

The Rights of Victims in Criminal Justice Proceedings for Serious Human Rights Violations

JUAN CARLOS OCHOA S.



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By

Juan Carlos Ochoa



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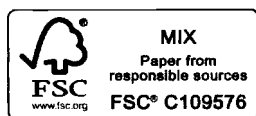
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To my parents and siblings

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Juan Carlos Ochoa
Oslo, Norway
October 2012

NOTE ON THE METHOD OF CITATION

I. LITERATURE

The full reference of the books, academic articles and reports of think tanks and non-governmental organizations cited in this book is provided in the *Bibliography*. They are listed in alphabetical order of the author's (editor's) family names. Several books, articles or reports of the same author are listed in chronological order.

In the footnotes, full reference of these sources is only provided the first time the particular source is cited. Thereafter, short references are used as follows:

For books, the short reference consist of the author's last name (year), the title of the book in italics, relevant page(s) (e.g. Clapham (2006), *Human Rights Obligations of Non-State Actors*, at 3–18).

For articles published in books, the short reference consists of the author's last name (year), the title of the article enclosed in double quotation marks, relevant page(s) (e.g. Simma (2005), "Commissions and Treaty Bodies of the UN System," at 582).

For articles published in journals, the short reference consists of the author's last name (year), the title of the article enclosed in double quotation marks, relevant page'(s)' (e.g. McKay (2008), "Victim Participation in Proceedings before the International Criminal Court," at 2).

For reports of think tanks and non-governmental organizations, the short reference consists of the name of the organization (year), the title of the report in italics, relevant page(s) (e.g. International Center for Transitional Justice and Ivannišević (2008), *The War Crimes Chamber in Bosnia and Herzegovina: From Hybrid to Domestic Court*, at 11).

II. INTERNATIONAL AND DOMESTIC CASE LAW

International and domestic case law is always cited in full.

III. DOCUMENTS FROM INTERGOVERNMENTAL ORGANIZATIONS

The full reference of the documents from intergovernmental organizations cited in this book is provided in the *Bibliography*. *In the footnotes*, full reference of these documents is only provided the first time the particular document is cited. Thereafter, short references are used. For example, UN HR Committee, General Comment No. 20:

Article 7 (Prohibition of Torture, or Other Cruel, Inhuman or Degrading Treatment of Punishment), para. 5.

IV. TREATIES AND OTHER INTERNATIONAL AGREEMENTS

Treaties and other international agreements are cited as follows: Name of the agreement, subdivision cited, date of signing, international treaty source. The date on which a treaty entered into force may be added parenthetically at the end of the citation if it is of particular importance. For example, American Convention on Human Rights, Arts. 67–68, 22 November 1969, 1144 *U.N.T.S.* 123.

LIST OF ABBREVIATIONS

ACHPR	African Commission on Human and Peoples' Rights
ACHR	American Convention on Human Rights
AJIL	American Journal of International Law
BiH	Bosnia and Herzegovina
CAT	UN Convention against Torture
CAT Committee	UN Committee against Torture
CEDAW Committee	UN Committee on the Elimination of All Forms of Discrimination against Women
CERD Committee	UN Committee on the Elimination of Racial Discrimination
Doc.	Document
ECHR	European Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights)
ECtHR	European Court of Human Rights
ECommHR	European Commission of Human Rights
ECCC	Extraordinary Chambers in the Courts of Cambodia
e.g.	for example
HR Committee	UN Human Rights Committee
IACtHR	Inter-American Court of Human Rights
IACommHR	Inter-American Commission on Human Rights
ICC	International Criminal Court
ICJ	International Court of Justice
ICCPR	International Covenant of Civil and Political Rights
ICSID	International Centre for Settlement of Investment Disputes
ICTR	International Criminal Tribunal for Rwanda
ICTY	International Criminal Tribunal for the Former Yugoslavia
i.e.	that is
ILA	International Law Association
ILC	UN International Law Commission
No.	number
OHCHR	Office of the UN High Commissioner for Human Rights
OSCE	Organization for Security and Co-operation in Europe
para.	paragraph
Res.	Resolution

SCSL	Special Court for Sierra Leone
TC	truth commission
UN	United Nations
UNMIK	United Nations Interim Administration Mission in Kosovo
UNTAET	United Nations Transitional Administration in East Timor
VCLT	Vienna Convention on the Law of Treaties
VIS	Victim Impact Statement

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INTRODUCTION

International treaties and human rights bodies have for a long time affirmed the significant role of judicial remedial mechanisms generally, and of criminal justice procedures in particular, in addressing serious human rights violations. Several treaties require States to conduct an effective investigation into, and to prosecute those allegedly responsible for, these infringements.¹ Additionally, human rights treaty monitoring bodies have for decades interpreted general human rights treaties to demand that States, in the event of a serious human rights violation, conduct an effective investigation and, if warranted, prosecute those responsible.² These bodies have put forward several rationales for this. In the first instance, they have noted that criminal justice procedures make it possible for a thorough and independent investigation to be carried out and for the criminal responsibility of those involved to be established. In addition, these bodies have stressed the special status of the rights infringed in serious human rights violations. In the light of these arguments, these bodies have maintained that criminal justice procedures fulfil an important expressivist function in the event of any of these infringements. Specifically, these bodies have stated that because of these features of criminal procedures, such procedures contribute significantly to reaffirming the importance the concerned society attaches to the infringed rights and, more generally, the authority of the law.³

The question is, then, whether to recognise, in parallel to the well-established State's obligations to investigate and prosecute serious human rights violations, the rights of victims of these infringements of access to and participation in criminal procedures.⁴

¹ See e.g. the Convention on the Prevention and Punishment of the Crime of Genocide, Arts. IV and VI, 9 December 1948, 78 *U.N.T.S.* 277 (hereinafter "the Genocide Convention"); the International Convention on the Suppression and Punishment of the Crime of Apartheid, Arts. IV and V, 30 November 1973, 1015 *U.N.T.S.* 243; the International Convention for the Protection of All Persons from Enforced Disappearance, Arts. 3, 4, 6, 7, 9, 10 and 11, 20 December 2006, UN Doc. A/RES/61/177 (23 December 2010) (hereinafter "the International Convention for the Protection of All Persons from Enforced Disappearance"). For further analysis of this matter, see below Chapter II, Section I, Subsection A.

² For a lengthy discussion of this matter, see below Chapter II. For the definition of the concept of 'serious human rights violations', see below Chapter I, Section I.

³ See below Chapter II, Section I, Subsection A.

⁴ It is worth clarifying that the term 'criminal procedures' as used in this monograph includes the investigation phase, and that the expression 'victim access to and participation in criminal procedures' will be used as a shorthand for 'access to and participation in criminal procedures for victims of serious human rights violations'. Equally, I should note that the terms 'criminal procedures' and 'criminal proceedings' will be used interchangeably throughout this book.