



Compilation of Risk Factors  
and Legal Norms for the

# Prevention *of* Genocide

Jacob Blaustein Institute  
for the Advancement of Human Rights

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In Cooperation with the Office of the Special Adviser on the Prevention of Genocide, United Nations

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# Compilation of Risk Factors and Legal Norms for the Prevention of Genocide

Foreword by Francis M. Deng,  
Special Adviser of the United Nations Secretary-General  
on the Prevention of Genocide

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# Foreword

**Francis M. Deng**

Special Adviser of the United Nations Secretary-General on the Prevention of Genocide

Genocide is one of the most heinous crimes known to humankind. Although humanity is expected to unite to prevent, stop, and punish it, allegations of genocide evoke emotionalism and denial from both the alleged perpetrators and those who would be called upon to intervene to stop it. This is why genocide is generally recognized after the fact, when the perpetrators are gone or defeated and the determination of the crime becomes a judgment of the victor over the vanquished. Early prevention, before the crisis escalates to genocidal levels and denial sets in, becomes the most constructive way to go.

The Jacob Blaustein Institute for the Advancement of Human Rights, by preparing the *Compilation of Risk Factors and Legal Norms for the Prevention of Genocide*, has provided us with a guiding tool for engaging governments in fulfilling their international obligations to prevent and punish the crime of genocide. The risk factors, clustered under systematic discrimination and life integrity violations, combined with a list of special circumstances that can encourage genocidal behavior, identify essential elements for constructively managing diversity. In many respects, they complement the *Framework of Analysis* which my office has developed for assessing the risk of genocide in a given situation. What is critically important to bear in mind is that every state, whether acting alone or with the support of the international community, is obligated to endeavor to prevent the commission of genocide. While this is a formidable challenge, states can respond effectively to the threat of genocide by taking timely preventive action and, if necessary, calling on the international community to assist. Situations leading to genocide are often predictable and can even take years to develop, which provides sufficient opportunity for preventive measures.

In order to facilitate constructive dialogue with governments and other key stakeholders, my office is striving to demystify genocide from being viewed as too sensitive an issue for comfortable discussion, to one that can be prevented or halted by being better understood as an extreme form of identity-related conflicts. These conflicts do not emanate from mere differences, but from gross inequalities generally reflected in egregious human rights violations: discrimination, marginalization, exclusion, dehumanization, denial of fundamental rights, and persecution.

In virtually all genocidal situations, society is acutely divided on the bases of such factors as those identified in the 1948 Convention on the Prevention and Punishment of the Crime of Genocide—nationality, race, ethnicity, and religion. The dichotomy is between in-groups, who enjoy the rights and dignity of citizenship, and out-groups, who are excluded from enjoying fundamental rights and freedoms. When these out-groups seek international protection, a narrow, negative concept of sovereignty is invoked as a barricade against international involvement. The ultimate outcome may be a nation in violent confrontation with itself. It is often the out-group's desperate reaction to gross inequalities and the counter-reaction by the dominant group, that may provoke insurgencies and genocidal counter-insurgencies. Structural prevention therefore requires constructive management of diversity to promote equitable distribution of power and resources and to ensure respect for all human rights. Prevention also calls for stipulating sovereignty as a positive concept of state responsibility, with international accountability.<sup>1</sup>

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<sup>1</sup> See Francis M. Deng, Sadikiel Kimaro, Terrence Lyons, Donald Rothchild, and I. William Zartman, *Sovereignty as Responsibility—Conflict Management in Africa*, The Brookings Institution, Washington, DC (1996).

Identity conflicts need not entail violent confrontation between opposing groups. Genocide can occur in times of war or in situations of relative peace. Even without a violent reaction to conditions of gross inequality and indignity, a particular group can be labeled as posing an imagined existential threat of one kind or another and be targeted for genocidal persecution or otherwise subjugated. That was indeed the case with the Jews in Germany, the Armenians in Turkey, minorities in Cambodia, the Muslims in Bosnia, and the Tutsis in Rwanda.

Since problems of diversity and disparity are global, the potential for genocidal conflicts is equally global, although some regions are more vulnerable than others. Furthermore, not all countries perform equally well in their management of diversity; some manage well, others not so well, while others fail dismally. This is why it is important to conduct case studies to identify best practices that can be emulated and worst practices to be avoided.

Where there is cause for concern, my office conducts an in-depth assessment of the situation, using a *Framework of Analysis*, focusing attention on eight factors which cumulatively increase the risk of genocidal violence. These are:

- i. Intergroup relations and record of discrimination;
- ii. Circumstances that affect the capacity to prevent genocide;
- iii. Presence of illegal arms and armed elements;
- iv. Motivation and acts that encourage divisions between groups;
- v. Circumstances that facilitate the perpetration of genocide;
- vi. Acts that could be elements of genocide;
- vii. Evidence of “intent to destroy in whole or in part”;
- viii. Triggering factors.

The Framework is envisaged as a tool by which states can look at themselves in the mirror, assess their own performance, identify areas in which they are doing well, where they need to improve their performance, and what preventive measures are needed.

The Genocide Convention clearly establishes the obligation incumbent on States parties “to prevent” genocide; however, while the treaty stipulates this obligation, it does not elaborate further on its scope. This ambiguity has given rise to one of the most significant challenges my office faces in fulfilling its mandate—identifying a universally acceptable threshold for the existence of the risk of genocide.

In 2008, I urged JBI to create this Compilation, drawing on normative sources, including the 1948 Convention on Genocide, international human rights and humanitarian law, the Statute of the International Criminal Court, and the jurisprudence of international courts, tribunals, and bodies. I then participated in meetings with experts, scholars, and specialists who advised and consulted with JBI on the text of the Compilation. It was my view that the JBI Compilation, once completed, would “encourage States to fulfill their genocide prevention obligations.”

The Compilation is an invaluable contribution to my office’s efforts to address the legal ambiguities in the Genocide Convention. It undertakes the first effort to identify “risk factors” and “areas of concern” that may lead to genocide based on normative legal sources. The Compilation demonstrates that there are a host of legal norms, such as those establishing protected rights



and the principle of nondiscrimination, dispersed throughout different instruments—national, regional, and international—that are relevant to the prevention of genocide.

JBI's Compilation complements and reinforces our Analysis Framework. It aims to promote consistency in the approach to genocide prevention adopted by my office, the international community, states, and other stakeholders, while, at the same time, reflecting the diverse manifestations of genocidal situations. The JBI Compilation and my office's Analysis Framework together should serve as complementary tools to better enable stakeholders to identify problem areas needing attention and to take the remedial measures to prevent the escalation of situations to genocidal levels. The normative base provided by the Compilation can provide a foundation to the development of monitoring and genocide prevention efforts by states and the special adviser and of advocacy initiatives by nongovernmental organizations.

The norms identified in the Compilation make it clear that circumstances giving rise to a risk of genocide—and thus to a need for genocide prevention efforts—can occur, like genocide itself, in times of relative peace as well as in times of conflict. Throughout history, genocide has occurred in societies in which different national, racial, ethnic or religious groups became involved in conflicts related to their identities. However, those genocidal conflicts were often preceded by serious systematic discriminatory practices and other human rights violations against targeted groups. It is these practices and violations, among others, that the Compilation identifies in such copious detail.

The Compilation does not suggest that every human rights abuse per se should be interpreted as giving rise to a risk of genocide; on the contrary, the Compilation clearly states that the “risk factors” it identifies are triggered by severe and systematic abuses of human rights, rather than being isolated incidents of abuse. It thereby incorporates the high threshold inherent in the definition of the crime of genocide—which the International Court of Justice has found must be established by proof “at a high level of certainty appropriate to the seriousness of the allegation”—into the process of identifying situations in which a risk of genocide is present.<sup>2</sup> Nevertheless, prevention requires protecting all human rights for all groups at all times without discrimination on any grounds.

The choices members of the international community make regarding how and when to respond to prevent genocide should be based on a strong commitment to upholding fundamental values and to protecting human lives and groups; these choices also will determine whether we uphold the promises of “never again” that we have repeatedly made to victims of past genocides. I give my wholehearted endorsement to JBI's Compilation and look forward to using it as my office and other stakeholders continue our efforts to develop and expand upon strategies for the prevention of genocide.

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<sup>2</sup> International Court of Justice, *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro)*, Judgment of 26 February 2007.

# Introduction

The Jacob Blaustein Institute for the Advancement of Human Rights (JBI) has a long and dedicated history of supporting projects and initiatives related to genocide prevention, as well as a longstanding commitment to strengthening human rights protections through international institutions and mechanisms. Most recently, JBI has undertaken an extensive examination of international law, at the request of the UN Secretary-General's Special Adviser on the Prevention of Genocide, Francis M. Deng, to clarify the legal framework for genocide prevention. This *Compilation of Risk Factors and Legal Norms for the Prevention of Genocide* is an outcome of JBI's Project on the Prevention of Genocide.

According to the Convention on the Prevention and Punishment of Genocide, States parties are obligated both to prevent and to punish genocide. Article 1 provides that “[t]he Contracting Parties confirm that genocide, whether committed in time of peace or in time of war, is a crime under international law which they undertake to prevent and to punish.” Article 2 provides the definition of genocide, while Article 3 establishes the acts that are punishable under the convention. Other provisions of the treaty address a range of issues relating to punishment for the commission of genocide. However, nowhere does the treaty elaborate on what is meant by the term prevention. Despite this, prevention is a core obligation applicable to every one of the 140 states that has ratified the convention.

To assist the Special Adviser on the Prevention of Genocide in providing guidance to states on their preventive obligations under the convention, JBI's Project on the Prevention of Genocide has produced this Compilation to identify the major “risk factors” that could lead to the perpetration of genocide and the legal norms and standards that underlie these risk factors. Further, the Compilation identifies a list of “special circumstances” that might increase the possibility of genocide.

As the Holocaust, the Rwandan genocide, and other similar events have taught us, genocide does not begin overnight. It is always preceded by a series of identifiable early warning signs, or risk factors, that reveal violations of international human rights law (that is, civil, political, economic, social, and cultural rights) as well as international humanitarian law. Studies of past genocides show that well before the onset of genocide, many of the risk factors listed in this Compilation were present, together with some of the special circumstances that are identified.<sup>3</sup> When one or more risk factors appear in concert with one or more of these special circumstances, states should be on alert and are expected to take measures to mitigate the risk of genocide.

The risk factors themselves are derived from international legal norms found in the major international and regional human rights treaties and jurisprudence and in international humanitarian law. The norms identified do not create any new obligations for states. Rather, they represent existing obligations within these bodies of law that are often jeopardized and

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<sup>3</sup> Payam Akhavan, “Report of the Work of the Office of the Special Adviser of the United Nations Secretary-General on the Prevention of Genocide,” *Human Rights Quarterly* 28 (2006) pg. 1049; Lawrence Woocher, “Early Warning for the Prevention of Genocide and Mass Atrocities,” March 1, 2007, International Studies Association Conference, pg. 6; and Anthony Oberschall, “From Ethnic Co-operation to Violence and War in Yugoslavia,” in Daniel Chiro and Martin Seligman, eds., *Ethnopolitical Warfare: Causes, Consequences, and Possible Solutions* (American Psychological Association, 2000), pg. 133.

violated in the lead-up to genocide. It should be noted that the risk factors do not refer to random or isolated incidents of human rights abuse, but rather to severe and systematic abuses of human rights and humanitarian law targeting members of a “particular group,” as set forth in Article 2 of the Genocide Convention—i.e., members of a national, ethnic, racial or religious group.

It is JBI’s hope that this Compilation will provide the Special Adviser with clear warning signs of possible genocide and facilitate the identification of situations that may require his intervention. The corresponding norms set forth should provide the legal basis for his calling on states to take preventive measures. As the Special Adviser articulated at the January 2009 conference on genocide prevention organized by the Office of the UN High Commissioner for Human Rights, JBI’s document will serve as a tool to “encourage States to fulfill their genocide prevention obligations.”<sup>4</sup>

The Compilation should also prove of value to other UN bodies, governments, nongovernmental organizations, legal experts and academics, and other members of civil society who collaborate with the special adviser. Indeed, UN Secretary-General Ban Ki-moon has called for a “global partnership against genocide.” In this partnership, UN human rights special procedures, UN entities with human rights monitoring mandates, and the Office of the High Commissioner for Human Rights have special responsibilities. Similarly, nongovernmental organizations and members of civil society play key roles in monitoring human rights situations around the world, calling attention to widespread and systematic abuses, and reminding states and international organizations of their obligations. *The Compilation of Risk Factors and Legal Norms for the Prevention of Genocide* should serve to bolster the efforts of all these actors to fulfill the promise of “never again.”

E. Robert Goodkind  
Chair

Felice D. Gaer  
Director

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<sup>4</sup> Statement of Special Adviser on the Prevention of Genocide at OHCHR Seminar on Genocide Prevention, [http://www2.ohchr.org/english/events/RuleofLaw/docs/Special\\_Advisor\\_Statement\\_2009-01-21.pdf](http://www2.ohchr.org/english/events/RuleofLaw/docs/Special_Advisor_Statement_2009-01-21.pdf).

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Finally, JBI thanks Roselyn Bell and Debbie Goldstein for their assistance in the production of the final product.

# Glossary of Abbreviations

AG/RES	General Assembly Resolution (Organization of American States)
CAT	Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
CEDAW	Convention on the Elimination of All Forms of Discrimination against Women
CERD	Committee on the Elimination of Racial Discrimination
CESCR	Committee on Economic, Social, and Cultural Rights
CRC	Convention on the Rights of the Child
ECHR	European Convention on Human Rights
ICCPR	International Covenant on Civil and Political Rights
ICERD	International Convention on the Elimination of All Forms of Racial Discrimination
ICESCR	International Covenant on Economic, Social, and Cultural Rights
ICRC	International Committee of the Red Cross
ICTR	International Criminal Tribunal for Rwanda
ICTY	International Criminal Tribunal for the Former Yugoslavia
OAU	Organization of African Unity
OSCE	Organization for Security and Co-operation in Europe
UDHR	Universal Declaration of Human Rights
UNESCO	United Nations Education, Scientific and Cultural Organization
UNGA	United Nations General Assembly
UNTS	United Nations Treaty Series

# Risk Factors and Legal Norms: An Overview

Under the Genocide Convention and international human rights law, states are required to take measures to prohibit acts that could result in genocide. For the effective achievement of such measures, it is important to understand and be aware of the signs and circumstances that could be indicative of possible genocide. This document identifies the major risk factors that could lead to the perpetration of genocide, together with the special circumstances that could facilitate this. Further, it sets forth the legal norms and standards that correspond to each risk factor and that can be invoked to strengthen the basis for taking preventive action.

This Compilation is divided into two categories: 1) discrimination-related risk factors; and 2) risk factors that could threaten the physical integrity of members of a particular group. This selection of categories is designed to show how systematic discrimination can escalate into violations of the right to life and physical integrity. All references in the Compilation to a “particular group” refer to a national, ethnic, racial or religious group, as set forth in Article 2 of the Convention on the Prevention and Punishment of the Crime of Genocide.

The risk factors are derived from international legal norms found in the major international and regional human rights treaties and jurisprudence. These sources include the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social, and Cultural Rights, the International Convention on the Elimination of All Forms of Racial Discrimination, and the Convention Against Torture; regional human rights instruments, such as the European Convention on Fundamental Rights and Freedoms, the American Convention on Human Rights, and the African (Banjul) Charter on Human and Peoples’ Rights; international humanitarian law; customary international law; relevant jurisprudence found in international and regional case law; and United Nations resolutions and other nonbinding instruments.

In addition, although it is not expressly stated in each risk factor, it should be noted that the risk factors refer to acts carried out or sponsored by the state, by proxies of the state, or by nonstate actors from which the state has failed to protect its population. States, it should be underscored, are obligated to abstain from engaging in activities that would create a risk factor for genocide and are also responsible for preventing both state and nonstate actors from engaging in such activities.<sup>5</sup> Prevention of genocide therefore entails both protective measures to protect and fulfill human rights, as well as preventive measures to abstain from activity that would violate them.

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<sup>5</sup> *Case Concerning the Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro)* (Judgment) [2007], No. 91, paras. 428-438. Online: <http://www.icj-cij.org/docket/files/91/13685.pdf> [Accessed 24 January 2010].

The risk factors do not refer to random acts but to severe and systematic abuses of human rights. It should be noted that the risk factors can be present during peacetime as well as armed conflict. Many of the rights associated with the risk factors are nonderogable, as set forth in international law, including Article 4 of the International Covenant on Civil and Political Rights, and need to be respected in accordance with international human rights and humanitarian law.<sup>6</sup>

Though all of the risk factors in this Compilation constitute violations of human rights and humanitarian law, each one, in and of itself, is a “necessary but not sufficient causal factor” of genocide.<sup>7</sup> However, when one or more risk factors appear in combination with others and in the presence of one or more special circumstances, they may well contribute to the onset of genocide. Studies of past genocides show that many of the risk factors in this Compilation were present in weeks, months, and, in some cases, even years before the onset of genocide. It is important also to note that every country situation will require case-by-case analysis by the special adviser in order to determine whether a country is, in fact, at risk of genocide. As mentioned above, there is no formulaic approach to definitively determine whether or to what extent a country is at risk of genocide, even when risk factors and special circumstances are present. The presence of one or more risk factors, therefore, does not necessarily mean that genocide will take place, but it should serve as an early warning to a state that it should take measures to mitigate the risk of genocide.

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<sup>6</sup>International Covenant on Civil and Political Rights, Article 4, states: “1. In time of public emergency which threatens the life of the nation and the existence of which is officially proclaimed, the States parties to the present Covenant may take measures derogating from their obligations under the present Covenant to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with their other obligations under international law and do not involve discrimination solely on the ground of race, color, sex, language, religion or social origin. 2. No derogation from Articles 6, 7, 8 (paragraphs 1 and 2), 11, 15, 16 and 18 may be made under this provision. 3. Any State party to the present Covenant availing itself of the right of derogation shall immediately inform the other States parties to the present Covenant, through the intermediary of the Secretary-General of the United Nations, of the provisions from which it has derogated and of the reasons by which it was actuated. A further communication shall be made, through the same intermediary, on the date on which it terminates such derogation.”

<sup>7</sup>Leo Kuper, *Genocide* (New Haven: Yale University Press, 1981), pg. 59.

When addressing the presence of one or more risk factors for genocide, states should be reminded of their obligations under international law to ensure human rights for all, including, notably, Article 2 of the Universal Declaration of Human Rights (UDHR), the International Covenant on Civil and Political Rights (ICCPR), and the International Covenant on Economic, Social, and Cultural Rights (ICESCR),<sup>8</sup> which obligate states to respect and ensure human rights of these instruments for all individuals within the State party's jurisdiction. States should also recall Article 5 of the ICCPR and Article 30 of the Universal Declaration of Human Rights,<sup>9</sup> which prohibit states from engaging in any activity or performing any act aimed at the destruction of the rights and freedoms set forth in those two instruments.

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<sup>8</sup>UDHR, Article 2, states: "Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, nonself-governing or under any other limitation of sovereignty."

ICCPR, Article 2, states: "1. Each State party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

2. Where not already provided for by existing legislative or other measures, each State party to the present Covenant undertakes to take the necessary steps, in accordance with its constitutional processes and with the provisions of the present Covenant, to adopt such laws or other measures as may be necessary to give effect to the rights recognized in the present Covenant.

3. Each State party to the present Covenant undertakes: (a) To ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity; (b) To ensure that any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy; (c) To ensure that the competent authorities shall enforce such remedies when granted."

ICESCR, Article 2 states: "1. Each State party to the present Covenant undertakes to take steps, individually and through international assistance and co-operation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures.

2. The States parties to the present Covenant undertake to guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind as to race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

3. Developing countries, with due regard to human rights and their national economy, may determine to what extent they would guarantee the economic rights recognized in the present Covenant to nonnationals.

<sup>9</sup>ICCPR, Article 5.1: "Nothing in the present Covenant may be interpreted as implying for any state, group or person any right to engage in any activity or perform any act aimed at the destruction of any of the rights and freedoms recognized herein or at their limitation to a greater extent than is provided for in the present Covenant."

UDHR, Article 30: "Nothing in this Declaration may be interpreted as implying for any state, group or person any right to engage in any activity or to perform any act aimed at the destruction of any of the rights and freedoms set forth herein."



## Lists of Risk Factors and Special Circumstances

## List of Risk Factors for Genocide

### Widespread and Systematic Discrimination against Members of a *Particular Group*

1. The systematic denial or revocation of the right to citizenship of members of a particular group, including, although not limited to, nonregistration at birth on discriminatory grounds, the sudden revocation of citizenship, conditioning citizenship on membership in a dominant group or renunciation of one's identity, and/or the discriminatory exclusion from the national census.
2. The systematic denial of participation in public affairs to members of a particular group, including, although not limited to, severe restrictions on equal access to public services, employment in the public sector, voting, and being a candidate for office.
3. The existence of a state policy of segregation targeting members of a particular group, or failure of a state to prevent, prohibit or eradicate practices of this nature against members of a particular group, including but not limited to forcibly imposed segregated schools and housing.
4. The systematic denial of or severe restrictions on access to education for members of a particular group, including, although not limited to, banning access of members of a particular group to schools or institutions of higher learning, or teaching of national, ethnic, racial, or religious hatred that constitutes incitement to discrimination, hostility or violence.
5. The systematic denial of or severe restrictions on access to health care targeted at members of a particular group, including, although not limited to, denying members of a particular group access to hospitals, medical centers, and physicians.
6. The systematic denial of or severe restrictions on the right to freedom of movement of members of a particular group, including, although not limited to, forcible relocations or restrictions on movement from one region to another.
7. Compulsory identification of members of a particular group against their will for the purposes of identifying these members as part of the particular group and subjecting them to severe discrimination and persecution.
8. The severe and systematic demonization of a particular group by the state or nonstate actors with a view to inciting persecution and violence against members of that group, and the failure of the state to prevent and punish such acts of persecution and violence. This includes, although is not limited to, expressions through the media including television, radio, newsprint, and the Internet, by public officials, state sponsored or supported (directly or indirectly) private actors, public figures and other nonstate actors that justify or advocate persecution or violence, including public statements by political leaders and elites that dehumanize, demonize, condone or justify or foment violence against a particular group, or incitement to genocide.
9. The systematic denial or severe restrictions against members of a particular group on the right to enjoy their own culture, to profess and practice their own religion, or to use their own language.

10. The systematic destruction of cultural, religious, and sacred sites, or severe restrictions against members of a particular group on their use of and access to such sites.

11. The systematic expropriation and/or destruction of property belonging to members of a particular group with no effective administrative or legal recourse or compensation.

12. Documentary evidence of a state policy demonstrating intent to destroy in whole or in part a particular group, including although not limited to, the existence of documents outlining plans for persecution and destruction of rights of the particular group, lists of individuals to be killed, registration of identity and location of community members with the intention to destroy in whole or in part members of the targeted group.

### Life Integrity Violations

1. The systematic subjection of members of a particular group to forced labor.

2. The systematic forcible transfer of children of a particular group from their families to individuals with a different identity for the purpose of changing their identity and assimilating them into another group.

3. The systematic forced marriage of women, enforced sterilization, forced pregnancy, the prevention of births of children from a particular group, and other acts aimed at destroying a particular group in whole or in part, including although not limited to, bans on intermarriage or forced marriage to individuals from the state-privileged identity/ies.

4. The deliberate destruction of subsistence food and medical supplies, including humanitarian aid, and/or the blocking of access to such supplies, with the intent to destroy a particular group in whole or in part.

5. The systematic arbitrary detention of members of a particular group, including their community leaders.

6. Systematic torture of members of a particular group on the basis of their membership in such a group.

7. The systematic use of rape and sexual violence, including the incitement thereof, targeting members of a particular group.

8. The systematic forcible transfer from their habitual place of residence of members of a particular group with little or no warning, compensation or administrative or legal recourse or review, including although not limited to the creation of ghettos or segregated areas, the practice of ethnic cleansing

9. The systematic killing of members of a particular group, as evidenced through extrajudicial, summary, and arbitrary executions, and/or as evidenced through the existence of mass graves resulting from such killings; enforced disappearances; and/or the targeting of community leaders and prominent intellectuals, professionals, educators, and religious leaders associated with a particular group.

10. The intentional targeting during armed conflict of civilian members of a particular group and of civilian sites inhabited by such civilians, calculated to destroy the particular group in whole or in part.

## List of Special Circumstances

The circumstances identified below may contribute to the development of an environment conducive to genocide occurring, or may negatively impact on a state's ability to prevent genocide. Together with one or more risk factors, their existence could make it more likely that genocide will occur. The circumstances cited are different from the risk factors in that some are historical and sociological, and unlike the risk factors, they are not necessarily derived from legal norms.<sup>1</sup>

1. A prior history of genocide or violence against a particular group.
2. The systematic denial of past genocides and mass atrocities.
3. A history of severe discrimination, dehumanization, and bias against members of a particular group, and legal sanctions and other measures to enforce such policies.
4. An exclusionary ideology adopted by an ethnically polarized elite with access to resources to commit genocide.
5. Critical events. This could be an election in which constituent support is split along ethnic, racial, religious, or national lines and the safeguards for free and fair elections are in question. This also could include the outbreak of armed conflict and the deployment of military and police to act internally against civilians belonging to a particular group.
6. Severe political instability, previous state failure and/or an abrupt and arbitrary change in government in countries in which the rights of members of particular groups are not adequately safeguarded.
7. Autocratic regimes in countries with diverse populations where political and economic power rests primarily with members of a particular group, to the systematic exclusion of other such groups.
8. A climate of impunity for violent acts and severe discrimination against members of a particular group, including the absence of the rule of law and/or the lack of legal restraints on the security sector.
9. The absence of checks on executive power and/or where the legislature does not or is unable or unwilling to exercise a role in preventing or stopping severe abuses or actions by the executive against particular groups, and where there are severe restrictions on the functioning of NGOs and independent media.

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<sup>1</sup>Sources for examination of the preconditions/triggers/accelerators include: Barbara Harff and Ted Robert Gurr, "Systematic Early Warning of Humanitarian Emergencies," *Journal of Peace Research* 35: 5 (Sept. 1998) 558-68; Harff and Gurr, "Toward an Empirical Theory of Genocides and Politicides: Identification and Measurement of Cases Since 1945," *International Studies Quarterly* 32: 3 (Sept. 1988) 359-71; Kurt Jonasson, "Precursors of Genocide—A Research Agenda," Montreal Institute for Genocide and Human Rights Studies (December 1998), [www.migs.concordia.ca/occpapers/precursors.htm](http://www.migs.concordia.ca/occpapers/precursors.htm); Harff, "No Lessons Learned from the Holocaust? Assessing Risks of Genocide and Political Mass Murder since 1955," *American Political Science Review* 97 (2003): 57-73; Madeleine K. Albright and William S. Cohen, "Preventing Genocide: A Blueprint for U.S. Policymakers," United States Institute of Peace, Washington, D.C. (2008): 25; Linda Woolf and Michael Hulsizer, "Psychological Roots of Genocide: Risk, Prevention, and Intervention," *Journal of Genocide Research* 7 (2005): 101-28; European Commission, "Conflict Prevention—EC Check-List for Root Causes of Conflict," at [//ec.europa.eu/external\\_relations/cfsp/cpcm/cp/list.htm](http://ec.europa.eu/external_relations/cfsp/cpcm/cp/list.htm) and [www.conflictsensitivity.org/](http://www.conflictsensitivity.org/).

10. State-imposed information blockades, isolation from other states, and refusal to allow national or international monitoring of human rights conditions or public reporting on human rights violations in countries with diverse populations that are subject to systematic discrimination.<sup>2</sup>
11. The existence of political or economic motives for leading actors in the state to encourage divisions among ethnic, racial, national or religious groups.
12. Extreme poverty combined with severe economic disparities, real or perceived, between different groups that political actors can and do manipulate to mobilize populations to commit violence against one or more particular groups.
13. The existence of states or communities abroad fostering extremism and/or providing financial resources or arms to groups advocating or engaging in violence against members of a particular group.
14. The existence of militias and/or extreme political groups based on platforms targeting particular groups and engaging in or advocating violence against them.
15. The direct or indirect state-sponsored, selective arming of certain groups with the aim of leaving members of one or more other particular groups undefended.
16. Ongoing armed conflict between a government and a particular group or between different particular groups and/or the existence of armed opposition forces within a marginalized group, incurring the government's wrath against the entire group.

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<sup>2</sup>States with low political interdependence (for example, states that are not members of regional or multilateral institutions) are three times as likely to have ethnic wars. Jack A. Goldstone, Ted Robert Gurr, Barbara Harff, Marc Levy, Monty G. Marshall, Robert Bates, David Epstein, Colin Kahl, Mark Woodward, Pamela T. Surko, and Alan N. Unger, *State Failure Task Force Report: Phase III Findings* (McLean, VA: Science Applications International Corporation, 2002). See [www.cidcm.umd.edu/inscr/stfail](http://www.cidcm.umd.edu/inscr/stfail); Office of the Special Adviser for the Prevention of Genocide, *Framework of Analysis*.

# Compilation of Risk Factors and Associated Norms





Widespread and Systematic Discrimination  
against Members of a *Particular Group*

## Underlying Norms in Support of the General Prohibition against Discrimination

For norms pertaining to discrimination, see:

**Universal Declaration of Human Rights (UDHR), Article 2.** Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, nonself-governing or under any other limitation of sovereignty.

**Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief, Article 2.1.** No one shall be subject to discrimination by any State, institution, group of persons, or person on the grounds of religion or other belief; 3. Discrimination between human beings on the grounds of religion or belief constitutes an affront to human dignity and a disavowal of the principles of the Charter of the United Nations, and shall be condemned as a violation of the human rights and fundamental freedoms proclaimed in the Universal Declaration of Human Rights and enunciated in detail in the International Covenants on Human Rights, and as an obstacle to friendly and peaceful relations between nations; 4.1. All States shall take effective measures to prevent and eliminate discrimination on the grounds of religion or belief in the recognition, exercise, and enjoyment of human rights and fundamental freedoms in all fields of civil, economic, political, social, and cultural life.; 4.2. All States shall make all efforts to enact or rescind legislation where necessary to prohibit any such discrimination, and to take all appropriate measures to combat intolerance on the grounds of religion or other beliefs in this matter.

**Declaration on the Rights of Persons Belonging to National or Ethnic, Religious, and Linguistic Minorities, Adopted by General Assembly Resolution 47/135 of 18 December 1992, Article 1.** States shall protect the existence and the national or ethnic, cultural, religious, and linguistic identity of minorities within their respective territories and shall encourage conditions for the promotion of that identity. 2. States shall adopt appropriate legislative and other measures to achieve those ends. Article 4.1. States shall take measures where required to ensure that persons belonging to minorities may exercise fully and effectively all their human rights and fundamental freedoms without any discrimination and in full equality before the law.

**International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), General Assembly Resolution 2106, 21 December 1965, Article 2.1.** States parties condemn racial discrimination and undertake to pursue by all appropriate means and without delay a policy of eliminating racial discrimination in all its forms and promoting understanding among all races, and, to this end: (a) Each State party undertakes to engage in no act or practice of racial discrimination against persons, groups of persons or institutions and to ensure that all public authorities and public institutions, national and local, shall act in conformity with this obligation; (b) Each State party undertakes not to sponsor, defend or support racial discrimination by any persons or organizations; (c) Each State party shall take effective measures to review governmental, national, and local policies, and to amend, rescind or nullify any laws and regulations which have the effect of creating or

perpetuating racial discrimination wherever it exists; (d) Each State party shall prohibit and bring to an end, by all appropriate means, including legislation as required by circumstances, racial discrimination by any persons, group or organization; (e) Each State party undertakes to encourage, where appropriate, integrationist multiracial organizations and movements and other means of eliminating barriers between races, and to discourage anything which tends to strengthen racial division. 2. States parties shall, when the circumstances so warrant, take, in the social, economic, cultural, and other fields, special and concrete measures to ensure the adequate development and protection of certain racial groups or individuals belonging to them, for the purpose of guaranteeing them the full and equal enjoyment of human rights and fundamental freedoms. These measures shall in no case entail as a consequence the maintenance of unequal or separate rights for different racial groups after the objectives for which they were taken have been achieved.

**Article 3.** States parties particularly condemn racial segregation and apartheid and undertake to prevent, prohibit and eradicate all practices of this nature in territories under their jurisdiction.

**Article 4.** States parties condemn all propaganda and all organizations which are based on ideas or theories of superiority of one race or group of persons of one color or ethnic origin, or which attempt to justify or promote racial hatred and discrimination in any form, and undertake to adopt immediate and positive measures designed to eradicate all incitement to, or acts of, such discrimination and, to this end, with due regard to the principles embodied in the Universal Declaration of Human Rights and the rights expressly set forth in Article 5 of this Convention, inter alia: (a) Shall declare an offense punishable by law all dissemination of ideas based on racial superiority or hatred, incitement to racial discrimination, as well as all acts of violence or incitement to such acts against any race or group of persons of another color or ethnic origin, and also the provision of any assistance to racist activities, including the financing thereof; (b) Shall declare illegal and prohibit organizations, and also organized and all other propaganda activities, which promote and incite racial discrimination, and shall recognize participation in such organizations or activities as an offense punishable by law; (c) Shall not permit public authorities or public institutions, national or local, to promote or incite racial discrimination.

**Article 5.** In compliance with the fundamental obligations laid down in Article 2 of this Convention, States parties undertake to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, color, or national or ethnic origin, to equality before the law, notably in the enjoyment of the following rights: (a) The right to equal treatment before the tribunals and all other organs administering justice; (b) The right to security of person and protection by the State against violence or bodily harm, whether inflicted by government officials or by any individual group or institution; (c) Political rights, in particular the right to participate in elections—to vote and to stand for election—on the basis of universal and equal suffrage, to take part in the government as well as in the conduct of public affairs at any level and to have equal access to public service; (d) Other civil rights, in particular: (i) The right to freedom of movement and residence within the border of the State; (ii) The right to leave any country, including one's own, and to return to one's country; (iii) The right to nationality; (iv) The right to marriage and choice of spouse; (v) The right to own property alone as well as in association with others; (vi) The right to inherit; (vii) The right to freedom of thought, conscience, and religion; (viii) The right to freedom of opinion and expression; (ix) The right to freedom of peaceful assembly and association; (e) Economic, social, and cultural rights, in particular: (i) The rights to work, to free choice of employment, to just and favorable conditions of work, to protection against unemployment, to equal pay for equal work, to just and favorable remuneration; (ii) The right to form and join trade unions; (iii) The right to housing; (iv) The right to public health, medical care, social security, and social services; (v) The right to education and training; (vi) The right to equal participation in cultural activities; (f) The right of access to any place or service intended for use by the general public,

such as transport, hotels, restaurants, cafes, theaters, and parks.

**Article 6.** States parties shall assure to everyone within their jurisdiction effective protection and remedies, through the competent national tribunals and other State institutions, against any acts of racial discrimination which violate his human rights and fundamental freedoms contrary to this Convention, as well as the right to seek from such tribunals just and adequate reparation or satisfaction for any damage suffered as a result of such discrimination.

**Article 7.** States parties undertake to adopt immediate and effective measures, particularly in the fields of teaching, education, culture, and information, with a view to combating prejudices which lead to racial discrimination and to promoting understanding, tolerance, and friendship among nations and racial or ethnical groups, as well as to propagating the purposes and principles of the Charter of the United Nations, the Universal Declaration of Human Rights, the United Nations Declaration on the Elimination of All Forms of Racial Discrimination, and this Convention.

**International Covenant on Economic, Social, and Cultural Rights (ICESCR), Article 2.2.** The States parties to the present Covenant undertake to guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind as to race, color, sex, language, religion, political or other opinion, nationality or social origin, property, birth or other status.

**International Covenant on Civil and Political Rights (ICCPR), Article 2.1.** Each State party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. 2. Where not already provided for by existing legislative or other measures, each State party to the present Covenant undertakes to take the necessary steps, in accordance with its constitutional processes and with the provisions of the present Covenant, to adopt such laws or other measures as may be necessary to give effect to the rights recognized in the present Covenant. 3. Each State party to the present Covenant undertakes: (a) To ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity; (b) To ensure that any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy; (c) To ensure that the competent authorities shall enforce such remedies when granted.

**Article 26.** All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, color, sex, language, religion, political or other opinion or nationality.

**European Framework Convention on Minorities, Article 4.1.** The Parties undertake to guarantee to persons belonging to national minorities the right of equality before the law and of equal protection of the law. In this respect, any discrimination based on belonging to a national minority shall be prohibited. 2. The Parties undertake to adopt, where necessary, adequate measures in order to promote, in all areas of economic, social, political, and cultural life, full and effective equality between persons belonging to a national minority and those belonging to the majority. In this respect, they shall take due account of the specific conditions of the persons belonging to national minorities. 3. The measures adopted in accordance with paragraph 2 shall not be considered to be an act of discrimination.

**Vienna Declaration and Program of Action, Para. 19.** Considering the importance of the promotion and protection of the rights of persons belonging to minorities and the contribution of such promotion and protection to the political and social stability of the States in which such persons live, the World Conference on Human Rights reaffirms the obligation of States to ensure that persons belonging to minorities may exercise fully and effectively all human rights and fundamental freedoms without any discrimination and in full equality before the law in accordance with the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious, and Linguistic Minorities. The persons belonging to minorities have the right to enjoy their own culture, to profess and practice their own religion, and to use their own language in private and in public, freely and without interference or any form of discrimination.

**European Convention on Human Rights, Article 14.** Prohibition of discrimination: The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, color, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.

**Protocol 12 of the European Convention on Human Rights, Article 1.** General prohibition of discrimination: 1. The enjoyment of any right set forth by law shall be secured without discrimination on any ground such as sex, race, color, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status. 2. No one shall be discriminated against by any public authority on any ground such as those mentioned in paragraph 1.

**Charter of Fundamental Rights of the European Union, Article 21.** Nondiscrimination: 1. Any discrimination based on any ground such as sex, race, color, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age or sexual orientation shall be prohibited. 2. Within the scope of application of the Treaty establishing the European Community and of the Treaty on European Union, and without prejudice to the special provisions of those Treaties, any discrimination on grounds of nationality shall be prohibited.

**Protocol of Amendment to the Charter of the Organization of American States, “Protocol of Cartagena de Indias,” Article 3.** The American States reaffirm the following principles: k) The American States proclaim the fundamental rights of the individual without distinction as to race, nationality, creed, or sex.

**League of Arab States, Arab Charter on Human Rights, Article 3.1.** Each State party to the present Charter undertakes to ensure to all individuals subject to its jurisdiction the right to enjoy the rights and freedoms set forth herein, without distinction on grounds of race, color, sex, language, religious

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<sup>3</sup>While relevant provisions in the Arab Charter on Human Rights are included, these should be read in conjunction with Article 43 of the Charter, which states, “Nothing in this Charter may be construed or interpreted as impairing the rights and freedoms protected by the domestic laws of the States parties or those set force in the international and regional human rights instruments which the States parties have adopted or ratified, including the rights of women, the rights of the child and the rights of persons belonging to minorities.” We note that various commentators have found deficiencies in the Arab Charter, including High Commissioner for Human Rights Louise Arbour, who, in a public statement on the occasion of its introduction, cited concerns over the instrument’s “incompatibility with international norms and standards.” See <http://www.un.org/apps/news/story.asp?NewsID=25447&Cr=human&Cr1=rights>. See also Merwat Rishmawi (Amnesty International), “The Revised Arab Charter on Human Rights: A step forward?” *Human Rights Law Review* 5:2 (2005) and David Forsythe, “The Arab Charter for Human Rights” in David Forsythe, ed., *Encyclopedia of Human Rights* (Oxford University Press, 2009).

belief, opinion, thought, national or social origin, wealth, birth or physical or mental disability.<sup>3</sup>

**American Convention on Human Rights, Article 1. Obligation to Respect Rights 1.** The States parties to this Convention undertake to respect the rights and freedoms recognized herein and to ensure to all persons subject to their jurisdiction the free and full exercise of those rights and freedoms, without any discrimination for reasons of race, color, sex, language, religion, political or other opinion, national or social origin, economic status, birth, or any other social condition. 2. For the purposes of this Convention, “person” means every human being.

**United Nations Declaration on the Rights of Indigenous Peoples, Article 2.** Indigenous peoples and individuals are free and equal to all other peoples and individuals and have the right to be free from any kind of discrimination, in the exercise of their rights, in particular that based on their indigenous origin or identity.

**ICERD, General Recommendation XXX (Sixty-fifth session, 2004): Discrimination Against Noncitizens, A/59/18 (2004) 93, at preamble and paras. 1-39.** Article 1, paragraph 1, of the Convention defines racial discrimination. Article 1, paragraph 2, provides for the possibility of differentiating between citizens and noncitizens. Article 1, paragraph 3, declares that, concerning nationality, citizenship or naturalization, the legal provisions of States parties must not discriminate against any particular nationality.

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## Systematic Denial or Revocation of the Right to Citizenship of Members of a *Particular Group*

1. The systematic denial or revocation of the right to citizenship of members of a *particular group*, including, although not limited to, nonregistration at birth on discriminatory grounds, the sudden revocation of citizenship, conditioning citizenship on membership in a dominant group or renunciation of one's identity, and/or the discriminatory exclusion from the national census.

For norms pertaining to the right to citizenship/nationality, see:

**UDHR, Article 15.** 1. Everyone has the right to a nationality; 2. No one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality.

**ICERD, Article 5(d)(iii).** In compliance with the fundamental obligations laid down in article 2 of this Convention, States parties undertake to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, color, or national or ethnic origin, to equality before the law, notably in the enjoyment of the following rights.... (d) Other civil rights, in particular... (iii) The right to nationality.

**ICCPR, Article 24.3.** Every child has the right to acquire a nationality.

**CRC, Article 7.1.** The child shall be registered immediately after birth and shall have the right from birth to a name, the right to acquire a nationality, and as far as possible, the right to know and be cared for by his or her parents. 2. States parties shall ensure the implementation of these rights in accordance with their national law and their obligations under the relevant international instruments in this field, in particular where the child would otherwise be stateless.

**Article 8.1.** States parties undertake to respect the right of the child to preserve his or her identity, including nationality, name, and family relations as recognized by law without unlawful interference.

**CEDAW, Article 9.1.** States parties shall grant women equal rights with men to acquire, change, or retain their nationality. They shall ensure in particular that neither marriage to an alien nor change of nationality by the husband during marriage shall automatically change the nationality of the wife, render her stateless, or force upon her the nationality of the husband. 2. States parties shall grant women equal rights with men with respect to the nationality of their children.

**International Convention on the Suppression and Punishment of the Crime of Apartheid, Article II.** For the purpose of the present Convention, the term "the crime of apartheid," which shall include similar policies and practices of racial segregation and discrimination as practiced in southern Africa, shall apply to the following inhuman acts committed for the purpose of establishing and maintaining domination by one racial group of persons over any other racial group of persons and systematically oppressing them: (c) Any legislative measures and other measures calculated to prevent a racial group or groups from participation in the political, social, economic, and cultural life of the country and the deliberate creation of conditions preventing the full development of such a group or groups, in particular by denying to members of a racial group or groups basic human rights and freedoms, including the right to work, the right to form recognized trade unions, the right to education, the right to leave and to return to their country, the right to a nationality, the right to freedom of movement and residence, the right

to freedom of opinion and expression, and the right to freedom of peaceful assembly and association.

**United Nations Declaration on the Rights of Indigenous Peoples, Article 6.** Every indigenous individual has the right to a nationality.

**American Declaration of the Rights and Duties of Man, Article XIX.** Every person has the right to the nationality to which he is entitled by law and to change it, if he so wishes, for the nationality of any other country that is willing to grant it to him.

**American Convention on Human Rights, Article 20.** Right to Nationality. Every person has the right to a nationality. 2. Every person has the right to the nationality of the state in whose territory he was born if he does not have the right to any other nationality. 3. No one shall be arbitrarily deprived of his nationality or of the right to change it.

**League of Arab States, Arab Charter on Human Rights, Article 29.1.** Everyone has the right to nationality. No one shall be arbitrarily or unlawfully deprived of his nationality. (See *supra* footnote 3.)

**African Charter on the Rights and Welfare of the Child, Article 6.** Name and Nationality. Every child shall have the right from his birth to a name. 2. Every child shall be registered immediately after birth. 3. Every child has the right to acquire a nationality. 4. States parties to the present Charter shall undertake to ensure that their Constitutional legislation recognize the principles according to which a child shall acquire the nationality of the State in the territory of which he has been born if, at the time of the child's birth, he is not granted nationality by any other State in accordance with its laws.

**ICERD, General Recommendation XXX (Sixty-fifth session, 2004): Discrimination Against Non-citizens, A/59/18 (2004) 93 at preamble and paras. 1-39.** Para. 14. Recognize that deprivation of citizenship on the basis of race, color, descent, or national or ethnic origin is a breach of States parties' obligations to ensure nondiscriminatory enjoyment of the right to nationality; Article 1, paragraph 2 provides for the possibility of differentiating between citizens and noncitizens. Article 1, paragraph 3 declares that, concerning nationality, citizenship or naturalization, the legal provisions of States parties must not discriminate against any particular nationality; 3. Article 5 of the Convention incorporates the obligation of States parties to prohibit and eliminate racial discrimination in the enjoyment of civil, political, economic, social, and cultural rights. Although some of these rights, such as the right to participate in elections, to vote and to stand for election, may be confined to citizens, human rights are, in principle, to be enjoyed by all persons. States parties are under an obligation to guarantee equality between citizens and noncitizens in the enjoyment of these rights to the extent recognized under international law; 6. Review and revise legislation, as appropriate, in order to guarantee that such legislation is in full compliance with the Convention, in particular regarding the effective enjoyment of the rights mentioned in article 5, without discrimination.

**ICCPR, General Comment 25 (Fifty-seventh session, 1996): Article 25: The Right to Participate in Public Affairs, Voting Rights, and the Right of Equal Access to Public Service, A/51/40 vol. I (1996) 98 at para. 3.** In contrast with other rights and freedoms recognized by the Covenant (which are ensured to all individuals within the territory and subject to the jurisdiction of the State), Article 25 protects the rights of "every citizen." State reports should outline the legal provisions which define citizenship in the context of the rights protected by article 25. No distinctions are permitted between citizens in the enjoyment of these rights on the grounds of race, color, sex, language, religion, politi-



cal or other opinion, national or social origin, property, birth or other status. Distinctions between those who are entitled to citizenship by birth and those who acquire it by naturalization may raise questions of compatibility with Article 25. State reports should indicate whether any groups, such as permanent residents, enjoy these rights on a limited basis, for example, by having the right to vote in local elections or to hold particular public service positions.

For norms pertaining to nonregistration at birth, see:

**ICCPR, Article 24.3.** Every child has the right to acquire a nationality.

**CRC, Article 7.1.** The child shall be registered immediately after birth and shall have the right from birth to a name, the right to acquire a nationality and as far as possible, the right to know and be cared for by his or her parents. 2. States parties shall ensure the implementation of these rights in accordance with their national law and their obligations under the relevant international instruments in this field, in particular where the child would otherwise be stateless.

**Article 8.1.** States parties undertake to respect the right of the child to preserve his or her identity, including nationality, name, and family relations as recognized by law without unlawful interference.

**African Charter on the Rights and Welfare of the Child, Article 6.** Name and Nationality 1. Every child shall have the right from his birth to a name. 2. Every child shall be registered immediately after birth. 3. Every child has the right to acquire a nationality. 4. States parties to the present Charter shall undertake to ensure that their Constitutional legislation recognize the principles according to which a child shall acquire the nationality of the State in the territory of which he has been born if, at the time of the child's birth, he is not granted nationality by any other State in accordance with its laws.

**Draft Inter-American Program for Universal Civil Registry and the "Right to Identity."** 1. Universalization and accessibility of civil registry and the right to identity. The states will guarantee access, without discrimination, by all persons to registries. 2. Strengthening of policies, public institutions, and legislation. A. The states will establish and carry out policies, rules and other measures aimed at eliminating practices of racism, discrimination, and intolerance in their civil registry systems. B. The states will register all girls and boys immediately after birth and will promote late registration of adults in accordance with their domestic legislation and any obligations they have incurred by virtue of pertinent international instruments.

For norms pertaining to exclusion from a national census when other minority groups are included, see:

**ICERD, General Recommendation XXIV (Fifty-fifth session, 1999): Concerning Article 1 of the Convention, A/54/18 (1999) 103.** 2. It appears from the periodic reports submitted to the Committee under Article 9 of the International Convention on the Elimination of All Forms of Racial Discrimination, and from other information received by the Committee, that a number of States parties recognize the presence on their territory of some national or ethnic groups or indigenous peoples, while disregarding others. Certain criteria should be uniformly applied to all groups, in particular the number of persons concerned, and their being of a race, color, descent or national or ethnic origin different from the majority or from other groups within the population. 3. Some States parties fail to collect data on the ethnic or national origin of their citizens or of other persons living on their territory, but decide at their own discretion which groups constitute ethnic groups or indigenous peoples

that are to be recognized and treated as such. The Committee believes that there is an international standard concerning the specific rights of people belonging to such groups, together with generally recognized norms concerning equal rights for all and nondiscrimination, including those incorporated in the International Convention on the Elimination of All Forms of Racial Discrimination. At the same time, the Committee draws to the attention of States parties that the application of different criteria in order to determine ethnic groups or indigenous peoples, leading to the recognition of some and refusal to recognize others, may give rise to differing treatment for various groups within a country's population.

**CRC, General Comment 4 (Thirty-third session, 2003): Adolescent Health and Development in the Context of the Convention on the Rights of the Child, A/59/41 (2004) 102 at para. 13.** Systematic data collection is necessary for States parties to be able to monitor the health and development of adolescents. States parties should adopt data-collection mechanisms that allow desegregation by sex, age, origin, and socio-economic status so that the situation of different groups can be followed. Data should also be collected to study the situation of specific groups such as ethnic and/or indigenous minorities, migrant or refugee adolescents, adolescents with disabilities, working adolescents, etc. Where appropriate, adolescents should participate in the analysis to ensure that the information is understood and utilized in an adolescent-sensitive way.

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## Systemic Denial of Participation in Public Affairs

2. The systematic denial of participation in public affairs to members of a *particular group*, including, although not limited to, severe restrictions on equal access to public services, employment in the public sector, voting, and being a candidate for office.

For norms pertaining to the right to participation in public affairs, see:

**UDHR, Article 21.1.** Everyone has the right to take part in the government of his country, directly or through freely chosen representatives. 2. Everyone has the right to equal access to public service in his country. 3. The will of the people shall be the basis of the authority of government; this will shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures.

**ICERD, Article 5.** In compliance with the fundamental obligations laid down in Article 2 of this Convention, States parties undertake to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, color, or national or ethnic origin, to equality before the law, notably in the enjoyment of the following rights: (c) Political rights, in particular the right to participate in elections—to vote and to stand for election—on the basis of universal and equal suffrage, to take part in the Government as well as in the conduct of public affairs at any level and to have equal access to public service.

**ICCPR, Article 25.** Every citizen shall have the right and the opportunity, without any of the distinctions mentioned in Article 2 and without unreasonable restrictions: (a) To take part in the conduct of public affairs, directly or through freely chosen representatives; (b) To vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors; (c) To have access, on general terms of equality, to public service in his country.

**United Nations Declaration on the Rights of Indigenous Peoples, Article 5.** Indigenous peoples have the right to maintain and strengthen their distinct political, legal, economic, social, and cultural institutions, while retaining their right to participate fully, if they so choose, in the political, economic, social, and cultural life of the State.

**Article 18.** Indigenous peoples have the right to participate in decision-making in matters which would affect their rights, through representatives chosen by themselves in accordance with their own procedures, as well as to maintain and develop their own indigenous decision-making institutions.

**Declaration on the Rights of Persons Belonging to National or Ethnic, Religious, and Linguistic Minorities, Article 2.1.** Persons belonging to national or ethnic, religious, and linguistic minorities (hereinafter referred to as persons belonging to minorities) have the right to enjoy their own culture, to profess and practice their own religion, and to use their own language, in private and in public, freely and without interference or any form of discrimination. 2.2 Persons belonging to minorities have the right to participate effectively in cultural, religious, social, economic, and public life. 2.3 Persons belonging to minorities have the right to participate effectively in decisions on the national and, where appropriate, regional level concerning the minority to which they belong or the regions in which they live, in a manner not incompatible with national legislation.

**African (Banjul) Charter on Human and Peoples' Rights, Article 13.1.** Every citizen shall have the right to participate freely in the government of his country, either directly or through freely chosen representatives in accordance with the provisions of the law. 2. Every citizen shall have the right of equal access to the public service of the country. 3. Every individual shall have the right of access to public property and services in strict equality of all persons before the law.

**American Declaration of the Rights and Duties of Man, Article XX.** Every person having legal capacity is entitled to participate in the government of his country, directly or through his representatives, and to take part in popular elections, which shall be by secret ballot, and shall be honest, periodic, and free.

**American Convention on Human Rights, Article 23. Right to Participate in Government.** 1. Every citizen shall enjoy the following rights and opportunities: a. to take part in the conduct of public affairs, directly or through freely chosen representatives; b. to vote and to be elected in genuine periodic elections, which shall be by universal and equal suffrage and by secret ballot that guarantees the free expression of the will of the voters; and c. to have access, under general conditions of equality, to the public service of his country. 2. The law may regulate the exercise of the rights and opportunities referred to in the preceding paragraph only on the basis of age, nationality, residence, language, education, civil and mental capacity, or sentencing by a competent court in criminal proceedings.

**Inter-American Convention on the Prevention, Punishment, and Eradication of Violence Against Women, Article 4.** Every woman has the right to the recognition, enjoyment, exercise, and protection of all human rights and freedoms embodied in regional and international human rights instruments. 10. The right to have equal access to the public service of her country and to take part in the conduct of public affairs, including decision-making.

**League of Arab States, Arab Charter on Human Rights, Article 24.** Every citizen has the right: 1. To freely pursue a political activity. 2. To take part in the conduct of public affairs, directly or through freely chosen representatives. 3. To stand for election or choose his representatives in free and impartial elections, in conditions of equality among all citizens that guarantee the free expression of his will. 4. To have the opportunity to gain access, on an equal footing with others, to public office in his country in accordance with the principle of equality of opportunity. (See *supra* footnote 3.)

**ICCPR General Comment 25 (Fifty-seventh session, 1996): Article 25: The Right to Participate in Public Affairs, Voting Rights and the Right of Equal Access to Public Service, A/51/40 vol. I (1996) 98 at paras. 1-27. Para 1.** Article 25 of the Covenant recognizes and protects the right of every citizen to take part in the conduct of public affairs, the right to vote and to be elected, and the right to have access to public service. Whatever form of constitution or government is in force, the Covenant requires States to adopt such legislative and other measures as may be necessary to ensure that citizens have an effective opportunity to enjoy the rights it protects. Article 25 lies at the core of democratic government based on the consent of the people and in conformity with the principles of the Covenant.

3. In contrast with other rights and freedoms recognized by the Covenant (which are ensured to all individuals within the territory and subject to the jurisdiction of the State), Article 25 protects the rights of "every citizen." State reports should outline the legal provisions which define citizenship in the context of the rights protected by Article 25. No distinctions are permitted between citizens in the enjoyment of these rights on the grounds of race, color, sex, language, religion, political or other

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opinion, national or social origin, property, birth or other status. Distinctions between those who are entitled to citizenship by birth and those who acquire it by naturalization may raise questions of compatibility with Article 25. State reports should indicate whether any groups, such as permanent residents, enjoy these rights on a limited basis, for example, by having the right to vote in local elections or to hold particular public service positions.

4. Any conditions which apply to the exercise of the rights protected by Article 25 should be based on objective and reasonable criteria. For example, it may be reasonable to require a higher age for election or appointment to particular offices than for exercising the right to vote, which should be available to every adult citizen. The exercise of these rights by citizens may not be suspended or excluded except on grounds which are established by law and which are objective and reasonable. For example, established mental incapacity may be a ground for denying a person the right to vote or to hold office.

8. Citizens also take part in the conduct of public affairs by exerting influence through public debate and dialogue with their representatives or through their capacity to organize themselves. This participation is supported by ensuring freedom of expression, assembly, and association.

9. Paragraph (b) of Article 25 sets out specific provisions dealing with the right of citizens to take part in the conduct of public affairs as voters or as candidates for election. Genuine periodic elections in accordance with paragraph (b) are essential to ensure the accountability of representatives for the exercise of the legislative or executive powers vested in them. Such elections must be held at intervals which are not unduly long and which ensure that the authority of government continues to be based on the free expression of the will of electors. The rights and obligations provided for in paragraph (b) should be guaranteed by law.

10. The right to vote at elections and referenda must be established by law and may be subject only to reasonable restrictions, such as setting a minimum age limit for the right to vote. It is unreasonable to restrict the right to vote on the ground of physical disability or to impose literacy, educational or property requirements. Party membership should not be a condition of eligibility to vote nor a ground of disqualification.

12. Freedom of expression, assembly, and association are essential conditions for the effective exercise of the right to vote and must be fully protected. Positive measures should be taken to overcome specific difficulties, such as illiteracy, language barriers, poverty, or impediments to freedom of movement which prevent persons entitled to vote from exercising their rights effectively. Information and materials about voting should be available in minority languages.

For norms pertaining to the right to vote, see:

**UDHR, Article 21.1.** Everyone has the right to take part in the government of his country, directly or through freely chosen representatives. 2. Everyone has the right to equal access to public service in his country. 3. The will of the people shall be the basis of the authority of government; this will shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures.

**ICCPR, Article 25.** Every citizen shall have the right and the opportunity, without any of the distinctions mentioned in Article 2 and without unreasonable restrictions: (a) To take part in the conduct of public affairs, directly or through freely chosen representatives; (b) To vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors; (c) To have access, on general terms of equality, to public service in his country.

**ICERD, Article 5.** In compliance with the fundamental obligations laid down in Article 2 of this Convention, States parties undertake to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, color, or national or ethnic origin, to equality before the law, notably in the enjoyment of the following rights: (c) Political rights, in particular the right to participate in elections—to vote and to stand for election—on the basis of universal and equal suffrage, to take part in the Government as well as in the conduct of public affairs at any level and to have equal access to public service.

**Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, Article 2.1.** Persons belonging to national or ethnic, religious and linguistic minorities (hereinafter referred to as persons belonging to minorities) have the right to enjoy their own culture, to profess and practice their own religion, and to use their own language, in private and in public, freely and without interference or any form of discrimination. 2.2 Persons belonging to minorities have the right to participate effectively in cultural, religious, social, economic, and public life. 2.3 Persons belonging to minorities have the right to participate effectively in decisions on the national and, where appropriate, regional level concerning the minority to which they belong or the regions in which they live, in a manner not incompatible with national legislation.

**American Declaration of the Rights and Duties of Man, Article XX.** Every person having legal capacity is entitled to participate in the government of his country, directly or through his representatives, and to take part in popular elections, which shall be by secret ballot, and shall be honest, periodic and free.

**American Convention on Human Rights, Article 23.** Right to Participate in Government. 1. Every citizen shall enjoy the following rights and opportunities: a. to take part in the conduct of public affairs, directly or through freely chosen representatives; b. to vote and to be elected in genuine periodic elections, which shall be by universal and equal suffrage and by secret ballot that guarantees the free expression of the will of the voters; and c. to have access, under general conditions of equality, to the public service of his country. 2. The law may regulate the exercise of the rights and opportunities referred to in the preceding paragraph only on the basis of age, nationality, residence, language, education, civil and mental capacity, or sentencing by a competent court in criminal proceedings.

**ICCPR General Comment 25 (Fifty-seventh session, 1996): Article 25: The Right to Participate in Public Affairs, Voting Rights and the Right of Equal Access to Public Service, A/51/40 vol. I (1996) 98 at paras. 1-27. Para 1.** Article 25 of the Covenant recognizes and protects the right of every citizen to take part in the conduct of public affairs, the right to vote and to be elected and the right to have access to public service. Whatever form of constitution or government is in force, the Covenant requires States to adopt such legislative and other measures as may be necessary to ensure that citizens have an effective opportunity to enjoy the rights it protects. Article 25 lies at the core of democratic government based on the consent of the people and in conformity with the principles of the Covenant.

Para 12. Freedom of expression, assembly, and association are essential conditions for the effective exercise of the right to vote and must be fully protected. Positive measures should be taken to overcome specific difficulties, such as illiteracy, language barriers, poverty, or impediments to freedom of movement which prevent persons entitled to vote from exercising their rights effectively. Information and materials about voting should be available in minority languages. Specific methods, such as photographs and symbols, should be adopted to ensure that illiterate voters have adequate information on

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which to base their choice. States parties should indicate in their reports the manner in which the difficulties highlighted in this paragraph are dealt with.

For norms pertaining to the duty to vote, see:

**American Declaration of the Rights and Duties of Man, Article XXXII.** It is the duty of every person to vote in the popular elections of the country of which he is a national, when he is legally capable of doing so.

For norms pertaining to running for political office, see:

**UDHR, Article 21.1.** Everyone has the right to take part in the government of his country, directly or through freely chosen representatives. 2. Everyone has the right to equal access to public service in his country.

**ICERD, Article 5.** In compliance with the fundamental obligations laid down in Article 2 of this Convention, States parties undertake to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, color, or national or ethnic origin, to equality before the law, notably in the enjoyment of the following rights: (c) Political rights, in particular the right to participate in elections—to vote and to stand for election—on the basis of universal and equal suffrage, to take part in the Government as well as in the conduct of public affairs at any level and to have equal access to public service.

**ICCPR, Article 25.** Every citizen shall have the right and the opportunity, without any of the distinctions mentioned in article 2 and without unreasonable restrictions: (a) To take part in the conduct of public affairs, directly or through freely chosen representatives; (b) To vote and to be elected at genuine periodic elections, which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors; (c) To have access, on general terms of equality, to public service in his country.

**CEDAW, Article 7.** States parties shall take all appropriate measures to eliminate discrimination against women in the political and public life of the country and, in particular, shall ensure to women, on equal terms with men, the right: (a) To vote in all elections and public referenda and to be eligible for election to all publicly elected bodies; (b) To participate in the formulation of government policy and the implementation thereof and to hold public office and perform all public functions at all levels of government; (c) To participate in nongovernmental organizations and associations concerned with the public and political life of the country.

**Article 8.** States parties shall take all appropriate measures to ensure to women, on equal terms with men and without any discrimination, the opportunity to represent their governments at the international level and to participate in the work of international organizations.

**Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief, Article 4.1.** All States shall take effective measures to prevent and eliminate discrimination on the grounds of religion or belief in the recognition, exercise, and enjoyment of human rights and fundamental freedoms in all fields of civil, economic, political, social, and cultural life. 2. All States shall make all efforts to enact or rescind legislation where necessary to prohibit any such discrimination and to take all appropriate measures to combat intolerance on the grounds of religion or other beliefs in this matter.

**League of Arab States, Arab Charter on Human Rights, Article 24.** Every citizen has the right: 1. To freely pursue a political activity. 2. To take part in the conduct of public affairs, directly or through freely chosen representatives. 3. To stand for election or choose his representatives in free and impartial elections, in conditions of equality among all citizens that guarantee the free expression of his will. 4. To have the opportunity to gain access, on an equal footing with others, to public office in his country in accordance with the principle of equality of opportunity. (See *supra* footnote 3.)

***Ignatane v. Latvia* (884/1999), ICCPR, A/56/40 Vol. II (25 July 2001) 191 at paras. 2.1, 2.2, 2.6-2.8 and 7.3-7.5.** 2.1 At the time of the events in question, Ms. Ignatane was a teacher in Riga. In 1993, she had appeared before a certification board to take a Latvian language test and had subsequently been awarded a language aptitude certificate stating that she had level 3 proficiency (the highest level).

2.2 In 1997, the author stood for local elections to be held on 9 March 1997, as a candidate of the Movement of Social Justice and Equal Rights in Latvia list. On 11 February 1997, she was struck off the list by decision of the Riga Election Commission, on the basis of an opinion issued by the State Language Board (SLB), to the effect that she did not have the required proficiency in the official language.

2.6 The author has submitted to the Committee a translation of articles 9, 17, and 22 of the Law on Elections to Town Councils and Municipal Councils, of 13 January 1994. Article 9 of the Law lists the categories of people who may not stand for local elections. According to Article 9, paragraph 7, no one who does not have level 3 (or higher) proficiency in the State language may stand for election. According to Article 17, if anyone standing for election is not a graduate of a school in which Latvian is the language of instruction, a copy of his or her language aptitude certificate showing higher level (3) proficiency in the State language must be attached to the “candidate’s application.” The author’s counsel has explained that the copy of the certificate is required to enable the SLB to check its authenticity, not its validity.

2.8 Lastly, Ms. Ignatane recalls that, according to statements made by the SLB at the time of the case hearings, the certification board in the Ministry of Education had received complaints about her proficiency in Latvian. It so happens, the author says, that it was just that Ministry that, in 1996, had been involved in a widely publicized controversy surrounding the closure of No. 9 secondary school in Riga, where she was the head teacher. The school was a Russian-language school and its closure had had a very bad effect on the Russian minority in Latvia.

7.3 According to the State party, participation in public affairs requires a high level of proficiency in the State language and a language requirement for standing as a candidate in elections is hence reasonable and objective. The Committee notes that Article 25 secures to every citizen the right and the opportunity to be elected at genuine periodic elections without any of the distinctions mentioned in Article 2, including language.

7.4 The Committee notes that, in this case, the decision of a single inspector, taken a few days before the elections and contradicting a language aptitude certificate issued some years earlier, for an unlimited period, by a board of Latvian language specialists, was enough for the Election Commission to decide to strike the author off the list of candidates for the municipal elections.

7.5 The Committee concludes that Ms. Ignatane has suffered specific injury in being prevented from standing for the local elections in the city of Riga in 1997, because of having been struck off the list of candidates on the basis of insufficient proficiency in the official language. The Human Rights Committee considers that the author is a victim of a violation of Article 25, in conjunction with Article 2 of the Covenant.



For norms pertaining to employment in state institutions, see:

**Vienna Declaration and Programme of Action, Part II, Article 27.** Measures to be taken, where appropriate, should include facilitation of their full participation in all aspects of the political, economic, social, religious, and cultural life of society and in the economic progress and development in their country.

***Delgado Páez v. Colombia (195/1985), ICCPR, A/45/40 (12 July 1990) 43 at paras. 2.2, 2.4-2.6, 2.8, 2.9 2.1.*** In March 1983, the author was appointed by the Ministry of Education as a teacher of religion and ethics at a secondary school in Leticia, Colombia. He was elected vice-president of the teachers' union. As an advocate of "liberation theology," his social views differed from those of the then Apostolic Prefect of Leticia...

2.2 In October 1983, the apostolic prefect sent a letter to the Education Commission withdrawing the support that the Church had given to Mr. Delgado. On 10 December 1983, the apostolic prefect wrote to the police inspector accusing Mr. Delgado of having stolen money from a student.

2.8 While at his residence in Bogotá, the author received anonymous phone calls threatening him with death if he returned to Leticia and did not withdraw his complaint against the apostolic prefect and the education authorities. He also received death threats at the teachers' residence at Leticia, which he reported to the military authorities at Leticia, the teachers' union, the Ministry of Education, and the President of Colombia.

2.9 On 2 May 1986, a work colleague ... was shot to death ... by unknown killers. On 7 May 1986, the author was himself attacked in the city of Bogotá, and, fearing his own life, left the country and obtained political asylum in France in June 1986.

3.2 He maintains that he was subjected to persecution—ideologically, politically, and in his work—by the Colombian authorities, because of his "progressive ideas in theological and social matters," that his honor and reputation were attacked by the authorities who falsely accused him of theft, whereas the reason behind the charge was to intimidate him because of his religious and social opinions. Moreover, his professional qualifications were unjustly put into question, although he had studied and taken a degree at the University of Santo Tombs and had taught several years at a high school in Bogotá.

5.9 Constant harassment and the threats against his person (in respect of which the State party failed to provide protection) made the author's continuation in public service teaching impossible. Accordingly, the Committee finds a violation of Article 25, paragraph (c) of the Covenant.

For norms pertaining to freedom of expression, see:

**UDHR, Article 19.** Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive, and impart information and ideas through any media and regardless of frontiers.

**ICCPR, Article 19.1.** Everyone shall have the right to hold opinions without interference. 2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive, and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice. 3. The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary: (a) For respect of the rights or reputations of others; (b) For the protection of national security or of public order ..., or of public health or morals.

**ICERD, Article 5.** In compliance with the fundamental obligations laid down in Article 2 of this Convention, States parties undertake to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, color, or national or ethnic origin, to equality before the law, notably in the enjoyment of the following rights: viii) The right to freedom of opinion and expression.

**International Convention on the Suppression and Punishment of the Crime of Apartheid, Article II.** For the purpose of the present Convention, the term “the crime of apartheid,” which shall include similar policies and practices of racial segregation and discrimination as practiced in southern Africa, shall apply to the following inhuman acts committed for the purpose of establishing and maintaining domination by one racial group of persons over any other racial group of persons and systematically oppressing them: (c) Any legislative measures and other measures calculated to prevent a racial group or groups from participation in the political, social, economic, and cultural life of the country and the deliberate creation of conditions preventing the full development of such a group or groups, in particular by denying to members of a racial group or groups basic human rights and freedoms, including the right to work, the right to form recognized trade unions, the right to education, the right to leave and to return to their country, the right to a nationality, the right to freedom of movement and residence, the right to freedom of opinion and expression, and the right to freedom of peaceful assembly and association.

**United Nations Declaration on the Rights of Indigenous Peoples, Article 16.1.** Indigenous peoples have the right to establish their own media in their own languages and to have access to all forms of nonindigenous media without discrimination. 2. States shall take effective measures to ensure that state-owned media duly reflect indigenous cultural diversity. States, without prejudice to ensuring full freedom of expression, should encourage privately owned media to adequately reflect indigenous cultural diversity.

**American Declaration of the Rights and Duties of Man, Article IV.** Every person has the right to freedom of investigation, of opinion, and of the expression and dissemination of ideas, by any medium whatsoever.

**American Convention on Human Rights, Article 13.** Freedom of Thought and Expression: 1. Everyone has the right to freedom of thought and expression. This right includes freedom to seek, receive, and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing, in print, in the form of art, or through any other medium of one’s choice. 2. The exercise of the right provided for in the foregoing paragraph shall not be subject to prior censorship but shall be subject to subsequent imposition of liability, which shall be expressly established by law to the extent necessary to ensure: a. respect for the rights or reputations of others; or b. the protection of national security, public order, or public health or morals.

**League of Arab States, Arab Charter on Human Rights, Article 32.1.** The present Charter guarantees the right to information and to freedom of opinion and expression, as well as the right to seek, receive, and impart information and ideas through any medium, regardless of geographical boundaries. 2. Such rights and freedoms shall be exercised in conformity with the fundamental values of society and shall be subject only to such limitations as are required to ensure respect for the rights or reputation of others or the protection of national security, public order, and public health or morals. (See *supra* footnote 3.)

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## The Existence of a Policy of State Segregation Targeting Members of a *Particular Group*

3. The existence of a state policy of segregation targeting members of a *particular group*, or failure of a state to prevent, prohibit or eradicate practices of this nature against members of a particular group, including but not limited to forcibly imposed segregated schools and housing.

For norms specifically referring to apartheid and a state policy of segregation, see:

**International Convention on the Elimination of All Forms of Racial Discrimination, Article 3.** States parties particularly condemn racial segregation and apartheid and undertake to prevent, prohibit, and eradicate all practices of this nature in territories under their jurisdiction.

**International Convention on the Suppression and Punishment of the Crime of Apartheid, G.A. res. 3068 (XXVIII)), 28 UN GAOR Supp. (No. 30) at 75, UN Doc. A/9030 (1974), 1015 UNTS 243, entered into force July 18, 1976.**

**Article I.** The States parties to the present Convention declare that apartheid is a crime against humanity and that inhuman acts resulting from the policies and practices of apartheid and similar policies and practices of racial segregation and discrimination, as defined in Article II of the Convention, are crimes violating the principles of international law, in particular the purposes and principles of the Charter of the United Nations, and constituting a serious threat to international peace and security. 2. The States parties to the present Convention declare criminal those organizations, institutions, and individuals committing the crime of apartheid.

**Article II.** For the purpose of the present Convention, the term “the crime of apartheid,” which shall include similar policies and practices of racial segregation and discrimination as practiced in southern Africa, shall apply to the following inhuman acts committed for the purpose of establishing and maintaining domination by one racial group of persons over any other racial group of persons and systematically oppressing them: (a) Denial to a member or members of a racial group or groups of the right to life and liberty of person; (i) By murder of members of a racial group or groups; (ii) By the infliction upon the members of a racial group or groups of serious bodily or mental harm, by the infringement of their freedom or dignity, or by subjecting them to torture or to cruel, inhuman or degrading treatment or punishment; (iii) By arbitrary arrest and illegal imprisonment of the members of a racial group or groups; (b) Deliberate imposition on a racial group or groups of living conditions calculated to cause its or their physical destruction in whole or in part; (c) Any legislative measures and other measures calculated to prevent a racial group or groups from participation in the political, social, economic, and cultural life of the country and the deliberate creation of conditions preventing the full development of such a group or groups, in particular by denying to members of a racial group or groups basic human rights and freedoms, including the right to work, the right to form recognized trade unions, the right to education, the right to leave and to return to their country, the right to a nationality, the right to freedom of movement and residence, the right to freedom of opinion and expression, and the right to freedom of peaceful assembly and association; (d) Any measures including legislative measures, designed to divide the population along racial lines by the creation of separate reserves and ghettos for the members of a racial group or groups, the prohibition of mixed marriages among members of various racial groups, the expropriation of landed property belonging to a racial group or groups or to members thereof; (e) Exploitation of the labor of the members of a racial group or groups, in particular by submitting them to forced labor; (f) Persecution of organizations and per-

sons, by depriving them of fundamental rights and freedoms, because they oppose apartheid.

**Article III.** International criminal responsibility shall apply, irrespective of the motive involved, to individuals, members of organizations and institutions and representatives of the State, whether residing in the territory of the State in which the acts are perpetrated or in some other State, whenever they: (a) Commit, participate in, directly incite or conspire in the commission of the acts mentioned in Article II of the present Convention; (b) Directly abet, encourage or co-operate in the commission of the crime of apartheid.

**Article IV.** The States parties to the present Convention undertake: (a) To adopt any legislative or other measures necessary to suppress as well as to prevent any encouragement of the crime of apartheid and similar segregationist policies or their manifestations and to punish persons guilty of that crime; (b) To adopt legislative, judicial, and administrative measures to prosecute, bring to trial, and punish in accordance with their jurisdiction persons responsible for, or accused of, the acts defined in Article II of the present Convention, whether or not such persons reside in the territory of the State in which the acts are committed or are nationals of that State or of some other State or are stateless persons.

**Rome Statute of the International Criminal Court, Article 7.** Crimes against humanity: 1. For the purpose of this Statute, “crime against humanity” means any of the following acts when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack: (j) The crime of apartheid; (h) “The crime of apartheid” means inhumane acts of a character similar to those referred to in paragraph 1, committed in the context of an institutionalized regime of systematic oppression and domination by one racial group over any other racial group or groups and committed with the intention of maintaining that regime.

**African Charter on the Rights and Welfare of the Child, Article 26.** Protection against Apartheid and Discrimination: 1. States parties to the present Charter shall individually and collectively undertake to accord the highest priority to the special needs of children living under Apartheid and in States subject to military destabilization by the Apartheid regime. 2. States parties to the present Charter shall individually and collectively undertake to accord the highest priority to the special needs of children living under regimes practicing racial, ethnic, religious or other forms of discrimination as well as in States subject to military destabilization. 3. States parties shall undertake to provide, whenever possible, material assistance to such children and to direct their efforts towards the elimination of all forms of discrimination and Apartheid on the African Continent.

**Declaration on the Right to Development, G.A. res. 41/128, annex, 41 UN GAOR Supp. (No. 53) at 186, UN Doc. A/41/53 (1986). Article 5.** States shall take resolute steps to eliminate the massive and flagrant violations of the human rights of peoples and human beings affected by situations such as those resulting from apartheid, all forms of racism and racial discrimination, colonialism, foreign domination and occupation, aggression, foreign interference and threats against national sovereignty, national unity and territorial integrity, threats of war, and refusal to recognize the fundamental right of peoples to self-determination.

**Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes Against Humanity, G.A. res. 2391 (XXIII), annex, 23 UN GAOR Supp. (No. 18) at 40, UN Doc. A/7218 (1968), entered into force Nov. 11, 1970. Article 1.** No statutory limitation shall apply to the following crimes, irrespective of the date of their commission: (a) War crimes as they are defined in the Charter of the International Military Tribunal, Nurnberg, of 8 August 1945 and confirmed by

resolutions 3 (1) of 13 February 1946 and 95 (I) of 11 December 1946 of the General Assembly of the United Nations, particularly the “grave breaches” enumerated in the Geneva Conventions of 12 August 1949 for the protection of war victims; (b) Crimes against humanity whether committed in time of war or in time of peace as they are defined in the Charter of the International Military Tribunal, Nurnberg, of 8 August 1945 and confirmed by resolutions 3 (1) of 13 February 1946 and 95 (1) of 11 December 1946 of the General Assembly of the United Nations, eviction by armed attack or occupation and inhuman acts resulting from the policy of apartheid, and the crime of genocide as defined in the 1948 Convention on the Prevention and Punishment of the Crime of Genocide, even if such acts do not constitute a violation of the domestic law of the country in which they were committed.

**Declaration on Race and Racial Prejudice, E/CN.4/Sub.2/1982/2/Add.1, annex V (1982).**

**Article 1.1.** All human beings belong to a single species and are descended from a common stock. They are born equal in dignity and rights and all form an integral part of humanity. 2. All individuals and groups have the right to be different, to consider themselves as different and to be regarded as such. However, the diversity of lifestyles and the right to be different may not, in any circumstances, serve as a pretext for racial prejudice; they may not justify, either in law or in fact, any discriminatory practice whatsoever, nor provide a ground for the policy of apartheid, which is the extreme form of racism.

**Article 4.** Any restriction on the complete self-fulfillment of human beings and free communication between them which is based on racial or ethnic considerations is contrary to the principle of equality in dignity and rights; it cannot be admitted. 2. One of the most serious violations of this principle is represented by apartheid, which, like genocide, is a crime against humanity, and gravely disturbs international peace and security. 3. Other policies and practices of racial segregation and discrimination constitute crimes against the conscience and dignity of mankind and may lead to political tensions and gravely endanger international peace and security.

**Article 6.** The State has prime responsibility for ensuring human rights and fundamental freedoms on an entirely equal footing in dignity and rights for all individuals and all groups. 2. So far as its competence extends and in accordance with its constitutional principles and procedures, the State should take all appropriate steps, inter alia by legislation, particularly in the spheres of education, culture, and communication, to prevent, prohibit, and eradicate racism—racist propaganda, racial segregation, and apartheid—and to encourage the dissemination of knowledge and the findings of appropriate research in natural and social sciences on the causes and prevention of racial prejudice and racist attitudes, with due regard to the principles embodied in the Universal Declaration of Human Rights and in the International Covenant on Civil and Political Rights. 3. Since laws proscribing racial discrimination are not in themselves sufficient, it is also incumbent on States to supplement them by administrative machinery for the systematic investigation of instances of racial discrimination, by a comprehensive framework of legal remedies against acts of racial discrimination, by broadly based education and research programs designed to combat racial prejudice and racial discrimination, and by programs of positive political, social, educational, and cultural measures calculated to promote genuine mutual respect among groups. Where circumstances warrant, special programs should be undertaken to promote the advancement of disadvantaged groups and, in the case of nationals, to ensure their effective participation in the decision-making processes of the community.

**Article 10.** International organizations, whether universal or regional, governmental or non-governmental, are called upon to cooperate and assist, so far as their respective fields of competence and means allow, in the full and complete implementation of the principles set out in this Declaration, thus contributing to the legitimate struggle of all men, born equal in dignity and rights, against the tyranny and oppression of racism, racial segregation, apartheid, and genocide, so that all the peoples of the world may be forever delivered from these scourges.

**Report of the World Conference Against Racism, Racial Discrimination, Xenophobia, and Related Intolerance, UN Doc. A/ CONF.189/12 (2001). Para. 15.** We recognize that apartheid and genocide in terms of international law constitute crimes against humanity and are major sources and manifestations of racism, racial discrimination, xenophobia, and related intolerance, and acknowledge the untold evil and suffering caused by these acts and affirm that wherever and whenever they occurred, they must be condemned and their recurrence prevented; 28. We recall that persecution against any identifiable group, collectivity or community on racial, national, ethnic or other grounds that are universally recognized as impermissible under international law, as well as the crime of apartheid, constitute serious violations of human rights and, in some cases, qualify as crimes against humanity; 99. We acknowledge and profoundly regret the massive human suffering and the tragic plight of millions of men, women, and children caused by slavery, the slave trade, the transatlantic slave trade, apartheid, colonialism and genocide, and call upon States concerned to honor the memory of the victims of past tragedies and affirm that, wherever and whenever these occurred, they must be condemned and their recurrence prevented. We regret that these practices and structures, political, socio-economic, and cultural, have led to racism, racial discrimination, xenophobia, and related intolerance.

**Committee on the Elimination of Racial Discrimination, General Recommendation 19. The prevention, prohibition and eradication of racial segregation and apartheid (Forty-seventh session, 1995), UN Doc. A/50/18 at 140 (1995), reprinted in Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies, UN Doc. HRI\GEN\1\ Rev.6 at 208 (2003).** General recommendation XIX, Racial segregation and apartheid (Article 3)

1. The Committee on the Elimination of Racial Discrimination calls the attention of States parties to the wording of Article 3, by which States parties undertake to prevent, prohibit, and eradicate all practices of racial segregation and apartheid in territories under their jurisdiction. The reference to apartheid may have been directed exclusively to South Africa, but the article as adopted prohibits all forms of racial segregation in all countries.
2. The Committee believes that the obligation to eradicate all practices of this nature includes the obligation to eradicate the consequences of such practices undertaken or tolerated by previous Governments in the State or imposed by forces outside the State.
3. The Committee observes that while conditions of complete or partial racial segregation may in some countries have been created by governmental policies, a condition of partial segregation may also arise as an unintended by-product of the actions of private persons. In many cities residential patterns are influenced by group differences in income, which are sometimes combined with differences of race, color, descent, and national or ethnic origin, so that inhabitants can be stigmatized and individuals suffer a form of discrimination in which racial grounds are mixed with other grounds.
4. The Committee therefore affirms that a condition of racial segregation can also arise without any initiative or direct involvement by the public authorities. It invites States parties to monitor all trends which can give rise to racial segregation, to work for the eradication of any negative consequences that ensue, and to describe any such action in their periodic reports.

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## Systematic Denial or Restriction of Access to Education

4. The systematic denial of or severe restrictions on access to education for members of a *particular group*, including, although not limited to, banning access of members of a particular group to schools or institutions of higher learning, or teaching of national, ethnic, racial, or religious hatred that constitutes incitement to discrimination, hostility or violence.

For norms pertaining to the right to an education, see:

**UDHR, Article 26.** Everyone has the right to education. Education shall be free, at least in the elementary and fundamental stages. Elementary education shall be compulsory. Technical and professional education shall be made generally available, and higher education shall be equally accessible to all on the basis of merit.

**ICESCR, Article 13.** Primary education shall be compulsory and available free for all.... The States parties to the present Covenant undertake to have respect for the liberty of parents ... to choose for their children schools other than those established by the public authorities, which conform to such minimum educational standards as may be laid down or approved by the State and to ensure the religious and moral education of their children in conformity with their own convictions. ... No part of this article shall be construed so as to interfere with the liberty of individuals and bodies to establish and direct educational institutions.

**ICCPR, Article 18.** The States parties to the present Covenant undertake to have respect for the liberty of parents ... to ensure the religious and moral education of their children in conformity with their own convictions.

**CRC, Article 24. 1.** Every child shall have, without any discrimination as to race, color, sex, language, religion, national or social origin, property or birth, the right to such measures of protection as are required by his status as a minor, on the part of his family, society and the State. **2.** States parties shall pursue full implementation of this right and, in particular, shall take appropriate measures: (c) To combat disease and malnutrition, including within the framework of primary health care, through, inter alia, the application of readily available technology and through the provision of adequate nutritious foods and clean drinking-water, taking into consideration the dangers and risks of environmental pollution; (e) To ensure that all segments of society, in particular parents and children, are informed, have access to education, and are supported in the use of basic knowledge of child health and nutrition, the advantages of breastfeeding, hygiene, and environmental sanitation, and the prevention of accidents.

**Article 27.1.** States parties recognize the right of every child to a standard of living adequate for the child's physical, mental, spiritual, moral, and social development. **2.** The parent(s) or others responsible for the child have the primary responsibility to secure, within their abilities and financial capacities, the conditions of living necessary for the child's development. **3.** States parties, in accordance with national conditions and within their means, shall take appropriate measures to assist parents and others responsible for the child to implement this right and shall, in case of need, provide material assistance and support programs, particularly with regard to nutrition, clothing, and housing.

**Article 29.1.** States parties agree that the education of the child shall be directed to: (a) The development of the child's personality, talents, and mental and physical abilities to their fullest potential; (b)

The development of respect for human rights and fundamental freedoms, and for the principles enshrined in the Charter of the United Nations; (c) The development of respect for the child's parents, his or her own cultural identity, language, and values, for the national values of the country in which the child is living, the country from which he or she may originate, and for civilizations different from his or her own; (d) The preparation of the child for responsible life in a free society, in the spirit of understanding, peace, tolerance, equality of sexes, and friendship among all peoples, ethnic, national and religious groups, and persons of indigenous origin; (e) The development of respect for the natural environment.

2. No part of the present article or Article 28 shall be construed so as to interfere with the liberty of individuals and bodies to establish and direct educational institutions, subject always to the observance of the principle set forth in paragraph 1 of the present article and to the requirements that the education given in such institutions shall conform to such minimum standards as may be laid down by the State.

**United Nations Declaration on the Rights of Indigenous Peoples, Article 15.1.** Indigenous peoples have the right to the dignity and diversity of their cultures, traditions, histories, and aspirations, which shall be appropriately reflected in education and public information. 2. States shall take effective measures, in consultation and cooperation with the indigenous peoples concerned, to combat prejudice and eliminate discrimination and to promote tolerance, understanding, and good relations among indigenous peoples and all other segments of society.

**International Convention on the Suppression and Punishment of the Crime of Apartheid, Article II.** ... the term "the crime of apartheid" [means]... (c) Any legislative measures and other measures calculated to prevent a racial group or groups from participation in the political, social, economic, and cultural life of the country and the deliberate creation of conditions preventing the full development of such a group or groups, in particular by denying to members of a racial group or groups basic human rights and freedoms, including the right to work, the right to form recognized trade unions, the right to education, the right to leave and to return to their country, the right to a nationality, the right to freedom of movement and residence, the right to freedom of opinion and expression, and the right to freedom of peaceful assembly and association.

**American Declaration of the Rights and Duties of Man, Article XII.** Every person has the right to an education, which should be based on the principles of liberty, morality, and human solidarity.

**Charter of the Organization of American States, Article 34.** The Member States agree that equality of opportunity, the elimination of extreme poverty, equitable distribution of wealth and income, and the full participation of their peoples in decisions relating to their own development are, among others, basic objectives of integral development. To achieve them, they likewise agree to devote their utmost efforts to accomplishing the following basic goals: h) Rapid eradication of illiteracy and expansion of educational opportunities for all.

**Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social, and Cultural Rights, "Protocol of San Salvador," Article 13.** Right to Education: 1. Everyone has the right to education. 2. The States parties to this Protocol agree that education should be directed towards the full development of the human personality and human dignity and should strengthen respect for human rights, ideological pluralism, fundamental freedoms, justice, and peace. They further agree that education ought to enable everyone to participate effectively in a democratic and pluralistic society and achieve a decent existence and should foster understanding, tolerance, and friendship among all nations and all racial, ethnic or religious groups, and promote activities for

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the maintenance of peace. 4. The States parties to this Protocol recognize that in order to achieve the full exercise of the right to education: a. Primary education should be compulsory and accessible to all without cost; b. Secondary education in its different forms, including technical and vocational secondary education, should be made generally available and accessible to all by every appropriate means, and, in particular, by the progressive introduction of free education; c. Higher education should be made equally accessible to all, on the basis of individual capacity, by every appropriate means, and, in particular, by the progressive introduction of free education;

**Article 16.** Rights of Children: Every child, whatever his parentage, has the right to the protection that his status as a minor requires from his family, society, and the State. Every child has the right to grow under the protection and responsibility of his parents; save in exceptional, judicially recognized circumstances, a child of young age ought not to be separated from his mother. Every child has the right to free and compulsory education, at least in the elementary phase, and to continue his training at higher levels of the educational system.

**OUA Cultural Charter for Africa, Article 2.** In order to fulfill the objectives set out in Article 2, the African States solemnly subscribe to the following principles: (a) access of all citizens to education and to culture.

**ICESCR, General Comment 13 (Twenty-first Session, 1999): Article 13: The Right to Education, E/2000/22 (1999) 111 at paras. 1, 2 and 4-60.**

1. Education is both a human right in itself and an indispensable means of realizing other human rights. As an empowerment right, education is the primary vehicle by which economically and socially marginalized adults and children can lift themselves out of poverty and obtain the means to participate fully in their communities. Education has a vital role in empowering women, safeguarding children from exploitative and hazardous labor and sexual exploitation, promoting human rights and democracy, protecting the environment, and controlling population growth. Increasingly, education is recognized as one of the best financial investments States can make. But the importance of education is not just practical: A well-educated, enlightened, and active mind, able to range freely and widely, is one of the joys and rewards of human existence.

4. States parties agree that all education, whether public or private, formal or nonformal, shall be directed towards the aims and objectives identified in Article 13, paragraph 1. The Committee notes that these educational objectives reflect the fundamental purposes and principles of the UN as enshrined in Articles 1 and 2 of the Charter. For the most part, they are also found in Article 26, paragraph 2, of the Universal Declaration of Human Rights, although Article 13, paragraph 1, of the Covenant adds to the Declaration in three respects: Education shall be directed to the human personality's "sense of dignity," it shall "enable all persons to participate effectively in a free society," and it shall promote understanding among all ethnic groups, as well as "nations and racial and religious groups." Of those educational objectives which are common to Article 26, paragraph 2, of the Universal Declaration of Human Rights and Article 13, paragraph 1, of the Covenant, perhaps the most fundamental is that "education shall be directed to the full development of the human personality."

6. While the precise and appropriate application of the terms will depend upon the prevailing conditions in a particular State party, education in all its forms and at all levels shall exhibit the following interrelated and essential features: (b) Accessibility. Educational institutions and programs have to be accessible to everyone, without discrimination, within the jurisdiction of the State party. Accessibility has three overlapping dimensions: (i) Nondiscrimination: Education must be accessible to all, especially the most vulnerable groups, in law and fact, without discrimination on any of the prohibited grounds (see paragraphs 31-37 on nondiscrimination).

31. The prohibition against discrimination enshrined in Article 2, paragraph 2 is subject to neither progressive realization nor the availability of resources; it applies fully and immediately to all aspects of education and encompasses all internationally prohibited grounds of discrimination. The Committee interprets Article 2, paragraph 2 and Article 3 of the Covenant in the light of the Convention against Discrimination in Education adopted by UNESCO in December 1960, the relevant provisions of the Convention on the Elimination of All Forms of Discrimination against Women, the International Convention on the Elimination of Racial Discrimination, the Convention on the Rights of the Child, and ILO Convention No. 169 (1989) concerning Indigenous and Tribal Peoples in Independent Countries, and wishes to draw particular attention to the following issues.

32. The adoption of temporary special measures intended to bring about de facto equality for men and women and for disadvantaged groups is not a violation of the right to nondiscrimination with regard to education, so long as such measures do not lead to the maintenance of unequal or separate standards for different groups, and provided they are not continued after the objectives for which they were taken have been achieved.

33. In some circumstances, separate educational systems or institutions for groups defined by the categories in Article 2, paragraph 2, shall be deemed not to constitute a breach of the Covenant. In this regard, the Committee affirms Article 2 of the Convention against Discrimination in Education.

34. The Committee takes note of Article 2 of the Convention on the Rights of the Child and Article 3, paragraph (e), of the Convention against Discrimination in Education and confirms that the principle of nondiscrimination extends to all persons of school age residing in the territory of a State party, including nonnationals, and irrespective of their legal status.

***Sampanis and Others v. Greece (application no. 32526/05)***. The court found that the authorities' failure to provide schooling for the children of the eleven applicants (Greek nationals of Roma origin) and the subsequent placement of their children in special classes in a separate school building was related to their Roma origin. The court found that these measures constituted discrimination against the applicants' children in violation of the prohibition against discrimination in Article 14 of the ECHR in conjunction with the right to education in Article 2 of Protocol No. 1 to the ECHR.

The applicants alleged that the head teachers of two schools had refused to enroll their children for the 2004-05 school year, claiming that they had not received any instructions on the matter from the relevant ministry. The applicants alleged that the following year, under pressure, they had signed a statement drafted by primary school teachers to the effect that they wanted their children to be transferred to a building separate from the school. Thereafter, the applicants' children were given classes in another building in prefabricated classrooms and were later transferred to a new primary school. The applicants complained that their children had been subjected, without any objective or reasonable justification, to treatment that was less favorable than that given to non-Roma children in a comparable situation.

The court found that it could be presumed that incidents of a racist nature that took place in front of the school in 2005 influenced the decision to place pupils of Roma origin in an annex to the primary school. The court considered that there was a strong presumption of discrimination and that it was for the government to show that this difference in treatment was the result of objective factors, unrelated to ethnic origin. The court observed that while the evidence did not show that the applicants had met with an explicit refusal by the school authorities, given the Roma community's vulnerability and considering that Article 14 requires in certain circumstances a difference of treatment in order to correct inequality, the competent authorities should have recognized the particularity of the case and facilitated the enrollment of the Roma children, even if necessary administrative documents were unavailable.

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The court noted that under the circumstances this obligation should have been particularly clear to the school authorities as they were aware of the problem of providing schooling for the Roma children living in the area and of the need to enroll them at primary school. The court considered that the competent authorities had not adopted a clear criterion in choosing which children to place in the special preparatory classes. In addition, the court noted that while the declared objective of the preparatory classes was for the pupils concerned to attain the level of education which would enable them to enter ordinary classes in due course, there was no evidence that the preparatory classes facilitated this process. Moreover, the court was not satisfied that the applicants had been able to assess all the aspects of the situation and the consequences of their consent to the transfer of their children to a separate building. Reiterating the fundamental importance of the prohibition of racial discrimination, the court considered that the possibility that someone could waive their right not to be the victim of such discrimination was unacceptable. Such a waiver would be incompatible with an important public interest.

**Commission on Human Rights, Resolution 2002/23 United Nations Literacy Decade (2003-2012).** (a) To give full effect to the right to education and to guarantee that this right is recognized and exercised without discrimination of any kind.

For norms pertaining to segregation of public schools, see:

**UNESCO Convention against Discrimination in Education, Article 2.** When permitted in a State, the following situations shall not be deemed to constitute discrimination, within the meaning of Article I of this Convention: (a) The establishment or maintenance of separate educational systems or institutions for pupils of the two sexes, if these systems or institutions offer equivalent access to education, provide a teaching staff with qualifications of the same standard, as well as school premises and equipment of the same quality, and afford the opportunity to take the same or equivalent courses of study; (b) The establishment or maintenance, for religious or linguistic reasons, of separate educational systems or institutions offering an education which is in keeping with the wishes of the pupil's parents or legal guardians, if participation in such systems or attendance at such institutions is optional and if the education provided conforms to such standards as may be laid down or approved by the competent authorities, in particular for education of the same level; (c) The establishment or maintenance of private educational institutions, if the object of the institutions is not to secure the exclusion of any group but to provide educational facilities in addition to those provided by the public authorities, if the institutions are conducted in accordance with that object, and if the education provided conforms with such standards as may be laid down or approved by the competent authorities, in particular for education of the same level.

**Article 3.** In order to eliminate and prevent discrimination within the meaning of this Convention, the States parties thereto undertake: (a) To abrogate any statutory provisions and any administrative instructions and to discontinue any administrative practices which involve discrimination in education; (b) To ensure, by legislation where necessary, that there is no discrimination in the admission of pupils to educational institutions; (c) Not to allow any differences of treatment by the public authorities between nationals, except on the basis of merit or need, in the matter of school fees and the grant of scholarships or other forms of assistance to pupils and necessary permits and facilities for the pursuit of studies in foreign countries; (d) Not to allow, in any form of assistance granted by the public authorities to educational institutions, any restrictions or preference based solely on the ground that pupils belong to a particular group; (e) To give foreign nationals resident within their territory the same access to education as that given to their own nationals.

**Article 4:1.** States shall take measures where required to ensure that persons belonging to minorities may exercise fully and effectively all their human rights and fundamental freedoms without any discrimination and in full equality before the law; 2. States shall take measures to create favorable conditions to enable persons belonging to minorities to express their characteristics and to develop their culture, language, religion, traditions and customs, except where specific practices are in violation of national law and contrary to international standards; 3. States should take appropriate measures so that, wherever possible, persons belonging to minorities may have adequate opportunities to learn their mother tongue or to have instruction in their mother tongue.

**Article 5.1.** The States parties to this Convention agree that: (a) Education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms; it shall promote understanding, tolerance, and friendship among all nations, racial or religious groups, and shall further the activities of the United Nations for the maintenance of peace; (b) It is essential to respect the liberty of parents and, where applicable, of legal guardians, firstly to choose for their children institutions other than those maintained by the public authorities but conforming to such minimum educational standards as may be laid down or approved by the competent authorities and, secondly, to ensure in a manner consistent with the procedures followed in the State for the application of its legislation, the religious and moral education of the children in conformity with their own convictions; and no person or group of persons should be compelled to receive religious instruction inconsistent with his or their convictions; (c) It is essential to recognize the right of members of national minorities to carry on their own educational activities, including the maintenance of schools and, depending on the educational policy of each State, the use or the teaching of their own language, provided, however: (i) That this right is not exercised in a manner which prevents the members of these minorities from understanding the culture and language of the community as a whole and from participating in its activities, or which prejudices national sovereignty; (ii) That the standard of education is not lower than the general standard laid down or approved by the competent authorities; and (iii) That attendance at such schools is optional. 2. The States parties to this Convention undertake to take all necessary measures to ensure the application of the principles enunciated in paragraph 1 of this article.

**International Convention on the Suppression and Punishment of the Crime of Apartheid, Article II.** ... “the crime of apartheid,” [means] ... (c) Any legislative measures and other measures calculated to prevent a racial group or groups from participation in the political, social, economic, and cultural life of the country and the deliberate creation of conditions preventing the full development of such a group or groups, in particular by denying to members of a racial group or groups basic human rights and freedoms, including the right to work, the right to form recognized trade unions, the right to education, the right to leave and to return to their country, the right to a nationality, the right to freedom of movement and residence, the right to freedom of opinion and expression, and the right to freedom of peaceful assembly and association.

**European Convention on Human Rights and Fundamental Freedoms, Protocol 1, Article 2.** No person shall be denied the right to education. In the exercise of any functions which it assumes in relation to education and to teaching, the State shall respect the right of parents to ensure such education and teaching in conformity with their own religious and philosophical convictions.

**United Nations Declaration on the Rights of Indigenous Peoples, Article 14.1.** Indigenous peoples have the right to establish and control their educational systems and institutions providing education in their own languages, in a manner appropriate to their cultural methods of teaching and learning. 14.2. Indigenous individuals, particularly children, have the right to all levels and forms of education

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of the State without discrimination. 14.3. States shall, in conjunction with indigenous peoples, take effective measures, in order for indigenous individuals, particularly children, including those living outside their communities, to have access, when possible, to an education in their own culture and provided in their own language.

For norms pertaining to the teaching of hatred or incitement directed towards a *particular group* and for norms encouraging the teaching of tolerance and cultural promotion, see:

**United Nations Declaration on the Rights of Indigenous Peoples, Article 15.1.** Indigenous peoples have the right to the dignity and diversity of their cultures, traditions, histories, and aspirations, which shall be appropriately reflected in education and public information. 2. States shall take effective measures, in consultation and cooperation with the indigenous peoples concerned, to combat prejudice and eliminate discrimination and to promote tolerance, understanding, and good relations among indigenous peoples and all other segments of society.

**CRC, Article 14.** (2) States parties shall respect the rights and duties of the parents and, when applicable, legal guardians, to provide direction to the child in the exercise of his or her right in a manner consistent with the evolving capacities of the child [.] (c) The development of respect for the child's parents, his or her own cultural identity, language, and values, for the national values of the country in which the child is living, the country from which he or she may originate, and for civilizations different from his or her own.

**Article 29.1.** States parties agree that the education of the child shall be directed to: (d) The preparation of the child for responsible life in a free society, in the spirit of understanding, peace, tolerance, equality of sexes, and friendship among all peoples, ethnic, national and religious groups, and persons of indigenous origin.

**ICERD, Article 7.** States parties undertake to adopt immediate and effective measures, particularly in the fields of teaching, education, culture, and information, with a view to combating prejudices which lead to racial discrimination and to promoting understanding, tolerance, and friendship among nations and racial or ethnical groups, as well as to propagating the purposes and principles of the Charter of the United Nations, the Universal Declaration of Human Rights, the United Nations Declaration on the Elimination of All Forms of Racial Discrimination, and this Convention.

**Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, Article 1.1.** States shall protect the existence and the national or ethnic, cultural, religious, and linguistic identity of minorities within their respective territories and shall encourage conditions for the promotion of that identity; 2. States shall adopt appropriate legislative and other measures to achieve those ends.

**Article 4.** States should, where appropriate, take measures in the field of education, in order to encourage knowledge of the history, traditions, language, and culture of the minorities existing within their territory. Persons belonging to minorities should have adequate opportunities to gain knowledge of the society as a whole.

**European Charter for Regional or Minority Languages, Strasbourg, 5.XI.1992, Article 7—Objectives and Principles:**

I. In respect of regional or minority languages, within the territories in which such languages are used

and according to the situation of each language, the Parties shall base their policies, legislation, and practice on the following objectives and principles:

1. The recognition of the regional or minority languages as an expression of cultural wealth;
2. The respect of the geographical area of each regional or minority language in order to ensure that existing or new administrative divisions do not constitute an obstacle to the promotion of the regional or minority language in question;
3. The need for resolute action to promote regional or minority languages in order to safeguard them;
4. The facilitation and/or encouragement of the use of regional or minority languages, in speech and writing, in public and private life;
5. The maintenance and development of links, in the fields covered by this Charter, between groups using a regional or minority language and other groups in the State employing a language used in identical or similar form, as well as the establishment of cultural relations with other groups in the State using different languages;
6. The provision of appropriate forms and means for the teaching and study of regional or minority languages at all appropriate stages;
7. The provision of facilities enabling nonspeakers of a regional or minority language living in the area where it is used to learn it if they so desire;
8. The promotion of study and research on regional or minority languages at universities or equivalent institutions;
9. The promotion of appropriate types of transnational exchanges, in the fields covered by this Charter, for regional or minority languages used in identical or similar form in two or more States.

II. The Parties undertake to eliminate, if they have not yet done so, any unjustified distinction, exclusion, restriction or preference relating to the use of a regional or minority language and intended to discourage or endanger the maintenance or development of it. The adoption of special measures in favor of regional or minority languages aimed at promoting equality between the users of these languages and the rest of the population or which take due account of their specific conditions is not considered to be an act of discrimination against the users of more widely-used languages.

3. The Parties undertake to promote, by appropriate measures, mutual understanding between all the linguistic groups of the country and in particular the inclusion of respect, understanding, and tolerance in relation to regional or minority languages among the objectives of education and training provided within their countries and encouragement of the mass media to pursue the same objective.

4. In determining their policy with regard to regional or minority languages, the Parties shall take into consideration the needs and wishes expressed by the groups which use such languages. They are encouraged to establish bodies, if necessary, for the purpose of advising the authorities on all matters pertaining to regional or minority languages.

5. The Parties undertake to apply, *mutatis mutandis*, the principles listed in paragraphs 1 to 4 above to nonterritorial languages. However, as far as these languages are concerned, the nature and scope of the measures to be taken to give effect to this Charter shall be determined in a flexible manner, bearing in mind the needs and wishes, and respecting the traditions and characteristics, of the groups which use the languages concerned.

**Protocol of Amendment to the Charter of the Organization of American States, “Protocol of Cartagena de Indias,” Article 3.** The American States reaffirm the following principles: m) The education of peoples should be directed toward justice, freedom, and peace.

**Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights, “Protocol of San Salvador,” Article 13.** Right to Education. 1. Ev-

everyone has the right to education. 2. The States parties to this Protocol agree that education should be directed towards the full development of the human personality and human dignity and should strengthen respect for human rights, ideological pluralism, fundamental freedoms, justice, and peace. They further agree that education ought to enable everyone to participate effectively in a democratic and pluralistic society and achieve a decent existence and should foster understanding, tolerance and friendship among all nations and all racial, ethnic or religious groups, and promote activities for the maintenance of peace.

**CESCR, General Comment No. 13 (Twenty-first session, 1999): Article 13. The Right to Education, E/2000/22 (1999) 111 at para. 50.** In relation to article 13(2), States have obligations to respect, protect and fulfill each of the “essential features” (availability, accessibility, acceptability, adaptability) of the right to education. By way of illustration, a State must respect the availability of education by not closing private schools; protect the accessibility of education by ensuring third parties, including parents and employers, do not stop girls from going to school; fulfill (facilitate) the acceptability of education by taking positive measures to ensure that education is culturally appropriate for minorities and indigenous peoples, and of good quality for all; fulfill (provide) the adaptability of education by designing and resourcing curricula which reflect the contemporary needs of students in a changing world; and fulfill (provide) the availability of education by actively developing a system of schools, including building classrooms, delivering programs, providing teaching materials, training teachers, and paying them domestically competitive salaries.

**The Right to Education: Implementation of the International Covenant on Economic, Social, and Cultural Rights (Article 13): 08/12/99. E/C.12/1999/10. (General Comments) Committee on Economic and Social Rights, Twenty-first session, 15 November-3 December 1999, General Comment No. 13, para 4.** States parties agree that all education, whether public or private, formal or nonformal, shall be directed towards the aims and objectives identified in Article 13 (1). The Committee notes that these educational objectives reflect the fundamental purposes and principles of the United Nations as enshrined in Articles 1 and 2 of the Charter. For the most part, they are also found in Article 26 (2) of the Universal Declaration of Human Rights, Although Article 13 (1) adds to the Declaration in three respects: Education shall be directed to the human personality’s “sense of dignity,” it shall “enable all persons to participate effectively in a free society,” and it shall promote understanding among all “ethnic” groups, as well as nations and racial and religious groups. Of those educational objectives which are common to Article 26 (2) of the Universal Declaration of Human Rights and Article 13 (1) of the Covenant, perhaps the most fundamental is that “education shall be directed to the full development of the human personality.”

**Declaration of the Principles of International Cultural Co-operation, adopted by the UNESCO General Conference at its fourteenth session, Paris, 4 November 1966, UNESCO’s Standard-Setting Instruments, IV.C. (1994). Article 1.1.** Each culture has a dignity and value which must be respected and preserved. 2. Every people has the right and the duty to develop its culture. 3. In their rich variety and diversity, and in the reciprocal influences they exert on one another, all cultures form part of the common heritage belonging to all mankind.

**CRC, General Comment 1 (Twenty-sixth session, 2001): Article 29 (1): The Aims of Education, CRC/C/103 (2001) 150 at para. 4.** Article 29 (1) states that the States parties agree that education should be directed to a wide range of values. This agreement overcomes the boundaries of religion, nation, and culture built across many parts of the world. At first sight, some of the diverse

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values expressed in Article 29 (1) might be thought to be in conflict with one another in certain situations. Thus, efforts to promote understanding, tolerance, and friendship among all peoples, to which paragraph (1) (d) refers, might not always be automatically compatible with policies designed, in accordance with paragraph (1) (c), to develop respect for the child's own cultural identity, language, and values, for the national values of the country in which the child is living, the country from which he or she may originate, and for civilizations different from his or her own. But, in fact, part of the importance of this provision lies precisely in its recognition of the need for a balanced approach to education and one which succeeds in reconciling diverse values through dialogue and respect for difference. Moreover, children are capable of playing a unique role in bridging many of the differences that have historically separated groups of people from one another.

**Final Document of the Copenhagen Meeting of the Conference on the Human Dimension of the OSCE, Copenhagen, 29 June 1990 (34).** ... In the context of the teaching of history and culture in educational establishments, they will also take account of the history and culture of national minorities.

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## Systematic Denial or Severe Restrictions of Access to Health Care

5. The systematic denial of or severe restrictions on access to health care targeted at members of a *particular group*, including, although not limited to, denying members of a particular group access to hospitals, medical centers, and physicians.

For norms pertaining to access to health care, see:

**UDHR, Article 25.** Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing, and medical care.

**ICERD, Article 5.** The right to public health, medical care, social security, and social service.

**ICESCR, Article 10.** Special protection should be accorded to mothers during a reasonable period before and after childbirth.... Children and young persons should be protected from economic and social exploitation. Their employment in work harmful to their morals or health or dangerous to life or likely to hamper their normal development should be punishable by law.

**Article 12.** The States parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health. The steps to be taken by the States parties to the present Covenant to achieve the full realization of this right shall include those necessary for: The provision for the reduction of the stillbirth-rate and of infant mortality and for the healthy development of the child; the improvement of all aspects of environmental and industrial hygiene; the prevention, treatment and control of epidemic, endemic, occupational, and other diseases; the creation of conditions which would assure to all medical service and medical attention in the event of sickness.

**Convention on the Elimination of All Forms of Discrimination against Women, Article 10.** Access to specific educational information to help to ensure the health and well-being of families, including information and advice on family planning.

**Article 12.** States parties shall take all appropriate measures to eliminate discrimination against women in the field of health care in order to ensure, on a basis of equality of men and women, access to health care services, including those related to family planning.... States parties shall ensure to women appropriate services in connection with pregnancy, confinement, and the post-natal period, granting free services where necessary, as well as adequate nutrition during pregnancy and lactation.

**Article 14.** To have access to adequate health care facilities, including information, counseling, and services in family planning.

**CRC, Article 6.** States parties recognize that every child has the inherent right to life.... States parties shall ensure to the maximum extent possible the survival and development of the child.

**Article 19.** States parties shall take all appropriate legislative, administrative, social, and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child.

**Article 24.** States parties recognize the right of the child to the enjoyment of the highest attainable standard of health and to facilities for the treatment of illness and rehabilitation of health. States parties shall strive to ensure that no child is deprived of his or her right of access to such health care ser-

vices. States parties shall pursue full implementation of this right and, in particular, shall take appropriate measures: to diminish infant and child mortality; to ensure the provision of necessary medical assistance and health care to all children with emphasis on the development of primary health care; to combat disease and malnutrition, including within the framework of primary health care, through, inter alia, the application of readily available technology and through the provision of adequate nutritious foods and clean drinking-water, taking into consideration the dangers and risks of environmental pollution; to ensure appropriate pre-natal and post-natal health care for mothers; to ensure that all segments of society, in particular parents and children, are informed, have access to education and are supported in the use of basic knowledge of child health and nutrition, the advantages of breastfeeding, hygiene, and environmental sanitation and the prevention of accidents; To develop preventive health care, guidance for parents and family planning education and services. States parties shall take all effective and appropriate measures with a view to abolishing traditional practices prejudicial to the health of children. States parties undertake to promote and encourage international co-operation with a view to achieving progressively the full realization of the right recognized in the present article. In this regard, particular account shall be taken of the needs of developing countries.

**Universal Declaration on the Eradication of Hunger and Malnutrition.** Every man, woman, and child has the inalienable right to be free from hunger and malnutrition in order to develop fully and maintain their physical and mental faculties.... It is a fundamental responsibility of Governments to work together for higher food production and a more equitable and efficient distribution of food between countries and within countries. Governments should initiate immediately a greater concerted attack on chronic malnutrition and deficiency diseases among the vulnerable and lower income groups.... All States should strive to the utmost to readjust, where appropriate, their agricultural policies to give priority to food production, recognizing, in this connection the interrelationship between the world food problem and international trade.

**American Declaration of the Rights and Duties of Man, Article 7.** All women, during pregnancy and the nursing period, and all children have the right to special protection, care, and aid. **Article 11.** Every person has the right to the preservation of his health through sanitary and social measures relating to food, clothing, housing, and medical care, to the extent permitted by public and community resources.

**Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social, and Cultural Rights, "Protocol of San Salvador," Article 10.** Right to Health 1. Everyone shall have the right to health, understood to mean the enjoyment of the highest level of physical, mental, and social well-being.

**African Charter on Human and Peoples' Rights, Article 4.** ... Every human being shall be entitled to respect for his life and the integrity of his person.

**Article 16.** Every individual shall have the right to enjoy the best attainable state of physical and mental health. States parties to the present Charter shall take the necessary measures to protect the health of their people and to ensure that they receive medical attention when they are sick.

**Article 18.** The state shall ensure the elimination of every discrimination against women and also ensure the protection of the rights of the woman and the child as stipulated in international declarations and conventions. The aged and the disabled shall also have the right to special measures of protection in keeping with their physical or moral needs.

**African Charter on the Rights and Welfare of the Child, Article 5.** Every child has an inherent

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right to life. This right shall be protected by law. States parties to the present Charter shall ensure, to the maximum extent possible, the survival, protection, and development of the child. Death sentence shall not be pronounced for crimes committed by children.

**Article 14.** Every child shall have the right to enjoy the best attainable state of physical, mental, and spiritual health. States parties to the present Charter shall undertake to pursue the full implementation of this right and in particular shall take measures: to reduce infant and child mortality rate; to ensure the provision of necessary medical assistance and health care to all children with emphasis on the development of primary health care; to ensure the provision of adequate nutrition and safe drinking water; to combat disease and malnutrition within the framework of primary health care through the application of appropriate technology; to ensure appropriate health care for expectant and nursing mothers; to develop preventive health care and family life education and provision of service; to integrate basic health service programs in national development plans; to ensure that all sectors of the society, in particular, parents, children, community leaders, and community workers are informed and supported in the use of basic knowledge of child health and nutrition, the advantages of breastfeeding, hygiene, and environmental sanitation and the prevention of domestic and other accidents; to ensure the meaningful participation of nongovernmental organizations, local communities, and the beneficiary population in the planning and management of a basic service programme for children; to support, through technical and financial means, the mobilization of local community resources in the development of primary health care for children.

**League of Arab States, Arab Charter on Human Rights, Article 38.** Every person has the right to an adequate standard of living for himself and his family, which ensures their well-being and a decent life, including food, clothing, housing, services, and the right to a healthy environment. The States parties shall take the necessary measures commensurate with their resources to guarantee these rights.

**Article 39.1.** The States parties recognize the right of every member of society to the enjoyment of the highest attainable standard of physical and mental health and the right of the citizen to free basic health-care services and to have access to medical facilities without discrimination of any kind. (See *supra* footnote 3.)

**ICESCR, General Comment 14 (Twenty-second session, 2000): Article 12: The Right to the Highest Attainable Standard of Health, E/2001/22 (2000) 128 at paras. 27 and 34 ...** Indigenous peoples, para 27. In the light of emerging international law and practice and the recent measures taken by States in relation to indigenous peoples, the Committee deems it useful to identify elements that would help to define indigenous peoples' right to health in order better to enable States with indigenous peoples to implement the provisions contained in Article 12 of the Covenant. The Committee considers that indigenous peoples have the right to specific measures to improve their access to health services and care. These health services should be culturally appropriate, taking into account traditional preventive care, healing practices and medicines. States should provide resources for indigenous peoples to design, deliver, and control such services so that they may enjoy the highest attainable standard of physical and mental health. The vital medicinal plants, animals, and minerals necessary to the full enjoyment of health of indigenous peoples should also be protected. The Committee notes that, in indigenous communities, the health of the individual is often linked to the health of the society as a whole and has a collective dimension. In this respect, the Committee considers that development-related activities that lead to the displacement of indigenous peoples against their will from their traditional territories and environment, denying them their sources of nutrition and breaking their symbiotic relationship with their lands, has a deleterious effect on their health.... Specific legal obligations, para 34. In particular, States are under the obligation to respect the right

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to health by, inter alia, refraining from denying or limiting equal access for all persons, including prisoners or detainees, minorities, asylum seekers, and illegal immigrants, to preventive, curative, and palliative health services; abstaining from enforcing discriminatory practices as a State policy; and abstaining from imposing discriminatory practices relating to women's health status and needs. Furthermore, obligations to respect include a State's obligation to refrain from prohibiting or impeding traditional preventive care, healing practices, and medicines, from marketing unsafe drugs and from applying coercive medical treatments, unless on an exceptional basis for the treatment of mental illness or the prevention and control of communicable diseases. Such exceptional cases should be subject to specific and restrictive conditions, respecting best practices and applicable international standards, including the Principles for the Protection of Persons with Mental Illness and the Improvement of Mental Health Care. In addition, States should refrain from limiting access to contraceptives and other means of maintaining sexual and reproductive health, from censoring, withholding or intentionally misrepresenting health-related information, including sexual education and information, as well as from preventing people's participation in health-related matters. States should also refrain from unlawfully polluting air, water, and soil, e.g., through industrial waste from State-owned facilities, from using or testing nuclear, biological or chemical weapons, if such testing results in the release of substances harmful to human health, and from limiting access to health services as a punitive measure, e.g., during armed conflicts in violation of international humanitarian law.

For norms pertaining to the right to life, see:

**UDHR, Article 3.** Everyone has the right to life, liberty, and the security of the person.

**Genocide Convention, Article 2.** In the present Convention, genocide means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such: (a) Killing members of the group; (b) Causing serious bodily or mental harm to members of the group; (c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part; (d) Imposing measures intended to prevent births within the group; (e) Forcibly transferring children of the group to another group.

**ICERD, Article 5.** In compliance with the fundamental obligations laid down in Article 2 of this Convention, States parties undertake to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, color, or national or ethnic origin, to equality before the law, notably in the enjoyment of the following rights: (b) The right to security of person and protection by the State against violence or bodily harm, whether inflicted by government officials or by any individual group or institution.

**ICCPR, Article 6.1.** Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life. 2. In countries which have not abolished the death penalty, sentence of death may be imposed only for the most serious crimes in accordance with the law in force at the time of the commission of the crime and not contrary to the provisions of the present Covenant and to the Convention on the Prevention and Punishment of the Crime of Genocide. This penalty can only be carried out pursuant to a final judgment rendered by a competent court. 3. When deprivation of life constitutes the crime of genocide, it is understood that nothing in this article shall authorize any State party to the present Covenant to derogate in any way from any obligation assumed under the provisions of the Convention on the Prevention and Punishment of the Crime of Genocide. 4. Anyone sentenced to death shall have the right to seek pardon or commuta-

tion of the sentence. Amnesty, pardon or commutation of the sentence of death may be granted in all cases. 5. Sentence of death shall not be imposed for crimes committed by persons below eighteen years of age and shall not be carried out on pregnant women. 6. Nothing in this article shall be invoked to delay or to prevent the abolition of capital punishment by any State party to the present Covenant.

**Article 4.1.** In time of public emergency which threatens the life of the nation and the existence of which is officially proclaimed, the States parties to the present Covenant may take measures derogating from their obligations under the present Covenant to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with their other obligations under international law and do not involve discrimination solely on the ground of race, color, sex, language, religion or social origin 2. No derogation from Articles 6, 7, 8 (paragraphs 1 and 2), 11, 15, 16 and 18 may be made under this provision.

**United Nations Declaration on the Rights of Indigenous Peoples, Article 7.1.** Indigenous individuals have the rights to life, physical and mental integrity, liberty, and security of person. 7.2. Indigenous peoples have the collective right to live in freedom, peace, and security as distinct peoples and shall not be subjected to any act of genocide or any other act of violence, including forcibly removing children of the group to another group.

**International Convention on the Suppression and Punishment of the Crime of Apartheid, Article II.** ... “the crime of apartheid” ... (a) Denial to a member or members of a racial group or groups of the right to life and liberty of person: (i) By murder of members of a racial group or groups; (ii) By the infliction upon the members of a racial group or groups of serious bodily or mental harm, by the infringement of their freedom or dignity, or by subjecting them to torture or to cruel, inhuman or degrading treatment or punishment; (iii) By arbitrary arrest and illegal imprisonment of the members of a racial group or groups; (b) Deliberate imposition on a racial group or groups of living conditions calculated to cause its or their physical destruction in whole or in part.

**Council of Europe Convention for the Protection of Human Rights and Fundamental Freedoms, Article 2.** Everyone’s right to life shall be protected by law.

**European Framework Convention on Minorities, Article 6.2.** The Parties undertake to take appropriate measures to protect persons who may be subject to threats or acts of discrimination, hostility or violence as a result of their ethnic, cultural, linguistic or religious identity.

**American Declaration of the Rights and Duties of Man, Article I.** Every human being has the right to life, liberty, and the security of his person.

**American Convention on Human Rights, Article 4.** Right to Life. Every person has the right to have his life respected. This right shall be protected by law and, in general, from the moment of conception. No one shall be arbitrarily deprived of his life.

**League of Arab States, Arab Charter on Human Rights, Article 5.1.** Every human being has the inherent right to life. 5.2 This right shall be protected by law. No one shall be arbitrarily deprived of his life.

**Article 14.1.** Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest, search or detention without a legal warrant. 14.2. No one shall be deprived of his liberty except on such grounds and in such circumstances as are determined by law and in accordance

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## Systematic Denial or Severe Restrictions of the Right to Freedom of Movement

6. The systematic denial of or severe restrictions on the right to freedom of movement of members of a particular group, including, although not limited to, forcible relocations or restrictions on movement from one region to another.

For norms pertaining to freedom of movement, see:

**UDHR, Article 13.1.** Everyone has the right to freedom of movement and residence within the borders of each State. 2. Everyone has the right to leave any country, including his own, and to return to his country.

**ICERD, Article 5.** In compliance with the fundamental obligations laid down in Article 2 of this Convention, States parties undertake to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, color, or national or ethnic origin, to equality before the law, notably in the enjoyment of the following rights: (d) Other civil rights, in particular (i) The right to freedom of movement and residence within the border of the State.

**ICCPR, Article 12.** Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence. 2. Everyone shall be free to leave any country, including his own. 4. No one shall be arbitrarily deprived of the right to enter his own country.

**United Nations Declaration on the Rights of Indigenous Peoples, Article 8.2.** States shall provide effective mechanisms for prevention of, and redress for, ... (c) Any form of forced population transfer which has the aim or effect of violating or undermining any of their rights; Article 10 states that: “Indigenous peoples shall not be forcibly removed from their lands or territories. No relocation shall take place without the free, prior, and informed consent of the indigenous peoples concerned and after agreement on just and fair compensation and, where possible, with the option of return.”

**International Convention on the Suppression and Punishment of the Crime of Apartheid, Article II.** ... “the crime of apartheid,” ... (c) Any legislative measures and other measures calculated to prevent a racial group or groups from ... the right to leave and to return to their country ... the right to freedom of movement and residence.

**American Declaration of the Rights and Duties of Man, Article VIII.** Every person has the right to fix his residence within the territory of the state of which he is a national, to move about freely within such territory, and not to leave it except by his own will.

**Article IX.** Every person has the right to the inviolability of his home.

**American Convention on Human Rights, Article 22. Freedom of Movement and Residence.** 1. Every person lawfully in the territory of a State party has the right to move about in it, and to reside in it subject to the provisions of the law. 2. Every person has the right to leave any country freely, including his own. 3. The exercise of the foregoing rights may be restricted only pursuant to a law to

the extent necessary in a democratic society to prevent crime or to protect national security, public safety, public order, public morals, public health, or the rights or freedoms of others. 5. No one can be expelled from the territory of the state of which he is a national or be deprived of the right to enter it.

**League of Arab States, Arab Charter on Human Rights, Article 26.1.** Everyone lawfully within the territory of a State party shall, within that territory, have the right to freedom of movement and to freely choose his residence in any part of that territory in conformity with the laws in force. 2. No State party may expel a person who does not hold its nationality but is lawfully in its territory, other than in pursuance of a decision reached in accordance with law and after that person has been allowed to submit a petition to the competent authority, unless compelling reasons of national security preclude it. Collective expulsion is prohibited under all circumstances.

**Article 27.1.** No one may be arbitrarily or unlawfully prevented from leaving any country, including his own, nor prohibited from residing, or compelled to reside, in any part of that country. 2. No one may be exiled from his country or prohibited from returning thereto. (See *supra* footnote 3.)

**African (Banjul) Charter on Human and Peoples' Rights, Article 12.1.** Every individual shall have the right to freedom of movement and residence within the borders of a State, provided he abides by the law. 2. Every individual shall have the right to leave any country including his own and to return to his country. This right may only be subject to restrictions, provided for by law for the protection of national security, law and order, public health or morality. 3. Every individual shall have the right, when persecuted, to seek and obtain asylum in other countries in accordance with laws of those countries and international conventions. 4. A nonnational legally admitted in a territory of a State party to the present Charter may only be expelled from it by virtue of a decision taken in accordance with the law. 5. The mass expulsion of nonnationals shall be prohibited. Mass expulsion shall be that which is aimed at national, racial, ethnic or religious groups.

**Council of Europe Protocol No. 4 to the Convention for the Protection of Human Rights and Fundamental Freedoms, Securing Certain Rights and Freedoms Other than Those Already Included in the Convention and in the First Protocol Thereto as Amended by Protocol No. 11 Strasbourg, 16.IX.1963, Article 2.** Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence. 2. Everyone shall be free to leave any country, including his own. 3. No restrictions shall be placed on the exercise of these rights other than such as are in accordance with law and are necessary in a democratic society in the interests of national security or public safety, for the maintenance of public order, for the prevention of crime, for the protection of health or morals, or for the protection of the rights and freedoms of others. 4. The rights set forth in paragraph 1 may also be subject, in particular areas, to restrictions imposed in accordance with law and justified by the public interest in a democratic society.

**Article 3.** Prohibition of expulsion of nationals: 1. No one shall be expelled, by means either of an individual or of a collective measure, from the territory of the State of which he is a national. 2. No one shall be deprived of the right to enter the territory of the state of which he is a national.

**ICCPR, General Comment 27 (Sixty-seventh session, 1999): Article 12: Freedom of Movement, A/55/40 vol. I (2000) 128 at para. 7.** Subject to the provisions of Article 12, paragraph 3, the right to reside in a place of one's choice within the territory includes protection against all forms of forced internal displacement. It also precludes preventing the entry or stay of persons in a defined part of the territory. Lawful detention, however, affects more specifically the right to personal liberty and is covered by Article 9 of the Covenant. In some circumstances, Articles 12 and 9 may come into play together.

**ICCPR, General Comment 29 (Seventy-second session, 2001): Derogations from Provisions of the Covenant during a State of Emergency, A/56/40 vol. I (2001), 202 at para. 13(d).** In those provisions of the Covenant that are not listed in Article 4, paragraph 2, there are elements that in the Committee's opinion cannot be made subject to lawful derogation under Article 4. Below, some illustrative examples are presented. (d) As confirmed by the Statute of the International Criminal Court, deportation or forcible transfer of population without grounds permitted under international law, in the form of forced displacement by expulsion or other coercive means from the area in which the persons concerned are lawfully present, constitutes a crime against humanity. 8. The legitimate right to derogate from Article 12 of the Covenant during a state of emergency can never be accepted as justifying such measures.

**Koptova v. Slovak Republic (13/1998), ICERD, A/55/18 (8 August 2000) 136 at paras. 2.1-2.3 and 10.1-10.3. Para 2.1.** The author reports that in 1981 seven Romany families from the villages of Rovne and Zbudské Dlhe, Slovak Republic, came to work in an agricultural cooperative located in the municipality of Krasný Brod. Shortly after their arrival each of the families sought and received permanent residence under Slovak Law (135/1982 Act) in what are today the municipalities of Nagov and Rokytovce (at the time part of Krasný Brod). When, at the end of 1989, the agricultural cooperative ceased operations, the Romany families lost their jobs. Insofar as their living quarters at the cooperative were linked to their employment, they were compelled to leave the cooperative. Upon their departure, the authorities demolished the stables which they had occupied.

**2.2.** In May 1991 the Romany families returned to the municipalities where they were legally registered, i.e., Rokytovce and Nagov. For various periods over the following six years, they lived in temporary housing provided reluctantly by local authorities in the county of Medzilaborce. On more than one occasion during that period, however, anti-Roma hostility on the part of local officials and/or non-Romany residents forced the Romany families to flee. Thus, between May and December 1991 the Medzilaborce County Department of Social Affairs reserved a trailer for the families to rent. Although the families raised the money, no village (Krasný Brod, Cabiny, Sukov, Rokytovce, Nagov or Cabalovce) allowed them to place the trailer on its territory. In 1993, after they had built temporary dwellings in the village of Cabiny, the dwellings were torn down by non-Romany residents. Throughout this period the Romany families were moving frequently from one town to another, in search of a permanent and secure home.

**2.3.** In spring 1997 the families again established temporary dwellings on agricultural land located in Cabiny. Local authorities from neighboring villages met to discuss the situation. The mayor of Cabiny characterized as illegal the movement of Roma to Cabiny and warned of a possible negative reaction from the rest of the population. The mayors of Cabalovce and Nagov agreed to accommodate the homeless Roma. On 8 June 1997 the Municipal Council of Rokytovce, whose mayor had not been present at the above-mentioned meeting, enacted a resolution which expressly forbade the Romany families from settling in the village and threatened them with expulsion should they try to settle there. The resolution also declared that they were not native inhabitants of Rokytovce, since after the separation of Rokytovce and Krasný Brod in 1990, they had neither resided in the village nor claimed their permanent residence there. On 16 July 1997 the Municipality of Nagov adopted resolution No. 22, which also forbade Roma citizens to enter the village or to settle in shelters in the village district. The resolution explicitly provided that its effect was of permanent duration. 10.1. Having received the full texts of resolutions 21 and 22, the Committee finds that, although their wording refers explicitly to Romas previously domiciled in the concerned municipalities, the context in which they were adopted clearly indicates that other Romas would have been equally prohibited from settling, which represented a violation of Article 5 (d) (i) of the Convention. 10.3. The Committee recom-

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mends that the State party take the necessary measures to ensure that practices restricting the freedom of movement and residence of Romas under its jurisdiction are fully and promptly eliminated.

**ICCPR, General Comment 27, Freedom of Movement, Para 4.** Everyone lawfully within the territory of a State enjoys, within that territory, the right to move freely and to choose his or her place of residence.

**CERD, General Recommendation XXVII, on Roma, Para 30.** To develop and implement policies and projects aimed at avoiding segregation of Roma communities in housing; to involve Roma communities and associations as partners together with other persons in housing project construction, rehabilitation, and maintenance. 31. To act firmly against any discriminatory practices affecting Roma, mainly by local authorities and by private owners, with regard to taking residence and access to housing, to act firmly against local measures of denying residence to, and unlawful expulsion of Roma, and to refrain from placing Roma in camps outside populated areas, isolated and without access to health care and other facilities. 32. To take the necessary measures, as appropriate, for offering Roma nomadic groups or travelers places for encampment for their caravans, with all possible facilities.

For norms pertaining to forced displacement to ghettos or localization, see:

**United Nations Declaration on the Rights of Indigenous Peoples, Article 8.2.** States shall provide effective mechanisms for prevention of, and redress for (c) Any form of forced population transfer which has the aim or effect of violating or undermining any of their rights; Article 10 states that: “Indigenous peoples shall not be forcibly removed from their lands or territories. No relocation shall take place without the free, prior, and informed consent of the indigenous peoples concerned and after agreement on just and fair compensation and, where possible, with the option of return.”

**ICCPR, General Comment 27 (Sixty-seventh session, 1999): Article 12: Freedom of Movement, A/55/40 vol. I (2000) 128 at para. 7.** Subject to the provisions of Article 12, paragraph 3, the right to reside in a place of one’s choice within the territory includes protection against all forms of forced internal displacement. It also precludes preventing the entry or stay of persons in a defined part of the territory. Lawful detention, however, affects more specifically the right to personal liberty and is covered by Article 9 of the Covenant. In some circumstances, Articles 12 and 9 may come into play together.

For norms pertaining to forcibly moving individuals sharing the state-privileged identity to regions inhabited by particular groups, with the intention of diluting the concentration of that group; forcibly assimilating; or as part of ethnic cleansing, see:

**Geneva Convention relative to the Protection of Civilian Persons in Time of War, Article 49.** Individual or mass forcible transfers, as well as deportations of protected persons from occupied territory to the territory of the Occupying Power or to that of any other country, occupied or not, are prohibited, regardless of their motive.... The Occupying Power shall not deport or transfer parts of its own civilian population into the territory it occupies.

**Rome Statute of the International Criminal Court, Article 8, War Crimes 2(viii).** The transfer, directly or indirectly, by the Occupying Power of parts of its own civilian population into the territory it occupies, or the deportation or transfer of all or parts of the population of the occupied territory within or outside this territory.

**Case of the Major War Criminals, Judgment, 1946, International Military Tribunal at Nurnberg.**  
The two accused were found guilty of transferring Germans into occupied regions to achieve “Germanization” of the area.



## Compulsory Identification of Members of a Particular Group against their Will and Subjecting Them to Severe Discrimination and Persecution

7. Compulsory identification of members of a *particular group* against their will for the purposes of identifying these members as part of the *particular group* and subjecting them to severe discrimination and persecution.

For norms pertaining to compulsory identification, see:

**ICCPR, Article 18.1.** Everyone shall have the right to freedom of thought, conscience, and religion. This right shall include freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice, and teaching. 2. No one shall be subject to coercion which would impair his freedom to have or to adopt a religion or belief of his choice. 3. Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others. 4. The States parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to ensure the religious and moral education of their children in conformity with their own convictions.

**Article 19.1.** Everyone shall have the right to hold opinions without interference....

**Article 27.** In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practice their own religion, or to use their own language.

**Article 4.1.** In time of public emergency which threatens the life of the nation and the existence of which is officially proclaimed, the States parties to the present Covenant may take measures derogating from their obligations under the present Covenant to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with their other obligations under international law and do not involve discrimination solely on the ground of race, color, sex, language, religion or social origin. 4.2. No derogation from Articles 6, 7, 8 (paragraphs 1 and 2), 11, 15, 16, and 18 may be made under this provision.

**Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, Article 1.1.** States shall protect the existence and the national or ethnic, cultural, religious and linguistic identity of minorities within their respective territories and shall encourage conditions for the promotion of that identity. 2. States shall adopt appropriate legislative and other measures to achieve those ends.

**Article 4.2.** States shall take measures to create favorable conditions to enable persons belonging to minorities to express their characteristics and to develop their culture, language, religion, traditions, and customs, except where specific practices are in violation of national law and contrary to international standards.

**ICESCR, Article 15.1.** The States parties to the present Covenant recognize the right of everyone: (a) To take part in cultural life; (b) To enjoy the benefits of scientific progress and its applications; (c) To benefit from the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author. 2. The steps to be taken by the States parties

to the present Covenant to achieve the full realization of this right shall include those necessary for the conservation, the development, and the diffusion of science and culture. 3. The States parties to the present Covenant undertake to respect the freedom indispensable for scientific research and creative activity. 4. The States parties to the present Covenant recognize the benefits to be derived from the encouragement and development of international contacts and co-operation in the scientific and cultural fields.

**CEDAW, Article 13.** States parties shall take all appropriate measures to eliminate discrimination against women in other areas of economic and social life in order to ensure, on a basis of equality of men and women, the same rights, in particular: (c) The right to participate in recreational activities, sports and all aspects of cultural life.

**CRC, Article 29.1.** States parties agree that the education of the child shall be directed to: (c) The development of respect for the child's parents, his or her own cultural identity, language, and values, for the national values of the country in which the child is living, the country from which he or she may originate, and for civilizations different from his or her own.

**Article 30.** In those States in which ethnic, religious or linguistic minorities or persons of indigenous origin exist, a child belonging to such a minority or who is indigenous shall not be denied the right, in community with other members of his or her group, to enjoy his or her own culture, to profess and practice his or her own religion, or to use his or her own language.

**United Nations Declaration on the Rights of Indigenous Peoples, Article 5.** Indigenous peoples have the right to maintain and strengthen their distinct political, legal, economic, social, and cultural institutions, while retaining their right to participate fully, if they so choose, in the political, economic, social, and cultural life of the State.

**Article 8.1.** Indigenous peoples and individuals have the right not to be subjected to forced assimilation or destruction of their culture. 2. States shall provide effective mechanisms for prevention of, and redress for: (d) Any form of forced assimilation or integration.

**Article 11.1.** Indigenous peoples have the right to practice and revitalize their cultural traditions and customs. This includes the right to maintain, protect, and develop the past, present, and future manifestations of their cultures, such as archaeological and historical sites, artifacts, designs, ceremonies, technologies, and visual and performing arts and literature.

**Article 12.1.** Indigenous peoples have the right to manifest, practice, develop, and teach their spiritual and religious traditions, customs and ceremonies; the right to maintain, protect, and have access in privacy to their religious and cultural sites; the right to the use and control of their ceremonial objects; and the right to the repatriation of their human remains.

**American Convention on Human Rights, Article 12.** Freedom of Conscience and Religion. Everyone has the right to freedom of conscience and of religion. This right includes freedom to maintain or to change one's religion or beliefs, and freedom to profess or disseminate one's religion or beliefs, either individually or together with others, in public or in private. 2. No one shall be subject to restrictions that might impair his freedom to maintain or to change his religion or beliefs. 3. Freedom to manifest one's religion and beliefs may be subject only to the limitations prescribed by law that are necessary to protect public safety, order, health, or morals, or the rights or freedoms of others. 4. Parents or guardians, as the case may be, have the right to provide for the religious and moral education of their children or wards that is in accord with their own convictions.

**League of Arab States, Arab Charter on Human Rights, Article 25.** Persons belonging to minorities shall not be denied the right to enjoy their own culture, to use their own language, and to practice their own religion. The exercise of these rights shall be governed by law. (See *supra* footnote 3.)

**CESCR, General Comment 16 (Thirty-fourth session, 2005): Article 3: The Equal Right of Men and Women to the Enjoyment of all Economic, Social, and Cultural Rights, E/2006/22 (2005) 116 at para. 31.** Article 15, paragraph 1 (a) and (b), of the Covenant requires States parties to recognize the right of everyone to take part in cultural life and to enjoy the benefits of scientific progress. Implementing Article 3, in relation to Article 15, paragraph 1 (a) and (b), requires, *inter alia*, overcoming institutional barriers and other obstacles, such as those based on cultural and religious traditions, which prevent women from fully participating in cultural life, science education, and scientific research, and directing resources to scientific research relating to the health and economic needs of women on an equal basis with those of men.

**CRC, General Comment 1 (Twenty-sixth session, 2001): Article 29 (1): The Aims of Education, CRC/C/103 (2001) 150 at para. 4.** Article 29 (1) states that the States parties agree that education should be directed to a wide range of values. This agreement overcomes the boundaries of religion, nation, and culture built across many parts of the world. At first sight, some of the diverse values expressed in Article 29 (1) might be thought to be in conflict with one another in certain situations. Thus, efforts to promote understanding, tolerance, and friendship among all peoples, to which paragraph (1) (d) refers, might not always be automatically compatible with policies designed, in accordance with paragraph (1) (c), to develop respect for the child's own cultural identity, language, and values, for the national values of the country in which the child is living, the country from which he or she may originate, and for civilizations different from his or her own. But, in fact, part of the importance of this provision lies precisely in its recognition of the need for a balanced approach to education and one which succeeds in reconciling diverse values through dialogue and respect for difference. Moreover, children are capable of playing a unique role in bridging many of the differences that have historically separated groups of people from one another.

**CRC, General Comment 6 (Thirty-ninth session, 2005): Treatment of Unaccompanied and Separated Children Outside their Country of Origin, A/61/41 (2005) 15 at para. 42.** The unaccompanied or separated child should be registered with appropriate school authorities as soon as possible and get assistance in maximizing learning opportunities. All unaccompanied and separated children have the right to maintain their cultural identity and values, including the maintenance and development of their native language.

**UNESCO Universal Declaration on Cultural Diversity, Adopted by the General Conference of the United Nations Educational, Scientific and Cultural Organization at its thirty-first session on 2 November 2001, Article 2.** From cultural diversity to cultural pluralism: In our increasingly diverse societies, it is essential to ensure harmonious interaction among people and groups with plural, varied, and dynamic cultural identities as well as their willingness to live together. Policies for the inclusion and participation of all citizens are guarantees of social cohesion, the vitality of civil society, and peace. Thus defined, cultural pluralism gives policy expression to the reality of cultural diversity. Indissociable from a democratic framework, cultural pluralism is conducive to cultural exchange and to the flourishing of creative capacities that sustain public life.

**Article 4.** Human rights as guarantees of cultural diversity: The defense of cultural diversity is an ethical imperative, inseparable from respect for human dignity. It implies a commitment to human rights

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and fundamental freedoms, in particular the rights of persons belonging to minorities and those of indigenous peoples. No one may invoke cultural diversity to infringe upon human rights guaranteed by international law, nor to limit their scope.

**Article 5.** Cultural rights as an enabling environment for cultural diversity: Cultural rights are an integral part of human rights, which are universal, indivisible, and interdependent. The flourishing of creative diversity requires the full implementation of cultural rights as defined in Article 27 of the Universal Declaration of Human Rights and in Articles 13 and 15 of the International Covenant on Economic, Social, and Cultural Rights. All persons should therefore be able to express themselves and to create and disseminate their work in the language of their choice, and particularly in their mother tongue; all persons should be entitled to quality education and training that fully respect their cultural identity; and all persons have the right to participate in the cultural life of their choice and conduct their own cultural practices, subject to respect for human rights and fundamental freedoms.

For norms pertaining to the right to dignity, see:

**UDHR, Article 1.** All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.

**African (Banjul) Charter on Human and Peoples Rights, Adopted 27 June 1981, OAU Doc. CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982), entered into force 21 October 1986. Article 5.** Every individual shall have the right to the respect of the dignity inherent in a human being and to the recognition of his legal status.

**Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, Article 3.** Right to Dignity 1. Every woman shall have the right to dignity inherent in a human being and to the recognition and protection of her human and legal rights.

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## Severe and Systematic Defamation or Dehumanization of a *Particular Group* and Failure to Punish Violence against Members of a *Particular Group*

2. The severe and systematic demonization of a *particular group* by the state or nonstate actors with a view to inciting persecution and violence against members of that group, and the failure of the state to prevent and punish such acts of persecution and violence. This includes, although is not limited to, expressions through the media including television, radio, newsprint, and the Internet, by public officials, state sponsored or supported (directly or indirectly) private actors, public figures and other nonstate actors that justify or advocate persecution or violence, including public statements by political leaders and elites that dehumanize, demonize, condone or justify or foment violence against a *particular group*, or incitement to genocide.

For norms pertaining to freedom of expression, see:

**Convention on the Prevention and Punishment of the Crime of Genocide, Article 3.** The following acts shall be punishable: (c) Direct and public incitement to commit genocide.

**Rome Statute of the International Criminal Court, Article 25 (e).** In respect to the crime of genocide, directly and publicly incites others to commit genocide.

**Statute of the International Criminal Tribunal for Rwanda, Article 2.** c) Direct and public incitement to commit genocide.

**Statute of the International Criminal Tribunal for the Former Yugoslavia, Article 4.3.** The following acts shall be punishable: c) Direct and public incitement to commit genocide.

**ICCPR, Article 19.2.** Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive, and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.

**Article 19.3.** The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary: (a) For respect of the rights or reputations of others; (b) For the protection of national security or of public order or of public health or morals.

**Article 20.1.** Any propaganda for war shall be prohibited by law. 2. Any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law.

**ICERD, Article 4.** States parties condemn all propaganda and all organizations which are based on ideas or theories of superiority of one race or group of persons of one color or ethnic origin, or which attempt to justify or promote racial hatred and discrimination in any form, and undertake to adopt immediate and positive measures designed to eradicate all incitement to, or acts of, such discrimination and, to this end, with due regard to the principles embodied in the Universal Declaration of Human Rights and the rights expressly set forth in Article 5 of this Convention, inter alia: (a) Shall declare an offense punishable by law all dissemination of ideas based on racial superiority or hatred, incitement to racial discrimination, as well as all acts of violence or incitement to such acts against

any race or group of persons of another color or ethnic origin, and also the provision of any assistance to racist activities, including the financing thereof; (b) Shall declare illegal and prohibit organizations, and also organized and all other propaganda activities, which promote and incite racial discrimination, and shall recognize participation in such organizations or activities as an offense punishable by law; (c) Shall not permit public authorities or public institutions, national or local, to promote or incite racial discrimination.

**United Nations Declaration on the Rights of Indigenous Peoples, Article 8.2.** States shall provide effective mechanisms for prevention of, and redress for: (e) Any form of propaganda designed to promote or incite racial or ethnic discrimination directed against them.

**American Convention on Human Rights, Article 13.5.** Any propaganda for war and any advocacy of national, racial, or religious hatred that constitute incitements to lawless violence or to any other similar action against any person or group of persons on any grounds including those of race, color, religion, language, or national origin shall be considered as offenses punishable by law.

**Inter-American Convention on the Prevention, Punishment, and Eradication of Violence Against Women, Article 4.** Every woman has the right to the recognition, enjoyment, exercise, and protection of all human rights and freedoms embodied in regional and international human rights instruments.

**Article 6.** The right of every woman to be free from violence includes, among others: 1. the right of women to be free from all forms of discrimination; and 2. the right of women to be valued and educated free of stereotyped patterns of behavior and social and cultural practices based on concepts of inferiority or subordination.

**Document of the Copenhagen Meeting of the Conference on the Human Dimension of the OSCE, Copenhagen, 29 June 1990 (40.1).** ... [T]ake effective measures, including the adoption, in conformity with their constitutional systems and their international obligations, of such laws as may be necessary, to provide protection against any acts that constitute incitement to violence against persons or groups based on national, racial, ethnic or religious discrimination, hostility or hatred, including anti-Semitism.

**UNESCO Declaration on Fundamental Principles concerning the Contribution of the Mass Media to Strengthening Peace and International Understanding, to the Promotion of Human Rights and to Countering Racism, Apartheid, and Incitement to War, Article 3.1.** The mass media have an important contribution to make to the strengthening of peace and international understanding and in countering racism, apartheid, and incitement to war. 2. In countering aggressive war, racism, apartheid, and other violations of human rights which are inter alia spawned by prejudice and ignorance, the mass media, by disseminating information on the aims, aspirations, cultures, and needs of all peoples, contribute to eliminat[ing] ignorance and misunderstanding between peoples, to mak[ing] nationals of a country sensitive to the needs and desires of others, to ensur[ing] the respect of the rights and dignity of all nations, all peoples, and all individuals without distinction of race, sex, language, religion or nationality and to draw[ing] attention to the great evils which afflict humanity, such as poverty, malnutrition, and diseases, thereby promoting the formulation by States of the policies best able to promote the reduction of international tension and the peaceful and equitable settlement of international disputes.

**Security Council Resolution 1738 (2006), S/RES/1738, Adopted by the Security Council at its**

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**5613th Meeting, on 23 December 2006. Para 4.** Reaffirms its condemnation of all incitements to violence against civilians in situations of armed conflict, further reaffirms the need to bring to justice, in accordance with applicable international law, individuals who incite such violence, and indicates its willingness, when authorizing missions, to consider, where appropriate, steps in response to media broadcast inciting genocide, crimes against humanity and serious violations of international humanitarian law.

**UN GA Resolution 60/7, Para 3.** Rejects any denial of the Holocaust as an historical event, either in full or part.

**UN GA Resolution 61/255, Para 1.** Condemns without any reservation any denial of the Holocaust.

**AG/RES. 2434 (XXXVIII-O/08) Right to Freedom of Thought and Expression and the Importance of the Media (Adopted at the fourth plenary session, held on June 3, 2008) Article 5.** Any propaganda for war and any advocacy of national, racial, or religious hatred that constitute incitements to lawless violence or to any other similar action against any person or group of persons on any grounds including those of race, color, religion, language, or national origin shall be considered as offenses punishable by law.

**ICERD General Recommendation XXX (Sixty-fifth session, 2004): Discrimination against Non-Citizens, A/59/18 (2004) 93 at preamble and paras. 1-39.**

III. Protection against hate speech and racial violence 11. Take steps to address xenophobic attitudes and behavior towards noncitizens, in particular hate speech and racial violence, and to promote a better understanding of the principle of nondiscrimination in respect of the situation of noncitizens; 12. Take resolute action to counter any tendency to target, stigmatize, stereotype or profile, on the basis of race, color, descent, and national or ethnic origin, members of “noncitizen” population groups, especially by politicians, officials, educators, and the media, on the Internet and other electronic communications networks and in society at large.

**ECHR, Article 10(2).** The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.

For norms pertaining to restrictions of freedom of speech as being permissible to counter hate speech, see:

***The Jewish Community of Oslo et al. v. Norway* (30/2003), ICERD, A/60/18 (15 August 2005) 154 at paras. 2.1-2.8, 10.3-10.6, 11 and 12.**

2.1 On 19 August 2000, a group known as the “Bootboys” organized and participated in a march in commemoration of the Nazi leader Rudolf Hess in Askim, near Oslo. ... The march was headed by Mr. Terje Sjolie. Upon reaching the town square, Mr. Sjolie made a speech, in which he stated: “We are gathered here to honor our great hero, Rudolf Hess, for his brave attempt to save Germany and Europe from Bolshevism and Jewry during the Second World War. While we stand here, over 15,000 Communists and Jew-lovers are gathered at Youngsroget in a demonstration against freedom of speech and the white race. Every day immigrants rob, rape, and kill Norwegians; every day our

people and country are being plundered and destroyed by the Jews, who suck our country empty of wealth and replace it with immoral and un-Norwegian thoughts....”

2.3 The authors claim that the immediate effect of the march appeared to be the founding of a Boot-boys branch in nearby Kristiansand, and that for the next 12 months the city was “plagued” by what the authors describe as incidents of violence directed against blacks and political opponents.

2.6 On 16 March 2001, Mr. Sjolie was acquitted by the Halden City Court. The prosecutor appealed to the Borgarting Court of Appeal, where Mr. Sjolie was convicted of a violation of section 135a because of the references in his speech to Jews. The Court of Appeal found that, at the least, the speech had to be understood as accepting the mass extermination of the Jews, and that this constituted a violation of section 135a.

10.5 As to whether these statements are protected by the “due regard” clause contained in Article 4, the Committee notes that the principle of freedom of speech has been afforded a lower level of protection in cases of racist and hate speech dealt with by other international bodies, and that the Committee’s own general recommendation XV clearly states (para. 4) that the prohibition of all ideas based upon racial superiority or hatred is compatible with the right to freedom of opinion and expression. The Committee notes that the “due regard” clause relates generally to all principles embodied in the Universal Declaration of Human Rights, not only freedom of speech. Thus, to give the right to freedom of speech a more limited role in the context of Article 4 does not deprive the “due regard” clause of significant meaning, all the more so since all international instruments that guarantee freedom of expression provide for the possibility, under certain circumstances, of limiting the exercise of this right. The Committee concludes that the statements of Mr. Sjolie, given that they were of an exceptionally/manifestly offensive character, are not protected by the “due regard” clause and that accordingly, his acquittal by the Supreme Court of Norway gave rise to a violation of Article 4, and consequently Article 6, of the Convention.

11 The Committee on the Elimination of Racial Discrimination ... is of the view that the facts before it disclose violations of Articles 4 and 6 of the Convention.

12 The Committee recommends that the State party take measures to ensure that statements such as those made by Mr. Sjolie in the course of his speech are not protected by the right to freedom of speech under Norwegian law.

***Faurisson v. France* (550/1993), ICCPR, A/52/40 vol. II (8 November 1996) 84 (CCPR/C/58/D/550/1993) at paras. 2.1-2.3, 2.5, 9.3-9.7, 10.**

2.1 The author was a professor of literature at the Sorbonne University in Paris until 1973 and at the University of Lyon until 1991, when he was removed from his chair. Aware of the historical significance of the Holocaust, he has sought proof of the methods of killings, in particular by gas asphyxiation. While he does not contest the use of gas for purposes of disinfection, he doubts the existence of gas chambers for extermination purposes (“*chambres à gaz homicides*”) at Auschwitz and in other Nazi concentration camps.

2.2 The author submits that his opinions have been rejected in numerous academic journals and ridiculed in the daily press, notably in France; nonetheless, he continues to question the existence of extermination gas chambers. As a result of public discussion of his opinions and the polemics accompanying these debates, he states that, since 1978, he has become the target of death threats and that on eight occasions he has been physically assaulted. On one occasion in 1989, he claims to have suffered serious injuries, including a broken jaw, for which he was hospitalized. He contends that although these attacks were brought to the attention of the competent judicial authorities, they were not seriously investigated and none of those responsible for the assaults has been arrested or prosecuted....

9.4 Any restriction on the right to freedom of expression must cumulatively meet the following con-

ditions: It must be provided by law; it must address one of the aims set out in paragraph 3 (a) and (b) of article 19, and must be necessary to achieve a legitimate purpose.

9.6 To assess whether the restrictions placed on the author's freedom of expression by his criminal conviction were applied for the purposes provided for by the Covenant, the Committee begins by noting, as it did in its General Comment 10, that the rights for the protection of which restrictions on the freedom of expression are permitted by Article 19, paragraph 3, may relate to the interests of other persons or to those of the community as a whole. Since the statements made by the author, read in their full context, were of a nature as to raise or strengthen anti-Semitic feelings, the restriction served the respect of the Jewish community to live free from fear of an atmosphere of anti-Semitism. The Committee therefore concludes that the restriction of the author's freedom of expression was permissible under Article 19, paragraph 3 (a), of the Covenant.

10. The Human Rights Committee ... is of the view that the facts as found by the Committee do not reveal a violation by France of Article 19, paragraph 3, of the Covenant.

**ECHR, *Garaudy v. France*. (no. 65831/01).** Court found that the applicant had adopted revisionist theories and systematically disputed the existence of the crimes against humanity which the Nazis had committed against the Jewish community. The Court argued that there could be no doubt that disputing the existence of clearly established historical events, such as the Holocaust, did not constitute historical research akin to a quest for the truth. The real purpose of such a work was to rehabilitate the National-Socialist regime and, as a consequence, to accuse the victims of the Holocaust of falsifying history. Disputing the existence of crimes against humanity was, therefore, one of the most severe forms of racial defamation and of incitement to hatred of Jews. The denial or rewriting of this type of historical fact undermined the values on which the fight against racism and anti-Semitism was based and constituted a serious threat to public order. It was incompatible with democracy and human rights and its proponents indisputably had designs that fell into the category of prohibited aims under Article 17 of the Convention. The Court found that, since the applicant's book, taken as a whole, displayed a marked tendency to revisionism, it ran counter to the fundamental values of the Convention, namely justice and peace. The applicant had sought to deflect Article 10 of the Convention from its intended purpose by using his right to freedom of expression to fulfill ends that were contrary to the Convention. Consequently, the Court held that he could not rely on Article 10 and declared his complaint incompatible with the Convention.

As regards Mr. Garaudy's convictions for racial defamation and incitement to racial hatred, the Court found that they could constitute an interference with his right to freedom of expression. The interference was prescribed by the Act of 29 July 1881 and had at least two legitimate aims: "the prevention of disorder or crime" and "the protection of the reputation or rights of others." However, for the same reasons as those set out above and in view of the overall revisionist tone of the work, the Court had serious doubts as to whether the passages on which his convictions were based could qualify for protection under Article 10. While criticism of State policy, whether of Israel or any other State, indisputably came within that Article, the Court noted that the applicant had not confined himself to such criticism: His writings had a clear racist objective. However, the Court did not consider it necessary to decide that issue, as it found that the reasons given by the domestic courts for convicting the applicant were relevant and sufficient and the interference with his right to respect for his freedom of expression was "necessary in a democratic society," in accordance with Article 10 § 2 of the Convention.

**ICERD General Recommendation XXXI (Sixty-seventh session, 2005): The Prevention of Racial Discrimination in the Administration and Functioning of the Criminal Justice System, A/60/18 (2005) 98 at para. 4.** The following should be regarded as indicators of potential causes of racial

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discrimination: (a) Any gaps in domestic legislation on racial discrimination. In this regard, States parties should fully comply with the requirements of Article 4 of the Convention and criminalize all acts of racism as provided by that article, in particular the dissemination of ideas based on racial superiority or hatred, incitement to racial hatred, violence or incitement to racial violence, but also racist propaganda activities and participation in racist organizations. States parties are also encouraged to incorporate a provision in their criminal legislation to the effect that committing offenses for racial reasons generally constitutes an aggravating circumstance.

**ICCPR General Comment 10 (Nineteenth session, 1983): Article 19: Freedom of Expression, A/38/40 (1983) 109 at para. 2.** Paragraph 2 requires protection of the right to freedom of expression, which includes not only freedom to “impart information and ideas of all kinds,” but also freedom to “seek” and “receive” them “regardless of frontiers” and in whatever medium, “either orally, in writing or in print, in the form of art, or through any other media of his choice.” Not all States parties have provided information concerning all aspects of the freedom of expression. For instance, little attention has so far been given to the fact that, because of the development of modern mass media, effective measures are necessary to prevent such control of the media as would interfere with the right of everyone to freedom of expression in a way that is not provided for in paragraph 3.

**ICCPR General Comment 11 (Nineteenth session, 1983): Article 20: Prohibition of Propaganda for War and Inciting National, Racial or Religious Hatred, A/38/40 (1983) 109 at para. 2.** Article 20 of the Covenant states that any propaganda for war and any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law. In the opinion of the Committee, these required prohibitions are fully compatible with the right of freedom of expression as contained in Article 19, the exercise of which carries with it special duties and responsibilities. The prohibition under paragraph 1 extends to all forms of propaganda threatening or resulting in an act of aggression or breach of the peace contrary to the Charter of the United Nations, while paragraph 2 is directed against any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence, whether such propaganda or advocacy has aims which are internal or external to the State concerned. The provisions of Article 20, paragraph 1, do not prohibit advocacy of the sovereign right of self-defense or the right of peoples to self-determination and independence in accordance with the Charter of the United Nations. For Article 20 to become fully effective, there ought to be a law making it clear that propaganda and advocacy as described therein are contrary to public policy and providing for an appropriate sanction in case of violation. The Committee, therefore, believes that States parties which have not yet done so should take the measures necessary to fulfill the obligations contained in Article 20, and should themselves refrain from any such propaganda or advocacy.

**ICCPR General Comment 29 (Seventy-second session, 2001): Derogations from Provisions of the Covenant during a State of Emergency, A/56/40 vol. I (2001) 202 at para. 13(e).** In those provisions of the Covenant that are not listed in Article 4, paragraph 2, there are elements that in the Committee’s opinion cannot be made subject to lawful derogation under Article 4. Below, some illustrative examples are presented.... (e) justification for a State party to engage itself, contrary to Article 20, in propaganda for war, or in advocacy of national, racial or religious hatred that would constitute incitement to discrimination, hostility or violence.

For norms pertaining to the Internet, see:

**Council of Europe Additional Protocol to the Convention on Cybercrime, Concerning the Criminalization of Acts of a Racist and Xenophobic Nature Committed through Computer Systems, Strasbourg, 28 January 2003.** Concerned, however, by the risk of misuse or abuse of such computer systems to disseminate racist and xenophobic propaganda: For the purposes of this Protocol, “racist and xenophobic material” means any written material, any image or any other representation of ideas or theories, which advocates, promotes or incites hatred, discrimination or violence, against any individual or group of individuals, based on race, color, descent or national or ethnic origin, as well as religion if used as a pretext for any of these factors.

**Article 3.** Dissemination of racist and xenophobic material through computer systems. Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offenses under its domestic law, when committed intentionally and without right, the following conduct: distributing, or otherwise making available, racist and xenophobic material to the public through a computer system.

**Article 4.** Racist and xenophobic-motivated threat. Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offenses under its domestic law, when committed intentionally and without right, the following conduct: threatening, through a computer system, with the commission of a serious criminal offense as defined under its domestic law, (i) persons for the reason that they belong to a group, distinguished by race, color, descent or national or ethnic origin, as well as religion, if used as a pretext for any of these factors, or (ii) a group of persons which is distinguished by any of these characteristics.

**Article 5.** Racist and xenophobic-motivated insult. Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offenses under its domestic law, when committed intentionally and without right, the following conduct: insulting publicly, through a computer system, (i) persons for the reason that they belong to a group distinguished by race, color, descent or national or ethnic origin, as well as religion, if used as a pretext for any of these factors; or (ii) a group of persons which is distinguished by any of these characteristics.

**Article 6.** Denial, gross minimization, approval or justification of genocide or crimes against humanity. Each Party shall adopt such legislative measures as may be necessary to establish the following conduct as criminal offenses under its domestic law, when committed intentionally and without right: distributing or otherwise making available, through a computer system to the public, material which denies, grossly minimizes, approves or justifies acts constituting genocide or crimes against humanity, as defined by international law and recognized as such by final and binding decisions of the International Military Tribunal, established by the London Agreement of 8 August 1945, or of any other international court established by relevant international instruments and whose jurisdiction is recognized by that Party.

**ICERD General Recommendation XXX (Sixty-fifth session, 2004): Discrimination Against Non-Citizens, A/59/18 (2004) 93 at para. 12.** [The Committee recommends] ... that the States parties to the Convention, as appropriate to their specific circumstances, adopt the following measures: 12. Take resolute action to counter any tendency to target, stigmatize, stereotype or profile, on the basis of race, color, descent, and national or ethnic origin, members of “noncitizen” population groups, especially by politicians, officials, educators, and the media, on the Internet and other electronic communications networks and in society at large.

## Denial or Restriction of the Right of Members of a *Particular Group* to Enjoy their Culture, Profess and Practice their Religion, or Use their own Language

9. The systematic denial or severe restrictions against members of a *particular group* on the right to enjoy their own culture, to profess and practice their own religion, or to use their own language.

For norms relating to the preservation and expression of culture, religion, and language, see:

**ICCPR, Article 18.1.** Everyone shall have the right to freedom of thought, conscience, and religion. This right shall include freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice, and teaching. 2. No one shall be subject to coercion which would impair his freedom to have or to adopt a religion or belief of his choice. 3. Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others. 4. The States parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to ensure the religious and moral education of their children in conformity with their own convictions.

**Article 19.1.** Everyone shall have the right to hold opinions without interference.

**Article 27.** In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practice their own religion, or to use their own language.

**Article 4.1.** In time of public emergency which threatens the life of the nation and the existence of which is officially proclaimed, the States parties to the present Covenant may take measures derogating from their obligations under the present Covenant to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with their other obligations under international law and do not involve discrimination solely on the ground of race, color, sex, language, religion or social origin. 4.2 No derogation from Articles 6, 7, 8 (paragraphs 1 and 2), 11, 15, 16, and 18 may be made under this provision.

**ICESCR, Article 15.1.** The States parties to the present Covenant recognize the right of everyone: (a) To take part in cultural life; (b) To enjoy the benefits of scientific progress and its applications; (c) To benefit from the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author. 2. The steps to be taken by the States parties to the present Covenant to achieve the full realization of this right shall include those necessary for the conservation, the development, and the diffusion of science and culture. 3. The States parties to the present Covenant undertake to respect the freedom indispensable for scientific research and creative activity. 4. The States parties to the present Covenant recognize the benefits to be derived from the encouragement and development of international contacts and co-operation in the scientific and cultural fields.

**ICERD, Article 4.** States parties condemn all propaganda and all organizations which are based on ideas or theories of superiority of one race or group of persons of one color or ethnic origin, or which attempt to justify or promote racial hatred and discrimination in any form, and undertake to adopt immediate and positive measures designed to eradicate all incitement to, or acts of, such discrimi-

nation and, to this end, with due regard to the principles embodied in the Universal Declaration of Human Rights and the rights expressly set forth in Article 5 of this Convention, inter alia: (a) Shall declare an offense punishable by law all dissemination of ideas based on racial superiority or hatred, incitement to racial discrimination, as well as all acts of violence or incitement to such acts against any race or group of persons of another color or ethnic origin, and also the provision of any assistance to racist activities, including the financing thereof; (b) Shall declare illegal and prohibit organizations, and also organized and all other propaganda activities, which promote and incite racial discrimination, and shall recognize participation in such organizations or activities as an offense punishable by law; (c) Shall not permit public authorities or public institutions, national or local, to promote or incite racial discrimination.

**Article 5.** In compliance with the fundamental obligations laid down in Article 2 of this Convention, States parties undertake to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, color, or national or ethnic origin, to equality before the law, notably in the enjoyment of the following rights: (e) Economic, social, and cultural rights, in particular: (vi) The right to equal participation in cultural activities.

**CEDAW, Article 13 c.** States parties shall take all appropriate measures to eliminate discrimination against women in other areas of economic and social life in order to ensure, on a basis of equality of men and women, the same rights, in particular: (c) The right to participate in recreational activities, sports, and all aspects of cultural life.

**CRC, Article 29.1.** States parties agree that the education of the child shall be directed to: (c) The development of respect for the child's parents, his or her own cultural identity, language, and values, for the national values of the country in which the child is living, the country from which he or she may originate, and for civilizations different from his or her own.

**Article 30.** In those States in which ethnic, religious or linguistic minorities or persons of indigenous origin exist, a child belonging to such a minority or who is indigenous shall not be denied the right, in community with other members of his or her group, to enjoy his or her own culture, to profess and practice his or her own religion, or to use his or her own language.

**Declaration on the Rights of Persons Belonging to National or Ethnic, Religious, and Linguistic Minorities, Article 1.** States shall protect the existence and the national or ethnic, cultural, religious, and linguistic identity of minorities within their respective territories and shall encourage conditions for the promotion of that identity. 2. States shall adopt appropriate legislative and other measures to achieve those ends.

**United Nations Declaration on the Rights of Indigenous Peoples, Article 5.** Indigenous peoples have the right to maintain and strengthen their distinct political, legal, economic, social, and cultural institutions, while retaining their right to participate fully, if they so choose, in the political, economic, social, and cultural life of the State.

**Article 8.1.** Indigenous peoples and individuals have the right not to be subjected to forced assimilation or destruction of their culture. 2. States shall provide effective mechanisms for prevention of, and redress for: (d) Any form of forced assimilation or integration.

**Article 11.1.** Indigenous peoples have the right to practice and revitalize their cultural traditions and customs. This includes the right to maintain, protect, and develop the past, present, and future manifestations of their cultures, such as archaeological and historical sites, artifacts, designs, ceremonies, technologies, and visual and performing arts and literature.

**Article 12.1.** Indigenous peoples have the right to manifest, practice, develop, and teach their spiritual and religious traditions, customs, and ceremonies; the right to maintain, protect, and have access in privacy to their religious and cultural sites; the right to the use and control of their ceremonial objects; and the right to the repatriation of their human remains.

**American Convention on Human Rights, Article 12.** Freedom of Conscience and Religion. Everyone has the right to freedom of conscience and of religion. This right includes freedom to maintain or to change one's religion or beliefs, and freedom to profess or disseminate one's religion or beliefs, either individually or together with others, in public or in private. 2. No one shall be subject to restrictions that might impair his freedom to maintain or to change his religion or beliefs. 3. Freedom to manifest one's religion and beliefs may be subject only to the limitations prescribed by law that are necessary to protect public safety, order, health, or morals, or the rights or freedoms of others. 4. Parents or guardians, as the case may be, have the right to provide for the religious and moral education of their children or wards that is in accord with their own convictions.

**Framework Convention for the Protection of National Minorities, Strasbourg, Article 5.** The Parties undertake to promote the conditions necessary for persons belonging to national minorities to maintain and develop their culture, and to preserve the essential elements of their identity, namely their religion, language, traditions, and cultural heritage. 5.2 Without prejudice to measures taken in pursuance of their general integration policy, the Parties shall refrain from policies or practices aimed at assimilation of persons belonging to national minorities against their will and shall protect these persons from any action aimed at such assimilation.

**League of Arab States, Arab Charter on Human Rights, Article 25.** Persons belonging to minorities shall not be denied the right to enjoy their own culture, to use their own language, and to practice their own religion. The exercise of these rights shall be governed by law. (See *supra* footnote 3.)

**Declaration of the Principles of International Cultural Co-operation, adopted by the UNESCO General Conference at its Fourteenth Session, Paris, 4 November 1966, Article 1.1.** Each culture has a dignity and value which must be respected and preserved. 2. Every people has the right and the duty to develop its culture.

**CESCR General Comment 16 (Thirty-fourth session, 2005): Article 3: The Equal Right of Men and Women to the Enjoyment of all Economic, Social, and Cultural Rights, E/2006/22 (2005) 116 at para. 31.** Article 15, paragraph 1 (a) and (b), of the Covenant requires States parties to recognize the right of everyone to take part in cultural life and to enjoy the benefits of scientific progress. Implementing Article 3, in relation to Article 15, paragraph 1 (a) and (b), requires, inter alia, overcoming institutional barriers and other obstacles, such as those based on cultural and religious traditions, which prevent women from fully participating in cultural life, science education, and scientific research, and directing resources to scientific research relating to the health and economic needs of women on an equal basis with those of men.

**CRC General Comment 1 (Twenty-sixth session, 2001): Article 29 (1): The Aims of Education, CRC/C/103 (2001) 150 at para. 4.** Article 29 (1) states that the States parties agree that education should be directed to a wide range of values. This agreement overcomes the boundaries of religion, nation, and culture built across many parts of the world. At first sight, some of the diverse values expressed in Article 29 (1) might be thought to be in conflict with one another in certain situations.

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Thus, efforts to promote understanding, tolerance, and friendship among all peoples, to which paragraph (1) (d) refers, might not always be automatically compatible with policies designed, in accordance with paragraph (1) (c), to develop respect for the child's own cultural identity, language, and values, for the national values of the country in which the child is living, the country from which he or she may originate, and for civilizations different from his or her own. But in fact, part of the importance of this provision lies precisely in its recognition of the need for a balanced approach to education and one which succeeds in reconciling diverse values through dialogue and respect for difference. Moreover, children are capable of playing a unique role in bridging many of the differences that have historically separated groups of people from one another.

**CRC General Comment 6 (Thirty-ninth session, 2005): Treatment of Unaccompanied and Separated Children Outside their Country of Origin, A/61/41 (2005) 15 at para. 42.** The unaccompanied or separated child should be registered with appropriate school authorities as soon as possible and get assistance in maximizing learning opportunities. All unaccompanied and separated children have the right to maintain their cultural identity and values, including the maintenance and development of their native language.

**Äärelä and Näkkäläjärvi v. Finland (779/1997) ICCPR, A/57/40 vol. II (24 October 2001) 117 (CCPR/C/73/D/779/1997) at paras. 2.1, 2.2, 7.5 and 7.6. Para 2.1.** The authors are reindeer breeders of Sami ethnic origin and members of the Sallivaara Reindeer Herding Co-operative. The co-operative has 286,000 hectares of state-owned land available for reindeer husbandry. On 23 March 1994, the Committee declared a previous communication, brought by the authors among others, which alleged that logging and road-construction activities in certain reindeer husbandry areas violated Article 27 of the Covenant, inadmissible for nonexhaustion of domestic remedies.

2.2. On 30 August 1996, the District Court decided, following an onsite forest inspection at the authors' request, to prohibit logging or road construction in the 92 hectare Kariselkä area, but to allow it in the Mirhaminmaa area. 2. The Court applied a test of "whether the harmful effects of felling are so great that they can be deemed to deny to the Sami a possibility of reindeer herding that is part of their culture, is adapted to modern developments, and is profitable and rational."

7.5. Turning to the claim of a violation of Article 27 in that logging was permitted in the Kariselkä area, the Committee notes that it is undisputed that the authors are members of a minority culture and that reindeer husbandry is an essential element of their culture.

**Howard v. Canada (879/1998), ICCPR, A/60/40 vol. II (26 July 2005) 12 at paras. 12.4-12.11 and 13.**

12.4. The Committee notes that it is undisputed that the author is a member of a minority enjoying the protection of Article 27 of the Covenant and that he is thus entitled to the right, in community with the other members of his group, to enjoy his own culture. It is not disputed that fishing forms an integral part of the author's culture.

12.5. The question before the Committee, as determined by its admissibility decision, is thus whether Ontario's Fishing Regulations as applied to the author by the courts have deprived him, in violation of Article 27 of the Covenant, of the ability to exercise, individually and in community with other members of his group, his aboriginal fishing rights which are an integral part of his culture.

General Assembly Declaration 47/135, Article 1 (1): "States shall protect the existence and the national or ethnic, cultural, religious, and linguistic identity of minorities within their respective territories and shall encourage conditions for the promotion of that identity." Article 2 (1): "Persons belonging to national or ethnic, religious and linguistic minorities (hereinafter referred to as persons

belonging to minorities) have the right to enjoy their own culture, to profess and practice their own religion, and to use their own language, in private and in public, freely and without interference or any form of discrimination.

For norms pertaining to the freedom of expression, see:

**UDHR, Article 19.** Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive, and impart information and ideas through any media and regardless of frontiers.

**ICCPR, Article 17** states that: 1. No one shall be subjected to arbitrary or unlawful interference with his privacy, family, or correspondence, nor to unlawful attacks on his honor and reputation. 2. Everyone has the right to the protection of the law against such interference or attacks.

**Article 19 1.** Everyone shall have the right to hold opinions without interference. 2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive, and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice. 3. The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary: (a) For respect of the rights or reputations of others; (b) For the protection of national security or of public order or of public health or morals.

**ICERD, Article 5.** In compliance with the fundamental obligations laid down in Article 2 of this Convention, States parties undertake to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, color, or national or ethnic origin, to equality before the law, notably in the enjoyment of the following rights: viii) The right to freedom of opinion and expression.

**CRC, Article 16.1.** No child shall be subjected to arbitrary or unlawful interference with his or her privacy, family, or correspondence, nor to unlawful attacks on his or her honor and reputation.

**Article 27.3.** States parties, in accordance with national conditions and within their means, shall take appropriate measures to assist parents and others responsible for the child to implement this right and shall, in the case of need, provide material assistance and support programs, particularly with regard to nutrition, clothing, and housing.

**International Convention on the Suppression and Punishment of the Crime of Apartheid, Article II.** ... “the crime of apartheid”... (c) Any legislative measures and other measures calculated to prevent a racial group or groups from participation in the political, social, economic, and cultural life of the country and the deliberate creation of conditions preventing the full development of such a group or groups, in particular by denying to members of a racial group or groups basic human rights and freedoms, including the right to work, the right to form recognized trade unions, the right to education, the right to leave and to return to their country, the right to a nationality, the right to freedom of movement and residence, the right to freedom of opinion and expression, and the right to freedom of peaceful assembly and association.

**United Nations Declaration on the Rights of Indigenous Peoples, Article 16.1.** Indigenous peoples have the right to establish their own media in their own languages and to have access to all forms of

nonindigenous media without discrimination. 2. States shall take effective measures to ensure that state-owned media duly reflect indigenous cultural diversity. States, without prejudice to ensuring full freedom of expression, should encourage privately owned media to adequately reflect indigenous cultural diversity.

**American Declaration of the Rights and Duties of Man, Article IV.** Every person has the right to freedom of investigation, of opinion, and of the expression and dissemination of ideas, by any medium whatsoever.

**American Convention on Human Rights, Article 11.** Right to Privacy 1. Everyone has the right to have his honor respected and his dignity recognized. 2. No one may be the object of arbitrary or abusive interference with his private life, his family, his home, or his correspondence, or of unlawful attacks on his honor or reputation. 3. Everyone has the right to the protection of the law against such interference or attacks.

**Article 13.** Freedom of Thought and Expression. 1. Everyone has the right to freedom of thought and expression. This right includes freedom to seek, receive, and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing, in print, in the form of art, or through any other medium of one's choice. 2. The exercise of the right provided for in the foregoing paragraph shall not be subject to prior censorship but shall be subject to subsequent imposition of liability, which shall be expressly established by law to the extent necessary to ensure: a. respect for the rights or reputations of others; or b. the protection of national security, public order, or public health or morals.

**League of Arab States, Arab Charter on Human Rights, Article 21.1.** No one shall be subjected to arbitrary or unlawful interference with regard to his privacy, family, home or correspondence, nor to unlawful attacks on his honor or his reputation. 21.2. Everyone has the right to the protection of the law against such interference or attacks.

**Article 32.1.** The present Charter guarantees the right to information and to freedom of opinion and expression, as well as the right to seek, receive, and impart information and ideas through any medium, regardless of geographical boundaries. 2. Such rights and freedoms shall be exercised in conformity with the fundamental values of society and shall be subject only to such limitations as are required to ensure respect for the rights or reputation of others or the protection of national security, public order, and public health or morals. (See *supra* footnote 3.)

For norms pertaining to the right to use one's language, see:

**ICCPR, Article 27.** In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practice their own religion, or to use their own language.

**CRC, Article 30.** In those States in which ethnic, religious or linguistic minorities or persons of indigenous origin exist, a child belonging to such a minority or who is indigenous shall not be denied the right, in community with other members of his or her group, to enjoy his or her own culture, to profess and practice his or her own religion, or to use his or her own language.

**Article 17.** States parties recognize the important function performed by the mass media and shall ensure that the child has access to information and material from a diversity of national and international sources, especially those aimed at the promotion of his or her social, spiritual, and moral

well-being and physical and mental health. To this end, States parties shall: (d) Encourage the mass media to have particular regard to the linguistic needs of the child who belongs to a minority group or who is indigenous.

**Article 29.1.** States parties agree that the education of the child shall be directed to: (c) The development of respect for the child's parents, his or her own cultural identity, language and values, for the national values of the country in which the child is living, the country from which he or she may originate, and for civilizations different from his or her own.

**Declaration on the Rights of Persons Belonging to National or Ethnic, Religious, and Linguistic Minorities, Article 2.1.** Persons belonging to national or ethnic, religious, and linguistic minorities (hereinafter referred to as persons belonging to minorities) have the right to enjoy their own culture, to profess and practice their own religion, and to use their own language, in private and in public, freely and without interference or any form of discrimination.

**Article 4.1.** States shall take measures where required to ensure that persons belonging to minorities may exercise fully and effectively all their human rights and fundamental freedoms without any discrimination and in full equality before the law; 2. States shall take measures to create favorable conditions to enable persons belonging to minorities to express their characteristics and to develop their culture, language, religion, traditions, and customs, except where specific practices are in violation of national law and contrary to international standards; 3. States should take appropriate measures so that, wherever possible, persons belonging to minorities may have adequate opportunities to learn their mother tongue or to have instruction in their mother tongue.

**League of Arab States, Arab Charter on Human Rights, Article 25.** Persons belonging to minorities shall not be denied the right to enjoy their own culture, to use their own language and to practice their own religion. The exercise of these rights shall be governed by law. (See *supra* footnote 3.)

**Framework Convention for the Protection of National Minorities, Strasbourg, Article 5.** The Parties undertake to promote the conditions necessary for persons belonging to national minorities to maintain and develop their culture, and to preserve the essential elements of their identity, namely their religion, language, traditions, and cultural heritage.

**Article 9.** The Parties undertake to recognize that the right to freedom of expression of every person belonging to a national minority includes freedom to hold opinions and to receive and impart information and ideas in the minority language, without interference by public authorities and regardless of frontiers. The Parties shall ensure, within the framework of their legal systems, that persons belonging to a national minority are not discriminated against in their access to the media.

**OAU Cultural Charter for Africa, Article 17.** The African States recognize the imperative need to develop African languages which will ensure their cultural advancement and accelerate their economic and social development and to this end will endeavor to formulate a national policy in regard to languages.

**Article 18.** The African States should prepare and implement the reforms necessary for the introduction of African languages into education. To this end, each state may choose one or more languages.

**European Charter for Regional or Minority Languages, Strasbourg, 1992.** Considering that the protection of the historical regional or minority languages of Europe, some of which are in danger of eventual extinction, contributes to the maintenance and development of Europe's cultural wealth and traditions.

**Article 7.1** In respect of regional or minority languages, within the territories in which such languages are used and according to the situation of each language, the Parties shall base their policies, legislation, and practice on the following objectives and principles: a. the recognition of the regional or minority languages as an expression of cultural wealth; b. the respect of the geographical area of each regional or minority language in order to ensure that existing or new administrative divisions do not constitute an obstacle to the promotion of the regional or minority language in question; c. the need for resolute action to promote regional or minority languages in order to safeguard them; d. the facilitation and/or encouragement of the use of regional or minority languages, in speech and writing, in public and private life; e. the maintenance and development of links, in the fields covered by this Charter, between groups using a regional or minority language and other groups in the State employing a language used in identical or similar form, as well as the establishment of cultural relations with other groups in the State using different languages; f. the provision of appropriate forms and means for the teaching and study of regional or minority languages at all appropriate stages; g. the provision of facilities enabling non-speakers of a regional or minority language living in the area where it is used to learn it if they so desire; e. the promotion of study and research on regional or minority languages at universities or equivalent institutions; ... The Parties undertake to promote, by appropriate measures, mutual understanding between all the linguistic groups of the country and in particular the inclusion of respect, understanding, and tolerance in relation to regional or minority languages among the objectives of education and training provided within their countries and encouragement of the mass media to pursue the same objective.

**Convention (No. 169) Concerning Indigenous and Tribal Peoples, Adopted on 27 June 1989 by the General Conference of the International Labour Organisation at its seventy-sixth session, Article 28. Para 1.** Children belonging to the peoples concerned shall, wherever practicable, be taught to read and write in their own indigenous language or in the language most commonly used by the group to which they belong. When this is not practicable, the competent authorities shall undertake consultations with these peoples with a view to the adoption of measures to achieve this objective.

**Vienna Declaration and Programme of Action, Para. 19.** Considering the importance of the promotion and protection of the rights of persons belonging to minorities and the contribution of such promotion and protection to the political and social stability of the States in which such persons live, the World Conference on Human Rights reaffirms the obligation of States to ensure that persons belonging to minorities may exercise fully and effectively all human rights and fundamental freedoms without any discrimination and in full equality before the law in accordance with the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities. The persons belonging to minorities have the right to enjoy their own culture, to profess and practice their own religion, and to use their own language in private and in public, freely and without interference or any form of discrimination.

**UNESCO Universal Declaration on Cultural Diversity, Adopted by the General Conference of the United Nations Educational, Scientific, and Cultural Organization at its Thirty-first Session on 2 November 2001, Article 5.** Cultural rights as an enabling environment for cultural diversity: Cultural rights are an integral part of human rights, which are universal, indivisible, and interdependent. The flourishing of creative diversity requires the full implementation of cultural rights as defined in Article 27 of the Universal Declaration of Human Rights and in Articles 13 and 15 of the International Covenant on Economic, Social, and Cultural Rights. All persons should therefore be able to express themselves and to create and disseminate their work in the language of their choice,

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and particularly in their mother tongue; all persons should be entitled to quality education and training that fully respect their cultural identity; and all persons have the right to participate in the cultural life of their choice and conduct their own cultural practices, subject to respect for human rights and fundamental freedoms.

**Document of the Copenhagen Meeting of the Conference on the Human Dimension of the OSCE, Copenhagen, 29 June 1990 (32).** To belong to a national minority is a matter of a person's individual choice and no disadvantage may arise from the exercise of such choice; persons belonging to national minorities have the right freely to express, preserve, and develop their ethnic, cultural, linguistic or religious identity and to maintain and develop their culture in all its aspects, free of any attempts at assimilation against their will. In particular, they have the right (32.1) to use freely their mother tongue in private as well as in public; ... (34) The participating States will endeavor to ensure that persons belonging to national minorities, notwithstanding the need to learn the official language or languages of the State concerned, have adequate opportunities for instruction of their mother tongue or in their mother tongue, as well as, wherever possible and necessary, for its use before public authorities, in conformity with applicable national legislation.

For norms pertaining to the right to learn one's mother tongue, see:

**Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, Article 4.3.** States should take appropriate measures so that, wherever possible, persons belonging to minorities may have adequate opportunities to learn their mother tongue or to have instruction in their mother tongue.

**CRC, Article 29.1.** States parties agree that the education of the child shall be directed to: ... (c) The development of respect for the child's parents, his or her own cultural identity, language, and values, for the national values of the country in which the child is living, the country from which he or she may originate, and for civilizations different from his or her own.

**Convention (No. 169) Concerning Indigenous and Tribal Peoples, Adopted on 27 June 1989 by the General Conference of the International Labour Organisation at its Seventy-sixth Session, Article 28. Para 1.** Children belonging to the peoples concerned shall, wherever practicable, be taught to read and write in their own indigenous language or in the language most commonly used by the group to which they belong. When this is not practicable, the competent authorities shall undertake consultations with these peoples with a view to the adoption of measures to achieve this objective.

**Document of the Copenhagen Meeting of the Conference on the Human Dimension of the OSCE, Copenhagen, 29 June 1990 (34).** The participating States will endeavor to ensure that persons belonging to national minorities, notwithstanding the need to learn the official language or languages of the State concerned, have adequate opportunities for instruction of their mother tongue or in their mother tongue, as well as, wherever possible and necessary, for its use before public authorities, in conformity with applicable national legislation.

**UNESCO Convention against Discrimination in Education, Adopted by the General Conference of the United Nations Educational, Scientific, and Cultural Organization on 14 December 1960, the General Conference of the United Nations Educational, Scientific, and Cultural Organiza-**

**tion, Meeting in Paris from 14 November to 15 December 1960, at its Eleventh Session, Article 5.1.** (c) It is essential to recognize the right of members of national minorities to carry on their own educational activities, including the maintenance of schools and, depending on the educational policy of each State, the use or the teaching of their own language, provided, however: (i) That this right is not exercised in a manner which prevents the members of these minorities from understanding the culture and language of the community as a whole and from participating in its activities, or which prejudices national sovereignty.

**European Charter for Regional or Minority Languages, Strasbourg, 5.XI.1992, Article 8.** Education 1. With regard to education, the Parties undertake, within the territory in which such languages are used, according to the situation of each of these languages, and without prejudice to the teaching of the official language(s) of the State: i.) to make available preschool education in the relevant regional or minority languages; or ii.) to make available a substantial part of preschool education in the relevant regional or minority languages; or iii.) to apply one of the measures provided for under i and ii above at least to those pupils whose families so request and whose number is considered sufficient; or iv.) if the public authorities have no direct competence in the field of preschool education, to favor and/or encourage the application of the measures referred to under i to iii above; v.) to make available primary education in the relevant regional or minority languages; or vi.) to make available secondary education in the relevant regional or minority languages; or vii.) to make available university and other higher education in regional or minority languages; or 2. to make arrangements to ensure the teaching of the history and the culture which is reflected by the regional or minority language.

For norms pertaining to the right to freedom of religion, including the right to practice, to teach one's children their religion, and to change one's religion, see:

**UDHR, Article 18.** Everyone has the right to freedom of thought, conscience, and religion; this right includes freedom to change his religion or belief.

**ICCPR, Article 18.1.** Everyone shall have the right to freedom of thought, conscience, and religion. This right shall include freedom either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice, and teaching. 2. No one shall be subject to coercion which would impair his freedom to have or to adopt a religion or belief of his choice. 3. Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others.

**Article 2.1.** Each State party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as religion[.]

**Article 26.** All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as religion[.]

**Article 27.** In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practice their own religion, or to use their own language.

**Article 4.1.** In time of public emergency which threatens the life of the nation and the existence of which is officially proclaimed, the States parties to the present Covenant may take measures derogating from their obligations under the present Covenant to the extent strictly required by the exigen-

cies of the situation, provided that such measures are not inconsistent with their other obligations under international law and do not involve discrimination solely on the ground of race, color, sex, language, religion or social origin. 4.2 No derogation from Articles 6, 7, 8 (paragraphs 1 and 2), 11, 15, 16 and 18 may be made under this provision.

**Article 5.1.** Nothing in the present Covenant may be interpreted as implying for any State, group or person any right to engage in any activity or perform any act aimed at the destruction of any of the rights and freedoms recognized herein or at their limitation to a greater extent than is provided for in the present Covenant.

**ICERD, Article 5.** States parties undertake to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, color, or national or ethnic origin, to equality before the law, notably in the enjoyment of the following rights: ... (d) Other civil rights, in particular: ... (vii) The right to freedom of thought, conscience, and religion.

**ICESCR, Article 2.2** The States parties to the present Covenant undertake to guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind such as religion.

**CRC, Article 30.** In those States in which ethnic, religious or linguistic minorities or persons of indigenous origin exist, a child belonging to such a minority or who is indigenous shall not be denied the right, in community with other members of his or her group, to enjoy his or her own culture, to profess and practice his or her own religion, or to use his or her own language.

**Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief, Article 1.1.** Everyone shall have the right to freedom of thought, conscience, and religion. This right shall include freedom to have a religion or whatever belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice, and teaching. 1.2. No one shall be subject to coercion which would impair his freedom to have a religion or belief of his choice. 1.3. Freedom to manifest one's religion or belief may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health or morals or the fundamental rights and freedoms of others.

**Article 2.1.** No one shall be subject to discrimination by any State, institution, group of persons, or person on the grounds of religion or other belief. 2.2. For the purposes of the present Declaration, the expression "intolerance and discrimination based on religion or belief" means any distinction, exclusion, restriction or preference based on religion or belief and having as its purpose or as its effect nullification or impairment of the recognition, enjoyment or exercise of human rights and fundamental freedoms on an equal basis.

**Article 3.** Discrimination between human beings on the grounds of religion or belief constitutes an affront to human dignity and a disavowal of the principles of the Charter of the United Nations, and shall be condemned as a violation of the human rights and fundamental freedoms proclaimed in the Universal Declaration of Human Rights and enunciated in detail in the International Covenants on Human Rights, and as an obstacle to friendly and peaceful relations between nations.

**Article 4.1.** All States shall take effective measures to prevent and eliminate discrimination on the grounds of religion or belief in the recognition, exercise, and enjoyment of human rights and fundamental freedoms in all fields of civil, economic, political, social, and cultural life. 4.2. All States shall make all efforts to enact or rescind legislation where necessary to prohibit any such discrimination, and to take all appropriate measures to combat intolerance on the grounds of religion or other beliefs in this matter.

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**Article 5.1.** The parents or, as the case may be, the legal guardians of the child have the right to organize the life within the family in accordance with their religion or belief and bearing in mind the moral education in which they believe the child should be brought up. 5.2. Every child shall enjoy the right to have access to education in the matter of religion or belief in accordance with the wishes of his parents or, as the case may be, legal guardians, and shall not be compelled to receive teaching on religion or belief against the wishes of his parents or legal guardians, the best interests of the child being the guiding principle. 5.3. The child shall be protected from any form of discrimination on the ground of religion or belief. He shall be brought up in a spirit of understanding, tolerance, friendship among peoples, peace and universal brotherhood, respect for freedom of religion or belief of others, and in full consciousness that his energy and talents should be devoted to the service of his fellow men. 5.4. In the case of a child who is not under the care either of his parents or of legal guardians, due account shall be taken of their expressed wishes or of any other proof of their wishes in the matter of religion or belief, the best interests of the child being the guiding principle. 5.5. Practices of a religion or belief in which a child is brought up must not be injurious to his physical or mental health or to his full development, taking into account Article 1, paragraph 3, of the present Declaration.

**Article 6.** In accordance with Article 1 of the present Declaration, and subject to the provisions of Article 1, paragraph 3, the right to freedom of thought, conscience, religion or belief shall include, inter alia, the following freedoms: (a) To worship or assemble in connection with a religion or belief, and to establish and maintain places for these purposes; (b) To establish and maintain appropriate charitable or humanitarian institutions; (c) To make, acquire, and use to an adequate extent the necessary articles and materials related to the rites or customs of a religion or belief; (d) To write, issue, and disseminate relevant publications in these areas; (e) To teach a religion or belief in places suitable for these purposes; (f) To solicit and receive voluntary financial and other contributions from individuals and institutions; (g) To train, appoint, elect or designate by succession appropriate leaders called for by the requirements and standards of any religion or belief; (h) To observe days of rest and to celebrate holidays and ceremonies in accordance with the precepts of one's religion or belief; (i) To establish and maintain communications with individuals and communities in matters of religion and belief at the national and international levels.

**Article 7.** The rights and freedoms set forth in the present Declaration shall be accorded in national legislation in such a manner that everyone shall be able to avail himself of such rights and freedoms in practice.

**Article 8.** Nothing in the present Declaration shall be construed as restricting or derogating from any right defined in the Universal Declaration of Human Rights and the International Covenants on Human Rights.

**American Convention on Human Rights, Article 12.** Freedom of Conscience and Religion: Everyone has the right to freedom of conscience and of religion. This right includes freedom to maintain or to change one's religion or beliefs, and freedom to profess or disseminate one's religion or beliefs, either individually or together with others, in public or in private. 2. No one shall be subject to restrictions that might impair his freedom to maintain or to change his religion or beliefs. 3. Freedom to manifest one's religion and beliefs may be subject only to the limitations prescribed by law that are necessary to protect public safety, order, health, or morals, or the rights or freedoms of others. 4. Parents or guardians, as the case may be, have the right to provide for the religious and moral education of their children or wards that is in accord with their own convictions.

**Vienna Declaration and Programme of Action, Para. 19.** Considering the importance of the promotion and protection of the rights of persons belonging to minorities and the contribution of such

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promotion and protection to the political and social stability of the States in which such persons live, the World Conference on Human Rights reaffirms the obligation of States to ensure that persons belonging to minorities may exercise fully and effectively all human rights and fundamental freedoms without any discrimination and in full equality before the law in accordance with the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities. The persons belonging to minorities have the right to enjoy their own culture, to profess and practice their own religion, and to use their own language in private and in public, freely and without interference or any form of discrimination.

**Human Rights Committee General Comment 22, Para 1.** The right to freedom of thought, conscience, and religion (which includes the freedom to hold beliefs) in Article 18.1 is far-reaching and profound; it encompasses freedom of thought on all matters, personal conviction and the commitment to religion or belief, whether manifested individually or in community with others. The Committee draws the attention of States parties to the fact that the freedom of thought and the freedom of conscience are protected equally with the freedom of religion and belief. The fundamental character of these freedoms is also reflected in the fact that this provision cannot be derogated from, even in time of public emergency, as stated in Article 4.2 of the Covenant.

**Para 2.** Article 18 protects theistic, nontheistic, and atheistic beliefs, as well as the right not to profess any religion or belief. The terms “belief” and “religion” are to be broadly construed. Article 18 is not limited in its application to traditional religions or to religions and beliefs with institutional characteristics or practices analogous to those of traditional religions. The Committee therefore views with concern any tendency to discriminate against any religion or belief for any reason, including the fact that they are newly established, or represent religious minorities that may be the subject of hostility on the part of a predominant religious community.

**Para 3.** Article 18 distinguishes the freedom of thought, conscience, religion or belief from the freedom to manifest religion or belief. It does not permit any limitations whatsoever on the freedom of thought and conscience or on the freedom to have or adopt a religion or belief of one’s choice. These freedoms are protected unconditionally, as is the right of everyone to hold opinions without interference in Article 19.1. In accordance with Articles 18.2 and 17, no one can be compelled to reveal his thoughts or adherence to a religion or belief.

**Para 4.** The freedom to manifest religion or belief may be exercised “either individually or in community with others and in public or private.” The freedom to manifest religion or belief in worship, observance, practice, and teaching encompasses a broad range of acts. The concept of worship extends to ritual and ceremonial acts giving direct expression to belief, as well as various practices integral to such acts, including the building of places of worship, the use of ritual formulae and objects, the display of symbols, and the observance of holidays and days of rest. The observance and practice of religion or belief may include not only ceremonial acts but also such customs as the observance of dietary regulations, the wearing of distinctive clothing or head coverings, participation in rituals associated with certain stages of life, and the use of a particular language customarily spoken by a group. In addition, the practice and teaching of religion or belief includes acts integral to the conduct by religious groups of their basic affairs, such as the freedom to choose their religious leaders, priests, and teachers, the freedom to establish seminaries or religious schools, and the freedom to prepare and distribute religious texts or publications.

**Para 5.** The Committee observes that the freedom to “have or to adopt” a religion or belief necessarily entails the freedom to choose a religion or belief, including the right to replace one’s current religion or belief with another or to adopt atheistic views, as well as the right to retain one’s religion or belief. Article 18.2 bars coercion that would impair the right to have or adopt a religion or belief,

including the use of threat of physical force or penal sanctions to compel believers or nonbelievers to adhere to their religious beliefs and congregations, to recant their religion or belief or to convert. Policies or practices having the same intention or effect, such as, for example, those restricting access to education, medical care, employment or the rights guaranteed by Article 25 and other provisions of the Covenant, are similarly inconsistent with Article 18.2. The same protection is enjoyed by holders of all beliefs of a nonreligious nature.

**Para 6.** The Committee is of the view that Article 18.4 permits public school instruction in subjects such as the general history of religions and ethics, if it is given in a neutral and objective way. The liberty of parents or legal guardians to ensure that their children receive a religious and moral education in conformity with their own convictions, set forth in Article 18.4, is related to the guarantees of the freedom to teach a religion or belief stated in Article 18.1. The Committee notes that public education that includes instruction in a particular religion or belief is inconsistent with Article 18.4, unless provision is made for nondiscriminatory exemptions or alternatives that would accommodate the wishes of parents and guardians.

**Para 7.** In accordance with Article 20, no manifestation of religion or belief may amount to propaganda for war or advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence. As stated by the Committee in its General Comment 11 [19], States parties are under the obligation to enact laws to prohibit such acts.

**Para 8.** Article 18.3 permits restrictions on the freedom to manifest religion or belief only if limitations are prescribed by law and are necessary to protect public safety, order, health or morals, or the fundamental rights and freedoms of others. The freedom from coercion to have or to adopt a religion or belief and the liberty of parents and guardians to ensure religious and moral education cannot be restricted. In interpreting the scope of permissible limitation clauses, States parties should proceed from the need to protect the rights guaranteed under the Covenant, including the right to equality and nondiscrimination on all grounds specified in Articles 2, 3, and 26. Limitations imposed must be established by law and must not be applied in a manner that would vitiate the rights guaranteed in Article 18. The Committee observes that paragraph 3 of Article 18 is to be strictly interpreted: Restrictions are not allowed on grounds not specified there, even if they would be allowed as restrictions to other rights protected in the Covenant, such as national security. Limitations may be applied only for those purposes for which they were prescribed and must be directly related and proportionate to the specific need on which they are predicated. Restrictions may not be imposed for discriminatory purposes or applied in a discriminatory manner. The Committee observes that the concept of morals derives from many social, philosophical, and religious traditions; consequently, limitations on the freedom to manifest a religion or belief for the purpose of protecting morals must be based on principles not deriving exclusively from a single tradition. Persons already subject to certain legitimate constraints, such as prisoners, continue to enjoy their rights to manifest their religion or belief to the fullest extent compatible with the specific nature of the constraint. States parties' reports should provide information on the full scope and effects of limitations under Article 18.3, both as a matter of law and of their application in specific circumstances.

**Para 9.** The fact that a religion is recognized as a state religion or that it is established as official or traditional or that its followers comprise the majority of the population, shall not result in any impairment of the enjoyment of any of the rights under the Covenant, including Articles 18 and 27, nor in any discrimination against adherents to other religions or nonbelievers. In particular, certain measures discriminating against the latter, such as measures restricting eligibility for government service to members of the predominant religion or giving economic privileges to them or imposing special restrictions on the practice of other faiths, are not in accordance with the prohibition of discrimination based on religion or belief and the guarantee of equal protection under Article 26. The measures contemplated by Article

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20, paragraph 2 of the Covenant constitute important safeguards against infringement of the rights of religious minorities and of other religious groups to exercise the rights guaranteed by Articles 18 and 27, and against acts of violence or persecution directed towards those groups. The Committee wishes to be informed of measures taken by States parties concerned to protect the practices of all religions or beliefs from infringement and to protect their followers from discrimination. Similarly, information as to respect for the rights of religious minorities under Article 27 is necessary for the Committee to assess the extent to which the right to freedom of thought, conscience, religion, and belief has been implemented by States parties. States parties concerned should also include in their reports information relating to practices considered by their laws and jurisprudence to be punishable as blasphemous.

**Para 10.** If a set of beliefs is treated as official ideology in constitutions, statutes, proclamations of ruling parties, etc., or in actual practice, this shall not result in any impairment of the freedoms under Article 18 or any other rights recognized under the Covenant nor in any discrimination against persons who do not accept the official ideology or who oppose it.

**Para 11.** Many individuals have claimed the right to refuse to perform military service (conscientious objection) on the basis that such right derives from their freedoms under Article 18. In response to such claims, a growing number of States have in their laws exempted from compulsory military service citizens who genuinely hold religious or other beliefs that forbid the performance of military service and replaced it with alternative national service. The Covenant does not explicitly refer to a right to conscientious objection, but the Committee believes that such a right can be derived from Article 18, inasmuch as the obligation to use lethal force may seriously conflict with the freedom of conscience and the right to manifest one's religion or belief. When this right is recognized by law or practice, there shall be no differentiation among conscientious objectors on the basis of the nature of their particular beliefs; likewise, there shall be no discrimination against conscientious objectors because they have failed to perform military service. The Committee invites States parties to report on the conditions under which persons can be exempted from military service on the basis of their rights under Article 18 and on the nature and length of alternative national service.

For norms pertaining to the right to teach one's children their culture and religion, see:

**UDHR, Article 26.1.** Everyone has a right to education. Education shall be free, at least in the elementary and fundamental stages. Elementary education shall be compulsory.

**Article 26.3.** Parents have a prior right to choose the kind of education that shall be given to their children.

**ICCPR, Article 18.4.** The States parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to ensure the religious and moral education of their children in conformity with their own convictions.

**Article 27.** In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practice their own religion, or to use their own language.

**ICESCR, Article 13.3.** The States parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to ensure the religious and moral education of their children in conformity with their own convictions.

**CRC, Article 14.2.** States parties shall respect the rights and duties of the parents and, when applicable, legal guardians, to provide direction to the child in the exercise of his or her right in a manner

consistent with the evolving capacities of the child [.] (c) The development of respect for the child's parents, his or her own cultural identity, language, and values, for the national values of the country in which the child is living, the country from which he or she may originate, and for civilizations different from his or her own.

**Article 30.** In those States in which ethnic, religious or linguistic minorities or persons of indigenous origin exist, a child belonging to such a minority or who is indigenous shall not be denied the right, in community with other members of his or her group, to enjoy his or her own culture, to profess and practice his or her own religion, or to use his or her own language.

**United Nations Declaration on the Rights of Indigenous Peoples, Adopted by General Assembly Resolution A/61/L.67 of 13 September 2007, Article 13.1.** Indigenous peoples have the right to revitalize, use, develop, and transmit to future generations their histories, languages, oral traditions, philosophies, writing systems, and literatures, and to designate and retain their own names for communities, places, and persons. 2. States shall take effective measures to ensure that this right is protected and also to ensure that indigenous peoples can understand and be understood in political, legal, and administrative proceedings, where necessary through the provision of interpretation or by other appropriate means.

**Article 14.1.** Indigenous peoples have the right to establish and control their educational systems and institutions providing education in their own languages, in a manner appropriate to their cultural methods of teaching and learning. 2. Indigenous individuals, particularly children, have the right to all levels and forms of education of the State without discrimination. 3. States shall, in conjunction with indigenous peoples, take effective measures, in order for indigenous individuals, particularly children, including those living outside their communities, to have access, when possible, to an education in their own culture and provided in their own language.

**American Convention on Human Rights, Article 12.1.** Freedom of Conscience and Religion. Everyone has the right to freedom of conscience and of religion. This right includes freedom to maintain or to change one's religion or beliefs, and freedom to profess or disseminate one's religion or beliefs, either individually or together with others, in public or in private. 2. No one shall be subject to restrictions that might impair his freedom to maintain or to change his religion or beliefs. 3. Freedom to manifest one's religion and beliefs may be subject only to the limitations prescribed by law that are necessary to protect public safety, order, health, or morals, or the rights or freedoms of others. 4. Parents or guardians, as the case may be, have the right to provide for the religious and moral education of their children or wards that is in accord with their own convictions.

**American Declaration of the Rights and Duties of Man, Article III.** Every person has the right freely to profess a religious faith, and to manifest and practice it both in public and in private.

**Article XXII.** Every person has the right to associate with others to promote, exercise, and protect his legitimate interests of a political, economic, religious, social, cultural, professional, labor union or other nature.

**Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, Article 1.** States shall protect the existence and the national or ethnic, cultural, religious, and linguistic identity of minorities within their respective territories and shall encourage conditions for the promotion of that identity. 2. States shall adopt appropriate legislative and other measures to achieve those ends.

**Article 2.1.** Persons belonging to national or ethnic, religious and linguistic minorities (herein after

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referred to as persons belonging to minorities) have the right to enjoy their own culture, to profess and practice their own religion, and to use their own language, in private and in public, freely and without interference or any form of discrimination. 2. Persons belonging to minorities have the right to participate effectively in cultural, religious, social, economic, and public life.

**Article 5.1** The States parties to this Convention agree that: (a) Education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms; it shall promote understanding, tolerance, and friendship among all nations, racial or religious groups, and shall further the activities of the United Nations for the maintenance of peace; (b) It is essential to respect the liberty of parents and, where applicable, of legal guardians, firstly to choose for their children institutions other than those maintained by the public authorities but conforming to such minimum educational standards as may be laid down or approved by the competent authorities and, secondly, to ensure in a manner consistent with the procedures followed in the State for the application of its legislation, the religious and moral education of the children in conformity with their own convictions; and no person or group of persons should be compelled to receive religious instruction inconsistent with his or their convictions; (c) It is essential to recognize the right of members of national minorities to carry on their own educational activities, including the maintenance of schools and, depending on the educational policy of each State, the use or the teaching of their own language, provided however: (i) that this right is not exercised in a manner which prevents the members of these minorities from understanding the culture and language of the community as a whole and from participating in its activities, or which prejudices national sovereignty; (ii) that the standard of education is not lower than the general standard laid down or approved by the competent authorities; and (iii) that attendance at such schools is optional. 2. The States parties to this Convention undertake to take all necessary measures to ensure the application of the principles enunciated in paragraph 1 of this Article.

**European Convention on Human Rights and Fundamental Freedoms, Protocol 1, Article 2.** No person shall be denied the right to education. In the exercise of any functions which it assumes in relation to education and to teaching, the State shall respect the right of parents to ensure such education and teaching in conformity with their own religious and philosophical convictions.

**Declaration on the Elimination of All Forms of Intolerance or Discrimination Based on Religion or Belief, Article 5.1.** The parents or, as the case may be, the legal guardians of the child have the right to organize the life within the family in accordance with their religion or belief and bearing in mind the moral education in which they believe the child should be brought up. 2. Every child shall enjoy the right to have access to education in the matter of religion or belief in accordance with the wishes of his parents or, as the case may be, legal guardians, and shall not be compelled to receive teaching on religion or belief against the wishes of his parents or legal guardians, the best interests of the child being the guiding principle.... 4. In the case of a child who is not under the care either of his parents or of legal guardians, due account shall be taken of their expressed wishes or of any other proof of their wishes in the matter of religion or belief, the best interests of the child being the guiding principle.

**Committee on Economic, Social, and Cultural Rights, General Comment, Article 13 (3) and (4).** The right to educational freedom: ... Article 13 (3) has two elements, one of which is that States parties undertake to respect the liberty of parents and guardians to ensure the religious and moral education of their children in conformity with their own convictions.... 15. The Committee is of the view that this element of Article 13 (3) permits public school instruction in subjects such as the general

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history of religions and ethics, if it is given in an unbiased and objective way, respectful of the freedoms of opinion, conscience, and expression. It notes that public education that includes instruction in a particular religion or belief is inconsistent with Article 13 (3), unless provision is made for nondiscriminatory exemptions or alternatives that would accommodate the wishes of parents and guardians.

For norms pertaining to situations where the state religion (or the religion that is established as the official or traditional religion) is the dominant discourse in public education, and there is a need for measures to be taken to protect followers of other religions or beliefs, see:

***Hartikainen v. Finland* (40/1978) (R.9/40), ICCPR, A/36/40 (9 April 1981) 147 at paras. 10.4.** The Committee does not consider that the requirement of the relevant provisions of Finnish legislation that instruction in the study of the history of religions and ethics should be given instead of religious instruction to students in schools whose parents or legal guardians object to religious instruction is in itself incompatible with Article 18 (4), if such alternative course of instruction is given in a neutral and objective way and respects the convictions of parents and guardians who do not believe in any religion. In any event, paragraph 6 of the School System Act expressly permits any parents or guardians who do not wish their children to be given either religious instruction or instruction in the study of the history of religions and ethics to obtain exemption therefrom by arranging for them to receive comparable instruction outside of school.

***Waldman v. Canada* (694/1996), ICCPR, A/55/40 vol. II (3 November 1999) 86 (CCPR/C/67/D/694/1996) at paras. 10.2, 10.4-10.6 and Individual Opinion by Martin Scheinin (concurring), 100 at paras. 3-5. Para 10.2.** The issue before the Committee is whether public funding for Roman Catholic schools, but not for schools of the author's religion, which results in him having to meet the full cost of education in religious school, constitutes a violation of the author's rights under the Covenant. 10.4 The Committee begins by noting that the fact that a distinction is enshrined in the Constitution does not render it reasonable and objective. In the instant case, the distinction was made in 1867 to protect the Roman Catholics in Ontario. The material before the Committee does not show that members of the Roman Catholic community or any identifiable section of that community are now in a disadvantaged position compared to those members of the Jewish community that wish to secure the education of their children in religious schools. Accordingly, the Committee rejects the State party's argument that the preferential treatment of Roman Catholic schools is nondiscriminatory because of its Constitutional obligation. Para 10.6. The Committee has noted the State party's argument that the aims of the State party's secular public education system are compatible with the principle of nondiscrimination laid down in the Covenant. The Committee ... notes, however, that the proclaimed aims of the system do not justify the exclusive funding of Roman Catholic religious schools.... The Covenant does not oblige States parties to fund schools which are established on a religious basis. However, if a State party chooses to provide public funding to religious schools, it should make this funding available without discrimination. This means that providing funding for the schools of one religious group and not for another must be based on reasonable and objective criteria. In the instant case, the Committee concludes that the material before it does not show that the differential treatment between the Roman Catholic faith and the author's religious denomination is based on such criteria. Consequently, there has been a violation of the author's rights under Article 26 of the Covenant to equal and effective protection against discrimination.

For norms pertaining to peaceful assembly and the freedom to manifest one's religion or belief, see:

**Human Rights Committee, General Comment 22, Para 3. Article 18** ... does not permit any limitations whatsoever on the freedom of thought and conscience or the freedom to have or adopt a religion or belief of one's choice.... Para 4. The freedom to manifest religion or belief in worship, observance, practice, and teaching encompasses a broad range of acts. The concept of worship extends to ritual and ceremonial acts giving direct expression to belief, as well as various practices integral to such acts, including the building of places of worship, the use of ritual formulae, and objects, the display of symbols, and the observance of holidays and days of rest. The observance and practice of religion or belief may include not only ceremonial acts but also such customs as the observance of dietary regulations, the wearing of distinctive clothing or head coverings, participation in rituals associated with certain stages of life, and the use of a particular language, customarily spoken by a group. In addition, the practice and teaching of religion or belief includes acts integral to the conduct by religious groups of their basic affairs, such as freedom to choose their religious leaders, priests, and teachers, the freedom to establish seminaries or religious schools, and the freedom to prepare and distribute religious texts or publications.

**Declaration on the Elimination of All Forms of Intolerance and Discrimination Based on Religion or Belief, Article 6.** The right to freedom of thought, conscience, religion or belief includes the freedom: (a.) To worship or assemble in connection with a religion or belief .... (c). To make, acquire, and use the necessary articles and materials related to the rites or customs of a religion or belief.

For norms pertaining to freedom of expression, see:

**UDHR, Article 19.** Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive, and impart information and ideas through any media and regardless of frontiers.

**ICCPR, Article 19.1.** Everyone shall have the right to hold opinions without interference. 2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive, and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice. 3. The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary: (a) For respect of the rights or reputations of others; (b) For the protection of national security or of public order, or of public health or morals.

**ICERD, Article 5.** In compliance with the fundamental obligations laid down in Article 2 of this Convention, States parties undertake to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, color, or national or ethnic origin, to equality before the law, notably in the enjoyment of the following rights: viii) The right to freedom of opinion and expression.

**United Nations Declaration on the Rights of Indigenous Peoples, Article 16.1.** Indigenous peoples have the right to establish their own media in their own languages and to have access to all forms of nonindigenous media without discrimination. 2. States shall take effective measures to ensure that State-owned media duly reflect indigenous cultural diversity. States, without prejudice to ensuring



full freedom of expression, should encourage privately owned media to adequately reflect indigenous cultural diversity.

**American Declaration of the Rights and Duties of Man, Article IV.** Every person has the right to freedom of investigation, of opinion, and of the expression and dissemination of ideas, by any medium whatsoever.

**American Convention on Human Rights, Article 13.** Freedom of Thought and Expression 1. Everyone has the right to freedom of thought and expression. This right includes freedom to seek, receive, and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing, in print, in the form of art, or through any other medium of one's choice. 2. The exercise of the right provided for in the foregoing paragraph shall not be subject to prior censorship but shall be subject to subsequent imposition of liability, which shall be expressly established by law to the extent necessary to ensure: a. respect for the rights or reputations of others; or b. the protection of national security, public order, or public health or morals.

**League of Arab States, Arab Charter on Human Rights, Article 32.1.** The present Charter guarantees the right to information and to freedom of opinion and expression, as well as the right to seek, receive and impart information and ideas through any medium, regardless of geographical boundaries. 2. Such rights and freedoms shall be exercised in conformity with the fundamental values of society and shall be subject only to such limitations as are required to ensure respect for the rights or reputation of others or the protection of national security, public order, and public health or morals. (See *supra* footnote 3.)

For norms pertaining to the right to assembly and association, see:

**ICERD, Article 5.** In compliance with the fundamental obligations laid down in Article 2 of this Convention, States parties undertake to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, color, or national or ethnic origin, to equality before the law, notably in the enjoyment of the following rights: (d) Other civil rights, in particular: (ix) The right to freedom of peaceful assembly and association.

**ICCPR, Article 21.** The right of peaceful assembly shall be recognized. No restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order, the protection of public health or morals or the protection of the rights and freedoms of others.

**Article 22.1** Everyone shall have the right to freedom of association with others, including the right to form and join trade unions for the protection of his interests. 2. No restrictions may be placed on the exercise of this right other than those which are prescribed by law and which are necessary in a democratic society in the interests of national security or public safety, public order, the protection of public health or morals or the protection of the rights and freedoms of others. This article shall not prevent the imposition of lawful restrictions on members of the armed forces and of the police in their exercise of this right. 3. Nothing in this article shall authorize States parties to the International Labour Organisation Convention of 1948 concerning Freedom of Association and Protection of the Right to Organize to take legislative measures which would prejudice, or to apply the law in such a manner as to prejudice, the guarantees provided for in that Convention.

**Article 27.** In those States in which ethnic, religious or linguistic minorities exist, persons belonging

to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practice their own religion, or to use their own language.

**CEDAW, Article 14.2.** States parties shall take all appropriate measures to eliminate discrimination against women in rural areas in order to ensure, on a basis of equality of men and women, that they participate in and benefit from rural development and, in particular, shall ensure to such women the right: (e) To organize self-help groups and co-operatives in order to obtain equal access to economic opportunities through employment or self-employment.

**CRC, Article 15.1.** States parties recognize the rights of the child to freedom of association and to freedom of peaceful assembly. 2. No restrictions may be placed on the exercise of these rights other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order, the protection of public health or morals, or the protection of the rights and freedoms of others.

**United Nations Declaration on the Rights of Indigenous Peoples, Article 36.1.** Indigenous peoples, in particular those divided by international borders, have the right to maintain and develop contacts, relations, and cooperation, including activities for spiritual, cultural, political, economic, and social purposes, with their own members as well as other peoples across borders. 2. States, in consultation and cooperation with indigenous peoples, shall take effective measures to facilitate the exercise and ensure the implementation of this right.

**American Declaration of the Rights and Duties of Man, Article XXI.** Every person has the right to assemble peaceably with others in a formal public meeting or an informal gathering, in connection with matters of common interest of any nature.

**Article XXII.** Every person has the right to associate with others to promote, exercise, and protect his legitimate interests of a political, economic, religious, social, cultural, professional, labor union or other nature.

**American Convention on Human Rights, Article 15.** Right of Assembly. The right of peaceful assembly, without arms, is recognized. No restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and necessary in a democratic society in the interest of national security, public safety or public order, or to protect public health or morals or the rights or freedom of others.

**Article 16.** Freedom of Association: 1. Everyone has the right to associate freely for ideological, religious, political, economic, labor, social, cultural, sports, or other purposes. 2. The exercise of this right shall be subject only to such restrictions established by law as may be necessary in a democratic society, in the interest of national security, public safety or public order, or to protect public health or morals or the rights and freedoms of others.

**League of Arab States, Arab Charter on Human Rights, Article 24.** Every citizen has the right.... 5. To freely form and join associations with others. 6. To freedom of association and peaceful assembly. (See *supra* footnote 3.)

For norms pertaining to the right to “in community with the other members of their group, to enjoy their own culture, to profess and practice their own religions, or to use their own language,” see:

**ICCPR, Article 18.1** Everyone shall have the right to freedom of thought, conscience, and religion. This right shall include freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching. 2. No one shall be subject to coercion which would impair his freedom to have or to adopt a religion or belief of his choice. 3. Freedom to manifest one’s religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others. 4. The States parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to ensure the religious and moral education of their children in conformity with their own convictions.

**Article 27.** In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practice their own religion, or to use their own language.

**Article 4.1.** In time of public emergency which threatens the life of the nation and the existence of which is officially proclaimed, the States parties to the present Covenant may take measures derogating from their obligations under the present Covenant to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with their other obligations under international law and do not involve discrimination solely on the ground of race, color, sex, language, religion or social origin. 4.2 No derogation from Articles 6, 7, 8 (paragraphs 1 and 2), 11, 15, 16, and 18 may be made under this provision.

**Article 5.1.** Nothing in the present Covenant may be interpreted as implying for any State, group or person any right to engage in any activity or perform any act aimed at the destruction of any of the rights and freedoms recognized herein or at their limitation to a greater extent than is provided for in the present Covenant.

**American Convention on Human Rights, Article 12.** Freedom of Conscience and Religion 1. Everyone has the right to freedom of conscience and of religion. This right includes freedom to maintain or to change one’s religion or beliefs, and freedom to profess or disseminate one’s religion or beliefs, either individually or together with others, in public or in private. 2. No one shall be subject to restrictions that might impair his freedom to maintain or to change his religion or beliefs. 3. Freedom to manifest one’s religion and beliefs may be subject only to the limitations prescribed by law that are necessary to protect public safety, order, health, or morals, or the rights or freedoms of others. 4. Parents or guardians, as the case may be, have the right to provide for the religious and moral education of their children or wards that is in accord with their own convictions.

**Declaration of the Principles of International Cultural Co-operation, Adopted by the UNESCO General Conference at its Fourteenth Session, Paris, 4 November 1966, UNESCO’s Standard-Setting Instruments, IV.C. (1994).** **Article 1.1.** Each culture has a dignity and value which must be respected and preserved. 2. Every people has the right and the duty to develop its culture. 3. In their rich variety and diversity, and in the reciprocal influences they exert on one another, all cultures form part of the common heritage belonging to all mankind.

For norms pertaining to indigenous peoples, including the right to exercise traditional aspects of their culture, including access to historic land, resources, and self-governance, see:

**CRC, Article 17 (d).** Encourage the mass media to have particular regard to the linguistic needs of the child who belongs to a minority group or who is indigenous.

**Article 29.1.** States parties agree that the education of the child shall be directed to: (d) The preparation of the child for responsible life in a free society, in the spirit of understanding, peace, tolerance, equality of sexes, and friendship among all peoples, ethnic, national, and religious groups, and persons of indigenous origin.

**United Nations Declaration on the Rights of Indigenous Peoples, Article 5.** Indigenous peoples have the right to maintain and strengthen their distinct political, legal, economic, social, and cultural institutions, while retaining their right to participate fully, if they so choose, in the political, economic, social, and cultural life of the State.

**Article 8.1.** Indigenous peoples and individuals have the right not to be subjected to forced assimilation or destruction of their culture. 2. States shall provide effective mechanisms for prevention of, and redress for: (d) Any form of forced assimilation or integration.

**Article 11.1.** Indigenous peoples have the right to practice and revitalize their cultural traditions and customs. This includes the right to maintain, protect, and develop the past, present, and future manifestations of their cultures, such as archaeological and historical sites, artifacts, designs, ceremonies, technologies, and visual and performing arts and literature.

**Article 12.1.** Indigenous peoples have the right to manifest, practice, develop, and teach their spiritual and religious traditions, customs, and ceremonies; the right to maintain, protect, and have access in privacy to their religious and cultural sites; the right to the use and control of their ceremonial objects; and the right to the repatriation of their human remains.

**Article 36.1.** Indigenous peoples, in particular those divided by international borders, have the right to maintain and develop contacts, relations, and cooperation, including activities for spiritual, cultural, political, economic, and social purposes, with their own members as well as other peoples across borders. 2. States, in consultation and cooperation with indigenous peoples, shall take effective measures to facilitate the exercise and ensure the implementation of this right.

**Convention (No. 169) Concerning Indigenous and Tribal Peoples, Adopted on 27 June 1989 by the General Conference of the International Labour Organisation at its Seventy-sixth Session, Article 28 1.** Children belonging to the peoples concerned shall, wherever practicable, be taught to read and write in their own indigenous language or in the language most commonly used by the group to which they belong. When this is not practicable, the competent authorities shall undertake consultations with these peoples with a view to the adoption of measures to achieve this objective.

**CERD General Recommendation XXIII (Fifty-first session, 1997): On the Rights of Indigenous Peoples, A/52/18 (1997) 122 at paras. 1-6. Para 4.** The Committee calls in particular upon States parties to:

- a. recognize and respect indigenous distinct culture, history, language, and way of life as an enrichment of the State's cultural identity and to promote its preservation;
- b. ensure that members of indigenous peoples are free and equal in dignity and rights and free from any discrimination, in particular that based on indigenous origin or identity;
- c. provide indigenous peoples with conditions allowing for a sustainable economic and social development compatible with their cultural characteristics;

d. ensure that members of indigenous peoples have equal rights in respect of effective participation in public life and that no decisions directly relating to their rights and interests are taken without their informed consent;

e. ensure that indigenous communities can exercise their rights to practice and revitalize their cultural traditions and customs, and to preserve and to practice their languages.

**Para 5.** The Committee especially calls upon States parties to recognize and protect the rights of indigenous peoples to own, develop, control, and use their communal lands, territories, and resources and, where they have been deprived of their lands and territories traditionally owned or otherwise inhabited or used without their free and informed consent, to take steps to return those lands and territories. Only when this is for factual reasons not possible, the right to restitution should be substituted by the right to just, fair, and prompt compensation. Such compensation should as far as possible take the form of lands and territories.

**CERD General Recommendation XXIII (Fifty-first Session 1997): On the Rights of Indigenous Peoples, A/52/18 (1997) 122 at para. 4(d).** The Committee calls in particular upon States parties to: ... d. Ensure that members of indigenous peoples have equal rights in respect of effective participation in public life and that no decisions directly relating to their rights and interests are taken without their informed consent.

**CERD General Recommendation XXIV (Fifty-fifth Session, 1999): Concerning Article 1 of the Convention, A/54/18 (1999) 103.** The Committee stresses that, according to the definition given in Article 1, paragraph 1, of the International Convention on the Elimination of All Forms of Racial Discrimination, the Convention relates to all persons who belong to different races, national or ethnic groups or to indigenous peoples. If the Committee is to secure the proper consideration of the periodic reports of States parties, it is essential that States parties provide as far as possible the Committee with information on the presence within their territory of such groups.

**CESCR General Comment No. 13 (Twenty-first Session, 1999): Article 13: The Right to Education, E/2000/22 (1999) 111 at para. 50.** In relation to article 13 (2), States have obligations to respect, protect, and fulfill each of the “essential features” (availability, accessibility, acceptability, adaptability) of the right to education. By way of illustration, a State must respect the availability of education by not closing private schools; protect the accessibility of education by ensuring that third parties, including parents and employers, do not stop girls from going to school; fulfill (facilitate) the acceptability of education by taking positive measures to ensure that education is culturally appropriate for minorities and indigenous peoples, and of good quality for all; fulfill (provide) the adaptability of education by designing and providing resources for curricula which reflect the contemporary needs of students in a changing world; and fulfill (provide) the availability of education by actively developing a system of schools, including building classrooms, delivering programs, providing teaching materials, training teachers, and paying them domestically competitive salaries.

**Äärelä and Näkkäläjärvi v. Finland (779/1997) ICCPR, A/57/40 vol. II (24 October 2001) 117 (CCPR/C/73/D/779/1997) at paras. 2.1, 2.2, 7.5 and 7.6.** Para.2.1 The authors are reindeer breeders of Sami ethnic origin and members of the Sallivaara Reindeer Herding Co-operative. The co-operative has 286,000 hectares of state-owned land available for reindeer husbandry. On 23 March 1994, the Committee declared a previous communication, brought by the authors among others, which alleged that logging and road-construction activities in certain reindeer husbandry areas violated Article 27 of the Covenant, inadmissible for nonexhaustion of domestic remedies.

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2.2 On 30 August 1996, the District Court decided, following an onsite forest inspection at the authors' request, to prohibit logging or road construction in the 92 hectare Kariselkä area, but to allow it in the Mirhaminmaa area. 2. The Court applied a test of "whether the harmful effects of felling are so great that they can be deemed to deny to the Sami a possibility of reindeer herding that is part of their culture, is adapted to modern developments, and is profitable and rational."

7.5 Turning to the claim of a violation of Article 27 in that logging was permitted in the Kariselkä area, the Committee notes that it is undisputed that the authors are members of a minority culture and that reindeer husbandry is an essential element of their culture.

**Howard v. Canada (879/1998), ICCPR, A/60/40 vol. II (26 July 2005)12 at paras. 12.4- 12.11 and 13. Para 12.4.** The Committee notes that it is undisputed that the author is a member of a minority enjoying the protection of Article 27 of the Covenant and that he is thus entitled to the right, in community with the other members of his group, to enjoy his own culture. It is not disputed that fishing forms an integral part of the author's culture. 12.5 The question before the Committee, as determined by its admissibility decision, is thus whether Ontario's Fishing Regulations as applied to the author by the courts have deprived him, in violation of Article 27 of the Covenant, of the ability to exercise, individually and in community with other members of his group, his aboriginal fishing rights which are an integral part of his culture.

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## The Systematic Destruction of Cultural, Religious, and Sacred Sites

10. The systematic destruction of cultural, religious, and sacred sites, or severe restrictions against members of a *particular group* on their use of and access to such sites.

For norms pertaining to the use of and access to cultural, religious, and sacred sites, see:

**Declaration on the Elimination of All Forms of Intolerance and Discrimination Based on Religion or Belief, Article 6.** In accordance with Article 1 of the present Declaration, and subject to the provisions of Article 1, paragraph 3, the right to freedom of thought, conscience, religion or belief shall include, inter alia, the following freedoms: (a) To worship or assemble in connection with a religion or belief, and to establish and maintain places for these purposes.

**UDHR, Article 18.** Everyone has the right to freedom of thought, conscience, and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship, and observance.

**ICCPR, Article 18. 1.** Everyone shall have the right to freedom of thought, conscience, and religion. This right shall include freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice, and teaching.

**ICRC Study on Customary International Humanitarian Law, Volume 1: Rules** (Jean-Marie Henckaerts and Louise Doswald-Beck, eds.) **Rule 38.** Each party to the conflict must respect cultural property: A. Special care must be taken in military operations to avoid damage to buildings dedicated to religion, art, science, education or charitable purposes, and historic monuments, unless they are military objectives. **Rule 40.** Each party to the conflict must protect cultural property: A. All seizure of or destruction or willful damage done to institutions dedicated to religion, charity, education, the arts and sciences, historic monuments, and works of art and science is prohibited.

**Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II), 1125 UNTS 609, entered into force Dec. 7, 1978. Article 16.** Protection of cultural objects and of places of worship. Without prejudice to the provisions of the Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict of 14 May 1954, it is prohibited to commit any acts of hostility directed against historic monuments, works of art, or places of worship which constitute the cultural or spiritual heritage of peoples, and to use them in support of the military effort.

**Article 53.** Protection of cultural objects and of places of worship. Without prejudice to the provisions of the Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict of 14 May 1954, and of other relevant international instruments, it is prohibited: (a) To commit any acts of hostility directed against the historic monuments, works of art, or places of worship which constitute the cultural or spiritual heritage of peoples; (b) To use such objects in support of the military effort; (c) To make such objects the object of reprisals.

**Article 85.** Repression of breaches of this Protocol. 4. In addition to the grave breaches defined in the preceding paragraphs and in the Conventions, the following shall be regarded as grave breaches

of this Protocol, when committed willfully and in violation of the Conventions of the Protocol.... (d) Making the clearly-recognized historic monuments, works of art, or places of worship that constitute the cultural or spiritual heritage of peoples and to which special protection has been given by special arrangement, for example, within the framework of a competent international organization, the object of attack, causing as a result extensive destruction thereof, where there is no evidence of the violation by the adverse party of Article 53, subparagraph (b), and when such historic monuments, works of art, and places of worship are not located in the immediate proximity of military objectives.

**Second Protocol to the Hague Convention of 1954 for the Protection of Cultural Property in the Event of Armed Conflict, The Hague, 26 March 1999, Article 7.** Precautions in attack: Without prejudice to other precautions required by international humanitarian law in the conduct of military operations, each Party to the conflict shall: a. do everything feasible to verify that the objectives to be attacked are not cultural property protected under Article 4 of the Convention; b. take all feasible precautions in the choice of means and methods of attack with a view to avoiding, and in any event to minimizing, incidental damage to cultural property protected under Article 4 of the Convention; c. refrain from deciding to launch any attack which may be expected to cause incidental damage to cultural property protected under Article 4 of the Convention which would be excessive in relation to the concrete and direct military advantage anticipated; and d. cancel or suspend an attack if it becomes apparent: i. that the objective is cultural property protected under Article 4 of the Convention; ii. that the attack may be expected to cause incidental damage to cultural property protected under Article 4 of the Convention which would be excessive in relation to the concrete and direct military advantage anticipated.

**Article 8.** Precautions against the effects of hostilities. The Parties to the conflict shall, to the maximum extent feasible: a. remove movable cultural property from the vicinity of military objectives or provide for adequate *in situ* protection; b. avoid locating military objectives near cultural property.

**Article 9.** Protection of cultural property in occupied territory. 1. Without prejudice to the provisions of Articles 4 and 5 of the Convention, a Party in occupation of the whole or part of the territory of another Party shall prohibit and prevent in relation to the occupied territory: a. any illicit export, other removal or transfer of ownership of cultural property; b. any archaeological excavation, save where this is strictly required to safeguard, record, or preserve cultural property c. any alteration to, or change of use of, cultural property which is intended to conceal or destroy cultural, historical, or scientific evidence. 2. Any archaeological excavation of, alteration to, or change of use of cultural property in occupied territory shall, unless circumstances do not permit, be carried out in close cooperation with the competent national authorities of the occupied territory.

**Convention for the Protection of Cultural Property in the Event of Armed Conflict, 249 UNTS 240, entered into force Aug. 7, 1956. Article 1.** For the purposes of the present Convention, the term “cultural property” shall cover, irrespective of origin or ownership: (a) movable or immovable property of great importance to the cultural heritage of every people, such as monuments of architecture, art or history, whether religious or secular; archaeological sites; groups of buildings which, as a whole, are of historical or artistic interest; works of art; manuscripts, books, and other objects of artistic, historical or archaeological interest; as well as scientific collections and important collections of books or archives or of reproductions of the property defined above; (b) buildings whose main and effective purpose is to preserve or exhibit the movable cultural property defined in subparagraph (a) such as museums, large libraries, and depositories of archives, and refuges intended to shelter, in the event of armed conflict, the movable cultural property defined in subparagraph (a); (c) centers containing a large amount of cultural property as defined in subparagraphs (a) and (b), to be known as “centers containing monuments.”

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**Article 2.** For the purposes of the present Convention, the protection of cultural property shall comprise the safeguarding of and respect for such property.

**Article 3.** The High Contracting Parties undertake to prepare in time of peace for the safeguarding of cultural property situated within their own territory against the foreseeable effects of an armed conflict, by taking such measures as they consider appropriate. 4. They shall refrain from any act directed by way of reprisals against cultural property.

**Article 5. 1.** Any High Contracting Party in occupation of the whole or part of the territory of another High Contracting Party shall as far as possible support the competent national authorities of the occupied country in safeguarding and preserving its cultural property. 2. Should it prove necessary to take measures to preserve cultural property situated in occupied territory and damaged by military operations, and should the competent national authorities be unable to take such measures, the Occupying Power shall, as far as possible, and in close co-operation with such authorities, take the most necessary measures of preservation.

**Treaty on the Protection of Artistic and Scientific Institutions and Historic Monuments (Roerich Pact), Washington, 15 April 1935. Article 1.** The historic monuments, museums, scientific, artistic, educational, and cultural institutions shall be considered as neutral and as such respected and protected by belligerents. The same respect and protection shall be due to the personnel of the institutions mentioned above. The same respect and protection shall be accorded to the historic monuments, museums, scientific, artistic, educational, and cultural institutions in time of peace as well as in war.

**Resolution 20—Protection of Cultural Property, the Diplomatic Conference on the Reaffirmation and Development of International Humanitarian Law Applicable in Armed Conflicts, Geneva, 1974-77.** Welcoming the adoption of Article 53 relating to the protection of cultural objects and places of worship as defined in the said Article, contained in the Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), Acknowledging that the Convention for the Protection of Cultural Property in the Event of Armed Conflict and its Additional Protocol, signed at The Hague on 14 May 1954, constitutes an instrument of paramount importance for the international protection of the cultural heritage of all mankind against the effects of armed conflict and that the application of this Convention will in no way be prejudiced by the adoption of the Article referred to in the preceding paragraph, urges States which have not yet done so to become Parties to the aforementioned Convention.

**Project of an International Declaration Concerning the Laws and Customs of War, Aug. 27, 1874, 4 Martens Nouveau Recueil (ser. 2) 219, 65 Brit. Foreign and St. Papers 1005 (1873-74). Article 8.** The property of municipalities, that of institutions dedicated to religion, charity, and education, the arts and sciences, even when State property, shall be treated as private property. All seizure or destruction of, or willful damage to, institutions of this character, historic monuments, works of art and science should be made the subject of legal proceedings by the competent authorities.

## The Systematic Expropriation or Destruction of Property Belonging to a *Particular Group*

11. The systematic expropriation and/or destruction of property belonging to members of a *particular group* with no effective administrative or legal recourse or compensation.

For norms pertaining to the right to own property, see:

**UDHR, Article 17** 1. Everyone has the right to own property alone as well as in association with others. 2. No one shall be arbitrarily deprived of his property.

Article 25.1 states that: Everyone has the right to a standard of living adequate for the health and well-being of himself and his family, including food, clothing, housing, and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age, or other lack of livelihood in circumstances beyond his control.

**African (Banjul) Charter on Human and Peoples' Rights, Article 14.** The right to property shall be guaranteed. It may only be encroached upon in the interest of public need or in the general interest of the community and in accordance with the provisions of appropriate laws.

**Protocol to the European Convention for the Protection of Human Rights and Fundamental Freedoms, as amended by Protocol No. 11 Paris, 20.III.1952. Article 1.** Protection of property: Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

**American Convention on Human Rights, "Pact of San Jose, Costa Rica," Article 21.** Right to Property: 1. Everyone has the right to the use and enjoyment of his property. The law may subordinate such use and enjoyment to the interest of society. 2. No one shall be deprived of his property except upon payment of just compensation, for reasons of public utility or social interest, and in the cases and according to the forms established by law.

**American Declaration of the Rights and Duties of Man, Article XI.** Every person has the right to the preservation of his health through sanitary and social measures relating to food, clothing, housing, and medical care, to the extent permitted by public and community resources.

**Article XXIII.** Every person has a right to own such private property as meets the essential needs of decent living and helps to maintain the dignity of the individual and of the home.

**Declaration on the Rights of Indigenous Peoples, Article 10.** Indigenous peoples shall not be forcibly removed from their lands or territories. No relocation shall take place without the free, prior, and informed consent of the indigenous peoples concerned and after agreement on just and fair compensation and, where possible, with the option of return.

**Article 28.1.** Indigenous peoples have the right to redress, by means that can include restitution or, when this is not possible, just, fair and equitable compensation, for the lands, territories, and resources which they have traditionally owned or otherwise occupied or used, and which have been confiscated, taken, occupied, used or damaged without their free, prior, and informed consent. 2. Unless otherwise freely agreed upon by the peoples concerned, compensation shall take the form of lands,

territories, and resources equal in quality, size, and legal status or of monetary compensation or other appropriate redress.

**Convention (No. 169) Concerning Indigenous and Tribal Peoples, Adopted on 27 June 1989 by the General Conference of the International Labour Organisation at its Seventy-sixth Session, Article 4.1.** Special measures shall be adopted as appropriate for safeguarding the persons, institutions, property, labor, cultures, and environment of the peoples concerned.

**Document of the Copenhagen Meeting of the Conference on the Human Dimension of the OSCE, Copenhagen, 29 June 1990, 9.6.** Everyone has the right peacefully to enjoy his property either on his own or in common with others. No one may be deprived of his property except in the public interest and subject to the conditions provided for by law and consistent with international commitments and obligations.

For norms pertaining to expropriation, see:

**International Convention on the Suppression and Punishment of the Crime of Apartheid, Article II.d.** Any measures including legislative measures, designed to divide the population along racial lines by the creation of separate reserves and ghettos for the members of a racial group or groups, the prohibition of mixed marriages among members of various racial groups, the expropriation of landed property belonging to a racial group or groups or to members thereof.

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## Documentary Evidence of a State Policy of Intent to Destroy a *Particular Group*

12. Documentary evidence of a state policy demonstrating intent to destroy in whole or in part a *particular group*, including although not limited to, the existence of documents outlining plans for persecution and destruction of rights of the particular group, lists of individuals to be killed, registration of identity and location of community members with the intention to destroy in whole or in part members of the targeted group.

For norms pertaining to documentary evidence of a state policy demonstrating intent to destroy a *particular group* in whole or in part, see:

**Genocide Convention, Article II.** In the present Convention, genocide means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such: (a) Killing members of the group; (b) Causing serious bodily or mental harm to members of the group; (c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part; (d) Imposing measures intended to prevent births within the group; (e) Forcibly transferring children of the group to another group.

**Article III.** The following acts shall be punishable: (a) Genocide; (b) Conspiracy to commit genocide; (c) Direct and public incitement to commit genocide; (d) Attempt to commit genocide; (e) Complicity in genocide.

**Rome Statute, Article 6.** Genocide: For the purpose of this statute, “genocide” means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such: (a) Killing members of the group; (b) Causing serious bodily or mental harm to members of the group; (c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part; (d) Imposing measures intended to prevent births within the group; (e) Forcibly transferring children of the group to another group.

# Life Integrity Violations

## Use of Members of a *Particular Group* in Forced Labor

1. The systematic subjection of members of a particular group to forced labor.

For norms referring specifically to forced labor, see:

**ICCPR, Article 8.3.** (a) No one shall be required to perform forced or compulsory labor; (b) Paragraph 3 (a) shall not be held to preclude, in countries where imprisonment with hard labor may be imposed as a punishment for a crime, the performance of hard labor in pursuance of a sentence to such punishment by a competent court; (c) For the purpose of this paragraph the term “forced or compulsory labor” shall not include: (i) Any work or service, not referred to in subparagraph (b), normally required of a person who is under detention in consequence of a lawful order of a court, or of a person during conditional release from such detention; (ii) Any service of a military character and, in countries where conscientious objection is recognized, any national service required by law of conscientious objectors; (iii) Any service exacted in cases of emergency or calamity threatening the life or well-being of the community; (iv) Any work or service which forms part of normal civil obligations.

**Forced Labor Convention, 1930 (No. 29) Adopted on 28 June 1930 by the General Conference of the International Labour Organisation at its Fourteenth Session, Article 1.** Each Member of the International Labour Organisation which ratifies this Convention undertakes to suppress the use of forced or compulsory labor in all its forms within the shortest possible period.

**Abolition of Forced Labor Convention, 1957 (No. 105) Adopted on 25 June 1957 by the General Conference of the International Labour Organisation at its Fortieth Session, Article 1.** Each Member of the International Labour Organisation which ratifies this Convention undertakes to suppress and not to make use of any form of forced or compulsory labor: (a) As a means of political coercion or education or as a punishment for holding or expressing political views or views ideologically opposed to the established political, social, or economic system; (b) As a method of mobilizing and using labor for purposes of economic development; (c) As a means of labor discipline; (d) As a punishment for having participated in strikes; (e) As a means of racial, social, national or religious discrimination.

**International Convention on the Suppression and Punishment of the Crime of Apartheid, Article 2.** (e) Exploitation of the labor of the members of a racial group or groups, in particular by submitting them to forced labor.

**American Convention on Human Rights, Article 6.** Freedom from Slavery. 1. No one shall be subject to slavery or to involuntary servitude, which are prohibited in all their forms, as are the slave trade and traffic in women. 2. No one shall be required to perform forced or compulsory labor. This provision shall not be interpreted to mean that, in those countries in which the penalty established for certain crimes is deprivation of liberty at forced labor, the carrying out of such a sentence imposed by a competent court is prohibited. Forced labor shall not adversely affect the dignity or the physical or intellectual capacity of the prisoner. 3. For the purposes of this article, the following do not constitute forced or compulsory labor: a. work or service normally required of a person imprisoned in execution of a sentence or formal decision passed by the competent judicial authority. Such work or service shall be carried out under the supervision and control of public authorities, and any persons

performing such work or service shall not be placed at the disposal of any private party, company, or juridical person; b. military service and, in countries in which conscientious objectors are recognized, national service that the law may provide for in lieu of military service; c. service exacted in time of danger or calamity that threatens the existence or the well-being of the community; or d. work or service that forms part of normal civic obligations.

**League of Arab States, Arab Charter on Human Rights, Article 10.1.** All forms of slavery and trafficking in human beings are prohibited and are punishable by law. No one shall be held in slavery and servitude under any circumstances. 10.2. Forced labor, trafficking in human beings for the purposes of prostitution or sexual exploitation, the exploitation of the prostitution of others or any other form of exploitation or the exploitation of children in armed conflict are prohibited. (See *supra* footnote 3.)

**Slavery Convention, Signed at Geneva on 25 September 1926, Article 5.** The High Contracting Parties recognize that recourse to compulsory or forced labor may have grave consequences and undertake, each in respect of the territories placed under its sovereignty, jurisdiction, protection, suzerainty or tutelage, to take all necessary measures to prevent compulsory or forced labor from developing into conditions analogous to slavery. It is agreed that: (1) Subject to the transitional provisions laid down in paragraph (2) below, compulsory or forced labor may only be exacted for public purposes. (2) In territories in which compulsory or forced labor for other than public purposes still survives, the High Contracting Parties shall endeavor progressively and as soon as possible to put an end to the practice. So long as such forced or compulsory labor exists, this labor shall invariably be of an exceptional character, shall always receive adequate remuneration, and shall not involve the removal of the laborers from their usual place of residence. (3) In all cases, the responsibility for any recourse to compulsory or forced labor shall rest with the competent central authorities of the territory concerned.

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## Forcible Transfer of Children from their Families to Those of a Different Identity

2. The systematic forcible transfer of children of a *particular group* from their families to individuals with a different identity for the purpose of changing their identity and assimilating them into another group.

For norms specifically referring to the transfer of children, see:

**Convention on the Prevention and Punishment of the Crime of Genocide, Article 2.** In the present convention, genocide means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such: (e) Forcibly transferring children of the group to another group.

**Statute of the International Criminal Tribunal for Rwanda, Article 2.1** The International Tribunal for Rwanda shall have the power to prosecute persons committing genocide as defined in paragraph 2 of this article or of committing any of the other acts enumerated in paragraph 3 of this article. 2. Genocide means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such: e) Forcibly transferring children of the group to another group.

**Statute of the International Criminal Tribunal for the Former Yugoslavia, Article 4.** The International Tribunal shall have the power to prosecute persons committing genocide as defined in paragraph 2 of this article or of committing any of the other acts enumerated in paragraph 3 of this article. 2. Genocide means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such: (e) forcibly transferring children of the group to another group.

**ICCPR, Article 17.1.** No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honor and reputation. 2. Everyone has the right to the protection of the law against such interference or attacks.

**Article 23.1.** The family is the natural and fundamental group unit of society and is entitled to protection by society and the State. 2. The right of men and women of marriageable age to marry and to found a family shall be recognized.

**CRC, Article 5.** States parties shall respect the responsibilities, rights, and duties of parents or, where applicable, the members of the extended family or community as provided for by local custom, legal guardians or other persons legally responsible for the child, to provide, in a manner consistent with the evolving capacities of the child, appropriate direction and guidance in the exercise by the child of the rights recognized in the present Convention.

**Article 8.1.** States parties undertake to respect the right of the child to preserve his or her identity, including nationality, name, and family relations as recognized by law without unlawful interference.

**Article 9.1.** States parties shall ensure that a child shall not be separated from his or her parents against their will, except when competent authorities subject to judicial review determine, in accordance with applicable law and procedures, that such separation is necessary for the best interests of the child. Such determination may be necessary in a particular case such as one involving abuse or neglect of the child by the parents, or one where the parents are living separately and a decision must be made as to the child's place of residence.



**United Nations Declaration on the Rights of Indigenous Peoples, Article 7.1.** Indigenous individuals have the rights to life, physical and mental integrity, liberty and security of person. 7.2. Indigenous peoples have the collective right to live in freedom, peace, and security as distinct peoples and shall not be subjected to any act of genocide or any other act of violence, including forcibly removing children of the group to another group.

**Mónaco v. Argentina (400/1990), ICCPR, A/50/40 vol. II (3 April 1995) 10 (CCPR/C/53/D/400/1990) at paras. 2.1-2.4, 10.3-10.5, 11.1 and 11.2.**

2.1. On 5 February 1977, Ximena Vicario's mother was taken with the then nine-month-old child to the headquarters of the federal police (Departamento Central de la Policía Federal) in Buenos Aires. Her father was apprehended in the city of Rosario on the following day. The parents subsequently disappeared, and although the National Commission on Disappeared Persons investigated their case after December 1983, their whereabouts were never established. Investigations initiated by the author herself finally led, in 1984, to locating Ximena Vicario, who was then residing in the home of a nurse, S.S., who claimed to have been taking care of the child after her birth. Genetic blood tests (*histocompatibilidad*) revealed that the child was, with a probability of 99.82 percent, the author's granddaughter.

10.4. As to Ximena Vicario's and her grandmother's right to privacy, it is evident that the abduction of Ximena Vicario, the falsification of her birth certificate, and her adoption by S.S. entailed numerous acts of arbitrary and unlawful interference with their privacy and family life, in violation of Article 17 of the Covenant. The same acts also constituted violations of Article 23, paragraph 1, and Article 24, paragraphs 1 and 2, of the Covenant.

10.5. While the Committee appreciates the seriousness with which the Argentine courts endeavored to redress the wrongs done to Ms. Vicario and her grandmother, it observes that the duration of the various judicial proceedings extended for over ten years, and that some of the proceedings have not yet been completed. The Committee notes that in the meantime Ms. Vicario, who was seven years of age when found, reached the age of maturity (18 years) in 1994, and that it was not until 1993 that her legal identity as Ximena Vicario was officially recognized. In the specific circumstances of this case, the Committee finds that the protection of children stipulated in Article 24 of the Covenant required the State party to take affirmative action to grant Ms. Vicario prompt and effective relief from her predicament. In this context, the Committee recalls its general comment on Article 24.5, in which it stressed that every child has a right to special measures of protection because of his/her status as a minor; those special measures are additional to the measures that States are required to take under Article 2 to ensure that everyone enjoys the rights provided for in the Covenant. Bearing in mind the suffering already endured by Ms. Vicario, who lost both of her parents under tragic circumstances imputable to the State party, the Committee finds that the special measures required under Article 24, paragraph 1, of the Covenant were not expeditiously applied by Argentina, and that the failure to recognize the standing of Mrs. Mónaco in the guardianship and visitation proceedings and the delay in legally establishing Ms. Vicario's real name and issuing identity papers also entailed a violation of Article 24, paragraph 2, of the Covenant, which is designed to promote recognition of the child's legal personality.

11.1. The Human Rights Committee ... is of the view that the facts which have been placed before it reveal a violation by Argentina of Article 24, paragraphs 1 and 2, of the Covenant.

11.2. In accordance with Article 2, paragraph 3 (a), of the Covenant, the State party is under an obligation to provide the author and her granddaughter with an effective remedy, including compensation from the State for the undue delay of the proceedings and resulting suffering to which they were subjected. Furthermore, the State party is under an obligation to ensure that similar violations do not occur in the future.

## Forced Marriage, Enforced Sterilization, Forced Pregnancy, and Prevention of Births

3. The systematic forced marriage of women, enforced sterilization, forced pregnancy, the prevention of births of children from a particular group, and other acts aimed at destroying a particular group in whole or in part, including although not limited to, bans on intermarriage or forced marriage to individuals from the state-privileged identity/ies.

For norms prohibiting enforced marriage, see:

**UDHR, Article 16(2).** Marriage shall be entered into only with the free and full consent of the intending spouses.

**ICCPR, Article 23.3.** No marriage shall be entered into without the free and full consent of the intending spouses.

**ICERD, Article 5.** In compliance with the fundamental obligations laid down in Article 2 of this Convention, States parties undertake to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, color, or national or ethnic origin, to equality before the law, notably in the enjoyment of the following rights: (d) Other civil rights, in particular: (iv) The right to marriage and choice of spouse.

**Article 6.** States parties shall assure to everyone within their jurisdiction effective protection and remedies, through the competent national tribunals and other State institutions, against any acts of racial discrimination which violate his human rights and fundamental freedoms contrary to this Convention, as well as the right to seek from such tribunals just and adequate reparation or satisfaction for any damage suffered as a result of such discrimination.

**CEDAW, Article 16.1.** States parties shall take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations and in particular shall ensure, on a basis of equality of men and women: (a) The same right to enter into marriage; (b) The same right freely to choose a spouse and to enter into marriage only with their free and full consent

**ICESCR, Article 10.** Marriage must be entered into with the free consent of the intending spouses.

**Convention on Consent to Marriage, Minimum Age for Marriage, and Registration of Marriages, 521 UNTS 231, entered into force Dec. 9, 1964. Article 1.** No marriage shall be legally entered into without the full and free consent of both parties, such consent to be expressed by them in person after due publicity and in the presence of the authority competent to solemnize the marriage and of witnesses, as prescribed by law.

**American Convention on Human Rights, Article 17. 2.** The right of men and women of marriageable age to marry and to raise a family shall be recognized, if they meet the conditions required by domestic laws, insofar as such conditions do not affect the principle of nondiscrimination established in this Convention. 3. No marriage shall be entered into without the free and full consent of the intending spouses.

**Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social, and Cultural Rights, “Protocol of San Salvador,” Article 15.** Right to the Formation and the Protection of Families: 2. Everyone has the right to form a family, which shall be exercised in accordance with the provisions of the pertinent domestic legislation.

**Beijing Declaration and Platform for Action, Fourth World Conference on Women, UN Doc: A/CONF.177/20/Rev.1 (1995).** Para 130. By Governments of countries of origin, transit, and destination, regional and international organizations, as appropriate: ... (b) Take appropriate measures to address the root factors, including external factors, that encourage trafficking in women and girls for prostitution and other forms of commercialized sex, forced marriages, and forced labor in order to eliminate trafficking in women, including by strengthening existing legislation with a view to providing better protection of the rights of women and girls and to punishing the perpetrators, through both criminal and civil measures.

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## Deliberate Destruction of Food and Medical Supplies or Blocking Access to Such Supplies

4. The deliberate destruction of subsistence food and medical supplies, including humanitarian aid, and/or the blocking of access to such supplies, with the intent to destroy a particular group in whole or in part.

For norms pertaining to food, medical supplies, and aid, see:

**International Convention on the Prevention and Punishment of Genocide, Art 2.** In the present Convention, genocide means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such: (a) Killing members of the group; (b) Causing serious bodily or mental harm to members of the group; (c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part; (d) Imposing measures intended to prevent births within the group; (e) Forcibly transferring children of the group to another group.

**UDHR, Article 25.1.** Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing, and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.

**Geneva Convention (IV) Relative to the Protection of Civilian Persons in Time of War, Article 23.** Each High Contracting Party ... shall likewise permit the free passage of all consignments of essential foodstuffs, clothing, and tonics intended for children under fifteen, expectant mothers, and maternity cases.

**Article 36.** Departures permitted under the foregoing Article shall be carried out in satisfactory conditions as regards safety, hygiene, sanitation, and food.

**Article 49.** The Occupying Power undertaking such transfers or evacuations shall ensure, to the greatest practicable extent, that proper accommodation is provided to receive the protected persons, that the removals are effected in satisfactory conditions of hygiene, health, safety, and nutrition.

**Article 55.** To the fullest extent of the means available to it, the Occupying Power has the duty of ensuring the food and medical supplies of the population; it should, in particular, bring in the necessary foodstuffs, medical stores, and other articles if the resources of the occupied territory are inadequate. The Occupying Power may not requisition foodstuffs, articles or medical supplies available in the occupied territory, except for use by the occupation forces and administration personnel, and then only if the requirements of the civilian population have been taken into account.... The Protecting Power shall, at any time, be at liberty to verify the state of the food and medical supplies in occupied territories, except where temporary restrictions are made necessary by imperative military requirements.

**Article 89.** Daily food rations for internees shall be sufficient in quantity, quality, and variety to keep internees in a good state of health and prevent the development of nutritional deficiencies. Account shall also be taken of the customary diet of the internees. Internees shall also be given the means by which they can prepare for themselves any additional food in their possession. Sufficient drinking water shall be supplied to internees.... Internees who work shall receive additional rations in proportion to the kind of labor which they perform. Expectant and nursing mothers and children under fifteen years of age shall be given additional food, in proportion to their physiological needs.

**ICESCR, Article 11.1.** The States parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing, and housing, and to the continuous improvement of living conditions. The States parties will take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international co-operation based on free consent. 2. The States parties to the present Covenant, recognizing the fundamental right of everyone to be free from hunger, shall take, individually and through international co-operation, the measures, including specific programmes, which are needed:... To improve methods of production, conservation, and distribution of food by making full use of technical and scientific knowledge, by disseminating knowledge of the principles of nutrition, and by developing or reforming agrarian systems in such a way as to achieve the most efficient development and utilization of natural resources; (b) Taking into account the problems of both food-importing and food-exporting countries, to ensure an equitable distribution of world food supplies in relation to need.

**Article 2.1.** Each State party to the present Covenant undertakes to take steps, individually and through international assistance and co-operation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures. 2. The States parties to the present Covenant undertake to guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind as to race, color, sex, language, religion, political or other opinion, national or social origin, property, birth, or other status.

**CRC, Article 24.1.** States parties recognize the right of the child to the enjoyment of the highest attainable standard of health and to facilities for the treatment of illness and rehabilitation of health. States parties shall strive to ensure that no child is deprived of his or her right of access to such health care services. 2. States parties shall pursue full implementation of this right and, in particular, shall take appropriate measures:... (b) To ensure the provision of necessary medical assistance and health care to all children with emphasis on the development of primary health care; (c) To combat disease and malnutrition, including within the framework of primary health care, through, inter alia, the application of readily available technology and through the provision of adequate nutritious foods and clean drinking-water, taking into consideration the dangers and risks of environmental pollution.

**Human Rights Committee, General Comment No. 6: The Right to Life (Article 6), para 5.** Moreover, the Committee has noted that the right to life has been too often narrowly interpreted. The expression “inherent right to life” cannot properly be understood in a restrictive manner, and the protection of this right requires that States adopt positive measures. In this connection, the Committee considers that it would be desirable for States parties to take all possible measures to reduce infant mortality and to increase life expectancy, especially in adopting measures to eliminate malnutrition and epidemics.

**Vienna Declaration and Programme of Action, Article 31.** The World Conference on Human Rights calls upon States to refrain from any unilateral measure not in accordance with international law and the Charter of the United Nations that creates obstacles to trade relations among States and impedes the full realization of the human rights set forth in the Universal Declaration of Human Rights and international human rights instruments, in particular the rights of everyone to a standard of living adequate for their health and well-being, including food and medical care, housing, and the necessary social services. The World Conference on Human Rights affirms that food should not be used as a tool for political pressure.

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**Declaration on the Right to Development, Article 8.1.** States should undertake, at the national level, all necessary measures for the realization of the right to development and shall ensure, inter alia, equality of opportunity for all in their access to basic resources, education, health services, food, housing, employment, and the fair distribution of income.

For norms pertaining to the right to food, see:

**Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts (Protocol I), Article 54.** Protection of objects indispensable to the survival of the civilian population. 1. Starvation of civilians as a method of warfare is prohibited. 2. It is prohibited to attack, destroy, remove or render useless objects indispensable to the survival of the civilian population, such as foodstuffs, agricultural areas for the production of foodstuffs, crops, livestock, drinking water installations and supplies, and irrigation works, for the specific purpose of denying them for their sustenance value to the civilian population or to the adverse Party, whatever the motive, whether in order to starve out civilians, to cause them to move away, or for any other motive.

**Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II), Article 14.** Protection of objects indispensable to the survival of the civilian population: Starvation of civilians as a method of combat is prohibited. It is therefore prohibited to attack, destroy, remove or render useless for that purpose, objects indispensable to the survival of the civilian population such as foodstuffs, agricultural areas for the production of foodstuffs, crops, livestock, drinking water installations and supplies, and irrigation works.

**Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, Article 15.** Right to Food Security: States parties shall ... provide women with access to clean drinking water, sources of domestic fuel, land, and the means of producing nutritious food; and establish adequate systems of supply and storage to ensure food security.

**Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social, and Cultural Rights ("Protocol of San Salvador"), Article 3.** Obligation of Nondiscrimination: The States parties to this Protocol undertake to guarantee the exercise of the rights set forth herein without discrimination.

**Article 12.** Right to Food: 1. Everyone has the right to adequate nutrition which guarantees the possibility of enjoying the highest level of physical, emotional, and intellectual development. 2. In order to promote the exercise of this right and eradicate malnutrition, the States parties undertake to improve methods of production, supply, and distribution of food, and to this end, agree to promote greater international cooperation in support of the relevant national policies.

**Article 17.** Protection of the Elderly: ... States parties agree to ... a. Provide suitable facilities, as well as food and specialized medical care, for elderly individuals who lack them and are unable to provide them for themselves.

**Guiding Principles on Internal Displacement, Principle 18.** All internally displaced persons have the right to an adequate standard of living. At the minimum, regardless of the circumstances, and without discrimination, competent authorities shall provide internally displaced persons with and ensure safe access to: (a) Essential food and potable water.

**General Assembly Resolution 51/171, 1996.** Food and sustainable agricultural development. The General Assembly welcomed the outcome of the World Food Summit, held in Rome from 13 to 17 November 1996, urged all members of the international community to cooperate actively in the implementation of the Plan of Action. ... Reaffirming the right of everyone to have access to safe and nutritious food consistent with the right to adequate food and the fundamental right of everyone to be free from hunger.

**World Declaration on Nutrition, 1992, Article 1.** We recognize that access to nutritionally adequate and safe food is a right of each individual. We recognize that globally there is enough food for all and that inequitable access is the main problem. Bearing in mind the right to an adequate standard of living, including food, contained in the Universal Declaration of Human Rights, we pledge to act in solidarity to ensure that freedom from hunger becomes a reality.

For norms pertaining to the right to health care, see:

**CEDAW, 12.2.** Notwithstanding the provisions of paragraph I of this article, States parties shall ensure to women appropriate services in connection with pregnancy, confinement, and the postnatal period, granting free services where necessary, as well as adequate nutrition during pregnancy and lactation.

**African (Banjul) Charter on Human and Peoples' Rights, Article 16.1.** Every individual shall have the right to enjoy the best attainable state of physical and mental health.

**Article 22.1.** All peoples shall have the right to their economic, social, and cultural development with due regard to their freedom and identity and in the equal enjoyment of the common heritage of mankind. 2. States shall have the duty, individually or collectively, to ensure the exercise of the right to development.

**African Charter on the Rights and Welfare of the Child, Article 14.** Health and Health Services states that "Every child shall have the right to enjoy the best attainable state of physical, mental, and spiritual health." And "States parties to the present Charter shall undertake to pursue the full implementation of this right and in particular shall take measures ... (c) to ensure the provision of adequate nutrition and safe drinking water; (d) to combat disease and malnutrition within the framework of primary health care through the application of appropriate technology."

**Declaration on the Rights of Indigenous Peoples, Article 24.1.** Indigenous peoples have the right to their traditional medicines and to maintain their health practices, including the conservation of their vital medicinal plants, animals, and minerals. Indigenous individuals also have the right to access, without any discrimination, to all social and health services. 2. Indigenous individuals have an equal right to the enjoyment of the highest attainable standard of physical and mental health. States shall take the necessary steps with a view to achieving progressively the full realization of this right.

## Arbitrary Detention

5. The systematic arbitrary detention of members of a particular group, including their community leaders.

For norms pertaining to arbitrary detention, see:

**ICCPR, Article 9.1.** Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedures as are established by law. 2. Anyone who is arrested shall be informed, at the time of arrest, of the reasons for his arrest and shall be promptly informed of any charges against him. 3. Anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release. It shall not be the general rule that persons awaiting trial shall be detained in custody, but release may be subject to guarantees to appear for trial, at any other stage of the judicial proceedings, and, should occasion arise, for execution of the judgment. 4. Anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that that court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful. 5. Anyone who has been the victim of unlawful arrest or detention shall have an enforceable right to compensation.

**United Nations Declaration on the Rights of Indigenous Peoples, Adopted by General Assembly Resolution A/61/L.67 of 13 September 2007, Article 7.1.** Indigenous individuals have the rights to life, physical and mental integrity, liberty, and security of person.

**International Convention on the Suppression and Punishment of the Crime of Apartheid, Article II.** (a) Denial to a member or members of a racial group or groups of the right to life and liberty of person.

**American Declaration of the Rights and Duties of Man, Article I.** Every human being has the right to life, liberty, and the security of his person.

**League of Arab States, Arab Charter on Human Rights, Article 14.1.** Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest, search or detention without a legal warrant. 14.2. No one shall be deprived of his liberty except on such grounds and in such circumstances as are determined by law and in accordance with such procedure as is established thereby. (See *supra* footnote 3.)

**Vienna Declaration, World Conference on Human Rights, 30.** The World Conference on Human Rights also expresses its dismay and condemnation that gross and systematic violations and situations that constitute serious obstacles to the full enjoyment of all human rights continue to occur in different parts of the world. Such violations and obstacles include, as well as torture and cruel, inhuman and degrading treatment or punishment, summary and arbitrary executions, disappearances, arbitrary detentions, all forms of racism, racial discrimination and apartheid, foreign occupation and alien domination, xenophobia, poverty, hunger and other denials of economic, social, and cultural rights, religious intolerance, terrorism, discrimination against women, and lack of the rule of law.



## Systematic Torture

6. Systematic torture of members of a particular group on the basis of their membership in such a group.

For norms pertaining to torture, see:

**UDHR, Article 5.** No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.

**ICCPR, Article 7.** No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation.

**Article 4.1.** In time of public emergency which threatens the life of the nation and the existence of which is officially proclaimed, the States parties to the present Covenant may take measures derogating from their obligations under the present Covenant to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with their other obligations under international law and do not involve discrimination solely on the ground of race, color, sex, language, religion or social origin. 2. No derogation from Articles 6, 7, 8 (paragraphs 1 and 2), 11, 15, 16, and 18 may be made under this provision.

**Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), Article 1.** For the purposes of this Convention, the term “torture” means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in, or incidental to lawful sanctions.

**Article 2.1.** Each State party shall take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction. 2. No exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency, may be invoked as a justification of torture. 3. An order from a superior officer or a public authority may not be invoked as a justification of torture.

**Article 3.1.** No State party shall expel, return (“*refouler*”) or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture.

**Article 4.1.** Each State party shall ensure that all acts of torture are offenses under its criminal law. The same shall apply to an attempt to commit torture and to an act by any person which constitutes complicity or participation in torture. 2. Each State party shall make these offenses punishable by appropriate penalties which take into account their grave nature.

**Article 5.1.** Each State party shall take such measures as may be necessary to establish its jurisdiction over the offenses referred to in Article 4 in the following cases: (a) When the offenses are committed in any territory under its jurisdiction or on board a ship or aircraft registered in that State; (b) When the alleged offender is a national of that State; (c) When the victim is a national of that State if that

State considers it appropriate. 2. Each State party shall likewise take such measures as may be necessary to establish its jurisdiction over such offenses in cases where the alleged offender is present in any territory under its jurisdiction and it does not extradite him pursuant to Article 8 to any of the States mentioned in paragraph I of this article. 3. This Convention does not exclude any criminal jurisdiction exercised in accordance with internal law.

**Article 8.1.** The offenses referred to in Article 4 shall be deemed to be included as extraditable offenses in any extradition treaty existing between States parties. States parties undertake to include such offenses as extraditable offenses in every extradition treaty to be concluded between them.

**Article 10.1.** Each State party shall ensure that education and information regarding the prohibition against torture are fully included in the training of law enforcement personnel, civil or military, medical personnel, public officials, and other persons who may be involved in the custody, interrogation or treatment of any individual subjected to any form of arrest, detention or imprisonment.

**Article 11.** Each State party shall keep under systematic review interrogation rules, instructions, methods, and practices as well as arrangements for the custody and treatment of persons subjected to any form of arrest, detention or imprisonment in any territory under its jurisdiction, with a view to preventing any cases of torture.

**Article 12.** Each State party shall ensure that its competent authorities proceed to a prompt and impartial investigation, wherever there is reasonable ground to believe that an act of torture has been committed in any territory under its jurisdiction.

**Article 13.** Each State party shall ensure that any individual who alleges he has been subjected to torture in any territory under its jurisdiction has the right to complain to, and to have his case promptly and impartially examined by, its competent authorities. Steps shall be taken to ensure that the complainant and witnesses are protected against all ill treatment or intimidation as a consequence of his complaint or any evidence given.

**Article 14.1.** Each State party shall ensure in its legal system that the victim of an act of torture obtains redress and has an enforceable right to fair and adequate compensation, including the means for as full rehabilitation as possible. In the event of the death of the victim as a result of an act of torture, his dependants shall be entitled to compensation.

**Article 15.** Each State party shall ensure that any statement which is established to have been made as a result of torture shall not be invoked as evidence in any proceedings, except against a person accused of torture as evidence that the statement was made.

**Article 16.1.** Each State party shall undertake to prevent in any territory under its jurisdiction other acts of cruel, inhuman or degrading treatment or punishment which do not amount to torture as defined in Article I, when such acts are committed by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. In particular, the obligations contained in Articles 10, 11, 12, and 13 shall apply with the substitution for references to torture of references to other forms of cruel, inhuman or degrading treatment or punishment.

**Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, Article 1.** The objective of the present Protocol is to establish a system of regular visits undertaken by independent international and national bodies to places where people are deprived of their liberty, in order to prevent torture and other cruel, inhuman or degrading treatment or punishment.

**Rome Statute of the International Criminal Court, Article 7, Crimes against Humanity:** (f) Torture ... For the purpose of paragraph 1: ... (e) "Torture" means the intentional infliction of severe pain or suffering, whether physical or mental, upon a person in the custody or under the control of

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the accused; except that torture shall not include pain or suffering arising only from, inherent in or incidental to, lawful sanctions.

**Article 8, War Crimes: 2.** For the purpose of this Statute, “war crimes” means: (a) Grave breaches of the Geneva Conventions of 12 August 1949, namely, any of the following acts against persons or property protected under the provisions of the relevant Geneva Convention: (i) Willful killing; (ii) Torture or inhuman treatment, including biological experiments; (c) In the case of an armed conflict not of an international character, serious violations of Article 3 common to the four Geneva Conventions of 12 August 1949, namely, any of the following acts committed against persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed *hors de combat* by sickness, wounds, detention or any other cause: (i) Violence to life and person, in particular murder of all kinds, mutilation, cruel treatment, and torture.

**CRC, Article 37:** No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment.

**Declaration on the Elimination of Violence against Women, Article 3.** Women are entitled to the equal enjoyment and protection of all human rights and fundamental freedoms in the political, economic, social, cultural, civil, or any other field. These rights include, inter alia: ... (h) The right not to be subjected to torture, or other cruel, inhuman or degrading treatment or punishment.

**African (Banjul) Charter on Human and Peoples’ Rights, Article 5.** Every individual shall have the right to the respect of the dignity inherent in a human being and to the recognition of his legal status. All forms of exploitation and degradation of man, particularly slavery, slave trade, torture, cruel, inhuman or degrading punishment and treatment, shall be prohibited.

**Convention for the Protection of Human Rights and Fundamental Freedoms, Article 3.** No one shall be subjected to torture or to inhuman or degrading treatment or punishment.

**European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, Article 1.** There shall be established a European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (hereinafter referred to as “the Committee”). The Committee shall, by means of visits, examine the treatment of persons deprived of their liberty with a view to strengthening, if necessary, the protection of such persons from torture and from inhuman or degrading treatment or punishment.

**League of Arab States, Arab Charter on Human Rights, Article 8.1.** No one shall be subjected to physical or psychological torture or to cruel, degrading, humiliating or inhuman treatment. 8.2 Each State party shall protect every individual subject to its jurisdiction from such practices and shall take effective measures to prevent them. The commission of, or participation in, such acts shall be regarded as crimes that are punishable by law and not subject to any statute of limitations. Each State party shall guarantee in its legal system redress for any victim of torture and the right to rehabilitation and compensation. (See *supra* footnote 3.)

**Inter-American Convention to Prevent and Punish Torture: Inter-American Convention to Prevent and Punish Torture, Article 1.** The States parties undertake to prevent and punish torture in accordance with the terms of this Convention.

**Article 2.** For the purposes of this Convention, torture shall be understood to be any act intentionally performed whereby physical or mental pain or suffering is inflicted on a person for purposes of criminal investigation, as a means of intimidation, as personal punishment, as a preventive measure, as a penalty, or for any other purpose. Torture shall also be understood to be the use of methods upon a person intended to obliterate the personality of the victim or to diminish his physical or mental capacities, even if they do not cause physical pain or mental anguish. The concept of torture shall not include physical or mental pain or suffering that is inherent in or solely the consequence of lawful measures, provided that they do not include the performance of the acts or use of the methods referred to in this article.

**Article 3.** The following shall be held guilty of the crime of torture: a. A public servant or employee who acting in that capacity orders, instigates or induces the use of torture, or who directly commits it or who, being able to prevent it, fails to do so. b. A person who at the instigation of a public servant or employee mentioned in subparagraph (a) orders, instigates or induces the use of torture, directly commits it or is an accomplice thereto.

**Article 4.** The fact of having acted under orders of a superior shall not provide exemption from the corresponding criminal liability.

**Article 5.** The existence of circumstances such as a state of war, threat of war, state of siege or of emergency, domestic disturbance or strife, suspension of constitutional guarantees, domestic political instability, or other public emergencies or disasters shall not be invoked or admitted as justification for the crime of torture.

**Article 6.** In accordance with the terms of Article 1, the States parties shall take effective measures to prevent and punish torture within their jurisdiction. The States parties shall ensure that all acts of torture and attempts to commit torture are offenses under their criminal law and shall make such acts punishable by severe penalties that take into account their serious nature. The States parties likewise shall take effective measures to prevent and punish other cruel, inhuman, or degrading treatment or punishment within their jurisdiction.

**Article 7.** The States parties shall take measures so that, in the training of police officers and other public officials responsible for the custody of persons temporarily or definitively deprived of their freedom, special emphasis shall be put on the prohibition of the use of torture in interrogation, detention, or arrest. The States parties likewise shall take similar measures to prevent other cruel, inhuman, or degrading treatment or punishment.

**Article 8.** The States parties shall guarantee that any person making an accusation of having been subjected to torture within their jurisdiction shall have the right to an impartial examination of his case. Likewise, if there is an accusation or well-grounded reason to believe that an act of torture has been committed within their jurisdiction, the States parties shall guarantee that their respective authorities will proceed properly and immediately to conduct an investigation into the case and to initiate, whenever appropriate, the corresponding criminal process. After all the domestic legal procedures of the respective State and the corresponding appeals have been exhausted, the case may be submitted to the international fora whose competence has been recognized by that State.

**Article 9.** The States parties undertake to incorporate into their national laws regulations guaranteeing suitable compensation for victims of torture. None of the provisions of this article shall affect the right to receive compensation that the victim or other persons may have by virtue of existing national legislation.

**Article 10.** No statement that is verified as having been obtained through torture shall be admissible as evidence in a legal proceeding, except in a legal action taken against a person or persons accused of having elicited it through acts of torture, and only as evidence that the accused obtained such statement by such means.

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**Article 11.** The States parties shall take the necessary steps to extradite anyone accused of having committed the crime of torture or sentenced for commission of that crime, in accordance with their respective national laws on extradition and their international commitments on this matter.

**Declaration on the Protection of All Persons from Enforced Disappearances, Article 1.1.** Any act of enforced disappearance is an offense to human dignity. It is condemned as a denial of the purposes of the Charter of the United Nations and as a grave and flagrant violation of the human rights and fundamental freedoms proclaimed in the Universal Declaration of Human Rights and reaffirmed and developed in international instruments in this field.

2. Any act of enforced disappearance places the persons subjected thereto outside the protection of the law and inflicts severe suffering on them and their families. It constitutes a violation of the rules of international law guaranteeing, inter alia, the right to recognition as a person before the law, the right to liberty and security of the person, and the right not to be subjected to torture and other cruel, inhuman or degrading treatment or punishment. It also violates or constitutes a grave threat to the right to life.

**Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment: Adopted by General Assembly Resolution 3452 (XXX) of 9 December 1975. Article 3.** No State may permit or tolerate torture or other cruel, inhuman or degrading treatment or punishment. Exceptional circumstances such as a state of war or a threat of war, internal political instability or any other public emergency may not be invoked as a justification of torture or other cruel, inhuman or degrading treatment or punishment.

**Article 4.** Each State shall, in accordance with the provisions of this Declaration, take effective measures to prevent torture and other cruel, inhuman or degrading treatment or punishment from being practiced within its jurisdiction.

**Article 7.** Each State shall ensure that all acts of torture as defined in Article 1 are offenses under its criminal law. The same shall apply in regard to acts which constitute participation in, complicity in, incitement to or an attempt to commit torture.

**Geneva Convention Relative to the Protection of Civilian Persons in Time of War (Part I, General Provisions), Article 3.** In the case of armed conflict not of an international character occurring in the territory of one of the High Contracting Parties, each Party to the conflict shall be bound to apply, as a minimum, the following provisions: (1) Persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed *hors de combat* by sickness, wounds, detention, or any other cause, shall in all circumstances be treated humanely, without any adverse distinction founded on race, color, religion or faith, sex, birth or wealth, or any other similar criteria. To this end, the following acts are and shall remain prohibited at any time and in any place whatsoever with respect to the above-mentioned persons: (a) violence to life and person, in particular, murder of all kinds, mutilation, cruel treatment, and torture.

**Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts (Protocol I), Article 75.** Fundamental guarantees: 2. The following acts are and shall remain prohibited at any time and in any place whatsoever, whether committed by civilian or by military agents: (a) violence to the life, health, or physical or mental well-being of persons, in particular: (i) murder; (ii) torture of all kinds, whether physical or mental.

**Guidelines and Measures for the Prohibition and Prevention of Torture, Cruel, Inhuman or Degrading Treatment or Punishment in Africa (The Robben Island Guidelines), African Com-**

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**mission on Human and Peoples' Rights, 32nd Session, 17-23 October, 2002. Banjul, Article 4.** States should ensure that acts which fall within the definition of torture, based on Article 1 of the UN Convention against Torture, are offenses within their national legal systems. 5. States should pay particular attention to the prohibition and prevention of gender-related forms of torture and ill-treatment and the torture and ill-treatment of young persons. 6. National courts should have jurisdictional competence to hear cases of allegations of torture in accordance with Article 5 (2) of the UN Convention against Torture. 7. Torture should be made an extraditable offense. 8. The trial or extradition of those suspected of torture should take place expeditiously in conformity with relevant international standards. 9. Circumstances such as state of war, threat of war, internal political instability, or any other public emergency shall not be invoked as a justification of torture, cruel, inhuman or degrading treatment or punishment. 10. Notions such as "necessity," "national emergency," and "public order" shall not be invoked as a justification of torture, cruel, inhuman or degrading treatment or punishment. 11. Superior orders shall never provide a justification or lawful excuse for acts of torture, cruel, inhuman or degrading treatment or punishment. 15. States should ensure no one is expelled or extradited to a country where he or she is at risk of being subjected to torture. 16. In order to combat impunity States should: a) Ensure that those responsible for acts of torture or ill-treatment are subject to legal process. b) Ensure that there is no immunity from prosecution for nationals suspected of torture, and that the scope of immunities for foreign nationals who are entitled to such immunities be as restrictive as is possible under international law. c) Ensure expeditious consideration of extradition requests to third states, in accordance with international standards. 17. Ensure the establishment of readily accessible and fully independent mechanisms to which all persons can bring their allegations of torture and ill-treatment. 18. Ensure that whenever persons who claimed to have been or who appear to have been tortured or ill-treated are brought before competent authorities an investigation shall be initiated.

**Vienna Declaration, World Conference on Human Rights, 55.** The World Conference on Human Rights emphasizes that one of the most atrocious violations against human dignity is the act of torture, the result of which destroys the dignity and impairs the capability of victims to continue their lives and their activities. 56. The World Conference on Human Rights reaffirms that under human rights law and international humanitarian law, freedom from torture is a right which must be protected under all circumstances, including in times of internal or international disturbance or armed conflicts. 57. The World Conference on Human Rights therefore urges all States to put an immediate end to the practice of torture and eradicate this evil forever through full implementation of the Universal Declaration of Human Rights, as well as the relevant conventions and, where necessary, strengthening of existing mechanisms. The World Conference on Human Rights calls on all States to cooperate fully with the Special Rapporteur on the question of torture in the fulfillment of his mandate. 60. States should abrogate legislation leading to impunity for those responsible for grave violations of human rights such as torture and prosecute such violations, thereby providing a firm basis for the rule of law.

**American Convention on Human Rights, Article 5.** Right to Humane Treatment: 1. Every person has the right to have his physical, mental, and moral integrity respected. 2. No one shall be subjected to torture or to cruel, inhuman, or degrading punishment or treatment. All persons deprived of their liberty shall be treated with respect for the inherent dignity of the human person.

**Human Rights Committee, General Comment 20, Article 7, Para 2.** The aim of the provisions of Article 7 of the International Covenant on Civil and Political Rights is to protect both the dignity

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and the physical and mental integrity of the individual. It is the duty of the State party to afford everyone protection through legislative and other measures as may be necessary against the acts prohibited by Article 7, whether inflicted by people acting in their official capacity, outside their official capacity, or in a private capacity. The prohibition in Article 7 is complemented by the positive requirements of Article 10, paragraph 1, of the Covenant, which stipulates that “All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.”

**Para 8.** The Committee notes that it is not sufficient for the implementation of Article 7 to prohibit such treatment or punishment or to make it a crime. States parties should inform the Committee of the legislative, administrative, judicial, and other measures they take to prevent and punish acts of torture and cruel, inhuman and degrading treatment in any territory under their jurisdiction.

**Para 10.** The Committee should be informed how States parties disseminate, to the population at large, relevant information concerning the ban on torture and the treatment prohibited by Article 7. Enforcement personnel, medical personnel, police officers, and any other persons involved in the custody or treatment of any individual subjected to any form of arrest, detention or imprisonment must receive appropriate instruction and training. States parties should inform the Committee of the instruction and training given and the way in which the prohibition of Article 7 forms an integral part of the operational rules and ethical standards to be followed by such persons.

**Para 14.** Article 7 should be read in conjunction with Article 2, paragraph 3, of the Covenant. In their reports, States parties should indicate how their legal system effectively guarantees the immediate termination of all the acts prohibited by Article 7 as well as appropriate redress. The right to lodge complaints against maltreatment prohibited by Article 7 must be recognized in the domestic law. Complaints must be investigated promptly and impartially by competent authorities so as to make the remedy effective. The reports of States parties should provide specific information on the remedies available to victims of maltreatment and the procedure that complainants must follow, and statistics on the number of complaints and how they have been dealt with.

**Para 15.** The Committee has noted that some States have granted amnesty in respect of acts of torture. Amnesties are generally incompatible with the duty of States to investigate such acts, to guarantee freedom from such acts within their jurisdiction, and to ensure that they do not occur in the future. States may not deprive individuals of the right to an effective remedy, including compensation and such full rehabilitation as may be possible.

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## Systematic Use of Rape and Sexual Violence

7. The systematic use of rape and sexual violence, including the incitement thereof, targeting members of a particular group.

For specific norms pertaining to rape and sexual violence, see:

**Rome Statute of the International Court, Article 7.** Crimes against humanity: For the purpose of this Statute, “crime against humanity” means any of the following acts when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack: (g) Rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity.

**Article 8.** War crimes (xxii) Committing rape, sexual slavery, enforced prostitution, forced pregnancy, as defined in Article 7, paragraph 2 (f), enforced sterilization, or any other form of sexual violence also constituting a grave breach of the Geneva Conventions.

**International Criminal Tribunal for Rwanda (ICTR) Statute, Article 3.** Crimes against Humanity. The International Tribunal for Rwanda shall have the power to prosecute persons responsible for the following crimes when committed as part of a widespread or systematic attack against any civilian population on national, political, ethnic, racial, or religious grounds: g) Rape.

**Article 4.** Violations of Article 3 common to the Geneva Conventions and Additional Protocol II. The International Tribunal for Rwanda shall have the power to prosecute persons committing or ordering to be committed serious violations of Article 3 common to the Geneva Conventions of 12 August 1949 for the Protection of War Victims, and of Additional Protocol II thereto of 8 June 1977. These violations shall include, but shall not be limited to: ... e) Outrages upon personal dignity, in particular humiliating and degrading treatment, rape, enforced prostitution, and any form of indecent assault.

**ICTY Statute, Article 5.** Crimes against humanity. The International Tribunal shall have the power to prosecute persons responsible for the following crimes when committed in armed conflict, whether international or internal in character, and directed against any civilian population: (g) rape.

**Declaration on the Elimination of Violence against Women. Article 2.** Violence against women shall be understood to encompass, but not be limited to, the following: (a) Physical, sexual, and psychological violence occurring in the family, including battering, sexual abuse of female children in the household, dowry-related violence, marital rape, female genital mutilation, and other traditional practices harmful to women, nonspousal violence, and violence related to exploitation; (b) Physical, sexual, and psychological violence occurring within the general community, including rape, sexual abuse, sexual harassment, and intimidation at work, in educational institutions and elsewhere, trafficking in women and forced prostitution; (c) Physical, sexual, and psychological violence perpetrated or condoned by the State, wherever it occurs.

**Inter-American Convention on the Prevention, Punishment, and Eradication of Violence Against Women, 33 I.L.M. 1534 (1994), entered into force March 5, 1995. Article 2.** Violence against women shall be understood to include physical, sexual, and psychological violence that occurs within the family or domestic unit or within any other interpersonal relationship, whether or not the perpetrator shares or has shared the same residence with the woman, including, among others, rape, battery,



and sexual abuse: a. that occurs in the community and is perpetrated by any person, including, among others, rape, sexual abuse, torture, trafficking in persons, forced prostitution, kidnapping, and sexual harassment in the workplace, as well as in educational institutions, health facilities, or any other place; and b. that is perpetrated or condoned by the state or its agents regardless of where it occurs.

**Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, Article 11.** Protection of Women in Armed Conflicts. 3. States parties undertake to protect asylum-seeking women, refugees, returnees, and internally displaced persons, against all forms of violence, rape, and other forms of sexual exploitation, and to ensure that such acts are considered war crimes, genocide, and/or crimes against humanity and that their perpetrators are brought to justice before a competent criminal jurisdiction.

**Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II), 8 June 1977. Art 4.2.** Without prejudice to the generality of the foregoing, the following acts against the persons referred to in paragraph I are and shall remain prohibited at any time and in any place whatsoever: (e) outrages upon personal dignity, in particular humiliating and degrading treatment, rape, enforced prostitution, and any form of indecent assault.

**Convention (IV) Relative to the Protection of Civilian Persons in Time of War. Geneva, 12 August 1949. Article 27.** Women shall be especially protected against any attack on their honor, in particular against rape, enforced prostitution, or any form of indecent assault.

**Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts (Protocol I), 8 June 1977. Art 76.** Protection of Women. 1. Women shall be the object of special respect and shall be protected in particular against rape, forced prostitution, and any other form of indecent assault.

**Prosecutor v. Akayesu, ICTR-96-4-T, Judgment, Sept. 2, 1998.** Established the definition for rape and sexual violence, “The Trial Chamber defines rape as a physical invasion of a sexual nature, committed on a person under circumstance[s] which are coercive. The Tribunal considers sexual violence, which includes rape, as any act of a sexual nature which is committed on a person under circumstance[s] which are coercive. Sexual violence is not limited to physical invasion of the human body and may include acts which do not involve penetration or even physical contact.” ... “The Chamber is further satisfied beyond reasonable doubt that the various acts were committed by Akayesu with the specific intent to destroy the Tutsi group, as such.” Para 731. Sexual violence includes: Para 10. “forcible sexual penetration ... and sexual abuse, such as forced nudity.”

**CEDAW General Recommendation 19** specifically defines violence against women and girls as a form of discrimination. This “includes acts that inflict physical, mental or sexual harm or suffering, threats of such acts, coercion, and other deprivations of liberty.”

**Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II), 1125 UNTS 609, entered into force Dec. 7, 1978. Article 4.** Fundamental guarantees: 1. All persons who do not take a direct part or who have ceased to take part in hostilities, whether or not their liberty has been restricted, are entitled to respect for their person, honor, and convictions and religious practices. They shall in

all circumstances be treated humanely, without any adverse distinction. It is prohibited to order that there shall be no survivors. 2. Without prejudice to the generality of the foregoing, the following acts against the persons referred to in paragraph 1 are and shall remain prohibited at any time and in any place whatsoever: (e) Outrages upon personal dignity, in particular humiliating and degrading treatment, rape, enforced prostitution, and any form of indecent assault.

**Control Council Law No. 10, Punishment of Persons Guilty of War Crimes, Crimes Against Peace and Against Humanity, December 20, 1945, 3 Official Gazette Control Council for Germany 50-55 (1946). Article 1. (c).** Crimes against Humanity. Atrocities and offenses, including but not limited to murder, extermination, enslavement, deportation, imprisonment, torture, rape, or other inhumane acts committed against any civilian population, or persecutions on political, racial or religious grounds whether or not in violation of the domestic laws of the country where perpetrated.

**International Criminal Court, Elements of Crimes, UN Doc. PCNICC/2000/1/Add.2 (2000). Article 7 (1) (g) Crime against Humanity of Rape, Article 8 (2) (b) (xxii) War crime of rape, Article 8 (2) (b) (xxii) War crime of sexual slavery 8 (2) (b) (xxii) War crime of sexual violence. 1.** The perpetrator committed an act of a sexual nature against one or more persons or caused such person or persons to engage in an act of a sexual nature by force, or by threat of force or coercion, such as that caused by fear of violence, duress, detention, psychological oppression or abuse of power, against such person or persons or another person, or by taking advantage of a coercive environment or such person's or persons' incapacity to give genuine consent. 2. The conduct was of a gravity comparable to that of a grave breach of the Geneva Conventions. 3. The perpetrator was aware of the factual circumstances that established the gravity of the conduct. 4. The conduct took place in the context of and was associated with an international armed conflict. 5. The perpetrator was aware of factual circumstances that established the existence of an armed conflict.

**Prosecutor v. Musema, ICTR-96-13-I Judgment, 27 January 2000, para. 907.** "Acts of rape and sexual violence were an integral part of the plan conceived to destroy the Tutsi group. Such acts targeted Tutsi women, in particular, and specifically contributed to their destruction and therefore that of the Tutsi group as such."

**Security Council Resolution 1820 (2008).** Adopted by the Security Council at its 5916th meeting, on 19 June 2008, S/RES/1820 (2008) 1. Stresses that sexual violence, when used or commissioned as a tactic of war in order to deliberately target civilians or as a part of a widespread or systematic attack against civilian populations, can significantly exacerbate situations of armed conflict and may impede the restoration of international peace and security, affirms in this regard that effective steps to prevent and respond to such acts of sexual violence can significantly contribute to the maintenance of international peace and security, and expresses its readiness, when considering situations on the agenda of the Council, to, where necessary, adopt appropriate steps to address widespread or systematic sexual violence;

2. Demands the immediate and complete cessation by all parties to armed conflict of all acts of sexual violence against civilians with immediate effect;

3. Demands that all parties to armed conflict immediately take appropriate measures to protect civilians, including women and girls, from all forms of sexual violence, which could include, inter alia, enforcing appropriate military disciplinary measures and upholding the principle of command responsibility, training troops on the categorical prohibition of all forms of sexual violence against civilians, debunking myths that fuel sexual violence, vetting armed and security forces to take into account

past actions of rape and other forms of sexual violence, and evacuation of women and children under imminent threat of sexual violence to safety; and requests the Secretary-General, where appropriate, to encourage dialogue to address this issue in the context of broader discussions of conflict resolution between appropriate UN officials and the parties to the conflict, taking into account, inter alia, the views expressed by women of affected local communities;

4. Notes that rape and other forms of sexual violence can constitute a war crime, a crime against humanity, or a constitutive act with respect to genocide, stresses the need for the exclusion of sexual violence crimes from amnesty provisions in the context of conflict resolution processes, and calls upon Member States to comply with their obligations for prosecuting persons responsible for such acts, to ensure that all victims of sexual violence, particularly women and girls, have equal protection under the law and equal access to justice, and stresses the importance of ending impunity for such acts as part of a comprehensive approach to seeking sustainable peace, justice, truth, and national reconciliation.

**The Rights of the Child, A/RES/52/107, para 12.** Reaffirms that rape in the conduct of armed conflict constitutes a war crime and that under certain circumstances it constitutes a crime against humanity and an act of genocide, as defined in the Convention on the Prevention and Punishment of the Crime of Genocide,<sup>15</sup> and calls upon all States to take all measures required for the protection of women and children from all acts of gender-based violence, including rape, sexual exploitation, and forced pregnancy, and to strengthen mechanisms to investigate and punish all those responsible and bring the perpetrators to justice.

**Guiding Principles on Internal Displacement, UN Doc. E/CN.4/1998/53/Add.2 (1998), Principle 11.1.** Every human being has the right to dignity and physical, mental, and moral integrity. 2. Internally displaced persons, whether or not their liberty has been restricted, shall be protected in particular against: (a) Rape, mutilation, torture, cruel, inhuman or degrading treatment or punishment, and other outrages upon personal dignity, such as acts of gender-specific violence, forced prostitution, and any form of indecent assault.

For norms pertaining to rape as torture, see:

**V.L. v. Switzerland, Committee Against Torture, CAT/C/37/D/262/2005, para 8.10.** “Sexual abuse by the police in this case constitutes torture, even though it was perpetrated outside formal detention facilities.” Reaffirmed in: *Meja v. Peru*, Inter-American Commission on Human Rights, Annual Report 1995, OEA/Ser.L/V/II.91.Doc.7.rev., case 10, 970; *Prosecutor v. Delaliic, et al.*/ case No. IT-96-21-T, 16 November 1998; *Prosecutor v. Furundzija*, case No. IT-95-17/1-T, 10 December 1998.

**Report of the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Manfred Nowak, Human Rights Council, A/HRC/7/3, 15 January 2008. Para 69.** “The Special Rapporteur stressed that rape and other serious acts of sexual violence by officials in contexts of detention or control not only amount to torture or ill treatment, but also constitute a particular egregious form of it, due to the stigmatization they carry.”

## Forcible Transfer

8. The systematic forcible transfer from their habitual place of residence of members of a *particular group* with little or no warning, compensation or administrative or legal recourse or review, including although not limited to the creation of ghettos or segregated areas, the practice of ethnic cleansing against a particular group and/or flight of that group to avoid being targeted, the transfer of populations to the border with the intention of forcing them to leave the country, the closure of international borders to prevent members of a particular group from leaving, the forced transfer of individuals from the state-favored group to regions inhabited by members of another *particular group(s)* with the intention of diluting the population concentration of the latter group(s).

### For norms pertaining to deportation/forcible transfers, see:

**Rome Statute of the International Criminal Court, entered into force July 1, 2002. Article 7.** Crimes against humanity: 1. For the purpose of this Statute, “crime against humanity” means any of the following acts when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack: (d) Deportation or forcible transfer of population; 2. For the purpose of paragraph 1:(d) “Deportation or forcible transfer of population” means forced displacement of the persons concerned by expulsion or other coercive acts from the area in which they are lawfully present, without grounds permitted under international law;  
**Article 8:** War crimes (vii) Unlawful deportation or transfer or unlawful confinement.

**United Nations Declaration on the Rights of Indigenous Peoples, Article 8.2.** States shall provide effective mechanisms for prevention of, and redress for (c) Any form of forced population transfer which has the aim or effect of violating or undermining any of their rights;  
**Article 10.** Indigenous peoples shall not be forcibly removed from their lands or territories. No relocation shall take place without the free, prior, and informed consent of the indigenous peoples concerned and after agreement on just and fair compensation and, where possible, with the option of return.

**Geneva Convention Relative to the Protection of Civilian Persons in Time of War, 75 UNTS 287, entered into force Oct. 21, 1950. Article 49.** Individual or mass forcible transfers, as well as deportations of protected persons from occupied territory to the territory of the Occupying Power or to that of any other country, occupied or not, are prohibited, regardless of their motive.

**Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II), 1125 UNTS 609, entered into force Dec. 7, 1978. Article 17.** Prohibition of forced movement of civilians: 1. The displacement of the civilian population shall not be ordered for reasons related to the conflict unless the security of the civilians involved or imperative military reasons so demand. Should such displacements have to be carried out, all possible measures shall be taken in order that the civilian population may be received under satisfactory conditions of shelter, hygiene, health, safety, and nutrition. 2. Civilians shall not be compelled to leave their own territory for reasons connected with the conflict.

**International Criminal Court, Elements of Crimes, UN Doc. PCNICC/2000/1/Add.2 (2000). Article 8 (2) (e) (viii).** War crime of displacing civilians: 1. The perpetrator ordered a displacement of a civilian population. 2. Such order was not justified by the security of the civilians involved or

by military necessity. 3. The perpetrator was in a position to effect such displacement by giving such order. 4. The conduct took place in the context of and was associated with an armed conflict not of an international character. 5. The perpetrator was aware of factual circumstances that established the existence of an armed conflict.

**ICCPR General Comment 29. (Seventy-second Session, 2001): Derogations from Provisions of the Covenant during a State of Emergency, A/56/40 vol. I (2001) 202 at para. 13(d).** In those provisions of the Covenant that are not listed in Article 4, paragraph 2, there are elements that in the Committee's opinion cannot be made subject to lawful derogation under Article 4. Below, some illustrative examples are presented. (d) As confirmed by the Statute of the International Criminal Court, deportation or forcible transfer of population without grounds permitted under international law, in the form of forced displacement by expulsion or other coercive means from the area in which the persons concerned are lawfully present, constitutes a crime against humanity. 8. The legitimate right to derogate from Article 12 of the Covenant during a state of emergency can never be accepted as justifying such measures.

**Report of the World Conference against Racism, Racial Discrimination, Xenophobia, and Related Intolerance, UN Doc. A/CONF.189/12 (2001), Para 52.** We note with concern that, among other factors, racism, racial discrimination, xenophobia, and related intolerance contribute to forced displacement and the movement of people from their countries of origin as refugees and asylum-seekers.

For norms pertaining to freedom of movement, see:

**UDHR, Article 13.1.** Everyone has the right to freedom of movement and residence within the borders of each State. 2. Everyone has the right to leave any country, including his own, and to return to his country.

**ICCPR, Article 12.** Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence. 2. Everyone shall be free to leave any country, including his own. 4. No one shall be arbitrarily deprived of the right to enter his own country.

**ICERD, Article 5.** In compliance with the fundamental obligations laid down in Article 2 of this Convention, States parties undertake to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, color, or national or ethnic origin, to equality before the law, notably in the enjoyment of the following rights: (d) Other civil rights, in particular (i) The right to freedom of movement and residence within the border of the State.

**American Convention on Human Rights, Article 22.** Freedom of Movement and Residence: 1. Every person lawfully in the territory of a State party has the right to move about in it, and to reside in it subject to the provisions of the law. 2. Every person has the right to leave any country freely, including his own. 3. The exercise of the foregoing rights may be restricted only pursuant to a law to the extent necessary in a democratic society to prevent crime or to protect national security, public safety, public order, public morals, public health, or the rights or freedoms of others. 5. No one can be expelled from the territory of the state of which he is a national or be deprived of the right to enter it.

**American Declaration of the Rights and Duties of Man, Article VIII.** Every person has the right to fix his residence within the territory of the state of which he is a national, to move about freely within such territory, and not to leave it except by his own will.

**Article IX.** Every person has the right to the inviolability of his home.

**League of Arab States, Arab Charter on Human Rights, Article 26.1.** Everyone lawfully within the territory of a State party shall, within that territory, have the right to freedom of movement and to freely choose his residence in any part of that territory in conformity with the laws in force. 2. No State party may expel a person who does not hold its nationality but is lawfully in its territory, other than in pursuance of a decision reached in accordance with law and after that person has been allowed to submit a petition to the competent authority, unless compelling reasons of national security preclude it. Collective expulsion is prohibited under all circumstances.

**Article 27.1.** No one may be arbitrarily or unlawfully prevented from leaving any country, including his own, nor prohibited from residing, or compelled to reside, in any part of that country. 2. No one may be exiled from his country or prohibited from returning thereto. (See *supra* footnote 3.)

**African (Banjul) Charter on Human and Peoples' Rights, Article 12.1.** Every individual shall have the right to freedom of movement and residence within the borders of a State, provided he abides by the law. 2. Every individual shall have the right to leave any country including his own, and to return to his country. This right may only be subject to restrictions, provided for by law for the protection of national security, law and order, public health or morality. 3. Every individual shall have the right, when persecuted, to seek and obtain asylum in other countries in accordance with laws of those countries and international conventions. 4. A nonnational legally admitted in a territory of a State party to the present Charter may only be expelled from it by virtue of a decision taken in accordance with the law. 5. The mass expulsion of nonnationals shall be prohibited. Mass expulsion shall be that which is aimed at national, racial, ethnic, or religious groups.

**Council of Europe Protocol No. 4 to the Convention for the Protection of Human Rights and Fundamental Freedoms, Securing Certain Rights and Freedoms Other than Those Already Included in the Convention and in the First Protocol Thereto as Amended by Protocol No. 11 Strasbourg, 16.IX.1963, Article 2.** Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence. 2. Everyone shall be free to leave any country, including his own. 3. No restrictions shall be placed on the exercise of these rights other than such as are in accordance with law and are necessary in a democratic society in the interests of national security or public safety, for the maintenance of public order, for the prevention of crime, for the protection of health or morals, or for the protection of the rights and freedoms of others. 4. The rights set forth in paragraph 1 may also be subject, in particular areas, to restrictions imposed in accordance with law and justified by the public interest in a democratic society. **Article 3.** Prohibition of expulsion of nationals: 1. No one shall be expelled, by means either of an individual or of a collective measure, from the territory of the State of which he is a national. 2. No one shall be deprived of the right to enter the territory of the state of which he is a national.

**ICCPR General Comment 27 (Sixty-seventh Session, 1999): Article 12: Freedom of Movement, A/55/40 Vol. I (2000) 128, Para 4.** Everyone lawfully within the territory of a State enjoys, within that territory, the right to move freely and to choose his or her place of residence. Para. 7. Subject to the provisions of Article 12, paragraph 3, the right to reside in a place of one's choice within the territory includes protection against all forms of forced internal displacement. It also precludes preventing the entry or stay of persons in a defined part of the territory. Lawful detention, however, affects more specifically the right to personal liberty and is covered by Article 9 of the Covenant. In some circumstances, Articles 12 and 9 may come into play together.

## Systematic Killing of Members of a *Particular Group*, Enforced Disappearances, and Targeting of Community Leaders and Intellectuals

9. The systematic killing of members of a *particular group*, as evidenced through extrajudicial, summary, and arbitrary executions, and/or as evidenced through the existence of mass graves resulting from such killings; enforced disappearances; and/or the targeting of community leaders and prominent intellectuals, professionals, educators, and religious leaders associated with a particular group.

For norms pertaining to the right to life, see:

**International Convention on the Prevention and Punishment of Genocide, Art. 2.** In the present Convention, genocide means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such: (a) Killing members of the group; (b) Causing serious bodily or mental harm to members of the group; (c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part; (d) Imposing measures intended to prevent births within the group; (e) Forcibly transferring children of the group to another group.

**UDHR, Article 3.** Everyone has the right to life, liberty, and security of person.

**ICERD, Article 5.** In compliance with the fundamental obligations laid down in Article 2 of this Convention, States parties undertake to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, color, or national or ethnic origin, to equality before the law, notably in the enjoyment of the following rights: (b) The right to security of person and protection by the State against violence or bodily harm, whether inflicted by government officials or by any individual group or institution.

**ICCPR, Article 6.1.** Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life. 2. In countries which have not abolished the death penalty, sentence of death may be imposed only for the most serious crimes in accordance with the law in force at the time of the commission of the crime and not contrary to the provisions of the present Covenant and to the Convention on the Prevention and Punishment of the Crime of Genocide. This penalty can only be carried out pursuant to a final judgment rendered by a competent court. 3. When deprivation of life constitutes the crime of genocide, it is understood that nothing in this article shall authorize any State party to the present Covenant to derogate in any way from any obligation assumed under the provisions of the Convention on the Prevention and Punishment of the Crime of Genocide. 4. Anyone sentenced to death shall have the right to seek pardon or commutation of the sentence. Amnesty, pardon or commutation of the sentence of death may be granted in all cases. 5. Sentence of death shall not be imposed for crimes committed by persons below eighteen years of age and shall not be carried out on pregnant women. 6. Nothing in this article shall be invoked to delay or to prevent the abolition of capital punishment by any State party to the present Covenant.

**Article 9.1.** Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law. 4. Anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful.

5. Anyone who has been the victim of unlawful arrest or detention shall have an enforceable right to compensation.

**Article 4.1.** In time of public emergency which threatens the life of the nation and the existence of which is officially proclaimed, the States parties to the present Covenant may take measures derogating from their obligations under the present Covenant to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with their other obligations under international law and do not involve discrimination solely on the ground of race, color, sex, language, religion or social origin 2. No derogation from Articles 6, 7, 8 (paragraphs 1 and 2), 11, 15, 16, and 18 may be made under this provision.

**Rome Statute, Article 5.** Crimes within the jurisdiction of the Court: **Article 6,** Genocide: For the purpose of this Statute, “genocide” means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, such as: (a) Killing members of the group; (b) Causing serious bodily or mental harm to members of the group; (c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part; (d) Imposing measures intended to prevent births within the group; (e) Forcibly transferring children of the group to another group.

**Article 7.** Crimes against humanity: 1. For the purpose of this Statute, “crime against humanity” means any of the following acts when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack: (a) Murder; (b) Extermination; (c) Enslavement; (d) Deportation or forcible transfer of population; (e) Imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law; (f) Torture; (g) Rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity; (h) Persecution against any identifiable group or collectivity on political, racial, national, ethnic, cultural, religious, gender as defined in paragraph 3, or other grounds that are universally recognized as impermissible under international law, in connection with any act referred to in this paragraph or any crime within the jurisdiction of the Court; (i) Enforced disappearance of persons; (j) The crime of apartheid; (k) Other inhumane acts of a similar character intentionally causing great suffering, or serious injury to body or to mental or physical health.

**Article 8.** War crimes: 1. The Court shall have jurisdiction in respect of war crimes, in particular when committed as part of a plan or policy or as part of a large-scale commission of such crimes. 2. For the purpose of this Statute, “war crimes” means: (a) Grave breaches of the Geneva Conventions of 12 August 1949, namely, any of the following acts against persons or property protected under the provisions of the relevant Geneva Convention: (i) Willful killing; (ii) Torture or inhuman treatment, including biological experiments; (iii) Willfully causing great suffering, or serious injury to body or health; (iv) Extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly; (v) Compelling a prisoner of war or other protected person to serve in the forces of a hostile Power; (vi) Willfully depriving a prisoner of war or other protected person of the rights of a fair and regular trial; (vii) Unlawful deportation or transfer or unlawful confinement; (viii) Taking of hostages.; (b) Other serious violations of the laws and customs applicable in international armed conflict, within the established framework of international law.

**CRC, Article 6.1.** States parties recognize that every child has the inherent right to life.

**ICTR Statute, Article 2, Genocide. 1.** The International Tribunal for Rwanda shall have the power to prosecute persons committing genocide as defined in paragraph 2 of this article or of committing any of the other acts enumerated in paragraph 3 of this article; 2. Genocide means any of the follow-



ing acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such: (a) Killing members of the group; (b) Causing serious bodily or mental harm to members of the group; (c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part; (d) Imposing measures intended to prevent births within the group; (e) Forcibly transferring children of the group to another group; 3. The following acts shall be punishable: (a) Genocide; (b) Conspiracy to commit genocide; (c) Direct and public incitement to commit genocide; (d) Attempt to commit genocide; (e) Complicity in genocide.

**Article 3:** Crimes against Humanity: The International Tribunal for Rwanda shall have the power to prosecute persons responsible for the following crimes when committed as part of a widespread or systematic attack against any civilian population on national, political, ethnic, racial or religious grounds: (a) Murder; (b) Extermination; (c) Enslavement; (d) Deportation; (e) Imprisonment; (f) Torture; (g) Rape; (h) Persecutions on political, racial, and religious grounds; (i) Other inhumane acts.

**Article 4:** Violations of Article 3 common to the Geneva Conventions and Additional Protocol II: The International Tribunal for Rwanda shall have the power to prosecute persons committing or ordering to be committed serious violations of Article 3 common to the Geneva Conventions of 12 August 1949 for the Protection of War Victims, and of Additional Protocol II thereto of 8 June 1977. These violations shall include, but shall not be limited to: (a) Violence to life, health, and physical or mental well-being of persons, in particular murder as well as cruel treatment such as torture, mutilation or any form of corporal punishment; (b) Collective punishments; (c) Taking of hostages; (d) Acts of terrorism; (e) Outrages upon personal dignity, in particular humiliating and degrading treatment, rape, enforced prostitution, and any form of indecent assault; (f) Pillage; (g) The passing of sentences and the carrying out of executions without previous judgment pronounced by a regularly constituted court, affording all the judicial guarantees which are recognized as indispensable by civilized peoples; (h) Threats to commit any of the foregoing acts.

**ICTY Statute, Article 2.** Grave breaches of the Geneva Conventions of 1949: The International Tribunal shall have the power to prosecute persons committing or ordering to be committed grave breaches of the Geneva Conventions of 12 August 1949, namely the following acts against persons or property protected under the provisions of the relevant Geneva Convention: (a) willful killing; (b) torture or inhuman treatment, including biological experiments; (c) willfully causing great suffering or serious injury to body or health; (d) extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly; (e) compelling a prisoner of war or a civilian to serve in the forces of a hostile power; (f) willfully depriving a prisoner of war or a civilian of the rights of fair and regular trial; (g) unlawful deportation or transfer or unlawful confinement of a civilian; (h) taking civilians as hostages.

**Article 3.** Violations of the laws or customs of war: The International Tribunal shall have the power to prosecute persons violating the laws or customs of war. Such violations shall include, but not be limited to: (a) employment of poisonous weapons or other weapons calculated to cause unnecessary suffering; (b) wanton destruction of cities, towns or villages, or devastation not justified by military necessity; (c) attack, or bombardment, by whatever means, of undefended towns, villages, dwellings, or buildings; (d) seizure of, destruction or willful damage done to institutions dedicated to religion, charity, and education, the arts and sciences, historic monuments, and works of art and science; (e) plunder of public or private property.

**Article 4.** Genocide: 1. The International Tribunal shall have the power to prosecute persons committing genocide as defined in paragraph 2 of this article or of committing any of the other acts enumerated in paragraph 3 of this article. 2. Genocide means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such: (a) kill-

ing members of the group; (b) causing serious bodily or mental harm to members of the group; (c) deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part; (d) imposing measures intended to prevent births within the group; (e) forcibly transferring children of the group to another group; 3. The following acts shall be punishable: (a) genocide; (b) conspiracy to commit genocide; (c) direct and public incitement to commit genocide; (d) attempt to commit genocide; (e) complicity in genocide.

**Article 5.** Crimes against humanity: The International Tribunal shall have the power to prosecute persons responsible for the following crimes when committed in armed conflict, whether international or internal in character, and directed against any civilian population: (a) murder; (b) extermination; (c) enslavement; (d) deportation; (e) imprisonment; (f) torture; (g) rape; (h) persecutions on political, racial, and religious grounds; (i) other inhumane acts.

**International Convention on the Suppression and Punishment of the Crime of Apartheid, Article II.** (a) Denial to a member or members of a racial group or groups of the right to life and liberty of person: (i) By murder of members of a racial group or groups; (b) Deliberate imposition on a racial group or groups of living conditions calculated to cause its or their physical destruction in whole or in part.

**American Declaration of the Rights and Duties of Man, Article I.** Every human being has the right to life, liberty, and the security of his person.

**American Convention on Human Rights, Article 4.** Right to Life: Every person has the right to have his life respected. This right shall be protected by law and, in general, from the moment of conception. No one shall be arbitrarily deprived of his life.

**African (BANJUL) Charter on Human and Peoples' Rights, Article 6.** Every individual shall have the right to liberty and to the security of his person. No one may be deprived of his freedom except for reasons and conditions previously laid down by law. In particular, no one may be arbitrarily arrested or detained.

**African Charter on the Rights and Welfare of the Child, Article 5.** Survival and Development: 1. Every child has an inherent right to life. This right shall be protected by law. 2. States parties to the present Charter shall ensure, to the maximum extent possible, the survival, protection and development of the child.

**European Convention for the Protection of Human Rights and Fundamental Freedoms, Article 2.** Right to life. Everyone's right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law.

**Article 51.** Right to liberty and security. 1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law.

**League of Arab States, Arab Charter on Human Rights, Article 5.1.** Every human being has the inherent right to life. 5.2 This right shall be protected by law. No one shall be arbitrarily deprived of his life.

**Article 14.1.** Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest, search or detention without a legal warrant. 14.2. No one shall be deprived of his lib-

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erty except on such grounds and in such circumstances as are determined by law and in accordance with such procedure as is established thereby. (See *supra* footnote 3.)

**United Nations Declaration on the Rights of Indigenous Peoples, Article 7.1.** Indigenous individuals have the rights to life, physical and mental integrity, liberty, and security of person. 7.2. Indigenous peoples have the collective right to live in freedom, peace, and security as distinct peoples and shall not be subjected to any act of genocide or any other act of violence, including forcibly removing children of the group to another group.

**European Framework Convention on Minorities, Article 6.2.** The Parties undertake to take appropriate measures to protect persons who may be subject to threats or acts of discrimination, hostility or violence as a result of their ethnic, cultural, linguistic, or religious identity.

For norms referring specifically to enforced disappearances, see:

**International Convention for the Protection of All Persons from Enforced Disappearance, E/CN.4/2005/WG.22/WP.1/Rev.4 (2005). Article 1.** No one shall be subjected to enforced disappearance. 2. No exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency, may be invoked as a justification for enforced disappearance.

**Article 2.** For the purposes of this Convention, enforced disappearance is considered to be the arrest, detention, abduction or any other form of deprivation of liberty committed 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 places such a person outside the protection of the law.

**Article 3.** Each State party shall take appropriate measures to investigate acts defined in Article 2 committed by persons or groups of persons acting without the authorization, support or acquiescence of the State and to bring those responsible to justice.

**Article 4.** Each State party shall take the necessary measures to ensure that enforced disappearance constitutes an offense under its criminal law.

**Article 5.** The widespread or systematic practice of enforced disappearance constitutes a crime against humanity as defined in applicable international law and shall attract the consequences provided for under such applicable international law.

**Article 6.1.** Each State party shall take the necessary measures to hold criminally responsible at least: (a) Any person who commits, orders, solicits or induces the commission of, attempts to commit, is an accomplice to or participates in an enforced disappearance; (b) The superior who: (i) Knew, or consciously disregarded information which clearly indicated that subordinates under his or her effective authority and control were committing or about to commit a crime of enforced disappearance; (ii) Exercised effective responsibility for and control over activities which were concerned with the crime of enforced disappearance; and (iii) Failed to take all necessary and reasonable measures within his or her power to prevent or repress the commission of the enforced disappearance or to submit the matter to the competent authorities for investigation and prosecution; (c) Subparagraph (b) above is without prejudice to the higher standards of responsibility applicable under relevant international law to a military commander or to a person effectively acting as a military commander. 2. No order or instruction from any public authority, civilian, military or other, may be invoked to justify an offense of enforced disappearance.

**Article 7.1** Each State party shall make the offense of enforced disappearance punishable by appro-

appropriate penalties which take into account its extreme seriousness. 2. Each State party may establish: (a) Mitigating circumstances, in particular for persons who, having been implicated in the commission of an enforced disappearance, effectively contribute to bringing the disappeared person forward alive or make it possible to clarify cases of enforced disappearance or to identify the perpetrators of an enforced disappearance; (b) Without prejudice to other criminal procedures, aggravating circumstances, in particular in the event of the death of the disappeared person or the commission of an enforced disappearance in respect of pregnant women, minors, persons with disabilities or other particularly vulnerable persons.

**Article 10.** Upon being satisfied, after an examination of the information available to it, that the circumstances so warrant, any State party in whose territory a person alleged to have committed an offense of enforced disappearance is present shall take him or her into custody or take such other legal measures as are necessary to ensure his or her presence. The custody and other legal measures shall be as provided for in the law of that State party, but may be continued only for such time as is necessary to ensure the person's presence at criminal, surrender or extradition proceedings. 2. A State party which has taken the measures referred to in paragraph 1 shall immediately carry out a preliminary inquiry or investigations to establish the facts. It shall notify the States parties referred to in Article 9, paragraph 1, of the measures it has taken in pursuance of paragraph 1 of this article, including detention and the circumstances warranting detention and the findings of its preliminary inquiry or its investigations, indicating whether it intends to exercise its jurisdiction.

**Article 11.** The State party in the territory under whose jurisdiction a person alleged to have committed an offense of enforced disappearance is found shall, if it does not extradite that person or surrender him or her to another State in accordance with its international obligations or surrender him or her to an international criminal tribunal whose jurisdiction it has recognized, submit the case to its competent authorities for the purpose of prosecution.

**Article 12.1.** Each State party shall ensure that any individual who alleges that a person has been subjected to enforced disappearance has the right to report the facts to the competent authorities, which shall examine the allegation promptly and impartially and, where appropriate, undertake without delay a thorough and impartial investigation. Appropriate steps shall be taken, where necessary, to ensure that the complainant, witnesses, relatives of the disappeared person and their defense counsel, as well as persons participating in the investigation, are protected against all ill-treatment or intimidation as a consequence of the complaint or any evidence given. 2. Where there are reasonable grounds for believing that a person has been subjected to enforced disappearance, the authorities referred to in paragraph 1 shall undertake an investigation, even if there has been no formal complaint.

**Article 17.1** No one shall be held in secret detention. 2. Without prejudice to other international obligations of the State party with regard to the deprivation of liberty, each State party shall, in its legislation: (a) Establish the conditions under which orders of deprivation of liberty may be given; (b) Indicate those authorities authorized to order the deprivation of liberty; (c) Guarantee that any person deprived of liberty shall be held solely in officially recognized and supervised places of deprivation of liberty; (d) Guarantee that any person deprived of liberty shall be authorized to communicate with and be visited by his or her family, counsel or any other person of his or her choice, subject only to the conditions established by law, or, if he or she is a foreigner, to communicate with his or her consular authorities, in accordance with applicable international law; (e) Guarantee access by the competent and legally authorized authorities and institutions to the places where persons are deprived of liberty, if necessary with the prior authorization of a judicial authority; (f) Guarantee that any person deprived of liberty and, in the case of a suspected enforced disappearance, the person deprived of liberty not being able to exercise this right, that any person with a legitimate interest, such as relatives of the person deprived of liberty, their representative or their counsel, in all circumstances, shall be

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entitled to take proceedings before a court, in order that that court may decide without delay on the lawfulness of the deprivation of liberty and order the release if that deprivation of liberty is not lawful. 3. Each State party shall assure the compilation and maintenance of one or more up-to-date official registers and/or records of persons deprived of liberty, which shall be made promptly available, upon request, to any judicial or other competent authority or institution authorized for that purpose by the law of the State party concerned or any relevant international legal instrument to which the State concerned is a party. The information contained therein shall include, as a minimum: (a) The identity of the person deprived of liberty; (b) The date, time, and location where the person was deprived of liberty and the identity of the authority who deprived the person of liberty; (c) The authority having decided the deprivation of liberty and the reasons for the deprivation of liberty; (d) The authority controlling the deprivation of liberty; (e) The place of deprivation of liberty, the date and time of admission to the place of deprivation of liberty, and the authority responsible for the place of deprivation of liberty; (f) Elements regarding the physical integrity of the person deprived of liberty; (g) In the event of death during the deprivation of liberty, the circumstances and cause of death and the destination of the human remains; (h) The date and time of release or transfer to another place of detention, the destination, and the authority responsible for the transfer.

**Article 24.** For the purposes of this Convention, “victim” means the disappeared person and any individual who has suffered harm as a direct result of an enforced disappearance. 2. Each 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. 3. Each State party shall take all appropriate measures to search for, locate, and release disappeared persons and, in the event of death, to locate, respect, and return their remains. 4. 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. 5. The right to obtain reparation referred to in paragraph 4 covers material and psychological harm and, where appropriate, other means of reparation such as: (a) Restitution; (b) Rehabilitation; (c) Satisfaction, including restoration of dignity and reputation; (d) Guarantees of nonrepetition.

**Rome Statute of the International Criminal Court UN Doc. 2187, UNTS 90, entered into force July 1, 2002. Article 7.** Crimes against humanity: 1. For the purpose of this Statute, “crime against humanity” means any of the following acts when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack: (e) Imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law; (i) Enforced disappearance of persons; (i) “Enforced disappearance of persons” means the arrest, detention or abduction of persons by, or with the authorization, support or acquiescence of a State or a political organization, followed by a refusal to acknowledge that deprivation of freedom or to give information on the fate or whereabouts of those persons, with the intention of removing them from the protection of the law for a prolonged period of time.

**International Criminal Court, Elements of Crimes, UN Doc. PCNICC/2000/1/Add.2 (2000). Article 7 (1) (i) Crime against humanity of enforced disappearance of persons: Elements 1.** The perpetrators (a) arrested, detained or abducted one or more persons; or (b) refused to acknowledge the arrest, detention or abduction, or to give information on the fate or whereabouts of such person or persons. 2. (a) Such arrest, detention or abduction was followed or accompanied by a refusal to acknowledge that deprivation of freedom or to give information on the fate or whereabouts of such person or persons; or (b) Such refusal was preceded or accompanied by that deprivation of freedom. 3. The perpetrator was aware that: (a) Such arrest, detention or abduction would be followed in the

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ordinary course of events by a refusal to acknowledge that deprivation of freedom or to give information on the fate or whereabouts of such person or persons; (b) Such refusal was preceded or accompanied by that deprivation of freedom. 4. Such arrest, detention or abduction was carried out by, or with the authorization, support, or acquiescence of, a State or a political organization. 5. Such refusal to acknowledge that deprivation of freedom or to give information on the fate or whereabouts of such person or persons was carried out by, or with the authorization or support of, such State or political organization. 6. The perpetrator intended to remove such person or persons from the protection of the law for a prolonged period of time. 7. The conduct was committed as part of a widespread or systematic attack directed against a civilian population. 8. The perpetrator knew that the conduct was part of or intended the conduct to be part of a widespread or systematic attack directed against a civilian population.

**Inter-American Convention on Forced Disappearance of Persons, Article I.** The States parties to this Convention undertake: a. Not to practice, permit, or tolerate the forced disappearance of persons, even in states of emergency or suspension of individual guarantees; b. To punish within their jurisdictions, those persons who commit or attempt to commit the crime of forced disappearance of persons and their accomplices and accessories; c. To co-operate with one another in helping to prevent, punish, and eliminate the forced disappearance of persons; d. To take legislative, administrative, judicial, and any other measures necessary to comply with the commitments undertaken in this Convention.

**Article III.** The States parties undertake to adopt, in accordance with their constitutional procedures, the legislative measures that may be needed to define the forced disappearance of persons as an offense and to impose an appropriate punishment commensurate with its extreme gravity. This offense shall be deemed continuous or permanent as long as the fate or whereabouts of the victim has not been determined. The States parties may establish mitigating circumstances for persons who have participated in acts constituting forced disappearance when they help to cause the victim to reappear alive or provide information that sheds light on the forced disappearance of a person.

**Article VI.** Criminal prosecution for the forced disappearance of persons and the penalty judicially imposed on its perpetrator shall not be subject to statutes of limitations. However, if there should be a norm of a fundamental character preventing application of the stipulation contained in the previous paragraph, the period of limitation shall be equal to that which applies to the gravest crime in the domestic laws of the corresponding State party.

**Article VII.** The defense of due obedience to superior orders or instructions that stipulate, authorize, or encourage forced disappearance shall not be admitted. All persons who receive such orders have the right and duty not to obey them. The States parties shall ensure that the training of public law-enforcement personnel or officials includes the necessary education on the offense of forced disappearance of persons.

**Article IX.** Persons alleged to be responsible for the acts constituting the offense of forced disappearance of persons may be tried only in the competent jurisdictions of ordinary law in each state, to the exclusion of all other special jurisdictions, particularly military jurisdictions. The acts constituting forced disappearance shall not be deemed to have been committed in the course of military duties. Privileges, immunities, or special dispensations shall not be admitted in such trials, without prejudice to the provisions set forth in the Vienna Convention on Diplomatic Relations.

**Article X.** In no case may exceptional circumstances such as a state of war, the threat of war, internal political instability, or any other public emergency be invoked to justify the forced disappearance of persons. In such cases, the right to expeditious and effective judicial procedures and recourse shall be retained as a means of determining the whereabouts or state of health of a person who has been

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deprived of freedom, or of identifying the official who ordered or carried out such deprivation of freedom. In pursuing such procedures or recourse, and in keeping with applicable domestic law, the competent judicial authorities shall have free and immediate access to all detention centers and to each of their units, and to all places where there is reason to believe the disappeared person might be found including places that are subject to military jurisdiction.

**Article XI.** Every person deprived of liberty shall be held in an officially recognized place of detention and be brought before a competent judicial authority without delay, in accordance with applicable domestic law. The States parties shall establish and maintain official up-to-date registries of their detainees and, in accordance with their domestic law, shall make them available to relatives, judges, attorneys, any other person having a legitimate interest, and other authorities.

**American Declaration of the Rights and Duties of Man, Article XXV.** No person may be deprived of his liberty except in the cases and according to the procedures established by preexisting law. No person may be deprived of liberty for nonfulfillment of obligations of a purely civil character. Every individual who has been deprived of his liberty has the right to have the legality of his detention ascertained without delay by a court, and the right to be tried without undue delay or, otherwise, to be released. He also has the right to humane treatment during the time he is in custody.

**American Convention on Human Rights, Article 7. Right to Personal Liberty.** 1. Every person has the right to personal liberty and security. 2. No one shall be deprived of his physical liberty except for the reasons and under the conditions established beforehand by the constitution of the State party concerned or by a law established pursuant thereto. 3. No one shall be subject to arbitrary arrest or imprisonment.

**League of Arab States, Arab Charter on Human Rights, Article 14.1.** Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest, search or detention without a legal warrant. 14.2. No one shall be deprived of his liberty except on such grounds and in such circumstances as are determined by law and in accordance with such procedure as is established thereby. (See *supra* footnote 3.)

**Vienna Declaration, World Conference on Human Rights, para 62.** The World Conference on Human Rights, welcoming the adoption by the General Assembly of the Declaration on the Protection of All Persons from Enforced Disappearance, calls upon all States to take effective legislative, administrative, judicial or other measures to prevent, terminate, and punish acts of enforced disappearances. The World Conference on Human Rights reaffirms that it is the duty of all States, under any circumstances, to make investigations whenever there is reason to believe that an enforced disappearance has taken place on a territory under their jurisdiction and, if allegations are confirmed, to prosecute its perpetrators.

**Human Rights Committee, General Comment 31, Nature of the General Legal Obligation on States parties to the Covenant, UN Doc. CCPR/C/21/Rev.1/Add.13 (2004). 18.** Where the investigations referred to in paragraph 15 reveal violations of certain Covenant rights, States parties must ensure that those responsible are brought to justice. As with failure to investigate, failure to bring to justice perpetrators of such violations could in and of itself give rise to a separate breach of the Covenant. These obligations arise notably in respect of those violations recognized as criminal under either domestic or international law, such as torture and similar cruel, inhuman, and degrading treatment (Article 7), summary and arbitrary killing (Article 6), and enforced disappearance (Arti-

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cles 7 and 9 and, frequently, 6). Indeed, the problem of impunity for these violations, a matter of sustained concern by the Committee, may well be an important contributing element in the recurrence of the violations. When committed as part of a widespread or systematic attack on a civilian population, these violations of the Covenant are crimes against humanity (see Rome Statute of the International Criminal Court, Article 7). Accordingly, where public officials or State agents have committed violations of the Covenant rights referred to in this paragraph, the States parties concerned may not relieve perpetrators from personal responsibility, as has occurred with certain amnesties (see General Comment 20 [44]) and prior legal immunities and indemnities. Furthermore, no official status justifies persons who may be accused of responsibility for such violations being held immune from legal responsibility. Other impediments to the establishment of legal responsibility should also be removed, such as the defense of obedience to superior orders or unreasonably short periods of statutory limitation in cases where such limitations are applicable. States parties should also assist each other to bring to justice persons suspected of having committed acts in violation of the Covenant that are punishable under domestic or international law. 19. The Committee further takes the view that the right to an effective remedy may in certain circumstances require States parties to provide for and implement provisional or interim measures to avoid continuing violations and to endeavor to repair at the earliest possible opportunity any harm that may have been caused by such violations.

***Velásquez Rodríguez Case, Judgment of July 29, 1988, Inter-Am.Ct.H.R. (Ser. C) No. 4 (1988).*** 174. The State has a legal duty to take reasonable steps to prevent human rights violations and to use the means at its disposal to carry out a serious investigation of violations committed within its jurisdiction, to identify those responsible, to impose the appropriate punishment, and to ensure the victim adequate compensation. 175. This duty to prevent includes all those means of a legal, political, administrative, and cultural nature that promote the protection of human rights and ensure that any violations are considered and treated as illegal acts, which, as such, may lead to the punishment of those responsible and the obligation to indemnify the victims for damages. It is not possible to make a detailed list of all such measures, since they vary with the law and the conditions of each State party. Of course, while the State is obligated to prevent human rights abuses, the existence of a particular violation does not, in itself, prove the failure to take preventive measures. On the other hand, subjecting a person to official, repressive bodies that practice torture and assassination with impunity is itself a breach of the duty to prevent violations of the rights to life and physical integrity of the person, even if that particular person is not tortured or assassinated, or if those facts cannot be proven in a concrete case. 176. The State is obligated to investigate every situation involving a violation of the rights protected by the Convention. If the State apparatus acts in such a way that the violation goes unpunished and the victim's full enjoyment of such rights is not restored as soon as possible, the State has failed to comply with its duty to ensure the free and full exercise of those rights to the persons within its jurisdiction. The same is true when the State allows private persons or groups to act freely and with impunity to the detriment of the rights recognized by the Convention. 181. The duty to investigate facts of this type continues as long as there is uncertainty about the fate of the person who has disappeared. Even in the hypothetical case that those individually responsible for crimes of this type cannot be legally punished under certain circumstances, the State is obligated to use the means at its disposal to inform the relatives of the fate of the victims and, if they have been killed, the location of their remains. 182. The court is convinced, and has so found, that the disappearance of Manfredo Velásquez was carried out by agents who acted under cover of public authority. However, even had that fact not been proven, the failure of the State apparatus to act, which is clearly proven, is a failure on the part of Honduras to fulfill the duties it assumed under Article 1(1) of the Convention, which obligated it to ensure Manfredo Velásquez the free and full exercise of his human rights. 185.

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The court, therefore, concludes 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. 186. As a result of the disappearance, Manfredo Velásquez was the victim of an arbitrary detention, which deprived him of his physical liberty without legal cause and without a determination of the lawfulness of his detention by a judge or competent tribunal. Those acts directly violate the right to personal liberty recognized by Article 7 of the Convention (*supra* 155) and are a violation imputable to Honduras of the duties to respect and ensure that right under Article 1(1).

187. The disappearance of Manfredo Velásquez violates the right to personal integrity recognized by Article 5 of the Convention (*supra* 156). First, the mere subjection of an individual to prolonged isolation and deprivation of communication is in itself cruel and inhuman treatment which harms the psychological and moral integrity of the person, and violates the right of every detainee under Article 5(1) and 5(2) to treatment respectful of his dignity. Second, although it has not been directly shown that Manfredo Velásquez was physically tortured, his kidnapping and imprisonment by governmental authorities, who have been shown to subject detainees to indignities, cruelty, and torture, constitute a failure of Honduras to fulfill the duty imposed by Article 1(1) to ensure the rights under Article 5(1) and 5(2) of the Convention. The guarantee of physical integrity and the right of detainees to treatment respectful of their human dignity require States parties to take reasonable steps to prevent situations which are truly harmful to the rights protected. 188. The above reasoning is applicable to the right to life recognized by Article 4 of the Convention (*supra* 157). The context in which the disappearance of Manfredo Velásquez occurred and the lack of knowledge seven years later about his fate create a reasonable presumption that he was killed. Even if there is a minimal margin of doubt in this respect, it must be presumed that his fate was decided by authorities who systematically executed detainees without trial and concealed their bodies in order to avoid punishment. This, together with the failure to investigate, is a violation by Honduras of a legal duty under Article 1(1) of the Convention to ensure the rights recognized by Article 4 (1). That duty is to ensure to every person subject to its jurisdiction the inviolability of the right to life and the right not to have one's life taken arbitrarily. These rights imply an obligation on the part of States parties to take reasonable steps to prevent situations that could result in the violation of that right.

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## Targeting of Civilian Members of a *Particular Group* and of Civilian Sites

10. The intentional targeting during armed conflict of civilian members of a particular group and of civilian sites inhabited by such civilians, calculated to destroy the particular group in whole or in part.

For specific international humanitarian law provisions that speak to protecting civilian populations from being targeted, see:

**ICRC Study on Customary International Humanitarian Law, Volume 1: Rules**, Jean-Marie Henckaerts and Louise Doswald-Beck, eds. (Cambridge University Press, 2009). Rule 88: Adverse distinction in the application of international humanitarian law based on race, color, sex, language, religion or belief, political or other opinion, national or social origin, wealth, birth or other status, or on any other similar criteria is prohibited.

**Convention (IV) Relative to the Protection of Civilian Persons in Time of War. Geneva, 12 August 1949. Article 3.** In the case of armed conflict not of an international character occurring in the territory of one of the High Contracting Parties, each Party to the conflict shall be bound to apply, as a minimum, the following provisions: (1) Persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those *placed hors de combat* by sickness, wounds, detention, or any other cause, shall in all circumstances be treated humanely, without any adverse distinction founded on race, color, religion or faith, sex, birth or wealth, or any other similar criteria. To this end the following acts are and shall remain prohibited at any time and in any place whatsoever with respect to the above-mentioned persons: (a) violence to life and person, in particular murder of all kinds, mutilation, cruel treatment, and torture; (b) taking of hostages; (c) outrages upon personal dignity, in particular, humiliating and degrading treatment; (d) the passing of sentences and the carrying out of executions without previous judgment pronounced by a regularly constituted court, affording all the judicial guarantees which are recognized as indispensable by civilized peoples. **Article 8.** Protected persons may in no circumstances renounce in part or in entirety the rights secured to them by the present Convention, and by the special agreements referred to in the foregoing Article, if such there be.

**Article 13.** The provisions of Part II cover the whole of the populations of the countries in conflict, without any adverse distinction based, in particular, on race, nationality, religion or political opinion, and are intended to alleviate the sufferings caused by war.

**Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts (Protocol I), 8 June 1977. Part IV. Civilian Population: Section I. General Protection against Effects of Hostilities. Article 48. Basic rule.** In order to ensure respect for and protection of the civilian population and civilian objects, the Parties to the conflict shall at all times distinguish between the civilian population and combatants and between civilian objects and military objectives and accordingly shall direct their operations only against military objectives.

**Article 49. Definition of attacks and scope of application.** 1. "Attacks" means acts of violence against the adversary, whether in offense or in defense. 2. The provisions of this Protocol with respect to attacks apply to all attacks in whatever territory conducted, including the national territory belonging to a Party to the conflict but under the control of an adverse Party.

**Article 50.** Definition of civilians and civilian population. 1. A civilian is any person who does not belong to one of the categories of persons referred to in Article 4 (A) (1), (2), (3) and (6) of the Third Convention and in Article 43 of this Protocol. In case of doubt whether a person is a civilian, that person shall be considered to be a civilian. 2. The civilian population comprises all persons who are civilians. 3. The presence within the civilian population of individuals who do not come within the definition of civilians does not deprive the population of its civilian character.

**Article 51.** Protection of the civilian population. 1. The civilian population and individual civilians shall enjoy general protection against dangers arising from military operations. To give effect to this protection, the following rules, which are additional to other applicable rules of international law, shall be observed in all circumstances. 2. The civilian population as such, as well as individual civilians, shall not be the object of attack. Acts or threats of violence the primary purpose of which is to spread terror among the civilian population are prohibited. 3. Civilians shall enjoy the protection afforded by this section, unless and for such time as they take a direct part in hostilities. 4. Indiscriminate attacks are prohibited. Indiscriminate attacks are: (a) those which are not directed at a specific military objective; (b) those which employ a method or means of combat which cannot be directed at a specific military objective; or (c) those which employ a method or means of combat the effects of which cannot be limited as required by this Protocol; and consequently, in each such case, are of a nature to strike military objectives and civilians or civilian objects without distinction. 5. Among others, the following types of attacks are to be considered as indiscriminate: (a) an attack by bombardment by any methods or means which treats as a single military objective a number of clearly separated and distinct military objectives located in a city, town, village or other area containing a similar concentration of civilians or civilian objects; and (b) an attack which may be expected to cause incidental loss of civilian life, injury to civilians, damage to civilian objects, or a combination thereof, which would be excessive in relation to the concrete and direct military advantage anticipated. 6. Attacks against the civilian population or civilians by way of reprisals are prohibited. 7. The presence or movements of the civilian population or individual civilians shall not be used to render certain points or areas immune from military operations, in particular in attempts to shield military objectives from attacks or to shield, favor or impede military operations. The Parties to the conflict shall not direct the movement of the civilian population or individual civilians in order to attempt to shield military objectives from attacks or to shield military operations.

**Article 52.** General protection of civilian objects. 1. Civilian objects shall not be the object of attack or of reprisals. Civilian objects are all objects which are not military objectives as defined in paragraph 2.2. Attacks shall be limited strictly to military objectives. Insofar as objects are concerned, military objectives are limited to those objects which by their nature, location, purpose or use make an effective contribution to military action and whose total or partial destruction, capture or neutralization, in the circumstances ruling at the time, offers a definite military advantage. 3. In case of doubt whether an object which is normally dedicated to civilian purposes, such as a place of worship, a house or other dwelling or a school, is being used to make an effective contribution to military action, it shall be presumed not to be so used.

**Article 54.** Protection of objects indispensable to the survival of the civilian population. 1. Starvation of civilians as a method of warfare is prohibited. 2. It is prohibited to attack, destroy, remove or render useless objects indispensable to the survival of the civilian population, such as foodstuffs, agricultural areas for the production of foodstuffs, crops, livestock, drinking water installations and supplies, and irrigation works, for the specific purpose of denying them for their sustenance value to the civilian population or to the adverse Party, whatever the motive, whether in order to starve out civilians, to cause them to move away, or for any other motive. 3. The prohibitions in paragraph 2 shall not apply to such of the objects covered by it as are used by an adverse Party: (a) as sustenance solely for the members of its armed forces; or (b) if not as sustenance, then in direct support of military ac-

tion, provided, however, that in no event shall actions against these objects be taken which may be expected to leave the civilian population with such inadequate food or water as to cause its starvation or force its movement. 4. These objects shall not be made the object of reprisals.

**Article 57.** Precautions in Attack. 1. In the conduct of military operations, constant care shall be taken to spare the civilian population, civilians, and civilian objects. 2. With respect to attacks, the following precautions shall be taken: (a) Those who plan or decide upon an attack shall: (i) do everything feasible to verify that the objectives to be attacked are neither civilians nor civilian objects and are not subject to special protection, but are military objectives within the meaning of paragraph 2 of Article 52 and that it is not prohibited by the provisions of this Protocol to attack them; (ii) take all feasible precautions in the choice of means and methods of attack with a view to avoiding, and in any event to minimizing, incidental loss of civilian life, injury to civilians, and damage to civilian objects; (iii) refrain from deciding to launch any attack which may be expected to cause incidental loss of civilian life, injury to civilians, damage to civilian objects, or a combination thereof, which would be excessive in relation to the concrete and direct military advantage anticipated; (b) an attack shall be canceled or suspended if it becomes apparent that the objective is not a military one or is subject to special protection or that the attack may be expected to cause incidental loss of civilian life, injury to civilians, damage to civilian objects, or a combination thereof, which would be excessive in relation to the concrete and direct military advantage anticipated; (c) effective advance warning shall be given of attacks which may affect the civilian population, unless circumstances do not permit. 3. When a choice is possible between several military objectives for obtaining a similar military advantage, the objective to be selected shall be that the attack on which may be expected to cause the least danger to civilian lives and to civilian objects. 4. In the conduct of military operations at sea or in the air, each Party to the conflict shall, in conformity with its rights and duties under the rules of international law applicable in armed conflict, take all reasonable precautions to avoid losses of civilian lives and damage to civilian objects. 5. No provision of this article may be construed as authorizing any attacks against the civilian population, civilians or civilian objects.

**Article 58.** Precautions against the effects of attacks. The Parties to the conflict shall, to the maximum extent feasible: (a) without prejudice to Article 49 of the Fourth Convention, endeavor to remove the civilian population, individual civilians, and civilian objects under their control from the vicinity of military objectives; (b) avoid locating military objectives within or near densely populated areas; (c) take the other necessary precautions to protect the civilian population, individual civilians, and civilian objects under their control against the dangers resulting from military operations.

**Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II), 8 June 1977. Article 13.**

The civilian population and individual civilians shall enjoy general protection against the dangers arising from military operations. To give effect to this protection, the following rules shall be observed in all circumstances. 2. The civilian population as such, as well as individual civilians, shall not be the object of attack. Acts or threats of violence the primary purpose of which is to spread terror among the civilian population are prohibited. 3. Civilians shall enjoy the protection afforded by this part, unless and for such time as they take a direct part in hostilities.

**Article 14.** Starvation of civilians as a method of combat is prohibited. It is therefore prohibited to attack, destroy, remove or render useless for that purpose, objects indispensable to the survival of the civilian population such as foodstuffs, agricultural areas for the production of foodstuffs, crops, livestock, drinking water installations and supplies, and irrigation works.

**Article 17.** 1. The displacement of the civilian population shall not be ordered for reasons related to the conflict unless the security of the civilians involved or imperative military reasons so demand. Should such

displacements have to be carried out, all possible measures shall be taken in order that the civilian population may be received under satisfactory conditions of shelter, hygiene, health, safety, and nutrition. 2. Civilians shall not be compelled to leave their own territory for reasons connected with the conflict.

**Rome Statute of the International Criminal Court, Article 6.** Genocide. For the purpose of this Statute, “genocide” means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnic, racial or religious group, as such: (a) Killing members of the group; (b) Causing serious bodily or mental harm to members of the group; (c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part; (d) Imposing measures intended to prevent births within the group; (e) Forcibly transferring children of the group to another group.

**Article 7.** Crimes against humanity. 1. For the purpose of this Statute, “crime against humanity” means any of the following acts when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack: (a) Murder; (b) Extermination; (c) Enslavement; (d) Deportation or forcible transfer of population; (e) Imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law; (f) Torture (g) Rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity; (h) Persecution against any identifiable group or collectivity on political, racial, national, ethnic, cultural, religious, gender as defined in paragraph 3, or other grounds that are universally recognized as impermissible under international law, in connection with any act referred to in this paragraph or any crime within the jurisdiction of the Court; (i) Enforced disappearance of persons; (j) The crime of apartheid; (k) Other inhumane acts of a similar character intentionally causing great suffering, or serious injury to body or to mental or physical health.

**Article 8.** War crimes. 1. The Court shall have jurisdiction in respect of war crimes in particular when committed as a part of a plan or policy or as part of a large-scale commission of such crimes. 2. For the purpose of this Statute, “war crimes” means: (a) Grave breaches of the Geneva Conventions of 12 August 1949, namely, any of the following acts against persons or property protected under the provisions of the relevant Geneva Convention: (i) Willful killing; (ii) Torture or inhuman treatment, including biological experiments; (iii) Willfully causing great suffering or serious injury to body or health; (iv) Extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly; (v) Compelling a prisoner of war or other protected person to serve in the forces of a hostile Power; (vi) Willfully depriving a prisoner of war or other protected person of the rights of fair and regular trial; (vii) Unlawful deportation or transfer or unlawful confinement; (b) Other serious violations of the laws and customs applicable in international armed conflict, within the established framework of international law, namely, any of the following acts: (i) Intentionally directing attacks against the civilian population as such or against individual civilians not taking direct part in hostilities; (ii) Intentionally directing attacks against civilian objects, that is, objects which are not military objectives; (iii) Intentionally directing attacks against personnel, installations, material, units or vehicles involved in a humanitarian assistance or peacekeeping mission in accordance with the Charter of the United Nations, as long as they are entitled to the protection given to civilians or civilian objects under the international law of armed conflict; (iv) Intentionally launching an attack in the knowledge that such attack will cause incidental loss of life or injury to civilians or damage to civilian objects or widespread, long-term, and severe damage to the natural environment which would be clearly excessive in relation to the concrete and direct overall military advantage anticipated; (v) Attacking or bombarding, by whatever means, towns, villages, dwellings or buildings which are undefended and which are not military objectives; (vi) Killing or wounding a combatant who, having laid down his arms or having no longer means of defense, has surrendered at discretion.



## Norms Related to Special Circumstances

## Norms Related to Special Circumstances

### Underlying Norms Relating to the Systematic Denial of Past Genocides:

**UNGA Resolution 60/7, Paragraph 3.** Rejects any denial of the Holocaust as an historical event, either in full or part.

**UNGA Resolution 61/255, Paragraph 1.** Condemns without any reservation any denial of the Holocaust.

***Faurisson v. France* (550/1993), ICCPR, A/52/40 Vol. II (8 November 1996) 84 (CCPR/C/58/D/550/1993) at paras. 2.1-2.3, 2.5, 9.3-9.7, 10. Para 2.1.** The author was a professor of literature at the Sorbonne University in Paris until 1973 and at the University of Lyon until 1991, when he was removed from his chair. Aware of the historical significance of the Holocaust, he has sought proof of the methods of killings, in particular by gas asphyxiation. While he does not contest the use of gas for purposes of disinfection, he doubts the existence of gas chambers for extermination purposes (“*chambres à gaz homicides*”) at Auschwitz and in other Nazi concentration camps.

2.2 The author submits that his opinions have been rejected in numerous academic journals and ridiculed in the daily press, notably in France; nonetheless, he continues to question the existence of extermination gas chambers. As a result of public discussion of his opinions and the polemics accompanying these debates, he states that, since 1978, he has become the target of death threats and that on eight occasions he has been physically assaulted. On one occasion in 1989, he claims to have suffered serious injuries, including a broken jaw, for which he was hospitalized. He contends that although these attacks were brought to the attention of the competent judicial authorities, they were not seriously investigated and none of those responsible for the assaults has been arrested or prosecuted.

9.4 Any restriction on the right to freedom of expression must cumulatively meet the following conditions: It must be provided by law; it must address one of the aims set out in paragraph 3 (a) and (b) of Article 19, and must be necessary to achieve a legitimate purpose.

9.5 The restriction on the author’s freedom of expression was indeed provided by law, i.e., the Act of 13 July 1990.

9.6 To assess whether the restrictions placed on the author’s freedom of expression by his criminal conviction were applied for the purposes provided for by the Covenant, the Committee begins by noting, as it did in its General Comment 10, that the rights for the protection of which restrictions on the freedom of expression are permitted by Article 19, paragraph 3, may relate to the interests of other persons or to those of the community as a whole. Since the statements made by the author, read in their full context, were of a nature as to raise or strengthen anti-Semitic feelings, the restriction served the respect of the Jewish community to live free from fear of an atmosphere of anti-Semitism. The Committee therefore concludes that the restriction of the author’s freedom of expression was permissible under Article 19, paragraph 3 (a), of the Covenant.

10. The Human Rights Committee ... is of the view that the facts as found by the Committee do not reveal a violation by France of Article 19, paragraph 3, of the Covenant.

### Underlying Norms Pertaining to Promoting the Recognition of One’s History:

**UN Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, Article 4.4:** States should, where appropriate, take measures in the field of education,



in order to encourage knowledge of the history, traditions, language, and culture of the minorities existing within their territory. Persons belonging to minorities should have adequate opportunities to gain knowledge of the society as a whole.

**Committee on Economic, Social, and Cultural Rights, Article 13 (3) and (4): The Right to Educational Freedom 28. Article 13 (3)** has two elements, one of which is that States parties undertake to respect the liberty of parents and guardians to ensure the religious and moral education of their children in conformity with their own convictions.... 15. The Committee is of the view that this element of Article 13 (3) permits public school instruction in subjects such as the general history of religions and ethics, if it is given in an unbiased and objective way, respectful of the freedoms of opinion, conscience, and expression. It notes that public education that includes instruction in a particular religion or belief is inconsistent with Article 13 (3) unless provision is made for nondiscriminatory exemptions or alternatives that would accommodate the wishes of parents and guardians.

**United Nations Declaration on the Rights of Indigenous Peoples, Article 15.1.** Indigenous peoples have the right to the dignity and diversity of their cultures, traditions, histories, and aspirations which shall be appropriately reflected in education and public information. 2. States shall take effective measures, in consultation and cooperation with the indigenous peoples concerned, to combat prejudice and eliminate discrimination and to promote tolerance, understanding and good relations among indigenous peoples and all other segments of society.

**CERD General Recommendation XXIII (Fifty-first Session, 1997): On the Rights of Indigenous Peoples, A/52/18 (1997) 122 at paras. 1-6. 4.** The Committee calls in particular upon States parties to: recognize and respect indigenous distinct culture, history, language, and way of life as an enrichment of the State's cultural identity and to promote its preservation.

**European Framework Convention on Minorities, Article 12.1:** The Parties shall, where appropriate, take measures in the fields of education and research to foster knowledge of the culture, history, language, and religion of their national minorities and of the majority.

**Document of the Copenhagen Meeting of the Conference on the Human Dimension of the OSCE, Copenhagen, 29 June 1990, Article 34.** The participating States will endeavor to ensure that persons belonging to national minorities, notwithstanding the need to learn the official language or languages of the State concerned, have adequate opportunities for instruction of their mother tongue or in their mother tongue, as well as, wherever possible and necessary, for its use before public authorities, in conformity with applicable national legislation. In the context of the teaching of history and culture in educational establishments, they will also take account of the history and culture of national minorities.





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