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Towards a Convention on the Prevention and Punishment of Crimes against Humanity:

Recommendations to States

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Introduction

Unlike other international crimes, such as war crimes, genocide, torture and enforced disappearance, to date there is no international treaty specifically dedicated to crimes against humanity. It is widely recognized that this is a major gap in the international legal framework and **a specific legal instrument to address crimes against humanity is needed.**

In 2019, the International Law Commission (hereinafter "ILC"), the UN body in charge of promoting "the progressive development of international law and its codification"¹, adopted the [Draft Articles on Prevention and Punishment of Crimes Against Humanity](#) (hereinafter "Draft Articles")² and submitted them to the UN General Assembly for its consideration. The ILC also recommended "the elaboration of a convention by the General Assembly or by an international conference of plenipotentiaries on the basis of the draft articles"³. In December 2022, the General Assembly established a two-year process to further consider the ILC's recommendation, and decided that the Sixth Committee should resume its session in April 2023 and April 2024 respectively. This should aim for an exchange of "substantive views, including in an interactive format, on all aspects of the draft articles"⁴. Finally, the Sixth Committee will "take a decision on the matter" in autumn 2024.⁵

TRIAL International calls on States to fully support the elaboration and adoption of a future Convention on Prevention and Punishment of Crimes against Humanity. It is crucial that States **actively engage in the ongoing discussions** on the Draft Articles and **commit to a process of negotiation that allows the adoption of a treaty on the prevention and punishment of crimes against humanity.** This can be a historic moment to promote the adoption of a new universally legally binding instrument that **will strengthen the legal framework applicable to crimes against humanity for the decades to come.**

The Draft Articles represent a good basis for the elaboration and negotiation of a Convention on Crimes against Humanity. Whilst some provisions can benefit from improvement, others should be welcomed and retained for the purpose of a prospective treaty.

Ahead of the upcoming Sixth Committee Second Resumed Session, TRIAL International wishes to share its key recommendations. The present paper will therefore focus on selected issues that appear to be crucial in the prevention and punishment of crimes against humanity. This is not an exhaustive list of TRIAL International's recommendations in relation to the Draft Articles and a prospective treaty on this matter.

¹ [Statute of the International Law Commission](#), Article 1(1). More information on the ILC is available [here](#).

² Draft articles on Prevention and Punishment of Crimes against Humanity, adopted by the ILC at its 71st session in 2019, and submitted to the General Assembly as a part of the Commission's report covering the work of that session (A/74/10), available [here](#). Hereafter, 'Draft Articles with commentaries'.

³ Official Records of the General Assembly, 74th Session, Supplement No. 10, UN Doc A/74/10, § 42.

⁴ Resolution adopted by the General Assembly on 30 December 2022, UN Doc [A/RES/77/249](#), § 4.

⁵ *Ibid.*, § 7.

1. Non-applicability of statutes of limitations

1.1. Criminal proceedings and penalties (Draft Article 6, para. 6)

Recommendation

TRIAL International calls on States to ensure that a prospective Convention on crimes against humanity contains a provision, along the lines of Draft Article 6, para. 6, establishing that statutes of limitations do not apply to crimes against humanity

Draft Article 6, para. 6, stipulates that “Each State shall take the necessary measures to ensure that, under its criminal law, the offences referred to in [the] draft article shall not be subject to any statute of limitations”. In other words, States would have an **obligation** to take measures so that **their domestic statutes of limitations do not apply to crimes against humanity** and to the corresponding sanctions.

In its commentaries to the Draft Articles, the ILC affirms that “there appears to be no State with a law on crimes against humanity that also bars prosecution after a period of time has elapsed. Rather, numerous States have specifically legislated against any such limitation”.⁶

TRIAL International applauds the inclusion of a provision on the non-applicability of statutes of limitations to crimes against humanity in the Draft Articles and considers that a prospective Convention on Crimes against Humanity shall enshrine this principle. Indeed, the non-applicability of statutes of limitations to crimes against humanity has been set forth in several international treaties⁷ and confirmed by international and domestic jurisprudence.⁸ Arguably, international customary law prohibits the application of statutes of limitations to crimes against humanity.⁹

However, the provision in the Draft Articles **could greatly benefit from rephrasing, with a view to becoming a self-executing rule** that does not necessarily require further action on the part of the States.¹⁰ Indeed, the wording of the Draft Articles implies that States must

⁶ Draft Articles with commentaries, supra note 2, Article 6, Commentary, § 35.

⁷ See, for instance, the [Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes Against Humanity](#) entered into force on 11 November 1970, it currently counts 56 States parties) ; the [European Convention on the Non-Applicability of Statutory Limitations to Crimes against Humanity and War Crimes](#) (entered into force on 27 June 2003, it currently has 8 States parties); the [Rome Statute of the International Criminal Court](#), Article 29 (entered into force on 1 July 2002, whose number of States parties is currently 124).

⁸ See, for instance, Inter-American Court of Human Rights, [Case Barrios Altos v. Peru](#), Judgment of 14 March 2011, § 41; European Court of Human Rights, [Aslakhanova v. Russia](#), Judgment of 18 December 2012, § 237; International Criminal Tribunal for the Former Yugoslavia, [Furundžija](#), Trial Chamber, Judgment of 10 December 1998, § 157. At the domestic level, see, for instance, Case [Erich Priebke and Karl Hass](#), Judgment of the Rome Military Tribunal of 22 July 1997; Case [Klaus Barbie](#), Judgment of the French Supreme Court (Criminal Law Chamber), 26 January 1984.

⁹ See, for instance, Cassese, A., Gaeta, P. et al., *Cassese's International Criminal Law*, 2013, p. 315.

¹⁰ In this regard, see also Amnesty International, [General Recommendations to States for a Convention on Prevention and Punishment of Crimes against Humanity](#), UN GA Sixth Committee First Resumed Session on the Draft Articles on Prevention and Punishment of Crimes against humanity (New York, 10-14 April 2023), 2023, Recommendation 5.

take some steps to ensure the non-applicability of statutes of limitations to crimes against humanity, whilst other international instruments contain a more direct formulation.¹¹

1.2. Reparation claims

Recommendation

TRIAL International calls on States to ensure that a prospective Convention on Crimes against Humanity contains a provision explicitly establishing that statutes of limitations shall not apply to civil or any other proceedings in which victims of crimes against humanity seek reparation.

The Draft Articles do not contain a provision on the non-applicability of statutes of limitations to civil or any other kind of proceedings in which victims of crimes against humanity seek reparation. The aforementioned Draft Article 6, para. 6, specifically concerns criminal proceedings and would not cover actions brought by victims to seek remedy outside of criminal proceedings. In other words, in the absence of a clear provision stipulating the non-applicability of statutes of limitations to any proceedings in which victims seek reparation, victims of crimes against humanity could see their compensation claims dismissed as time-barred. In this regard, the UN Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence affirmed that “statutory limitations on claims for reparation have been identified as **one of the greatest obstacles to reparation**”.¹²

It is worth mentioning that the Working Group of Experts on People of African Descent and the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance stressed “the need for a provision on the non-applicability of any statute of limitations for the right to reparations for crimes against humanity”.¹³ Similarly, the UN Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence pointed out that the Draft Articles “should recognize the non-applicability of statutory limitations to any legal action [...] by victims seeking full reparation”.¹⁴ In his view, “this is a **logical consequence of the non-applicability of statutory limitations to crimes against humanity**, since **the crimes are what give rise to the claims for reparation**”.¹⁵ In this sense, the extension of the rule to proceedings in which victims of crimes against humanity seek reparation would be a mere corollary of the fairly widely recognized principle of the non-applicability of statutory limitations to crimes against humanity, as set forth in Draft Article 6, para. 6.

¹¹ In this regard, see, for instance, Article 29 of the Rome Statute of the International Criminal Court (supra note 7) which reads as follows: “*The crimes within the jurisdiction of the Court shall not be subject to any statute of limitations*”.

¹² Comments and observations received from Governments, international organizations and others, 21 January 2019, UN Doc A/CN.4/726, hereinafter ‘Comments and observations, [A/CN.4/726](#)’, p. 131.

¹³ Additional comments and observations received from Governments, international organizations and others, Addendum, 2 May 2019, UN Doc [A/CN.4/726/Add.2](#), p. 22.

¹⁴ Comments and observations, A/CN.4/726, supra note 11, p. 131.

¹⁵ *Idem*

TRIAL International calls on States to include in a prospective Convention on Crimes against Humanity a provision explicitly providing that statutes of limitations shall not apply to civil or any other proceedings in which victims of crimes against humanity seek reparation. This provision is essential to fully recognize the well-established victims' right to redress enshrined in Draft Article 12, para. 3.¹⁶

Principle 23 of the 2005 UN Updated Set of Principles for the Protection and Promotion of Human Rights through Action to Combat Impunity affirms that "prescription shall not apply to crimes under international law [which include crimes against humanity] that are by their nature imprescriptible".¹⁷ Interestingly, it adds that "when it does apply, **prescription shall not be effective against civil or administrative actions brought by victims seeking reparation for their injuries**".¹⁸ Similarly, Section IV of the 2005 UN Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law (hereinafter "UN Basic Principles on Reparation") is devoted to the issue of statutes of limitations. It reads as follows:

*"Where so provided for in an applicable treaty or contained in other international legal obligations, statutes of limitations shall not apply to gross violations of international human rights law and serious violations of international humanitarian law which constitute crimes under international law. Domestic statutes of limitations for other types of violations that do not constitute crimes under international law, including **those time limitations applicable to civil claims and other procedures, should not be unduly restrictive**".¹⁹*

In this regard, it is worth underlying that, according to the preamble of the UN Basic Principles on Reparation, "the Basic Principles [...] **do not entail new international or domestic legal obligations** but identify mechanisms, modalities, procedures and methods for the implementation of **existing legal obligations** under international human rights law and international humanitarian law which are complementary though different as to their norms".²⁰

The issue at stake has also been dealt with by the United Nations Committee against Torture (hereinafter "UN CAT"). In its General Comment No. 3 on the implementation of Article 14 of the Convention against Torture and other Cruel, Inhuman or Degrading Treatment

¹⁶ Victims' right to reparation has been consistently upheld in numerous international legal instruments. See, among others, the [UN Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law](#), the [Universal Declaration of Human Rights](#) (Article 8); the [International Covenant on Civil and Political Rights](#) (Article 2, para. 3); the [International Convention for the Protection of All Persons from Enforced Disappearance](#) (Article 24, paras. 4 and 5); the [Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment](#) (Article 14); the Rome Statute of the International Criminal Court (Article 75); the [American Convention on Human Rights](#) (Article 25); the [European Convention on Human Rights](#) (Article 13).

¹⁷ [Updated Set of principles for the protection and promotion of human rights through action to combat impunity](#), 8 February 2005, UN Doc E/CN.4/2005/102/Add.1, Principle 23.

¹⁸ *Idem*

¹⁹ [UN Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law](#), adopted by the General Assembly resolution 60/147, 15 December 2005, §§ 6-7, emphasis added.

²⁰ *Ibid.*, Preamble, § 7.

or Punishment (hereinafter "Convention against Torture") concerning victims' right to redress, the UN CAT has identified statutes of limitations as one of the obstacles preventing victims' effective access to redress.²¹ In this regard, it affirmed that:

*"On account of the **continuous nature of the effects** of torture, statutes of limitations should not be applicable as these deprive victims of the redress, compensation, and rehabilitation due to them. For many victims, **passage of time does not attenuate the harm** and in some cases the harm may increase as a result of post-traumatic stress that requires medical, psychological and social support, which is often inaccessible to those who have not received redress".²²*

Whilst the UN CAT's considerations specifically refer to torture, they should apply *mutatis mutandis* to other crimes under international law, including crimes against humanity. In this regard, it is worth highlighting that the UN CAT addressed the issue of statutes of limitations for civil claims concerning a victim of rape as a war crime in the case *A v. BiH*. In its decision, the UN CAT noted that the complainant was granted compensation in the relevant criminal proceedings, but was unable to receive it in practice.²³ Given that "the domestic legislation regulating civil claims for non-pecuniary damage provides for a statute of limitations for such cases", the UN CAT concluded that the State party breached its obligations under Article 14 of the Convention "by failing to provide the complainant with redress, including fair and adequate compensation".²⁴

The Inter-American Court of Human Rights addressed the issue of statutes of limitations for civil claims specifically in relation to crimes against humanity. In its judgment on the case *Órdenes Guerra et al. v. Chile*, the Inter-American Court concluded that **"insofar as the facts that gave rise to the civil actions for damages for acts characterized as crimes against humanity, such actions should not be subject to the statute of limitations"**.²⁵

Therefore, as stated above, the explicit recognition that statutes of limitations do not apply to civil or any other proceedings in which victims of crimes against humanity seek redress is a necessary corollary of the fairly widely accepted principle that statutory limitations do not apply to crimes against humanity. Importantly, it is an **essential safeguard to ensure that victims can effectively enjoy the right to reparation**.

TRIAL International recommends that States carefully consider the incorporation in a prospective Convention of a provision explicitly stipulating the non-applicability of statutory limitations to proceedings in which victims of crimes against humanity seek reparation.

²¹ UN CAT, General Comment No. 3, UN Doc [CAT/C/GC/3](#), 13 December 2012, § 38.

²² *Ibid.*, § 40, emphasis added.

²³ UN CAT, Case *A. v. BiH*, decision of 2 August 2019, § 7.6.

²⁴ *Idem*, footnote omitted

²⁵ Inter-American Court of Human Rights, Case *Órdenes de Guerra et al. v. Chile*, Judgment of 29 November 2018, § 89, in general §§ 78-95.

2. Liability of legal persons (Draft Article 6, para. 8)

Recommendation

TRIAL International calls on States to strengthen the language used in Draft Article 6, para. 8, with a view to ensuring that a prospective Convention on Crimes against Humanity provides an obligation to establish the liability of legal persons for their participation in crimes against humanity. Such liability may be criminal, civil or administrative and shall be without prejudice to the criminal liability of natural persons who committed the crime.

By acknowledging the “potential involvement of legal persons” in crimes against humanity,²⁶ Draft Article 6, para. 8, provides that “subject to the provisions of its national law, each State shall take measures, where appropriate, to establish the liability of legal persons for the offences referred to in this draft article. Subject to the legal principles of the State, such liability of legal persons may be criminal, civil or administrative”. In its commentaries, the ILC specifies that this provision leaves a wide margin of discretion to States in the implementation of the relevant obligation. In particular, “the obligation is ‘subject to’ the State’s existing approach to liability of legal persons for criminal offences under its national law”, including in relation to the definition of legal person, as well as the grounds and conditions for such liability.²⁷ Secondly, as the provision itself spells out, States maintain a flexible margin to determine the nature of the liability, that can be criminal, civil or administrative.²⁸ Moreover, States can ultimately assess the very appropriateness of imposing such liability for crimes against humanity.²⁹

TRIAL International calls on States to adopt a clearer language stipulating that legal persons shall be liable for their participation in crimes against humanity. Such liability may be criminal, civil or administrative and shall be without prejudice to the criminal liability of natural persons who committed the crime. Furthermore, as provided for in other multilateral treaties, legal persons held liable shall be “subject to effective, proportionate and dissuasive criminal or non-criminal sanctions, including monetary sanctions”.³⁰

Indeed, it is widely recognised that legal persons, especially corporations and other entities, can potentially be involved in the commission of international crimes, including crimes against humanity.³¹ Specific provisions on the liability of legal persons have been enshrined in several

²⁶ Draft Articles with commentaries, *supra* note 2, Article 6, commentary, § 47.

²⁷ *Ibid.*, § 49, emphasis added.

²⁸ *Ibid.*, § 51

²⁹ *Ibid.*, § 50

³⁰ See, for instance, the [2000 United Nations Convention against Transnational Organized Crime](#), Article 10, para. 4 (entered into force on 29 September 2003 and whose number of States parties is 192); [2003 United Nations Convention against Corruption](#), Article 26, para. 4 (entered into force on 14 December 2005, whose number of States parties is 190).

³¹ In this regard, see, for instance, Working Group on the use of mercenaries as a means of violating human rights and impeding the exercise of the right of peoples to self-determination, Access to justice, accountability and remedies for victims of mercenaries, mercenary-related actors and private military and security companies, 5 July 2022, UN Doc [A/HRC/51/25](#), § 81; IBA War Crimes Committee shines a light on corporate liability cases, 25 November 2022, available [here](#); De Vos, D., Corporate Criminal Accountability for International Crimes, Just Security, 30 November 2017, available [here](#); Kaleck, W., Saage-Maaß, M., Corporate Accountability for Human Rights Violations Amounting

international treaties,³² including the recently adopted Ljubljana-The Hague Convention on International Cooperation in the Investigation and Prosecution of the Crime of Genocide, Crimes against Humanity, War Crimes and Other International Crimes (hereinafter “Ljubljana-The Hague Convention”).³³

TRIAL International is of the view that providing for the liability of legal persons is crucial to capture the full range of responsibilities in the perpetration of crimes against humanity, thus **avoiding any impunity gaps**. Furthermore, appropriate domestic legislation implementing a clear international obligation in this regard can also play a **significant deterrent effect**. Importantly, recognising the liability of legal persons for their participation in crimes against humanity can considerably **increase victims’ access to full and effective reparation**.

3. “Conditional universal jurisdiction” (Draft Article 7, para. 2) and the obligation to prosecute or extradite (Draft Article 10)

Recommendation

States should retain in a prospective Convention provisions stipulating the obligations to establish and exercise jurisdiction over crimes against humanity in cases where the alleged offender is present in any territory under the State’s jurisdiction, unless that State extradites or surrenders the person (Draft Article 7, para. 2, and Draft Article 10)

Draft Article 7, para. 2, provides for the State’s obligation to establish its jurisdiction over crimes against humanity “in cases where the alleged offender is present in any territory under its jurisdiction and it does not extradite or surrender the person in accordance with the [...] draft articles”. As the ILC explains in its commentaries, “this obligation **helps to prevent an alleged offender from seeking refuge in a State that otherwise has no connection with the offence**.”³⁴

This obligation should be read in conjunction with Draft Article 10. The latter provides for the State’s obligation to exercise jurisdiction over crimes against humanity if the alleged offender is present in the territory under its jurisdiction. In such case, if “it does not extradite or

to International Crimes: The Status Quo and its Challenges, in *Journal of International Criminal Justice* 8/3, 2010, available [here](#).

³² See, for instance, the 2000 United Nations Convention against Transnational Organized Crime, Article 10 (supra note 30); 2003 United Nations Convention against Corruption, Article 26 (supra note 30). See also the list provided in the ILC Commentaries to the Draft Articles (Draft Articles with commentaries, supra note 2, Article 6, commentary, § 46).

³³ Adopted on 23 May 2023 and not yet entered into force, the [Ljubljana-The Hague Convention](#) opened for signature on 14 February 2024 and has already been signed by 32 States. Article 15 on “Liability of legal persons” provides that: “1. Each State Party shall adopt such measures as may be necessary, consistent with its legal principles, to establish the liability of legal persons for their participation in the crimes to which that State Party applies this Convention in accordance with article 2. 2. Subject to the legal principles of the State Party, the liability of legal persons may be criminal, civil or administrative. 3. Such liability shall be without prejudice to the criminal liability of the natural persons who have committed the crimes. 4. Each State Party shall, in particular, ensure that legal persons held liable in accordance with this article are subject to effective, proportionate and dissuasive criminal or non-criminal sanctions, including monetary sanctions”.

³⁴ Draft Articles with commentaries, supra note 2, Article 7, commentary, § 9.

surrender the person to another State or competent international criminal court or tribunal”, the State is under the obligation to “submit the case to its competent authorities for the purpose of prosecution” (Draft Article 10). This is what is generally referred to as the “*aut dedere aut judicare*” principle. In other words, the State has the duty to investigate and, if appropriate, prosecute the alleged responsible for crimes against humanity, but it can be relieved from such obligation if it “extradites or surrenders the alleged offender to another State or competent international criminal court or tribunal that is willing and able itself to submit the case to prosecution”.³⁵

TRIAL International calls on States to incorporate these provisions in a prospective Convention on Crimes against Humanity, as they contribute to avoid the creation of “safe havens” for perpetrators and constitute a key bulwark against impunity for crimes against humanity.

TRIAL International is of the view that those provisions should be **retained as currently drafted**. Indeed, similar provisions have already been incorporated in other multilateral treaties concerning crimes under international law, including the International Convention for the Protection of All Persons from Enforced Disappearance and the widely ratified Convention against Torture.³⁶

4. Other recommendations: improving the definitions of crimes

As mentioned above, the topics analysed in this paper do not represent an exhaustive list of the issues requiring further consideration and attention in view of the elaboration and adoption of a prospective Convention on Crimes against Humanity.

Among others, **TRIAL International urges States to consider amending the definitions of the crimes of enforced disappearance and persecution contained in the Draft Articles to bring them in line with the relevant definitions under treaty and customary international law.**

Accordingly, with regard to enforced disappearance, the expression “*with the intention of removing them from the protection of the law for a prolonged period of time*” contained in the definition of the crime enshrined in Draft Article 2, para. 2(i), should be removed, since it is unduly restrictive and it adds two requirements that fall short of international human rights law standards, as emphasised, among others, by the United Nations Working Group on Enforced or Involuntary Disappearances and the United Nations Committee on Enforced Disappearances.³⁷ In this regard, the latter stressed

³⁵ *Ibid.*, Article 10, commentary, § 1.

³⁶ See Article 9, para 2, and Article 11, para. 1, of the International Convention for the Protection of All Persons from Enforced Disappearance (entered into force on 23 December 2010, the number of States parties is 72); see also Article 5, para. 2, and Article 7, para. 1, of the Convention against Torture (entered into force on 26 June 1987, the number of States parties is 173). See also Article 8, para. 3, and Article 14 of the Ljubljana-The Hague Convention, *supra* note 31 (for analysis of these provisions, including on the possibility to formulate a very limited reservation, see Capizzi, P., Relva, H., A Historic Step Forward in the Fight Against Impunity for International Crimes, Symposium on Ljubljana – The Hague Convention on Mutual Legal Assistance: Critical Reflections in *Opinio Juris*, 27 July 2023, available [here](#)).

³⁷ See Article 2 of the International Convention for the Protection of All Persons from Enforced Disappearance (*supra* notes 16 and 36). See, among others, the UN Working Group on Enforced or Involuntary Disappearances (Comments and observations, A/CN.4/ 726, *supra* note 12, pp. 148-150 and Comments to the Draft Articles on Crimes Against Humanity, 3 December 2018, available [here](#), pp. 2-5); UN Committee on Enforced Disappearances (Statement on the draft articles on crimes against humanity adopted by the International Law Commission,

“the importance to maintain the definition enshrined in the Convention on the Protection of all Persons from Enforced Disappearance at its Article 2”,³⁸ whilst the former pointed out that the Draft Articles “*de facto* could leave a number of conducts which constitute enforced disappearance under international human rights law (IHRL) outside the scope of this Convention”.³⁹

Similarly, with regard to persecution, the expression “*in connection with any act referred to in this paragraph*” contained in the definition of the crime set forth in Draft Article 2, para. 1(h), should be deleted. By adding the requirement that persecution must be perpetrated in connection with other underlying acts of crimes against humanity, the definition in the Draft Articles does not reflect customary international law.⁴⁰

Other subjects that, in view of the adoption of a prospective Convention on Crimes against Humanity, require further consideration, include the definition of victims and their rights, measures of reparations, and the prohibition of amnesties for crimes against humanity. In this regard, TRIAL International refers to briefing papers already put forward by other stakeholders,⁴¹ and reserves its right to issue or join future dedicated briefing papers.

Adopted on 1 June 2018, during the 14th session of the Committee, 22 May - 1 June, 2018, available [here](#), § 2); United Nations Office of the High Commissioner for Human Rights (Comments and observations, A/CN.4/726, supra note 12, pp. 136-137); Amnesty International (General Recommendations, supra note 10, Recommendation 2); Human Rights Watch, [Recommendations on the International Law Commission's Draft Articles on Prevention and Punishment of Crimes Against Humanity](#), April 2023, Recommendation 2).

³⁸ UN Committee on Enforced Disappearances, Statement on the draft articles, supra note 37, § 2.

³⁹ UN Working Group on Enforced or Involuntary Disappearances, Comments to the Draft Articles, supra note 37, p.4.

⁴⁰ See, among others, United Nations Office of the High Commissioner for Human Rights (Comments and observations, A/CN.4/726, supra note 11, pp. 137-138); Amnesty International (General Recommendations, supra note 10, Recommendation 2); Human Rights Watch, Recommendations, supra note 35, Recommendation 1).

⁴¹ On the definition of victims and their rights and on reparations measures, see, for instance, Amnesty International, General Recommendations, supra note 10, Recommendation 14. On the prohibition of amnesty and similar measures, see, for instance, Amnesty International, General Recommendations, supra note 10, Recommendation 12; Human Rights Watch, Recommendations, supra note 35, Recommendation 4; United Nations Office of the High Commissioner for Human Rights, Comments and observations, A/CN.4/726, supra note 12, pp. 131-132; UN Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence, Comments and observations, A/CN.4/726, supra note 12, p. 131.