

::: THE VICTIMS REPARATIONS GUIDELINES

BASIC PRINCIPLES AND GUIDELINES ON RIGHTS TO A REMEDY AND REPARATIONS FOR VICTIMS OF VIOLATIONS OF INTERNATIONAL HUMAN RIGHTS AND HUMANITARIAN LAW (This Law was Written for Victims of Abuse of Power, Displacement, and Slavery)

(Rev. 15 August
2003) Background

The Sub-Commission on Prevention of Discrimination and Protection of Minorities, in its resolution 1989/13, decided to entrust the Special Rapporteur, Mr. Theo van Boven, with the task of undertaking a study concerning the right to restitution, compensation and rehabilitation for victims of gross violations of human rights and fundamental freedoms. In 1993, Mr. van Boven submitted the study in his final report to the Sub-Commission (FJCN.4/Sub.2/1993/8). The Commission regarded the proposed basic principles and guidelines contained in the study of the Special Rapporteur as a useful basis for giving priority to the question of restitution, compensation and rehabilitation.

In accordance with Commission resolution 1998/43, Mr. M. Cherif Bassiouni was appointed as independent expert to prepare a revised version of the draft of basic principles and guidelines, taking into account the views and comments provided by States, intergovernmental and non-governmental organizations. In its resolution 1999/133, the Commission noted with appreciation the report of the independent expert (FJCN.4/1999/65). In 2000, Mr. Bassiouni submitted the final report containing a revised version of the basic principles and guidelines (FJCN.4/2000/62) to the Commission at its fifty-sixth session. Additionally, Mr. Bassiouni held two consultative meetings in Geneva for all interested Member States, intergovernmental and non-governmental organizations and comments made during those meetings were taken into account in formulating the principles and guidelines.

On the basis of Commission resolutions 2000/41 and 2002/144, the Office of High Commissioner for Human Rights (OHCHR) circulated the text of the principles and guidelines and comments were received from Member States along with intergovernmental and non-governmental organizations.

Preamble

The Commission on Human Rights

Recalling the provisions providing a right to a remedy for victims of violations of international human rights and humanitarian law found in numerous international instruments, in particular the Universal Declaration of Human Rights at article 8, the International Covenant on Civil and Political Rights at article 2, the International Convention on the Elimination of All Forms of Racial Discrimination at article 6, the Convention against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment at article 11, and the Convention on the Rights of the Child at article 39,

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

1 article 13,

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

6 Reaffirming the principles enunciated in the Declaration of Basic Principles of Justice for
7 Victims

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9 of Crime and Abuse of Power, including that victims should be treated with compassion and
10 respect for their dignity, have their right to access to justice and redress mechanisms fully
11 respected, and that the establishment, strengthening and expansion of national funds for
12 compensation to victims should be encouraged, together with the expeditious development of
13 appropriate rights and remedies for victims,

14 Recalling resolution 1989/57 of 24 May 1989 of the Economic and Social Council, entitled
15 "Implementation of the Declaration of Basic Principles of Justice for Victims of Crime and Abuse
16 of Power," as well as Council resolution 1990/22 of 24 May 1990, entitled "Victims of crime and
17 abuse of power,"

18 Noting that in resolution 827 (1993) of 25 May 1993 in which it adopted the Statute of the
19 International Criminal Tribunal for the Former Yugoslavia, the Security Council decided that "the
20 work of the International Tribunal shall be carried out without prejudice to the right of the victims
21 to seek, through appropriate means, compensation for damages incurred as a result of violations
22 of international humanitarian law,"

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

30 Emphasizing that the principles and guidelines do not create new substantive international
31 or domestic legal obligations but identify mechanisms, modalities, procedures and methods for
32 the implementation of existing legal obligations under international human rights law and
33 international humanitarian law,

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

39 Noting that international human rights law and international humanitarian law have
40 developed along separate legal and historic tracks, which nevertheless overlap in some respects
41 and provide coextensive protections of victims, though not necessarily in the same manner or
42 using the same terminology,

1 Noting also that conflicts of a non-international character as well as internal conflicts that
2 have occurred since the Second World War reveal that a high level of victimization has occurred
3 at the hands of non-State actors and that the (victims of violations of international humanitarian
4 law and human rights law require the same protections as other victims, not only on the basis of
5 principles of State responsibility but also on the basis of social and human solidarity),

6 Noting further, as established in the Declaration of Basic Principle of Justice for victims of
7 crime and Abuse of Power, that victims of serious abuses of political and economic power are
8 entitled to the protection of their rights as other victims,

9 Noting further those contemporary forms of victimization, while essentially directed against
10 individuals, are nevertheless also directed against classes of persons or identifiable groups of
11 persons

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13 who are targeted collectively and who should also be entitled to the protection of their
14 collective rights, and to engage in collective action,

15 Recognizing that, in honoring the victims' right to benefit from remedies and reparations,
16 the
17 international community keeps faith and human solidarity with victims, survivors and future
18 human generations, and reaffirms the international legal principles of accountability, justice and
19 the rule of law,

20 Convinced that, in adopting a victim-oriented point of departure, the community, at local,
21 national and international levels, affirms its human solidarity and compassion with victims of
22 violations of international human rights and humanitarian law as well as with humanity at large,

23 Decides to adopt the Basic Principles and Guidelines on the Right to a Remedy and
24 Reparations for Victims of Violations of International Human Rights and Humanitarian Law as
25 follows:

26 I. OBLIGATION TO RESPECT, ENSURE THE RESPECT FOR AND ENFORCE
27 INTERNATIONAL HUMAN RIGHTS AND HUMANITARIAN LAW

28 1. Every State has the obligation to respect, ensure respect for and enforce international
29 human
30 rights and humanitarian law norms that are, *inter alia*:

- 31 (a) Contained in treaties to which it is a State party;
32 (b) Found in customary international law; or
33 (c) Incorporated in its domestic law.

34 2. To that end, if they have not already done so, States shall ensure that domestic law is
35 consistent with international legal obligations by:

- 36 (a) Incorporating norms of international human rights and humanitarian law into their
37 domestic law, or otherwise implementing them in their domestic legal system;
38 (b) Adopting appropriate and effective judicial and administrative procedures and other

1 appropriate measures that provide fair, effective and prompt access to justice;

2 (c) Making available adequate, effective and prompt reparations as defined below; and

3 (d) Ensuring, in the case that there is a difference between national and international
4 norms,
5 that the norm that provides the greatest degree of protection is applied.

6 II. SCOPE OF THE OBLIGATION

7 3. The obligation to respect, ensure respect for and enforce international human rights and
8 humanitarian law includes, *inter alia*, a State's duty to:

9 (a) Take appropriate legal, administrative and/or other actions such as agreeing on a
10 monetary
11 settlement (A Reparations Trust Fund), specifically as compensation for past and current
12 transgressions and to prevent future violations;

13 (b) Effectively investigate violations and, where appropriate take action against the
14 violator in
15 accordance with domestic and international law;

16 (c) Provide victims with equal and effective access to justice irrespective of who may be
17 the
18 ultimate bearer of responsibility for the violation;

1 (d) Afford appropriate remedies to victims; and

2 (e) Provide for or facilitate reparations to victims.
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7 III. VIOLATIONS OF INTERNATIONAL HUMAN RIGHTS AND 8 HUMANITARIAN 9 LAW THAT CONSTITUTE CRIMES UNDER INTERNATIONAL LAW 10

11 4. Violations of international human rights and humanitarian law that constitute crimes under
12 international law carry the duty to prosecute persons alleged to have committed these violations,
13 to punish perpetrators adjudged to have committed these violations, and to cooperate with and
14 assist States and appropriate international judicial organs in the investigation and prosecution of
15 these violations and to determine punitive damages to the victims.

16 5. To that end, States shall incorporate within their domestic law appropriate provisions,
17 consistent with international human rights law, providing for universal jurisdiction where a nexus
18 exists with the enforcing State over crimes under international law. Moreover, States shall
19 facilitate extradition or surrender of offenders to other States and to international judicial bodies
20 and to (provide judicial assistance and other forms of cooperation in the pursuit of international
21 justice, including assistance to and protection of victims and witnesses, consistent with
22 international human rights legal standards).

23 IV. STATUTES OF LIMITATIONS

6. Consistent with international law, statutes of limitations shall not apply for prosecuting violations of international human rights and humanitarian law.

7. Statutes of limitations for prosecuting other violations or pursuing civil claims should not unduly restrict, procedurally or in other ways, the ability of a victim to pursue a claim against the perpetrator, and should not apply with respect to periods during which no effective remedies exist for violations of human rights and international humanitarian law.

V. VICTIMS OF VIOLATIONS OF INTERNATIONAL HUMAN RIGHTS AND HUMANITARIAN LAW

8. A person is a "victim" where, as a result of acts or omissions that constitute a violation of international human rights or humanitarian law norms, that person(s), individually or collectively, suffered harm, including physical or mental injury, emotional suffering, economic loss, or impairment of that person's fundamental legal rights. A "victim" may also be a legal personality, a dependant or a member of the immediate family or household of the direct victim, as well as a person who in intervening to assist a victim or prevent the occurrence of further violations, has suffered physical, mental, or economic harm.

9. A person's status as a "victim" should not depend on any relationship that may exist or may have existed between the victim and the perpetrator, or whether the perpetrator of the violation has been identified, apprehended, prosecuted, or convicted.

VI. TREATMENT OF VICTIMS

10. (Victims should be treated) by the State and, where applicable, by intergovernmental and non- governmental organizations and private enterprises, (with compassion and respect for their dignity and human rights and appropriate measures should be taken to ensure their safety and privacy as well as that of their families). The State should ensure that its domestic laws, as much as possible, provide that a victim who has suffered violence or trauma should benefit from special consideration and care to

avoid his or her retraumatization in the course of legal action or administrative procedures designed to provide justice and reparations.

VII. VICTIMS' RIGHT TO A REMEDY

11. Remedies for violations of international human rights and humanitarian law include the victim's right to:

- (a) Access to justice;
- (b) Reparations for harm suffered; and
- (c) Access to the factual information concerning the violations.

VIII. VICTIMS' RIGHTS TO ACCESS JUSTICE

12. A victim's right of access to justice includes all available judicial, administrative and

1 other public proceedings, mechanisms and modalities that exist under domestic laws, as well as
2 under international law. Obligations arising under international law to secure the individual or
3 collective right to access justice and fair and impartial proceedings should be made available under
4 domestic laws. To that end, States should:

5 (a) Make known, through public and private mechanisms, all available remedies and
6 provisions to create additional forms of rehabilitation as needed for violations of international
7 human rights and humanitarian law;

8 (b) Take measures to minimize the inconvenience to victims, protect their privacy as
9 appropriate, and ensure their safety from intimidation and retaliation, as well as that of their
10 families and witnesses, before, during, and after judicial, administrative or other proceedings that
11 affect the interests of victims;

12 (c) Facilitate assistance to victims seeking access to justice and reparations.

13 (d) Make all appropriate diplomatic and legal means available to ensure that victims
14 can
15 exercise their rights to a remedy and reparations for violations of international human rights or
16 humanitarian law.

17 13. In addition to individual access to justice, adequate provisions should also be made to
18 allow
19 groups of victims to present collective claims for reparations and to receive reparations
20 collectively.

21 14. The right to an adequate, effective and prompt remedy against a violation of international
22 human rights or humanitarian law includes all available international processes in 'Which an
23 individual may have legal standing and should be without prejudice to any other domestic
24 remedies.

25 IX. VICTIMS' RIGHTS TO REPARATIONS

26 15. Adequate, effective and prompt reparations shall be intended to promote justice by redressing
27 violations of international human rights or humanitarian law. Reparations should be proportional
28 to the gravity of the violations and the harm suffered.

29 16. In accordance with its domestic laws and international legal obligations, a State shall provide
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31 reparations to victims for its acts or omissions constituting violations of international human rights
32 and humanitarian law.

33 17. In cases where the violation is not attributable to the State, the party responsible for the
34 violation

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36 should provide reparations to the victim or to the State if the State has already provided reparations

1 to the victim.

2 18. In the event that the party responsible for the violation is unable or unwilling to meet
3 these obligations, the State should endeavor to provide reparations to victims who have sustained
4 bodily injury or impairment of physical or mental health as a result of these violations and to the
5 families, in particular, dependants of persons who have died or become physically or mentally
6 incapacitated as a result of the violations. To that end, States should endeavor to establish
7 national funds for reparations to victims and seek other sources of funds wherever necessary to
8 supplement these.

9 19. A State shall enforce its domestic judgments for reparations against private individuals or
10 entities responsible for the violations. States shall endeavor to enforce valid foreign
11 judgments for reparations against private individuals or entities responsible for the
12 violations.

13 20. In cases where the State or Government under whose authority the violation occurred is no
14 longer in existence, the State or Government successor in title should provide reparations to the
15 victims.

16 X. FORMS OF REPARATIONS

17 21. In accordance with their domestic law and international obligations, and taking account of
18 individual circumstances, States should provide victims of violations of international human rights
19 and humanitarian law the following forms of reparations: restitution, compensation, rehabilitation,
20 and satisfaction and guarantees of non-repetition.

21 22. Restitution should, whenever possible, restore the victim to the original situation before the
22 violations of international human rights or humanitarian law occurred. Restitution includes:
23 restoration of liberty, legal rights, social status, family life and citizenship; return to one's place of
24 residence; and restoration of employment and return of property.

25 23. Compensation should be provided for any economically assessable damage resulting
26 from
27 violations of international human rights and humanitarian law, such as:

- 28 (a) Physical or mental harm, including pain, suffering and emotional distress;
- 29 (b) Lost opportunities, including education;
- 30 (c) Material damages and lost earnings; ideas, property and contributions that were
31 not credited or compensated; including loss of earning potential individually and collectively;
- 1 (d) Harm to reputation or dignity; and
- 2
- 3 (e) Costs required for legal or expert assistance, medicines and medical services, and
4 psychological and social services.

5 24. Rehabilitation should include medical and psychological care as well as legal and social
6 services.
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- 1 25. Satisfaction should include, where applicable, any or all of the following:
- 2 (a) Cessation of continuing violations;
- 3 (b) Verification of the facts and full and public disclosure of the truth to the extent
- 4 that such disclosure does not cause further unnecessary harm or threaten the safety of the victim,
- 5 witnesses, or others;
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- 8 (c) The search for the bodies of those killed or for the disappeared, and assistance in
- 9 the
- 10 identification and reburial of the bodies in accordance with the cultural practices of the families
- 11 and communities;
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- 14 (d) An official declaration or a judicial decision restoring the dignity, reputation and
- 15 legal
- 16 and social rights of the victims and of persons closely connected with the victims;
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- 18 (e) Apology, including public acknowledgement of the facts and acceptance of
- 19 responsibility;
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- 21 (f) Judicial or administrative sanctions against persons responsible for the violations;
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- 23 (g) Commemorations and tributes to the victims;
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- 25 (h) Inclusion of an accurate account of the violations that occurred in international
- 26 human rights and humanitarian law training and in educational material at all levels.
- 27
- 28 26. Guarantees of non-repetition and prevention should include, where applicable, any or all
- 29 of the following:
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- 31 (a) Ensuring effective civilian control of military and security forces;
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- 33 (b) Restricting the jurisdiction of military tribunals only to specifically military
- 34 offences
- 35 committed by members of the armed forces;
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- 37 (c) Strengthening the independence of the judiciary;
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- 39 (d) Protecting persons in the legal, medical and health-care professions, the media,
- and
- other related professions, and human rights defenders;
- (e) Conducting and strengthening, on a priority and continued basis, human rights
- training
- to all sectors of society, including law enforcement officials, as well as military and security
- forces in international humanitarian law;
- (f) Promoting the observance of codes of conduct and ethical norms, in particular

1 international standards, by public servants, including law enforcement, correctional, media,
2 medical, psychological, social service and military personnel, as well as the staff of economic
3 enterprises;

4 . (g) Creating mechanisms for monitoring inter-social conflict resolution and
5 preventive social intervention.
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7 XI. PUBLIC ACCESS TO INFORMATION

8 27. States should develop means of informing the general public and in particular victims of
9 violations of international human rights and humanitarian law of the rights and remedies contained
10 within these principles and guidelines and of all available legal, medical, psychological, social,
11 administrative and all other services to which victims may have a right of access to justice.
12

13 XII. NON-DISCRIMINATION AMONG VICTIMS

14 28. The application and interpretation of these principles and guidelines must be consistent with
15 internationally recognized human rights law and be without any adverse distinction founded on
16 grounds such as race, color, gender, sex preference, age, language, religion, political or religious
17 belief, national, ethnic or social origin, wealth, birth, family or other class, disability or health
18 status.
19

20 XIII. NON-DEROGATION

21 29. Nothing in these principles or guidelines shall be construed as restricting or derogating
22 from
23 any rights or obligations arising under international law.