



Access to relevant information concerning violations and reparation mechanisms

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Basic Principles and Guidelines¹

Allow me first to thank the organizers for their generous invitation. I would also like to pay HOMMAGE TO CHERIF BASSIOUNI AND THEO VAN BOVEN, and others, who worked so hard for the adoption and implementation of these important Basic Principles and Guidelines.

Principle 24 has two important parts²

1. **States should provide information**, to the public and victims, about the rights and remedies addressed by the Basic Principles and Guidelines and of all available services to which victims might have a right of access.
2. **Victims should be able to seek and obtain information and learn the truth** about the violations that lead to their victimization.

We should mention **other related principles from the Basic Principles and Guidelines**:

(*) The author would like to thank Civitas Maxima (<https://www.civitas-maxima.org/en>) an Independent Legal Representation of Victims of War Crimes and Crimes Against Humanity, for providing him with invaluable contribution to this working paper. "Civitas Maxima is founded on the conviction that victims of international crimes must hold the keys to their own quest for justice". Alain Werner, Director of Civitas Maxima

¹ Accessed at: <https://www.ohchr.org/en/professionalinterest/pages/remedyandreparation.aspx>

² Precise wording of the provision: "States should develop means of informing the general public and, in particular, victims of gross violations of international human rights law and serious violations of international humanitarian law of the rights and remedies addressed by these Basic Principles and Guidelines and of all available legal, medical, psychological, social, administrative and all other services to which victims may have a right of access. Moreover, victims and their representatives should be entitled to seek and obtain information on the causes leading to their victimization and on the causes and conditions pertaining to the gross violations of international human rights law and serious violations of international humanitarian law and to learn the truth in regard to these violations."

- **Principle 11: Victims' right to remedies**

“Remedies for gross violations of international human rights law and serious violations of international humanitarian law include the victim’s right to the following as provided for under international law: (c) Access to relevant information concerning violations and reparation mechanisms.”

- **Principle 12: Access to justice**

“[...] States should: (a) disseminate, through public and private mechanisms, information about all available remedies for gross violations of human rights law and serious violations of international humanitarian law.”

- **Principle 22: Reparation for harm suffered**

“*Satisfaction* should include, where applicable, any or all of the following: (b) verification of the facts and full and public disclosure of the truth to the extent that such disclosure does not cause further harm or threaten the safety and interests of the victim, the victim’s relatives, witnesses, or persons who have intervened to assist the victim or prevent the occurrence of further violations”

As well as related principles in **the Updated Set of Principles for the protection and promotion of human rights through action to combat impunity:**

- **Principle 2: The inalienable right to the truth**

“Every people has the inalienable right to know the truth about past events concerning the perpetration of heinous crimes and about the circumstances and reasons that led, through massive or systematic violations, to the perpetration of those crimes. Full and effective exercise of the right to the truth provides a vital safeguard against the recurrence of violations. “

- **Principle 4: The victim’s right to know**

“Irrespective of any legal proceedings, victims and their families have the imprescriptible right to know the truth about the circumstances in which violations took place and, in the event of death or disappearance, the victims’ fate.”

- **Principle 33: Publicizing reparation procedures**

“Ad hoc procedures enabling victims to exercise their right to reparation should be given the widest possible publicity by private as well as public communication media. Such dissemination should take place both within and outside the country, including through consular services, particularly in countries to which large numbers of victims have been forced into exile.”

Some comments on Principle 24³

An important aspect of the guarantee of non-repetition includes the victims’ right to access factual and other relevant information concerning the violation.⁴ Understanding and public disclosure of the truth is important to victims because the truth: (1) alleviates the suffering of the surviving victims; (2) vindicates the memory or status of the direct victim of the violation; (3) encourages the State to confront its dark past; and (4) through it, seek reform.⁵ Truth can help provide an historical record, educate people, promote forgiveness and prevent future victimisation.⁶ **Truth is an imperative**, not an option to be displaced by political convenience.⁷

³ See M Cherif Bassiouni, ‘International Recognition of Victims’ Rights’, Human Rights Law Review 6:2 (2006), 203-279, pp 248-279; see also Theo van Boven, ‘The United Nations Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law’ (2010), found at: http://legal.un.org/avl/pdf/ha/ga_60-147/ga_60-147_e.pdf.

⁴ The right to the full disclosure of truth (i.e. right to truth) has been recognised in international humanitarian law. See, for example, Articles 16 and 17, 1949 Geneva Convention I; Articles 122 et seq. 1949 Geneva Convention III; Articles 136 et seq. 1949 Geneva Convention IV; and Article 33, Additional Protocol I to the Geneva Conventions (duty to search for missing persons). This right has also been recognised in the jurisprudence of various international bodies. See HRC Concluding Observations: Guatemala, 3 April 1996, CCPR/C/79/Add.63 at para. 25 (right to truth applies to all human rights violations); Case 11.481, Ignacio Ellacuria v El Salvador Report No. 136/99 (1999); 8 IHRR 501 (2001) at para. 221 (right to truth linked to the right to a remedy); Case 10.480, Lucio Parada Cea v El Salvador Report No. 1/99 (1998) at para. 147 (right to know what happened, the reasons and the circumstances, as well as the participants); Velasquez Rodriguez IACtHR Series C 4 (1988) at para. 181; Godinez Cruz, supra n. 123 at para. 191; Castillo Paez (Reparations), supra n. 307 at para. 90; Blake (Reparations), supra n. 307 at para. 97; and Caracazo, supra n. 259 at para. 118. The persons or groups entitled to the right to truth include the following: Bamaca Velasquez (Reparations), supra n. 259 at paras 73^8 (family members and society); Caracazo, supra n. 259 at paras 115 and 118 (investigation and search for the truth as a benefit to society); and Juan Sanchez, supra n. 307 at para. 185 (public disclosure of truth to the society). See also Ellacuria v El Salvador, ibid. at para. 224 (collective right that ensures society’s access to information and private right for relatives of the victims, which affords a form of compensation).

⁵ During the process of drafting, delegations suggested that this principle should be properly aligned with principle 11(c), ‘in order to facilitate the access by victims and their representatives to factual information concerning violations.’ Second Consultative Meeting Report at 12 (‘the text should refer to the right to know, seek, obtain and retain information on the alleged violations, and to the truth.’). See also Aldana-Pindell, ‘In Vindication of Justiciable Victims’ Rights’, supra n. 2 at 1439^43. Aldana-Pindell divides the right to truth into the substantive and procedural right to truth, noting that the right to the truth is not violated if the State does not uncover each of the components of truth that surviving human rights victims seek from the State (at 1441).

⁶ See Osiel, ‘Ever Again: Legal Remembrance of Administrative Massacre’, (1995) 144 University of Pennsylvania Law Review 493.

⁷ M Cherif Bassiouni, ‘International Recognition of Victims’ Rights’, Human Rights Law Review 6:2 (2006), 203-279, p 276.

Recent attempts to engage in truth-finding have involved the establishment of truth commissions and other forms of fact-finding commissions in a number of countries – predominantly in South America and Africa.⁸ Such efforts include the establishment of the National Commission on Disappeared Persons and an accompanying reparation scheme in Argentina;⁹ the National Commission on Truth and Reconciliation established in 1990 in Chile, to shed light on human rights violations that occurred during the military dictatorship from 1973 to 1990;¹⁰ the Commission on Truth in El Salvador established in 1992 under the direction of the UN, to investigate serious acts of violence that occurred since 1980;¹¹ and the Truth and Reconciliation Commission established in post-apartheid South Africa.¹² Although some commissions may have played an important restorative role in the process of reconciliation and peace-building, the work of truth commissions to date has not produced the most effectual results in terms of individual victim redress.¹³

International Instruments relating to the right to know the truth:¹⁴

Key resolutions:

- General Assembly Resolution, Right to truth (2014) ([E F S A C R](#))
- A/HRC/RES/21/7, Human Rights Council Resolution, Right to truth (2012) ([E F S A C R](#))
- A/HRC/RES/15/5, Human Rights Council Resolution, Forensic genetics and human rights (2010) ([E F S A C R](#))
- A/HRC/RES/12/12, Human Rights Council Resolution, Right to the truth (2009) ([E F S A C R](#))

⁸ See Priscilla Hayner, 'Fifteen Truth Commissions^1974 to 1994: A Comparative Study', (1994) 16 Human Rights Quarterly 597.

⁹ See Pasqualucci, 'The Whole Truth and Nothing But the Truth: Truth Commissions, Impunity and the Inter-American Human Rights System', (1994) 12 Boston University International Law Journal 321; and Hayner, *Confronting State Terror and Atrocity* (London: Routledge, 2000).

¹⁰ Although limited in its mandate, as of 1996 the Chilean Commission paid compensation to close to 5,000 relatives of victims totaling over \$80 million (US). See Reisman, 'Compensation for Human Rights Violations', in Randelzhofer and Tomuschat (eds), *State Responsibility and the Individual: Reparation in Instances of Grave Violations of Human Rights* (The Hague: Kluwer Law International, 1999) 106.

¹¹ See *From Madness to Hope: The 12-Year War in El Salvador*, report of the Commission on the Truth for El Salvador, annexed to a Letter dated 29 March 1993 from the Secretary-General to the President of the UN Security Council, 1 April 1993, S/25500.

¹² See Wilson, *The Politics of Truth and Reconciliation in South Africa: Legitimizing the Post-Apartheid Regime* (Cambridge: Cambridge University Press, 2001).

¹³ M Cherif Bassiouni, 'International Recognition of Victims' Rights', *Human Rights Law Review* 6:2 (2006), 203-279, p 276.

¹⁴ Found at: <https://www.ohchr.org/EN/Issues/TruthJusticeReparation/Pages/InternationalInstruments.aspx>

- A/HRC/RES/10/26, Human Rights Council Resolution, Forensic genetics and human rights (2009) ([E F S C R](#))
- A/HRC/RES/9/11, Human Rights Council Resolution, Right to the truth (2008) ([E F S A C R](#))
- E/CN.4/RES/2005/66, Commission on Human Rights Resolution, Right to the truth (2005) ([E F S](#))

Key reports:

- A/HRC/25/49, Special Rapporteur in the Field of Cultural Rights, Report on memorialization processes of the events of the past in post-conflict and divided societies (2014) ([E F S A C R](#))
- A/HRC/24/42, Special Rapporteur on Truth, Justice, Reparations and Non Repetition, on selected challenges faced by truth commissions (2013) ([E S A R](#))
- A/68/296, Special Rapporteur the Field of Cultural Rights, Report on the writing and teaching of history (2013) ([E F S A C R](#))
- A/68/362, Special Rapporteur on Freedom of Expression and Opinion, The right to access information and the right to truth (2013) ([E F S A C R](#))
- A/HRC/17/21, Report of the Office of the UN High Commissioner for Human Rights on the seminar on experiences of archives as a means to guarantee the right to the truth, (2011) ([E F S A C R](#))
- A/HRC/15/33, Report of the UN High Commissioner for Human Rights on the Right to the truth (2010) ([E F S A C R](#))
- A/HRC/12/19, Report of the Office of the UN High Commissioner for Human Rights on the Right to the truth (2009) ([E F S A C R](#))
- A/HRC/5/7, Report of the Office of the UN High Commissioner for Human Rights on the Right to the Truth (2007) ([E F S A C R](#))
- E/CN.4/2006/91, Report of the Office of the United Nations High Commissioner for Human Rights on, Study on the right to the truth (2006) ([E F S A C R](#))

Treaty body sources:

- A/HRC/16/48 para. 39, Working Group on Enforced or Involuntary Disappearances, General Comment on truth ([E F S A C R](#))
- A/HRC/WGEID/98/1, Working Group on Enforced or Involuntary Disappearances, General Comment on Children and enforced disappearances ([E F S A C R](#))

OHCHR Publications:

- HR/PUB/06/1, Truth commissions ([E F S A R](#))

Some commentaries on the right to know the truth:

- Frank Haldemann, Thomas Unger, Valentina Cadelo, **The United Nations Principles to Combat Impunity: A Commentary** [OSAIL], 22 March 2018, found at: <http://opil.ouplaw.com/view/10.1093/law/9780198743606.001.0001/law-9780198743606-miscMatter-5>.
- **Professor Diane Orentlicher's Independent Study on Best Practices, including Recommendations, to Assist States in Strengthening their Domestic Capacity to Combat all Aspects of Impunity**, Commission on Human Rights, E/CN.4/2004/88, 27 February 2004, found at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G04/113/55/PDF/G0411355.pdf?OpenElement>, paras 14-23.

How these principles are being applied: Experience of international, regional and national mechanisms in enforcing this principle and in enhancing accountability

The **Inter-American Court of Human Rights** in its' judgement in the case of *Bámaca-Velásquez v. Guatemala*¹⁵ stated that:¹⁶

*"This Court also established, in its judgment on the merits, that due to the characteristics of this case, the right to the truth was subsumed in the right of the victim or his next of kin to obtain clarification of the facts relating to the violations and the corresponding responsibilities from the competent State organs, through the investigation and prosecution established in Articles 8 and 25 of the Convention."¹⁷ As this Court has pointed out, **only if all circumstances of the violations involved are clarified can it be considered that the State***

¹⁵ Judgement of February 22, 2002 (Reparations and Costs).

¹⁶ Ibid, paras 75-77.

¹⁷ *Bámaca Velásquez Case. November 25, 2000 Judgment. C Series No. 70*, para. 201.

has provided the victim and his next of kin effective remedy and that it has complied with its general obligation to investigate.¹⁸

The right every person has to the truth has been developed in international human rights law¹⁹ and, as this Court has stated previously, the possibility of the victim's next of kin knowing what happened to the victim²⁰ and, if that be the case, the whereabouts of the victim's mortal remains,²¹ is a means of reparation, and therefore an expectation regarding which the State must satisfy the next of kin of the victims and society as a whole.²²

Finally, the State has the obligation, according to the general duty set forth in Article 1(1) of the Convention, to ensure that these grave violations do not occur again. Therefore, the State must take all steps necessary to attain this goal. Preventive measures and those against recidivism begin by revealing and recognizing the atrocities of the past, as was ordered by the Court in its judgment on the merits. Society has the right to know the truth regarding such crimes, so as to be capable of preventing them in the future."

In their Joint Concurring Opinion in the *Caballero Delgado and Santana* Case,²³ Judges A.A. Cançado Trindade and A. Abreu Burelli stated that:

"We expressed therein our understanding, of equal incidence in the present case, that contemporary doctrine on the matter of reparations for violations of human rights has established the relationship between the right to reparation, the right to truth and the right to justice (which starts with the access to justice)".²⁴

¹⁸ See *Caballero Delgado and Santana* Case. December 8, 1995 Judgment. C Series No. 22.

¹⁹ See, for example, United Nations Human Rights Committee, *Quinteros v. Uruguay*, Communication No. 107/1981, decision of 21 July 1983; United Nations, Human Rights Committee, Subcommittee on Prevention of Discrimination and Protection of Minorities, 49th Session, UN General Assembly Doc. E/CN.4/Sub.2/1997/20/Rev.1; United Nations, Human Rights Committee, Subcommittee on Prevention of Discrimination and Protection of Minorities, 45th Session, Final report submitted by Theo van Boven, Special Rapporteur, E/CN.4/Sub.2/1993/8

²⁰ See *Cantoral Benavides* Case, Reparations, supra note 5, para. 69; *Villagrán Morales et al.* Case, Reparations, supra note 5, para. 100; and *Paniagua Morales et al.* Case, Reparations, supra note 5, para. 200.

²¹ See *Castillo Páez* Case, November 3, 1997 Judgment. C Series No. 34, para. 90; *Caballero Delgado and Santana* Case. Reparations (Art. 63(1) American Convention on Human Rights). January 29, 1997 Judgment. C Series No. 31, para. 58; and *Neira Alegria et al.* Case. Reparations (Art. 63(1) American Convention on Human Rights). September 19, 1996 Judgment. C Series No. 29, para. 69.

²² See *Castillo Petrucci et al.* Case. May 30, 1999 Judgment. C Series No. 52, para. 90. In this regard, see also United Nations, Human Rights Committee, Subcommittee on Prevention of Discrimination and Protection of Minorities, 49th Session, UN General Assembly Doc. E/CN.4/Sub.2/1997/20/Rev.1; and United Nations, Human Rights Committee, Subcommittee on Prevention of Discrimination and Protection of Minorities, 45th Session, Final report submitted by Theo van Boven, Special Rapporteur, E/CN.4/Sub.2/1993/8.

²³ *Caballero Delgado and Santana* Case. December 8, 1995 Judgment. C Series No. 22.

²⁴ *Ibid*, Joint Concurring Opinion of Judges A.A. Cançado Trindade and A. Abreu Burelli, para 1.

Some **other examples of mechanisms** which have commented on the right to the truth etc., include:

- **Commission on Human Rights**

See for example the Report on the Fifty-Seventh Session, E/CN.4/RES/2001/70, 25 April 2001²⁵ – recognizes that, for the victims of human rights violations, public knowledge of their suffering and the truth about the perpetrators, including their accomplices, of these violations are essential steps towards rehabilitation and reconciliation, and urges States to intensify their efforts to provide victims of human rights violations with a fair and equitable process through which these violations can be investigated and made public and to encourage victims to encourage victims to participate in such a process.”

- **Human Rights Council**

See for example the Report of the Thirtieth session, 7 September 2015, by the **Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence, Pablo de Greiff**.²⁶

Conclusion²⁷

Despite the developments in international law which have taken place, MUCH MORE IS NEEDED TO MAKE THIS PROGRESS A REALITY FOR VICTIMS. While the 2006 Basic Principles and Guidelines are indeed a triumph for victims, the quest for reparation has not yet ended. The realisation of victims’ rights requires the establishment of implementation mechanisms and governmental will to take the Principles from words to practice. The international legal system is unfortunately far from being victim-oriented.

By honouring victims’ rights to benefit from remedies and reparation, the international community and individual States express solidarity with victims and reaffirm the principles of accountability, justice and the rule of law. Recognising the rights of victims of gross human rights and international humanitarian law violations certainly is one of the most crucial imperatives of our age.

²⁵ Found at: <http://www.un.org/documents/ecosoc/docs/2001/e2001-23partII.pdf>.

²⁶ Found at: <https://www.ohchr.org/Documents/Issues/Truth/A-HRC-30-42.pdf>, see for example Annex: Set of general recommendations for truth commissions and archives, p 27.

²⁷ See M Cherif Bassiouni, ‘International Recognition of Victims’ Rights’, Human Rights Law Review 6:2 (2006), 203-279, p 279.

PROPOSALS

1. DO MORE Raise awareness about rules, remedies, reparation, truth and reconciliation, not only in international conferences, academic circles, but on radio, international, national and local programs (a most powerful way to carry the message), and in social networks.

2. VICTIMS Empower victims, individuals, their families and communities to access and also to participate in the truth, justice and reconciliation process, be it through judicial or non-judicial processes.

3. LANGUAGE Provide support to victims to access justice and remedies in a language they understand: in local languages or in languages of the country of origin for refugees and victims and survivors of human trafficking.

4. BEST PRACTICES Collect and publicize best practices in academia, police, local leaders, medical and social workers, as well as opinion makers (media and religious leaders) in order to keep the memory of the past alive and prevent further violations and victimization. Governments have the duty to uphold the right to truth. A State must counter denials of abuse by preserving documents and opening archives. These records can inform truth commissions, courts of law, memorials, and searches for the disappeared—all of which serve to uncover and recognize the truth about what happened.

5. NON-STATE ACTORS Mobilize civil society in a campaign for States (and also non-State actors, including armed NSAs and private business) to implement their obligations to respect and ensure respect for fundamental provisions of human rights and international humanitarian law.

6. BEYOND JUSTICE Promote access to information through restorative justice in setting up agreed-upon Truth and Reconciliation Commissions, drawing lessons from cases in South Africa, Latin America, Morocco, Indonesia, among others, and adapting this approach to local conditions, with the participation of all stakeholders. Every country needs to find the balance between full justice and reconciliation, with the final aim of reconstruction and reconciliation. There is no perfect justice: restorative justice could be promoted as a solution that brings healing, reparation and integration, restoring the fabric of the society, and preventing future harm, incorporating responsibility, inclusiveness, openness, hope. In Africa, traditional justice is restorative, based on strong communal values.

7. TRAINING Increase education and training on human rights and humanitarian law norms and principles, as well as on universal values protecting human life and dignity in order to reinforce “public conscience” for both justice and peace, and to reach and empower victims

8. ADAPT TO LOCAL CONDITIONS Find a balance for reconciliation that needs both criminal justice and complementary approaches on regional, national and even local levels.

Raul Alfonsin, the first democratically elected President of Argentina after the military dictatorship, stated: « *A fin de cuentas, el castigo es un instrumento - no el único ni el más importante - para devolver a las sociedades devastadas por la dictadura una conciencia moral colectiva.* »

(« Criminal prosecution is one instrument but not the sole or even the most important one for forming moral conscience »). International criminal justice mostly deals with individuals. In order to foster reconciliation, we need to complement individual prosecutions with community-centered approaches. Criminal justice, especially in the case of international or foreign jurisdictions, is often perceived as unilateral. Reconciliation needs the creation of a dialogue between perpetrators and victims, in the framework of locally-rooted approaches. Those locally-rooted approaches should be readily available, understood and accepted by the concerned individuals and communities. **These complementary approaches to justice, based on a dialogue with victims, as initiatives of decision-makers, with important symbolic, political and economic consequences, can be based on local indigenous customs or even universal religious beliefs.**

9. INTER-CULTURAL We need to share and communicate lessons from past and on-going conflicts in order to achieve, in each particular situation, a synergy between - on the one hand, justice (international and domestic), in respecting international standards of international humanitarian law and human rights; - and, on the other, political gestures, psycho-medical, educational, traditional and spiritual processes in a multidisciplinary and intercultural approach.

RESOURCES & WEBSITES

- Civitas Maxima <https://www.civitas-maxima.org/en>
- Global Initiative against organized transnational crime. <https://globalinitiative.net/>
- Geneva Call <https://genevacall.org/>
- Human Rights Watch <https://www.hrw.org>
- <https://www.hrw.org/news/2019/04/12/nepal-reform-transitional-justice-law>
- International Committee of the Red Cross www.icrc.org
- International Institute of Humanitarian Law www.iihl.org
- International Commission of Jurists www.ici.org <https://www.ici.org/the-right-to-a-remedy-and-reparation-for-gross-human-rights-violations-2018-update-to-practitioners-guide-no-2/>
- Trial International. <https://trialinternational.org>
- OHCHR www.ohchr.org
- UNODC www.unodc.org
- ICC. <https://www.icc-cpi.int>
- McCain Institute www.mccaininstitute.org/buffett-mccain-institute-initiative-combat-modern-slavery/
- Human Trafficking: www.christusliberati.org

**THE UNITED NATIONS BASIC PRINCIPLES AND GUIDELINES ON THE
RIGHT TO A REMEDY AND REPARATION FOR VICTIMS OF GROSS
VIOLATIONS OF INTERNATIONAL HUMAN RIGHTS LAW AND SERIOUS
VIOLATIONS OF INTERNATIONAL HUMANITARIAN LAW**

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APPENDIXES

**Basic Principles and Guidelines on the Right
to a Remedy and Reparation for Victims of
Gross Violations of International Human
Rights Law and Serious Violations of
International Humanitarian Law**

**Adopted and proclaimed by General Assembly resolution
60/147 of 16 December 2005**

The General Assembly,

Guided by the Charter of the United Nations, the Universal Declaration of Human Rights, the International Covenants on Human Rights, other relevant human rights instruments and the Vienna Declaration and Programme of Action,

Affirming the importance of addressing the question of remedies and reparation for victims of gross violations of international human rights law and serious violations of international humanitarian law in a systematic and thorough way at the national and international levels,

Recognizing that, in honouring the victims' right to benefit from remedies and reparation, the international community keeps faith with the plight of victims, survivors and future human generations and reaffirms international law in the field,

Recalling the adoption of the Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law by the Commission on Human Rights in its resolution 2005/35 of 19 April 2005 and by the Economic and Social Council in its resolution 2005/30 of 25 July 2005, in which the Council recommended to the General Assembly that it adopt the Basic Principles and Guidelines,

1. Adopts the Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law annexed to the present resolution;

2. *Recommends* that States take the Basic Principles and Guidelines into account, promote respect thereof and bring them to the attention of members of the executive bodies of government, in particular law enforcement officials and military and security forces, legislative bodies, the judiciary, victims and their representatives, human rights defenders and lawyers, the media and the public in general;

3. *Requests* the Secretary-General to take steps to ensure the widest possible dissemination of the Basic Principles and Guidelines in all the official languages of the United Nations, including by transmitting them to Governments and intergovernmental and non-governmental organizations and by including the Basic Principles and Guidelines in the United Nations publication entitled *Human Rights: A Compilation of International Instruments*.

64th plenary meeting
16 December 2005

Annex

Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law

Preamble

The General Assembly,

Recalling the provisions providing a right to a remedy for victims of violations of international human rights law found in numerous international instruments, in particular article 8 of the Universal Declaration of Human Rights, article 2 of the International Covenant on Civil and Political Rights, article 6 of the International Convention on the Elimination of All Forms of Racial Discrimination, article 14 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, and article 39 of the Convention on the Rights of the Child, and of international humanitarian law as found in article 3 of the Hague Convention respecting the Laws and Customs of War on Land of 18 October 1907 (Convention IV), article 91 of the Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I) of 8 June 1977, and articles 68 and 75 of the Rome Statute of the International Criminal Court,

Recalling the provisions providing a right to a remedy for victims of violations of international human rights found in regional conventions, in particular article 7 of the African Charter on Human and Peoples' Rights, article 25 of the American Convention on Human Rights, and article 13 of the Convention for the Protection of Human Rights and Fundamental Freedoms,

Recalling the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power emanating from the deliberations of the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders and General Assembly resolution 40/34 of 29 November 1985 by which the Assembly adopted the text recommended by the Congress,

Reaffirming the principles enunciated in the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, including that victims should be treated with compassion and respect for their dignity, have their right to access to justice and redress mechanisms fully respected, and that the establishment, strengthening and expansion of national funds for compensation to victims should be encouraged, together with the expeditious development of appropriate rights and remedies for victims,

Noting that the Rome Statute of the International Criminal Court requires the establishment of "principles relating to reparations to, or in respect of, victims, including restitution, compensation and rehabilitation", requires the Assembly of States Parties to establish a trust fund for the benefit of victims of crimes within the jurisdiction of the Court, and of the families of such victims, and mandates the Court "to protect the safety, physical and psychological well-being, dignity and privacy of victims" and to permit the participation of victims at all "stages of the proceedings determined to be appropriate by the Court",

Affirming that the Basic Principles and Guidelines contained herein are directed at gross violations of international human rights law and serious violations of international humanitarian law which, by their very grave nature, constitute an affront to human dignity,

Emphasizing that the Basic Principles and Guidelines contained herein do not entail new international or domestic legal obligations but identify mechanisms, modalities, procedures and methods for the implementation of existing legal obligations under international human rights law and international humanitarian law which are complementary though different as to their norms,

Recalling that international law contains the obligation to prosecute perpetrators of certain international crimes in accordance with international obligations of States and the requirements of national law or as provided for in the applicable statutes of international judicial organs, and that the duty to prosecute reinforces the international legal obligations to be carried out in accordance with national legal requirements and procedures and supports the concept of complementarity,

Noting that contemporary forms of victimization, while essentially directed against persons, may nevertheless also be directed against groups of persons who are targeted collectively,

Recognizing that, in honouring the victims' right to benefit from remedies and reparation, the international community keeps faith with the plight of victims, survivors and future human generations and reaffirms the international legal principles of accountability, justice and the rule of law,

Convinced that, in adopting a victim-oriented perspective, the international community affirms its human solidarity with victims of violations of international law, including violations of international human rights law and international humanitarian law, as well as with humanity at large, in accordance with the following Basic Principles and Guidelines,

Adopts the following Basic Principles and Guidelines:

I. Obligation to respect, ensure respect for and implement international human rights law and international humanitarian law

1. The obligation to respect, ensure respect for and implement international human rights law and international humanitarian law as provided for under the respective bodies of law emanates from:

- (a) Treaties to which a State is a party;
- (b) Customary international law;
- (c) The domestic law of each State.

2. If they have not already done so, States shall, as required under international law, ensure that their domestic law is consistent with their international legal obligations by:

- (a) Incorporating norms of international human rights law and international humanitarian law into their domestic law, or otherwise implementing them in their domestic legal system;
- (b) Adopting appropriate and effective legislative and administrative procedures and other appropriate measures that provide fair, effective and prompt access to justice;
- (c) Making available adequate, effective, prompt and appropriate remedies, including reparation, as defined below;
- (d) Ensuring that their domestic law provides at least the same level of protection for victims as that required by their international obligations.

II. Scope of the obligation

3. The obligation to respect, ensure respect for and implement international human rights law and international humanitarian law as provided for under the respective bodies of law, includes, inter alia, the duty to:

- (a) Take appropriate legislative and administrative and other appropriate measures to prevent violations;
- (b) Investigate violations effectively, promptly, thoroughly and impartially and, where appropriate, take action against those allegedly responsible in accordance with domestic and international law;

(c) Provide those who claim to be victims of a human rights or humanitarian law violation with equal and effective access to justice, as described below, irrespective of who may ultimately be the bearer of responsibility for the violation; and

(d) Provide effective remedies to victims, including reparation, as described below.

III. Gross violations of international human rights law and serious violations of international humanitarian law that constitute crimes under international law

4. In cases of gross violations of international human rights law and serious violations of international humanitarian law constituting crimes under international law, States have the duty to investigate and, if there is sufficient evidence, the duty to submit to prosecution the person allegedly responsible for the violations and, if found guilty, the duty to punish her or him. Moreover, in these cases, States should, in accordance with international law, cooperate with one another and assist international judicial organs competent in the investigation and prosecution of these violations.

5. To that end, where so provided in an applicable treaty or under other international law obligations, States shall incorporate or otherwise implement within their domestic law appropriate provisions for universal jurisdiction. Moreover, where it is so provided for in an applicable treaty or other international legal obligations, States should facilitate extradition or surrender offenders to other States and to appropriate international judicial bodies and provide judicial assistance and other forms of cooperation in the pursuit of international justice, including assistance to, and protection of, victims and witnesses, consistent with international human rights legal standards and subject to international legal requirements such as those relating to the prohibition of torture and other forms of cruel, inhuman or degrading treatment or punishment.

IV. Statutes of limitations

6. Where so provided for in an applicable treaty or contained in other international legal obligations, statutes of limitations shall not apply to gross violations of international human rights law and serious violations of international humanitarian law which constitute crimes under international law.

7. Domestic statutes of limitations for other types of violations that do not constitute crimes under international law, including those time limitations applicable to civil claims and other procedures, should not be unduly restrictive.

V. Victims of gross violations of international human rights law and serious violations of international humanitarian law

8. For purposes of the present document, victims are persons who individually or collectively suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights, through acts or omissions that constitute gross violations of international human rights law, or serious violations of international humanitarian law. Where appropriate, and in accordance with domestic law, the term "victim" also includes the immediate family or dependants of the direct victim and persons who have suffered harm in intervening to assist victims in distress or to prevent victimization.

9. A person shall be considered a victim regardless of whether the perpetrator of the violation is identified, apprehended, prosecuted, or convicted and regardless of the familial relationship between the perpetrator and the victim.

VI. Treatment of victims

10. Victims should be treated with humanity and respect for their dignity and human rights, and appropriate measures should be taken to ensure their safety, physical and psychological well-being and privacy, as well as those of their families. The State should ensure that its domestic laws, to the extent possible, provide that a victim who has suffered violence or trauma should benefit from special consideration and care to avoid his or her re-traumatization in the course of legal and administrative procedures designed to provide justice and reparation.

VII. Victims' right to remedies

11. Remedies for gross violations of international human rights law and serious violations of international humanitarian law include the victim's right to the following as provided for under international law:

- (a) Equal and effective access to justice;
- (b) Adequate, effective and prompt reparation for harm suffered;
- (c) Access to relevant information concerning violations and reparation mechanisms.

VIII. Access to justice

12. A victim of a gross violation of international human rights law or of a serious violation of international humanitarian law shall have equal access to an effective judicial remedy as provided for under international law. Other remedies available to the victim include access to administrative and other bodies, as well as mechanisms, modalities and proceedings conducted in accordance with domestic law. Obligations arising under international law to secure the right to access justice and fair and impartial proceedings shall be reflected in domestic laws. To that end, States should:

- (a) Disseminate, through public and private mechanisms, information about all available remedies for gross violations of international human rights law and serious violations of international humanitarian law;
- (b) Take measures to minimize the inconvenience to victims and their representatives, protect against unlawful interference with their privacy as appropriate and ensure their safety from intimidation and retaliation, as well as that of their families and witnesses, before, during and after judicial, administrative, or other proceedings that affect the interests of victims;
- (c) Provide proper assistance to victims seeking access to justice;
- (d) Make available all appropriate legal, diplomatic and consular means to ensure that victims can exercise their rights to remedy for gross violations of international human rights law or serious violations of international humanitarian law.

13. In addition to individual access to justice, States should endeavour to develop procedures to allow groups of victims to present claims for reparation and to receive reparation, as appropriate.

14. An adequate, effective and prompt remedy for gross violations of international human rights law or serious violations of international humanitarian law should include all available and appropriate international processes in which a person may have legal standing and should be without prejudice to any other domestic remedies.

IX. Reparation for harm suffered

15. Adequate, effective and prompt reparation is intended to promote justice by redressing gross violations of international human rights law or serious violations of international humanitarian law. Reparation should be proportional to the gravity of the violations and the harm suffered. In accordance with its domestic laws and international legal obligations, a State shall provide reparation to victims for acts or omissions which can be attributed to the State and constitute gross violations of international human rights law or serious violations of international humanitarian law. In cases where a person, a legal person, or other entity is found liable for reparation to a victim, such party should provide reparation to the victim or compensate the State if the State has already provided reparation to the victim.

16. States should endeavour to establish national programmes for reparation and other assistance to victims in the event that the parties liable for the harm suffered are unable or unwilling to meet their obligations.

17. States shall, with respect to claims by victims, enforce domestic judgements for reparation against individuals or entities liable for the harm suffered and endeavour to enforce valid foreign legal judgements for reparation in accordance with domestic law and

international legal obligations. To that end, States should provide under their domestic laws effective mechanisms for the enforcement of reparation judgements.

18. In accordance with domestic law and international law, and taking account of individual circumstances, victims of gross violations of international human rights law and serious violations of international humanitarian law should, as appropriate and proportional to the gravity of the violation and the circumstances of each case, be provided with full and effective reparation, as laid out in principles 19 to 23, which include the following forms: restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition.

19. *Restitution* should, whenever possible, restore the victim to the original situation before the gross violations of international human rights law or serious violations of international humanitarian law occurred. Restitution includes, as appropriate: restoration of liberty, enjoyment of human rights, identity, family life and citizenship, return to one's place of residence, restoration of employment and return of property.

20. *Compensation* should be provided for any economically assessable damage, as appropriate and proportional to the gravity of the violation and the circumstances of each case, resulting from gross violations of international human rights law and serious violations of international humanitarian law, such as:

- (a) Physical or mental harm;
- (b) Lost opportunities, including employment, education and social benefits;
- (c) Material damages and loss of earnings, including loss of earning potential;
- (d) Moral damage;
- (e) Costs required for legal or expert assistance, medicine and medical services, and psychological and social services.

21. *Rehabilitation* should include medical and psychological care as well as legal and social services.

22. *Satisfaction* should include, where applicable, any or all of the following:

- (a) Effective measures aimed at the cessation of continuing violations;
- (b) Verification of the facts and full and public disclosure of the truth to the extent that such disclosure does not cause further harm or threaten the safety and interests of the victim, the victim's relatives, witnesses, or persons who have intervened to assist the victim or prevent the occurrence of further violations;
- (c) The search for the whereabouts of the disappeared, for the identities of the children abducted, and for the bodies of those killed, and assistance in the recovery, identification and reburial of the bodies in accordance with the expressed or presumed wish of the victims, or the cultural practices of the families and communities;
- (d) An official declaration or a judicial decision restoring the dignity, the reputation and the rights of the victim and of persons closely connected with the victim;
- (e) Public apology, including acknowledgement of the facts and acceptance of responsibility;
- (f) Judicial and administrative sanctions against persons liable for the violations;
- (g) Commemorations and tributes to the victims;
- (h) Inclusion of an accurate account of the violations that occurred in international human rights law and international humanitarian law training and in educational material at all levels.

23. *Guarantees of non-repetition* should include, where applicable, any or all of the following measures, which will also contribute to prevention:

- (a) Ensuring effective civilian control of military and security forces;
- (b) Ensuring that all civilian and military proceedings abide by international standards of due process, fairness and impartiality;

- (c) Strengthening the independence of the judiciary;
- (d) Protecting persons in the legal, medical and health-care professions, the media and other related professions, and human rights defenders;
- (e) Providing, on a priority and continued basis, human rights and international humanitarian law education to all sectors of society and training for law enforcement officials as well as military and security forces;
- (f) Promoting the observance of codes of conduct and ethical norms, in particular international standards, by public servants, including law enforcement, correctional, media, medical, psychological, social service and military personnel, as well as by economic enterprises;
- (g) Promoting mechanisms for preventing and monitoring social conflicts and their resolution;
- (h) Reviewing and reforming laws contributing to or allowing gross violations of international human rights law and serious violations of international humanitarian law.

X. Access to relevant information concerning violations and reparation mechanisms

24. States should develop means of informing the general public and, in particular, victims of gross violations of international human rights law and serious violations of international humanitarian law of the rights and remedies addressed by these Basic Principles and Guidelines and of all available legal, medical, psychological, social, administrative and all other services to which victims may have a right of access. Moreover, victims and their representatives should be entitled to seek and obtain information on the causes leading to their victimization and on the causes and conditions pertaining to the gross violations of international human rights law and serious violations of international humanitarian law and to learn the truth in regard to these violations.

XI. Non-discrimination

25. The application and interpretation of these Basic Principles and Guidelines must be consistent with international human rights law and international humanitarian law and be without any discrimination of any kind or on any ground, without exception.

XII. Non-derogation

26. Nothing in these Basic Principles and Guidelines shall be construed as restricting or derogating from any rights or obligations arising under domestic and international law. In particular, it is understood that the present Basic Principles and Guidelines are without prejudice to the right to a remedy and reparation for victims of all violations of international human rights law and international humanitarian law. It is further understood that these Basic Principles and Guidelines are without prejudice to special rules of international law.

XIII. Rights of others

27. Nothing in this document is to be construed as derogating from internationally or nationally protected rights of others, in particular the right of an accused person to benefit from applicable standards of due process.

<https://www.ohchr.org/en/professionalinterest/pages/remedyandreparation.aspx>



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COMMISSION ON HUMAN RIGHTS
Sixtieth session
Item 17 of the provisional agenda

PROMOTION AND PROTECTION OF HUMAN RIGHTS

Impunity*

Note by the Secretary-General

In its resolution 2003/72, the Commission on Human Rights requested the Secretary-General to commission an independent study on best practices, including recommendations, to assist States in strengthening their domestic capacity to combat all aspects of impunity, taking into account the Set of Principles for the protection and promotion of human rights through action to combat impunity (E/CN.4/Sub.2/1997/20/Rev.1, annex II) and how they have been applied, reflecting recent developments and considering the issue of their further implementation, and also taking into account the information and comments received pursuant to the resolution, and to submit the study to the Commission no later than its sixtieth session.

Accordingly, the Secretary-General has the honour to transmit to the Commission the independent study, undertaken by Professor Diane Orentlicher.

* The report was submitted after the deadline in order to incorporate the replies of all respondents and to take into account the results of the expert workshop held in December 2003.

GE.04-11355 (E) 120304

<https://documents-dds-ny.un.org/doc/UNDOC/GEN/G04/113/55/PDF/G0411355.pdf?OpenElement>

RULE-OF-LAW TOOLS FOR POST-CONFLICT STATES

Reparations programmes



UNITED NATIONS

<https://www.ohchr.org/Documents/Publications/ReparationsProgrammes.pdf>



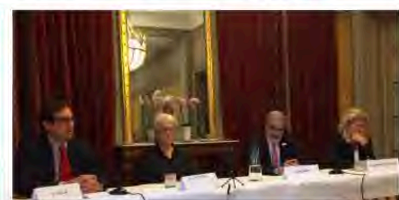
March 21, 2019

“Give Us a Baby and We’ll Let You Go”

Trafficking of Kachin “Brides” from Myanmar to China

Available In 简体中文 English

A young woman who was trafficked at age 17 by a friend's mother who promised her a well-paid child care job and then sold her to a family in China as a "bride." Once purchased, she was confined and subjected to sexual slavery, but managed to escape after several months and return home to Myanmar. © 2018 Human Rights Watch





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Violations of IHL

When violations of IHL occur, States are under an obligation to prosecute alleged offenders. Domestic courts therefore play an important role in the enforcement of IHL and limiting impunity.

In addition to national jurisdictions, violations of IHL can also be prosecuted by various international criminal tribunals.

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International Criminal Court



Ad hoc tribunals

CUSTOMARY LAW

- Responsibility and reparation
- Individual responsibility
- War crimes

DOMESTIC LAW

ictj briefing

International Policy Relations
June 2011

Transitional Justice in the
United Nations Human Rights
Council

Transitional Justice in the United Nations Human Rights Council

Executive Summary

Five years after the establishment of the United Nations Human Rights Council (the Council), this report offers some initial findings on the extent to which its work has addressed different forms of accountability for gross human rights violations and how this accords with the approach to transitional justice within the broader United Nations (UN) system.

Based on an initial review of the Council's practice, the report concludes that the Council and its mechanisms have approached justice in a piecemeal and sometimes politicized manner. Transitional justice measures offer practical strategies to address the complex legacy of serious human rights abuses that are responsive to victims' interests and reinforce a human rights-based rule of law. The report concludes that there is a need for more comprehensive discussion among member states, the Office of the High Commissioner on Human Rights (OHCHR), and independent experts on how transitional justice could be more effectively integrated, thereby enabling the Council to fulfill its mandate to address human rights violations and prevent future abuses. Specific findings include:

- The existing normative framework for transitional justice could be better integrated in the work of UN Special Procedures and the Council.¹ In addition to treaty-based obligations, the Updated Set of Principles for the Protection and Promotion of Human Rights through Action to Combat Impunity and the Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law remain underutilized by Special Procedures and the Council as a whole. These offer a useful toolbox of interrelated justice approaches, including prosecution, truth-seeking, reparation, and institutional reform.
- The Council's political response to possible forms of justice in situations of gross, systematic human rights violations has been selective and lacks follow-through. Implementation of recommendations by human rights mechanisms on accountability for gross, systematic human rights violations is rarely monitored, which negatively impacts the Council's credibility. The second cycle of the

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¹ Special Procedures includes special rapporteurs, special representatives, independent experts, and working groups mandated by the UN's political bodies to monitor and report on human rights violations and to recommend ways to promote and protect human rights. Under criteria established by the Council in 2007, these experts are selected based on their expertise, experience in the field of human rights, independence, impartiality, personal integrity, and objectivity. See Human Rights Council Resolution 5/7, Sept. 18, June 18, 2007.



2018: A Year in Review



2018 ICTJ | Justice Truth Dignity A Year in Review

A Year in Review

We are pleased to present an interactive look back on ICTJ's work in 2018—its challenges and triumphs—as we prepare for a promising and more just year ahead.

ICTJ 2018 Year in Review



Par Diana Alsip
1 février 2019

<https://www.ictj.org/multimedia/interactive/2018-year-review>

Forms of Justice: A Guide to Designing Reparations Application Forms and Registration Processes for Victims of Human Rights Violations

12/6/2017

Ruben Carranza, Cristián Correa, and Elena Naughton

In a number of countries around the world, governments have created state-administered reparations programs for victims and communities that were most affected by massive human rights violations. The success of these programs, which often involve thousands of individuals, depends in part on the state's ability to reach victims and record their demands for justice in an effective and meaningful way. Reparations programs may be administered by government agencies pursuant to a law or policy or a court judgment. In all cases, a process of identifying, verifying, and registering those entitled to reparations is necessary. This often begins with a reparations application form.



Read the full guide in English [here](#).

Read the full guide in Arabic [here](#).

The forms that can be used to apply and register for reparations contain a set of questions for survivors or victims' family members to answer, sometimes with the assistance of government officials or even nongovernment organization staff. They often require applicants to submit additional documentation or proof of eligibility in order to receive reparations. In many cases, an agency implementing the program will carry out this

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Forms of Justice

A Guide to Designing Reparations Application Forms and Registration Processes for Victims of Human Rights Violations



TRANSITIONAL JUSTICE AND ECONOMIC, SOCIAL AND CULTURAL RIGHTS



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Forms of Justice

A Guide to Designing Reparations Application Forms and Registration Processes for Victims of Human Rights Violations

Ruben Carranza, Cristián Correa, and Elena Naughton

December 2017

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العدالة الجائرة

أشكال العدالة:

دليل إعداد استمارات طلب جبر الضرر
وعمليات التسجيل الخاصة بضحايا انتهاكات
حقوق الإنسان

روبن كارانزا ، كريستيان كوريا ، وإيلينا نوغتون

ديسمبر 2017

In a number of countries around the world, governments have created State-administered reparations programs for victims and communities that were most affected by massive human rights violations. The success of these programs, which often involve thousands of individuals, depends in part on the State's ability to reach victims and record their demands for justice in an effective and meaningful way. Reparations programs may be administered by government agencies pursuant to a law or policy or a court judgment. In all cases, a process of identifying, verifying, and registering those entitled to reparations is necessary. This often begins with a reparations application form.

Like other efforts to provide acknowledgement and justice to victims of human rights violations, the form and the registration process should send a clear message to victims and society that the

violations were wrong and that victims have rights that must be respected. Reparations application forms are likely to be a victim's first personal encounter with how transitional justice is pursued, because not all victims are able to testify (or submit statements) to a truth commission or testify in or even attend a trial.

This guide recommends some basic principles to guide the process of designing a reparations application form:

Learn from other registration processes. At the outset, government agencies and international organizations with previous experience of dealing with massive human rights violations, internally displaced persons, victims' groups, and civil society organizations should be involved in the drafting and designing of reparations policies and programs.

Avoid being legalistic. Reparations forms should be designed by a multidisciplinary group of persons and agencies. While lawyers can contribute significantly, persons with experience facilitating community outreach, managing information technology, dealing with large data-bases, conducting interviews, and gathering data in developing countries have equally important contributions to make in designing the form and determining how it will be used.

Use the design process to spark dialogue. The process of designing an application form and registering victims is an important time of contact between, and among, victims' groups, civil society actors, and the government. Designing the form is an opportunity for dialogue about how reparations can commence. Amid the registration process, implementers will also have the chance to adjust and revise the reparations form and the registration procedure.

Do no harm. Well-conceived application forms (and registration processes) should reflect the admonition to "do no harm" to victims and their families. This includes ensuring no undue administrative and financial requirements are placed on victims that add to their burdens. The process of designing the form should also consider that for many victims it is painful to remember and narrate their experiences. The form should ease the burden of recollection by giving time and space to those who fill them out, and reparations implementers should anticipate the need for psychosocial support.

Find ways to make filling out the form itself reparative. Both the reparations form and the process for registering victims should be reparative in effect. The reparations form and/or the accompanying guide may include statements acknowledging victims and the harms they suffered. The registration process itself should, likewise, treat applicants with the re-spect and dignity accorded to victims who have suffered human rights violations.

Anticipate how the form will be used. It is important to understand in advance the purpose and objectives to be served by a reparations form. What information or documentation is needed from applicants, and why? How will that information be used and analyzed? What has already been learned from truth seeking and needs assessments? The amount of information required from applicants during the registration process may be less due to what is already known about victims, the violations, and harms suffered, or where detailed recommendations already exist about the scope and content of a future reparations program. If a reparations policy has not yet been finalized or planners are still assessing victims' needs and require additional data, a different type or level of detail may be required from applicants. Sometimes a small pilot study may be conducted, followed by a full registration effort.

Taking poverty and marginalization into account in designing forms. The reparations form and the registration process should be designed so as to ensure that eligible victims can access reparations, particularly low-income and marginalized victims. To that end, it is necessary to anticipate the financial, literacy, logistical and emotional challenges that low-income, marginalized victims typically face. Additionally, designers should consider the insecurity, fear, and mistrust of authorities, concerns about potential stigma, lack of formal education, social and economic vulnerability, and other difficulties victims will need to overcome to show violations or lasting harms occurred, often years after the events.



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1. RULES
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CHAPTER 42
RULE 150

Rule 150. Reparation

Related Practice

Quick navigation

Rule 150. A State responsible for violations of international humanitarian law is required to make full reparation for the loss or injury caused.

Summary

State practice establishes this rule as a norm of customary international law applicable in both international and non-international armed conflicts.

International armed conflicts

It is a basic rule of international law that reparation is to be made for violations of international law. In the *Chorzów Factory case (Merits)* in 1928, the Permanent Court of International Justice stated that:

It is a principle of international law, and even a general conception of the law, that any breach of an engagement involves an obligation to make reparation ... Reparation is the indispensable complement of a failure to apply a convention, and there is no necessity for this to be stated in the convention itself.^[1]

The Draft Articles on State Responsibility provide that “the responsible State is under an obligation to make full reparation for the injury caused by the internationally wrongful act”.^[2]

The duty to make reparation for violations of international humanitarian law is explicitly referred to in the Second Protocol to the Hague Convention for the Protection of Cultural Property.^[3] It is also implied in the rule contained in the Geneva Conventions, according to which States cannot absolve themselves or another High Contracting Party of any liability incurred in respect of grave breaches.^[4]

Reparation sought by States

There exist numerous examples of reparation sought by States for violations of international humanitarian law. With respect to the form of reparation, the Draft Articles on State Responsibility provide that “full reparation for the injury caused by the internationally wrongful act shall take the form of restitution,

(i) *Restitution*. As explained in Article 35 of the Draft Articles on State Responsibility, the purpose of restitution is to re-establish the situation that existed before the wrongful act was committed. The Article provides that a State responsible for an internationally wrongful act is under an obligation to make restitution provided that this "is not materially impossible" and "does not involve a burden out of all proportion to the benefit deriving from restitution instead of compensation". The commentary on the Draft Articles explains that restitution can, in its simplest form, involve such conduct as the release of persons wrongly detained or the return of property wrongly seized, but can also be a more complex act, and that restitution comes first among the forms of reparation.^[6]

Paragraph 1 of the First Protocol to the Hague Convention for the Protection of Cultural Property provides that States must prevent the exportation of cultural property from occupied territory. Paragraph 3 obliges the occupying State (as well as other States) to return cultural property exported in violation of Paragraph 1 at the close of hostilities to the territory previously occupied (see Rule 41).^[7]

A number of agreements relating to the Second World War provided for the restitution of property that had been stolen, seized or confiscated.^[8] In 1970, during a debate in the Special Political Committee of the UN General Assembly on measures carried out by Israel in the occupied territories, Poland stated that Israel was liable for the restitution of Palestinian property.^[9] Hungary's Military Manual provides that, after a conflict, civilian, cultural and requisitioned objects have to be returned.^[10]

In 1991, Germany declared its acceptance of the rule that cultural property has to be returned after the end of hostilities and also stated that it had returned cultural property in all cases in which the cultural goods were found and could be identified. In other cases, Germany has paid compensation to the State of the original owner.^[11]

In 1999, during a debate in the UN General Assembly, the United Arab Emirates called upon Iraq to return Kuwaiti cultural property.^[12] Kuwait also insisted on the restitution by Iraq of cultural property, and Iraq explained its readiness to do so.^[13] Similarly, the UN Security Council urged Iraq on several occasions to return to Kuwait all property seized.^[14] The UN Secretary-General reported on compliance by Iraq with obligations placed upon it by several UN Security Council resolutions and noted, in 2000, that a substantial amount of property had been returned since the end of the Gulf War, but that many items remained unreturned. He stressed that "priority should be given to the return by Iraq of the Kuwaiti archives ... and museum items".^[15]

In 2001, the Russian Federation and Belgium reached an agreement on the return to Belgium of the military archives stolen by the Nazis during the Second World War and then taken to Moscow by Soviet forces. The Russian Federation accepted to return these archives provided it was reimbursed the cost of having maintained them.^[16]

(ii) *Compensation*. It is a long-standing rule of customary international law, set forth in the 1907 Hague Convention (IV) and repeated in Additional Protocol I, that a State which violates international humanitarian law must pay compensation, if the case demands.^[17] This obligation has been put into practice through numerous post-conflict settlements.^[18] It is also spelled out in the Draft Articles on State Responsibility, which oblige a State "to compensate for the damage caused ... insofar as such damage is not made good by restitution".^[19] The commentary on the Draft Articles explains that "restitution, despite its primacy as a legal principle, is frequently unavailable or inadequate ... The role of compensation is to fill gaps so as to ensure full reparation for damage suffered."^[20]

The obligation to compensate for damage caused by violations of international humanitarian law is confirmed by a number of official statements.^[21] It has also been recalled in a number of resolutions adopted by the UN Security Council and UN General Assembly.^[22]

(iii) *Satisfaction*. Article 37 of the Draft Articles on State Responsibility provides that:

1. The State responsible for an internationally wrongful act is under an obligation to give satisfaction for the injury caused by the act insofar as its obligation cannot be made good by restitution or compensation.
2. Satisfaction may consist in an acknowledgement of the breach, an expression of regret, a formal apology or another appropriate modality.
3. Satisfaction shall not be out of proportion to the injury and may not take a form humiliating to the responsible State.^[24]

The requirement to establish the truth through investigation and to bring perpetrators to justice is mentioned in the commentary on Article 37 of the Draft Articles on State Responsibility, which lists "inquiry into the causes of an accident resulting in harm or injury" and "disciplinary or penal action against the individuals whose conduct caused the internationally wrongful act" among the possible ways of giving satisfaction.^[24] The US Field Manual includes, as types of remedies for violations of international humanitarian law, publication of the facts and punishment of captured offenders as war criminals.^[25] It should be noted that, independent of the duty to provide appropriate reparation, States are under an obligation to investigate war crimes over which they have jurisdiction and to prosecute the suspects if necessary (see Rule 158).

Guarantees of non-repetition are a possible form of satisfaction referred to in the Draft Articles on State Responsibility, which require a State responsible for an internationally wrongful act to cease the violation, and to offer appropriate assurances and guarantees of non-repetition, if circumstances so demand.^[26]

Reparation sought directly by individuals

There is an increasing trend in favour of enabling individual victims of violations of international humanitarian law to seek reparation directly from the responsible State. Article 33(2) of the Draft Articles on State Responsibility states that Part II of the Draft Articles ("Content of the international responsibility of a State") "is without prejudice to any right, arising from the international responsibility of a State, which may accrue directly to any person or entity other than a State".^[27] The commentary on Article 33 furthermore states that:

When an obligation of reparation exists towards a State, reparation does not necessarily accrue to that State's benefit. For instance, a State's responsibility for the breach of an obligation under a treaty concerning the protection of human rights may exist towards all the other parties to the treaty, but the individuals concerned should be regarded as the ultimate beneficiaries and in that sense as the holders of the relevant rights.^[28]

Croatia, in its views and comments on the 1997 version of the Draft Principles and Guidelines on the Right to Reparation for Victims of [Gross] Violations of Human Rights and International Humanitarian Law, as they were then called, and the United States, in a Concurrent Resolution of the House of Representatives in 2001 with regard to violations committed by Japan against so-called "comfort women", have referred to the right of victims to receive reparation directly.^[29] In two resolutions on the former Yugoslavia, the UN General Assembly recognized "the right of victims of 'ethnic cleansing' to receive just reparation for their losses" and urged all parties "to fulfil their agreements to this end".^[30]

Reparation has been provided directly to individuals via different procedures, in particular via mechanisms set up by inter-State agreements, via unilateral State acts such as national legislation or reparation sought by individuals directly before national courts.

(i) *Reparation provided on the basis of inter-State and other agreements*. Under a number of agreements concluded in the aftermath of the Second World War, Germany was obliged to restitute to victims stolen property such as jewellery, precious household goods and other household effects, and cultural property.^[31]

A more recent example of restitution to individuals on the basis of an inter-State agreement is the Agreement on Refugees and Displaced Persons annexed to the Dayton Accords which establishes the Commission for Real Property Claims of Displaced Persons and Refugees in Bosnia and Herzegovina and which mandates the Commission to decide on, *inter alia*, claims for return of real property,^[32] as well as for compensation for the deprivation of property in the course of hostilities since 1991, which cannot be restored to them.^[33]

The Agreement between the Government of Canada and the National Association of Japanese Canadians (Japanese-Canadian Redress Agreement) adopted in 1988 provides for apology for and acknowledgement of violations of international humanitarian law.^[34]

Another example is the United Nations Compensation Commission (UNCC) established by a UN Security Council resolution, which reviews claims for compensation for direct loss and damage arising "as a result of [Iraq's] unlawful invasion and occupation of Kuwait" suffered by States, international organizations, corporations and individuals. Although the UNCC deals principally with losses arising from Iraq's unlawful use of force, awards have also covered violations of international humanitarian law suffered by individuals.^[35] For example, the UNCC has awarded compensation to former prisoners of war held by Iraq who had been subjected to ill-treatment in violation of the Third Geneva Convention.^[36]

A further example is the Eritrea-Ethiopia Claims Commission established by the 2000 Peace Agreement between Eritrea and Ethiopia, which has the mandate "to decide through binding arbitration all claims for loss, damage or injury by ... nationals (including both natural and juridical persons) of one party against the Government of the other party or entities owned or controlled by the other party" ^[37]

Various specific funds have been created in the recent past with a mandate to award compensation to individuals. Examples include the Austrian Reconciliation Fund and the German Foundation "Remembrance, Responsibility and the Future", both established by national legislation on the basis of agreements concluded by Austria and Germany with the United States. The Austrian Reconciliation Fund was created "to make a contribution toward reconciliation, peace, and cooperation through a voluntary gesture of the Republic of Austria to natural persons who were coerced into slave labour or forced labour by the National Socialist regime on the territory of the present day Republic of Austria". The German Foundation was set up in order to "make financial compensation available ... to former forced labourers and those affected by other injustices from the National Socialist period".^[38]

Another example is the Victims Trust Fund established pursuant to Article 79 of the Statute of the International Criminal Court. The fund will include money and other property collected through fines and forfeitures imposed by the Court on perpetrators. However, it is expected that funds will also come from voluntary contributions from States, corporations, organizations and individuals.^[39]

(ii) *Reparation provided on the basis of a unilateral State act.* There are reports of direct compensation by Germany to inmates of concentration camps and to victims of medical experiments and by Norway to persons suffering from anti-Jewish measures during the Second World War.^[40] Japan has provided an apology for the treatment of "comfort women" and Norway for anti-Jewish measures during the Second World War.^[41]

Austria and Germany have adopted laws related to the restitution of objects to victims, as has the United States in the form of its Law on Restitution for WWII Internment of Japanese-Americans and Aleuts.^[42]

The creation in 1997 by France of the Study Mission on the Spoliation of Jews in France (also known as the "Mattéoli Mission") with the task of conducting a study of the various forms of spoliation visited upon the Jews of France during the Second World War, and of the scope and effect of post-war restitution efforts, points in the same direction.^[43]

(iii) *Reparation sought in national courts.* The Hague Convention (IV) and Additional Protocol I require that compensation be paid but do not indicate whether only States are recipients or also individuals, nor do they specify the mechanism for reviewing claims for compensation.^[44]

Individual claimants before national courts have encountered a number of obstacles in trying to obtain compensation on the basis of Article 3 of Hague Convention (IV), although no court has explicitly ruled out such a possibility under contemporary international law.^[45] In the *Shimoda* case in 1963, for example, the Tokyo District Court held that individuals did not have a direct right to compensation under international law, and considerations of sovereign immunity precluded proceedings against another State before Japanese courts.^[46]

Until the 1990s, German courts generally considered that the 1953 London Agreement on German External Debts had postponed the question of indemnification of individuals, though it did not exclude the possibility of granting compensation once the issue of reparations to States had been settled.^[47] As a result, after the coming into force of the 1990 Treaty on the Final Settlement with Respect to Germany ("Two-Plus-Four-Treaty"),^[48] the German courts held that, in general, they were no longer prevented from dealing with the question of compensation to individuals.^[49] As a consequence, Germany's Constitutional Court in the *Forced Labour* case in 1996 stated that there did not exist a rule of general international law preventing the payment of compensation to individuals for violations of international law.^[50] However, in the *Distomo* case in 2003, Germany's Federal Supreme Court stated that, owing to a concept of war as a "relationship from State to State" as it existed during the Second World War, a State which was responsible for crimes committed at that time was only liable to pay compensation vis-à-vis another State but not vis-à-vis the individual victims. According to the Court, international law conferred upon States the right to exercise diplomatic protection of their nationals, and the right to claim compensation was the right of the State "at least for the period in question", i.e., during the Second World War.^[51]

In the *Goldsstar* case in 1992 relating to the intervention by the United States in Panama, a US Court of Appeals found that Article 3 of the 1907 Hague Convention (IV) was not self-executing because there was no evidence of an intent to provide a private right of action.^[52] In the *Princez* case in 1992, another US Court of Appeals dismissed a claim for damages against Germany for treatment inflicted during the Second World War because it lacked jurisdiction for reasons of State immunity.^[53]

An example of compensation granted to individual claimants for injury suffered during the Second World War is the decision by Greece's Court of First Instance of Leivadia in the *Prefecture of Voiotia* case in 1997, which was upheld in 2000 by the Supreme Court. In this case, the courts applied Article 3 of the 1907 Hague Convention (IV) and Article 46 of the Hague Regulations and ruled that the victims of the *Distomo* killings could directly bring a claim against Germany for compensation and that sovereign immunity could not be invoked in connection with violations of a rule of *jus cogens* (inter alia wilful killing). However, with regard to the same case, Greece refused to give its consent necessary for the execution of the judgment against Germany for reasons of State immunity.^[54]

Non-international armed conflicts

There is an increasing amount of State practice from all parts of the world that shows that this rule applies to violations of international humanitarian law committed in non-international armed conflicts and attributable to a State. It flows directly from the basic legal principle that a breach of law involves an obligation to make reparation,^[55] as well as from the responsibility of a State for violations which are attributable to it (see Rule 149). Practice varies in that it sometimes refers to the duty to make reparations in general terms, and at other times to specific forms of reparation, including restitution, compensation and satisfaction (see *infra*).^[56] Some reparation was provided on the basis of a recognition by the government of its responsibility to provide such reparation and sometimes on the basis of its recognition that it ought to make such reparation.

It lies in the nature of non-international armed conflicts, however, that the procedures which have been made available to provide reparation in international armed conflict are not necessarily relevant in non-international armed conflict. In particular, in non-international armed conflicts, victims suffer violations in their own State and generally have access to domestic courts to claim reparation in accordance with domestic law.^[57] It is noteworthy in this respect that the International Covenant on Civil and Political Rights, as well as the three regional human rights treaties, require that States must provide a remedy for violations.^[58] The UN Human Rights Committee and the Inter-American Court of Human Rights have stated that this obligation is non-derogable.^[59]

Reparation sought from a State

The possibility for an individual victim of a violation of international humanitarian law to seek reparation from a State can be inferred from Article 75(6) of the Statute of the International Criminal Court, which states that "nothing in this article shall be interpreted as prejudicing the rights of victims under national or international law".^[60] Article 38 of the Second Protocol to the Hague Convention for the Protection of Cultural Property, which expressly refers to the duty of States to provide reparation, applies in any armed conflict.^[61]

An example from practice is the Joint Circular on Adherence to International Humanitarian Law and Human Rights of the Philippines, which provides that in the case of damage to private property in the course of legitimate security or police operations, "measures shall be undertaken whenever practicable ... to repair the damage caused".^[62] Also, in a resolution adopted in 1996, the UN General Assembly urged the Afghan authorities to provide "efficient and effective remedies" to victims of serious violations of international humanitarian law.^[63]

Other examples from practice relate to specific forms of reparation, including restitution, compensation and satisfaction:

(i) *Restitution*: In the case of *Akdivar and Others v. Turkey*, the European Court of Human Rights stated that there was a legal obligation for a violating State to put an end to the breach and to "make reparation for its consequences in such a way as to restore as far as possible the situation existing before the breach (restitutio in integrum)". However, it also stated that if this was in practice impossible, the State that ought to make reparation was to choose another means in order to comply with the judgment.^[64]

Another example is the Agreement on Refugees and Displaced Persons annexed to the Dayton Accords, which established the Commission for Real Property Claims of Displaced Persons and Refugees in Bosnia and Herzegovina, stating that refugees and displaced persons shall have the right to restitution of property of which they were deprived during the hostilities since 1991.^[65]

Similarly, the Housing and Property Claims Commission in Kosovo is given the power to decide on claims for restitution, repossession and return of the property brought by certain categories of persons, including those who lost their property rights as a result of discrimination, as well as refugees and displaced persons.^[66]

Another example is the 1998 Comprehensive Agreement on Respect for Human Rights and International Humanitarian Law in the Philippines which provides for restitution as a possible form of reparation.^[67]

(ii) *Compensation*: There is widespread and representative practice in which States have made efforts to compensate victims of violations of international humanitarian law committed in non-international armed conflicts. Examples include: the Comprehensive Agreement on Human Rights in Guatemala by which the parties "recognize that it is a humanitarian duty to compensate and/or assist victims of human rights violations"; the Comprehensive Agreement on Respect for Human Rights and International Humanitarian Law in the Philippines, by which the parties recognize the right of the victims and their families to seek justice for violations of human rights, including "adequate compensation or indemnification"; and the Russian Federation's Resolution on Compensation for Destruction of Property for Citizens Having Suffered from the Settling of the Crisis in Chechnya and Having Left Chechnya Irrevocably.^[66] Also, Chile's National Commission for Truth and Reconciliation, El Salvador's special committee investigating the whereabouts of missing persons and Sri Lanka's Commission of Inquiry into Involuntary Removal or Disappearance of Persons in certain provinces made recommendations that compensation should be paid to victims or their relatives.^[67] In its views and comments on the 1997 version of the Draft Principles and Guidelines on the Right to Reparation for Victims of (Gross) Violations of Human Rights and International Humanitarian Law, as they were then called, Chile called for inclusion of a specific provision establishing "the State's immediate, direct liability for compensation".^[68] Rwanda, in 1996, and Zimbabwe, in 1999, also announced their willingness to compensate victims of, respectively, acts of genocide and crimes against humanity committed in Rwanda and of killings committed during the armed conflict in the early 1980s in Zimbabwe.^[69]

Another instrument implementing the right of victims to compensation is the Agreement on Refugees and Displaced Persons annexed to the Dayton Accords, which establishes the Commission for Real Property Claims of Displaced Persons and Refugees in Bosnia and Herzegovina and which states that refugees and displaced persons who were deprived of their property in the course of hostilities since 1991 must be compensated if the property cannot be restored to them.^[70] UNMIK Regulation No. 2000/60, containing the Rules of Procedure and Evidence of the Housing and Property Claims Commission in Kosovo, provides for compensation to persons whose property rights were lost as a result of discrimination.^[71]

There has also been practice by international organizations calling for or recommending compensation to victims of violations of international humanitarian law in non-international armed conflicts.^[72]

(iii) *Satisfaction*. There are examples of practice where satisfaction has been provided as a form of reparation, including in the form of rehabilitation, apology, guarantees of non-repetition and establishing the truth. For example, as early as the Spanish Civil War, apologies, guarantees of non-repetition and a promise of punishing persons responsible for certain violations were made.^[73]

More recently, the Comprehensive Agreement on Respect for Human Rights and International Humanitarian Law in the Philippines provides for "rehabilitation" as a possible form of reparation.^[74] The requirement to establish the truth through investigation and to bring perpetrators to justice was stressed by the Inter-American Commission on Human Rights in a case concerning the murder of Archbishop Romero by death squads in El Salvador in 1980. The Commission established, *inter alia*, that El Salvador was responsible for:

failing to carry out its duty to investigate seriously and in good faith the violation of rights recognized by the [American Convention on Human Rights]; to identify the persons responsible for that violation, place them on trial, punish them, and make reparations for the human rights violations.

Referring to decisions by the UN Human Rights Committee, it furthermore stated that "the duty to make reparations for damage is not satisfied merely by offering a sum of money to the victim's next-of-kin. First, an end must be brought to their uncertainty and ignorance, i.e. they must be given the complete and public knowledge of the truth." It stated that this right to know the full, complete and public truth "is part of the right to reparation for human rights violations, with respect to satisfaction and guarantees of non-repetition".^[75] The principle that reparation includes the right to the truth, as well as the investigation and prosecution of the persons responsible for human rights violations, was confirmed by the Inter-American Court of Human Rights in the case of *Street Children v. Guatemala* in 2001.^[76]

Reparation sought from armed opposition groups

There is some practice to the effect that armed opposition groups are required to provide appropriate reparation for the damage resulting from violations of international humanitarian law. An example is the Comprehensive Agreement on Respect for Human Rights and International Humanitarian Law in the Philippines, which states that "the Parties to the armed conflict shall adhere to and be bound by the generally accepted principles and standards of international humanitarian law" and which provides for indemnification of the victims of violations of international humanitarian law.^[79] It is also significant that in 2001 a provincial arm of the ELN in Colombia publicly apologized for the death of three children resulting from an armed attack and the destruction of civilian houses during "an action of war" and expressed its willingness to collaborate in the recuperation of remaining objects.^[80]

There is also some practice of the United Nations supporting the obligation of armed opposition groups to provide appropriate reparation. In a resolution on Liberia adopted in 1996, the UN Security Council called upon "the leaders of the factions" to ensure the return of looted property.^[81] In a resolution on Afghanistan adopted in 1998, the UN Commission on Human Rights urged "all the Afghan parties" to provide effective remedies to the victims of violations of human rights and humanitarian law.^[82] In 1998, in his report on the causes of conflict and the promotion of durable peace and sustainable development in Africa, the UN Secretary-General recommended that "in order to make warring parties more accountable for their actions ... international legal machinery be developed to facilitate efforts to find, attach and seize the assets of transgressing parties and their leaders".^[83]

Even if it can be argued that armed opposition groups incur responsibility for acts committed by persons forming part of such groups (see commentary to Rule 149), the consequences of such responsibility are not clear. In particular, it is unclear to what extent armed opposition groups are under an obligation to make full reparation, even though in many countries victims can bring a civil suit for damages against the offenders (see commentary to Rule 151).

[79] PCIJ, *Chorzów Factory case (Merits)* (cited in Vol. II, Ch. 42, § 102); see also PCIJ Statute, Article 36, which states that "the States Parties to the present Statute may at any time declare that they recognize as compulsory *ipso facto* and without special agreement, in relation to any other state accepting the same obligation, the jurisdiction of the Court in all legal disputes concerning: ... (d) the nature or extent of the reparation to be made for the breach of an international obligation". Article 36 of the ICJ Statute contains similar wording.

[80] Draft Articles on State Responsibility, Article 51 (*ibid.*, § 86).

[81] Second Protocol to the Hague Convention for the Protection of Cultural Property, Article 38 (*ibid.*, § 80).

[82] First Geneva Convention, Article 51 (*ibid.*, § 2); Second Geneva Convention, Article 52 (*ibid.*, § 2); Third Geneva Convention, Article 131 (*ibid.*, § 2); Fourth Geneva Convention, Article 148 (*ibid.*, § 2).

[83] Draft Articles on State Responsibility, Article 34 (*ibid.*, § 157).

[84] International Law Commission, Commentary on Article 35 of the Draft Articles on State Responsibility (*ibid.*, § 351).

[85] First Protocol to the Hague Convention for the Protection of Cultural Property, §§ 1 and 3 (*ibid.*, § 310).

[86] Paris Agreement on Reparation from Germany (*ibid.*, §§ 301–302); Convention on the Settlement of Matters Arising out of the War and the Occupation (*ibid.*, §§ 304–309).

[87] Poland, Statement before the Special Political Committee of the UN General Assembly (*ibid.*, § 230).

[88] Hungary, *Military Manual* (*ibid.*, § 326).

[89] See the statement of Germany (cited in Vol. II, Ch. 12, § 460).

[90] See the statement of the United Arab Emirates (*ibid.*, § 471).

[91] See the practice of Iraq (*ibid.*, §§ 463–464 and 466) and Kuwait (*ibid.*, §§ 467–468) and the reported practice of Kuwait (cited in Vol. II, Ch. 42, § 335).

- [166] UN Security Council, Res. 686 (cited in Vol. II, Ch. 12, § 472) and Res. 3284 (*ibid.*, § 473); see also Res. 687 (cited in Vol. II, Ch. 12, § 445).
- [167] See UN Secretary-General, Further report on the status of compliance by Iraq with the obligations placed upon it under certain of the Security Council resolutions relating to the situation between Iraq and Kuwait (cited in Vol. II, Ch. 12, § 476) and Second report pursuant to paragraph 14 of resolution 1284 (1999) (*ibid.*, § 477).
- [168] See the reported practice of Belgium (*ibid.*, § 470) and the Russian Federation (*ibid.*, § 470).
- [169] 1907 Hague Convention (IV), Article 3 (cited in Vol. II, Ch. 43, § 110); Additional Protocol I, Article 91 (adopted by consensus) (*ibid.*, § 125).
- [170] See, e.g., Peace Treaty for Japan (*ibid.*, §§ 113–114); Yoshida–Stikker Protocol between Japan and the Netherlands (*ibid.*, § 115); Convention on the Settlement of Matters Arising out of the War and the Occupation (*ibid.*, §§ 116–118); Luxembourg Agreement between Germany and Israel (*ibid.*, §§ 119–120); Luxembourg Agreement between Germany and the CJMC (*ibid.*, §§ 144–149); Austrian State Treaty (*ibid.*, § 121); Agreement concerning Payments on behalf of Norwegian Nationals Victimized by National Socialist Persecution (*ibid.*, § 123); Implementation Agreement to the German Unification Treaty (*ibid.*, § 127); US–Germany Agreement concerning Final Benefits to Certain US Nationals Who Were Victims of National Socialist Measures of Persecution (also known as the “Prinz Agreement”) (*ibid.*, §§ 128–129); Agreement on Refugees and Displaced Persons annexed to the Dayton Accords (*ibid.*, §§ 130–132); US–Chinese Agreement on the Settlement of Chinese Claims resulting from the Bombardment of the Chinese Embassy in Belgrade and US–Chinese Memorandum of Understanding on the Settlement of US Claims resulting from the Bombardment of the Chinese Embassy in Belgrade (*ibid.*, §§ 133–134); Agreement on the Foundation “Remembrance, Responsibility and the Future” concluded between Germany and the United States (*ibid.*, §§ 135–137); Austrian–US Executive Agreement concerning the Austrian Reconciliation Fund (*ibid.*, § 138); Bilateral agreements between Austria and six Central and Eastern European States (*ibid.*, § 139); Peace Agreement between Eritrea and Ethiopia (*ibid.*, § 140); Washington Agreement between France and the United States (*ibid.*, §§ 141–142); Annex A to the Austrian–US Agreement concerning the Austrian General Settlement Fund (*ibid.*, §§ 143–144).
- [171] Draft Articles on State Responsibility, Article 36 (*ibid.*, § 158).
- [172] International Law Commission, Commentary on Article 36 of the Draft Articles on State Responsibility (*ibid.*, § 263). As to whether the damage is financially assessable in order to be compensated, the commentary states that “compensable personal injury encompasses not only associated material losses, such as loss of earnings and earning capacity, medical expenses and the like, but also non-material damage suffered by the individual (sometimes, though not universally, referred to as ‘moral damage’ in national legal systems). Non-material damage is generally understood to encompass loss of loved ones, pain and suffering as well as the affront to sensibilities associated with an intrusion on the person, home or private life.”
- [173] See, e.g., the practice of Canada (*ibid.*, § 211), China (*ibid.*, § 214), Iraq (*ibid.*, § 220), Kuwait (*ibid.*, § 224), Lebanon, speaking on behalf of the Group of Arab States (*ibid.*, § 226), Mexico (*ibid.*, § 227), Syrian Arab Republic (*ibid.*, § 235), United Kingdom (*ibid.*, § 237) and United States (*ibid.*, § 238).
- [174] See, e.g., UN Security Council, Res. 387 (*ibid.*, § 242), Res. 455 (*ibid.*, § 243), Res. 473 (*ibid.*, § 244), Res. 527 (*ibid.*, § 245), Res. 571 (*ibid.*, § 246), Res. 687 (*ibid.*, § 247), Res. 692 (*ibid.*, § 248) and Res. 827 (*ibid.*, § 249); UN General Assembly, Res. 50/22 C (*ibid.*, § 250), Res. 51/233 (*ibid.*, § 251) and Res. 56/83 (*ibid.*, § 252).
- [175] International Law Commission, Draft Articles on State Responsibility, Article 37 (*ibid.*, § 325). The commentary on Article 36 of the Draft Articles on State Responsibility (*ibid.*, § 352) explains that satisfaction “is concerned with non-material injury, specifically non-material injury to the State, on which a monetary value can be put only in a highly approximate and notional way.” The commentary on Article 37 explains that “satisfaction ... is the remedy for those injuries, not financially assessable, which amount to an affront (to the State)” (*ibid.*, § 353).
- [176] International Law Commission, Commentary on Article 37 of the Draft Articles on State Responsibility (*ibid.*, § 353).
- [177] United States, *Field Manual* (*ibid.*, § 328).
- [178] Draft Articles on State Responsibility, Article 30.
- [179] Draft Articles on State Responsibility, Article 33(2).
- [180] International Law Commission, Commentary on Article 33 of the Draft Articles on State Responsibility (cited in Vol. II, Ch. 43, § 350).
- [181] See the practice of Croatia (*ibid.*, § 90) and United States (*ibid.*, § 93).
- [182] UN General Assembly, Res. 48/153 (*ibid.*, § 94) and Res. 49/196 (*ibid.*, § 95); see also UN Commission on Human Rights, Res. 1998/70 (*ibid.*, § 96).

- [10] See Convention on the Settlement of Matters Arising out of the War and the Occupation, Chapter 3, Article 2 (*ibid.*, § 304); Protocol No. 1 of the Luxembourg Agreement between Germany and the Conference on Jewish Material Claims against Germany (*ibid.*, § 315); see also the legislation of Germany (*ibid.*, § 330).
- [11] See Agreement on Refugees and Displaced Persons annexed to the Dayton Accords, Articles VII and XI (*ibid.*, § 317).
- [12] See Agreement on Refugees and Displaced Persons annexed to the Dayton Accords, Articles I and XII(2) (*ibid.*, §§ 130–132).
- [13] See the practice of Canada (*ibid.*, § 333).
- [14] See, e.g., UNCC, Governing Council, Decision 3 (*ibid.*, §§ 248 and 272) and Decision 11 (*ibid.*, §§ 248 and 274).
- [15] UNCC, Report and Recommendations made by the Panel of Commissioners concerning Part One of the Second Instalment of Claims for Serious Personal Injury or Death (*ibid.*, § 276).
- [16] To date, the Commission, ruling on claims brought by Eritrea and Ethiopia on behalf of their nationals respectively, has awarded compensation related to the treatment of former prisoners of war by the two States, see Eritrea–Ethiopia Claims Commission, Prisoners of War, Eritrea's and Ethiopia's Claims, Partial Awards (*ibid.*, § 281).
- [17] See the legislation of Austria (*ibid.*, § 179) and Germany (*ibid.*, § 183).
- [18] ICC Statute, Article 79, which states that "(1) A Trust Fund shall be established by decision of the Assembly of States Parties for the benefit of victims of crimes within the jurisdiction of the Court, and of the families of such victims. (2) The Court may order money and other property collected through fines or forfeiture to be transferred, by order of the Court, to the Trust Fund. (3) The Trust Fund shall be managed according to criteria to be determined by the Assembly of States Parties."
- [19] See the practice of Germany (cited in Vol. II, Ch. 42, § 239) and Norway (*ibid.*, § 229); "On behalf of victims of pseudo-medical experiments: Red Cross action", *International Review of the Red Cross*, No. 142, 1973, pp. 3–21.
- [20] See the practice of Japan (cited in Vol. II, Ch. 42, §§ 336–339) and Norway (*ibid.*, § 229).
- [21] See the legislation of Austria (*ibid.*, § 329), Germany (*ibid.*, § 330) and United States (*ibid.*, § 331).
- [22] See the practice of France (*ibid.*, § 334).
- [23] Hague Convention (IV), Article 3 (*ibid.*, § 110); Additional Protocol I, Article 91 (*ibid.*, § 125).
- [24] See, e.g., Germany, Administrative Court of Appeal of Münster, *Personal Injuries case* (*ibid.*, § 190); Germany, Federal Supreme Court, *Reparation Payments case* (*ibid.*, § 191); Germany, Second Chamber of the Constitutional Court, *Forced Labour case* (*ibid.*, § 192); Germany, Federal Supreme Court, *Dislomo case*, (*ibid.*, 193); Greece, Court of First Instance of Larissa, *Prefecture of Voiotia case* (*ibid.*, § 194); Japan, Tokyo District Court, *Shimoda case* (*ibid.*, § 195); Japan, Tokyo High Court and Supreme Court, *Siberian Detainees case* (*ibid.*, § 196); Japan, Tokyo District Court and Tokyo High Court, *Apology for the Kamishisaka Slaughter of Koreans case* (*ibid.*, § 197); Japan, Tokyo District Court, *Ex-Allied Nationals Claims case*, *Dutch Nationals Claims case* and *Philippine "Comfort Women" Claims case* (*ibid.*, § 198); Japan, Fukuoka District Court, *Zhong Baoheng and Others case* (*ibid.*, § 199); Japan, Yamaguchi Lower Court and Hiroshima High Court, *Ko Oiso Hei Incidents case* (*ibid.*, § 200); United States, Court of Appeals (Fourth Circuit), *Goldstar case* (*ibid.*, § 203); United States, District Court for the District of Columbia and Court of Appeals for the District of Columbia, *Prinex case* (*ibid.*, § 204); United States, District Court for the District of Columbia, *Comfort Women case* (*ibid.*, § 209).
- [25] Japan, Tokyo District Court, *Shimoda case* (*ibid.*, § 195).
- [26] See Germany, Federal Supreme Court, *Reparation Payments case* (*ibid.*, § 191).
- [27] Treaty on the Final Settlement with Respect to Germany ("Two-Plus-Four-Treaty") between the Federal Republic of Germany, the German Democratic Republic, France, the USSR, the United Kingdom and the United States, 12 September 1990.
- [28] See, e.g., Germany, Constitutional Court, *Forced Labour case* (cited in Vol. II, Ch. 42, § 192); Germany, Federal Supreme Court, *Dislomo case* (*ibid.*, § 193).
- [29] Germany, Constitutional Court, *Forced Labour case* (*ibid.*, § 192).
- [30] Germany, Federal Supreme Court, *Dislomo case* (*ibid.*, § 193).
- [31] United States, Court of Appeals, *Goldstar case* (*ibid.*, § 203).

- [188] United States, Court of Appeals for the District of Columbia, *Prince* case (*ibid.*, § 204).
- [189] Greece, Court of First Instance of Leivadia and Supreme Court, *Prefecture of Voiotia* case (*ibid.*, § 194); Greece, Statement before the European Court of Human Rights in the *Kalogiropoulos and Others* case (*ibid.*, § 194).
- [190] See, e.g., PCIJ, *Chorzów Factory* case (*Merits*) (*ibid.*, § 102); see also PCIJ Statute, Article 36, which states that "the States Parties to the present Statute may at any time declare that they recognize as compulsory *ipso facto* and without special agreement, in relation to any other state accepting the same obligation, the jurisdiction of the Court in all legal disputes concerning: ... (d) the nature of the reparation to be made for the breach of an international obligation". Article 36(2) of the Statute of the International Court of Justice contains similar wording.
- [191] Article 34 of the Draft Articles on State Responsibility provides that "full reparation for the injury caused by the internationally wrongful act shall take the form of restitution, compensation or satisfaction, either singly or in combination" (*ibid.*, §§ 157 and 323). In addition, it should be noted that Article 75(2) of the ICC Statute concerning "Reparations to victims" gives the Court the power to "make an order directly against a convicted person specifying appropriate reparations to, or in respect of, victims, including restitution, compensation and rehabilitation".
- [192] See, e.g., Colombia, *Basic Military Manual* (*ibid.*, § 162); American Law Institute, Restatement (Third) of the Foreign Relations Law of the United States (*ibid.*, §§ 107, 292 and 363). It should be noted that diplomatic protection would still be possible in a situation where foreign residents or visitors are injured by the armed forces of a State in the context of a non-international armed conflict.
- [193] International Covenant on Civil and Political Rights, Article 2(3); European Convention on Human Rights, Article 13; American Convention on Human Rights, Articles 10 and 25; African Charter on Human and Peoples' Rights, Article 7(1)(a) (implicit).
- [194] See, e.g., UN Human Rights Committee, General Comment No. 29 (Article 4 of the International Covenant on Civil and Political Rights), 24 July 2001, § 14; Inter-American Court of Human Rights, *Judicial Guarantees* case, Advisory Opinion, §§ 24–26.
- [195] ICC Statute, Article 75(6) (cited in Vol. II, Ch. 42, § 79).
- [196] Second Protocol to the Hague Convention for the Protection of Cultural Property, Article 38 (*ibid.*, § 80).
- [197] Philippines, Joint Circular on Adherence to IHL and Human Rights (*ibid.*, § 87).
- [198] UN General Assembly, Res. 51/108 (*ibid.*, § 96).
- [199] European Court of Human Rights, *Akdivar and Others v. Turkey* (*ibid.*, § 356). The Court's powers to provide "just satisfaction" are based on the European Convention for the Protection of Human Rights and Fundamental Freedoms, Article 41 (*ibid.*, § 303). The Inter-American Court of Human Rights has similar powers to provide "fair compensation" on the basis of the American Convention on Human Rights, Article 63(1) (*ibid.*, § 312). The African Court of Human and Peoples' Rights will have powers to order "the payment of fair compensation or reparation" on the basis of the Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court of Human and Peoples' Rights, Article 27 (*ibid.*, § 314).
- [200] Agreement on Refugees and Displaced Persons annexed to the Dayton Accords, Article 1(1) (*ibid.*, § 316).
- [201] UNMIK Regulation No. 2000/60, Section 2(2), (5) and (6) (*ibid.*, § 156). The Housing and Property Claims Commission was established by UNMIK Regulation No. 1999/23 (*ibid.*, § 219).
- [202] Comprehensive Agreement on Respect for Human Rights and IHL in the Philippines, Part III, Article 2(3) (*ibid.*, § 318).
- [203] See Comprehensive Agreement on Human Rights in Guatemala, Article VIII (*ibid.*, § 152); Comprehensive Agreement on Respect for Human Rights and IHL in the Philippines, Part III, Article 2(3) (*ibid.*, § 154); the legislation of the Russian Federation (*ibid.*, § 184).
- [204] See the practice of Chile (*ibid.*, § 212), El Salvador (*ibid.*, § 215) and Sri Lanka (*ibid.*, §§ 233–234).
- [205] See the practice of Chile (*ibid.*, § 212).
- [206] See the practice of Rwanda (*ibid.*, § 232) and Zimbabwe (*ibid.*, § 241).
- [207] Agreement on Refugees and Displaced Persons annexed to the Dayton Accords, Article XI (*ibid.*, § 153).
- [208] UNMIK Regulation No. 2000/60, Section 2(3) (*ibid.*, § 156).
- [209] UNMIK Regulation No. 2000/60, Section 2(2) (*ibid.*, § 156).
- [210] UN Commission on Human Rights, Res. 1995/77 (*ibid.*, § 253); UN Sub-Commission on Human Rights, Res. 1993/23 (*ibid.*, § 254) and Res. 1995/5 (*ibid.*, § 255); UN Secretary-General, Report on the causes of conflict and the promotion of durable peace and sustainable development in Africa (*ibid.*, § 258); UN Commission on the Truth for El Salvador, Report (*ibid.*, § 262).
- [211] Spain; Note from the President of the Spanish Junta de Defensa Nacional (*ibid.*, § 360).
- [212] Comprehensive Agreement on Respect for Human Rights and IHL in the Philippines, Part III, Article 2(3) (*ibid.*, § 154).
- [213] Inter-American Commission on Human Rights, *Monsignor Oscar Arnulfo Romero y Galdámez (El Salvador)* (*ibid.*, § 357).
- [214] Inter-American Court of Human Rights, *Street Children v. Guatemala* (*ibid.*, § 358).
- [215] Comprehensive Agreement on Respect for Human Rights and IHL in the Philippines, Part III, Article 2(3) and Part IV, Articles 1 and 6 (*ibid.*, § 318).
- [216] See the practice of the National Liberation Army (Colombia) (*ibid.*, § 365).
- [217] UN Security Council, Res. 1071 (*ibid.*, § 346).
- [218] UN Commission on Human Rights, Res. 1998/70 (*ibid.*, § 348).
- [219] UN Secretary-General, Report on the causes of conflict and the promotion of durable peace and sustainable development in Africa (*ibid.*, § 258).



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Tech Against Trafficking - Mapping the Landscape of Technology Tools

Side event at the OSCE 19th Alliance against Trafficking in Persons Conference

RESPECT



South Africa's
booming heroin trade



Sanctions and smuggling:
Iraqi Kurdistan and Iran's
border economies

Posted on: 04 April 2019

Tech Against Trafficking (TAT) is a coalition of technology companies – including Amazon, AT&T, BT, Microsoft, Nokia, Salesforce.org, and Vodafone – that believe technology can and must play a major role in preventing and disrupting human trafficking and empowering survivors.

Launched in 2018, TAT is committed to supporting and scaling promising technologies. The Global Initiative Against Transnational Organized Crime has been chosen as TAT Research Lead, along with the RESPECT founding organizations. We have since then begun mapping the landscape of tech tools currently being used in the anti-trafficking sector and identified over 260 tools across a range of geographies, target users, focus areas, and technologies – from facial recognition, blockchain, and artificial intelligence, to basic smartphone apps.

EVENT DETAILS

TIME: 13.30 - 14.45

DATE: 9 April 2019

ADDRESS: Room 532, OSCE
Congress Centre, Hofburg,
Heldenplatz, Vienna

<https://globalinitiative.net/tech-against-trafficking-mapping-the-landscape-of-technology-tools/>

VII. *Victims' right to remedies*

11. Remedies for gross violations of international human rights law and serious violations of international humanitarian law include the victim's right to the following as provided for under international law:

- (a) Equal and effective access to justice;
- (b) Adequate, effective and prompt reparation for harm suffered; and
- (c) Access to relevant information concerning violations and reparation mechanisms.

VIII. *Access to justice*

12. A victim of a gross violation of international human rights law or of a serious violation of international humanitarian law shall have equal access to an effective judicial remedy as provided for under international law. Other remedies available to the victim include access to administrative and other bodies, as well as mechanisms, modalities and proceedings conducted in accordance with domestic law. Obligations arising under international law to secure the right to access justice and fair and impartial proceedings shall be reflected in domestic laws. To that end, States should:

- (a) Disseminate, through public and private mechanisms, information about all available remedies for gross violations of international human rights law and serious violations of international humanitarian law;
- (b) Take measures to minimize the inconvenience to victims and their representatives, protect against unlawful interference with their privacy as appropriate and ensure their safety from intimidation and retaliation, as well as that of their families and witnesses, before, during and after judicial, administrative, or other proceedings that affect the interests of victims;
- (c) Provide proper assistance to victims seeking access to justice;
- (d) Make available all appropriate legal, diplomatic and consular means to ensure that victims can exercise their rights to remedy for gross violations of international human rights law or serious violations of international humanitarian law.

13. In addition to individual access to justice, States should endeavour to develop procedures to allow groups of victims to present claims for reparation and to receive reparation, as appropriate.

14. An adequate, effective and prompt remedy for gross violations of international human rights law or serious violations of international humanitarian law should include all available and appropriate international processes in which a person may have legal standing as well as national mechanisms to ensure effective remedies.

BROWNLIE'S DOCUMENTS ON

Human Rights

SIXTH EDITION



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Edited by Ian Brownlie
& Guy S. Goodwin-Gill

Carlos Fernández de Casadevante Romani

International Law of Victims

 Springer

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The Approach of International Law to Victims

Traditionally, International Law has not paid sufficient attention to victims.¹ An explanation for this can be found in the particular nature of international law: States make, interpret and apply international law. Therefore, as a result of this and owing to the predominantly interstate structure of the international community, international norms have been created to respond to states' interests and goals. In this context, states have paid attention to persons or individuals only in some particular fields of international law.

This is the case, for example, with human rights, international criminal law (with regard to international criminal responsibility of individuals)² or international humanitarian law. But in each of these branches of international law, the way in which victims are considered differs. So, in international law of human rights, victims are considered when the State is the author of the breach of the international obligation, but this branch of international law does not consider the breach of international obligations in this field by non-state actors.³

Nevertheless, such an approach does not mean that only states breach human rights because non-state actors do so as well. Although this is an established fact, it has taken a lot of time for it to gain global recognition and acknowledgement in the international arena by international norms and by statements of international organs.⁴ An example of this is the report to the Sub-Commission on the Promotion

¹ As Bottighero clearly states, victims have been left on the periphery of domestic and international political agenda (cf. Bottighero 2004, 2).

² See Fernández de Casadevante Román (ed) (2011).

³ On this issue, see Clapham (2006).

⁴ An example of it are the resolutions adopted since 1994 onwards by the UN Commission on Human Rights under the title "Human rights and terrorism". The UN Commission on Human Rights has also qualified terrorism as a violation of human rights (see resolutions 1994/46, 1995/43, 1996/47, 1997/52, 1998/47, 1999/27, 2000/30, 2001/37, 2002/35 and 2003/37). Also, the Sub-



Council of Europe Convention on Action against Trafficking in Human Beings *

Warsaw, 16.V.2005

Article 12 – Assistance to victims

- 1 Each Party shall adopt such legislative or other measures as may be necessary to assist victims in their physical, psychological and social recovery. Such assistance shall include at least:
 - a standards of living capable of ensuring their subsistence, through such measures as: appropriate and secure accommodation, psychological and material assistance;
 - b access to emergency medical treatment;
 - c translation and interpretation services, when appropriate;
 - d counselling and information, in particular as regards their legal rights and the services available to them, in a language that they can understand;
 - e assistance to enable their rights and interests to be presented and considered at appropriate stages of criminal proceedings against offenders;
 - f access to education for children.
- 2 Each Party shall take due account of the victim's safety and protection needs.
- 3 In addition, each Party shall provide necessary medical or other assistance to victims lawfully resident within its territory who do not have adequate resources and need such help.

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Updated Set of principles for the protection and promotion of human rights through action to combat impunity



**Economic and Social
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COMMISSION ON HUMAN RIGHTS
Sixty-first session
Item 17 of the provisional agenda

PROMOTION AND PROTECTION OF HUMAN RIGHTS

Impunity

**Report of the independent expert to update the Set of principles
to combat impunity, Diane Orentlicher***

Addendum

**Updated Set of principles for the protection and promotion
of human rights through action to combat impunity**

**SYNOPTICAL TABLE OF THE UPDATED SET OF PRINCIPLES
FOR THE PROTECTION AND PROMOTION OF HUMAN RIGHTS
THROUGH ACTION TO COMBAT IMPUNITY**

Preamble

Definitions

I. COMBATING IMPUNITY: GENERAL OBLIGATIONS

- Principle 1. General obligations of States to take effective action to combat impunity

II. THE RIGHT TO KNOW

A. General principles

- Principle 2. The inalienable right to the truth
- Principle 3. The duty to preserve memory
- Principle 4. The victims' right to know
- Principle 5. Guarantees to give effect to the right to know

B. Commissions of inquiry

- Principle 6. The establishment and role of truth commissions
- Principle 7. Guarantees of independence, impartiality and competence
- Principle 8. Definition of a commission's terms of reference
- Principle 9. Guarantees for persons implicated
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- Principle 13. Publicizing the commission's reports

C. Preservation of and access to archives bearing witness to violations

- Principle 14. Measures for the preservation of archives
- Principle 15. Measures for facilitating access to archives

I. COMBATING IMPUNITY: GENERAL OBLIGATIONS

PRINCIPLE 1. GENERAL OBLIGATIONS OF STATES TO TAKE EFFECTIVE ACTION TO COMBAT IMPUNITY

Impunity arises from a failure by States to meet their obligations to investigate violations, to take appropriate measures in respect of the perpetrators, particularly in the area of justice, by ensuring that those suspected of criminal responsibility are prosecuted, tried and duly punished; to provide victims with effective remedies and to ensure that they receive reparation for the injuries suffered; to ensure the inalienable right to know the truth about violations; and to take other necessary steps to prevent a recurrence of violations.

II. THE RIGHT TO KNOW

A. General principles

PRINCIPLE 2. THE INALIENABLE RIGHT TO THE TRUTH

Every people has the inalienable right to know the truth about past events concerning the perpetration of heinous crimes and about the circumstances and reasons that led, through massive or systematic violations, to the perpetration of those crimes. Full and effective exercise of the right to the truth provides a vital safeguard against the recurrence of violations.

PRINCIPLE 3. THE DUTY TO PRESERVE MEMORY

A people's knowledge of the history of its oppression is part of its heritage and, as such, must be ensured by appropriate measures in fulfilment of the State's duty to preserve archives and other evidence concerning violations of human rights and humanitarian law and to facilitate knowledge of those violations. Such measures shall be aimed at preserving the collective memory from extinction and, in particular, at guarding against the development of revisionist and negationist arguments.

PRINCIPLE 4. THE VICTIMS' RIGHT TO KNOW

Irrespective of any legal proceedings, victims and their families have the imprescriptible right to know the truth about the circumstances in which violations took place and, in the event of death or disappearance, the victims' fate.

PRINCIPLE 5. GUARANTEES TO GIVE EFFECT TO THE RIGHT TO KNOW

States must take appropriate action, including measures necessary to ensure the independent and effective operation of the judiciary, to give effect to the right to know. Appropriate measures to ensure this right may include non-judicial processes that complement the role of the judiciary. Societies that have experienced heinous crimes perpetrated on a massive or systematic basis may benefit in particular from the creation of a truth commission or

other commission of inquiry to establish the facts surrounding those violations so that the truth may be ascertained and to prevent the disappearance of evidence. Regardless of whether a State establishes such a body, it must ensure the preservation of, and access to, archives concerning violations of human rights and humanitarian law.

B. Commissions of inquiry

PRINCIPLE 6. THE ESTABLISHMENT AND ROLE OF TRUTH COMMISSIONS

To the greatest extent possible, decisions to establish a truth commission, define its terms of reference and determine its composition should be based upon broad public consultations in which the views of victims and survivors especially are sought. Special efforts should be made to ensure that men and women participate in these deliberations on a basis of equality.

In recognition of the dignity of victims and their families, investigations undertaken by truth commissions should be conducted with the object in particular of securing recognition of such parts of the truth as were formerly denied.

PRINCIPLE 32. REPARATION PROCEDURES

All victims shall have access to a readily available, prompt and effective remedy in the form of criminal, civil, administrative or disciplinary proceedings subject to the restrictions on prescription set forth in principle 23. In exercising this right, they shall be afforded protection against intimidation and reprisals.

Reparations may also be provided through programmes, based upon legislative or administrative measures, funded by national or international sources, addressed to individuals and to communities. Victims and other sectors of civil society should play a meaningful role in the design and implementation of such programmes. Concerted efforts should be made to ensure that women and minority groups participate in public consultations aimed at developing, implementing, and assessing reparations programmes.

Exercise of the right to reparation includes access to applicable international and regional procedures.

PRINCIPLE 33. PUBLICIZING REPARATION PROCEDURES

Ad hoc procedures enabling victims to exercise their right to reparation should be given the widest possible publicity by private as well as public communication media. Such dissemination should take place both within and outside the country, including through consular services, particularly in countries to which large numbers of victims have been forced into exile.

PRINCIPLE 34. SCOPE OF THE RIGHT TO REPARATION

The right to reparation shall cover all injuries suffered by victims; it shall include measures of restitution, compensation, rehabilitation, and satisfaction as provided by international law.

In the case of forced disappearance, the family of the direct victim has an imprescriptible right to be informed of the fate and/or whereabouts of the disappeared person and, in the event of decease, that person's body must be returned to the family as soon as it has been identified, regardless of whether the perpetrators have been identified or prosecuted.

Remedial Approaches to Human Rights Violations: The Inter-American Court of Human Rights and Beyond

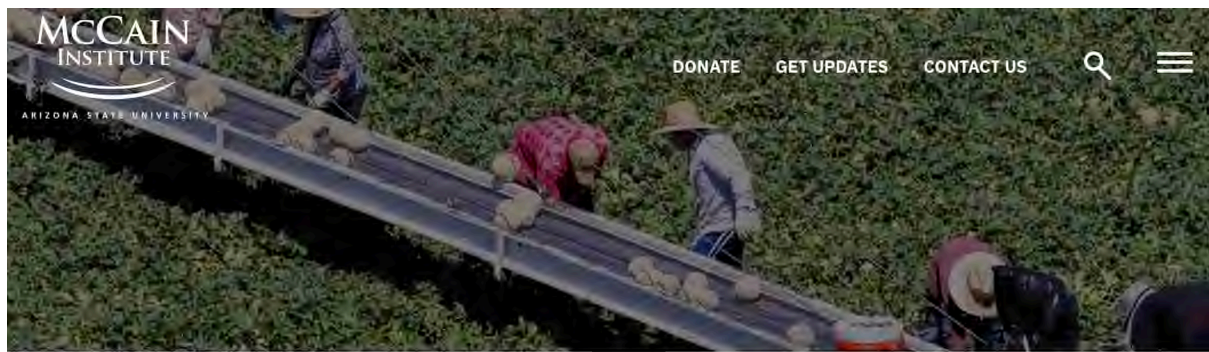


Thomas Antkowiak

A sustained reflection upon remedial obligations and possibilities is particularly necessary at this juncture in the development of international law, where important mechanisms with reparative functions have recently sprung up around the world: the International Criminal Court, the African Court of Human Rights, and several national schemes, as a result of proliferating transitional justice initiatives. This Article argues for a remedial model that emphasizes the restorative measures of satisfaction and rehabilitation, as well as general assurances of non-repetition.

The work first examines the case law of the Inter-American Court of Human Rights, the only international human rights body with binding powers that has consistently ordered equitable remedies in conjunction with compensation. The Article next considers the strengths and limitations of the Inter-American Tribunal's unique reparative approach, which has been neglected in the literature despite significant evolution in recent years. The following section attempts to refine the Court's normative model by proposing a participative methodology, consisting in procedural reforms, to calibrate remedies more precisely to a victim's situation and necessities. Finally, the work discusses how the Court's victim-conscious balance of non-monetary orders and economic compensation, which has revamped standards for redress in international law, should be incorporated to a greater extent into the remedial approaches of other international courts and domestic institutions.

More Info: Columbia Journal of Transnational Law, Vol. 46, No. 2, 2008



The Buffett-McCain Institute Initiative to Combat Modern Slavery

Combating Human Trafficking



In spring 2017, the Howard G. Buffett Foundation and the McCain Institute for International Leadership at Arizona State University launched a three-year multi-disciplinary initiative to combat human trafficking in the agricultural sector.

Forced Labor is a modern form of slavery and a fundamental violation of human rights. Victims of forced labor, a type of human trafficking, can be found in factories, on farms, at construction sites and more. Through force, fraud or coercion, victims are made to work for little or no pay. Agricultural workers are particularly vulnerable because they are excluded from some labor laws, are low paid, work in remote and isolated locations, often have low levels of literacy, and may lack legal immigration status.

The objective of the Buffett-McCain Institute Initiative to Combat Modern Slavery is to test, and then replicate, a program that:

- **Ends trafficker impunity** by supporting a justice system able to effectively, fairly and efficiently handling forced labor and labor exploitation cases.
- **Secures justice for victims** of forced labor and severe forms of labor exploitation.
- **Prevents the crime** by bringing the Fair Food Program to Texas.
- **Leverages resources and increases coordination** through multi-sectoral partnerships.

COMBATTRE LA TRAITE DES PERSONNES

Guide à l'usage des parlementaires

LA TRAITE DES ETRES HUMAINS  UN CRIME QUI NOUS DÉSHONORE



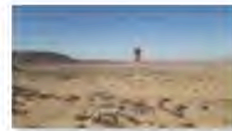
Geneva Call publishes a study on the negotiation of humanitarian access in North Kivu

News



1 February 2019

Geneva Call holds a workshop in Beirut to support NGOs working in Syria



22 January 2019

Final destruction of 2,485 stockpiled anti-personnel mines in Western Sahara



14 January 2019

"Armed conflicts have rules too": press conference in Kiev



17 December 2018

Iraq: two armed actors sign a humanitarian declaration to protect civilians, children and displaced people



UNITED NATIONS HUMAN RIGHTS
MANAGEMENT —————
2018 ————— 2021 **PLAN**



THEORY OF CHANGE

WHAT WE DO

- PROVIDE EXPERT LEGAL ADVICE ON HUMAN RIGHTS ISSUES
- FACILITATE LEARNING AND KNOWLEDGE TRANSFER
- DELIVER HUMAN RIGHTS EDUCATION
- RAISE HUMAN RIGHTS AWARENESS
- COMMUNICATE
- MONITOR AND PUBLICLY REPORT ON HUMAN RIGHTS SITUATIONS
- ADVOCATE FOR HUMAN RIGHTS
- DIRECTLY PROTECT CIVIL SOCIETY MEMBERS AND HUMAN RIGHTS DEFENDERS
- FACILITATE DIALOGUE BETWEEN DIVERSE STAKEHOLDERS ON HUMAN RIGHTS ISSUES
- BUILD NETWORKS AND ALLIANCES TO EXTEND HUMAN RIGHTS PROMOTION AND PROTECTION
- ENABLE THE FUNCTIONING OF THE INTERNATIONAL HUMAN RIGHTS MECHANISMS

OUR PILLARS

- **MECHANISMS**
Increasing implementation of the outcomes of the international human rights mechanisms.
- **DEVELOPMENT**
Advancing sustainable development through human rights
- **PEACE AND SECURITY**
Preventing violations and strengthening protection of human rights, including in situations of conflict and insecurity
- **NON-DISCRIMINATION**
Enhancing equality and countering discrimination
- **ACCOUNTABILITY**
Strengthening the rule of law and accountability for human rights violations
- **PARTICIPATION**
Enhancing participation and protecting civic space

THE RESULTS WE CONTRIBUTE TO

- State laws and policies protect and promote human rights
- State institutions, non-state actors and the private sector promote, protect and respect human rights
- State accountability mechanisms monitor, investigate and provide redress for human rights violations
- Public participation in policy-making processes grows, particularly by women and members of groups facing discrimination
- Public support grows for protection of human rights
- Member States and other actors engage with United Nations human rights mechanisms
- International and regional human rights mechanisms and bodies promote and protect human rights effectively
- The international community responds effectively to critical human rights situations and issues
- International human rights law and standards progress
- Human rights are effectively integrated in UN policies and programmes

GOAL
ALL
HUMAN
RIGHTS
ARE
ACHIEVED
FOR ALL



Women's Rights are Human Rights



UNITED NATIONS
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OFFICE OF THE HIGH COMMISSIONER

The Special Rapporteur on the independence of judges and lawyers has drawn attention to the problems of informal justice systems in relation to women's rights to access to justice and to an effective remedy. For instance, she has highlighted cases of gender-based violence in which staff of the public prosecution service pressured victims into dropping their charges and resolving the situation through conciliation or mediation (A/HRC/17/30/Add.3).

The Special Rapporteur on violence against women has also commented on informal justice mechanisms or alternative dispute mechanisms in her country mission reports. Her country visits have revealed that in many countries where the formal justice system exists in parallel with traditional or customary systems for dispute resolution, as well as with religious systems in some cases, the formal justice system is weak and often inaccessible to women. In Somalia for instance, there is a complex interrelationship between customary, religious and formal dispute settlement. Clan interests often take precedence over the interests of individual victims and families choose to reconcile through the customary system instead of seeking redress for victims. This leads to women victims of rape being forced to marry the rapist, following the ruling of male village elders applying customary practices (A/HRC/20/16/Add.3). In Ghana, traditional authorities, such as tribal chiefs in many rural areas, rule over issues and disputes regarding land and property rights, as well as matters involving "supernatural interference", including allegations of witchcraft. Women who are accused of practising witchcraft are ostracized by their communities and displaced as a result of these allegations, often violently

⁶⁴ *Progress of the World's Women 2011–2012*, pp. 67–68.

driven away, physically assaulted or even murdered (A/HRC/7/6/Add.3). In Afghanistan, sharia law, customary law, the formal, secular legal system and international law exist in parallel. The Special Rapporteur found that sharia law and tribal customs often get mixed up, and practices that would violate Islamic teachings are applied at local level, such as child marriage, *bad*, denial of the rights of widows and inheritance rights of women. Local councils (*shura* or *jirga*), composed of locally influential men, mediate cases including those related to women's rights and violence against women. Their decisions are binding and arguably "inherently discriminatory against women" (E/CN.4/2006/61/Add.5).

It is the responsibility of States to ensure that, if informal systems or mechanisms of justice like reconciliation are used, these comply with international human rights standards. In practice, however, research has shown that informal justice mechanisms often discriminate against women, and that women are excluded from the decision-making processes when their cases are being reconciled and decided upon. Marriage, divorce, access to land, property and violence against women are all examples of cases affecting women's rights that are often handled through reconciliation or other informal justice mechanisms.⁹⁰ Furthermore, research has demonstrated that, in cases of intrafamily violence, reconciliation is inadvisable. The parties to the process do not have equal bargaining positions and, according to the Inter-American Commission on Human Rights, in a number of countries it is clear that the agreements reached in the framework of mediation compound the physical and emotional risks for women. Generally, the assailant does not honour the agreement and the agreement itself does not address the causes and consequences of the violence.⁹¹

The Special Rapporteur on the independence of judges and lawyers recommended that international human rights law should be the starting point, taking traditional justice systems into account, but regarding them as having validity only insofar as their principles and practices conform to international standards (A/HRC/4/25).

⁹⁰ Ibid., pp. 68-78.

⁹¹ Inter-American Commission on Human Rights, *Access to Justice for Women Victims of Sexual Violence in Mesoamerica* (OEA/Ser.L/V/II Doc. 63), para. 269.