PRINCIPLES FOR ESTABLISHMENT OF A RULE OF LAW CRIMINAL JUSTICE SYSTEM

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I. INTRODUCTION

From the adoption of the Universal Declaration of Human Rights by the United Nations General Assembly in 1948 through the Concluding Document of the Moscow Meeting on the Human Dimension of the Conference on Security and Cooperation In Europe (CSCE), adopted in October, 1991, the international community has repeatedly recognized that protection and promotion of human rights and fundamental freedoms are "the foundation of freedom, justice and peace in the world."¹

These international documents also recognize that to ensure respect for human rights and fundamental freedoms within a pluralistic democracy, a "Rule of Law" criminal justice system is an essential component of such a

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The need for "effective international protection of human rights" arose directly from "the horrors of the Second World War." Through arbitrary punishment and deprivation of the exercise of fundamental human rights, the Nazi totalitarian regime culminated in the systematic extermination of twelve million people, including six million Jews.

More recently, the break-up of the Soviet Union, after more than seventy years of totalitarian Communist rule, has led to revelations of similar repressive use of the Soviet criminal justice system to subjugate its diverse population under arbitrary rule.

This paper compiles from the various international human rights documents discussed above those principles which are essential to the establishment and effective implementation of a criminal justice system based on the "Rule of Law." The source of each principle is footnoted herein. In a few instances, additional principles are stated which are deemed by the author to be implicitly essential to ensure that the institutions created to protect the human rights and fundamental freedoms of individuals subjected to the criminal justice system will have adequate authority and power to carry out their mandate.

These principles have been recognized by all Participating States in the CSCE, including Russia and the other successor states of the former Soviet Union (FSU), as universally applicable to their respective States, "irrespective of their political, economic or social systems as well as of their size, geographical location or level of economic development . . . ."

Either as participating states in the CSCE and signatories to its agreements, beginning with the Helsinki Final Act in 1975, or as parties to the International Covenant on Civil and Political Rights, Russia and the other former Soviet Republics have repeatedly pledged to implement all of the principles in those documents that guarantee the effective exercise of human

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2 Copenhagen Concluding Document; supra note 1, introduction, at 1; see also Charter of Paris, supra note 1, pmbl., § on economic liberty, at 193, 195; Moscow Concluding Document, supra note 1, pmbl., at 1671.


4 Helsinki Final Act, supra note 1, pmbl., at 2; Madrid Concluding Document, supra note 1, introduction, at 5.
rights and fundamental freedoms by their people.\(^5\)

The importance of these principles was highlighted in the Moscow Concluding Document, adopted shortly after the defeat of the August 1991 Soviet Communist Coup:

The participating states emphasize that issues relating to human rights, fundamental freedoms, democracy and the rule of law *are of international concern*, as respect for these rights and freedoms constitutes one of the foundations of the international order. They categorically and irrevocably declare that the commitments undertaken in the field of the human dimension of the CSCE are matters of direct and legitimate concern to all participating States *and do not belong exclusively to the internal affairs of the State concerned* . . . . \(^6\)

[Emphasis added.]

History has demonstrated that all governments and their peoples are capable of abusing human rights and fundamental freedoms. However, the most reliable test of the validity of any given State's political system is whether it has created institutions to effectively safeguard against abuses of human rights and to redress such violations when they do occur.

Therefore, this paper can stand as a guide for determining whether existing laws and practices under the current criminal justice systems of Russia and the other former Soviet republics, as well as proposed reforms of those systems, comply with universally recognized international standards for protection of human rights and fundamental freedoms.\(^7\)

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\(^6\) Moscow Concluding Document, *supra* note 1, pmbl., at 1671.

\(^7\) An earlier version of this paper was presented at the Vilnius Alternative Human Rights Conference in September 1991. It has been updated to include relevant provisions of the Moscow Concluding Document and recent geopolitical changes.
II. **STATEMENT OF PRINCIPLES**

A. *Establishment of a Criminal Justice System based on the Rule of Law*

1. The criminal justice system must be designed to promote and protect those principles of justice which form the basis of the rule of law. The rule of law is not simply a formal legality which assures regularity and consistency in the achievement and enforcement of democratic order, but is in fact "justice based on the recognition and full acceptance of the supreme value of the human personality and guaranteed by institutions providing a framework for its fullest expression."

2. Democracy is an inherent element of the rule of law. As applied to the criminal justice system, democracy is based on:

   (a) A constitution that defines separate branches of government. Government should be divided into a legislative branch with power to enact laws, an executive branch with power to enforce laws, and a judicial branch with power and authority to interpret laws, to adjudicate disputes and to try and sentence those accused of crimes under the rules of the criminal justice system.

   (b) Independence of each of the branches of government from control by the other branches in order to prevent subversion of any branch in its responsibility to protect human rights and fundamental freedoms.

   (c) A system of checks and balances between the respective branches of government. Such a system is designed to prevent arbitrary conduct by either branch and to protect citizens from abuses of their human rights and fundamental freedoms by any branch of government.

   (d) Both a division of authority and power and a system of checks and balances among the institutions that comprise the criminal

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9 Copenhagen Concluding Document, *supra* note 1, § 3, at 1308; see Moscow Concluding Document, *supra* note 1, § 18, at 1677, for the most recent reaffirmation of this relationship.
justice system. These institutions include: (i) investigative and arresting officials, (ii) officials responsible for charging and prosecuting those accused of crimes, (iii) judicial officers responsible for ensuring due process for and fair adjudication of the accused, (iv) an independent and impartial trier of fact, whether a court or a jury of the accused's peers, and (v) institutions to oversee the agencies responsible for incarceration of those persons accused or convicted of criminal offenses or of those persons involuntarily committed to mental institutions.\textsuperscript{10}

3. Human rights and fundamental freedoms must be guaranteed by constitution and law in accordance with the State's obligations under the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, all CSCE agreements, other international and/or regional obligations, and international law.\textsuperscript{11}

4. All laws, regulations, practices and policies pertaining to the criminal justice system must conform with the State's international obligations under the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, all CSCE documents, other international and regional obligations of the state, and international law.\textsuperscript{12}

5. All legislation, regulations, practices and policies pertaining to the criminal justice system must be adopted at the end of an open process reflecting the public will, either directly or through duly elected representatives.\textsuperscript{13} Such legislation, regulations, practices and policies shall become effective only upon publication and widespread dissemination thereof and establishment of provisions for accessibility thereto by citizens and residents of the State.\textsuperscript{14}

\textsuperscript{10} Copenhagen Concluding Document, \textit{supra} note 1, § 3, at 1308.
\textsuperscript{11} \textit{Id.}, § 5.7, at 1308; Moscow Concluding Document, \textit{supra} note 1, § 32, at 1684.
\textsuperscript{12} Copenhagen Concluding Document, \textit{supra} note 1, § 4, at 1308; Charter of Paris, \textit{supra} note 1, at 193.
\textsuperscript{13} Moscow Concluding Document, \textit{supra} note 1, § 18.1, at 1677.
\textsuperscript{14} Copenhagen Concluding Document, \textit{supra} note 1, § 5.8, at 1308; Vienna Concluding Document, \textit{supra} note 1, princ. 13.4, at 9.
6. The government of the State, including all law enforcement officials as well as the judiciary, must have an affirmative duty to comply with the constitution of the State, including, but not limited to, all protections of human rights and fundamental freedoms, and to act in a manner consistent with the law.¹⁵

7. There shall be no restrictions on the exercise of human rights and fundamental freedoms except as expressly provided by law. Only those narrow, specified restrictions which are consistent with the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights shall be permitted.¹⁶

8. The State may not punish as criminal behavior the exercise of human rights and fundamental freedoms as recognized by the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, all CSCE agreements, other international and regional obligations, and international law.¹⁷

9. It is essential that the independence of judges and the impartial operation of the public judicial service be ensured by law. An independent judiciary must be constitutionally guaranteed and respected in practice, with reference to the Basic Principles on the Independence of the Judiciary, including:

(a) prohibiting improper influence on judges;

(b) preventing revision of judicial decisions by administrative authorities, except for the right of the competent authorities to mitigate or commute sentences imposed by judges, in conformity with the law;

(c) protecting the judiciary’s freedom of expression and association, subject only to such restrictions as are consistent with its functions;

¹⁵ Copenhagen Concluding Document, supra note 1, §§ 5.3, 5.5, at 1308.
¹⁶ Id., §§ 24, 25, at 1316; Universal Declaration of Human Rights, supra note 1, art. 30; International Covenant on Civil and Political Rights, supra note 1, arts. 4, 22(2), at 174, 178.
¹⁷ Charter of Paris, supra note 1, at 193; Copenhagen Concluding Document, supra note 1, §§ 9.1-9.6, at 1311; Vienna Concluding Document, supra note 1, prins. 13.8, 21, at 535.
(d) ensuring that judges are properly qualified, trained and selected on a non-discriminatory basis;

(e) guaranteeing tenure and appropriate conditions of service, including on the matter of promotion of judges, where applicable;

(f) respecting conditions of immunity; and

(g) ensuring that the disciplining, suspension and removal of judges are determined according to law.\(^{18}\)

10. The State must ensure by law that the independence of defense attorneys will be protected, particularly with respect to their recruitment, education, compensation and conditions of practice.\(^{19}\)

11. The State must ensure by law that law enforcement personnel will act in the public interest, will respond to a specific need and will pursue a legitimate aim. The law must also restrict the use of ways and means by law enforcement personnel to protect the public order only to those commensurate with the circumstances. Law enforcement officers must be subject to judicial control and be held accountable for their acts. Legislation should provide for due compensation for the victims of acts found to violate prescribed limits of the exercise of police power. Training and education of law enforcement personnel should include discussion of the prohibition against excessive force.\(^{20}\)

12. In order to ensure that governmental institutions in the criminal justice system comply with their obligations to protect human rights and fundamental freedoms of those citizens who come in contact with it or who are accused of crimes, independent governmental and non-governmental institutions must be allowed to be established with the right to monitor performance of criminal justice system institutions and to gain access to

\(^{18}\) Moscow Concluding Document, supra note 1, §§ 19.1, 19.2 (i-vii), at 10; see Copenhagen Concluding Document, supra note 1, § 5.12, at 1308.

\(^{19}\) Copenhagen Concluding Document, supra note 1, § 5.13, at 1309; see Moscow Concluding Document, supra note 1, §§ 20.1-20.4, at 10-11 for related principles.

facilities, information, and records.21

13. Effective remedies must by created by law to redress violations of human rights and fundamental freedoms committed by government officials. Those remedies must be available before an independent, competent tribunal with powers of enforcement, including judicial review of administrative regulations and decisions affecting human rights and fundamental freedoms.22

14. Individuals whose human rights and fundamental freedoms have been violated by the State's criminal justice system should, after exhaustion of all domestic remedies, have the right to communicate with or to appeal to established international tribunals, such as the UN Human Rights Committee under the Optional Protocol to the International Covenant on Civil and Political Rights, or such other international or regional human rights tribunals established by international organizations to which the State is a party.23

B. Restraints on the Exercise of Arbitrary Law Enforcement Authority

1. In order to guarantee that everyone in the State has the right to liberty and security of person and property, the constitution and laws of the State must provide that:

   (a) No one shall be subject to arbitrary arrest, detention, or exile.24

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21 Copenhagen Concluding Document, supra note 1, § 5.5, at 1308; Vienna Concluding Document, supra note 1, princ. 26, at 535; Moscow Concluding Document, supra note 1, § 43, at 23.

22 Charter of Paris, supra note 1, at 193; Universal Declaration of Human Rights, supra note 1, at art. 8; International Covenant on Civil and Political Rights, supra note 1, arts. 2.3(a)-(c), 9.5, at 174, 176. See also Moscow Concluding Document, supra note 1, §§ 18.2-18.4, at 1677.


24 Charter of Paris, supra note 1, at 193; International Covenant on Civil and Political Rights, supra note 1, art. 9.1, at 175; Universal Declaration of Human Rights, supra note 1, art. 9.
(b) No persons shall be subject to arbitrary or unlawful interference with or invasion of their privacy, family, home, telecommunications, or correspondence. This zone of privacy shall be free from unreasonable searches and seizures by the State without probable cause.\textsuperscript{25}

(c) No persons shall be deprived of life, liberty, or property without due process of law and except on such grounds and in accordance with such procedure as are established by law.\textsuperscript{26}

(d) The courts shall have express authority and jurisdiction to determine whether human rights and fundamental freedoms, including but not limited to those in sections (a) and (b) above, have been violated by State law enforcement officials and to enforce effective remedies to deter and punish such violations.\textsuperscript{27}

2. In order to ensure that all law enforcement officers operate in accordance with the constitution and laws of the State, all police, militia, intelligence and military officials engaged in domestic law enforcement shall be under the control of, and accountable to, the civil authorities.\textsuperscript{28}

3. The State shall take appropriate measures to ensure that education and information regarding the prohibition of excess force by law enforcement personnel as well as relevant international, regional, and domestic codes of conduct are included in the training of such personnel.\textsuperscript{29}

C. Judicial Rights and Protections of the Accused in the Criminal Justice System

1. Anyone who is deprived of liberty by arrest or detention shall be entitled to be brought promptly before a judge or other judicial officer authorized by

\textsuperscript{25} Universal Declaration of Human Rights, supra note 1, art. 12; International Covenant on Civil and Political Rights, supra note 1, art. 17.1, at 177.

\textsuperscript{26} International Covenant on Civil and Political Rights, supra note 1, art. 9.1, at 175.

\textsuperscript{27} Universal Declaration of Human Rights, supra note 1, art. 12; International Covenant on Civil and Political Rights, supra note 1, art. 17.2, at 177; Charter of Paris, supra note 1, at 193; Moscow Concluding Document, supra note 1, § 21.2, at 1678.

\textsuperscript{28} Moscow Concluding Document, supra note 1, § 25.1, at 1681; Copenhagen Concluding Document, supra note 1, § 5.6, at 1308.

\textsuperscript{29} Moscow Concluding Document, supra note 1, § 22, at 1678.
law for a determination of the lawfulness of that arrest or detention. The judge or judicial officer shall have the power and authority to order the detainee's release without delay if it is determined that the detention is not lawful.30

2. Anyone who is arrested must be informed promptly in a language he or she understands of his or her rights, the reason for the arrest, and any charges against him or her.31

3. No persons shall be tried for a criminal offense unless they have been informed prior to trial promptly and in detail, in a language which the accused understands, of the nature and cause of the charge against them and are given adequate time and facilities to prepare a defense, with the aid of and with adequate opportunity to communicate with counsel.32

4. From the time of arrest or detention, and throughout the proceedings thereafter, the accused will have the right to defend him or herself in person or through legal assistance as he or she so chooses. If the accused does not have sufficient means to pay for legal assistance, counsel will be provided free when the interests of justice so require.33

5. Anyone arrested or detained will have the right, without undue delay, to promptly notify or to require competent authority to notify appropriate persons of the individual's choice of his or her arrest, detention, imprisonment and whereabouts. Any restriction on this right must be prescribed by law and in accordance with international standards.34

30 Moscow Concluding Document, supra note 1, § 23.1(iv), at 1680; Copenhagen Concluding Document, supra note 1, § 5.15, at 1309; International Covenant on Civil and Political Rights, supra note 1, art. 9.4, at 176.
31 Moscow Concluding Document, supra note 1, § 23.1(ii)-(iii), at 1680; International Covenant on Civil and Political Rights, supra note 1, art. 9.2, at 175.
32 International Covenant on Civil and Political Rights, supra note 1, art. 14.3(a)-(b), at 177; Copenhagen Concluding Document, supra note 1, § 5.17, at 1309.
33 Moscow Concluding Document, supra note 1, § 23.1(v), at 1680; Copenhagen Concluding Document, supra note 1, § 5.17, at 1309; International Covenant on Civil and Political Rights, supra note 1, art. 14.3(b), at 177.
34 Moscow Concluding Document, supra note 1, § 23.1(vi), at 1680.
6. Anyone charged with a criminal offense shall have the right to be tried within a reasonable time, without undue delay, or to be released.\(^\text{35}\)

7. It shall not be the general rule that persons awaiting trial shall be detained in custody, but release may be subject to reasonable guarantees to appear for trial, at any other stage of the judicial proceedings, and, should occasion arise, for execution of the judgement.\(^\text{36}\)

8. In the determination of any criminal charge against an accused, the accused shall be entitled to a fair and public trial by a competent, independent and impartial tribunal established by law.\(^\text{37}\)

9. In such a trial, the accused shall have the right:

(a) to be presumed innocent;

(b) to have the burden on the State of establishing the accused's guilt in accordance with the highest standard required under law;

(c) to be present at the trial;

(d) to defend against the charges in person or by counsel;

(e) to examine, or have examined, the witnesses against the accused;

(f) to compel the attendance and examination of witnesses on the accused's behalf;

(g) to have the free assistance of an interpreter if the accused cannot understand or speak the language used in the court; and

\(^{35}\) International Covenant on Civil and Political Rights, \textit{supra} note 1, arts. 9.3, 14.3(c), at 175, 177.

\(^{36}\) International Covenant on Civil and Political Rights, \textit{supra} note 1, art. 9.3, at 175.

(h) not to be compelled to testify against him or herself or to confess his or her guilt to the criminal offense being charged.\textsuperscript{38}

10. No persons shall be liable to be tried or punished again for an offense for which they have already been finally convicted or acquitted in accordance with the law and penal procedure of the State.\textsuperscript{39}

11. Rules of criminal procedure and evidence shall be adopted, published and disseminated consistent with the principles articulated in this document. Rules of evidence shall also be based on international standards of reliability, relevance, materiality and admissibility.\textsuperscript{40}

12. The press and the public may be excluded from all or part of a criminal trial only under exceptional circumstances, established by law, where publicity would prejudice the interests of justice. In such exceptional circumstances, the accused and his or her counsel shall be present at all such proceedings, a record thereof shall be kept and preserved, and, when such prejudice has dissipated by time or circumstances, the record shall be made public.\textsuperscript{41}

13. In the case of juvenile persons, the procedure shall be such as will take into account their age and the desirability of promoting their rehabilitation.\textsuperscript{42}

14. Everyone convicted of a crime shall have the right to have that conviction and sentence reviewed by a higher tribunal according to law. Such an appeal shall be conducted at a fair and public hearing, within a reasonable time after the conviction, before an independent and impartial tribunal. At such appeals, defendants shall have the right to be present and to present legal argument and to be represented by counsel of their own choice or to have counsel appointed on their behalf if they cannot afford to

\textsuperscript{38} Copenhagen Concluding Document, \textit{supra} note 1, § 5.19, at 1309; International Covenant on Civil and Political Rights, \textit{supra} note 1, arts. 14.2, 14.3(d)-(g), at 172-73; \textit{Universal Declaration of Human Rights}, \textit{supra} note 1, art. 11.1.

\textsuperscript{39} International Covenant on Civil and Political Rights, \textit{supra} note 1, art. 14.7, at 177.

\textsuperscript{40} Copenhagen Concluding Document, \textit{supra} note 1, § 5.14, at 1309.

\textsuperscript{41} Copenhagen Concluding Document, \textit{supra} note 1, § 12; International Covenant on Civil and Political Rights, \textit{supra} note 1, art. 14.1, at 176.

\textsuperscript{42} International Covenant on Civil and Political Rights, \textit{supra} note 1, art. 14.4, at 177.
rule their own counsel.\textsuperscript{43}

\textit{D. Criminal Code Protections for Human Rights and Fundamental Freedoms}

1. No one shall be held guilty of any criminal offense on account of any act or omission which did not constitute a criminal offense, recognized under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the penalty that was applicable at the time the criminal offense was committed. If, subsequent to the commission of the offense, a provision is made by law for the imposition of a lighter penalty, the offender shall benefit thereby.\textsuperscript{44}

2. No one shall be found guilty of any criminal offense whose definition is vague, or indefinite, or is overbroad so as to allow punishment for the exercise of human rights or fundamental freedoms which are protected by the constitution or laws of the State or which are recognized under international law.\textsuperscript{45}

3. The State shall adopt, in conformity with its constitutional system and international obligations, laws which prohibit as a criminal offense acts that constitute incitement to violence or discrimination against persons or groups based on national, racial, ethnic, or religious discrimination, hostility or hatred, including, but not limited to anti-Semitism, against Roma, and xenophobia. The State shall also provide for effective enforcement of such laws.\textsuperscript{46}

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\item \textsuperscript{43} Vienna Concluding Document, \textit{supra} note 1, princ. 13i, at 534; International Covenant on Civil and Political Rights, \textit{supra} note 1, art. 14.5, at 177.
\item \textsuperscript{44} Copenhagen Concluding Document, \textit{supra} note 1, § 5.18, at 1309; International Covenant on Civil and Political Rights, \textit{supra} note 1, art. 15, at 177; \textit{Universal Declaration of Human Rights}, \textit{supra} note 1, art. 11.2.
\item \textsuperscript{45} Copenhagen Concluding Document, \textit{supra} note 1, § 5.18, at 1309; Charter of Paris, \textit{supra} note 1, at 193.
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E. Rights, Protections and Treatment of Those Incarcerated

1. All persons deprived of their liberty, whether as a result of an arrest, pretrial detention, post-conviction imprisonment, or commitment to a mental institution, shall be treated with humanity, with respect for the inherent dignity of the human person, and with respect for the internationally recognized standards for the administration of justice and the human rights of detainees.47

2. Accused persons shall, save in exceptional circumstances, be segregated from convicted persons and shall be subject to separate treatment appropriate to their status as unconvicted persons.48

3. Accused juvenile persons shall be separated from adults and brought as speedily as possible for adjudication.49

4. The goals of the penitentiary system shall include treatment of prisoners, an essential aim of which shall be their reformation and social rehabilitation. Juvenile offenders shall be segregated from adults and be accorded treatment appropriate to their age and legal status.50

5. No one shall be subjected to torture or to cruel, inhumane or degrading treatment or punishment.51

6. No one shall be subjected without his or her free consent to medical or scientific experimentation.52

47 Moscow Concluding Document, supra note 1, § 23 at 1680; Vienna Concluding Document, supra note 1, princi. 23.a-23.f at 535; International Covenant on Civil and Political Rights, supra note 1, art. 10.1 at 371.

48 International Covenant on Civil and Political Rights, supra note 1, art. 10.2(a) at 371.

49 Id. art. 10.(b) at 371.

50 Id. art. 10.3 at 371-2.

51 Vienna Concluding Document, supra note 1, princi. 23.d at 535; International Covenant on Civil and Political Rights, supra note 1, art. 7 at 370; Charter of Paris, supra note 1, at 190.

52 International Covenant on Civil and Political Rights, supra note 1, art. 7 at 370.
7. All persons shall be protected from any psychiatric or other medical practices that violate human rights and fundamental freedoms.\(^5\)

8. The State shall enact effective legislative, administrative, judicial and other necessary measures to prevent and punish torture and other cruel, inhuman or degrading treatment or punishment and psychiatric and other medical practices that violate human rights and fundamental freedoms. These measures shall be consistent with the U.N. Convention against Torture and Other Cruel and Inhuman or Degrading Treatment or Punishment.\(^6\)

9. The administration of all places of incarceration shall be consistent with the U.N. Standard Minimum Rules for the Treatment of Prisoners as well as the U.N. Code of Conduct for Law Enforcement Officials.\(^7\)

10. Law enforcement bodies shall be effectively prohibited from taking undue advantage of the situation of a detained or imprisoned person in order to compel him or her to confess, or to otherwise incriminate him or herself, or to force the detainee to testify against any other person.\(^8\)

11. No statement that is established as having been coerced through torture or other cruel, inhuman or degrading physical or mental treatment or punishment shall be admissible as evidence in any legal proceeding, except in a legal action taken against a person or persons accused of having elicited it through such misconduct, and only as evidence that the accused obtained such statement by such means.\(^9\)

12. The State shall provide by law that education and information regarding prohibition against torture are fully included in the training of civil and military law enforcement personnel, medical personnel, public officials and other persons who may be involved in the custody, interrogation or treatment of any individuals subjected to any form of arrest, detention, imprisonment,

\(^{53}\) Vienna Concluding Document, supra note 1, princ. 23(f) at 535.

\(^{54}\) Id. princs. 23(d) & 23(f) at 535; Copenhagen Concluding Document, supra note 1, art. II, § 16.1-16.2 at 1313.

\(^{55}\) Vienna Concluding Document, supra note 1, princ. 23(c) at 535.

\(^{56}\) Moscow Concluding Document, supra note 1, § 23.1, para. vii at 1680.

or mental health commitment. 58

13. All laws, regulations, practices and policies pertaining to incarcerated persons shall be published and be fully available to incarcerated persons and their representatives. 59

14. State laws and administrative regulations shall provide an effective means of redress for all incarcerated persons against violations of their human rights and fundamental freedoms while incarcerated including:

(a) the right to seek and receive adequate legal assistance, by competent, independent attorneys of their own choosing or provided by the State free of charge if the incarcerated persons cannot afford to pay for their own attorneys;

(b) the right to a hearing before a competent, impartial, and independent tribunal;

(c) the right to seek and receive assistance from other, independent, nongovernmental organizations whose purpose is to assist those incarcerated in defending their human rights and fundamental freedoms; and

(d) the right to communicate with international bodies with competence to receive and consider information concerning allegations of human rights abuses of those incarcerated. 60

15. Independent human rights monitoring organizations shall have the right of access to institutions of incarceration, the inmates thereof, and their records in order to monitor compliance with international standards for protection of the human rights and fundamental freedoms of those incarcerat-

58 Copenhagen Concluding Document, supra note 1, art. II, § 16.4 at 1313; see Moscow Concluding Document, supra note 1, § 22 at 1680.

59 Charter of Paris, supra note 1, at 193-5; Copenhagen Concluding Document, supra note 1, art. I, § 5.8 at 1308.

60 Moscow Concluding Document, supra note 1, § 23.1, para. ix at 1681; Copenhagen Concluding Document, supra note 1, art. II, §§ 5.10, 5.21 at 1308-1309; Copenhagen Concluding Document, supra note 1, art. II, § 11.1-11.3 at 1312.
ed and to assist those whose rights have been violated in seeking redress therefor.\textsuperscript{61}

16. Every human being has the inherent right to life. This right shall be protected by law. No one shall be deprived arbitrarily of life.\textsuperscript{62}

17. To the extent that the death penalty has not been abolished completely by the State, a sentence of death may be imposed only for the most serious crimes and in accordance with the law in force at the time of the commission of the crime and not contrary to the provisions of the International Covenant on Civil and Political Rights or contrary to the U.N. Convention on the Prevention and Punishment of the Crime of Genocide. Such a death penalty can be carried out only pursuant to a final judgment rendered by a competent court.\textsuperscript{63}

18. Any person sentenced to death shall have the right to seek pardon or commutation of the sentence. Amnesty, pardon or commutation of the sentence of death may be granted in all cases.\textsuperscript{64}

19. The State shall consider the abolition of the death penalty in accordance with the pertinent provisions of the Second Optional Protocol to the International Covenant on Civil and Political Rights\textsuperscript{65} and of the Sixth Protocol to the European Convention for the Protection of Human Rights and Fundamental Freedoms.\textsuperscript{66}

20. The State shall create a commission to study and report to the public periodically on the use, abuse, and methods of infliction of capital punishment and on the treatment of inmates awaiting the execution of their death

\textsuperscript{61} Moscow Concluding Document, \textit{supra} note 1, § 43.2-43.3 at 1690; Vienna Concluding Document, princ. 26 at 535.

\textsuperscript{62} International Covenant on Civil and Political Rights, \textit{supra} note 1, art. 6.1 at 370.

\textsuperscript{63} \textit{Id.} art. 6.2 at 370; Copenhagen Concluding Document, \textit{supra} note 1, art. II, § 17.3 at 1314; Vienna Concluding Document, princ. 24 at 535.

\textsuperscript{64} International Covenant on Civil and Political Rights, \textit{supra} note 1, art. 1 6.4 at 370.


\textsuperscript{66} Moscow Concluding Document, \textit{supra} note 1, § 36-36.1 at 1686; Copenhagen Concluding Document, \textit{supra} note 1, arts. 17.1, 17.2, 17.4, 17.5, 17.7 at 1314.
21. No one shall be imprisoned solely on the ground of inability to pay a debt or to fulfill any other contractual obligation.68

22. No one shall be committed involuntarily to any mental health institution, whether as part of a civil proceeding or in conjunction with a criminal proceeding, without being afforded due process of law before an independent, competent and impartial tribunal. At any such proceeding, the person sought to be committed shall have the right to be represented by competent, independent counsel. Anyone so committed shall be entitled to a periodic review of the validity of the continuation of such commitment.69

III. CONCLUSION

The foregoing Principles, as organized in this paper, are the equivalent of a "Code" of internationally recognized human rights requirements for a Rule of Law criminal justice system. The existence of such a Code has important, practical implications for the international community as the emerging states of the former Soviet Union struggle to define their place in that community.

For example, international organizations, such as the Council of Europe, may use this code in determining whether the newly independent countries in the former Soviet Union and Eastern Europe comply with international human rights standards. Human rights compliance must be, and has been treated as, a condition of membership in those organizations. This Code of human rights for the criminal justice system should serve as a guideline for evaluating legislation and practice in prospective member states.70

Also, the recently enacted U.S. Freedom for Russia and Emerging Eurasian Democracies and Open Markets (F.R.E.E.D.O.M.) Support Act of 1992 requires that the President, in providing economic assistance to the government of any independent state of the former Soviet Union, must take

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67 Copenhagen Concluding Document, supra note 1, art. II, § 17.8 at 1314.
68 International Covenant on Civil and Political Rights, art. 11 at 372.
69 Id. arts. 9.1, 9.4, & 14 at 371-2.
into account the extent to which that state is acting, *inter alia*, to “make significant progress toward, and is committed to the comprehensive implementation of, a democratic system based on principles of the rule of law” and to “respect internationally recognized human rights.” 71 An ex-Soviet successor state’s eligibility for U.S. economic aid under this Act can be measured by examining that state’s compliance with the Principles in this Code.

Finally, compilation and promulgation of these Principles into a “Code of Internationally Recognized Human Rights in the Criminal Justice Systems of Democratic Countries” helps to underscore the vital role played by a Rule of Law criminal justice system in promoting and protecting democratic, free-market institutions. It is unlikely, for example, that broad economic and political reforms will succeed in Russia and other former Soviet republics in the absence of the development of criminal justice systems which adhere to these Principles. Ultimately, it is only through widespread incorporation of these Principles into the criminal justice systems of countries long shackled by repressive, totalitarian governments that “justice and peace in the world” can prevail. 72

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72 European Convention, *supra* note 70, pmbl.