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**STEERING COMMITTEE FOR HUMAN RIGHTS
(CDDH)**

**DRAFTING GROUP ON THE ERADICATION OF IMPUNITY FOR
SERIOUS HUMAN RIGHTS VIOLATIONS
(CDDH-ELI)**

[Draft]~~preliminary~~ text in relation to ~~discussions~~
~~on~~ clusters 1 and 2

I. Examination of the Issues

1. Cluster 1: Issues related to Scope and Definitions

i. The Scope of the Guidelines

1. The 2011 Guidelines draw on several sources, including the European Convention on Human Rights (the Convention), as interpreted by the case law of the European Court of Human Rights (the Court), and the work of the Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT).¹

2. The CDDH recognises that ~~the European human rights system cannot operate in isolation, particularly regarding~~ impunity for serious human rights violations ~~which~~ often extends beyond the European sphere.² As highlighted during the first exchange of views, the Convention must be viewed as interconnected with broader international law, including international humanitarian law, international criminal law and the rules on the prohibition of the use of force.³

3. Significant developments have occurred since the adoption of the 2011 Guidelines. In August 2014, the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (CETS No. 210, Istanbul Convention) entered into force, emphasising the need for eradication of impunity for such acts. A United Nations (UN) Special Rapporteur on the Promotion of Truth, Justice, Reparation and Guarantees of Non-Recurrence has focused on the rights to truth, reparation and non-repetition since September 2011.⁴ Additionally, a new Convention on International Cooperation in the Investigation and Prosecution of the Crime of Genocide, Crimes against Humanity, War Crimes, and Other International Crimes (the Ljubljana-The Hague Convention on Mutual Legal Assistance) was adopted in May 2023, enhancing cooperation to combat impunity for the most serious crimes. In November 2024, the International Law Commission's draft articles for the prevention and punishment of crimes against humanity⁵ were approved by the Sixth Committee (Legal) of the UN General Assembly.⁶

4. Since 2011, several new courts and mechanisms have been established to address serious international crimes and human rights violations. In 2013, the Extraordinary African Chambers in the Senegalese Courts were created through an agreement between the African Union and Senegal. These chambers were mandated to prosecute international crimes committed in Chad between 1982 and 1990. In 2015, Kosovo⁷ Specialist Chambers and Specialist Prosecutor's Office were established as part of Kosovo's judicial system and staffed with international judges and prosecutors. Their mandate is to investigate and prosecute crimes against humanity, war crimes and other crimes related to the Kosovo conflict of the late 1990s. A Special Criminal Court in the Central African Republic has been operational since 2018, as a

¹ See 2011 Guidelines, preamble.

² See doc. [CDDH-ELI\(2024\)09](#), paras. 3-5.

³ See Doc. [CDDH-ELI\(2024\)05](#). Key points made by Mykola Gnatovskyy. See also the [CDDH Report](#) on the place of the European Convention on Human Rights in the European and international legal order, November 2019.

⁴ See Doc. [CDDH-ELI\(2024\)05](#). Key points made by Emmanuel Decaux.

⁵ See [Draft Articles for the Prevention and Punishment of Crimes against Humanity](#), adopted by the International Law Commission at its seventy-first session in 2019.

⁶ See [Sixth Committee, Upholding Tradition of Consensus in Historic Meeting, Approves Text to Begin Elaborating International Convention on Crimes Against Humanity](#), 22 November 2024.

⁷ All references to Kosovo, whether the territory, institutions or population, in this text shall be understood in full compliance with United Nations' Security Council Resolution 1244 and without prejudice to the status of Kosovo.

hybrid court mandated to investigate and prosecute serious human rights violations committed in the Central African Republic since 2003.

5. The International, Impartial and Independent Mechanism in assisting the investigation and prosecution of persons responsible for the most serious crimes under international law committed in the Syrian Arab Republic since March 2011 ("IIIM") was established by the UN General Assembly in December 2016. Its mandate is to assist in the investigation and prosecution of persons responsible for the most serious crimes under international law committed in Syria since March 2011.

6. The geopolitical context has also evolved. The European Court on Human Rights has received growing numbers of applications relating to systematic and severe human rights violations, including those arising from armed conflict and mass violence, necessitating further exploration of the interplay between the Convention and international humanitarian law in its recent jurisprudence.⁸ The Russian Federation's war of aggression against Ukraine underscores the importance of holding perpetrators accountable to prevent further violations and eradicate impunity.⁹

7. Two mechanisms for investigation of serious human rights violations are currently active in Europe: the Group of Human Rights Experts on Belarus, established on 4 April 2024 to, among other tasks, investigate and establish the facts, circumstances and root causes of all alleged human rights violations and abuses committed in Belarus since 1 May 2020; and the Independent International Commission of Inquiry on Ukraine, established on 4 March 2022 to, *inter alia*, investigate all alleged violations and abuses of human rights and violations of international humanitarian law, and related crimes in the context of the aggression against Ukraine by the Russian Federation, and to establish the facts, circumstances and root causes of any such violations and abuses.

8. The Council of Europe has actively engaged in combating impunity, as emphasised in the Reykjavik ~~and Vilnius~~ declarations.¹⁰ The Council has undertaken active efforts towards accountability for Ukraine and addressing possible legal gaps that might lead to impunity, notably through the establishment of the Register of Damage Caused by the Aggression of the Russian Federation against Ukraine.¹¹ The Council is also taking a leading role in the discussions for the creation of a Claims Commission and an *ad hoc* tribunal for Ukraine.¹²

9. The CDDH considers that these developments justify expanding the scope of the 2011 Guidelines to address accountability comprehensively, incorporating a wider range of international and regional standards. Accordingly, the CDDH recommends ~~that reflecting~~ these developments should be taken into account when assessing the need and feasibility to revise the

⁸ See Doc. [CDDH-ELI\(2024\)05](#), Key points made by Mykola Gnatovskyy. See also the [CDDH Report](#) on the effective processing and resolution of cases relating to inter-State disputes, December 2022, and the 2023 [Committee of Ministers Declaration](#), adopted on 5 April 2023.

⁹ See Committee of Ministers' decisions [CM/Del/Dec\(2024\)1490/2.3](#) adopted at the 1490th meeting of the Ministers' Deputies, 21 and 23 February 2024; [CM/Del/Dec\(2023\)1457bis/2.3](#) adopted at the 1457bis meeting of the Ministers' Deputies, 24 February 2023; [CM/Del/Dec\(2022\)1442/2.3](#) adopted at the 1442nd meeting, 14-15 September 2022.

¹⁰ [Reykjavik Declaration "United around our values"](#), adopted at the Fourth Summit of Heads of State and of Government of the Council of Europe, 16-17 May 2023; [Vilnius Declaration, adopted at the High-level Conference on the European Social Charter, 3-4 July 2024](#).

¹¹ See Doc. [CDDH-ELI\(2024\)05](#), Key points made by Kerli Veski; See Doc. [CDDH-ELI\(2024\)12](#), Key points made by Jörg Polakiewicz.

¹² See Doc. [CDDH-ELI\(2024\)12](#), Key points made by Jörg Polakiewicz.

~~2011 in-revised~~ Guidelines and/or adopt (an) additional non-binding instrument(s),¹³ including when considering updating definitions of impunity and serious human rights violations.

ii. Definition of Impunity

10. The 2011 Guidelines define “impunity” as follows:

“Impunity arises where those responsible for acts that amount to serious human rights violations are not brought to account”.¹³

“These guidelines deal with impunity for acts or omissions that amount to serious human rights violations and which occur within the jurisdiction of the state concerned.”¹⁴

11. The 2011 definition focuses narrowly on the failure to hold perpetrators accountable.¹⁵ The CDDH agrees on the necessity of revising this definition to make it more comprehensive, ensuring legal certainty and clarity and including responses through different forms of proceedings.

12. While considering alignment with the definition of impunity contained in the UN Updated Set of principles for the protection and promotion of human rights through action to combat impunity, which encompass various forms of legal proceedings (criminal, civil, administrative or disciplinary proceedings),¹⁶ the CDDH decides to retain the 2011 definition's flexibility, as expressed in “not brought to account.”

13. However, the revised definition should incorporate the concept of addressing “enabling environments” that foster impunity, such as lack of access to justice or remedies, lack of judicial independence, State policies obstructing accountability processes, or insufficient political will.

14. Additionally, the CDDH addressed the jurisdictional limitations in the 2011 definition, recognising the need to account for extraterritorial jurisdiction where it arises in accordance with the case-law of the Court, and taking note of views expressed by the Parliamentary Assembly.¹⁷ The CDDH agrees that the 2011 definition of impunity may be too restrictive if it only covers

¹³ See 2011 Guidelines, I.1.

¹⁴ See 2011 Guidelines II.1.

¹⁵ See doc. [CDDH-ELI\(2024\)09](#), paras. 6-10.

¹⁶ [E/CN.4/2005/102/Add.1](#) - Updated Set of principles for the protection and promotion of human rights through action to combat impunity, United Nations Economic and Social Council, Commission on Human Rights, 8 February 2005: “‘Impunity’ means the impossibility, de jure or de facto, of bringing the perpetrators of violations to account – whether in criminal, civil, administrative or disciplinary proceedings – since they are not subject to any inquiry that might lead to their being accused, arrested, tried and, if found guilty, sentenced to appropriate penalties, and to making reparations to their victims.”

¹⁷ [Resolution 2509 \(2023\)](#) ‘Transnational repression as a growing threat to the rule of law and human rights’, Parliamentary Assembly of the Council of Europe, 23 June 2023, para. 10.

serious human rights violations occurring within the jurisdiction of the State concerned.¹⁸ While restricting the jurisdiction of the State concerned is important in the context of establishing the responsibility of that State, the fight against impunity extends beyond those acts for which the State concerned is responsible. Consequently, to reflect this broader perspective, it is proposed to clarify jurisdictional issues relating to specific obligations or commitments in (an) additional non-binding instrument(s), or in revised Guidelines, ~~remove the phrase "and which occur within the jurisdiction of the state concerned"~~ to reflect this broader perspective.

iii. Definition of Serious Human Rights Violations

15. The 2011 Guidelines defines "serious human rights violations" as:

"those acts in respect of which states have an obligation under the Convention, and in the light of the Court's case-law, to enact criminal law provisions. Such obligations arise in the context of the right to life (Article 2 of the Convention), the prohibition of torture and inhuman or degrading treatment or punishment (Article 3 of the Convention), the prohibition of forced labour and slavery (Article 4 of the Convention) and with regard to certain aspects of the right to liberty and security (Article 5, paragraph 1, of the Convention) and of the right to respect for private and family life (Article 8 of the Convention). Not all violation of these articles will necessarily reach this threshold."¹⁹

16. The CDDH determined that this definition ~~is too narrow and lacks legal certainty and clarity. The definition should be retained but~~ should be expanded to account for international legal developments.²⁰

17. It is recommended that the revised definition includes international crimes, consistent with the Court's examination of such violations in its case law²¹ particularly in the context of the Russian Federation's war of aggression against Ukraine. A similar approach has been taken in other relevant instruments.²² It was agreed that there is a need to ~~revise extend the scope of the Guidelines to cover also the definition of serious human rights violations to include~~ violations of international criminal law and serious violations of international humanitarian law.

18. The CDDH also proposed adding a second category of acts that could qualify on account of their scale, widespread nature or systematic occurrence, while ensuring that isolated acts could still be covered on account of their gravity. Consequently, it is recommended that the scale requirement only applies to serious human rights violations that would not normally amount to criminal offences.

19. The 2011 Guidelines do not refer to peremptory norms. Explicit reference to such norms would strengthen alignment with international law generally, emphasising accountability for universally recognised violations and addressing barriers to justice.²³ Their inclusion would provide clarity, ensuring that the Guidelines are to be seen in the context of broader international developments. The CDDH agrees on the need to consider a more robust approach,²⁴ not only by highlighting the importance of peremptory norms in the definition, but also noting that measures to combat impunity are particularly important in the context of violations of peremptory norms. The Guidelines could also underline that different violations entail different obligations, in that violations of peremptory norms might justify a different approach in certain aspects, including but not limited to questions of amnesties or statute of limitation.

20. The 2011 definition of serious human rights violations lists articles of the Convention. To ensure continuing relevance, a non-exhaustive list of examples of violations should replace the current list of Convention articles in revised Guidelines and/or (an) additional non-binding instrument(s). In light of current developments in international law and the possible inclusion of new offences under the Rome Statute of the International Criminal Court,²⁵ this approach would ensure that the Guidelines remain valid without the foreseeable need for a revision.

21. The CDDH examined the need to retain the criminalisation obligation as referred to in the 2011 definition. The criminalisation obligation should remain in order to avoid a complete revision of the Guidelines. In addition, member States should be encouraged to align domestic laws with international standards so as to address impunity effectively, as failure properly to integrate international crimes into domestic law can result in a failure to adequately investigate and prosecute them.²⁶

iv. Definitions of Perpetrators and Victims

22. The CDDH discussed the possibility of broadening the definitions of “perpetrators” and “victims” to enhance their impact and inclusivity. The 2011 guidelines define these terms as follows:

“In the guidelines, the term “perpetrators” refers to those responsible for acts or omissions amounting to serious human rights violations.”²⁷

“In the guidelines, the term “victim” refers to a natural person who has suffered harm, including physical or mental injury, emotional suffering or economic loss, caused by a serious human rights violation. The term “victim” may also include, where appropriate, the immediate family or dependants of the direct victim. A person shall be considered a victim regardless of whether the perpetrator of the violation is identified, apprehended, prosecuted, or convicted and regardless of the familial relationship between the perpetrator and the victim.”²⁸

¹⁸ ~~Resolution 2509 (2023) ‘Transnational repression as a growing threat to the rule of law and human rights’, Parliamentary Assembly of the Council of Europe, 23 June 2023, para. 10.~~

¹⁹ See 2011 Guidelines II.3.

²⁰ See doc. [CDDH-ELI\(2024\)09](#), paras. 11-19.

²¹ [Article 7 - International crimes](#), Key Theme, Registry of the European Court of Human Rights, last update 31 August 2023. See also doc. [CDDH-ELI\(2024\)09](#), paras. 24-30.

²² For instance, the Updated Set of principles on impunity encompasses serious crimes under international law and states that “[a]s used in these principles, the phrase ‘serious crimes under international law’ encompasses grave breaches of the Geneva Conventions of 12 August 1949 and of Additional Protocol I thereto of 1977 and other violations of international humanitarian law that are crimes under international law, genocide, crimes against humanity, and other violations of internationally protected human rights that are crimes under international law and/or which international law requires States to penalize, such as torture, enforced disappearance, extrajudicial execution, and slavery.” The Basic Principles on Reparation refer to “gross violations of international human rights law and serious violations of international humanitarian law constituting crimes under international law, [and with respect to which] States have the duty to investigate and, if there is sufficient evidence, the duty to submit to prosecution the person allegedly responsible for the violations and, if found guilty, the duty to punish her or him.”

²³ See doc. [CDDH-ELI\(2024\)09](#), paras. 20-23.

²⁴ See doc. [CDDH-ELI\(2024\)09](#), para. 23.

²⁵ Particular attention should be paid to the pending proposals of amendments to include slave trade as a crime against humanity, slavery and the slave trade as war crimes, and ecocide as a crime under the Rome Statute. See Assembly of States Parties, “[Report of the Working Group on Amendments](#),” ICC-ASP/23/26, 1 December 2024. See also *op. cit.*, footnotes 7 and 8 and Doc. [CDDH-ELI\(2024\)12](#), Key points made by Kate Vigneswaran.

²⁶ See doc. [CDDH-ELI\(2024\)09](#), paras. 27-29.

²⁷ See 2011 Guidelines, II.4.

²⁸ See 2011 Guidelines, II.5.

23. The CDDH considered whether both definitions could include legal entities.²⁹ It was determined that the 2011 definition of “perpetrators” is sufficiently broad to encompass both natural and legal persons.

24. Conversely, the definition of “victims” is explicitly restricted to natural persons. To ensure a more inclusive approach to accountability, the CDDH proposes replacing “natural persons” with “those who have suffered,” thereby aligning the definition of “victims” with that of “perpetrators.”

v. States’ Responsibility for Serious Human Rights Violations

25. The CDDH discussed the inclusion of States’ responsibility for serious human rights violations in the Guidelines, particularly from the perspective of inter-state cases.³⁰ Article 33 of the Convention allows a State Party to bring before the Court an alleged breach of the Convention by another State Party. In April 2022, the Parliamentary Assembly encouraged Council of Europe member States to utilise inter-State applications under Article 33 of the Convention to hold the Russian Federation accountable for alleged violations of the Convention and its protocols up to 16 September 2022.³¹ The Assembly further noted that “the European Court of Human Rights [...] can hold the Russian Federation accountable for human rights violations committed by Russian troops.”³² At the Fourth Summit in May 2023, the Heads of State and of Government of the Council of Europe reaffirmed their commitment to supporting “the Court’s efforts to ensure that, through the expeditious processing of individual and inter-state applications, in particular those arising from conflicts, States are held accountable for their actions.”³³

26. Since the Convention’s entry into force in 1953, the Court has handled 30 inter-state cases, most of which addressed events linked to crises or conflict.³⁴ In recent years, the number of inter-state cases has risen sharply, with 14 applications currently pending before the Court, 10 of which were lodged since 2020.³⁵ This trend underscores the importance of ensuring the Court’s capacity to fulfil its role as defined under Article 19 of the Convention. States involved in inter-state cases and related individual applications must fully comply with their obligations under Article 38, as interpreted by the Court.³⁶ This includes providing timely and comprehensive responses to the Court’s requests for information and evidence.

²⁹ See Doc. [CDDH-ELI\(2024\)12](#), Key points made by Kate Vigneswaran and Chiara Gabriele.

³⁰ See doc. [CDDH-ELI\(2024\)09](#), paras. 31-36.

³¹ [Resolution 2436 \(2022\)](#) “The Russian Federation’s aggression against Ukraine: ensuring accountability for serious violations of international humanitarian law and other international crimes”, Parliamentary Assembly of the Council of Europe, 28 April 2022, para. 11.8. The Russian Federation ceased to be a party to the Convention on 16 September 2022, meaning that its obligation under Article 1 to secure Convention rights and freedoms to everyone within its jurisdiction came to an end on that date.

³² *Ibid*, para. 9.

³³ [Reykjavik Declaration “United around our values”](#), adopted at the Fourth Summit of Heads of State and of Government of the Council of Europe, 16-17 May 2023, Appendix IV ‘Recommitting to the Convention system as the cornerstone of the Council of Europe’s protection of human rights’, p. 18.

³⁴ [Questions and answers on inter-State cases](#), Press Unit, European Court of Human Rights, June 2024.

³⁵ [Memorandum of the European Court of Human Rights](#), adopted by the Plenary Court on 20 March 2023 in view of the 4th Summit of the Heads of State and Government of the Council of Europe, paras. 20-21. [Questions and answers on inter-State cases](#), Press Unit, European Court of Human Rights, June 2024; see also the [page on inter-State applications](#) on the Court’s website.

³⁶ Report on the effective processing and resolution of cases relating to inter-State disputes (document [CDDH\(2022\)R97 Addendum 3](#)), adopted by the CDDH at its 97th meeting (6-9 December 2022), p. 2.

27. Outside the European sphere, the number of inter-state cases brought before the International Court of Justice and other dispute mechanisms involving allegations of international crimes has also seen a recent increase. These cases relate to the application of the Convention on the Prevention and Punishment of the Crime of Genocide,³⁷ the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,³⁸ and the International Convention on the Elimination of All Forms of Racial Discrimination.³⁹

28. The CDDH recognises that inter-state cases play an important, complementary role in accountability strategies and addressing impunity. Including States' responsibility for serious human rights in revised Guidelines and/or (an) additional non-binding instrument(s) would underscore the increasing importance of inter-state cases in combating serious human rights violations. Furthermore, it was proposed to highlight the subject matter of recent inter-state cases, as most of them concern issues related to serious human rights violations.

2. Cluster 2: Issues related to Cooperation

29. In its discussions, the CDDH-ELI examined cooperation-related issues under Cluster 2 and their impact on eradicating impunity for serious human rights violations. The Group recognised that a lack of cooperation – whether between states, with international courts or mechanisms or in the execution of judgements – can create environments where impunity flourishes. Based on the revised definitions mentioned above, the CDDH discussed how to address these challenges and how –measures that member States could take to address environments enabling impunity. These measures could be emphasised in–revised Guidelines and/or (an) additional non-binding instrument(s) could emphasise measures that strengthen cooperation to prevent and combat impunity effectively.-

i. Inter-state Cooperation and Legal and Mutual Assistance

30. The CDDH-ELI recognised that inter-state cooperation is essential for effectively investigating and prosecuting serious human rights violations and holding perpetrators accountable.⁴⁰ However, the CDDH identified several challenges that could hinder such cooperation. These include difficulties in gathering and sharing information and evidence across jurisdictions, such as accessing documents, witness testimonies, forensic evidence and other relevant materials. Additionally, differences in legal systems, evidentiary standards and prosecutorial practices among States complicate the admissibility and exchange of evidence.

31. To address these challenges, the CDDH emphasises the need to enhance inter-state cooperation to ensure effective accountability. This means encouraging States to intensify collaborative efforts in investigating and prosecuting serious human rights violations while considering recent developments in international cooperation practices.⁴¹

³⁷ See International Court of Justice, *Bosnia and Herzegovina v. Serbia and Montenegro*; *Croatia v. Serbia*; *The Gambia v. Myanmar*; *Ukraine v. Russian Federation* and *South Africa v. Israel*.

³⁸ See International Court of Justice, *Canada and the Netherlands v. Syrian Arab Republic*.

³⁹ See International Court of Justice, *Ukraine v. Russian Federation*; *Qatar v. United Arab Emirates*; *Georgia v. Russian Federation*.

⁴⁰ See Doc. [CDDH-ELI\(2024\)10](#), paras. 3-9.

⁴¹ See Doc. [CDDH-ELI\(2024\)05](#), Key points made by Matt Cannock.

32. The 2011 Guidelines include general provisions on the significant role of international cooperation in combating impunity, calling on States to fulfil their obligations related to mutual legal assistance, prosecution, and extradition. States are also encouraged to extend their cooperation beyond existing obligations.⁴²

33. Given the pivotal role of legal and mutual assistance in combating impunity, the 2011 Guidelines ~~should~~ could be updated to reflect recent advancements in this field. One approach could be to incorporate specific provisions into ~~Specifically,~~ revised Guidelines ~~could include provisions that~~ to reinforce the importance of legal cooperation mechanisms among States through mutual legal assistance ~~enhance legal cooperation mechanisms among States through mutual legal assistance~~. Alternatively, an additional non-binding instrument could provide more detailed guidance to states on how to enhance inter-state cooperation. A combined approach could also be envisaged, with core principles outlined in revised Guidelines and practical recommendations elaborated in a separate instrument.

34. Revised Guidelines and/or (an) additional non-binding instrument(s) could encourage member States to align their legal frameworks with international standards and obligations to facilitate effective inter-state cooperation. This would include ~~not only harmonising legal systems, but also~~ allocating adequate resources and providing specialised training for those involved in cooperation mechanisms.

35. Member States could also be encouraged to participate and continue their active engagement with regional networks that facilitate cooperation, such as the European Network for investigation and prosecution of genocide, crimes against humanity and war crimes (Genocide Network). This network promotes accountability for core international crimes through direct cooperation among practitioners from EU member states, observer states and international organisations.⁴³ States could further establish national entities dedicated to inter-state cooperation, ensuring effective communication and coordination.

36. The Council of Europe has made significant contributions to facilitating international cooperation in criminal matters through binding instruments such as the European Convention on Mutual Assistance in Criminal Matters (ETS No. 30). This Convention, ratified by all Council of Europe member States, enhances mutual assistance among member States by providing a comprehensive legal framework to handle requests efficiently and effectively, promoting cooperation and coordination among national judicial authorities.⁴⁴ Two additional protocols⁴⁵ supplement the convention, broadening its scope and addressing modern challenges, including the use of communication technologies and the protection of personal data. To date, neither of the two additional protocols to this Convention has been ratified by all Council of Europe member States.

37. The new Convention on International Cooperation in the Investigation and Prosecution of Genocide, Crimes against Humanity, War Crimes and other International Crimes⁴⁶ (the Ljubljana-

⁴² See Guideline XII.

⁴³ See Doc. [CDDH-ELI\(2024\)12](#), Key points made by Matevz Pezdirc.

⁴⁴ The Convention entered into force in 1962 - to date, it has been ratified by 50 states, including all member States of the Council of Europe (see the [ratification chart](#) on the website of the Treaty Office of the Council of Europe).

⁴⁵ The Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters (ETS No. 099) entered into force in 1982 - to date, it has been ratified by 43 states (see the [ratification chart](#)). The Second Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters (ETS No. 182) entered into force in 2004 - to date, it has been ratified by 43 states (see the [ratification chart](#)).

⁴⁶ Convention on International Cooperation in the Investigation and Prosecution of Genocide, Crimes against Humanity, War Crimes and other International Crimes, adopted on 26 May 2023, signed by 37 states as of February 2025. Some

The Hague Convention on Mutual Legal Assistance) represents a significant step forward. This Convention seeks to close jurisdictional gaps, facilitate evidence sharing, extradition, and other forms of legal and administrative cooperation. By ~~obligating~~ establishing a framework for facilitating provision by states ~~to provide of~~ mutual legal assistance and for ensuring that State Parties take the necessary measures to ensure that the relevant offences criminalise all international crimes ~~are criminalised under their domestic law~~, the Convention is a critical tool in combating impunity for serious human rights violations.⁴⁷ As the first multilateral legal instrument regulating inter-state cooperation in investigating and prosecuting genocide, crimes against humanity, war crimes and other international crimes, it offers significant potential for enhancing international cooperation.

38. Revised Guidelines and/or (an) additional non-binding instrument(s) could encourage, where appropriate, states to sign and ratify bilateral agreements and existing European and international instruments, including the Council of Europe Additional Protocols to the European Convention on Mutual Assistance in Criminal Matters and the Ljubljana-The Hague Convention on Mutual Legal Assistance.

ii. Cooperation with International Courts and Mechanisms

39. Cooperation between member States and international courts is essential to ensuring the effectiveness of justice and the eradication of impunity. International courts rely heavily on state cooperation to function efficiently.⁴⁸ Therefore, it is crucial for the Guidelines to explicitly promote state cooperation with these courts.⁴⁹

40. The 2011 Guidelines address issues related to international cooperation⁵⁰ and non-judicial mechanisms,⁵¹ but they do not specifically mention cooperation with international courts. This omission fails to reflect significant developments in international law and the growing importance of such cooperation. Similarly, the Guidelines make no reference to international inquiry mechanisms.

41. States have an obligation to ensure the effective and efficient functioning of international courts to the statutes of which they are parties, or where the court has been established under Chapter VII of the UN Charter. The CDDH agrees that revised Guidelines and/or (an) additional non-binding instrument(s) should explicitly promote and encourage state cooperation with international courts, including international criminal courts.

42. Member States should be encouraged to cooperate with ~~comply with requests from~~ international courts in accordance with their international legal obligations, including by complying with requests such as the surrender of suspects, executing arrest warrants, and transfers, and cooperating in the execution of sentences. States that have ratified founding treaties of international courts should fulfil their cooperation commitment, while others may be invited to support their work. ~~including the surrender of suspects, execution of arrest warrants, transfers, and cooperation in the execution of sentences. For member States who have ratified the founding~~

~~aspects of this instrument, such as the *aut dedere aut judicare* obligation (the obligation to extradite or prosecute), will be examined by the CDDH-ELI at its third meeting.~~

⁴⁷ See Doc. [CDDH-ELI\(2024\)12](#), Key points made by Mirjam Ekkart.

⁴⁸ See Doc. [CDDH-ELI\(2025\)01](#), Key points made by Amélie Becquart.

⁴⁹ See Doc. [CDDH-ELI\(2024\)10](#), paras. 17-30.

⁵⁰ See 2011 Guidelines, [Guideline](#) XII.

⁵¹ See 2011 Guidelines, [Guideline](#) -XV.

treaty of the International Criminal Court (ICC), a specific reference to cooperation with the Office of the Prosecutor of the ~~International Criminal Court (ICC)~~ could be incorporated into revised Guidelines and/or (an) additional non-binding instrument(s), particularly during the investigative stages. In this context, the Parliamentary Assembly has called on Council of Europe member and observer States to “support the ICC Prosecutor in his task of investigating and prosecuting suspected perpetrators of war crimes, crimes against humanity and, possibly, genocide, by providing political support and adequate human and financial resources and by making available any evidence in their possession” and to “fully cooperate with the ICC prosecutor, [...] including by handing over to them any persons on their territory against whom arrest warrants are issued.”⁵²

43. Facilitating communication between international courts and national authorities is vital to ensuring smooth cooperation. This could be achieved by appointing national liaison officers or focal points tasked with maintaining effective communication channels. Revised Guidelines and/or (an) additional non-binding instrument(s) could include a general provision encouraging states to establish such mechanisms and/or provide further practical guidance on their roles, responsibilities, and best practices for implementation.

44. In addition, international inquiry mechanisms, established to respond to situations involving serious human rights violations, play a crucial role in ensuring accountability for both states and individuals.

45. Since 2011, there has been an increase in the number of international inquiry mechanisms established to address serious human rights violations in specific regions.⁵³ One notable example is the International, Impartial and Independent Mechanism in assisting the investigation and prosecution of persons responsible for the most serious crimes under international law committed in the Syrian Arab Republic since March 2011 (“IIIM”), which was established to assist in investigating and prosecuting those responsible for the most serious international crimes committed in Syria. The IIIM collects, consolidates, preserves and analyses evidence of core international crimes while supporting national jurisdictions to facilitate fair and expeditious criminal proceedings.⁵⁴

46. Member States’ cooperation with international inquiry mechanisms is crucial for their success. However, these mechanisms often face challenges due to inadequate cooperation from states. Revised Guidelines and/or (an) additional non-binding instrument(s) could encourage member States to cooperate with and support the work of international inquiry mechanisms, dependent on their in light of their respective mandate and the institutional basis underpinning their establishment. This approach aims to enhance accountability for human rights violations. In terms of scope, R rather than attempting to provide an exhaustive list of such mechanisms, revised Guidelines and/or (an) additional non-binding instrument(s) could ~~the CDDH would~~ instead use ~~adopt~~ the general term “commissions of inquiry international investigative bodies and other mechanisms”, thus reflecting the diversity of diverse sources of their mandates and institutional frameworks. To support the work of these mechanisms, the Revised Guidelines and/or (an) additional instrument could underscore the importance of states to cooperate with these bodies to fight impunity, and provide more detailed recommendations on practical cooperation measures. These could include highlight the importance of granting them access to relevant information and

⁵² [Resolution 2436 \(2022\)](#) “The Russian Federation’s aggression against Ukraine: ensuring accountability for serious violations of international humanitarian law and other international crimes”, Parliamentary Assembly of the Council of Europe, 28 April 2022, paras. 11.1 and 11.5.

⁵³ See all [Human Rights Council-mandated investigative bodies](#).

⁵⁴ See Doc. [CDDH-ELI\(2024\)12](#), Key points made by Robert Petit.

territories, ensuring the protection of ~~protecting~~ victims and witnesses present in member States, and responding constructively to their findings and recommendations.

iii. Execution of Judgements of International Courts

47. The 2011 Guidelines refer to the European Court of Human Rights and the importance of executing judgements of domestic courts.⁵⁵ However, the 2022 Committee of Ministers' Guidelines on the Prevention and remedying of violations of the Convention for the protection of human rights and fundamental freedoms ~~refer to deal extensively with execution of~~ ~~deal~~

⁵⁵ See 2011 Guidelines, preamble and Guideline XI.

~~extensively with execution of judgments of the European Court of Human Rights,⁵⁶ and the importance of executing judgements of domestic courts.⁵⁷~~

48. At its first meeting, the Group recognised that the non-execution of judgements of international courts poses a significant barrier to combating impunity. It undermines the deterrent effect of such judgements, ~~and~~ hinders their potential to prevent the recurrence of human rights violations ~~and deprives victims of effective remedies. The execution of these judgements is essential not only for ensuring accountability but also for delivering justice and redress to individuals whose rights have been violated.~~ Non-execution – whether of European or other international court judgements – remains a major challenge in the fight against impunity.⁵⁸

49. Despite the binding obligation under Article 46 of the Convention for member States to abide by judgements of the Court, as of late 2023, 1,088 leading judgements⁵⁹ were still pending execution.⁶⁰ By January 2024, 49% of leading judgements from the past decade were still pending implementation, with an average delay of six years and eight months.⁶¹ It is important to note, however, that relatively few pending judgments fall within the current or potential future scope of the Guidelines.

50. Challenges to the execution of judgements of the Court arise from various factors, including the political and legal complexity of certain cases, and the systemic or structural issues identified in the judgements.⁶² Additionally, non-cooperation by some member States and a lack of resources or technical expertise may further impede the implementation process.⁶³

51. In 2022, the Committee of Ministers adopted Guidelines to member States on the prevention and remedying of violations of the Convention for the protection of human rights and fundamental freedoms,⁶⁴ ~~reiterating reinforcing~~ the importance of executing judgements. During the Fourth Summit in May 2023, the Heads of State and Government of the Council of Europe reaffirmed the “unconditional obligation to abide by the final judgments of the European Court of Human Rights in any case to which [they] are parties”⁶⁵ and “the fundamental importance of the execution of the Court’s judgments and the effective supervision of that process to ensure the long-term sustainability, integrity and credibility of the Convention system.”⁶⁶ Recent initiatives, such as meetings between national coordinators and the Department for the Execution of Judgments and the creation of the Execution Coordinators’ Network,⁶⁷ aim to enhance cooperation and build national capacities to address execution challenges.

52. It is essential to reaffirm that States parties to international judicial bodies are under an obligation to implement their judgements,⁶⁸ ~~in revised Guidelines and/or (an) additional non-binding instrument(s).~~

53. The CDDH highlights that the 2011 Guidelines focus on the implementation of domestic court judgments⁶⁹ and recommends extending their scope to include judgements ~~rendered by the Court and judgements, decisions and views rendered by of the Court and other~~ international dispute settlement mechanisms ~~criminal tribunals.~~⁷⁰

54. Strengthening state capacity to align laws and policies with international court rulings is crucial for ensuring effective compliance. Comprehensive reforms to national legislation and policy may be necessary to align domestic practices with international court judgements.⁷¹ This ~~has been addressed in several Committee of Ministers’ instruments regarding the execution of the Court’ judgements.~~⁷² ~~could be reflected in R~~ revised Guidelines and/or (an) additional ~~non-binding instrument(s) could provide recommendations on how to strengthen state capacity to align laws and policies with international judgements, including~~ emphasising the need for states to

allocate sufficient resources for implementing judgements promptly and, promoting domestic execution arrangements through, including reporting mechanisms and capacity-building programs, is also essential, as essential components for fostering implementation of court judgements.

55. Civil society organisations and independent oversight mechanisms, such as National Human Rights Institutions (NHRIs), and Ombudsperson institutions play a critical role in monitoring and advocating for the implementation of international courts judgements, including

⁵⁶ See [202244 Guidelines on the Prevention and remedying of violations of the Convention for the protection of human rights and fundamental freedoms, 2022, notably Section II/ Guidelines 12-17 – preamble. The Guidelines also refers to the case law of the Court.](#)

⁵⁷ See 2011 Guidelines XI.

⁵⁸ See Doc. [CDDH-ELI\(2024\)10](#), paras. 10-16.

⁵⁹ According to the glossary of the Department for the execution of judgments of the European Court of Human Rights, a “leading case” is a “Case which has been identified as disclosing a problem, in law and/or practice, at national level, often requiring the adoption by the respondent State of new or additional general measures to prevent recurrence of similar violations. [...] A leading case may also reveal structural/systemic problems, identified by the Court in its judgment or by the Committee of Ministers in the course of its supervision of execution, requiring the adoption by the respondent State of new general measures to prevent recurrence of similar violations.”

⁶⁰ [Supervision of the execution of judgments of the European Court of Human Rights 2023 - 17th Annual Report of the Committee of Ministers](#), p. 117.

⁶¹ European Implementation Network Statistics, see [Country Map — European Implementation Network \(einnetwork.org\)](#).

⁶² See [Supervision of the execution of judgments of the European Court of Human Rights 2023 - 17th Annual Report of the Committee of Ministers](#), p. 59. See Doc. [CDDH-ELI\(2024\)12](#), Key points made by Frederic Dolt.

⁶³ [Reykjavik Declaration “United around our values”](#), *op. cit.*, Appendix IV “Recommitting to the Convention system as the cornerstone of the Council of Europe’s protection of human rights”, p. 18. See Doc. [CDDH-ELI\(2024\)12](#), Key points made by Frederic Dolt.

⁶⁴ [Guidelines of the Committee of Ministers to member States on the prevention and remedying of violations of the Convention for the protection of human rights and fundamental freedoms](#), adopted by the Committee of Ministers on 27 September 2022 at the 1444th meeting of the Ministers’ Deputies.

⁶⁵ [Reykjavik Declaration “United around our values”](#), adopted at the Fourth Summit of Heads of State and of Government of the Council of Europe, 16-17 May 2023, p. 4.

⁶⁶ [Reykjavik Declaration “United around our values”](#), *op. cit.*, Appendix IV “Recommitting to the Convention system as the cornerstone of the Council of Europe’s protection of human rights”, p. 18.

⁶⁷ For further information, see [Meeting of Co-ordinators of the execution of judgments of the European Court of Human Rights - 24 June 2024 - Implementation of Human Rights, Justice and Legal Co-Operation Standards \(coe.int\)](#)

⁶⁸ The binding nature of international court’s judgements is grounded in the respective founding treaties or statutes of these judicial bodies. Article 94 of the UN Charter obliges member States to comply with decisions of the International Court of Justice. The binding nature of judgements from the International Criminal Tribunal for the former Yugoslavia (ICTY) and the international Criminal Tribunal for Rwanda (ICTR) derives from their establishment under Chapter VII of the UN Charter, which gives the UN Security Council authority to take binding measures to maintain or restore international peace and security. Article 59 of the Rome Statute of the International Criminal Court outlines the binding nature of the Court’s decisions on states parties.

⁶⁹ See 2011 Guideline XI.

⁷⁰ See [Study of the Office of the UNHCHR, A/HRC/57/27, 11 September 2024, para. 55\(c\).](#)

⁷¹ ‘Domestic Implementation of Human Rights Judgments in Europe: Legal Infrastructure and Government Effectiveness Matter’, Dia Anagnostou and Alina Mungiu-Pippidi, February 2014, *European Journal of International Law*, Volume 25, Issue 1, pp. 220-221.

⁷² See [Recommendation CM/Rec\(2008\)2 of the Committee of Ministers to member states on efficient domestic capacity for rapid execution of judgments of the European Court of Human Rights, adopted on 6 February 2008; See also Brussels Declaration, High-Level Conference on the “Implementation of the European Convention on Human Rights, our shared responsibility”, 27 March 2015; Recommendation CM/Rec\(2021\)4 of the Committee of Ministers to member States on the publication and dissemination of the European Convention on Human Rights, the case law of the European Court of Human Rights and other relevant texts, adopted on 22 September 2021.](#)

those of the Court.^{73, 74} Member States should be encouraged to ~~actively~~ engage proactively with these ~~bodies organisations when in~~ monitoring compliance and enacting necessary legal and policy reforms. Revised Guidelines and/or (an) additional non-binding instrument(s) could acknowledge and promote this engagement.

⁷³ Article 36, paragraph 2, and Article 46, paragraph 2, of the Convention. See Resolution 2494 (2023) 'Implementation of judgments of the European Court of Human Rights', Parliamentary Assembly of the Council of Europe, 26 April 2023, para. 7.6; See also Doc. CDDH-ELI(2024)12, Key points made by Frederic Dolt; Recommendation CM/Rec(2021)1 of the Committee of Ministers to member States on the development and strengthening of effective, pluralist and independent national human rights institutions, 31 March 2021, preamble; Guidelines of the Committee of Ministers on the prevention and remedying of violations of the Convention for the protection of human rights and fundamental freedoms, CM(2022)141-add1final, 28 September 2022, Guideline 7 – Strengthening the role of NHRIs, civil society and other key bodies; 7.1 and 7.2; Recommendation CM/Rec(2021)4 of the Committee of Ministers to member States on the publication and dissemination of the European Convention on Human Rights, the case-law of the European Court of Human Rights and other relevant texts, 22 September 2021, point 1.4.

⁷⁴ Resolution 2494 (2023) 'Implementation of judgments of the European Court of Human Rights', Parliamentary Assembly of the Council of Europe, 26 April 2023, para. 7.6; See Doc. CDDH-ELI(2024)12, Key points made by Frederic Dolt.