



CDDH-ELI(2025)02
31/03/2025

**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 cluster 3

3. Cluster 3: Issues related to Criminal Law

1. The CDDH examined several criminal law issues while examining the need for and feasibility to revise the 2011 Guidelines and/or adopt (an) additional non-binding instrument(s) to complement the guidelines on the eradication of impunity for serious human rights violations.

i. Universal criminal jurisdiction

2. Universal criminal jurisdiction is a well-established principle of international law¹ that serves as a complementary mechanism in the fight against impunity. It allows states to prosecute individuals for serious human rights violations, regardless of where the crimes were committed or the nationality of the perpetrator or victims. By ensuring that borders are not always an obstacle to justice, universal criminal jurisdiction reinforces global accountability efforts.

3. There are no universally recognised rules under customary international law regarding universal criminal jurisdiction,² and there is no international consensus on its precise definition and scope.³ Several international treaties and instruments provide for the prosecution of specific crimes based on this principle.⁴ State practice shows that universal criminal jurisdiction is generally exercised over the most serious international crimes, such as war crimes, genocide, crimes against humanity, slavery, torture, terrorism, and piracy.⁵

4. Universal jurisdiction has been incorporated into the national legal frameworks of several Council of Europe member States. The CDDH recognises that different forms of universal criminal jurisdiction exist across jurisdictions. Some states provide for absolute universal criminal jurisdiction, while others apply a conditional form, imposing limitations, such as requiring the perpetrator's presence on national territory before prosecution can proceed.

¹ See the work of the Sixth Committee (Legal) of the General Assembly of the United Nations in relation to [the scope and application of the principle of universal jurisdiction](#), 79th session (2024). The European Court of Human Rights has recognised that universal jurisdiction "is relatively widely accepted by the States with regard to criminal matters". See [Nait-Liman v. Switzerland](#) [GC], appl. no. 51357/07, 15 March 2018, §178. See also, with regard to the crime of genocide, [Jorgic v. Germany](#), appl. no. 74613/01, 12 July 2007, §§68-69.

² See the work of the Sixth Committee (Legal) of the General Assembly of the United Nations in relation to [the scope and application of the principle of universal jurisdiction](#), 79th session (2024).

³ See [Reply to Recommendation 1953 \(2011\)](#) of the Parliamentary Assembly of the Council of Europe "The obligation of member and observer states of the Council of Europe to co-operate in the prosecution of war crimes", §6, adopted at the 1145th meeting of the Ministers' Deputies, 13 June 2012.

⁴ See Article 49 of the [Geneva Convention \(I\)](#) for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, 12 August 1949; Article 50 of the [Geneva Convention \(II\)](#) for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of the Armed Forces at Sea, 12 August 1949; Article 129 of the [Geneva Convention \(III\)](#) relative to the Treatment of Prisoners of War, 12 August 1949; and Article 146 of the [Geneva Convention \(IV\)](#) relative to the Protection of Civilians Persons in Time of War, 12 August 1949; Articles I and VI of the [Convention on the Prevention and Punishment of the Crime of Genocide](#), entered into force on 12 January 1951; Article V of the [International Convention on the Suppression and Punishment of the Crime of Apartheid](#), entered into force on 18 July 1976; Article 5(2) of the [Convention against Torture and Other Cruel, Inhumane or Degrading Treatment or Punishment](#), adopted on 10 December 1984; Article 6(4) and (5) of the [Convention for the suppression of unlawful acts against the safety of maritime navigation](#), entered into force on 1 March 1992; Article 9 of the [International Convention for the Protection of All Persons from Enforced Disappearance](#), adopted on 23 December 2010; Article 8(3) of the [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; See also Article 7 of the [Draft articles on Prevention and Punishment of Crimes Against Humanity](#), 2019. See also [Jorgic v. Germany](#), appl. no. 74613/01, 12 July 2007, §69.

⁵ See [A/78/130](#), Report of the Secretary-General on the scope and application of the principle of universal jurisdiction, 6 July 2023, Table 1 - List of crimes mentioned in the comments by Governments concerning which universal jurisdiction (including other bases of jurisdiction) is established by their codes.

5. The 2011 Guidelines do not explicitly refer to universal criminal jurisdiction. Instead, they focus on states' obligations to investigate and prosecute, where warranted, serious crimes under the European Convention on Human Rights, including Article 2 (right to life), Article 3 (the prohibition of torture and inhumane or degrading treatment or punishment), Article 4 (the prohibition of slavery and forced labour), Article 5 (the right to liberty and to security), and Article 8 (the right to respect for private and family life). Guideline XII underscores the importance of mutual legal assistance, prosecutions, and extraditions as key mechanisms to enhance inter-state cooperation against impunity.

6. In recent years, states - including Council of Europe member States - have increasingly exercised universal criminal jurisdiction to prosecute serious human rights violations such as genocide, war crimes, crimes against humanity, terrorism and torture, when committed outside their territory.⁶ Examples include: Austria's conviction of a Syrian national for terrorism-related crimes in Syria;⁷ Hungary's conviction of a Syrian national for crimes against humanity against the civilian population in Syria;⁸ Germany's prosecution of members of Syrian intelligence services and Da'esh, convicting them for crimes against humanity, war crimes and genocide against the Yazidi community in Iraq;⁹ France's trials of individuals involved in the 1994 Rwanda genocide¹⁰ and recent investigation of alleged war crimes, enforced disappearances and torture committed in Syria;¹¹ Switzerland's conviction of a Liberian rebel commander for rape, murder and cannibalism; and the Netherlands' trials of former members of Syrian jihadist groups and government militias for war crimes committed in Syria.¹²

7. The United Nations has repeatedly called on states to establish universal jurisdiction in their national legal frameworks,¹³ in order to strengthen global efforts against impunity.

8. The Russian Federation's aggression against Ukraine has further underscored the need to hold perpetrators accountable for serious violations of international law. The Council of Europe's Committee of Ministers has emphasised the necessity of mobilising all instruments to ensure accountability and urged member States to engage in developing a comprehensive accountability system in accordance with international law.¹⁴

⁶ See [CDDH-ELI\(2025\)01](#) – Key points made by Amélie Becquart. See also [Universal Jurisdiction Annual Review 2024](#), p. 11 which highlights a 33% increase of the total number of cases in 2023 compared to 2022.

⁷ See Judgment of the Regional Court, Eisenstadt, AZ 50 Hv 15/21w, 23 March 2022.

⁸ See Budapest Metropolitan Court, Judgment No. 31.B.1091/2019/184, 3 December 2020.

⁹ As recent examples, Germany has used universal jurisdiction under its Code of Crimes Against International Law which allows prosecution for genocide, war crimes, and crimes against humanity regardless of where they occurred. See the Al-Khatib trial (2022), in which a former Syrian intelligence officer was convicted in 2022 by a German court for crimes against humanity, including torture, committed in Syria.

¹⁰ See the 2022 conviction of Laurent Bucyibaruta for complicity in genocide and crimes against humanity and the recent case brought against Eugene Rwamucyo accused of genocide, complicity in genocide, crimes against humanity, complicity in crimes against humanity and conspiring to prepare those crimes.

¹¹ See French Cour de Cassation, "[Universal jurisdiction of French justice for crimes committed in Syria](#)," 12 May 2023.

¹² For more examples, see [Universal Jurisdiction Annual Review 2024](#).

¹³ See for example, [A/HRC/48/60](#) – Report of the United Nations Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence on "Accountability: Prosecuting and punishing gross violations of human rights and serious violations of international humanitarian law in the context of transitional justice", July 2021, §97(u).

¹⁴ 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, §4; [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, §5.

9. The creation of specialised units for investigating and prosecuting international crimes is considered essential for effective and targeted investigations of crimes committed abroad.¹⁵ Several Council of Europe member States have established such units for investigating and prosecuting international crimes committed outside their territories.¹⁶ However, these units require adequate resources and capacity to function properly.¹⁷ A key challenge in prosecuting cases under universal jurisdiction is the limited resources allocated to such investigations, as states often prioritise domestic crimes over international ones.¹⁸ Integrating international crimes into broader criminal policy frameworks could help address this challenge.¹⁹

10. Universal criminal jurisdiction has become a crucial tool in closing impunity gaps. In light of recent developments in member States and in international law as well as increasing calls for action,²⁰ strengthening the application of universal criminal jurisdiction is vital for ensuring accountability. The CDDH considers it relevant to include a reference to universal criminal jurisdiction in revised guidelines and/or (an) additional non-binding instrument(s). In particular, Council of Europe member States could be encouraged to incorporate universal criminal jurisdiction into their national legal frameworks (if they have not already done so) and actively exercise it to combat impunity. Revised guidelines and/or (an) additional instrument(s) could also make further practical recommendations, for example that states allocate adequate resources and capacity to investigate and prosecute crimes under universal criminal jurisdiction and establish functioning specialised units for investigations and prosecutions.

ii. **Extradition of (alleged) perpetrators of serious violations of human rights**

11. Extradition plays a central role in combating impunity for serious human rights violations by ensuring that alleged perpetrators are brought to justice, regardless of where they are found.

12. The 2011 Guidelines contain a section on international cooperation, emphasising that states must fulfil their obligations with respect to extraditions in a manner that is consistent with human rights standards, including the principle of *non-refoulement* and act in good faith.²¹

13. The Parliamentary Assembly of the Council of Europe (PACE) has long advocated for Council of Europe member States to incorporate the principle of *aut dedere aut iudicare* (extradite or prosecute) into their national criminal laws. This principle ensures that states can prosecute perpetrators of serious human rights violations if their extradition to the state where the crimes were committed is not possible.²² This principle is also contained in the UN Updated Set of

Commented [VM1]: To be discussed: Proposal from the Rapporteur to address the issue of human rights in the extradition context, referring to the jurisprudence of the ECtHR.

¹⁵ See [CDDH-ELI\(2025\)01](#) – Discussion. See also [The Prague Statement](#) on Universal Criminal Jurisdiction, “Universal Jurisdiction: Accelerating Progress on Justice and Accountability for the War in Ukraine and Beyond,” 8 October 2024, p. 2.

¹⁶ For examples, in 2013, France established the Central Office to fight crimes against humanity, genocide and war crimes. Germany created specialised units within the Federal Criminal Police Office and the Office of the Federal Public Prosecutor General to investigate international crimes. The Netherlands have created special teams within its national police and prosecution services. See more information on [A/76/203](#), Report of the Secretary-General on the scope and application of the principle of universal jurisdiction, 21 July 2021, §§32 and 36.

¹⁷ See [The Prague Statement](#) on Universal Criminal Jurisdiction, “Universal Jurisdiction: Accelerating Progress on Justice and Accountability for the War in Ukraine and Beyond,” 8 October 2024, p. 3.

¹⁸ See [CDDH-ELI\(2025\)01](#) – Discussion.

¹⁹ See [CDDH-ELI\(2025\)01](#) – Discussion.

²⁰ See [The Prague Statement](#) on Universal Criminal Jurisdiction, “Universal Jurisdiction: Accelerating Progress on Justice and Accountability for the War in Ukraine and Beyond,” 8 October 2024, pp. 2-3.

²¹ See 2011 Guidelines, Guideline XII.

²² [Recommendation 1427 \(1999\)](#) “Respect for international humanitarian law in Europe”, Parliamentary Assembly of the Council of Europe, 23 September 1999, §8.2; [Resolution 1785 \(2011\)](#) “The obligation of member and observer

principles for the protection and promotion of human rights through action to combat impunity (UN Updated Set of Principles), which calls on states to implement their legal obligations to institute criminal proceedings against persons suspected of serious crimes under international law if they do not extradite them.²³ PACE has also encouraged member States to expedite extradition requests and process them in good faith, particularly for war crimes.²⁴ Additionally, it has called for lifting bans on the extradition of nationals, which it considers a “serious obstacle to the course of justice.”²⁵

14. In reply to the PACE recommendation, the Committee of Ministers has accepted that reinforcing the principle of *aut dedere aut judicare* could serve as an effective means to prosecute war crimes, especially when universal jurisdiction cannot be applied.²⁶

15. The International Law Commission (ILC) has noted that the obligation to extradite or prosecute is widely recognised by states as a crucial tool in fighting impunity. It applies to a broad range of crimes of serious concern to the international community,²⁷ and several international treaties already reflect this obligation.²⁸ The Draft Articles on Prevention and Punishment of Crimes Against Humanity propose that states be required to prosecute an alleged offender accused of crimes against humanity if the authorities do not extradite him or her.²⁹

16. The Council of Europe Commissioner for Human Rights has also recommended that all states introduce an exception to the rule of non-extradition of nationals for the most serious offences under international law (war crimes, crimes against humanity and genocide). The Commissioner stressed that such a measure would “send the signal that these crimes are so abhorrent that no safe haven can be provided to those who commit them.”³⁰

17. The 1960 European Convention on Extradition (ETS No. 024),³¹ ratified by all Council of Europe member States, enshrines the obligation to extradite individuals wanted for prosecution or sentencing in another Contracting Party - subject to specific conditions and provisions set out in the convention - and the principle “extradite or prosecute”.³² Not all Council of Europe member

states of the Council of Europe to co-operate in the prosecution of war crimes”, Parliamentary Assembly of the Council of Europe, 26 January 2011, §§9 and 10.6.

²³ [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, Principle 21.

²⁴ [Resolution 1785 \(2011\)](#) ‘The obligation of member and observer states of the Council of Europe to co-operate in the prosecution of war crimes’, Parliamentary Assembly of the Council of Europe, 26 January 2011, §10.4-10.6.

²⁵ *Ibid*, §§6 and 11.4.

²⁶ Reply to [Recommendation 1953 \(2011\)](#) ‘The obligation of member and observer states of the Council of Europe to co-operate in the prosecution of war crimes’, adopted at the 1145th meeting of the Ministers’ Deputies, 18 June 2012, §7.

²⁷ [Final report](#) of the International Law Commission on “The obligation to extradite or prosecute (*aut dedere aut judicare*)”, 2014, p. 2.

²⁸ See for example Articles 5(2) and 7(1) of the [Convention against Torture and Other Cruel, Inhumane or Degrading Treatment or Punishment](#).

²⁹ See International Law Commission, [Draft articles on Prevention and Punishment of Crimes Against Humanity](#), 2019, Article 10.

³⁰ [Dealing with the past for a better future - Achieving justice, peace and social cohesion in the region of the former Yugoslavia](#), Issue Paper, Council of Europe Commissioner for Human Rights, November 2023, p. 41.

³¹ The [European Convention on Extradition](#) (ETS no. 24) entered into force in 1960 – to date, it has been ratified by 51 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).

³² Article 6 (2) of the [European Convention on Extradition](#); [Reply to Recommendation 1953 \(2011\)](#) of the Parliamentary Assembly of the Council of Europe “The obligation of member and observer states of the Council of Europe to co-operate in the prosecution of war crimes”, §5, adopted at the 1145th meeting of the Ministers’ Deputies, 13 June 2012.

States have signed and ratified the four Additional Protocols to the European Convention on Extradition (ETS No. 086,³³ ETS No. 098,³⁴ CETS No. 209,³⁵ and CETS No. 212³⁶), however, despite calls from the Committee of Ministers to do so.³⁷ Article 1 of the Additional Protocol to the European Convention on Extradition (ETS No. 086) provides that war crimes and crimes against humanity constitute extraditable offences.³⁸

18. The new Convention on International Cooperation in the Investigation and Prosecution of the Crime of Genocide, Crimes against Humanity, War Crimes and other International Crimes (Ljubljana-The Hague Convention) strengthens extradition obligations by ensuring that perpetrators of genocide, crimes against humanity, and war crimes cannot evade justice.³⁹ Under this instrument, state parties must cooperate and extradite individuals unless legitimate grounds for refusal apply, as outlined in the convention.⁴⁰

19. The CDDH considers it important to revise the 2011 Guidelines and/or adopt (an) additional non-binding instrument(s) to call for member States to ensure that extradition for serious human rights violations is possible under their domestic law, and to remove legal and practical barriers to inter-state cooperation. This could include encouragements to sign and ratify where appropriate Additional Protocols to the European Convention on Extradition and the Ljubljana-The Hague Convention. Additionally, revised Guidelines and/or (an) additional non-binding instrument(s) could reinforce the application of the principle *aut dedere aut judicare* as a tool for ensuring justice in cases where extradition is not possible, including by incorporating this principle into national criminal laws.

iii. Amnesties, pardons and time-bars

20. Amnesties, pardons, and time-bars can be significant obstacles to accountability for serious human rights violations. By preventing the investigation and prosecution of such crimes or by pardoning or granting release to an individual convicted of serious human rights violations, they contribute to impunity.

21. The 2011 Guidelines emphasise that legitimate restrictions and limitations on investigations and prosecutions should be kept to the minimum necessary to achieve their

³³ The [Additional Protocol](#) to the European Convention on Extradition (ETS No. 086) entered into force in 1979 - to date, it has been ratified by 41 states, including 37 member States of the Council of Europe (see the [ratification chart](#) on the website of the Treaty Office of the Council of Europe).

³⁴ The [Second Additional Protocol](#) to the European Convention on Extradition (ETS No. 098) entered into force in 1983 to date, it has been ratified by 45 states, including 41 member States of the Council of Europe (see the [ratification chart](#) on the website of the Treaty Office of the Council of Europe).

³⁵ The [Third Additional Protocol](#) to the European Convention on Extradition (CETS No. 209) entered into force in 2012 - to date, it has been ratified by 23 states, all of which are member States of the Council of Europe (see the [ratification chart](#) on the website of the Treaty Office of the Council of Europe).

³⁶ The [Fourth Additional Protocol](#) to the European Convention on Extradition (ETS No. 212) entered into force in 2014 - to date, it has been ratified by 14 states, 13 of which are member States of the Council of Europe (see the [ratification chart](#) on the website of the Treaty Office of the Council of Europe).

³⁷ [Reply to Recommendation 1953 \(2011\)](#) of the Parliamentary Assembly of the Council of Europe "The obligation of member and observer states of the Council of Europe to co-operate in the prosecution of war crimes", §2, adopted at the 1145th meeting of the Ministers' Deputies, 13 June 2012.

³⁸ [Reply to Recommendation 1953 \(2011\)](#) of the Parliamentary Assembly of the Council of Europe "The obligation of member and observer states of the Council of Europe to co-operate in the prosecution of war crimes", §3, adopted at the 1145th meeting of the Ministers' Deputies, 13 June 2012.

³⁹ See Doc. [CDDH-ELI\(2024\)12](#), Key points made by Mirjam Ekkart.

⁴⁰ See Article 5(1) and (2) of the Convention on International Cooperation in the Investigation and Prosecution of the Crime of Genocide, Crimes against Humanity, War Crimes and other International Crimes ("[Ljubljana-The Hague Convention](#)").

intended aim.⁴¹ The reference texts of the 2011 Guidelines highlights the Court's case-law, which affirms that when an individual is charged with torture or ill-treatment, neither criminal proceedings nor sentencing should be time-barred, and amnesties or pardons should not be permitted.⁴²

22. International law constrains the use of amnesties, pardons, and statutory limitations for serious offences, even in the context of peace agreements or national reconciliation efforts.⁴³ In 2021, the UN Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence recommended that states "refrain from having recourse to legal, judicial or de facto obstacles to accountability, such as [...] total or partial amnesties, pardons, the application of statutory limitations [...] since they run counter to international law."⁴⁴ The UN Updated Set of Principles on impunity stipulates that, even in a context of peace agreement, perpetrators of serious crimes under international law must not benefit from amnesties unless the state has fulfilled its obligations to investigate, prosecute, and provide reparations, or unless the individual has been prosecuted in another jurisdiction.⁴⁵ The UN Principles also specify that amnesties must not interfere with victims' right to reparation.⁴⁶ In addition, pardons based on humanitarian grounds could only be granted in cases of terminal illness of imminent resolution.⁴⁷

23. Amnesties for grave breaches of human rights are generally incompatible with states' obligations under international conventions that provide for a duty to prosecute crimes defined therein,⁴⁸ such as Article 7 of the International Covenant for Civil and Political Rights (ICCPR).⁴⁹ The UN Committee Against Torture (CAT) has repeatedly found that amnesties and pardons for torture are incompatible with states' obligations.⁵⁰ The UN Human Rights Committee has also urged states to prohibit amnesties for serious human rights violations, including international crimes.⁵¹

⁴¹ See 2011 Guidelines, Guideline XIV.

⁴² See Reference texts of the 2011 Guidelines, referring to [Abdülşamet Yaman v. Turkey](#), appl. no. 32446/96, 2 November 2004, §55. See also the cases of [Yeter v. Turkey](#), appl. no. 33750/03, 13 January 2009, §70; [Ould Dah v. France](#), appl. no. 13113/03, 17 March 2009, p. 17.

⁴³ [A/HRC/48/60](#) – Report of the Special Rapporteur on the Promotion of truth, justice, reparation and guarantees of non-recurrence "Accountability: Prosecuting and punishing gross violations of human rights and serious violations of international humanitarian law in the context of transitional justice processes," 9 July 2021, §26.

⁴⁴ [A/HRC/48/60](#) – Report of the Special Rapporteur on the Promotion of truth, justice, reparation and guarantees of non-recurrence "Accountability: Prosecuting and punishing gross violations of human rights and serious violations of international humanitarian law in the context of transitional justice processes," 9 July 2021, §97(b).

⁴⁵ [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, Principle 24(a).

⁴⁶ *Ibid.*, Principle 24(b).

⁴⁷ [A/HRC/48/60](#), op. cit., §97(f).

⁴⁸ See [Marquš v. Croatia](#) [GC], appl. no. 4455/10, 27 May 2014, §§132-133.

⁴⁹ For violations of Article 7 of the International Covenant for Civil and Political Rights (ICCPR), see Human Rights Committee, [CCPR General Comment No. 20: Article 7](#) (Prohibition of Torture or Other Cruel, Inhuman, or Degrading Treatment or Punishment), §15.

⁵⁰ CAT, Concluding Observations on Azerbaijan, [UN Doc. A/55/44](#), 1999, §69(c). See also CAT, Concluding Observations on Senegal, [UN Doc. A/51/44](#), 1996, §117; CAT, Concluding Observations on Chile, [UN Doc. CAT/C/CR/32/5](#), 2004, §7(b); CAT, Concluding Observations on Bahrain, [UN Doc. CAT/CO/34/BHR](#), 2005, §6(g). For pardons, see CAT, [Kepa Urre Guridi v. Spain](#), Communication No. 212/2002, [U.N. Doc. CAT/C/34/D/212/2002](#) (2005), §6.7.

⁵¹ See for examples, [CCPR/C/NIC/CO/4](#) – Concluding observations on the fourth periodic report of Nicaragua, 15 November 2022, §12(a); [CCPR/C/SEN/CO/5](#) – Concluding observations on the fifth periodic report of Senegal, 11 December 2019, §9, calling for Senegal to abolish all amnesties for international crimes and provide reparation to the victims and their families; [CCPR/C/MRT/CO/2](#) – Concluding observations on the second periodic report of Mauritania, 23 August 2019, §10.

24. Statutes of limitations also create serious barriers to justice, as time restrictions on the prosecution of serious human rights violations allow perpetrators to evade accountability. Recognising this risk, international law and human rights standards emphasise that the most serious crimes should not be subject to statutory limitations. The UN Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence affirmed that statutory limitations should not apply to serious human rights violations.⁵² The Convention on the Non-applicability of Statutory Limitations to War Crimes and Crimes against Humanity establishes that such crimes remain prosecutable at all times.⁵³ The UN Committee against Torture (CAT) has interpreted Articles 1 and 4 of the UN Convention against Torture as obligating states to ensure that acts of torture cannot be time-barred.⁵⁴ The Rome Statute of the International Criminal Court (ICC) also explicitly states that the crimes within its jurisdiction are not subject to any statute of limitations.⁵⁵ Furthermore, the UN Updated Set of Principles on impunity stipulates that prescriptions in criminal cases “shall not apply to crimes under international law that are by their nature imprescriptible.”⁵⁶

25. The European Court of Human Rights has consistently ruled that amnesties and statutes of limitations must not obstruct accountability for grave human rights violations. In *Mocanu and Others v. Romania*, the Grand Chamber held that for acts of torture or ill-treatment, statutes of limitations should not apply, and amnesties and pardons should not be tolerated.⁵⁷ In *Kononov v. Latvia* and *Touvier v. France*, the Court further affirmed that war crimes and crimes against humanity are not subject to statutory limitations.⁵⁸

26. In 2022, the Court issued an Advisory Opinion on the applicability of statutes of limitations to offences amounting to torture, reaffirming that the prohibition against torture is a peremptory norm under international law. The Court held that “criminal proceedings ought not to be discontinued on account of a limitation period, and also that amnesties and pardons should not be tolerated.”⁵⁹ The Court also noted significant state practice among Council of Europe member States in abrogating or suspending statutes of limitations for acts of torture, ensuring accountability for state officials.⁶⁰

27. The Committee of Ministers has stressed that “when a State agent has been charged with crimes involving ill-treatment, it is of the utmost importance that criminal proceedings and sentencing are not time-barred. In order to maintain public trust in the justice system, measures

⁵² [A/HRC/48/60](#), op. cit., §34.

⁵³ Article 1 of the [Convention on the Non-applicability of Statutory Limitations to War Crimes and Crimes against Humanity](#), entered into force on 11 November 1970.

⁵⁴ For instance, see [CAT/C/DNK/CO/5](#), Conclusions and recommendations of the UN Committee Against Torture, 16 July 2007, para. 11.

⁵⁵ [Rome Statute](#) of the International Criminal Court, Article 29.

⁵⁶ [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, Principle 23.

⁵⁷ [Mocanu and Others v. Romania](#) [GC], appl. nos. 10865/09, 45886/07 and 32431/08, 17 September 2014, §326.

⁵⁸ [Kononov v. Latvia](#) [GC], appl. no. 36376/04, 17 May 2010, §233; [Touvier v. France](#), appl. no. 29420/95, 13 January 1997, §7.

⁵⁹ [Advisory Opinion on the applicability of statutes of limitation to prosecution, conviction and punishment in respect of an offence constituting, in substance, an act of torture](#), Requested by the Armenian Court of Cassation, Request no. P16-2021-001, 26 April 2022, §69-64. On the prohibition of torture amounting to a *jus cogens* norm, see also: International Court of Justice, *Questions Relating to the Obligation to Prosecute or Extradite (Belgium v. Senegal)*, Judgment of 20 July 2012, *ICJ Reports* 2012, §99.

⁶⁰ [Advisory Opinion on the applicability of statutes of limitation to prosecution, conviction and punishment in respect of an offence constituting, in substance, an act of torture](#), Requested by the Armenian Court of Cassation, Request no. P16-2021-001, 26 April 2022, §64.

such as the granting of an amnesty or pardon should not be envisaged or accepted without convincing reasons.”⁶¹

28. The European Commission for Democracy through Law (Venice Commission) has similarly reaffirmed that “amnesties have the effect of retrospectively nullifying the criminality of certain acts and can therefore deprive criminal provisions as laid down in acts of parliament of any practical effect”⁶² and concluded that amnesties are impermissible in relation to serious international crimes and serious human rights violations.⁶³

29. Referring to international conventions, judgments of several international courts and resolutions, recommendations and comments from various international bodies, in 2014, the Court had recognised the “growing tendency in international law” to reject amnesties for grave breaches of fundamental human rights, as they are incompatible with states’ obligation to prosecute and punish such acts.⁶⁴ This tendency has been recognised by, the International Law Commission (ILC), which in 2017 recognised that “there is a ‘crystallising international norm’ or ‘emerging consensus’ prohibiting amnesties in relation to serious international crimes, particularly in relation to blanket or general amnesties, based on a duty to investigate and prosecute those crimes and punish their perpetrators.”⁶⁵

30. In 2023, Council of Europe member States declared that no statutes of limitation apply to genocide, crimes against humanity, and war crimes, including conflict-related sexual violence and rape.⁶⁶

31. In light of these developments, the 2011 Guidelines should be strengthened to explicitly state that amnesties, pardons and statutes of limitations should not apply to grave breaches of fundamental human rights, including international crimes. Revised guidelines and/or (an) additional non-binding instrument(s) could recommend that member States align their national laws with international standards by eliminating limitation periods for such crimes. Additionally, revised guidelines and/or (an) additional non-binding instrument(s) could stipulate that amnesties, pardons and statutes of limitations must not hinder victims’ access to remedies and reparations.

32. Statutory limitations have also obstructed the execution of judgments of the European Court of Human Rights, as states have sometimes been unable to reopen investigations following the issuance of a Court’s judgment due to the passage of time. The adoption of measures such as allowing the reopening of investigations or suspending statutes of limitations could significantly assist in the execution of the Court’s judgments.⁶⁷ Revised guidelines and/or (an) additional non-binding instrument(s) could recommend that states adopt measures to facilitate the execution of

⁶¹ [Recommendation CM/Rec\(2016\)4 of the Committee of Ministers to member States on the protection of journalism and safety of journalists and other media actors](#), adopted at the 1253rd meeting of the Ministers’ Deputies, 13 April 2016, §24.

⁶² [CDL-AD\(2024\)003](#), Spain - Opinion on the rule of law requirements of amnesties, with particular reference to the parliamentary bill of Spain “on the organic law on amnesty for the institutional, political and social normalisation of Catalonia”, adopted by the Venice Commission at its 138th Plenary Session (Venice, 15-16 March 2024), §60.

⁶³ *Ibid*, §122.

⁶⁴ [*Marquš v. Croatia*](#) [GC], appl. no. 4455/10, 27 May 2014, §§139-140.

⁶⁵ See [UN Doc. A/72/10 \(2017\)](#) - UN General Assembly, Report of the International Law Commission on the work of its sixty-ninth session (Agenda item 81), Article 10, §9.

⁶⁶ [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.

⁶⁷ See [CDDH-ELI\(2024\)12](#) – Key points made by Frédéric Dolt.

the Court's judgments, including reopening investigations in cases adjudicated by the Court and suspending limitation periods.⁶⁸

iv. Immunities of States Officials

v. Separation of powers, independence of the judiciary

33. The 2011 Guidelines broadly emphasise the need to ensure the independence and impartiality of investigations and the judiciary, in accordance with the principle of the separation of powers. The 2011 Guidelines also highlight the necessity of protecting justice personnel from reprisals.⁶⁹

34. The CDDH considers that revised Guidelines and/or (an) additional non-binding instrument(s) could further elaborate on international standards governing the separation of powers and judicial independence, taking into account recent jurisprudence of the Court⁷⁰ and recommendations from the Venice Commission.⁷¹ This includes reinforcing the principles of independence, impartiality, and transparency in judicial processes, particularly related to serious violations of human rights.

35. In assessing whether a tribunal can be considered as "independent," the Court examines the manner of appointment of its members, their term of office, the existence of guarantees against external pressures, and whether the body presents an appearance of independence.⁷² Revised guidelines and/or (an) additional non-binding instrument(s) could recommend that member States take measures promoting the independence of the judicial system, such as:

- adopting clear standards for judicial appointment and tenure, ensuring that selection and appointment processes are transparent and merit-based to prevent executive or legislative interference;
- strengthening institutional safeguards, for instance by considering establishing or reinforcing independent prosecutorial and judicial councils with mandates to oversee prosecutorial and judicial appointments, discipline and administration.⁷³

36. Regarding the investigation and prosecution of serious human rights violations, the Court has emphasised that all reasonable steps must be taken to ensure that investigations are independent, effective, and subject to public scrutiny to maintain confidence in their outcomes.⁷⁴ To address proceedings specifically related to serious human rights violations, revised guidelines and/or (an) additional non-binding instrument could include additional safeguards, such as:

- mandatory training for judges and prosecutors working in relevant fields, notably those involved in the adjudication and prosecution of serious human rights violations, including international criminal law and international humanitarian law, to ensure they possess the necessary expertise;

⁶⁸ See Doc. [CDDH-ELI\(2024\)12](#), Key points made by Frédéric Dolt.

⁶⁹ See 2011 Guidelines, Guidelines VI and IX.

⁷⁰ See European Court of Human Rights, [Factsheet - Independence of the justice system](#), August 2023.

⁷¹ See [Compilation of Venice Commission Opinions and Reports concerning Courts](#), CDL-PI(2023)020, 18 July 2023; [Compilation of Venice Commission Opinions and Reports concerning Judges](#), CDL-PI(2023)019, 18 July 2023.

⁷² See for example, [Luka v. Romania](#), appl. no. 34197/02, 21 July 2009, §37.

⁷³ See [Recommendation CM/Rec\(2010\)12](#) of the Committee of Ministers to member States on judges: independence, efficiency and responsibilities.

⁷⁴ [Al-Skeini and Others v. the United Kingdom](#), appl. no. 55721/07, Judgment of 7 July 2011, §§ 164, 166-167.

- ensuring the financial and administrative autonomy of the judiciary by allocating adequate and independent budgets, particularly for complex and often lengthy cases involving serious human rights violations, to prevent undue financial leverage by other branches of power;
- introducing accountability mechanisms to address judicial bias or misconduct in cases of serious human rights violations, enhancing public trust in the judicial system;
- strengthening independent oversight bodies to investigate allegations of unlawful detention or ill-treatment. This includes reinforcing the role of National Preventive Mechanisms (NPMs), which have been established in many Council of Europe member States.

37. Transparency is essential for the effective functioning of the justice system, as it strengthens public trust in courts and prosecutors. To enhance transparency, revised guidelines and/or (an) additional non-binding instrument could recommend member States to:

- publish judicial decisions in accessible formats, including digital versions;
- ensure public access to hearings, where appropriate, and facilitate media access to relevant and appropriate case information;
- promote better communication between the judiciary, prosecutors and the media to enhance public awareness and trust;⁷⁵
- establish victim-friendly procedures, such as ensuring victims have access to legal assistance and case information (see below, Cluster 4).

38. The Committee of Ministers of the Council of Europe has adopted the first-ever international treaty aiming to protect the profession of lawyers and the right to practice this profession with independence and without discrimination, improper hindrance or interference. The convention also aims at protecting lawyers being subjected to attacks, threats, harassment or intimidation.⁷⁶ Revised guidelines and/or (an) additional non-binding instrument(s) could encourage where appropriate Council of Europe member States to sign and ratify such Convention.

vi. Fair trial guarantees

39. The 2011 Guidelines include safeguards to protect individuals deprived of their liberty from serious human rights violations. These safeguards aim to prevent any unlawful detention or ill-treatment and to ensure the right to a fair and public hearing for those accused of committing such violations.⁷⁷

40. The CDDH considers that revised guidelines and/or (an) additional non-binding instrument(s) could incorporate further safeguards in light of the Court's case-law on the right to a fair trial.⁷⁸ In particular, these revisions could recommend that member States adopt measures to uphold the principle of a fair trial in proceedings involving serious human rights violations, including:

⁷⁵ See the European Commission for the Efficiency of Justice (CEPEJ), [Guide on communication with the media and the public for courts and prosecution authorities](#), adopted at the 31st plenary meeting of the CEPEJ, 3 and 4 December 2018. See also [CM\(2013\)161-add](#) – Opinion no. 8 (2013) of the Consultative Council of European Prosecutors (CCPE) on relations between prosecutors and the media.

⁷⁶ Article 1 of the Council of Europe [Convention for the Protection of the Profession of Lawyer](#), adopted by the Committee of Ministers at its 1522nd meeting on 11-12 March 2025.

⁷⁷ See 2011 Guidelines, Guidelines IV and IX.

⁷⁸ See [Guide on article 6 of the European Convention on Human Rights – Right to a fair trial](#), updated on 31 August 2024.

- ensuring the fairness of the proceedings, while balancing the need for police authorities to take effective measures to counter serious crimes in discharge of their duty under Articles 2, 3 and 5 paragraph 1 of the European Convention on Human Rights to protect the right to life and the right to bodily security of members of the public;⁷⁹
- providing additional safeguards for individuals on trial for serious human rights violations, ensuring that even those accused of grave crimes receive justice in line with international standards. This includes the right to legal representation at all stages of the proceedings, particularly when the seriousness of the offence and the severity of the potential penalties justify free legal representation.⁸⁰ Other essential safeguards include adequate time and facilities to prepare a defence and the right to appeal a judgment, subject to statutory requirements which should not undermine the fairness of the proceedings;⁸¹
- ensuring effective participation in the proceedings, including specific protections for vulnerable defendants.⁸² Juvenile defendants, in particular, should be afforded proceedings that respect the principle of the best interests of the child. This includes taking full account of their age, level of maturity, and intellectual and emotional capacities, and ability to understand and participate in the proceedings.⁸³

41. Additionally, revised guidelines and/or (an) additional non-binding instrument(s) should recognise the evolving increasing reliance on digital technologies, including open-source intelligence and social media content.⁸⁴ The 2011 Guidelines do not address these developments, despite the fact that digitalisation of justice systems of member States is constantly developing (see below, para. 42) and that accountability bodies dealing with serious human rights violations, particularly international crimes, now regularly handle large volumes of electronic, pictorial and social media evidence. Establishing guidelines for managing and securing digital evidence is essential, including to prevent investigative bodies from being overwhelmed⁸⁵ and to secure entire digital platforms used by courts in the investigation of serious human rights violations.⁸⁶ For example, the Register of Damage for Ukraine relies exclusively on digital evidence due to necessity and to efficiency process a large number of claims.⁸⁷ The Register also uses mass claims processing techniques and tools, such as computer-assisted data processing, data analysing and sampling, with the use of artificial intelligence (AI).⁸⁸ In 2022, Eurojust has established the Core International Crimes Evidence Database⁸⁹ to preserve, analyse, and store evidence of core international crimes. This digital database enables national judicial authorities to identify relevant evidence located in other jurisdictions. UNODC has also developed standards and best practices for digital forensics,⁹⁰ while Interpol has issued guidelines for digital forensics

⁷⁹ *Ibrahim and Others v. the United Kingdom* [GC], appl. nos. 50541/08, 50571/08, 50573/08 and 40351/09, 13 September 2016, §252.

⁸⁰ *Benham v. the United Kingdom* [GC], appl. no. 19380/92, 10 June 1996, §61; *Quaranta v. Switzerland*, appl. no. 12744/87, 24 May 1991, §33; *Zdravko Stanev v. Bulgaria*, appl. no. 32238/04, 6 November 2012, §38.

⁸¹ Article 6 guarantees apply in principle to appeals on points of law. See *Meftah and Others v. France* [GC], appl. nos. 32911/96, 35237/97 and 34595/97, 26 July 2002, §40.

⁸² *Hasáliková v. Slovakia*, appl. no. 39654/15, 24 June 2021, § 69, concerning defendants with intellectual impairments.

⁸³ *V. v. the United Kingdom* [GC], appl. no. 24888/94, 16 December 1999, §§ 85-86; *Blokhin v. Russia* [GC], appl. no. 47152/06, 23 March 2016, §195.

⁸⁴ See *CDDH-ELI(2025)01* – Key Points made by Amélie Becquart.

⁸⁵ See *The Prague Statement* on Universal Criminal Jurisdiction, “Universal Jurisdiction: Accelerating Progress on Justice and Accountability for the War in Ukraine and Beyond,” 8 October 2024, p. 3.

⁸⁶ For instance, see B. Thorne, “*Artificial Sanctions: Potential Implications of US Sanctions on the ICC’s use of AI and Digital Evidence*,” *Opinio Juris*, 25 February 2025.

⁸⁷ See *CDDH-ELI(2025)01* – Key Points made by Markiyan Kliuchkovskyi.

⁸⁸ Register of Damage for Ukraine, *Rules Governing the Submission, Processing and Recording of Claims*, Article 20(1).

⁸⁹ See more information about the *Core International Crimes Evidence Database*.

⁹⁰ See United Nations Office on Drugs and Crime, *Standards and best practices for digital forensics*.

first responders, listing best practices for maintaining evidence integrity during search and seizure operations.⁹¹

42. The Council of Europe contributes to strengthening electronic evidence-handling capacities in cases of war crimes and gross human rights violations in Ukraine.⁹² Furthermore, the Committee of Ministers has adopted foundational principles in its Guidelines on electronic evidence in civil and administrative proceedings.⁹³ These Guidelines could serve as a foundation for developing further recommendations in criminal proceedings.

43. The Parliamentary Assembly (PACE) adopted a Resolution stressing the need to regulate the use of AI for use by the police and criminal justice systems based on universally accepted and applicable core ethical principles, such as transparency, justice and fairness, human responsibility for decisions, safety and security, and privacy and data protection. In particular, PACE called on member States to adopt national legal framework to regulate the use of AI, based on these principles.⁹⁴

44. It may be considered necessary to modernise the 2011 Guidelines to reflect these rapid technological advancements affecting accountability mechanisms. Revised guidelines and/or (an) additional non-binding instrument(s) could:

- call for the establishment of standardised procedures for the collection, preservation, analysis and presentation of digital evidence of serious human rights violations, ensuring adherence to principles of integrity, authenticity and admissibility;
- encourage the use of AI tools to enhance the efficiency and accuracy of digital evidence analysis of serious human rights violations, while ensuring compliance with legal standards, ethical guidelines and security, and call on member States to adopt national legal frameworks to regulate the use of such technologies in this context;
- develop training programmes to equip law enforcement, prosecutors, and the judiciary with the necessary skills to handle digital evidence and AI applications in investigations of serious human rights violations;
- promote international and regional collaboration among member States to harmonise legal frameworks and facilitate cross-border exchanges of digital evidence. This could include encouraging the use of common digital platforms to store and share evidence related to serious human rights violations;
- ensure that the use of digital evidence and AI technologies in investigations of serious human rights violations respect fundamental human rights, including privacy and fair trial guarantees.

vii. **Modes of criminal liability**

45. The 2011 Guidelines address the accountability of subordinates, emphasising that orders or instructions from a superior cannot serve as a justification for evading accountability for serious

Commented [VM2]: This topic was not discussed at the 3rd meeting, during which the CDDH Secretariat proposed to draft a section on this matter for review by CDDH-ELI members at the next meeting (in April).

⁹¹ See Interpol – [Guidelines for Digital Forensics First Responders](#), March 2021.

⁹² See Council of Europe project [CyberUA](#), which aims to contribute to improvement of the handling of electronic evidence for use in criminal proceedings related to war crimes and gross human rights violations in the context of the Russian aggression against Ukraine through strengthening the criminal justice capacities of Ukrainian law enforcement, prosecutors and the judiciary on handling electronic evidence in criminal cases.

⁹³ [CM\(2018\)169-add1final](#) – Guidelines of the Committee of Ministers of the Council of Europe on electronic evidence in civil and administrative proceedings.

⁹⁴ [PACE Resolution 2342 \(2020\)](#), "Justice by algorithm – The role of artificial intelligence in policing and criminal justice systems," adopted on 22 October 2020, §§4 and 9. See also Europol, ["AI and policing: The benefits and challenges of artificial intelligence for law enforcement"](#), 2024.

human rights violations.⁹⁵ The reference texts of the 2011 Guidelines cite the Statutes of the International Criminal Tribunal for the former Yugoslavia (ICTY), the International Criminal Tribunal for Rwanda (ICTR), and the International Criminal Court, each of which include the principle that superior orders do not exempt individuals from responsibility. They also reference PACE Resolution 1675(2009)⁹⁶ and Principle 27 of the UN Updated Set of Principles.

46. Experts have suggested to the CDDH-ELI that the 2011 Guidelines do not adequately address other essential modes of liability necessary for ensuring full accountability for serious human rights violations.⁹⁷ To strengthen accountability and ensure states to effectively prosecute individuals suspected of such crimes, revised guidelines and/or (an) additional non-binding instrument(s) could encourage states to incorporate the full spectrum of modes of liability into their national legislation. This should include, in particular, modes of liability specific to international crimes such as: direct and indirect (co)-perpetration, other forms of perpetrations (aiding and abetting, ordering and instigating), command responsibility, responsibility for inchoate crimes (attempt and conspiracy), and the responsibility of commanders and superiors.⁹⁸ By expanding the scope of liability, these revisions would reinforce accountability frameworks and help ensure that all forms of perpetration of serious human rights violations are effectively prosecuted at the national level.

⁹⁵ See 2011 Guidelines, Guideline XIII.

⁹⁶ See PACE [Resolution 1675\(2009\)](#) – State of human rights in Europe: the need to eradicate impunity.

⁹⁷ See [CDDH-ELI\(2024\)12](#) – Key Points made by Kate Vigneswaran and Key Points made by Chiara Gabriele. See also ICJ, TRIAL International and FIDH Submission to the Steering Committee for Human Rights on revision or supplementation of the Guidelines on Eradicating Impunity for Serious Human Rights Violations, January 2025, p. 17.

⁹⁸ See [CDDH-ELI\(2024\)12](#) – Key Points made by Chiara Gabriele.