

# THE VICTIMS REPARATIONS GUIDELINES

BASIC PRINCIPLES and GUIDELINES on THE RIGHT TO A  
REMEDY and REPARATIONS for VICTIMS of VIOLATIONS  
of INTERNATIONAL HUMAN RIGHTS and  
HUMANITARIAN LAW

(This Law was Written for Victims of Displacement  
Abuse of Power, Colonialism, 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 (FICN.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.

Following is the revised version of the principles and guidelines.

## 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 Inhumane 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 article 13,

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 resolution 40/34 of 29 November 1985 by which the General Assembly adopted the text recommended by the Congress,

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

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

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

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

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

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

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

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

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

1        Noting further those contemporary forms of victimization, while essentially directed against  
2 individuals, are nevertheless also directed against classes of persons or identifiable groups of  
3 persons who are targeted collectively and who should also be entitled to the protection of their  
4 collective rights and to engage in collective action,

5        Recognizing that, in honoring the victims' right to benefit from remedies and reparations,  
6 the  
7 international community keeps faith and human solidarity with victims, survivors and future  
8 human generations, and reaffirms the international legal principles of accountability, justice and  
9 the rule of law,

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

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

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

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

21            (a)    Contained in treaties to which it is a state party;

22            (b)    Found in customary international law; or

23            (c)    Incorporated in its domestic law.

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

26            (a)    Incorporating norms of international human rights and humanitarian law into their  
27 domestic law, or otherwise implementing them in their domestic legal system;

28            (b)    Adopting appropriate and effective judicial and administrative procedures and other  
29 appropriate measures that provide fair, effective and prompt access to justice;

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

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

34        II.       SCOPE OF THE OBLIGATION

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

37            (a)    Take appropriate legal, administrative and/or other actions such as agreeing on a

- 1 monetary settlement (A Reparations Trust Fund), specifically as compensation for past and
- 2 current transgressions and to prevent future violations;
- 3 (b) Effectively investigate violations and, where appropriate take action against the
- 4 violator in
- 5 accordance with domestic and international law;
- 6 (c) Provide victims with equal and effective access to justice irrespective of who may be
- 7 the
- 8 ultimate bearer of responsibility for the violation;
- (d) Afford appropriate remedies to victims; and
- (e) Provide for or facilitate reparations to victims.

### III. VIOLATIONS OF INTERNATIONAL HUMAN RIGHTS AND HUMANITARIAN LAW WHICH CONSTITUTES CRIMES UNDER INTERNATIONAL LAW

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

5. To that end, States shall incorporate within their domestic law appropriate provisions, consistent with international human rights law, providing for universal jurisdiction where a nexus exists with the enforcing State over crimes under international law. Moreover, States shall facilitate extradition or surrender of offenders to other States and to international judicial bodies and to (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).

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

- (a) Make known, through public and private mechanisms, all available remedies and provisions to create additional forms of rehabilitation as needed for violations of international human rights and humanitarian law;
- (b) Take measures to minimize the inconvenience to victims, protect 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) Facilitate assistance to victims seeking access to justice and reparations.
- (d) Make all appropriate diplomatic and legal means available to ensure that victims can exercise their rights to a remedy and reparations for violations of international human rights or humanitarian law.

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

14. The right to an adequate, effective and prompt remedy against a violation of international human



rights or humanitarian law includes all available international processes in 'Which an individual may have legal standing and should be without prejudice to any other domestic remedies.

#### IX. VICTIMS' RIGHTS TO REPARATIONS

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

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

17. In cases where the violation is not attributable to the State, the party responsible for the violation should provide reparations to the victim or to the State if the State has already provided reparations to the victim.

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

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

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

#### X. FORMS OF REPARATIONS

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

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

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

- (a) Physical or mental harm, including pain, suffering and emotional distress;
- (b) Lost opportunities, including education;
- (c) Material damages and lost earnings; ideas, property and contributions that were not credited or compensated; including loss of earning potential individually and collectively;

(d) Harm to reputation or dignity; and

(e) Costs required for legal or expert assistance, medicines and medical services, and psychological and social services.

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

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

(a) 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 unnecessary harm or threaten the safety of the victim, witnesses, or others;

(c) The search for the bodies of those killed or for the disappeared, and assistance in the identification and reburial of the bodies in accordance with the cultural practices of the families and communities;

(d) An official declaration or a judicial decision restoring the dignity, reputation and legal and social rights of the victims and of persons closely connected with the victims;

(e) Apology, including public acknowledgement of the facts and acceptance of responsibility;

(f) Judicial or administrative sanctions against persons responsible 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 and humanitarian law training and in educational material at all levels.

26. Guarantees of non-repetition and prevention should include, where applicable, any or all of the following:

(a) Ensuring effective civilian control of military and security forces;

(b) Restricting the jurisdiction of military tribunals only to specifically military offences committed by members of the armed forces;

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



- .
- (g) Creating mechanisms for monitoring inter-social conflict resolution and preventive social intervention.

#### XI. PUBLIC ACCESS TO INFORMATION

27. States should develop means of informing the general public and in particular victims of violations of international human rights and humanitarian law of the rights and remedies contained within these 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 to justice.

#### XII. NON-DISCRIMINATION AMONG VICTIMS

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

#### XIII. NON-DEROGATION

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