Principles against Executions

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PRINCIPLES AGAINST EXECUTIONS†

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I. INTRODUCTION

The right to be free from extra-legal, arbitrary, or summary executions is recognized in a number of international human rights instruments. Such killings violate article 6 of the International Covenant on Civil and Political Rights,¹ which provides that “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 Although international organizations have developed procedures and remedies in response to extra-legal, arbitrary, and summary killings,³ executions continue to occur in many countries. These killings include: (1) political assassinations; (2) deaths resulting from torture or ill-treatment in prison or de-

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(3) deaths in the context of enforced or involuntary "disappearances;" (4) deaths resulting from excessive use of force by law-enforcement personnel; and (5) executions without due process.  

In order to give meaning to the right to be free from arbitrary killings, safeguards must be developed to make arbitrary killings less likely to occur and to insure the investigation of suspicious deaths which do occur. Many suspicious deaths are not adequately investigated because the killings are committed by various branches of government either directly, or with their consent or acquiescence. Examples of such suspicious deaths include those of Archbishop Oscar Romero in El Salvador, Benigno Aquino in the Philippines, Father Jerzy Popieluszko in Poland, and Rodrigo Rojas de Negri in Chile. In each of these instances, inadequate investigation procedures were used which rendered the ultimate conclusion questionable. When an investigation of a suspicious death is conducted, it often results in erroneous causes of death, whether from a confrontation between government forces and armed opposition groups, an attempted escape from custody or resistance to arrest, an exercise of self-defense, suicide, or a sudden illness.

Many countries have procedures for investigating deaths, but these procedures become ineffective when the deaths occur under suspicious circumstances, such as potential involvement of the police, the army, or other governmental agents. In these instances, a thorough and independent investigation is rarely conducted. Relevant evidence is either ignored or concealed. Consequently, the perpetrators of the killings are seldom brought to justice.

In the last decade, the international community has come to recognize the continued existence of arbitrary and summary killings throughout the world as well as the need for international action to safeguard individuals from such killings. The United Nations has de-

6. Id. at 26-27. The Special Rapporteur stressed the legal issues surrounding the investigation of arbitrary executions by stating: In cases where an ordinary civilian was responsible for such deaths, . . . the circumstances have been investigated, an autopsy carried out and those found responsible for the death have been tried, convicted and punished in accordance with the law. However, where death was caused by the police, the army or other law enforcement agencies or persons acting under their protection, such investigations have been the exception rather than the rule. . . .
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veloped Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions ("Principles"). Because this action represents a significant step in international efforts to stop arbitrary and summary killings, this article will provide an authoritative interpretation and history of the Principles. Part II outlines the background and development of the Principles. The Minnesota Lawyers International Human Rights Committee, a nongovernmental organization, played a significant role in the development of the Principles. Accordingly, Part III examines the role a nongovernmental organization may have in drafting international standards by setting forth the Principles and reviewing the source and history of the deliberations behind each Principle. Finally, Part IV examines the effectiveness of the Principles by applying them to a current, urgent situation of unexplained deaths in Australia.

II. BACKGROUND

In recent years, various international human rights organizations have investigated arbitrary killings. These groups include Amnesty International, Human Rights Watch, and the Minnesota Lawyers International Human Rights Committee, a nongovernmental organization committed to promoting human rights and investigating human rights violations in the U.S. and abroad. The Committee advocates against individual human rights abuses, researches and investigates human rights conditions in other countries, encourages the adoption of international human rights standards by all countries, and educates the membership, the bar, political leaders and the public concerning human rights issues.

Nongovernmental organizations, organizations without governmental participation or endorsement, frequently play a vital role in the formulation, adoption and entry into force of resolutions, declarations or treaties in the field of international human rights. For a discussion of nongovernmental organizations engaged in the protection of human rights, see Weissbrodt, The Contribution of International Nongovernmental Organizations to the Protection of Human Rights, in HUMAN RIGHTS IN INTERNATIONAL LAW: LEGAL AND POLICY ISSUES 403 (T. Meron ed. 1984); L. Livezey, NONGOVERNMENTAL ORGANIZATIONS AND THE IDEAS OF HUMAN RIGHTS (1988).

Amnesty International is a nongovernmental organization involved in the protection of human rights. Its mandate includes: (1) seeking the immediate and unconditional release of "prisoners of conscience," that is, "persons detained because of their beliefs, color, sex, ethnic origin, language, or religious creed, provided they have not used or advocated violence;" (2) opposing the death penalty, torture, and other cruel or inhuman or degrading treatment or punishment of all prisoners; and (3) working for fair trials for political prisoners. See Amnesty International Statute, art. 1, Al Index: POL 20/01/99; at 2 (1988).

Human Rights Watch is comprised of Africa Watch, Americas Watch, Asia Watch, the Fund for Free Expression, Helsinki Watch, and Middle East Watch. Helsinki Watch, founded in 1979, promotes attention to the human rights provisions of the Helsinki Final Act and the recognition of the Act as an international human rights instrument. Americas Watch, founded in 1982, works to increase respect for human rights by promoting awareness of, and support for, the international human rights instruments which are applicable to the Americas. For more information on
ternational Human Rights Committee.\textsuperscript{12} These investigations reveal the need for international cooperation in preventing arbitrary executions—\textsuperscript{13} a need also recognized by various organs of the United Nations (U.N.).\textsuperscript{14} The U.N. General Assembly has on several occasions expressed alarm at the incidence of arbitrary executions occurring throughout the world and has sought to establish international standards to deal with such killings.\textsuperscript{15} In 1982, the U.N. Commission on Human Rights\textsuperscript{16} authorized a Special Rapporteur to study the problem of arbitrary executions.\textsuperscript{17} Similarly, in 1985 the Seventh U.N. Congress on the Prevention of Crime and the Treatment of Offenders\textsuperscript{18} requested a report from the Secretary-General on the effective prevention, investigation, and elimination of such killings.\textsuperscript{19}

In 1986, the U.N. General Assembly adopted a resolution which condemned arbitrary executions and also endorsed the conclusion of the

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\textsuperscript{12} For a description of the Minnesota Lawyers International Human Rights Committee's involvement in promoting human rights, see _supra_ note 8.

\textsuperscript{13} In the interest of brevity, unless otherwise noted in the text, throughout this article, the term "arbitrary" is meant to encompass "extra-legal" and "summary" executions as well. For a discussion of the meaning of each term, see _infra_ notes 43-46 and accompanying text.


\textsuperscript{16} The Charter of the United Nations requires the United Nations to promote human rights and their universal respect, as well as to promote their observance. U.N. Charter arts. 1(3), 55(c), 56 and 62(2). For this purpose, the Economic and Social Council was empowered by the Charter to set up a commission for the protection of human rights. _Id._ art. 60. The Commission on Human Rights was established by the Council in 1946. E.S.C. Res. 5(I), 1 U.N. ESCOR 163 (1946). For a detailed discussion of the history and work of the U.N. Commission on Human Rights see H. Tolley, _THE U.N. COMMISSION ON HUMAN RIGHTS_ (1987).

\textsuperscript{17} The Charter of the United Nations requires the United Nations to promote human rights and their universal respect, as well as to promote their observance. U.N. Charter arts. 1(3), 55(c), 56 and 62(2). For this purpose, the Economic and Social Council was empowered by the Charter to set up a commission for the protection of human rights. _Id._ art. 60. The Commission on Human Rights was established by the Council in 1946. E.S.C. Res. 5(I), 1 U.N. ESCOR 163 (1946). For a detailed discussion of the history and work of the U.N. Commission on Human Rights see H. Tolley, _THE U.N. COMMISSION ON HUMAN RIGHTS_ (1987).

\textsuperscript{18} The United Congress on the Prevention of Crime and the Treatment of Offenders convenes every five years. The Seventh Congress was held in Milan, Italy, from August 26 to September 6, 1985, in conformity with Economic and Social Council Resolution 1984/154 of May 25, 1984.

Special Rapporteur. In his annual report, the Special Rapporteur stated the need "to develop international standards designed to ensure that investigations are conducted into all cases of suspicious death . . ." including provisions for an adequate autopsy. During the same year, the U.N. Economic and Social Council requested that the U.N. Committee on Crime Prevention and Control consider arbitrary executions at its tenth session in August 1988, "with a view to elaborating principles on the effective prevention and investigation of such practices."  

In the 1987 report, the Special Rapporteur on Summary or Arbitrary Executions examined the "[a]bsence of investigation, prosecution and/or punishment in cases of death in suspicious circumstances." The report noted that governments were extremely reluctant to investigate where military or law enforcement agencies were possibly involved. In these cases, autopsies or inquest proceedings often do not take place, or crucial information, such as evidence of torture, is omitted.  

In response to this report, the U.N. Commission on Human Rights recommended that governments "[r]eview the machinery for investigation of deaths under suspicious circumstances in order to secure an impartial and independent investigation of such deaths, including an adequate autopsy." The Commission specifically recommended that international organizations "[m]ake a concerted effort to draft international standards designed to ensure proper investigation by appropriate authorities into all cases of suspicious death, including provisions for

23. Id.
24. Id. at 27.
adequate autopsy." Pursuant to this recommendation and as a result of its own investigations, the Minnesota Lawyers International Human Rights Committee drafted the "Standards for the Investigation of Arbitrary Killings." Similarly, the U.N. Secretariat in Vienna prepared draft principles on the effective prevention and investigation of extra-legal, arbitrary, and summary executions.

These two drafts were reviewed, revised, and combined at a conference sponsored by the Minnesota Lawyers International Human Rights Committee in October 1987 (the "Conference"). The Conference, entitled "Promoting Human Rights Through Adequate Inquiry Procedures," was attended by various experts and several organizations involved in the issue of arbitrary executions. The Conference was based on an interdisciplinary approach and included participants with legal, anthropological, medical and forensic expertise. The U.N. was represented by individuals from its Centre for Human Rights in Geneva and its Crime Prevention and Criminal Justice Branch in Vienna.

The Conference was designed as a working meeting to formulate international death investigation standards. The participants were challenged to find ways to investigate suspicious deaths impartially and effectively, to develop internationally recognized standards by which such investigations could be judged, and ultimately, to prevent arbitrary executions. The Conference expanded the U.N. Secretariat's preliminary text from thirteen draft Principles to twenty draft Principles. The resulting Principles address an array of concerns regarding the prevention, investigation, and legal proceedings surrounding arbitrary killings.

26. Id. at 4.

27. In preparing these principles the Secretary-General took into account the work done previously in this field by other U.N. bodies, offices, and the specialized agencies, and by regional intergovernmental and nongovernmental bodies. Hence, the Principles contain provisions from various other declarations and human rights treaties. Report of the Secretary-General, Extra-legal, Arbitrary and Summary Executions and Measures for Their Prevention and Investigation, U.N. Doc. E/AC.57/1988/5, at 21 (1988) [hereinafter Report of the Secretary-General].


29. In addition to the United Nations, the other organizations represented at the Conference included: the Center for Archeological Studies, International Human Rights Law Group, the American Association for the Advancement of Science, the Ford Foundation, the Lawyers Committee for Human Rights, Amnesty International, and the International Service for Human Rights.

30. The participants at the Conference recognized that drafting and enacting death inquiry standards would not prevent arbitrary or summary killings. International standards such as those adopted at the Conference, however, may well provide the impetus needed to implement procedures which will ultimately protect the right to be free from the arbitrary deprivation of life.
In June 1988, an international preparatory meeting was held in Vienna (the "June Meeting"). The purpose of the meeting was to prepare for presentation of the Conference's draft Principles to the U.N. Committee on Crime Prevention and Control, and ultimately to the U.N. Economic and Social Council. The June meeting was attended by U.N. officials and criminal justice experts representing Austria, Cuba, Ecuador, the Federal Republic of Germany, Pakistan, the Philippines, the U.S.S.R., and other countries.\(^\text{31}\)

Some minor changes were made to the draft Principles at the June Meeting, but their basic content remained the same as adopted by the Conference. The draft Principles were subsequently presented to the Committee on Crime Prevention and Control in August 1988. The Committee approved the draft Principles with few changes and the Principles were adopted by the U.N. Economic and Social Council in May 1989.\(^\text{32}\)

In December 1989 the Principles were endorsed by the U.N. General Assembly.\(^\text{33}\) The General Assembly also condemned the continued occurrence of large-scale arbitrary executions.\(^\text{34}\) In addition, the General Assembly expressly welcomed the close cooperation between the Committee on Crime Prevention and Control and various other U.N. branches in elaborating the draft Principles.

III. THE PRINCIPLES ON THE EFFECTIVE PREVENTION AND INVESTIGATION OF EXTRA-LEGAL, ARBITRARY, AND SUMMARY EXECUTIONS

The Principles, many of which are derived from various other U.N. human rights instruments, provide standards for governments to utilize within the framework of their national legislation and practices. In order to insure the effective prevention of arbitrary executions, the

\(^{31}\) Because of its participation in developing the draft Principles, and in furtherance of its desire to have the Principles adopted as an international standard, two representatives from the Minnesota Lawyers International Human Rights Committee attended the meeting. Representatives from the following organizations also attended the meeting: the Council of Arab Ministers of Justice, Amnesty International, Arizona State University, the Council on Human Rights in Asia, Caritas International, the International Centre for Sociological Penal and Penitentiary Research and Studies, the International Council for Adult Education, the International Association of Democratic Lawyers, Union Internationale des Syndicats de Police, and the International Association of Senior Police Officers.


Principles are to be brought to the attention of law enforcement and criminal justice officials, military personnel, lawyers, members of the executive and legislative bodies of the government, and the public in general. The Principles are separated into three sections dealing with prevention, investigation, and legal proceedings. After presentation of each Principle, this article will discuss the changes made by Conference participants to the U.N. Secretariat’s preliminary text of draft Principles, as well as any subsequent changes made at the June Meeting. By tracing the source of these Principles, it is hoped that they will be better understood.

A. Prevention

The Principles contain eight provisions concerning the prevention of extra-legal, arbitrary, and summary killings. Taken together, these provisions set forth a broad prohibition against such executions. In addition, they provide for various governmental actions and restrictions, as well as individual rights and guarantees.

Principle 1: General Prohibitions Against Arbitrary Killings

Governments shall prohibit by law all extra-legal, arbitrary and summary executions and shall ensure that any such executions are recognized as offences under their criminal laws, and are punishable by appropriate penalties which take into account the seriousness of such offences. Exceptional circumstances such as a state of war or threat of war, internal political instability or any other public emergency may not be invoked as a justification for such executions.

35. See Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, G.A. Res. 46, 39 U.N. GAOR Supp. (No. 51) at 197, U.N. Doc. A/39/51 (1984) entered into force June 26, 1987; art. 2, para. 1 states: “Each State Party shall take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction . . . .” See also art. 4, which states in part:

1. Each State Party shall ensure that all acts of torture are offences 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 offences punishable by appropriate penalties which take into account their grave nature.

36. Id. art. 2, para. 2, which states: “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 . . . .” See also International Covenant, supra note 1, art. 4 paras. 1 and 2 which allows a State Party to derogate from its obligations under the Covenant in times of public emergency. Even during a public emergency, however, a State Party may not derogate from its obligation to protect each individual’s right to life nor subject an individual to torture or other cruel, inhuman or degrading treatment.
Such executions shall not be carried out under any circumstances including, but not limited to, situations of internal armed conflict, excessive or illegal use of force by a public official or other person acting in an official capacity or a person acting at the instigation, or with the consent or acquiescence of such person, and situations in which deaths occur in custody. This prohibition shall prevail over decrees issued by governmental authority.

Acts of torture may be one of the principal practices leading to arbitrary deaths. Therefore, it is not surprising that Principle 1, like many of the other Principles, is modeled after provisions of the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (“Convention Against Torture”). The first sentence of Principle 1 is a combination of article 2, paragraph 1, and article 4 of the Convention Against Torture. Two noteworthy differences exist, however.

First, article 2 of the Convention Against Torture requires that State Parties prevent torture through legislative, administrative, judicial, or other measures, while article 4 mandates that all acts of torture be criminal offenses. Conversely, the Principles require governments to prohibit by law all arbitrary executions within the first sentence of Principle 1. Although the language of both the Convention Against Torture and the Principles command the same result, the wording of this Principle is more forceful, succinct, and thus potentially more effective. The requirement that governments “shall ensure that any such executions are recognized as offenses under their criminal laws” appears repetitive. Nevertheless, this requirement emphasizes the manner in which governments must deal with extra-legal, arbitrary, and summary killings.

Second, the Convention Against Torture requires that attempts to commit torture, as well as complicity and participation in torture, be considered crimes. There is no parallel provision in the Principles.


38. See Convention Against Torture, supra note 35, art. 1, para. 1, which defines torture, in part, as follows: “[W]hen 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 . . . .”


41. Id.

42. Id. art. 4.
Admittedly, Principle 1 goes on to prohibit arbitrary executions by "persons acting in an official capacity or a person acting at the instigation, or with the consent or acquiescence of such person." This clause may be an attempt by the drafters to include a general prohibition against participation or complicity in such killings, but Principle 1 is not as all-encompassing as the language of the Convention Against Torture.

In addition, Principles 18 and 19 require that all participants in arbitrary killings be brought to justice, including superior officers or public authorities who had a reasonable opportunity to prevent such acts. The parameters of these Principles, however, may be unclear when read in light of Principle 1. If these Principles included a general prohibition of any participation in arbitrary executions, they would clarify which participants, other than superior officers or public officials, must be brought to justice.

Unlike the Convention Against Torture, the Principles contain no reference to attempts to commit extra-legal, arbitrary, or summary killing. It is unclear whether such actions are prohibited, although it is likely that prohibitions against attempted arbitrary killings are beyond the scope of the Principles. The Principles are the result of an increasing international concern over actual deaths resulting from governmental participation through instigation, consent, or acquiescence. The exclusion of attempted arbitrary killings may stem from the fact that the Principles are intended to protect the right to life recognized in various human rights instruments. Therefore, requiring criminal liability for an attempt to commit an arbitrary execution may be an inappropriate extension of the Principles' mandate.

Noticeably absent from the Principles is any attempt to define extra-legal, arbitrary or summary executions. These terms, even more so than the term "torture," are not conducive to an all-encompassing definition. The phrase "extra-legal, arbitrary or summary executions" may describe a variety of human rights abuses which result in the deprivation of life. Although these terms seem vague and overlapping, commentators appear to categorize human rights abuses described by the terms into three basic groups:

43. See infra text accompanying notes 167-84.
44. See Convention Against Torture, supra note 35, art. 1, para. 1 (for a detailed definition of "torture").
(1) "arbitrary" executions or killings may take a variety of forms, some of which may also be considered summary or extra-legal. These include massacres by security forces, deaths resulting from acts of aggression contrary to the United Nations Charter, deaths resulting from torture or from ill-treatment in prison or detention, and deaths resulting from excessive use of force by law enforcement officials.

(2) "summary" executions are carried out after marginally legal proceedings, which violate the procedural safeguards provided in articles 6, 9, 14, and 15 of the International Covenant on Civil and Political Rights. These executions often result from an order of a "revolutionary court" or a "military tribunal."

46. The Special Rapporteur cited the following examples of arbitrary executions in his first report: the killing of people who are in detention after torture; the deliberate killing of targeted individuals who are not under detention by governments; the massacre of groups of individuals, for example, political demonstrators or people gathering for a meeting; the systematic killing over a period of time of specific categories of persons, such as members of political parties, ethnic and/or religious groups, social classes, or trade unions. See Report of the Special Rapporteur, supra note 5, at 29-42.

47. See International Covenant, supra note 1, art. 6, which provides in part:

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 . . . .

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;

Art. 9 states in part:

1. All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent, and fair tribunal established by law . . . .

2. Everyone charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to law . . . .

5. Everyone convicted of a crime shall have the right to his conviction and sentence being reviewed by a higher tribunal according to law . . . .

Art. 14 states in part:

1. Everyone charged with a criminal offence shall have the right to be tried within a reasonable time...

2. Everyone charged with a criminal offence shall have the right to be tried within a reasonable time...

48. The Special Rapporteur cited the following as examples of summary executions in his first report:

The death sentence is delivered often in a special court, special military tribunal,
“extra-legal” executions occur outside any legal framework and have no color of legality. They are usually committed by the government or death squads associated with the government and are often directed towards political adversaries or dissidents.

In choosing not to define the terms “extra-legal, arbitrary and summary executions,” the drafters of the Principles have provided the broadest possible level of protection to the right to life. Although these terms may be developing an international customary definition, the Principles appear to allow for a case-by-case determination. As international law evolves, so may the concepts of extra-legal, arbitrary and summary deprivations of life.

The definitional scope of the Principles was discussed at the Conference. In qualifying the nature of killings to be prohibited, Conference participants considered whether the term “extra-judicial” alone would suffice. Ultimately, they agreed that the term “extra-judicial” would be too narrow and that the terms “arbitrary or summary” should be retained. The Conference participants recognized that the terms “arbitrary or summary” provided greater flexibility due to their evolving customary definition and usage.

Conference participants also questioned whether Principle 1, as drafted, was so broad as to imply that all suspicious deaths should be subject to the Principles, including those deaths completely unrelated to government officials. The participants rejected this contention, however, since phrases such as “situations of internal armed conflict” and “illegal use of force by law enforcement agents” appropriately qualified the nature of the suspicious deaths to be investigated.

The draft of the Principles which participants had before them at the Conference prohibited the “use of force by non-governmental or para-governmental groups” which results in arbitrary killing. The participants rejected the suggestion that this provision be deleted because they believed it was difficult to predict who would conduct death
squad or summary executions. In addition, they believed that the provision appropriately qualified the objectives of the Principles. Ultimately, the U.N. Secretariat changed the phrase to “use of force by a public official” to mirror the Convention Against Torture.

In an attempt to avert official governmental endorsement of arbitrary killing, the Conference participants sought to define and prohibit such official decrees. They considered and adopted language that would have prohibited “legislati[ve]” and “executive” decrees. However, the attendees of the June Meeting changed this language to prohibit “decrees issued by governmental authority.” The attendees considered the latter language more encompassing, entailing such notions as legislative pardons or amnesties. The participants also agreed that all deaths in custody are, by their nature, suspicious and should be subject to the enhanced scrutiny of these standards. Consequently, the word “suspicious” was deleted from the phrase “deaths in custody” to avoid the implication that some deaths in custody need not be investigated.

What constitutes an “extra-legal, arbitrary and summary execution” was also discussed at the June Meeting, and in particular, whether a “death squad execution” would be included within these terms. The participants concluded that the mandate for preparation of the Principles was limited to arbitrary executions involving governmental authorities, either by direct action or by consent or acquiescence. It was recognized that not all death squad or vigilante-style executions fall within the scope of the Principles. Therefore, death squad executions in which a government has not participated ought to be pursued in other instruments or mandates.

Principle 2: Ensuring a Clear Chain of Command

In order to prevent extra-legal, arbitrary and summary executions, Governments shall ensure strict control, including a clear chain of command, over all officials responsible for the apprehension, arrest,

54. Id.
55. See Convention Against Torture, supra note 35, art. 1, para. 1.
57. See Report to the Minnesota Lawyers International Human Rights Committee (July 2, 1988) (discussing the June Meeting) [hereinafter MLIHRC Report].
58. Id.
59. Id.
60. Id.
61. Id.
62. Id.
detention, custody and imprisonment as well as those officials au-
thorized by law to use force and firearms. The drafters of
the Principles strengthened this command.

First, Principle 2 requires that governments “ensure strict control,
including a clear chain of command” over those individuals who are in
a position to commit arbitrary executions. This requirement imposes a
heavier burden on governments than does the Convention Against Tor-
ture, which requires only systematic review of various rules and prac-
tices. Principle 2 also focuses more on preventing arbitrary executions
by mandating control over individuals, whereas Article 11 of the Con-
vention Against Torture prescribes control over the processes that indi-
viduals are to follow. Because this Principle places greater emphasis on
controlling individuals, it may compel governments to be more aware
of, have more control over, and consequently, have a better opportunity
to prevent arbitrary killings.

Second, the drafters defined the groups of individuals over which
governments must maintain control. These groups were identified ac-
cording to situations in which arbitrary killings are most likely to oc-
cur. While article 11 of the Convention Against Torture contemplates
only situations of arrest, detention, or imprisonment, the drafters rec-
ognized that arbitrary killings also occur in situations where individuals
are merely apprehended. In addition, the drafters discerned that many
arbitrary deaths result from excessive use of force. Accordingly, Princi-
ple 2 prescribes that officials responsible for “apprehension” (and other
forms of detention) and “officials authorized to use force and firearms”
be controlled by governments.

63. See Convention Against Torture, supra note 35, art. 11, which states:
Each State Party shall keep under systematic review interrogation rules, instruc-
tions, 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.
64. Id.
65. Id.
66. Id.
Principle 3: Orders from Superior Officers

Governments shall prohibit orders from superior officers or public authorities authorizing or inciting other persons to carry out any such extra-legal, arbitrary or summary executions. All persons shall have the right and the duty to defy such orders. Training of law enforcement officials shall emphasize the above provisions.

Unlike articles 2 and 10 of the Convention Against Torture, Principle 3 mandates that governments take affirmative action to prohibit orders for arbitrary executions from superior officers. Although the Convention Against Torture does not permit torture to be justified on the basis of an order from a superior public authority, it fails to command an outright prohibition of such orders. By requiring governments to take appropriate steps to outlaw such orders from superior officers, Principle 3 recognizes that orders from government officials may play a more significant role in arbitrary killings than in torture. Consequently, this Principle exceeds the Convention Against Torture by directly prohibiting orders for arbitrary executions.

The Convention Against Torture devotes an entire article to education and informing relevant individuals about the prohibition against torture. Unfortunately, educating and informing individuals under the Principles was not considered at either the Conference or the June Meeting. However, the last sentence of Principle 3 does contemplate “training of law enforcement officials,” and it tends to consider military personnel as well as police officers.

Two important changes were made to Principle 3 at the June Meeting. First, the right to defy orders from a superior officer or public authority was given to “persons” as compared to “officers.”

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67. Id. at art. 2, par. 3, which states in part: “An order from a superior officer or a public authority may not be invoked as a justification of torture.”
68. This clause is consistent with the Nuremburg Principles. See infra note 174 and accompanying text.
69. See Convention Against Torture, supra note 35, art. 10, which states in part:
   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.
   2. Each State Party shall include this prohibition in the rules or instructions issued in regard to the duties and functions of any such persons.
70. Id. art. 2, para. 3.
71. Id. art. 10.
72. See MLIHRC Report, supra note 57.
quently, the right to defy illegal orders is applicable to the broadest number of persons possible. Additionally, the second sentence was modified so that persons receiving an illegal order to commit an arbitrary execution not only have a right to defy such an order, but have an affirmative duty to do so.\(^7\) This change is more consistent with the first part of the Principle which prohibits the issuance of such orders.

**Principle 4: Protection for Those in Danger of Extra-Legal, Arbitrary or Summary Execution**

Effective protection through judicial or other means shall be guaranteed to individuals and groups who are in danger of extra-legal, arbitrary or summary executions, including those who receive death threats.\(^7^4\)

Principle 4 goes one step further than the Convention Against Torture by requiring governments to protect those individuals who may be potential victims of arbitrary killings. The very nature of arbitrary executions necessitates such protection. The activities of certain individuals or groups of individuals, which are or are perceived to be in opposition to the government, are more likely to be victims of arbitrary killings.\(^7^6\) It is usually these same individuals or groups of individuals who are also subjected to torture. The Principles, therefore, may prove to be more effective than the Convention Against Torture by emphasizing that protective measures for prospective victims are incumbent upon a government.

In order to clarify that governments should use all possible means to protect witnesses and individuals who are in danger from death threats, the Conference modified Principle 4 to require “effective protection through judicial or other means” rather than “special judicial protection.”\(^7^8\) The Conference participants deleted a provision from the Principles which required countries that could not guarantee the safety

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73. Id.
74. See *Convention Against Torture*, supra note 35, art. 2, para. 1, which states: “Each State Party shall take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction.”
75. The Special Rapporteur listed the following groups of individuals as likely targets for summary or arbitrary executions in his first report: ethnic groups; racial groups; religious sects and groups; peasants; workers; trade unionists; political leaders; social reform activists; church people and lay workers; refugees; school children and students; intellectuals, teachers and artists; judges, lawyers, and members of the legal profession; doctors and medical personnel; journalists; and former government officials, military or police personnel. Report of the Special Rapporteur, *supra* note 5, at 20-3.
of potential victims to encourage and assist them to emigrate. The participants believed that States might perceive such a requirement as too great a threat to their national sovereignty, and that such a requirement would become a barrier to international acceptance of the Principles.77

Principle 5: Extradition

No one shall be involuntarily returned or extradited to a country where there are substantial grounds for believing that he or she may become a victim of extra-legal, arbitrary or summary execution in that country.

The language of Principle 5 closely parallels that of the comparable provision of the Convention Against Torture.78 This Principle grants an individual the right to be free from extradition under the stated circumstances, while the Convention Against Torture concentrates on restricting a State’s ability to extradite. The objectives of these two provisions are identical. By phrasing the right to be free from extradition in individual terms, however, Principle 5 emphasizes the importance of that right.79

According to the current language of the Principle, “no one shall be involuntarily returned or extradited to a country where” they are in danger of being illegally executed, whether or not such extradition is actually accomplished by force. At the June Meeting, the word “involuntarily” was substituted for the word “forcibly” because the participants thought that “forcible extradition” implied a tougher standard than necessary.80

Principle 6: Information on Places of Custody and Whereabouts of Detained Persons

Governments shall ensure that persons deprived of their liberty are

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77. Id.
78. See Convention Against Torture, supra note 35, art. 3 which states in part: “No State Party shall expel, return . . . 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.”
79. With the emergence of international human rights law, the traditional view of extradition as a process between two nations has changed. Consideration is now given to the human rights of the individual involved. For a further discussion of international extradition see M. Bassioumi, International Extradition and World Public Order (1974)[hereinafter International Extradition].
80. See MLIHRC Report, supra note 57.
held in officially recognized places of custody, and that accurate information\textsuperscript{81} on their custody and whereabouts, including transfers, is made immediately available to their relatives and lawyer or other persons of confidence.\textsuperscript{82}

The protection of individual detainees is, on the one hand, beyond the scope of the Principles, and is effectively regulated by the Body of Principles for the Protection of All Persons Under Any Form of Detention or Imprisonment ("Principles on Detention")\textsuperscript{83} and the Standard Minimum Rules for Treatment of Prisoners ("Standard Minimum Rules").\textsuperscript{84} Principle 6, on the other hand, mandates that governments ensure that the whereabouts of individual detainees be known and available at all times.

Principle 6 attempts to prevent enforced or involuntary "disappearances"\textsuperscript{85} which often result in arbitrary executions.\textsuperscript{86} Because

\textsuperscript{81.} See Draft Body of Principles for the Protection of All Persons Under Any Form of Detention or Imprisonment [hereinafter Principles on Detention], which were adopted subsequent to the drafting of the Principles Against Executions but which were drafted and considered for years prior to the drafting of the Principles and therefore available for guidance. G.A. Res. 43/173, 43 U.N. GAOR Supp. (No. 49), U.N. Doc. A/43/49 (1989). Principle 12 and the Standard Minimum Rules for Treatment of Prisoners [hereinafter Standard Minimum Rules], adopted by First U.N. Congress on the Prevention of Crime and Treatment of Offenders, Aug. 30, 1955, approved by the Economic and Social Council. Res. 663(C) (XXIV), July 13, 1957. amended by E.S.C. Res. 2076 (LXII), May 13, 1977. Para. 7 specifies what types of information are to be recorded including: (1) detainee's identity; (2) reasons for arrest or commitment; and, (3) time and day of arrest.

\textsuperscript{82.} See Principles on Detention, supra note 81, Principles 15 and 16 which state in part: 15. [C]ommunication of the detained or imprisoned person with the outside world, and in particular his family or counsel, shall not be denied for more than a matter of days. 16. Promptly after arrest and after each transfer from one place of detention or imprisonment to another, a detained or imprisoned person shall be entitled to notify members of his family or other appropriate persons of his choice of his arrest, detention or imprisonment or of the transfer and of the place where he is kept in custody. See also Standard Minimum Rules, supra note 81, para. 44, which states: "Every prisoner shall have the right to inform at once his family of his imprisonment or his transfer to another institution."

\textsuperscript{83.} See Principles on Detention, supra note 81.

\textsuperscript{84.} See Standard Minimum Rules, supra note 81.


\textsuperscript{86.} An example of instances of "permanently disappeared" is the current situation in Sri Lanka where Tamils are fighting for an independent state. Since the conflict began in 1983, over 600 Tamils have disappeared. Many of the victims are arrested, tortured, and killed with their bodies being buried or destroyed in secret. The Sri Lankan government denies that these "disap-
many illegal executions involve persons who have been taken into custody, attempts to prevent such killings can succeed if the whereabouts of the detainee are made available to persons outside the government, \textit{i.e.} family members or attorneys. Hence, this Principle recognizes and requires disclosure of a person's custody and whereabouts as an effort toward gradually abolishing \textit{incommunicado} detention.

Two changes were made to Principle 6 at the June meeting. First, the phrase, “or other persons of confidence,” was added to the provision. Participants recognized that some detained persons have neither an attorney nor a family member who can seek information as to their custody.\textsuperscript{87} Realizing that it is imperative that an individual outside the government have access to this information, they decided that the detainee should be entitled to have a close friend inquire on his or her behalf.\textsuperscript{88} Second, the term “arrest” was changed to “custody.” Participants thought that some officials might claim that no arrest had yet been made and that, as such, they had no duty to provide any information about the detained person.\textsuperscript{89} In choosing to require that accurate information of a person’s “custody” be made immediately available, the participants at the June Meeting rejected a phrase requiring that governments provide the “reason for detention.” The participants believed that such a phrase would be beyond the focus of the Principles to prevent and investigate arbitrary executions.\textsuperscript{90}

\textit{Principle 7: Inspections by Qualified Personnel}

Qualified inspectors, including medical personnel,\textsuperscript{91} or an equivalent independent authority,\textsuperscript{92} shall conduct inspections in places of appearances” occurred and has yet to make any attempt to discover what has happened to these individuals. See Amnesty International Report 1988, at 181 (1988).

\textsuperscript{87} See MLIHRC Report, supra note 55. The draft Declaration on the Protection of all Persons Against Enforced or Involuntary Disappearances builds on Principle 6 by using somewhat clearer language: “Accurate information on their detention and whereabouts including transfer, shall be made promptly available to their family members and counsel, anyone designated by them or other persons having a legitimate interest in the information.” Letter from R. Brody to Professor David Weissbrodt (March 28, 1990).

\textsuperscript{88} Id.

\textsuperscript{89} Id.

\textsuperscript{90} Id.

\textsuperscript{91} See Standard Minimum Rules, supra note 81, para. 26 which states:

The medical officer shall regularly inspect and advise the director upon:

(a) The quantity, quality, preparation and service of food;

(b) The hygiene and cleanliness of the institution and the prisoners;

(c) The sanitation, heating, lighting and ventilation of the institution . . .

\textsuperscript{92} See Principles on Detention, supra note 81, Principle 29 which states:
tody on a regular basis,\textsuperscript{93} and be empowered to undertake unannounced inspections on their own initiative, with full guarantees of independence in the exercise of this function. These inspectors shall have unrestricted access to all persons in such places of custody,\textsuperscript{94} and to all their records.

Principle 7 is modeled after provisions of the Standard Minimum Rules\textsuperscript{95} and the Principles on Detention.\textsuperscript{96} This Principle, however, has three noteworthy differences. First, it emphasizes that inspections must be done by a qualified and independent authority, whereas the Standard Minimum Rules do not mention the independence of the inspector or medical personnel.\textsuperscript{97} The Principles on Detention, however, do require that the inspecting authority be independent of the penal institution.\textsuperscript{98} A fair interpretation of Principle 7 is that the inspector should be independent from the government, as well as the penal institution. This independence is more likely to ensure that accurate and reliable information is gathered and brought to the attention of the relevant authorities.

The second noteworthy difference is that Principle 7 allows for unannounced inspections. The ability to inspect any place of custody without prior notification will allow inspectors to examine detention centers and prisons without giving those in charge of such institutions an opportunity to "prepare" for the inspection. These unannounced inspections will also aid in the enforcement of Principle 6 by requiring that a detainee be held in custody at the place alleged by the government.\textsuperscript{99}

\begin{quote}
Places of detention shall be visited regularly by qualified and experienced persons appointed by, and responsible to, a competent authority distinct from the authority directly in charge of the administration of the place of detention or imprisonment.

A detained or imprisoned person shall have the right to communicate freely and in full confidentiality with the persons who visit the places of detention or imprisonment.

See \textit{Principles on Detention, supra} note 81, Principle 29.
\end{quote}

\textsuperscript{93} See Standard Minimum Rules, \textit{supra} note 81, para. 55 which states: There shall be a regular inspection of penal institutions and services by qualified and experienced inspectors appointed by a competent authority. Their task shall be in particular to ensure that these institutions are administered in accordance with existing laws and regulations and with a view to bringing about the objectives of penal and correctional services.

\textsuperscript{94} See Principles on Detention, \textit{supra} note 81, Principle 29.

\textsuperscript{95} See Standard Minimum Rules, \textit{supra} notes 81, paras. 26 and 55.

\textsuperscript{96} See Principles on Detention, \textit{supra} note 81, Principle 29.

\textsuperscript{97} See Standard Minimum Rules, \textit{supra} note 81, paras. 26 and 55.

\textsuperscript{98} See Principles on Detention, \textit{supra} note 81, Principle 29.

\textsuperscript{99} The importance of factfinding visits to places of custody as a preventative mechanism is
Finally, Principle 7 requires that inspectors have access to all detainees and their records. The Standard Minimum Rules do not discuss that to which an inspector may have access; rather, they set forth what the inspector's task shall be.\textsuperscript{100} Likewise, the Principles on Detention allow for access to persons but is silent regarding access to individual records.\textsuperscript{101} Therefore, Principle 7 is much more protective, granting an inspector broad authority to define the purposes of an inspection and to act accordingly.

Conference participants, particularly those from the medical field, believed that some mechanism should exist to permit medical or other qualified personnel to monitor and treat persons in custody.\textsuperscript{102} Consequently, similar to the Standard Minimum Rules, this Principle explicitly allows for inspections and treatment by medical personnel.

Participants at the June Meeting did not change the language of Principle 7, but they did discuss whether it would be more appropriately placed in the "Investigation" section of the Principles. The participants agreed, however, that inspections during the commission of extra-legal executions were not practical and that inspections after such executions had occurred were not what was intended.\textsuperscript{103} Therefore, all inspections of places of custody were appropriately considered as preventive measures and not investigative measures.

**Principle 8: Preventing Executions Through Diplomatic Intercession, Access and Cooperation with Intergovernmental Bodies**

Governments shall make every effort to prevent extra-legal, arbitrary and summary executions through measures such as diplomatic intercession, improved access of complainants to intergovernmental and judicial bodies, and public denunciation.\textsuperscript{104} Intergovernmental

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\textsuperscript{100} See Standard Minimum Rules, supra note 81, para. 26.

\textsuperscript{101} See Principles on Detention, supra note 81, Principle 29.

\textsuperscript{102} See Report of the Minnesota Conference, supra note 28, at 7.

\textsuperscript{103} See MLIHRC Report, supra note 57.

\textsuperscript{104} See Convention Against Torture, supra note 35, art. 13 which states in part:

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.

See also Principles on Detention, supra note 81, Principle 33 which states:

A detained or imprisoned person or his counsel shall have the right to make a request or complaint regarding his treatment . . . to the authorities responsible for the
mechanisms shall be used to investigate reports of any such execu-
tions and to take effective action against such practices.\textsuperscript{108} Governments, including those of countries where extra-legal, arbitrary and summary executions are suspected to occur, shall cooperate fully in international investigations on the subject.\textsuperscript{106}

Principle 8 obligates governments to develop procedures aimed at preventing arbitrary killings. The first sentence is modeled after article 13 of the Convention against Torture.\textsuperscript{107} Principle 8 is much more detailed, however, and consequently may prove to be more effective. The Convention Against Torture and the Principles on Detention mandate only that an individual who alleges torture or ill-treatment be given the right to complain and to have his case examined by competent authorities.\textsuperscript{108} Principle 8 not only commands that governments prevent arbitrary executions by allowing access to judicial bodies, but also suggests diplomatic intercession and public denunciation.

Publicity, or even the threat of publicity, may be the most effective tool in preventing illegal executions, as it has been in the past for remedying other international human rights violations.\textsuperscript{109} Published occurrences of a government’s involvement in arbitrary killings can be politically, economically, and socially devastating. Consequently, actual or possible publicity should be useful tools in helping to eliminate illegal executions. In addition, because Principle 8 emphasizes that these measures should be taken by governments to prevent arbitrary executions, this language is stronger than that of the Convention Against Torture and the Principles on Detention, both of which seem to deal only with after-the-fact governmental action.\textsuperscript{110}

\textsuperscript{105} See \textit{Convention Against Torture}, supra note 35, art. 12 which states:

\begin{quote}
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.
\end{quote}

\textsuperscript{106} See \textit{Convention Against Torture}, supra note 35, art. 9 which states:

\begin{enumerate}
\item States Parties shall afford one another the greatest measure of assistance in connection with criminal proceedings brought in respect [to] any [occurrences of torture], including the supply of all evidence at their disposal necessary for the proceedings.
\item States Parties shall carry out their obligations under paragraph 1 of this article in conformity with any treaties on mutual judicial assistance that may exist between them.
\end{enumerate}

\textsuperscript{107} See \textit{Convention Against Torture}, supra note 35, art. 13.

\textsuperscript{108} Id.


\textsuperscript{110} See \textit{Convention Against Torture}, supra note 35, art. 13.
The last sentence in this Principle is modeled after article 9 of the Convention Against Torture.\textsuperscript{111} Whereas the Convention Against Torture requires governmental cooperation only after a criminal proceeding has been instituted, Principle 8 contemplates a more pro-active government involvement in the prevention and/or investigation processes.\textsuperscript{112} Consequently, this Principle requires governments to cooperate both in investigations concerning specific deaths, and general investigations on the subject of arbitrary executions.

The command for broader cooperation was likewise recognized at the June Meeting. Once again, the participants considered placing Principle 8 under the "Prevention" section rather then the "Investigation" section.\textsuperscript{113} Although this Principle concerns actions taken after illegal executions occur, the participants believed it should remain in the "prevention" section since it imposes an obligation on governments to cooperate with intergovernmental investigations of arbitrary killings in order to prevent their future occurrence.\textsuperscript{114}

**B. Investigation**

The investigative provisions of the Principles set forth detailed requirements for investigations of suspected arbitrary killings. The purpose of these provisions is to identify and eliminate such killings through the use of, among other things, adequate autopsies, protection for those persons involved in the investigation, and public disclosure of the investigation results.

These provisions were specifically drafted for the legal and medical investigation of suspected arbitrary executions. Existing international declarations or treaties were not very useful as guidelines for the resulting Principles. Indeed, this part of the Principles represents the gradual elaboration of international norms to prevent and investigate arbitrary killings. Many national and state laws, however, do provide for inquests into suspicious deaths. Consequently, the procedures set forth in these laws served as guidelines in drafting the investigative provisions contained in the Principles.\textsuperscript{115}

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\textsuperscript{111} See Convention Against Torture, supra note 35, art. 9.
\textsuperscript{112} Id.
\textsuperscript{113} See MLIHRC Report, supra note 57.
\textsuperscript{114} Id.
\textsuperscript{115} The MLIHRC relied on the inquest provisions contained in the laws of California, England, France, Minnesota, the Netherlands, the Soviet Union, and Quebec in drafting its investigative principles.
also referred to such national and state laws in preparing a model protocol for the legal and medical investigations of arbitrary killings. The directives of this protocol were considered in drafting the Investigative Principles. As a result, the Investigative Principles were substantially revised and expanded at the Conference to clarify, (1) that all investigations should be thorough, prompt, and impartial; (2) governments should establish and maintain regular and systematic investigatory agencies and procedures to accomplish these objectives, and (3) special inquiry commissions should be involved in certain situations.

Principle 9: Elements of a Thorough, Prompt and Impartial Investigation

There shall be a thorough, prompt and impartial investigation of all suspected cases of extra-legal, arbitrary and summary executions, including cases where complaints by relatives or other reliable reports suggest unnatural death in the above circumstances. Governments shall maintain investigatory offices and procedures to undertake such inquiries. The purpose of the investigation shall be to determine the cause, manner and time of death, the person responsible, and any pattern or practice which may have brought about that death. It shall include an adequate autopsy, collection and analysis of all


117. The standards of The Minnesota Protocol are intended to insure that:
(1) a thorough, impartial, and timely investigation is conducted of every suspicious death, particularly those of a political nature; (2) the investigation, including an adequate autopsy, is carried out by experienced, trained persons who are separate from any potentially involved political organization or entity; (3) investigators have adequate support staff and access to all sources of information relating to the death, and (4) the results of the investigation, including an autopsy report, are made public.


119. See Principles on Detention, supra note 81, Principle 34 which states in part:
Whenever the death or disappearance of a detained or imprisoned person occurs during his detention or imprisonment, an inquiry into the cause of death or disappearance shall be held by a judicial or other authority, either on its own motion or at the instance of a member of the family of such a person or any person who has knowledge of the case . . . .

120. See MINN. STAT. ANN. § 390.11, subd. 6 (West 1989) (coroner shall record name, place body found, date, cause, and manner of death).

121. Id. subds. 2, 3 (coroner may conduct an autopsy when it is in the public interest to do
physical and documentary evidence, and statements from witnesses. The investigation shall distinguish between natural deaths, accidental deaths, suicides and homicides.

The purpose of Principle 9, as well as its counterpart in the Principles on Detention,122 is to insure that a complete investigation is conducted whenever an arbitrary execution is suspected. It is interesting to note that this Principle is more detailed than the corresponding provision in the Principles on Detention, yet both would be applicable in cases of death occurring in custody. Principle 1123 makes it clear that all deaths occurring in custody are encompassed by the Principles. Therefore, the more detailed provisions of Principle 9 may complement the Principles on Detention to insure that a complete and accurate investigation is undertaken in such circumstances.

As discussed above, Principle 9 sets forth in detail the purpose of an investigation under the Principles. Because of the nature of the deaths which are to be investigated, that is, deaths in which governmental officials may have been involved, the goals of an investigation under this Principle are much more detailed than those customarily found in state law.124 Principle 9 requires that an autopsy be performed in all cases where extra-legal, arbitrary, or summary executions are suspected. In contrast, some state or national laws provide that an autopsy may be undertaken in suspicious circumstances, and then only after consent of the family is obtained.125 This Principle exceeds state or national law autopsy requirements by eliminating possible abuses of discretion which are intended to avoid adequate investigation of deaths caused by government officials. Although no changes were made to Principle 9 at the June Meeting, the question arose whether the Principles were sufficiently broad to include a right to conduct an investigation in the case of a “permanently disappeared”126 person. Such a case arises when a person has “disappeared” and is a suspected victim of an arbitrary execution. The participants at the June Meeting concluded that Principle 9 does permit an investigation in the case of a “permanently disappeared” person since it contemplates “all suspected cases

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so but only if next of kin consents).

123. See supra note 57 and accompanying text.
124. See, e.g., MINN. STAT. ANN. § 390.11 (West 1989).
125. Id.
126. See supra note 85 and accompanying text.
of extra-legal, arbitrary, and summary executions."

Principle 10: Powers and Resources Available to the Investigating Authority

The investigating authority shall have the power to obtain all the information necessary to the inquiry. Those persons conducting the investigation shall have at their disposal all the necessary budgetary and technical resources for effective investigation. They shall also have the necessary authority to oblige officials allegedly involved in any such executions to appear and testify. The same shall apply to any witness. To this end, they shall be entitled to issue summons to witnesses, including the officials allegedly involved and to demand the production of evidence.

Principle 10 gives an investigating authority broad jurisdiction to gather testimony and evidence pertaining to an arbitrary killing. While most state laws give coroners or investigators the authority to subpoena witnesses, they customarily do not allow for the questioning of suspects or the production of evidence. This Principle therefore provides investigators with authority to act in the capacity of peace officers and government attorneys under national law. Consequently, the investigating authority is endowed with the power to both compel the production of evidence and to issue summonses to witnesses.

Participants at the June Meeting made three other changes to Principle 10. First, the participants changed the phrase “the commission shall have the authority,” to “the investigating authority shall have the power.” This new language makes Principle 10 applicable to all investigating authorities, rather than to only specially appointed commissions of inquiry. Second, participants elected to “oblige officials allegedly involved . . . to appear and testify,” instead of merely permitting the investigating authority to “enlist the cooperation of officials” allegedly involved in illegal executions. Finally, the participants at the June Meeting enlarged the power of an investigating authority to issue summonses to the “officials allegedly involved,” as

127. See MLIHRC Report, supra note 57 (emphasis added).
128. See, e.g., MINN. STAT. ANN. § 390.15 (West 1989) (coroner may issue subpoenas to witnesses); CAL. GOV'T CODE § 27499 (1988) (coroner shall summon and examine as a witness any person who has knowledge of the facts).
129. Id.
131. See MLIHRC Report, supra note 57.
132. Id.
well as to witnesses.\textsuperscript{133}

**Principle 11: The Appointment of Special Commissions of Inquiry**

In cases in which the established investigative procedures are inadequate because of lack of expertise or impartiality, because of the importance of the matter or because of the apparent existence of a pattern of abuse, and in cases where there are complaints from the family of the victim about these inadequacies or other substantial reasons, Governments shall pursue investigations through an independent commission of inquiry or similar procedure. Members of such a commission shall be chosen for their recognized impartiality, competence and independence as individuals. In particular, they shall be independent of any institution, agency or person that may be the subject of the inquiry. The commission shall have the authority to obtain all information necessary to the inquiry and shall conduct the inquiry as provided under these Principles.

Principle 11 was not addressed in the original Vienna draft Principles; rather, it was drafted by the Minnesota Lawyers International Human Rights Committee.\textsuperscript{134} Considerable discussion took place at the Conference concerning the nature of special inquiry commissions, such as the selection of members, the extent of power, and the appropriate scope of inquiry. The Conference participants concluded that these questions were not subject to uniform answers and would have to be determined largely by the circumstances of particular cases.\textsuperscript{135}

The Conference participants also recognized that a special inquiry commission should be appointed only in certain circumstances, \textit{i.e.} where there is a lack of expertise, a lack of impartiality, or the existence of an issue of exceptional public importance.\textsuperscript{136} It was further recognized, however, that there may be other situations where a present investigative authority may be inadequate. Thus, the Conference participants left open the possibility of appointing a special commission “for other substantial reasons.”\textsuperscript{137} They also believed that the scope of the special inquiry should not be limited to a single incident. Accordingly, Principle 11 provides for an investigation into the “pattern or practice” of suspicious and arbitrary killings.\textsuperscript{138}

\begin{itemize}
  \item[133.] \textit{Id.}
  \item[134.] \textit{Id.}
  \item[135.] \textit{Id.}
  \item[136.] \textit{Id.}
  \item[137.] \textit{Id.}
  \item[138.] \textit{Id.}
\end{itemize}
The Conference participants determined that it would be impractical to require a team of experts to conduct an investigation and autopsy, since there is a lack of experts in many countries. They also realized, however, that some recognition of expertise was desirable to preclude the possibility of inexperienced persons conducting autopsies. The participants acknowledged that the situation, rather than the availability of experts, should govern whether experts are required. They concluded that outside experts should be utilized when circumstances dictate the use of complex or sophisticated techniques in performing the investigation or autopsy. Consequently, a country’s lack of experts will not justify failure to conduct adequate death investigations or requisite technical investigations. The participants of the June Meeting made minor modifications to Principle 11 which clarified and strengthened the requirement of impartiality for special commission members.

Principle 12: Autopsy or Exhumation of the Body

The body of the deceased person shall not be disposed of until an adequate autopsy is conducted by a physician, who shall, if possible, be an expert in forensic pathology. Those conducting the autopsy shall have the right of access to all investigative data, to the place where the body was discovered, and to the place where the death is thought to have occurred. If the body has been buried and it later appears that an investigation is required, the body shall be promptly and competently exhumed for an autopsy. If skeletal remains are discovered, they should be carefully exhumed and studied according to systematic anthropological techniques.

Once again, because of the circumstances to which the Principles apply, Principle 12 is much more detailed than state or national law. While state or national law apparently permits a coroner to obtain aid

139. Id.
140. Id.
141. See MLIHRC Report, supra note 57.
142. See, e.g., Minn. Stat. Ann. § 390.11, subd. 4 (West 1989) (coroner may obtain assistance from other medical experts if needed).
143. See id. subd. 8 (coroner may order that there be no interference with the body or the scene of death).
144. See id. subd. 3 (coroner may exhume body and conduct autopsy if next of kin consent); see also Cal. Gov’t Code § 27491 (coroner will have right to exhume the body if necessary).
145. For a detailed description of autopsy and disinternment procedures as well as analysis of skeletal remains, see The Minnesota Protocol, supra note 116, at 21-36.
from medical experts if necessary, this Principle prefers and encourages the use of medical experts whenever possible. In addition, some coroners may be required by state law to obtain permission from the family members before a body may be exhumed for an autopsy. Principle 12, however, requires no such consent, because family members might be pressured by a government to block an autopsy. Consequently, an investigation of an arbitrary execution conducted pursuant to this Principle should be free from any outside interference.

Although no changes were made to Principle 12 at the June Meeting, the participants discussed the degree of detail with which autopsy and disinterment procedures should be specified in this Principle and Principle 13. The participants decided that the details of these Principles were sufficiently important to remain in the instrument even though this detail exceeds that customarily found in international standards. Such detail is especially appropriate for governmental authorities who are neither aware of the major steps involved in an adequate autopsy nor qualified to determine whether an adequate autopsy has been performed.

Principle 13: Minimum Requirements of an Adequate Autopsy

The body of the deceased shall be available to those conducting the autopsy for a sufficient amount of time to enable a thorough investigation to be carried out. The autopsy shall, at a minimum, attempt to establish the identity of the deceased and the cause and manner of death. The time and place of death shall also be determined to the extent possible. Detailed color photographs of the deceased shall be included in the autopsy report in order to document and support the findings of the investigation. The autopsy report must describe any and all injuries to the deceased including any evidence of torture.

Participants at the June Meeting recognized the importance of an adequate autopsy in helping to prevent future arbitrary killings. In order to make it clear that the minimal elements of an adequate autopsy contained within Principle 13 are mandatory, the word “should” was replaced throughout this Principle with “shall.” The elements of an adequate autopsy set forth in Principle 13 highlight those set forth in the Model Autopsy Protocol developed by the Minnesota Lawyers In-

147. See id. subd. 3; Cal. Gov't Code § 27491.
148. See MLIHRC Report, supra note 57.
149. See MLIHRC Report, supra note 57.
ternational Human Rights Committee. This Principle stresses that following a controversial death, a thorough autopsy must be conducted. If the resulting autopsy report is to aid in the detection and subsequent apprehension of those responsible for the death, it must meet the criteria set forth in Principle 13.

**Principle 14: Impartiality of Those Conducting the Autopsy**

In order to ensure objective results, those conducting the autopsy must be able to function impartially and independently of any potentially implicated persons or organizations or entities.

Principle 14 is consistent with judicial and medical obligations stated in other U.N. documents. It is a further attempt to ensure that a thorough and accurate autopsy is performed. Principle 14 also recognizes and guarantees the importance of autonomy for experts conducting the autopsy.

The drafters of the Principles recognized that the most likely source of improper influence or intimidation during an investigation of an arbitrary death is an involved government or its agent. Hence, Principle 14 mandates that those conducting an autopsy be independent of any potentially implicated persons or organizations. By applying the obligations set forth in the Principles to judicial independence in circumstances of arbitrary executions, the drafters are attempting to ensure that an investigation will result in a reliable determination as to the cause and manner of a death. This determination will ultimately aid in discovering those responsible for such deaths.


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

See also Principles of Medical Ethics Relevant to the Role of Health Personnel, Particularly Physicians, in the Protection of Prisoners and Detainees Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, G.A. Res. 37/194, 37 U.N. GAOR, Supp. (No. 51), U.N. Doc. A/37/53 (1983) [hereinafter Principles of Medical Ethics]; Principle 2 states:

It is a gross contravention of medical ethics, as well as an offence under applicable international instruments, for health personnel, particularly physicians, to engage, actively or passively, in acts which constitute participation in, complicity in, incitement to or attempts to commit torture or other cruel, inhuman or degrading treatment or punishment.

152. See Basic Principles and Principles of Medical Ethics, supra note 151.
Principle 14 essentially applies the obligation of physicians to prevent torture as set forth in the Principles of Medical Ethics, to the situation of arbitrary executions. The Principles of Medical Ethics consider any physician conduct that actively or passively involves acts of torture a gross contravention of medical ethics. This Principle acknowledges that if a medical expert responsible for conducting an autopsy is not independent from potentially implicated persons or organizations, that expert may not be able to render a truthful report. Such inaccurate reporting would aid in the perpetration of illegal killing and could constitute passive participation in arbitrary killing.

**Principle 15: Protection of Complainants, Witnesses and Investigators**

Complainants, witnesses, those conducting the investigation and their families shall be protected from violence, threats of violence or any other form of intimidation. Those potentially implicated in extra-legal, arbitrary or summary executions shall be removed from any position of control or power, whether direct or indirect, over complainants, witnesses and their families, as well as over those conducting investigations.

The participants of the Conference determined that the people most often in danger of violence and intimidation are those who are conducting the investigation. Consequently at the June Meeting, participants broadened the class of individuals to be protected by including in this Principle “those conducting investigations.” Though modeled after article 13 of the Convention Against Torture, Principle 15 goes beyond protection of complainants and witnesses to include those conducting the investigation and their families. In addition this Principle provides more protection than the Convention Against Torture by mandating the removal of implicated persons from positions of control over individuals involved in the investigation. By including protection for investigators and allowing for the removal of implicated persons from positions of power, investigations under the Principles are more likely to identify the perpetrators of arbitrary killings.

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153. *Id.*
154. See *Convention Against Torture, supra* note 35, art. 13, which states: “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.”
156. See *MLIHRC Report, supra* note 57.
157. *Id.*
Families of the deceased and their legal representatives shall be informed of, and have access to, any hearing as well as to all information relevant to the investigation, and shall be entitled to present other evidence. The family of the deceased shall have the right to insist that a medical or other qualified representative be present at the autopsy. When the identity of a deceased person has been determined, a notification of death shall be posted, and the family or relatives of the deceased immediately informed. The body of the deceased shall be returned to them upon completion of the investigation.

Conference participants believed that information relevant to the investigation and hearing should be made available to the family of the deceased. Principle 16 therefore addresses a concern for the rights of the victim's family and for the adequacy of the investigative process. This Principle gives the family the right to have its own medical representative present at the autopsy. The family also has the right to return of the deceased's body after the investigation for burial or other purposes. Principle 16 does not give the family the right to attend the autopsy. The family may have a doctor of its choice present at the autopsy; however, Conference participants thought that allowing individual family members to attend such a proceeding would be inappropriate.

**Principle 17: Written Report of the Investigation**

A written report shall be made within a reasonable period of time on the methods and findings of such investigations. The report shall be made public immediately\(^\text{158}\) and shall include the scope of the inquiry, procedures and methods used to evaluate evidence as well as conclusions and recommendations based on findings of fact and on applicable law. The report shall also describe in detail specific events that were found to have occurred, and the evidence upon which such findings were based and list the names of witnesses who testified, with the exception of those whose identities have been withheld for their own protection. The Government shall, within a reasonable period of time, either reply to the report of the investigation, or indi-

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158. See Report of Minnesota Conference, supra note 28, at 8. This Principle, like Principle 11, was not previously addressed in the preliminary Vienna text of draft principles; rather, it too was formulated by the Minnesota Lawyers International Human Rights Committee. Id.

159. See supra note 109 and accompanying text (for discussion regarding publicity).
cate the steps to be taken in response to it.160

The provisions of Principle 17 requiring a government to respond to an investigative report of extra-legal, arbitrary and summary executions is modeled after various other human rights instruments, including the International Covenant on Civil and Political Rights161 ("International Covenant") and the Convention Against Torture.162 However, there is one major difference. Pursuant to this Principle, a government must address the investigation report only after an investigation has been conducted. By comparison, the International Covenant and the Convention Against Torture direct State Parties to submit a report upon the mere request of the committees entrusted with enforcement of those instruments.163 Since the Principles do not establish an international investigative authority, the requirements of the International Covenant and the Convention Against Torture would not be feasible.

Participants at the Conference recognized the importance of avoiding any implication that a governmental reply to a publicized investigation report must be hostile or defensive.164 Consequently, the participants added language which required the involved government to issue a response, either by publishing a reply, or by indicating the steps to be taken in response to the report.165

The participants of the June Meeting believed that Principle 17 should indicate the period of time during which an investigative authority is expected to issue, distribute, and release the written report of the investigation. Accordingly, this Principle requires that reports be written "within a reasonable period of time" upon completion of the investigation. Also, the report must "be made public immediately" upon completion.166

C. Legal Proceedings

The final three Principles set forth pertinent legal issues concerning arbitrary executions.

160. Requiring a government to reply to any report resulting from an investigation into extra-legal, arbitrary, or summary killings is consistent with various other human rights instruments. See International Covenant, supra note 1, arts. 14, 40, 41(a); Convention Against Torture, supra note 35, arts. 19, 21(a).
161. See International Covenant, supra note 1, arts. 40, 41(a).
162. See Convention Against Torture, supra note 35, arts. 19, 21(1)(a).
163. See International Covenant, supra note 1, arts. 40, 41(a).
165. Id.
166. See MLIHRC Report, supra note 57.
Principle 18: Bringing Perpetrators to Justice

Governments shall ensure that persons identified by the investigation as having participated in extra-legal, arbitrary and summary executions in any territory under their jurisdiction are brought to justice. Governments shall either bring such persons to justice or cooperate to extradite any such persons to other countries wishing to exercise jurisdiction. This Principle shall apply irrespective of who and where the perpetrators or the victims are, their nationalities or where the offence was committed.

The second sentence of Principle 18 is a simple, yet precise, summary of articles 5 through 9 of the Convention Against Torture. By shortening these articles to a simple “prosecute or extradite” rule, Principle 18 emphasizes the expectation that no government should allow perpetrators of arbitrary executions to go unpunished.

Conference participants redefined those individuals to be charged with arbitrary or summary killings from those “involved” to those who “have participated” in such killings. Conference participants concluded that this change was necessary because the term “involved” implied that mere observers or family members attempting to gain access to the investigation might somehow be deemed to be “involved”; this implication was clearly not the intent of Principle 18.

In addition, extraditional obligations were clarified at the Conference so that a country is expected either to prosecute persons accused of participating in arbitrary killings, or to cooperate with any other government who wishes to extradite and prosecute such persons. The preliminary text of the draft Principles required extradition only if the country lacked jurisdiction to prosecute, but the Conference participants deemed this requirement inadequate. Noting that a jurisdictional basis is frequently available in several countries, Conference participants substituted the more encompassing language “willingness to prosecute.” The June Meeting broadened this phrase to the

167. See Convention Against Torture, supra note 35, arts. 5-9 which provide that governments must institute either criminal or extradition proceedings after a preliminary examination of the facts surrounding an incident support an allegation of torture.


170. Id.

171. See INTERNATIONAL EXTRADITION, supra note 79; see also M. Bassiouni, INTERNATIONAL EXTRADITION: UNITED STATES LAW AND PRACTICE (1983).


173. See id.
phrase “wishing to exercise jurisdiction.”

Principle 19: Liability of Superior Officers

Without prejudice to Principle 3 above, an order from a superior officer or a public authority may not be invoked as a justification for extra-legal, arbitrary or summary executions. Supiors, officers or other public officials may be held responsible for acts committed by such officials under their hierarchical authority if they had a reasonable opportunity to prevent such acts. In no circumstances, including a state of war, siege or other public emergency, shall blanket immunity from prosecution be granted to any person allegedly involved in extra-legal, arbitrary, or summary executions.

The first provision of Principle 19 mirrors Principle IV of the Nuremburg Principles, and prohibits justifying an arbitrary execution based on an order from a superior officer. This Principle, as well as Principle 3 which prohibits orders from superior officers and mandates a duty of subordinates to defy such orders, makes it clear that under no circumstances will a perpetrator of such an execution be allowed to go unpunished. The Principles acknowledge that a majority of arbitrary executions are committed by subordinates acting pursuant to a superior’s order and, consequently, deal with this situation forcefully.

The second sentence of Principle 19 creates vicarious liability for superior officers when arbitrary killings, committed by their subordinates, could reasonably have been prevented. Once again, this provision goes beyond the Convention Against Torture, which merely prohibits the use of a superior’s order as justification for torture. By creating vicarious liability for superior officers, the Principles may be more effective in eliminating arbitrary killings; high-ranking officials will be more concerned with the actions of their subordinates and will have a greater incentive to prevent illegal executions.

The language of Principle 19 was altered somewhat at the Conference to conform more to the same concept in the Convention Against

174. Control Council Law No. 10, Punishment of Persons Guilty of War Crimes, Crimes Against Peace and Against Humanity, 3 OFFICIAL GAZETTE CONTROL COUNCIL FOR GERMANY 50-55 (1946); see also Nuremburg Principles, G.A. Res. 95(I), Dec. 11, 1946, which states in part: “The fact that any person acted pursuant to the order of his government or of a superior does not free him from responsibility for a crime, but may be considered in mitigation . . . .”
175. See Convention Against Torture, supra note 35, art. 2.
176. See Nuremburg Principles, supra note 174.
177. See supra note 66 and accompanying text.
178. See Convention Against Torture, supra note 35, art. 2.
Torture. The Conference participants discussed at some length the vicarious-liability nature of this Principle. Participants envisioned circumstances where vicarious liability would not be appropriate. Accordingly, they agreed that superior officers “may,” not “shall” be held responsible for the reasonably preventable acts of subordinates.

The preliminary text of the draft Principles established a total prohibition against grants of immunity from prosecution. Though extremely controversial, participants ultimately concluded that a total ban did not allow for adequate prosecutorial discretion. Participants limited the scope of this provision by prohibiting blanket grants of immunity prior to an investigation. Whether a post-investigation grant of immunity would be appropriate remained an open question.

At the June Meeting, the phrase “prior blanket immunity” was changed to “blanket immunity.” The participants believed that the concept of “prior” blanket immunity tended to suggest that Principle only applied to instances in which countries declared an amnesty against punishment of its law enforcement authorities before any arbitrary executions had been committed. The term “prior” was deleted in order to make it clear that blanket immunity is prohibited both before and after the illegal execution is committed.

Principle 20: Compensation to Families of Victims

The families and dependents of victims of extra-legal, arbitrary and summary executions shall be entitled to fair and adequate compensation, within a reasonable period of time.

Principle 20 essentially mirrors the comparable provision in the Convention Against Torture, as well as the International Cov-

180. Id.
181. Id.
182. Id.
183. See MLIHRC Report, supra note 57.
184. An example of a grant of blanket immunity arose in Argentina. The Argentine government, in December 1986, adopted a law known as “Punta Final.” The law set a 60-day deadline for the formal initiation of new prosecutions of members of the armed forces, police, and prison services accused of past human rights violations. After the 60 days had passed, no other actions could be brought except in cases involving theft, the abduction of minors, or the falsification of documents. See Amnesty International Report 1988, supra note 86, at 93.
185. See Convention Against Torture, supra note 35, art. 14, para. 1, which states: 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
PRINCIPLES AGAINST EXECUTIONS

Two changes were made to this Principle at the June Meeting. First, compensation is required to be paid to the victims' families "within a reasonable period of time." Additionally, a previous reference to other international instruments, including the Convention Against Torture, was deleted so as not to suggest that the right to compensation for families of victims should be limited only to the countries which are subject to such instruments or by the conditions imposed in such instruments.

IV. AUSTRALIAN ROYAL COMMISSION ON ABORIGINAL DEATHS IN CUSTODY

The utility of these standards is illustrated by a number of possible killings which have occurred throughout the world. For example, in July 1988, Edward Charles Cameron, an Australian Aboriginal football star, was found hanged in a police lock-up in Australia. His death was only one of at least 107 custodial deaths of Aborigines and Torres Strait Islanders since 1980. In October 1987, a Royal Commission of Inquiry was established by the Australian Government to investigate these deaths. The Minnesota Lawyers International Human Rights Committee sent representatives to Australia in December 1987 to monitor the investigation and to provide assistance to the Royal Commission. The information these representatives brought with them included the then current text of the draft Principles on preventing and investigating arbitrary executions.

The Commission was created pursuant to an Australian federal statute entitled Royal Commission Act of 1902. Although this Act reflects many of the provisions of the Principles, there are significant differences. Under the Act, the scope of any inquiry is restricted to the "Terms of Reference" which are issued by the Prime Minister once a Commission has been declared. Hence, the effectiveness of a Commission may be thwarted by unduly restrictive Terms of Reference.

186. See also International Covenant, supra note 1, art. 9, para. 5 which provides: "Anyone who has been the victim of unlawful arrest or detention shall have an enforceable right to compensation."
187. See MLIHRC Report, supra note 57.
188. Id.
189. See Report on the Australian Royal Commission on Aboriginal and Torres Strait Islander Deaths in Custody (Minnesota Lawyers International Human Rights Committee 1988).
190. Id. at 6.
191. Id. at 6-7.
The Terms of Reference in this case were issued in October 1987. They did not specify the intended scope of the inquiry; instead they gave the Commission only general guidance.\textsuperscript{192} Therefore, it was left to the discretion of the Commission to decide whether the inquiry should have a broad or narrow focus. Under Principle 9 of the Principles, which allow for inquiry into any pattern or practice which may have brought about the death, the possibility of a narrowly focused investigation could be avoided.

In May 1988, the Australian Government issued new Terms of Reference giving the Commission authority to investigate societal causes of the deaths of the Aborigines and Torres Strait Islanders.\textsuperscript{193} The new Terms of Reference appear to allow for a “pattern or practice” investigation as allowed under the Principles.

A Royal Commission acts independently and has broad powers to obtain evidence and protect witnesses, but its ability to lay contempt charges, and thus oblige testimony, is not automatically established as prescribed by Principle 11 of the Principles.\textsuperscript{194} While requiring the commissioners to inquire and report upon the matter, the Royal Commission Act does not specify whether the report should be made public.\textsuperscript{195} Hence, public denunciation, a useful tool required under Principle 17 of the Principles, may not result.

The Royal Commission on Deaths in Custody was created to investigate a very troublesome aspect of Australian society.\textsuperscript{196} Many countries may not have the ability or desire to create such investigative authorities. Furthermore, those countries which do, may not give these bodies adequate authority to conduct an effective investigation. The Principles, having been approved by the U.N. Economic and Social Council,\textsuperscript{197} will guide countries in effectively preventing and investigating arbitrary killings.

V. CONCLUSION

The right to freedom from arbitrary deprivation of life has long been recognized. For the victims of extra-legal, arbitrary and summary executions, however, this right is without adequate safeguards. The

\begin{footnotes}
\item[192] Id. at 14.
\item[193] Id. at 29-30.
\item[194] Id. at 8-9.
\item[195] Id. at 11.
\end{footnotes}
Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions add welcome and long awaited substance to this well-recognized right.

APPENDIX

PRINCIPLES ON THE EFFECTIVE PREVENTION AND INVESTIGATION OF EXTRA-LEGAL, ARBITRARY AND SUMMARY EXECUTIONS

Prevention

1. Governments shall prohibit by law all extra-legal, arbitrary and summary executions and shall ensure that any such executions are recognized as offences under their criminal laws, and are punishable by appropriate penalties which take into account the seriousness of such offences. Exceptional circumstances including a state of war or threat of war, internal political instability or any other public emergency may not be invoked as a justification for such executions. Such executions shall not be carried out under any circumstances including, but not limited to, situations of internal armed conflict, excessive or illegal use of force by a public official or other person acting in an official capacity or a person acting at the instigation, or with the consent or acquiescence of such person, and situations in which deaths occur in custody. This prohibition shall prevail over decrees issued by governmental authority.

2. In order to prevent extra-legal, arbitrary and summary executions, Governments shall ensure strict control, including a clear chain of command over all officials responsible for the apprehension, arrest, detention, custody and imprisonment as well as those officials authorized by law to use force and firearms.

3. Governments shall prohibit orders from superior officers or public authorities authorizing or inciting other persons to carry out any such extra-legal, arbitrary or summary executions. All persons shall have the right and the duty to defy such orders. Training of law enforcement officials shall emphasize the above provisions.

4. Effective protection through judicial or other means shall be guaranteed to individuals and groups who are in danger of extra-legal, arbitrary or summary executions, including those who receive death threats.

5. No one shall be involuntarily returned or extradited to a country where there are substantial grounds for believing that he or she may become a victim of extra-legal, arbitrary or summary execution in that
6. Governments shall ensure that persons deprived of their liberty are held in officially recognized places of custody, and that accurate information on their custody and whereabouts, including transfers, is made promptly available to their relatives and lawyer or other persons of confidence.

7. Qualified inspectors, including medical personnel, or an equivalent independent authority, shall conduct inspections in places of custody on a regular basis, and be empowered to undertake unannounced inspections on their own initiative, with full guarantees of independence in the exercise of this function. The inspectors shall have unrestricted access to all persons in such places of custody, as well as to all their records.

8. Governments shall make every effort to prevent extra-legal, arbitrary and summary executions through measures such as diplomatic intercession, improved access of complainants to intergovernmental and judicial bodies, and public denunciation. Intergovernmental mechanisms shall be used to investigate reports of any such executions and to take effective action against such practices. Governments, including those of countries where extra-legal, arbitrary and summary executions are reasonably suspected to occur, shall co-operate fully in international investigations on the subject.

9. There shall be a thorough, prompt and impartial investigation of all suspected cases of extra-legal, arbitrary and summary executions, including cases where complaints by relatives or other reliable reports suggest unnatural death in the above circumstances. Governments shall maintain investigative offices and procedures to undertake such inquiries. The purpose of the investigation shall be to determine the cause, manner and time of death, the person responsible, and any pattern or practice which may have brought about that death. It shall include any adequate autopsy, collection and analysis of all physical and documentary evidence, and statements from witnesses. The investigation shall distinguish between natural death, accidental death, suicide and homicide.

10. The investigative authority shall have the power to obtain all the information necessary to the inquiry. Those persons conducting the investigation shall have at their disposal all the necessary budgetary and technical resources for effective investigation. They shall also have the authority to oblige officials allegedly involved in any such executions to
appear and testify. The same shall apply to any witness. To this end, they shall be entitled to issue summons to witnesses, including the officials allegedly involved, and to demand the production of evidence.

11. In cases in which the established investigative procedures are inadequate because of lack of expertise or impartiality, because of the importance of the matter or because of the apparent existence of a pattern of abuse, and in cases where there are complaints from the family of the victim about these inadequacies or other substantial reasons, Governments shall pursue investigations through an independent commission of inquiry or similar procedure. Members of such a commission shall be chosen for their recognized impartiality, competence and independence as individuals. In particular, they shall be independent of any institution, agency or person that may be the subject of the inquiry. The commission shall have the authority to obtain all information necessary to the inquiry and shall conduct the inquiry as provided for under these Principles.

12. The body of the deceased person shall not be disposed of until an adequate autopsy is conducted by a physician, who shall, if possible, be an expert in forensic pathology. Those conducting the autopsy shall have the right of access to all investigative data, to the place where the body was discovered, and to the place where the death is thought to have occurred. If the body has been buried and it later appears that an investigation is required, the body shall be promptly and competently exhumed for an autopsy. If skeletal remains are discovered, they should be carefully exhumed and studied according to systematic anthropological techniques.

13. The body of the deceased shall be available to those conducting the autopsy for a sufficient amount of time to enable a thorough investigation to be carried out. The autopsy shall, at a minimum, attempt to establish the identity of the deceased and the cause and manner of death. The time and place of death shall also be determined to the extent possible. Detailed colour photographs of the deceased shall be included in the autopsy report in order to document and support the findings of the investigation. The autopsy report must describe any and all injuries to the deceased including any evidence of torture.

14. In order to ensure objective results, those conducting the autopsy must be able to function impartially and independently of any potentially implicated persons or organizations or entities.

15. Complainants, witnesses, those conducting the investigation and their families shall be protected from violence, threats of violence or any other form of intimidation. Those potentially implicated in extra-
legal, arbitrary or summary executions shall be removed from any position of control or power, whether direct or indirect, over complainants, witnesses and their families, as well as over those conducting investigations.

16. Families of the deceased and their legal representatives shall be informed of, and have access to, any hearing as well as to all information relevant to the investigation, and shall be entitled to present other evidence. The family of the deceased shall have the right to insist that a medical or other qualified representative be present at the autopsy. When the identity of a deceased person has been determined, a notification of death shall be posted, and the family or relatives of the deceased immediately informed. The body of the deceased shall be returned to them upon completion of the investigation.

17. A written report shall be made within a reasonable period of time on the methods and findings of such investigations. The report shall be made public immediately and shall include the scope of the inquiry, procedures and methods used to evaluate evidence as well as conclusions and recommendations based on findings of fact and on applicable law. The report shall also describe in detail specific events that were found to have occurred, and the evidence upon which such findings were based, and list the names of witnesses who testified, with the exception of those whose identities have been withheld for their own protection. The Government shall, within a reasonable period of time, either reply to the report of the investigation, or indicate the steps to be taken in response to it.

Legal Proceedings

18. Governments shall ensure that persons identified by the investigation as having participated in extra-legal, arbitrary or summary executions in any territory under their jurisdiction are brought to justice. Governments shall either bring such persons to justice or co-operate to extradite any such persons to other countries wishing to exercise jurisdiction. This principle shall apply irrespective of who and where the perpetrators or the victims are, their nationalities or where the offence was committed.

19. Without prejudice to Principle 3 above, an order from a superior officer or a public authority may not be invoked as a justification for extra-legal, arbitrary or summary executions. Superiors, officers or other public officials may be held responsible for acts committed by officials under their hierarchical authority if they had a reasonable opportunity to prevent such acts. In no circumstances, including a state of
war, siege or other public emergency, shall blanket immunity from prosecution be granted to any person allegedly involved in extra-legal, arbitrary or summary executions.

20. The families and dependents of victims of extra-legal, arbitrary or summary executions shall be entitled to fair and adequate compensation within a reasonable period of time.