24 November 2009, No. 11.681, para. 233.

⁹⁴ *Chitay Nech et al v. Guatemala*, para. 240–241; IACtHR, *Goiburú et al. v. Paraguay*, para. 171; IACtHR, *La Cantuta v. Peru*, Merits, Reparations and Costs, para. 231, and IACtHR, *Ticona Estrada et. al. v. Bolivia*, Judgment, 1 July 2009, (Ser. C) No. 199, para. 155; IACtHR, *Neira Alegria et. al. v. Perú*, Reparations and Costs, Judgment, 19 September 1996, (Ser. C) No. 29, para. 69.

⁹⁵ *Chitay Nech et al v. Guatemala*, Declaration, paras. 11–18.

⁹⁶ UN HRC, *Maria del Carmen Almeida de Quinteros et al v. Uruguay*, 21 July 1983, Communication No. 107/1981.

⁹⁷ UN HRC, *Lyashkevich v. Belarus*, 3 April 2003, Communication No. 887/1999 (2003), para. 11.

⁹⁸ Committee against Torture, General Comment No.3, Implementation of article 14 by States parties’, CAT/C/GC/3, 19 November 2012, para. 9.

**MUJKANOVIC et al. v BOSNIA & HERZEGOVINA (Application No. 47063/08)
and 10 other applications**

**ANNEX TO WRITTEN COMMENTS BY
REDRESS AND OMCT**

DETAILS OF INTERVENERS

REDRESS

The Redress Trust ('REDRESS') is an international human rights non-governmental organisation based in London with a mandate to assist torture survivors to prevent their further torture and to seek justice and other forms of reparation. It has accumulated a wide expertise on the rights of victims of torture to gain both access to the courts and redress for their suffering and has advocated on behalf of victims from all regions of the world. Over the past twenty years, REDRESS has regularly taken up cases on behalf of individual torture survivors at the national and international level and provides assistance to representatives of torture survivors. REDRESS has consultative status with ECOSOC and has extensive experience in interventions before national and international courts and tribunals, including the United Nations' Committee against Torture and Human Rights Committee, the European Court of Human Rights, the Inter-American Commission of Human Rights, the African Commission on Human and Peoples' Rights, the International Criminal Court, the Special Court for Sierra Leone and the Extraordinary Chambers in the Courts of Cambodia.

OMCT

Created in 1986, the World Organisation Against Torture (OMCT) is today the main coalition of international non-governmental organisations (NGO) fighting against torture, summary executions, enforced disappearances and all other cruel, inhuman or degrading treatment. With 297 affiliated organisations in its SOS-Torture Network and many tens of thousands correspondents in every country, OMCT is the most important network of non-governmental organisations working for the protection and the promotion of human rights in the world.

Based in Geneva, OMCT's International Secretariat provides personalised medical, legal and/or social assistance to hundreds of torture victims and ensures the daily dissemination of urgent appeals across the world, in order to protect individuals and to fight against impunity. Specific programmes allow it to provide support to specific categories of vulnerable people, such as women, children and human rights defenders. In the framework of its activities, OMCT also submits individual communications and alternative reports to the special mechanisms of the United Nations, and actively collaborates in the development of international norms for the protection of human rights.

OMCT enjoys a consultative status with the following institutions: ECOSOC (United Nations), the International Labour Organization, the African Commission on Human and Peoples' Rights, the Organisation Internationale de la Francophonie, and the Council of Europe.

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**ANNEX TO WRITTEN COMMENTS BY
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LIST OF AUTHORITIES⁹⁹

Permanent Court of International Justice

1. Permanent Court of International Justice (PCIJ), *The Factory at Chorzow (Claim for Indemnity) case, (Germany v. Poland)*, Merits, (Ser. A) No. 17
http://www.worldcourts.com/pcij/eng/decisions/1928.09.13_chorzow1.htm

African Commission on Human and Peoples' Rights

2. *Mouvement Burkinabé des Droits de l'Homme et des Peuples v. Burkina Faso*, Comm. No. 204/97 (2001)
http://www.achpr.org/files/sessions/29th/comunications/204.97/achpr29_204_97_eng.pdf
3. 'Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa' (Doc/OS (XXX) (247)).
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4. *Chitay Nech et al v. Guatemala*, Judgment, 25 May 2010, (Ser. C) No. 212
http://www.corteidh.or.cr/docs/casos/articulos/seriec_212_ing.pdf
5. *Masacres de Ituango v. Colombia*, Judgment, 1 July 2006, (Ser. C) No. 148
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6. *Anzualdo Castro v. Peru*, Judgment, 22 September 2009, (Ser. C) No. 202
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http://www.corteidh.or.cr/docs/casos/articulos/Seriec_92_ing.pdf
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http://www.corteidh.or.cr/docs/casos/articulos/seriec_04_ing.doc
9. *Goiburú et al. v. Paraguay*, Judgment, 22 September 2006, (Ser. C) No. 153
http://www.corteidh.or.cr/docs/casos/articulos/seriec_153_ing.pdf
10. *Loayza-Tamayo v. Peru*, Judgment, 17 September 1997, (Ser. C) No. 33
http://www.corteidh.or.cr/docs/casos/articulos/seriec_33_ing.pdf
11. *Myrna Mack Chang v Guatemala*, Judgment, 25 November 2003, (Ser. C) No. 101
http://www.corteidh.or.cr/docs/casos/articulos/seriec_101_ing.pdf

⁹⁹ We have not provided ECHR materials, or widely ratified human rights treaties. Authorities are listed under each heading in the order in which they appear in the intervention.

12. *Tibi v. Ecuador*, Judgment, 7 September 2004, (Ser. C) No. 114
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14. *Gomez-Paquiyaury Brothers v. Peru*, Judgment, 8 July 2004, (Ser. C) No. 110
http://www.corteidh.or.cr/docs/casos/articulos/seriec_110_ing.pdf
15. *Bamaca Velasquez v. Guatemala*, Reparations and Costs, Judgment, 22 February 2002, (Ser. C) No. 91
http://www.corteidh.or.cr/docs/casos/articulos/Seriec_91_ing.pdf
16. *La Cantuta v. Peru*, Merits, Reparations and Costs, Judgment, 29 November 2006, (Ser. C) No.162
http://www.corteidh.or.cr/docs/casos/articulos/seriec_162_ing.pdf
17. *Baldeón García v. Perú*, Merits, Reparations and Costs, Judgment, 6 April 2006, (Ser. C) No. 147
http://www.corteidh.or.cr/docs/casos/articulos/seriec_147_ing.pdf
18. “*Las Dos Erres*” *Massacre v. Guatemala*, Judgement, 24 November 2009, (Ser. C) No. 211
http://www.corteidh.or.cr/docs/casos/articulos/seriec_211_ing.pdf
19. *Ticona Estrada et. al. V. Bolivia*, Judgment, 1 July 2009, (Ser. C) No. 191
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United Nations Documents

22. United Nations Declaration on the Protection of All Persons from Enforced Disappearance
<http://www.un.org/documents/ga/res/47/a47r133.htm>
23. International Convention for the Protection of All Persons from Enforced Disappearance, entered into force 23 December 2010
<http://www2.ohchr.org/english/law/disappearance-convention.htm>
24. Working Group on Enforced or Involuntary Disappearances (WGEID), ‘General Comment on Enforced Disappearance as a Continuous Crime’
<http://www.ohchr.org/Documents/Issues/Disappearances/GC-EDCC.pdf>
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http://www.ohchr.org/Documents/Issues/Disappearances/GC-right_to_the_truth.pdf
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<http://www.unhcr.org/refworld/publisher,CAT,,USA,453776c60,0.html>
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28. CAT, General Comment No. 2, Implementation of article 2 by States Parties, U.N. Doc. CAT/C/GC/2/CRP.1/Rev.4 (2007)
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<http://www.unhcr.org/refworld/docid/46822b6c2.html>
31. 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, General Assembly Resolution 60/147 of 16 December 2005
<http://www2.ohchr.org/english/law/remedy.htm>
32. The UN *Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power*, adopted by General Assembly resolution 40/34 of 29 Nov. 1985
<http://www.un.org/documents/ga/res/40/a40r034.htm>
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35. UN Economic and Social Council, 'Principles on the effective prevention and investigation of extra-legal, arbitrary and summary executions', Resolution 1989/65, 24 May 1989
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36. UN HRC, General Comment No. 31 [80] *Nature of the General Legal Obligation Imposed on States Parties to the Covenant* 26/05/2004, U.N. Doc. No.CCPR/C/21/Rev.1/Add.13
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UN Human Rights Committee

37. *Maria del Carmen Almeida de Quinteros et al v. Uruguay*, 21 July 1983, Communication No. 107/1981
<http://www1.umn.edu/humanrts/undocs/newscans/107-1981.html>
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<http://www1.umn.edu/humanrts/undocs/1469-2006.pdf>
39. *S. JegatheeswaraSarma v. Sri Lanka*, 16 July 2003, Communication No. 950/2000 (2003)
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41. *El-Megreisi v. Libyan Arab Jamahiriya*, 23 March 1994, Communication No. 440/1990 (1990)
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