

## 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 Summary

The right to a remedy for victims of gross violations of international human rights law is found in numerous instruments of international human rights law:

- the Universal Declaration of Human Rights (article 8),
- the International Covenant on Civil and Political Rights (article 2),
- the International Convention on the Elimination of All Forms of Racial Discrimination (article 6),
- the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (article 14), and
- the Convention on the Rights of the Child (article 39).

Provisions for this right are also found in international humanitarian law:

- the Hague Convention respecting the Laws and Customs of War on Land of 18 October 1907 (Convention IV, article 3),
- the Protocol Additional to the Geneva Conventions of 12 August 1949 (article 91),
- the Protection of Victims of International Armed Conflicts (Protocol I) of 8 June 1977, and
- the Rome Statute (articles 68 and 75).

In honouring the right of victims to remedies and reparations, the international community reaffirms accountability, justice, and the rule of law. In adopting a victim-oriented perspective, the international community affirms its solidarity with victims of violations of international law, as well as with humanity at large, in accordance with the following Basic Principles and Guidelines.

### Basic Principles and Guidelines

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

This obligation is provided for in international treaties, customary international law, and in domestic laws. This obligation includes, inter alia, the duty to:

- a. take legislative, administrative, and other measures to prevent violations;
- b. investigate violations effectively, promptly, thoroughly, and impartially and, where appropriate, take action against those allegedly responsible;
- c. provide victims with equal and effective access to justice, irrespective of who bears responsibility for the violation; and
- d. provide effective remedies to victims, including reparations.

### Victims of gross violations of international human rights law and serious violations of international humanitarian law

*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 dependents of the direct victim and persons who have suffered harm in intervening to assist victims in distress or to prevent victimization*. A person shall be considered a victim regardless of whether the perpetrator of the violation is identified, apprehended, prosecuted, or convicted, and regardless of whether or not there is a family relationship between the perpetrator and the victim.

### **Treatment of victims**

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

### **Victims’ right to remedies**

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

- a. equal and effective access to justice;
- b. adequate, effective, and prompt reparations for harm suffered; and
- c. access to relevant information concerning violations and reparations mechanisms.

### **Remedy as access to justice**

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 to mechanisms and proceedings conducted in line with domestic law. Obligations arising under international law to secure access to justice, and to fair and impartial proceedings shall be reflected in domestic laws. To that end, States should:

- a. disseminate information about all available remedies for violations of international human rights law and international humanitarian law;
- b. minimize the inconvenience to victims, protect against unlawful interference with victims’ privacy, and ensure their safety from intimidation and retaliation, as well as that of their representatives, families, and witnesses, before, during, and after judicial, administrative, or other proceedings;
- c. provide proper assistance to victims seeking access to justice; and
- d. make available all appropriate legal and diplomatic means to ensure that victims can exercise their rights to remedy.

An adequate, effective, and prompt remedy for violations of international human rights law and of international humanitarian law should allow victims to access all available and appropriate international processes. Moreover, access to international remedies should not prevent the possibility of any domestic remedies. In addition to individual access to justice, States should endeavour to develop procedures that allow groups of victims to receive reparations as appropriate.

### **Reparations for harm suffered**

Adequate and prompt reparations promote justice by redressing violations of international human rights or humanitarian law. Reparations should be proportional to the gravity of the violations and harm suffered. In accordance with its domestic laws and international legal obligations, a State shall provide reparations to victims for acts or omissions by the State.

A person who is found liable for reparations should provide them to the victim or compensate the State if the State has already provided reparations to the victim. States should establish national programmes for reparations and other assistance to victims in case those liable for the harm suffered are unable or unwilling to meet their obligations. States shall provide effective mechanisms for reparations and enforce judgements for reparations against parties liable for the harm suffered in accordance with domestic law and international legal obligations. In accordance with domestic law and international law, victims should be provided with full and effective reparations that include: **restitution, compensation, rehabilitation, satisfaction, and guarantees of non-repetition.**

*Restitution* seeks to restore the victim to the original situation before violations occurred. Restitution may include: restoration of liberty; enjoyment of human rights (identity, family life, citizenship); return to one's place of residence; restoration of employment; and return of property. *Compensation* should be provided for any economically assessable damage, such as:

- physical or mental harm;
- lost opportunities, including employment, education, and social benefits;
- material damages and loss of earnings, including loss of earning potential;
- moral damage;
- costs for legal assistance, and medical, psychological, and social services.

*Rehabilitation* includes medical and psychological care, legal and social services.

*Satisfaction* includes any or all of the following:

- effective measures aimed at the cessation of continuing violations;
- 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;
- the search for the disappeared, for the identities of 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;
- an official declaration or a judicial decision restoring the dignity, reputation, and rights of the victim and of persons closely connected with the victim;
- public apology, including acknowledgement of the facts and acceptance of responsibility;
- judicial and administrative sanctions against persons liable for the violations;
- commemorations and tributes to the victims; and
- inclusion of an accurate account of the violations that occurred in trainings and in educational material at all levels.

*Guarantees of non-repetition* should include the following measures that may also contribute to prevention:

- ensuring effective civilian control of military and security forces;
- ensuring that all civilian and military proceedings abide by international standards of due process, fairness and impartiality;
- strengthening the independence of the judiciary;
- protecting persons in the legal, medical and health-care professions, the media and other related professions, and human rights defenders;

- 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;
- 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;
- promoting mechanisms to prevent social conflicts and monitor their resolution;
- reforming laws that contribute to or allow gross violations of international human rights law and serious violations of international humanitarian law.

### **Access to relevant information concerning violations and reparation mechanisms**

States should inform 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 victims may have a right to access. Moreover, victims and their representatives are entitled to information about the causes and conditions of the gross violations of international human rights law, of serious violations of international humanitarian law, of their victimization, and a right to learn the truth in regard to these violations.

### **Non-discrimination**

These Basic Principles and Guidelines must be consistent with international human rights law and international humanitarian law and be interpreted and applied with no discrimination of any kind or on any grounds.

### **Non-derogation**

Nothing in these Basic Principles and Guidelines shall restrict or derogate (detract) from any rights or obligations determined by domestic and international law. The present Basic Principles and Guidelines do not prejudice (do not interfere with or deny) 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 do not prejudice the special rules of international law.

### **Rights of others**

Nothing in this document is to be construed as denying the rights of others as protected by international or national laws, in particular the right of an accused person to benefit from applicable standards of due process.

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