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P R E F A C E

M. CHERIF BASSIOUNI

The Chicago Principles on Post-Conflict Justice present basic guidelines for designing and implementing policies to address past atrocities. They are the result of a series of meetings and consultations that took place over a seven-year period involving distinguished scholars, jurists, journalists, religious leaders, and others.

The first meeting was organized by the International Human Rights Law Institute (IHRLI) in 1997 and held at the Holocaust Memorial Museum in Washington, D.C. The draft guidelines developed at that event were discussed at a 1998 meeting at the International Institute of Higher Studies in Criminal Sciences (ISISC) in Siracusa, Italy. The proceedings were published in *14 Nouvelles Études Pénales 1998* and the preliminary guidelines were revised and published in *Post-Conflict Justice* (M. Cherif Bassiouni, ed. 2002).

Beginning in 2003, IHRLI and the Chicago Council on Foreign Relations held a series of three meetings to discuss post-conflict justice and review the draft principles, which were renamed the *Chicago Principles on Post-Conflict Justice*. From 2003 through

2005, various versions of these principles were circulated for comment and then reformulated by IHRLI staff. During this process, more than 180 experts from 30 countries were consulted. In this way, the *Chicago Principles on Post-Conflict Justice* benefited from the input of a diverse group of distinguished individuals representing distinct personal, professional, and cultural backgrounds and experiences.

The Chicago Principles on Post-Conflict Justice are designed to contribute to the international movement to address past violations of human rights and humanitarian law. Post-conflict justice embodies a fundamental commitment to truth, peace, reconciliation, the rights of victims, and the basic sanctity and inherent value of human life. To paraphrase the Talmud and the Qu'ran, where the pursuit of justice helps save a single life, it is similar in the eyes of the Creator as having saved all humanity.

I have had the privilege of directing this project from its inception and am deeply indebted to the many friends and colleagues who have contributed their ideas, criticisms, thoughts, and opinions to the development of *The Chicago Principles on Post-Conflict Justice*. The experts who have assisted in this effort from 1997 through 2003 are listed in the appendices.

I extend special appreciation to the Chicago Council on Global Affairs (CCGA), formerly the Chicago Council on Foreign Relations, and its president, Marshall Bouton. I also wish to acknowledge the support of the Association Internationale de Droit Pénal (AIDP), and the International Institute of Higher Studies in Criminal Sciences in Siracusa, Italy (ISISC).

While the *Chicago Principles on Post-Conflict Justice* incorporate the views of many people, these contributions have been shaped by my judgment as well as the research, writing and editorial work of three IHRLI colleagues: Daniel Rothenberg, Executive Director; Michael Wahid Hanna, Senior Fellow; and Etelle Higonnet, Senior Fellow. Mr. Rothenberg supervised the process from 2003 through 2007.

The Chicago Principles do not necessarily represent the views of CCGA, AIDP, IHRLI, ISISC, the participants in the Chicago meetings, or the scholars, experts, and organizations who reviewed earlier versions of this document.

My deep appreciation goes out to everyone who participated in these meetings and reviewed various drafts of *The Chicago Principles on Post-Conflict Justice*.

*If you see a wrong you must right it;
with your hand if you can,
or with your tongue, or in your heart,
and that is the weakest of faith.*

PROPHET MOHAMMED

If you want peace, work for justice.

POPE JOHN PAUL VI

*The world rests on three pillars:
on truth, on justice, and on peace.*

THE TALMUD

FACING ATROCITY:
THE IMPORTANCE OF GUIDING PRINCIPLES
ON POST-CONFLICT JUSTICE

M. CHERIF BASSIOUNI & DANIEL ROTHENBERG

1. INTRODUCTION TO THE CHICAGO PRINCIPLES

From the mid-20th century to the present, wars, insurgencies, ethnic unrest, and the repressive actions of authoritarian regimes have produced enormous human suffering and the deaths of tens of millions, the majority of whom have been civilians. These conflicts often involve significant and systematic violations of fundamental human rights, including genocide, torture, disappearances, massacres, rape, and mass displacement. In general, institutionalized impunity protects perpetrators while victims' demands for accountability are ignored. More often than not, justice for past atrocities is sacrificed for political expediency, often as a means to negotiate the end of a conflict.

However, there is a growing international acknowledgment that building a responsive and democratic society in the wake of atrocity requires an open engagement with the demands of victims and a corresponding commitment to truth, justice, and reconciliation. Increasingly, the international community, governments, and civil society organizations seek accountability for past atrocities as expressed through a diverse set of ideas and practices known as “post-conflict justice.” The development of post-conflict justice represents a significant shift in the international politics of peace, security, and national reconstruction, as well as an important stage in the evolution of the global movement to protect and defend fundamental human rights.

Post-conflict justice is premised on an understanding that domestic stability, security, and democratic governance in the aftermath of atrocity are strengthened by a commitment to justice and accountability. Openly facing the legacy of past violence is essential for preventing future victimization, achieving peace and reconciliation, and protecting human rights.

Despite the growing policy significance of these ideas and a steady increase in resources for specific post-conflict justice initiatives, the international community remains largely unprepared for each new challenge. The Security Council, other United Nations entities, governments, regional bodies, and non-governmental organizations generally respond to transitional situations in a reactive, improvised, and often inefficient manner. All too often, these key actors fail to coordinate programs and funding, resulting in post-conflict justice strategies that are poorly integrated and inadequately address the specific demands of local culture and context.

In part, this problem results from the absence of clear and widely accepted principles on post-conflict justice. The lack of basic guidelines makes it difficult for international and domestic actors to efficiently design policies and determine which combinations of strategies are most effective for addressing particular social, political, and cultural needs. In addition, guiding principles could help establish a clear, common language for discussing post-conflict justice. The use of uniform terminology, definitions, and concepts could improve communication, analysis, and coordination among United Nations entities, governments, regional bodies, and non-governmental organizations.

The Chicago Principles on Post-Conflict Justice are designed to address these problems. Part I presents an overview of the fundamentals of the field, presenting post-conflict justice as a set of ideas and practices based upon a number of foundational ideas. The section also provides a series of general concepts to assist in designing and implementing post-conflict justice strategies. Part II presents seven guiding principles on post-conflict justice involving: prosecutions; truth-telling and investigations of past violations; victims' rights, remedies and reparations; vetting, sanctions and administrative measures; memorialization, education and the preservation of historical memory; traditional, indigenous and religious approaches to justice and healing; and, institutional reform and effective governance. Each principle is followed by a review of concrete recommendations regarding the design and implementation of post-conflict justice strategies, policies, and programs. The text uses the term "shall" to indicate an established obligation under international law and the term "should" to reference a suggested action based on international norms.

The Chicago Principles on Post-Conflict Justice are designed to encourage improved focus and greater coherence regarding strategies for addressing past atrocities. The term "post-conflict justice" is used with an understanding that there exist a number of similar or related concepts including "transitional justice", "strategies for combating impunity", "peace building", and "post-conflict reconstruction". These terms and their definitions overlap and their diversity reflects both the evolving nature of the field and links with particular institutions rather than substantial differences in understanding or ideology.

The Chicago Principles on Post-Conflict Justice present the search for accountability in the aftermath of conflict as a complex, multifaceted, interdisciplinary process that extends beyond a formal legalistic approach. Domestic and international prosecutions on their own rarely provide victims and a suffering society with adequate justice for past atrocities. Relying solely on formal legal action generally fails to fully address victims' needs and may reveal serious limitations within a transitional government that ultimately weakens society's faith in the legitimacy of judicial processes. If prosecutions are not integrated into a broad strategy of accountability, they can

appear as political acts and may run the risk of allowing perpetrators to become martyrs or otherwise creating barriers to a more socially coherent vision of justice. Similar criticisms may be leveled at any isolated, sector-specific approach to justice, particularly within a society that has suffered severe and systematic violations.

The Chicago Principles on Post-Conflict Justice acknowledge substantial differences between international humanitarian law, international human rights law, and international criminal law. However, the document does not address the complex and often technical legal questions that arise from these distinctions. This is partly because key differences between these bodies of law reflect an understanding of international wars as distinct from domestic conflicts and an acceptance of clear divisions between state and non-state actors. Recent conflicts have substantially blurred these differences rendering prior legal categories insufficient. Rather than resolving these legal disputes, the *Chicago Principles on Post-Conflict Justice* embrace a victim-centered rather than conflict-centered approach as a means of improving the design and implementation of policies to address human suffering in the aftermath of conflict.

The Chicago Principles on Post-Conflict Justice have been prepared at a time of intense international discussion regarding these issues. This can be seen in a growing number of important contributions by scholars, activists, and organizations, including a series of major United Nations studies reviewing peacekeeping operations, policies to combat impunity, victims' rights, and comparative analyses of fieldwork experiences. *The Chicago Principles on Post-Conflict Justice* link theory and practice, providing a valuable reference for those directly engaged in peace processes, national reconstruction, peacekeeping operations, and the development and implementation of policies to defend and protect fundamental rights. The document may also be of use to scholars, activists, politicians, journalists, and others interested in accountability, justice, and human rights.

2. EVOLUTION OF THE CONCEPT OF POST-CONFLICT JUSTICE

Recent history has shown that enhancing accountability and minimizing impunity are important elements for building democratic states in the wake of conflict. These prac-

tices are also essential for establishing rule of law, respecting human rights, honoring the suffering of victims, and preventing the recurrence of future violations.

Post-conflict justice is a relatively new concept whose coherence is only now emerging after two decades of theoretical and practical development. The essential commitments of post-conflict justice are grounded in the foundational global promises that established the modern human rights system over fifty years ago. However, the specific processes described by the term represent a significant and relatively recent development.

The intellectual roots of post-conflict justice can be traced to the period following World War I when the emerging international community began to seriously consider the value of seeking justice in the aftermath of conflict, despite taking little substantive action. After World War II, the international community established key institutions of post-conflict justice, including the International Military Tribunals at Nuremberg and Tokyo and supported related domestic war crimes prosecutions in Europe and Asia. These initiatives were linked to the birth of the modern human rights system through the creation of the United Nations and the broad acceptance of the Universal Declaration of Human Rights.

From the 1950s through the 1980s, human rights commitments continued to develop. However, the Cold War demands of *realpolitik* and the profound ideological and political divisions of the time prevented the implementation of more substantial policies of accountability and justice. During this time, there were major advances in treaty law, significant development of international institutions and a growing engagement with the substance of human rights obligations.

From the mid-1980s on, there was a surge of interest in post-conflict justice associated with a number of political transitions from authoritarian to democratic regimes. In South and Central America, many countries initiated processes of openly engaging the legacy of past systematic repression. Newly democratic governments implemented domestic prosecutions, truth commissions, reparations policies, and mechanisms of memorialization, often motivated by popular pressure, civil society, and local human rights groups. In Eastern and Central Europe, governments created related initiatives involving public debate, memorialization, opening security archives, and instituting administrative sanctions known as “lustration” or “vetting.” In general, these post-con-

flict justice strategies emerged from the bottom up, arising out of popular movements and developing in response to local experiences and local demands.

By the mid-1990s, a broad international consensus had developed regarding the need to link justice and reconciliation with the end of conflict and support for democratic transitions. This historic shift grew out of the increasing legitimacy of human rights discourse, the activities of international and domestic non-governmental organizations and a general expansion of states' legal commitments to fundamental human rights.

The international acceptance of post-conflict justice ideas and strategies was also related to expanding United Nations operations, including peacekeeping and human rights missions as well as a growing institutional recognition of the link between human rights and international development. This process advanced through the Security Council's establishment of the Commission to Investigate War Crimes in the former Yugoslavia, the International Criminal Tribunal for the former Yugoslavia, the International Criminal Tribunal for Rwanda, and the creation of the International Criminal Court. Other related United Nations initiatives included support for truth commissions, vetting, institutional reforms, and the creation of mixed national/international tribunals in Sierra Leone, Kosovo, East Timor and Cambodia.

However, the United Nations' engagement with post-conflict justice typically lacks central coordination which has led to inefficiency, excessive costs, and poor implementation. Post-conflict justice interventions have generally been managed by too many distinct and disconnected United Nations bodies, including the High Commissioner for Human Rights in Geneva, the Department of Peacekeeping Operations in New York, the Office on Drugs and Crime in Vienna, the United Nations Development Programme in New York, as well as other offices within the Secretary General. The UN agencies involved in these processes generally operate with established internal bureaucracies, limited coordination or integration, and the lack of a unifying master plan.

These problems are heightened by the role of the Security Council which presently devotes a disproportionate amount of its valuable time and resources to a small number of post-conflict issues, such as the two ad-hoc tribunals. In addition, the Security Council is not well positioned for managing coordinated post-conflict justice programs because

successful policies require a sensitive and flexible engagement with local conditions, including substantial input by NGOs, IGOs and community representatives.

Alongside these international processes, many countries implemented their own post-conflict justice strategies, at times independently and at other times with outside support and guidance. These strategies included domestic prosecutions of both high- and low-level perpetrators and a variety of institutional reforms, including new constitutions, judicial reform, and the creation of formal human rights monitoring bodies. Governments in dozens of countries have also implemented truth commissions, a practice unique to the evolution of post-conflict justice, as well as vetting policies, systems of reparation, and mechanisms of memorialization.

In recent years, post-conflict justice ideas, strategies, and processes have gained substantial momentum. These diverse practices mark a shift in the way the nations and the international community understand national reconstruction, peace, and democracy. Issues of truth-telling, reconciliation, and legal and moral accountability are now viewed as essential elements of peace negotiations and form the foundation of many national reconstruction programs. As a result of the widespread implementation of post-conflict justice policies around the world, it is now possible to draw upon and learn from prior experiences. Alongside growing global consensus regarding the validity and necessity of a commitment to post-conflict justice, there is a pressing need for increased comparative research as well as the establishment of clear guidelines and principles.

3. BALANCING PEACE, JUSTICE AND RECONCILIATION

Post-conflict justice involves a delicate balance between peace, justice, and reconciliation. Managing these issues is difficult, especially within highly divisive political contexts following wars, civil unrest, and authoritarian rule. The situation is especially complex where addressing victims' needs involves confronting political actors directly or indirectly responsible for past atrocities. Despite the tensions inherent in balancing competing goals, it is inappropriate and inaccurate to assume that countries must choose between political security and a failure to engage past atrocities or instability coupled

with accountability and reconciliation. One of the goals of the movement for post-conflict justice is to demonstrate that peace and justice are complementary.

Ending hostilities and establishing peace is often a difficult, tenuous process involving protracted negotiations and the intervention and assistance of various governments, the United Nations and other multinational organizations. More often than not, peace is simply viewed as the absence of war. However, genuine peace requires the creation of a positive foundation for social, political and economic growth grounded in the respect for fundamental human rights.

Peace processes and the formation of new governments frequently involve the participation of perpetrators who seek to evade accountability for past atrocities. However, if those involved in transitional negotiations accept impunity for past violations as legitimate, perpetrators may be allowed to trade full protection from responsibility for past crimes in return for various promises. *The Chicago Principles on Post-Conflict Justice* highlight the long-term value of a firm commitment to accountability integrated within a broad-based plan for national reconstruction and reconciliation. A series of guiding principles that establish clear foundational commitments regarding post-conflict justice may help negotiators resist the temptation to avoid an engagement with questions of justice in order to achieve expedient political settlements.

After a conflict is formally resolved, a country's transitional process often requires interventions to ensure security, demobilize armed groups, rebuild key state institutions, and encourage economic development and overall stability. These objectives cannot be achieved simultaneously or implemented quickly. Instead, they depend on a number of factors which vary from conflict to conflict, and are often bound to the support of the international community and its willingness to contribute expertise and resources.

A serious approach to post-conflict justice requires balancing pressing moral demands for action with a recognition of the practical and political limitations that characterize transitional contexts. This is particularly true in the aftermath of conflict and authoritarian rule where nations often face collapsed infrastructure, continued insecurity, the presence of armed groups, a traumatized population, a devastated economy, endemic poverty, and a transitional government with limited resources. *The Chicago Principles*

on *Post-Conflict Justice* recognize that legal systems in these contexts are often dysfunctional or nonexistent and that peacekeeping operations are generally not well-suited to addressing the demands of victims and other pressing justice needs. Establishing social order and basic governance in such contexts presents a serious challenge to domestic and international actors.

Over the last two decades it has become increasingly clear that restoring peace and security in the aftermath of conflict requires a long-term commitment based on careful planning and effective implementation as well as the coordination of support mechanisms. This has rarely occurred especially in the areas of governance, justice, and rule of law. Recent United Nations efforts express an awareness of this need and a growing commitment to a more comprehensive and integrated approach to post-conflict justice. Of special interest is the acknowledgment of the fundamental link between post-conflict justice, global peace, and sustainable development. *The Chicago Principles* draw on an expanding number of United Nations documents as well as field experiences from various international missions. Addressing these issues requires coordinated program design and implementation, substantial and consistent funding, increasing and fostering local input and control, and the formal elaboration and adoption of basic guidelines on post-conflict justice.

It is essential that rule of law strategies are implemented soon after formal peace is established and that there is adequate international funding and support. General reconstruction efforts should be managed with great sensitivity to the fundamental commitments of post-conflict justice. This encourages greater policy integration as well as an acknowledgment that rebuilding a society in the wake of destruction is itself an act of reconciliation and a mode of seeking justice.

Developing and implementing post-conflict justice policies is always contested, both domestically and internationally. While the specifics of each intervention are necessarily subject to debate, the overall vision of post-conflict justice should always be victim-centered, linked with social reconciliation, and based not on short-term objectives, but on a firm moral and legal commitment to fundamental human rights.

4. DEVELOPING A COMPREHENSIVE PLAN

Designing appropriate post-conflict justice strategies requires a high degree of flexibility and an open and evolving engagement with the specific demands of local reality. Meaningful post-conflict justice policies must have a high degree of legitimacy and require substantial political will on the part of leaders inside and outside of the government.

While complete accountability is the desired ideal, this is rarely practical or possible. For this reason, successful post-conflict justice interventions require a creative engagement with political realities. Post-conflict justice strategies must always seek to maximize accountability and minimize impunity. An appropriate post-conflict justice strategy will reveal as much truth as possible; achieve as much reconciliation as is feasible; provide as full and complete reparations as are affordable; and, address past violence in an open, transparent, and truthful manner.

The development of comprehensive post-conflict justice strategies requires that vulnerable groups, such as women, children, refugees, the elderly, and disempowered religious or ethnic minorities, be provided with special protections and adequate means to engage in the process of addressing the past. In particular, programs should be established with a clear understanding of the often gendered nature of political violence and the special needs of women, whether as widows, primary caregivers, or community leaders.

Post-conflict justice requires great sensitivity to social and cultural context and a clear understanding of local political interests. Policymakers need to engage in national consultations and seek significant local input from non-governmental organizations, community groups, traditional or tribal leaders, religious organizations, and others. The process of rebuilding the justice system should be undertaken with a commitment to adequately accommodating local input and needs.

Just as conflicts arise from distinct local issues and involve different types of repression and violence, post-conflict situations vary dramatically. Rebuilding in the aftermath of an international war differs from reconstruction in the wake of an internal conflict. Further distinctions exist between conflicts of an ethnic or religious nature, or political transitions following the fall of a tyrannical regime.

Post-conflict justice is also highly dependent on the processes through which a conflict was brought under control. Some conflicts terminate with the overwhelming victory of one side over another, providing the prevailing force with near-complete control over the management and implementation of national reconstruction. While this may simplify the creation of strategies to address past violence, it fosters an imbalance of interests that can negatively impact the creation of fair and impartial policies. Other conflicts end through negotiated settlements which often reflect the demands and needs of various parties, but present their own challenges. Negotiated settlements may involve significant equality in the power and influence of conflicting parties or substantial disparities. In addition, a variety of external issues and constituencies often play a role in shaping peaceful outcomes.

The suffering arising from repressive authoritarian regimes and violent conflicts—particularly those involving genocide, crimes against humanity, war crimes, mass killing, institutionalized torture, and other severe and systematic human rights violations—is ultimately unanswerable. No true remedy exists for these brutal acts. However, in the wake of conflict, societies and governments should acknowledge past suffering and take action to address claims for justice arising from past violence. Post-conflict justice arises from a profound human need to acknowledge the truth of suffering and to press for accountability as a means of building for the future.

It remains possible to improve the world's response to past violations of human rights and humanitarian law. However, a substantial change in enabling post-conflict justice requires political will, resources and long-term commitments. *The Chicago Principles on Post-Conflict Justice* encourage a comprehensive, integrated approach to addressing past atrocities involving quick action, long-term planning, national consultations, the participation of diverse constituencies, sensitivity to local context and culture, broad institutional reform, and a domestic and international commitment to linking justice, peace and reconciliation.

THE CHICAGO PRINCIPLES ON
POST-CONFLICT JUSTICE

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THE CHICAGO PRINCIPLES ON
POST-CONFLICT JUSTICE

PRINCIPLE 1

States shall prosecute alleged perpetrators of gross violations of human rights and humanitarian law.

PRINCIPLE 2

States shall respect the right to truth and encourage formal investigations of past violations by truth commissions or other bodies.

PRINCIPLE 3

States shall acknowledge the special status of victims, ensure access to justice, and develop remedies and reparations.

PRINCIPLE 4

States should implement vetting policies, sanctions, and administrative measures.

PRINCIPLE 5

States should support official programs and popular initiatives to memorialize victims, educate society regarding past political violence, and preserve historical memory.

PRINCIPLE 6

States should support and respect traditional, indigenous, and religious approaches regarding past violations.

PRINCIPLE 7

States shall engage in institutional reform to support the rule of law, restore public trust, promote fundamental rights, and support good governance.

PART 1
FUNDAMENTALS

FOUNDATIONAL ELEMENTS OF POST-CONFLICT JUSTICE

HUMAN SUFFERING AND THE DEMAND FOR JUSTICE

Violations of human rights and humanitarian law produce complex harm, suffering, and loss and states should address the demands for justice arising from these acts.

GROUNDING IN INTERNATIONAL LAW

International human rights and humanitarian law outline basic standards and key obligations that provide the foundation for efforts to combat impunity and support accountability for past violations.

ACCOUNTABILITY, PEACE AND DEMOCRACY

Peace, democracy and political stability following conflict and authoritarian rule are served when states and societies address past violations.

VICTIM-CENTERED APPROACH

Policies that seek justice for past violations should be victim-centered and should address victims' rights to remedies and reparations.

CONTEXT-SPECIFIC STRATEGIES

Specific strategies that address past violations should be designed and implemented with great sensitivity to social, cultural, historical, and political context.

INTERDISCIPLINARY NATURE AND LONG-TERM COMMITMENT

Addressing past violations of human rights and humanitarian law is a complex, multi-faceted, interdisciplinary process that requires broad vision and long-term commitment.

DESIGNING AND IMPLEMENTING POST-CONFLICT JUSTICE STRATEGIES

COORDINATION OF DIVERSE STRATEGIES

Post-conflict justice can be implemented through a number of interdisciplinary strategies, including: prosecutions; truth commissions; reparations; vetting, sanctions and administrative measures; memorialization, education and archives; traditional, indigenous and religious approaches; and, institutional reform. While specific strategies may be successfully implemented on their own, the larger objectives of post-conflict justice are best served through a coordinated, coherent, and comprehensive approach.

STATES' RESPONSIBILITIES AND INTERNATIONAL COOPERATION

States directly impacted by past violence have the primary responsibility for implementing post-conflict justice strategies. States may benefit from a reflection on the experiences of other post-conflict societies, as well as input, support, and assistance from international experts, institutions, and organizations. These processes often require cooperation, financial support, and technical assistance on the part of the international community-

INTEGRATING VULNERABLE GROUPS

Post-conflict justice strategies should be as representative and inclusive as possible and should exhibit special sensitivity toward vulnerable groups, including children and religious, ethnic, and other minorities.

NATIONAL CONSULTATIONS AND VICTIM PARTICIPATION

Successful post-conflict justice strategies benefit from national consultations, public and civil society involvement, and the participation of victims and their families.

GENDERED NATURE OF VIOLENCE

Post-conflict justice strategies are served by acknowledging and addressing the often gendered nature of political violence and the special needs of women, whether as widows, primary caregivers, or community leaders.

SENSITIVITY TO LOCAL NEEDS AND AWARENESS OF LIMITATIONS

Post-conflict justice should express sensitivity to local needs and an engagement with the particular nature of the conflict. Programs and policies benefit from balancing competing local interests, recognizing social, economic, political and logistical limitations, and encouraging reasonable expectations among victims and the larger society.

IMPORTANCE OF DOMESTIC SECURITY

Post-conflict justice requires a firm commitment to establishing domestic security and a safe environment relatively free from political instability, uncertainty, threat, and violence.

DURATION AND SCOPE OF SPECIFIC POLICIES

While the success of specific policies is served by clear mandates regarding scope and duration, post-conflict justice is best understood as an evolving process defined by distinct actions that play a role within different stages of national reconstruction and reconciliation.

ACCOUNTABILITY AND TRANSPARENCY

The implementation and financing of post-conflict strategies should occur in a transparent manner involving individual and institutional accountability. These processes benefit from public communication and consultation, independent audits, appropriate sanctions, and other means of supporting program independence and credibility.

PREVENTION

States should commit to implementing meaningful social, political and economic policies designed to prevent the occurrence and recurrence of violations. This requires broad support for fundamental human rights, careful monitoring of conflicts during their formative stages, and a willingness to take appropriate action. It is only through concerted state action, increased global vigilance and coordinated international involvement that serious violations of human rights and humanitarian law can be prevented.

PART 2
PRINCIPLES

PRINCIPLE 1

States shall prosecute alleged perpetrators of gross violations of human rights and humanitarian law.

1.1 COURTS AND JURISDICTION

PRIMACY OF DOMESTIC COURTS

States have primary jurisdiction over gross violations of human rights and humanitarian law that occur within their territory. States may create specific legal mechanisms to address past violations based on domestic and international standards. International criminal tribunals and the domestic courts of other countries should only exercise jurisdiction when national courts cannot offer satisfactory guarantees of independence and impartiality or are unwilling or unable to engage in effective legal action.

MIXED DOMESTIC / INTERNATIONAL TRIBUNALS

Where domestic courts cannot prosecute gross violations of human rights and humanitarian law without outside assistance, states may work with the international community to develop hybrid systems involving domestic and international law, personnel, technical assistance, and financing.

INTERNATIONAL TRIBUNALS

Where domestic courts are unable or unwilling to prosecute gross violations of human rights and humanitarian law, and where mixed tribunals are not feasible, cases may be adjudicated by international tribunals.

RELATION OF INTERNATIONAL AND MIXED PROSECUTIONS TO DOMESTIC CAPACITY BUILDING

Prosecutions in mixed and international tribunals should be designed to support local capacity building and the strengthening of domestic institutions.

SUPPORT FOR UNIVERSAL JURISDICTION

States should create legislation and otherwise enable their courts to exercise universal jurisdiction for gross violations of human rights and humanitarian law in accordance with principles of treaty law and customary international law.

1.2 INTERNATIONAL COOPERATION

DISCLOSURE OF INFORMATION ON HUMAN RIGHTS VIOLATIONS

States should cooperate with each other and with international organizations in the preservation, collection, and disclosure of information regarding gross violations of human rights and humanitarian law and other issues relevant to post-conflict justice. States should cooperate by providing information from government archives as well as other sources.

INVESTIGATIONS

States shall cooperate with each other and assist international organizations, tribunals, and related entities with investigations. States shall disclose and make available information and evidence regarding gross violations of human rights and humanitarian law.

EXTRADITION

When requested, States shall extradite, or surrender for the purpose of prosecution, individuals present within their territory believed to have committed gross violations of

human rights and humanitarian law. States are only obligated to extradite individuals to countries whose courts respect due process principles and uphold international legal standards.

IMPLEMENTING FOREIGN JUDGMENTS

States should assist post-conflict justice strategies by implementing judgments of other jurisdictions related to gross violations of human rights and humanitarian law, including restricting travel, freezing perpetrator assets, and other actions designed to encourage accountability and enable justice.

1.3 PROSECUTION

IMPARTIALITY AND INDEPENDENCE

Prosecutions in courts and tribunals shall be held to high standards of independence and competence.

INVESTIGATION AND PROSECUTION

States shall investigate serious allegations of gross violations of human rights and humanitarian law committed within their territory or associated with individuals under domestic jurisdiction. Where investigations confirm the validity of such allegations, states shall develop appropriate prosecutorial strategies.

RESPECT FOR DUE PROCESS

States shall act in good faith and in accordance with the principles of due process when conducting investigations and prosecutions.

PROHIBITING MULTIPLE TRIALS FOR THE SAME CRIME

States shall not try an individual more than once for the same crime, except where prior legal processes purposefully shielded the individual from liability or otherwise operated in an improper manner.

WITNESS PROTECTION

States shall protect witnesses, their family members, and others who may be harmed as a result of their cooperation with investigations and prosecutions.

PROTECTION FOR PROCEEDINGS AND STAFF

States shall safeguard legal proceedings and protect legal counsel, judicial officials, and staff that may be harmed as a result of their participation in investigations and prosecutions.

PUBLIC OUTREACH

Prosecutions should include a public outreach component to ensure that the general population is aware of the proceedings, their structure, and the potential benefits for victims, their families, communities, and the larger society.

1.4 LIMITATIONS ON DEFENSE

NO STATUTES OF LIMITATIONS TO PROTECT PERPETRATORS FROM PROSECUTION

Statutes of limitation shall not be used to prevent the prosecution of individuals for genocide, serious war crimes, or crimes against humanity.

“OBEYING ORDERS” IS NOT AN ACCEPTABLE DEFENSE

Obeying the orders of a superior shall not be a legitimate defense in domestic courts, international tribunals, or other adjudicative bodies. However, obeying orders may be considered for determining criminal or civil penalties.

COMMANDERS ARE LEGALLY RESPONSIBLE

Following the doctrine of command responsibility, individuals in positions of authority shall be held legally responsible for gross violations of human rights and humanitarian law committed by those operating under their effective control.

NO HEAD-OF-STATE IMMUNITY OR RELATED PROTECTIONS FROM PROSECUTION

Perpetrators of gross violations of human rights and humanitarian law shall not be provided with protection from legal responsibility or reduced punishment under Head-of-State immunity, diplomatic immunity, or similar forms of legal protection.

NO ASYLUM TO PROTECT PERPETRATORS FROM PROSECUTION

States shall not provide asylum or other protective status to individuals who have committed or are alleged to have committed gross violations of human rights or humanitarian law.

1.5 RIGHTS OF ALLEGED, ACCUSED AND CONVICTED PERPETRATORS

RESPECT FOR DEFENDANTS' RIGHTS

The goals of post-conflict justice are served by respecting the human rights of all, including those accused or convicted of committing gross violations of human rights and humanitarian law.

DEFENDANTS' RIGHTS

States shall provide defendants with internationally accepted due process protections, including: presumption of innocence until proven guilty; trial by a competent, independent, and impartial tribunal established by law; prompt, clear, and detailed information regarding the charges against them; adequate time and facilities for the preparation of defense by a counsel of their choosing; timely prosecution without unreasonable delay; free legal assistance if necessary; the right to provide witnesses on their behalf; the right to examine witnesses; and, the freedom from being compelled to confess or testify against themselves.

NO RETROACTIVE PUNISHMENT

Acts or omissions that did not constitute a crime under national or international law at the time they were committed shall not be the basis for prosecutions. Courts shall not impose a heavier penalty than was applicable at the time the criminal offense was committed.

RIGHTS OF PRISONERS AND DETAINEES

All persons deprived of their liberty shall be treated with humanity and with respect for their inherent dignity in accordance with international norms.

1.6 STATE DISCRETION IN PROSECUTION

PROSECUTORIAL STRATEGY

Since it is often impossible to prosecute all alleged perpetrators, states typically develop context-specific prosecutorial strategies. States should exercise great care and discretion in determining which perpetrators will be prosecuted and shall not use arbitrary or impermissibly discriminatory selection criteria.

VALUE OF PROSECUTING HIGH-LEVEL ACTORS

The goals of post-conflict justice are generally served by prosecutions targeting high-level actors responsible for planning and implementing gross violations of human rights and humanitarian law.

PERMISSIBLE DELAYS FOR PROSECUTIONS

States may delay prosecutions for reasonable periods of time to respect due process, ensure security, and develop appropriate judicial and institutional capacity. Decisions to delay prosecutions should be made in consideration of victims' rights, the rights of alleged perpetrators, and the possible negative impact on reliable testimony and evidence.

PROSECUTION OF CHILD SOLDIERS AND MINORS

States should exercise caution regarding the prosecution of child soldiers and others who are alleged to have committed crimes as minors and should consider the importance of their rehabilitation and reintegration. Where states prosecute individuals who committed crimes as minors, they shall adhere to international standards for juvenile justice.

1.7 MILITARY COURTS AND TRIBUNALS

NO USE OF MILITARY COURTS AND TRIBUNALS

States should not use military courts or tribunals to prosecute military personnel, police, or members of intelligence services or paramilitary forces for gross violations of human rights or humanitarian law committed against civilians.

1.8 AMNESTY

AMNESTY

States shall not grant blanket amnesty to absolve individuals of responsibility for genocide, serious war crimes, or crimes against humanity.

TOKEN SENTENCES AND SIMILAR ACTIONS

States shall not issue token sentences or engage in other actions designed to inequitably limit punishment for gross violations of human rights and humanitarian law.

AMNESTY AS A PRE-REQUISITE FOR THE TERMINATION OF CONFLICT

States should limit the granting of amnesty to circumstances where such measures are necessary for negotiating the end of a conflict, subject to obligations arising under international law.

LINKING AMNESTY WITH ACCOUNTABILITY

States that provide amnesty or other mechanisms to reduce individual legal responsibility for past crimes shall do so in consideration of international law. States should ensure that amnesty policies are linked to specific mechanisms of accountability to discourage impunity and support the goals of post-conflict justice. Amnesty is more acceptable when it provides protection to low-ranking perpetrators, child soldiers, those responsible for less serious crimes, and those forced to commit violations.

INDIVIDUAL ADJUDICATION OF CLAIMS

States that provide amnesty or other mechanisms of reducing individual legal responsibility for past crimes should favor systems that involve the individual adjudication of claims.

PRINCIPLE 2

States shall respect the right to truth and encourage formal investigations of past violations by truth commissions or other bodies.

2.1 RIGHT TO TRUTH

GENERAL VIOLATIONS

Victims, their families, and the general society have the right to know the truth about past violations of human rights and humanitarian law. They have the right to general information regarding patterns of systematic violations, the history of the conflict, and the identification of those responsible for past violations.

SPECIFIC VIOLATIONS

Victims and their families have the right to receive specific information regarding violations of direct impact and concern, including the circumstances in which these violations occurred and the whereabouts of those killed and disappeared.

2.2 TRUTH COMMISSIONS

TRUTH COMMISSIONS

Investigations of past violations of human rights and humanitarian law are commonly conducted by temporary, officially-sanctioned, non-judicial investigative bodies known as truth commissions. Truth commissions provide an important mechanism for addressing the right to truth for victims, their families, and the larger society. Truth commissions may be created through legislation, peace treaties, executive orders, or other legal acts that commonly define a formal mandate.

GOALS OF TRUTH COMMISSIONS

Truth commissions serve a variety of interrelated goals, including: establishing an accurate historical record of past violations; determining individual and/or organizational responsibility; providing an official forum where victims' stories can be heard and acknowledged; challenging impunity through objective research useful for policymakers and others; facilitating national reconciliation and the open acknowledgment of wrongdoing; and, recommending reparations, institutional reforms, and other policies.

IMPARTIALITY AND INDEPENDENCE

Truth commissions shall be impartial and independent. Once a truth commission is created, no outside forces should be allowed to interfere with its composition, structure, or operation. Commissioners and staff should enjoy the privileges and immunities necessary for their protection.

CONSULTATION WITH PUBLIC AND VICTIMS

The decision to establish a truth commission, define its mandate, and determine its composition is served by public consultations that include the views of victims and their families.

POSSIBLE LINKS TO LEGAL ACTION

Truth commissions are not courts, but may be used to support legal actions, whether civil or criminal. However, formal links to legal processes must be carefully designed to uphold key due process protections and must not compromise a truth commission's impartiality, independence, or competence.

COMPOSITION OF TRUTH COMMISSIONS

Truth commissions are generally composed of commissioners whose selection supports the credibility and success of the investigative body. Commissioners must be individuals of high moral character, impartiality, and integrity. Truth commissions involve a professional, interdisciplinary staff that may include lawyers, social scientists, investigators, analysts, mental health professionals, forensic experts, data specialists, and others. Truth commissions benefit from naming commissioners and staff that represent the ethnic, religious, and social composition of the nation and adequately represent women.

2.3 OPERATION AND METHODOLOGY OF TRUTH COMMISSIONS

BASIC OPERATION AND METHODOLOGY

Truth commissions require a clear definition of the time period to be investigated, the duration of their activities, the scope and focus of their research, and their investigatory powers.

VARIED FOCUS

Truth commissions may engage in research and present conclusions on: detailed accounts of specific violations; individual and group responsibility for past violence; the history of the conflict; social, political, economic, and political causes of the conflict; and, the influence of foreign governments and international policies. Truth commissions may also present multiple understandings of "truth" that include subjective and experiential meaning alongside more traditional, legal conceptions of fact and evidence.

METHODOLOGIES

Truth commission methodologies vary, though virtually all commissions conduct interviews with victims, their families, witnesses, perpetrators, and experts. Many commissions gather and analyze documents from state agencies, armed forces, insurgents, political parties and foreign governments. Truth commissions commonly create databases to aid in analysis, present case studies, conduct exhumations, and review thematic issues relevant to their mandate. Truth commissions typically verify data collected, but do so in a manner distinct from the evidentiary rules used in judicial processes.

AUTHORITY TO INTERVIEW

Truth commissions benefit from broad authority to conduct interviews and collect information, which may include subpoena powers.

WITNESS RESPECT AND PROTECTION

Truth commissions must respect the rights of those presenting testimony and address related security issues by clearly communicating possible risks, ensuring a safe interview environment, taking appropriate confidentiality measures, and providing select witness security where necessary.

ACCUSED INDIVIDUALS' RIGHT TO RESPOND

Where individuals may be adversely affected by a truth commission's findings, they should be provided with an opportunity to confront or rebut evidence offered against them in person, by written submission, or through designated representatives.

DETERMINING RESPONSIBILITY FOR PAST VIOLENCE

Truth commissions should seek to determine responsibility for past violations of human rights and humanitarian law. This process should involve the public presentation of conclusions regarding responsible parties and the systematic nature of repressive practices and may involve the identification of individual and institutional actors.

PUBLIC OUTREACH

Truth commissions should engage in public outreach to ensure that the general population is aware of the investigative body, its work, and the potential benefits for victims, their families, communities, and the larger society. Truth commissions should ensure broad public access through activities such as opening multiple offices, sending staff throughout the country, and holding public meetings.

LINK TO SOCIAL RECONCILIATION

Many truth commissions formally link investigative work with processes of social reconciliation, including mediation and encounters between victims and perpetrators. Some commissions also utilize non-judicial or quasi-judicial processes of acknowledging responsibility, accountability, and punishment.

2.4 PRESENTATION OF FINDINGS AND RECOMMENDATIONS

RESPONSIBILITY TO PUBLICLY PRESENT FINDINGS

Truth commissions have a responsibility to present their findings to the public, generally through a final written report. They may also use other means including radio, television, and other popular media. Truth commissions' findings should be presented in a manner that is easily accessible by the public.

RESPONSIBILITY TO MAKE RECOMMENDATIONS

Truth commissions should make recommendations that openly engage past violations, encourage national reconciliation, seek to deter future violations, and foster respect for fundamental human rights and the rule of law. They may suggest reparations, constitutional reform, legislation, restructuring security institutions and the judiciary, and policies that promote social and economic change. Recommendations generally focus on state actions and institutions, but may also be directed toward domestic civil society, foreign governments, and international organizations.

STATE RESPONSIBILITY TO DISSEMINATE TRUTH COMMISSION FINDINGS

States should ensure that a truth commission's findings are published, made widely available, and broadly communicated to the general society. This may include presenting popular versions of the truth commission's work, translating material into multiple languages, creating radio, television or related programs, and integrating findings within public education curricula.

ARCHIVING TRUTH COMMISSION MATERIALS

Truth commissions should safeguard the testimonies, evidence, and related materials in archives that are eventually opened for public review.

2.5 OTHER INVESTIGATIVE BODIES AND TRUTH-TELLING ACTIONS

IMPORTANCE OF OTHER INVESTIGATIVE BODIES

States may also create other types of investigative bodies designed to reveal the truth about various elements of past violations.

GOALS OF INVESTIGATIVE BODIES

Alternative investigative bodies may review issues that are either too specific or too general to be covered by truth commissions such as particular events and actors, the role of professional organizations, and general historical issues.

NON-STATE BASED INVESTIGATIONS

Private organizations, such as religious groups and professional associations, may present investigations of past violations designed to contribute to truth-telling and support post-conflict justice.

EXHUMATIONS

States should support exhumations of clandestine cemeteries and sites where victims'

remains may be found and should assist in proper legal investigations as well as culturally sensitive handling and burial.

2.6 ARCHIVES RELATED TO PAST VIOLATIONS

CREATION OF ARCHIVES

States are encouraged to work with civil society to gather and preserve documents related to past violations from governmental institutions such as the police, military and intelligence services, as well as other sources.

MANAGEMENT OF ARCHIVES

It is recommended that archives are organized and managed by professionals. Technical measures and penalties should be applied to prevent removal, destruction, concealment or falsification, especially if undertaken for the purpose of enabling impunity.

ACCESS TO ARCHIVES

Access to archives should be subject to reasonable restrictions designed to protect the privacy, confidentiality, and security of victims and others, but not for the purpose of censorship.

RIGHT OF ACCUSED INDIVIDUALS TO RESPOND TO INFORMATION IN ARCHIVES

Individuals are entitled to know whether their names appear in state archives and should be provided with the opportunity of formally challenging the validity of information found there.

PRINCIPLE 3

States shall acknowledge the special status of victims, ensure access to justice, and develop remedies and reparations.

3.1 SPECIAL STATUS OF VICTIMS

DEFINITION OF VICTIMS

Victims are those who have suffered harm, individually or collectively, including physical injury, mental injury, emotional suffering, economic loss, or the significant impairment of basic legal rights. Victims include those who have directly experienced violations of human rights and humanitarian law, as well as members of their immediate families.

PRIORITY OF VICTIMS

States and others shall ensure that victims are treated with compassion and respect, and that policies and programs are designed with special sensitivity to their needs. States should take appropriate measures to ensure the safety and privacy of victims and their families.

3.2 RIGHT TO REMEDIES AND ACCESS TO JUSTICE

RIGHT TO REMEDIES

Victims have the right to equal and effective access to justice, factual information concerning violations and adequate, effective and prompt reparations. States shall respect victims' individual and collective rights to justice. States shall publicize applicable remedies and make available appropriate legal, institutional, diplomatic, and consular means to promote victims' access to justice.

ACCESS TO JUSTICE

States shall ensure that victims are aware of their rights and, to the degree possible, have equal access to effective, fair, and impartial judicial and administrative remedies.

RIGHT TO PARTICIPATE IN PROCEEDINGS

States should provide victims and their families with the opportunity to participate in civil and criminal legal processes related to past violations as direct claimants, *parties civile*, or other relevant capacities.

3.3 RIGHT TO REPARATIONS

VICTIMS' RIGHT TO REPARATIONS

Victims have the right to reparations for violations of human rights and humanitarian law. States and others should provide victims with appropriate reparations for both acts and omissions resulting in past violations. States remain responsible for reparations even where the government that committed past violations no longer exists. States should enforce domestic judgments for reparations against responsible parties and enforce valid foreign judgments. Victims' participation in international reparations processes should not affect their access to domestic remedies.

REPARATIONS BY NON-STATE ACTORS

Where non-state actors are responsible for violations, they should provide reparations to victims. Where these actors are unable or unwilling to meet their obligations, states should assume this responsibility, especially where a state was either partially complicit or failed to take adequate preventative action.

3.4 TYPES OF REPARATIONS

TYPES OF REPARATIONS

States should provide victims of violations of human rights and humanitarian law with various types of reparations including: restitution; compensation; rehabilitation; and, the satisfaction and guarantees of non-repetition. Reparations shall be structured in accordance with domestic law and international obligations.

RESTITUTION

Restitution seeks to restore victims to their situation prior to having suffered serious violations. Restitution includes: resettlement in one's place of prior residence; return of confiscated property; and, the restoration of liberty, employment, family unity, legal rights, and citizenship. States should make special efforts to ensure that individual criminal records are cleared of illegitimate and politically motivated convictions related to prior government repression.

COMPENSATION

Compensation provides victims with monetary payments for damages, suffering and loss resulting from past violations. Compensation includes payments to address: physical harm; mental harm; lost economic, educational, and social opportunities; damage to reputation and dignity; and, costs related to legal aid, expert assistance, and relevant medical, psychological, and social services.

REHABILITATION

Rehabilitation provides services to victims to address the impact of past violations, including: medical and psychological care; social services; education; job training; and, legal assistance. States should focus special attention on providing rehabilitation to child victims, the children of victims, and child soldiers.

SATISFACTION AND GUARANTEES OF NON-REPETITION

Satisfaction and guarantees of non-repetition provide victims with information and services to address the continuing impact of past violations and prevent future violations. These actions include providing victims with information on: those killed, including the location of clandestine gravesites; those disappeared and the circumstances of their disappearance; and, abducted children. States should also implement measures to end continuing violations, such as institutional reform, while also creating conditions to prevent future violations.

3.5 OTHER ASPECTS OF REPARATIONS

PROPORTIONALITY, SCOPE AND IMPACT

Reparations should be proportional to the nature of the violation and the harm suffered. States should ensure that reparations are equitably provided to all victims.

MORAL REPARATIONS

Moral reparations such as commemorations and tributes may aid in social reconciliation, bridge gaps between victims and the broader community, and support individual and communal healing.

APOLOGIES

Apologies by the state, individual perpetrators and others may encourage social understanding, facilitate the process of national reconstruction, and enable forgiveness on the part of victims and their families.

PRINCIPLE 4

States should implement vetting policies, sanctions, and administrative measures.

VETTING

Vetting prevents individuals responsible for past violations from participating in government or holding official positions. Vetting may operate for a set period of time or may involve lifetime bans. Vetting policies, sanctions, and related administrative measures are designed to punish perpetrators, prevent future violations, and distinguish the new government from prior repressive regimes by expressing clear support for accountability and fundamental human rights.

PROPORTIONALITY, SCOPE, AND IMPACT

States should ensure that vetting policies and related sanctions are proportional to responsibility for past violations and link a commitment to accountability with the long-term goals of national reconciliation and peace.

METHODS

States may develop institutional systems for vetting, sanctions, and administrative

measures using courts or non-judicial administrative systems. States may implement vetting through public or confidential processes.

VETTING OF MILITARY, INTELLIGENCE AND SECURITY FORCES

States should make special efforts to determine individual responsibility of military, intelligence, and other security personnel for gross violations of human rights and humanitarian law. Those bearing the greatest responsibility should be barred from participating in government or security forces, especially high-ranking officials who planned, instigated, ordered, or committed violations.

VETTING OF POLITICAL LEADERS

States should limit the participation in government and political institutions of leaders who planned, instigated, ordered, or committed gross violations of human rights and humanitarian law. This is especially important for high-level party and government officials.

VETTING OF NON-STATE ACTORS

Where non-state actors are disarmed, demobilized and reintegrated into society, they should be subjected to similar vetting policies as state actors. Measures should be taken to secure the cooperation of countries that contributed to the creation and development of such groups, particularly through financial or logistical support.

VETTING OF THE JUDICIARY

States should develop appropriate policies to remove judges associated with prior repressive regimes, particularly those associated with committing, supporting, or enabling gross violations of human rights and humanitarian law.

SANCTIONS AND ADMINISTRATIVE MEASURES

States should consider sanctions and administrative measures for individuals responsible for gross violations of human rights and humanitarian law, such as revoking professional licenses or denying public benefits.

RESPECT FOR DUE PROCESS

All individuals subject to vetting, sanctions, and other non-criminal civil and administrative measures should be provided with appropriate and reasonable due process protections.

RELATION TO PROSECUTIONS

Vetting, sanctions, and administrative measures may be implemented alongside prosecutions and automatically imposed on the basis of a finding of criminal liability.

PRINCIPLE 5

States should support official programs and popular initiatives to memorialize victims, educate society regarding past political violence, and preserve historical memory.

5.1 MEMORIALIZATION

GOALS OF MEMORIALIZATION

Memorialization honors the dignity, suffering, and humanity of victims, both living and dead, and commemorates the struggles and suffering of individuals, communities, and society at large. On an individual and national level, memorialization may contribute to healing and reconciliation.

TYPES OF MEMORIALIZATION

Memorialization may involve formal state-sponsored actions that vary in scope, impact, and visibility, as well as informal actions that reflect individual, group, and community needs. These processes include: built memorials such as monuments, statues and mu-

seums; sites of memorialization such as former prisons, battlefields or concentration camps; and, commemorative activities including official days of mourning, renaming streets, parks, and other public sites and various forms of artistic, social, and community engagement with past violations.

VICTIM PARTICIPATION AND CONTEXT-SPECIFIC MEMORIALIZATION

States should engage in memorialization with the assistance of victims, victims' organizations, and others in a manner that displays great sensitivity toward local culture, context, and values.

ACTIVE ENGAGEMENT IN THE PROCESS OF MEMORIALIZING

Memorializing is a social and political process that includes the memorial itself, the creation of the memorial, and shifting social engagement with the memorial over time. Memorials should be designed within a context of civic participation, taking into account responses of victims, their families, civil society organizations, and others.

5.2 EDUCATION

RESPONSIBILITY TO EDUCATE

States have a responsibility to ensure that information about past violations is adequately and appropriately communicated to broad sectors of society. States should integrate the documentation and analysis of past violations into national educational curricula.

GOALS OF EDUCATION ABOUT PAST VIOLATIONS

States should work with victims, communities, civil society organizations, and others to ensure that the public is aware of past violations as a means of preventing their recurrence and building a culture of respect for fundamental human rights and the rule of law.

5.3 PRESERVATION OF HISTORICAL MEMORY

RESPONSIBILITY TO PRESERVE HISTORICAL MEMORY

States have a basic responsibility to ensure that information about past violations is accurately preserved.

GOALS OF PRESERVING HISTORICAL MEMORY

The preservation of historical memory ensures that history is not lost or re-written so that societies may learn from their past and prevent the recurrence of violence and atrocity.

STRATEGIES

Measures aimed at preserving historical memory include the public dissemination of truth commission findings, public educational curricula focusing on past violations, archives, and state and community efforts aimed at promoting awareness within the larger society.

PRINCIPLE 6

States should support and respect traditional, indigenous, and religious approaches regarding past violations.

VALUE OF TRADITIONAL, INDIGENOUS, AND RELIGIOUS APPROACHES

Traditional, indigenous, and religious approaches to justice have high levels of local legitimacy and are generally integrated into the daily lives of victims, their families, communities, and the larger society. Despite the fact that these practices are often more closely bound to local society than courts and government institutions, they have often been ignored by states and international organizations.

VARIED NATURE OF THESE APPROACHES

Traditional, indigenous, and religious approaches to justice vary widely with culture and context. However, these practices commonly exhibit structural, procedural, and conceptual similarities and derive their structure and value from key elements of local society, including, family and clan ties, group identity, patron-client relations, social solidarity, and norms involving honor, shame, dignity, and prestige.

RESPECT FOR DUE PROCESS

From the human rights perspective, these practices sometimes raise concerns regarding due process protections, uniformity of process and punishment, and principles of equality. States, civil society, communities, and others should work together to seek a balance between traditional processes of justice and key human rights protections.

LINK TO HEALING

Traditional, indigenous, and religious approaches to justice frequently involve rituals and collective processes that provide a focus for group solidarity and make explicit references to religious ideals, stories, values, local history, and custom. These processes often enable individual and community healing through the re-establishment of relationships, not only between people, but also with God, spirits, traditions, and other elements of a holistic and spiritual framework. They may address the harm of past violence by linking these experiences with a protective and empowering cultural context involving collective action, ceremonies, ritual exchanges, prayers, and public acts of atonement.

LINK TO RECONCILIATION

Social reconciliation generally requires an acknowledgment of responsibility on the part of individuals and communities and the integration of victims and perpetrators into a coherent social order. Traditional, indigenous, and religious practices often link public deliberative processes involving respected community members with formal mechanisms of evaluating and addressing claims. They commonly address harm through symbolic punishment, payment or exchange, and decisions and processes widely accepted by multiple parties.

PRINCIPLE 7

States shall engage in institutional reform to support the rule of law, restore public trust, promote fundamental rights, and support good governance.

7.1 INSTITUTIONAL REFORM, PEACE, AND RECONSTRUCTION

GOALS OF INSTITUTIONAL REFORM

States shall engage in actions to improve governance and assist institutions to address the legacy of past violations. These actions include institutional restructuring, security sector reform, legal and judicial rebuilding, and activities that support democratization and the defense of fundamental human rights.

PUBLIC CONSULTATIONS AND REPRESENTATION OF VULNERABLE GROUPS

Institutional reforms aimed at supporting responsible governance and preventing a recurrence of violations should be developed alongside broad public consultations that include the participation of victims, their families, affected communities, and civil

society. It is essential that these processes include the adequate representation of women as well as minority groups and others, particularly where they were targeted for past violations of human rights and humanitarian law.

DISARMAMENT, DEMOBILIZATION, AND REINTEGRATION PROGRAMS

States should ensure that disarmament, demobilization, and reintegration of militias and other armed groups are linked to comprehensive policies of post-conflict justice. States should reduce the availability of arms within the country and make special efforts to reintegrate child soldiers into society.

EXPLICITLY LINKING INSTITUTIONAL REFORMS TO POST-CONFLICT JUSTICE

States should explicitly link forward-looking reconstruction efforts and related institutional reforms to an open engagement with past violations and a formal acknowledgment of the goals of post-conflict justice.

7.2 MILITARY, INTELLIGENCE, AND DOMESTIC SECURITY REFORM

CONTROL OF MILITARY, INTELLIGENCE, AND DOMESTIC SECURITY FORCES

States should ensure that the military, intelligence, and domestic security services operate under civilian control. States should establish effective mechanisms and institutions of civilian oversight.

RESPECT FOR HUMAN RIGHTS AND HUMANITARIAN LAW

States shall make sure that military, intelligence, and domestic security services respect basic principles of human rights and humanitarian law.

MILITARY, INTELLIGENCE, AND DOMESTIC SECURITY SERVICES EDUCATION

States shall ensure that the military, intelligence, and domestic security services receive appropriate education on human rights and humanitarian law and key domestic and international legal principles.

INTELLIGENCE AND DOMESTIC SECURITY FORCES LEGISLATION AND DOCTRINE

States should make sure that legislation defining military, intelligence, and domestic security authority clearly defines these entities as apolitical bodies charged with defending the sovereignty of the state and its territorial integrity. States should also ensure that legislation regarding intelligence and security bodies clearly limits their mandate to information-gathering and security as part of a responsive, democratic system of governance.

7.3 LEGAL REFORM

ENSURING RULE OF LAW

States shall restructure and reform institutions to ensure consistent adherence to the rule of law. States should encourage responsive governance and build the foundation of a society premised on key democratic principles.

RATIFYING INTERNATIONAL CONVENTIONS

States should ratify relevant international conventions regarding the defense and protection of human rights.

INDEPENDENT JUDICIARY

States shall undertake all necessary steps to assure the independent, impartial, and effective functioning of the judiciary in accordance with international standards of due process.

CHANGING OR REPEALING LAWS TO PROTECT HUMAN RIGHTS

States shall make appropriate constitutional changes, repeal, or adjust laws that contribute to or enable violations of human rights and humanitarian law, and enact legislative and other measures necessary to ensure respect for fundamental human rights and safeguard democratic institutions and processes.

LINKS TO TRADITIONAL LEGAL SYSTEMS AND LOCAL CONFLICT RESOLUTION

States should openly acknowledge the value of traditional and customary legal systems and local mechanisms of conflict resolution as elements of post-conflict justice and domestic legal reform.

7.4 COMBATING CORRUPTION

RESPONSIBLE GOVERNANCE

States shall combat corruption as part of broad policy reforms regarding accountability and good governance.

ENCOURAGING TRANSPARENCY

States should ensure transparency for funding, institutional management, and program development regarding post-conflict justice strategies and other aspects of governmental policy. International organizations have a special responsibility to serve as models for combating corruption and encouraging transparency and accountability.

7.5 INSTITUTIONAL REFORM, HUMAN RIGHTS AND GOVERNANCE

RESPECT FOR HUMAN RIGHTS

States make concerted efforts to integrate human rights concepts into all aspects of governance and ensure that government institutions implement specific policies that support fundamental human rights, rule of law, and democratic values.

SPECIAL PROTECTION FOR FUNDAMENTAL FREEDOMS

States should provide special protections for key civil and political freedoms.

HUMAN RIGHTS MONITORING

States should create human rights ombudsmen, independent human rights commissions, or other state or quasi-state institutions designed to protect and defend fundamental human rights. States should monitor domestic conflicts and engage in preventative action and conflict resolution.

HUMAN RIGHTS TRAINING FOR STATE EMPLOYEES

States should ensure that public officials and employees, particularly those involved in military, intelligence, domestic security, and judicial sectors, receive comprehensive and ongoing training in human rights. States should promote the observance of codes of conduct for all public servants.

REMEDYING SOCIAL AND ECONOMIC INEQUALITY THROUGH REFORMS

States should engage in broad social and economic reforms that address basic structural causes of conflict, including: significant economic inequality; structural mechanisms of social and political disempowerment; ethnic or related tensions; and, social elements that encourage or enable the violent resolution of disputes.

APPENDICES

APPENDIX 1

PARTICIPANTS OF THE 1997 EXPERTS MEETING AT THE UNITED STATES
HOLOCAUST MEMORIAL MUSEUM, WASHINGTON, DC

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APPENDIX 3

CHICAGO-BASED EXPERTS WHO PARTICIPATED IN THE MEETINGS HELD
ON FEBRUARY 12 AND 24, AND MARCH 5, 2003, IN CHICAGO
TO DISCUSS AND REVIEW THE DRAFT PRINCIPLES

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