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**Promotion and protection of all human rights, civil,
political, economic, social and cultural rights,
including the right to development****International legal standards underpinning the pillars of
transitional justice****Report of the Special Rapporteur on the promotion of truth, justice,
reparation and guarantees of non-recurrence, Fabián Salvioli***Summary*

In the present report, the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence, Fabián Salvioli, provides an analysis of the international legal standards underpinning the five pillars of transitional justice: truth, justice, reparation, memorialization and guarantees of non-recurrence.

The Special Rapporteur analyses all sources of international law and presents a thorough systematization of the standards contained therein. In doing so, he consolidates the main concepts, rules and duties supporting each pillar, including those that are not expressly mentioned in international treaties but are derived from them, the jurisprudence of international and regional tribunals, widely respected sources of soft law, and State practice.



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I. Introduction

1. The present report is submitted by the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence to the Human Rights Council pursuant to resolution 45/10. In the report, the Special Rapporteur lists key activities undertaken from August 2022 to June 2023 and examines the international legal standards underpinning the pillars of transitional justice.
2. Between November 2022 and January 2023, the Special Rapporteur organized an open consultation with States, national human rights institutions and civil society, which yielded valuable contributions for the report.¹

II. Activities undertaken by the Special Rapporteur

3. On 15 September 2022, the Special Rapporteur participated in a round table entitled “Roma and memorialization: advancing recognition and remedy for the dark chapters of the Romani past and their impact on the present”, organized by the Office of the United Nations High Commissioner for Human Rights and civil society organizations.
4. On 16 September, he participated in the fifty-first session of the Human Rights Council and held meetings during that week with representatives from States and civil society.
5. On 19 September, he participated in the side event in the margins of the fifty-first session of the Council, entitled “Sharing stories, healing wounds: transitional justice in Bosnia and Herzegovina”, organized by the Permanent Missions of Austria, Belgium, Bosnia and Herzegovina and Germany.
6. On 4 October, he participated by video message in a transitional justice workshop held by The May 18 Memorial Foundation in Bangkok.
7. From 18 October to 20 October, the Special Rapporteur held meetings with the Special Adviser to the Secretary-General on the Prevention of Genocide, the Deputy Head of Office of the Peacebuilding Support Office, officials of the Executive Office of the Secretary-General, other special procedure mandate holders and representatives from States, academia and civil society.
8. On 21 October, he participated in the seventy-seventh session of the General Assembly.
9. From 22 November to 2 December, he conducted an official visit to Serbia and Kosovo.²
10. On 12 and 13 December, he participated in the Fourth Global Forum against the Crime of Genocide, organized by the Ministry of Foreign Affairs of Armenia with the support of the Office on Genocide Prevention and the Responsibility to Protect.
11. He held an online consultation, open between 13 February 2022 and 17 March 2023, on the financing of reparations owed to victims of serious violations of human rights and humanitarian law.
12. On 29 March, the Special Rapporteur convened an expert meeting on financing of reparations owed to victims of serious violations of human rights and humanitarian law.
13. On 11 May, he participated in an international workshop entitled “Reparations: lessons from the past, challenges for the future”, organized by Utrecht University and the Trust Fund for Victims.

¹ See <https://www.ohchr.org/en/calls-for-input/2023/minimum-international-legal-standards-underpinning-pillars-transitional>.

² References to Kosovo shall be understood to be in the context of Security Council resolution 1244 (1999).

14. From 12 to 16 June, he participated in the twenty-ninth annual meeting of special rapporteurs, independent experts and chairs of working groups of the special procedures of the Human Rights Council.

III. Background

15. In compliance with his mandate, and mindful of the importance of clearly establishing the scope of application of the rules regarding transitional justice, the Special Rapporteur decided to devote the present report to analysing the international legal standards underpinning the five pillars of transitional justice: truth, justice, reparation, memorialization and guarantees of non-recurrence.

16. The analysis takes into account that the five pillars of transitional justice are complementary and interdependent, and therefore commonly intersect with one another. As emphasized by a previous mandate holder, to achieve success in the implementation of transitional justice measures, the tight and bidirectional relations between the pillars must be taken into account when designing relevant programmes. States must thus implement such obligations under a comprehensive approach that combines the elements of each pillar in a complementary and mutually reinforcing manner.³ The current view is that transitional justice processes must be focused on and implemented in line with the effective fulfilment of States' human rights obligations.⁴ In addition, the pillars of transitional justice should be developed with due consideration of the principles of non-discrimination, must integrate a gender perspective and a victim-centred approach, and must be aimed at addressing the root causes of serious human rights violations.⁵

IV. Truth-seeking

A. General considerations

17. In accordance with the updated set of principles for the protection and promotion of human rights through action to combat impunity, truth consists in the inalienable right of victims and their families to know the truth about past events concerning the perpetration of heinous crimes and about the circumstances and reasons that led, through massive or systematic violations, to the perpetration of those crimes. It is considered a vital safeguard against the recurrence of violations.⁶ The failure to investigate such violations could in and of itself give rise to a separate breach of the relevant international instrument.⁷ Truth is also needed to achieve more complete memorialization processes.

18. This right stems from the duty of States to investigate gross violations of human rights and serious violations of international humanitarian law, contained in several universal and regional instruments. The duty to investigate is derived from the obligation of States to respect and ensure human rights, and from the right of all persons to an effective remedy for violations of those rights, contained in the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights and numerous other international and regional human rights instruments.⁸

³ A/HRC/21/46, paras. 24 and 61.

⁴ A/HRC/45/45, para. 34.

⁵ Human Rights Council resolution 51/23.

⁶ Principle 2.

⁷ See, for example, Human Rights Committee, general comment No. 31 (2004), para. 15.

⁸ American Convention on Human Rights, arts. 1, 8 and 25; African Charter on Human and People's Rights, arts. 3 and 13; Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights), arts. 1, 6 and 13; Arab Charter on Human Rights, arts. 3, 13 and 23; Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, art. 12; International Convention for the Protection of All Persons from Enforced Disappearance, art. 24; Inter-American Convention on Forced Disappearance of Persons, art. X; and American Declaration of the Rights and Duties of Man, art. XVIII.

19. The right of families to know the truth about the fate of their relatives is codified in the Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I)⁹ and the International Convention for the Protection of All Persons from Enforced Disappearance.¹⁰ It has also been recognized by the General Assembly,¹¹ the Human Rights Council¹² and the Organization of American States.¹³

20. The right to truth is also mentioned expressly in other sources of international law, such as the updated set of principles for the protection and promotion of human rights through action to combat impunity and the Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law. Some States have incorporated the right to truth in their domestic laws¹⁴ and, in some cases, their national courts have played an important role in providing access to the truth.¹⁵

21. The duty of States to investigate alleged human rights violations and the right of victims to know the truth about those violations have also been recognized by several regional and international courts and human rights protection mechanisms, such as the Human Rights Committee,¹⁶ the European Court of Human Rights,¹⁷ the African Commission on Human and Peoples' Rights¹⁸ and the Inter-American Court of Human Rights.¹⁹

B. Specific considerations

1. Effective, independent and impartial investigations

22. States have the positive obligation to investigate, identify the patterns of joint action and identify all those who participated in various ways in human rights violations.²⁰ This must be done with the appropriate participation of the victims in the proceedings, through wide-ranging possibilities of being heard.²¹ The investigations may relate to all persons, whether they ordered the violations or actually committed them, acting as perpetrators or accomplices, and whether they are public officials or members of quasi-governmental or private armed groups with any kind of link to the State, or of non-governmental armed movements. In guaranteeing the right to truth, States must take the measures necessary to ensure the independent and effective operation of the judiciary and non-judicial processes

⁹ Art. 32.

¹⁰ Art. 24.

¹¹ Resolution 68/165.

¹² Resolutions 9/11, 12/12 and 21/7.

¹³ Resolution 2175 of 6 June 2006.

¹⁴ See, e.g., Spain, Act No. 52/2007, on historical memory, and Act No. 20/2022, on democratic memory; and Uruguay, Act No. 19.822 of 2019. See also Joint Declaration on Missing Persons in the Framework of the Berlin Process.

¹⁵ See, for example, Supreme Court of Argentina, *Urteaga v. The Argentine State-Joint Chiefs of Staff of the Armed Forces*, Judgment, 15 October 1998; and Federal Chamber of La Plata, resolution 18/98, 21 April 1998.

¹⁶ Communication No. 563/1993, *Bautista de Arellana v. Colombia*, paras. 8.3 and 8.6; [CCPR/C/79/Add.63](#), para. 25; and communication No. 107/1981, *Quinteros Almeida v. Uruguay*, paras. 8 and 15.

¹⁷ *Kurt v. Turkey*, Application No. 15/1997/799/1002, Judgment, 25 May 1998, paras. 85, 86 and 175; and *Anguelova v. Bulgaria*, Application No. 38361/97, Judgment, 13 June 2002.

¹⁸ *Amnesty International et al. v. Sudan*, communications No. 48/90, No. 50/91, No. 52/91 and No. 89/93, Decision, 5 November 1999, paras. 51 and 56.

¹⁹ "*Mapiripán Massacre*" v. *Colombia*, Judgment, 15 September 2005, paras. 223, 233 and 241; *Bámaca Velásquez v. Guatemala*, Judgment, 22 February 2002, paras. 76 and 77; *García and family members v. Guatemala*, Judgment, 29 November 2012, para. 176; *Velásquez Rodríguez v. Honduras*, Judgment, 29 July 1988, para. 181; and *Rodríguez Vera et al. (the Disappeared from the Palace of Justice) v. Colombia*, Judgment, 14 November 2014, pp. 12–14.

²⁰ European Court of Human Rights, *Cyprus v. Turkey*, Application No. 25781/94, Judgment, 10 May 2001, paras. 155–158; Inter-American Court of Human Rights, *La Rochela Massacre v. Colombia*, Judgment, 11 May 2007, para. 195; and *Chitay Nech et al. v. Guatemala*, Judgment, 25 May 2010.

²¹ Inter-American Court of Human Rights, *Gelman v. Uruguay*, Judgment, 24 February 2011, para. 187.

that complement the role of the judiciary.²² Also, investigations must be undertaken seriously and not as a mere formality predestined to be ineffective.²³

23. The investigations should begin *ex officio*,²⁴ that is, should not depend on the procedural initiative of the victims or of their next of kin, nor on their contributing evidence,²⁵ and must be prompt, thorough, effective, credible and transparent.²⁶ The Human Rights Committee and the Inter-American Court of Human Rights have noted the need to undertake investigations of potentially unlawful deprivations of life in accordance with technical standards, such as those of the Minnesota Protocol on the Investigation of Potentially Unlawful Death, its precursor (the United Nations Manual on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions), and the model autopsy protocol.

24. To effectively uncover all information that can be established about the facts and whereabouts of missing persons, investigations must include the goals of finding and identifying the remains of the victims.²⁷ The Inter-American Court of Human Rights, which has analysed the topic of enforced disappearance in Latin America in depth, has found that a State must prepare a meticulous plan to search for, exhume and identify victims, taking into account the State's "maximum use of its human, scientific and technical resources".²⁸ If found, a person's body must be returned to the family as soon as it has been identified.²⁹ This is of the utmost importance, as it affords families relief from the anguish and suffering caused by uncertainty,³⁰ and permits them to close the process of mourning and bury the victims in accordance with their beliefs.³¹ Some measures to comply with this obligation are: the use of systems of genetic information;³² the establishment of a web page for tracing those persons; coordination among the relevant governmental and non-governmental authorities and institutions;³³ the creation of specialized units to investigate cases of enforced disappearance; the elaboration of a protocol for the collection and identification of bodily remains, and the creation of a psychosocial assistance programme for individuals who are found and their relatives.³⁴

25. In practice, a considerable number of special commissions to locate persons missing in conflict or other circumstances have been created,³⁵ including by means of international cooperation. Nevertheless, more effective efforts are needed worldwide: the Working Group

²² Updated set of principles, principles 8 (c) and 5.

²³ Inter-American Court of Human Rights, *Moiwana Community v. Suriname*, Judgment, 15 June 2005, para. 146.

²⁴ Human Rights Committee, general comment No. 36 (2019), paras. 28 and 64. See also European Court of Human Rights, *Oğur v. Turkey*, Application No. 21594/93, Judgment, 20 May 1999; and Inter-American Court of Human Rights, *Gómez Paquiyauri Brothers v. Peru*, Judgment, 8 July 2004, para. 131.

²⁵ Inter-American Court of Human Rights, *Moiwana Community v. Suriname*, para. 146; and European Court of Human Rights, *Khashiyev and Akayeva v. Russia*, Applications No. 57942/00 and No. 57945/00, Judgment, 24 February 2005, para. 153.

²⁶ Human Rights Committee, general comment No. 31 (2004), para. 15.

²⁷ Geneva Convention relative to the Protection of Civilian Persons in Time of War (Fourth Geneva Convention), art. 26; and Protocol I Additional to the Geneva Conventions of 1949, art. 32. See also Human Rights Committee, *Aliboev v. Tajikistan*, (CCPR/C/85/D/985/2001); Inter-American Court of Human Rights, *Velásquez Rodríguez v. Honduras*, paras. 166, 175 and 181; and European Court of Human Rights, *Akkum and Others v. Turkey*, Application No. 21894/93, Judgment, 24 June 2005, paras. 247–251.

²⁸ *Río Negro Massacres v. Guatemala*, Judgment, 4 September 2012, paras. 265 and 268.

²⁹ Updated set of principles, principle 34; and [A/HRC/22/45](#) and [A/HRC/22/45/Corr.1](#), para. 54.

³⁰ Inter-American Court of Human Rights, *Chitay Nech et al. v. Guatemala*, para. 222. See also Human Rights Committee, communication No. 30/1978, *Bleier v. Uruguay*, para. 2.4.

³¹ Inter-American Court of Human Rights, *Massacres of El Mozote and nearby places v. El Salvador*, Judgment, 25 October 2012, para. 331. See also [A/HRC/14/42](#) and [A/HRC/AC/6/2](#).

³² Inter-American Court of Human Rights, *Serrano Cruz Sisters v. El Salvador*, Judgment, 1 March 2005, para. 193.

³³ *Ibid.*, paras. 189–191.

³⁴ [A/HRC/22/45](#) and [A/HRC/22/45/Corr.1](#), para. 79 (g).

³⁵ Bosnia and Herzegovina, Brazil, Croatia, Ireland, Montenegro, Serbia and the United Kingdom of Great Britain and Northern Ireland, as well as Kosovo, among many others.

on Enforced or Involuntary Disappearances has transmitted over 59,600 cases to over 110 States.³⁶

2. Truth commissions and commissions of inquiry

26. The updated set of principles for the protection and promotion of human rights through action to combat impunity include the most specific and comprehensive systematization of the rules that should guide the creation and operation of truth commissions and commissions of inquiry. These are mechanisms created specifically to establish the facts surrounding heinous crimes perpetrated on a massive or systematic basis against societies,³⁷ which is common State practice in transitional processes.³⁸ Truth-seeking commissions, however, are not intended to act as substitutes for the civil, administrative or criminal courts.³⁹

27. On deciding whether such a commission of inquiry should be created, and what its terms of reference and composition should be, the views of the victims and survivors should be central to the decision, which should also take into consideration gender equality and civil society representation. Generally, the objective of the investigations should be to achieve recognition of formerly denied facts and focus, as a matter of priority, on violations that constitute serious crimes under international law.

3. Independence, impartiality, competence and effectiveness of the commission

28. States must take the measures necessary to ensure the independent and effective operation of non-judicial truth-seeking processes. One key to guaranteeing independence is to ensure transparent funding that provides sufficient material and human resources. The effective operation of the commission also requires the assistance of law enforcement authorities.⁴⁰ For swift operation in finding truth, commissions of inquiry should seek assistance from law enforcement authorities in calling for testimonies, inspecting places concerned in their investigations and/or calling for the delivery of relevant documents.⁴¹ Commission members should be selected in accordance with clear, public criteria, should have expertise in the field of human rights and humanitarian law, and should reflect adequate representation of groups in situations of vulnerability.⁴² They must be persons of high moral character, neutrality and integrity.

29. Commission members should have special guarantees that secure their irremovability during their term, except on grounds of incapacity or behaviour that renders them unfit to discharge their duties and pursuant to impartial and independent determinations.⁴³ Commissioners and staff must enjoy the necessary privileges and immunities for their protection, especially in respect of any defamation proceedings or other civil or criminal action brought against them on the basis of facts or opinions contained in the commission's reports,⁴⁴ and against threats to their life, health or safety.

30. The reports and recommendations of commissions should be given due consideration to ensure effective implementation and expected outcomes, including legislative and other actions to combat impunity.⁴⁵ Society should take effective ownership of those recommendations, so as to prevent gaps in the narratives of the past that could be exploited by political actors.⁴⁶

³⁶ A/HRC/51/31, para. 5.

³⁷ Updated set of principles, principle 5.

³⁸ Various examples are mentioned in A/HRC/48/60, paras. 14 and 15.

³⁹ Updated set of principles, principle 8.

⁴⁰ Ibid., principle 11.

⁴¹ Ibid., principles 6 and 8.

⁴² Ibid., principles 7 and 11.

⁴³ Ibid., principle 7 (a). See also African Commission on Human and People's Rights, *Amnesty International et al. v. Sudan*, para. 51.

⁴⁴ Updated set of principles, principle 7 (b).

⁴⁵ Ibid., principle 12.

⁴⁶ A/HRC/45/45, para. 67.

4. Due process and special protection of persons

31. Investigations by truth commissions, or any proceeding that could affect people's rights, must comply with the basic guarantees of due process.⁴⁷ Where requested, the identity of the witnesses must be protected from disclosure. Before identifying perpetrators, the commission must corroborate the information and must afford the implicated individuals an opportunity to provide a statement setting forth their version of the facts at a hearing or through submission of a document equivalent to a right of reply.⁴⁸

32. Victims and witnesses should enjoy effective measures that ensure their security, physical and psychological well-being, may be called upon to testify only on a strictly voluntary basis and free of expenses, and assisted in their language, if possible. Social workers and/or mental health care practitioners should be authorized to assist victims, during and after their testimony. For the investigations, the commissions' rules should include appropriate procedures or measures to end threats to the life, health or safety of a person concerned.⁴⁹

5. Measures regarding historical archives: preservation and access by the public

33. To facilitate access to knowledge by members of society, States have a duty to preserve archives and other evidence concerning past violations.⁵⁰ This is essential for enabling societies to learn the truth and regain ownership of their history.⁵¹ Therefore, States must take appropriate measures to end risks of losing elements of proof.⁵² Archives should be protected through the design and implementation of appropriate public policies,⁵³ including the technical measures and penalties that should be applied.⁵⁴ Truth requires the construction of "the most complete historical record possible".⁵⁵

34. Conservation of records and historical sites must be guided by transparency, and with the perspective of guaranteeing the freedom to seek and receive information.⁵⁶ Therefore, access to archives should be facilitated to the victims and their next of kin, always with due respect to other victims' privacy or security, which may necessitate restrictions.⁵⁷ Provisions that prevent declassification of information related to grave human rights violations should be repealed.⁵⁸ Both States and international organizations, including the United Nations, should establish useful methodologies for granting access to archives.⁵⁹

35. In the responses to the online consultation held to inform the present report, the Special Rapporteur noted good practices by States, for example, seeking guidance from the International Council on Archives.⁶⁰ Nevertheless, there are also examples in which the legal framework does not comply with the aforementioned standards and State authorities are not cooperative in giving proper access to important documents.

⁴⁷ European Court of Human Rights, *Albert and Le Compte v. Belgium*, Applications No. 7299/75 and No. 7496/76, Judgment, 10 February 1983; Inter-American Court of Human Rights, *Baena Ricardo et al. v. Panama*, Judgment, 2 February 2001, pp. 90–93; and Inter-American Court of Human Rights, Advisory Opinion OC-9/87, 6 October 1987, pp. 7 and 10.

⁴⁸ Updated set of principles, principle 9 (a) and (b).

⁴⁹ *Ibid.*, principles 8 (b) and 10; and Inter-American Court of Human Rights, *López Soto et al. v. Venezuela*, Judgment, 26 September 2018, para. 222.

⁵⁰ Updated set of principles, principle 3.

⁵¹ [A/HRC/45/45](#), para. 70.

⁵² Updated set of principles, principle 8 (b).

⁵³ Inter-American Court of Human Rights, *Deras García et al. v. Honduras*, Judgment, 25 August 2022, para. 115 (in Spanish).

⁵⁴ Updated set of principles, principle 14.

⁵⁵ Inter-American Court of Human Rights, *Gelman v. Uruguay*, para. 192.

⁵⁶ *Ibid.*

⁵⁷ Updated set of principles, principle 15.

⁵⁸ Inter-American Court of Human Rights, *Deras García et al. v. Honduras*, para. 115.

⁵⁹ For example, the report prepared by the United Nations and the Economic Community of West African States on the deaths of 50 Ghanaian citizens and migrants in the Gambia under the dictatorship of Yahya Jammeh has never been published ([A/HRC/45/45](#), para. 75).

⁶⁰ See also Uruguay, Act No. 19.822, including with respect to collaboration agreements between the executive branch and the Universidad de la República.

6. Dissemination of commission reports

36. Commission reports should be made public in full and disseminated as widely as possible. For security reasons, portions of inquiries may be kept confidential.⁶¹ For example, if disclosure could cause further harm to or threaten the safety and interests of the victims, the victims' relatives or persons who have intervened to assist the victim.⁶²

V. Justice

A. General considerations

37. The legal obligation to prosecute and punish violations while removing obstacles that would prevent the fulfilment of that obligation is “the chief expression of the duty of accountability”;⁶³ the need for such justice must be effectively satisfied in order to achieve just and lasting reconciliation.⁶⁴ States have the obligation to ensure that perpetrators of violations of human rights and international humanitarian law are prosecuted, tried and duly punished.⁶⁵ Prosecutions must be prompt and achieve the desired or expected effect.⁶⁶ Failure to prosecute and punish leads to impunity, and violates a State's obligations to provide remedy to victims and to prosecute crimes under international law.⁶⁷ A breach of these obligations may not be justified by the invocation of provisions of internal law.⁶⁸ These norms have been supported in the jurisprudence of international human rights mechanisms,⁶⁹ and in resolutions of and guidance adopted by the General Assembly and Human Rights Council⁷⁰ and regional forums.⁷¹ Prosecutions should always respect the right to a fair trial⁷² and victims should be offered assistance and psychosocial support.⁷³

38. States must take necessary and appropriate action to punish the perpetrators of serious crimes.⁷⁴ In order to achieve this, the State must take, with the greatest speed possible, relevant legislative, administrative, financial and budgetary measures.⁷⁵

⁶¹ Updated set of principles, principle 13.

⁶² Basic Principles and Guidelines, para. 22 (b).

⁶³ A/HRC/48/60, para. 86.

⁶⁴ Updated set of principles, preamble.

⁶⁵ Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field (First Geneva Convention), art. 49; Geneva Convention for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea (Second Geneva Convention), art. 50; Geneva Convention relative to the Treatment of Prisoners of War (Third Geneva Convention), art. 129; Fourth Geneva Convention, art. 146; Convention on the Prevention and Punishment of the Crime of Genocide, arts. I, IV and V; International Convention for the Protection of All Persons from Enforced Disappearance, art. 6; and Convention against Torture, art. 4.

⁶⁶ See, e.g., Inter-American Court of Human Rights, *Radilla Pacheco v. Mexico*, Judgment, 23 November 2009, para. 201.

⁶⁷ Human Rights Committee, general comment No. 31 (2004), paras. 16 and 18.

⁶⁸ Vienna Convention on the Law of Treaties, art. 27. See also Inter-American Court of Human Rights, “*Mapiripán Massacre*” v. *Colombia*, para. 304.

⁶⁹ European Court of Human Rights, *Armani Da Silva v. the United Kingdom*, Application No. 5878/08, Judgment, 30 March 2016, paras. 233 and 234; and Inter-American Court of Human Rights, “*Mapiripán Massacre*” v. *Colombia*, para. 238. See also Human Rights Committee, general comment No. 31 (2004), para. 18.

⁷⁰ Basic Principles and Guidelines, para. 22 (f); United Nations Global Plan of Action to Combat Trafficking in Persons; and Human Rights Council resolution 51/23. See also Commission on Human Rights resolution 2005/81.

⁷¹ Guidelines of the Committee of Ministers of the Council of Europe on eradicating impunity for serious human rights violations; and Organization of American States resolution 2406 of 3 June 2008.

⁷² Universal Declaration of Human Rights, arts. 10 and 11; International Covenant on Civil and Political Rights, arts. 9, 14 and 15; American Convention on Human Rights, art. 8; European Convention on Human Rights, art. 6; and African Charter on Human and Peoples' Rights, art. 7.

⁷³ A/HRC/48/60, para. 97 (q).

⁷⁴ Updated set of principles, principle 19.

⁷⁵ See, e.g., Inter-American Court of Human Rights, *Maidanik et al. v. Uruguay*, Judgment, 15 November 2021, para. 254.

39. However, the Special Rapporteur notes that impunity is a recurrent problem in transitional processes around the world. Some States use their institutional powers to deny violations or cause them to be forgotten; in some cases there is de facto impunity, characterized by a “pact of silence” observed by the authorities and society. In other cases, investigations are ineffective, sentences are not commensurate with the crimes, or amnesty is awarded to perpetrators.⁷⁶

B. Specific considerations

1. Safeguards against the abuse of rules of law and other obstacles to prosecution and criminal punishment

40. In order to comply with international standards, States should adopt and enforce safeguards against the abuse of rules of law and undertake the measures necessary to strengthen the effectiveness of international legal principles concerning universal and international jurisdiction.⁷⁷ For example, as a rule of jus cogens, no statutory limitation should be applied to war crimes and crimes against humanity,⁷⁸ as these crimes offend humanity as a whole.⁷⁹ Also, perpetrators may not successfully invoke the rule of *non bis in idem* if the previous proceedings were not conducted independently or impartially, or if the purpose was to shield the person concerned from criminal responsibility.⁸⁰

41. Amnesty provisions and other rules aimed at impeding investigation and punishment of persons responsible for grave human rights violations are contrary to international law, as States must first meet their duties regarding justice and the effective remedy of victims’ rights.⁸¹ This is reflected in jurisprudence of the European Court of Human Rights⁸² and the Inter-American Court of Human Rights,⁸³ and in views expressed by the Human Rights Committee,⁸⁴ the International Committee of the Red Cross⁸⁵ and the African Commission on Human and Peoples’ Rights.⁸⁶ Similar considerations have been upheld by the General Assembly⁸⁷ and the Working Group on Enforced or Involuntary Disappearances; the latter has reiterated the illegality of such measures even where approved by a referendum or a similar consultation procedure.⁸⁸ Peace agreements approved by the United Nations cannot promise amnesty for serious crimes.⁸⁹ Also, high courts in several States⁹⁰ have ruled that the amnesties in transitional contexts are contrary to international standards. Practice shows that amnesties have often failed to achieve their aim of preventing new violations and have instead emboldened their beneficiaries to commit further crimes.⁹¹ Finally, pardons on humanitarian

⁷⁶ A/HRC/48/60, paras. 28–55.

⁷⁷ Updated set of principles, principles 21 and 22.

⁷⁸ Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity; Rome Statute of the International Criminal Court, art. 29; and updated set of principles, principle 23.

⁷⁹ Inter-American Court of Human Rights, *Almonacid-Arellano et al. v. Chile*, Judgment, 26 September 2006, para. 152.

⁸⁰ Updated set of principles, principle 26 (b); and Rome Statute, art. 20.

⁸¹ Updated set of principles, principle 24 (a); and E/CN.4/Sub.2/1997/20/Rev.1, para. 32.

⁸² *Yaman v. Turkey*, Judgment, 2 November 2004, para. 55.

⁸³ *Gelman v. Uruguay*.

⁸⁴ General comment No. 31 (2004), para. 18; and CCPR/CO/71/HRV, para. 11.

⁸⁵ Jean-Marie Henckaerts and Louise Doswald-Beck, *Customary International Humanitarian Law: Volume I – Rules* (Geneva, International Committee of the Red Cross, 2007), pp. 609, 610 and 612–614.

⁸⁶ African Commission on Human and Peoples’ Rights, *Zimbabwe Human Rights NGO Forum v. Zimbabwe*, Decision, May 2006, paras. 211 and 215.

⁸⁷ Declaration on the Protection of All Persons from Enforced Disappearance, art. 18.

⁸⁸ General comment on article 18 of the Declaration (2000), para. 2.

⁸⁹ S/2004/616, para. 10.

⁹⁰ Supreme Court of Argentina, Supreme Court of Colombia, Constitutional Court of Colombia, Constitutional Chamber of the Supreme Court of El Salvador, Supreme Court of Honduras, Constitutional Tribunal of Peru and Supreme Court of Uruguay.

⁹¹ A/HRC/27/56, para. 31.

grounds for perpetrators of serious crimes are permitted only in cases of terminal illness where death is imminent.⁹²

42. The official capacity of government officials, regardless of rank or the nature of their duties, is not grounds for a reduction of sentence or an exemption of responsibility.⁹³ Due obedience can be grounds for reducing the sentence, but cannot exempt the perpetrator from responsibility. The superior bears responsibility for the subordinate's actions, if the superior had knowledge of, or acquiesced in, the subordinate's actions.⁹⁴ The jurisdiction of military tribunals must be restricted to specifically military offences, to the exclusion of human rights violations, which are to come under the jurisdiction of ordinary domestic courts.⁹⁵ The principle has been emphasized in recommendations and decisions of international protection mechanisms⁹⁶ and in international instruments.⁹⁷

43. Disclosure and repentance are important, but they cannot exempt perpetrators from criminal or other responsibility.⁹⁸ Special sanctions of a restorative nature, such as non-custodial sentences, cannot replace criminal sanctions and may violate a State's obligations if they are disproportionate to the gravity of the crime.⁹⁹ In this sense, it is worth recalling that States must accompany truth measures with prosecution and conviction in order to bring justice.¹⁰⁰ Finally, persons who committed serious crimes should not benefit from special protections such as the right to diplomatic asylum¹⁰¹ or the principle of non-extradition,¹⁰² except in cases where their life or physical or mental integrity could be in serious danger.¹⁰³

2. Mandatory, appropriate criminal sanctions

44. Sanctioning perpetrators, in the form of a penalty pursuant to a final judgment handed down under criminal law, is an important part of the pillar of justice¹⁰⁴ and one of the most effective forms of prevention.¹⁰⁵ Punishment of serious human rights violations is mandatory under general international law.¹⁰⁶ It must be appropriate and take into account the gravity¹⁰⁷ and nature of the offence, and the participation and culpability of the accused. The Rome Statute of the International Criminal Court, for example, sets out the ranges of penalties applicable for the crimes specified therein.¹⁰⁸

45. Dispensations or sentence remissions should be limited, as States should abstain from hindering the determination and execution of sentences.¹⁰⁹ The term of imprisonment may be reduced if the person cooperates with the investigation; nevertheless a certain proportion of

⁹² A/HRC/48/60, para. 97 (f).

⁹³ Updated set of principles, principle 27 (c); and Rome Statute, art. 27.

⁹⁴ Updated set of principles, principles 27 (a) and (b).

⁹⁵ Ibid., principle 29.

⁹⁶ CCPR/C/79/Add.74, para. 11; CAT/C/MEX/CO/4, para. 14; and Inter-American Court of Human Rights, *La Rochela Massacre v. Colombia*, para. 200.

⁹⁷ Declaration on the Protection of All Persons from Enforced Disappearance, art. 16; and Inter-American Convention on Forced Disappearance of Persons, art. IX.

⁹⁸ Updated set of principles, principle 28.

⁹⁹ A/HRC/48/60, paras. 25 and 87.

¹⁰⁰ A/HRC/36/50/Add.1, paras. 25 and 55.

¹⁰¹ Declaration on Territorial Asylum, art. 1 (2); and updated set of principles, principle 25.

¹⁰² Updated set of principles, principle 26 (a); and Convention relating to the Status of Refugees, art. 1 (F).

¹⁰³ Updated set of principles, principle 26 (a).

¹⁰⁴ A/HRC/48/60, para. 87.

¹⁰⁵ *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro)*, Judgment, I.C.J. Reports 2007, p. 43, para. 426.

¹⁰⁶ Rome Statute, art. 78; First Geneva Convention, art. 49; Second Geneva Convention, art. 50; Third Geneva Convention, art. 129; Fourth Geneva Convention, art. 146; Convention on the Prevention and Punishment of the Crime of Genocide, art. V; International Convention for the Protection of All Persons from Enforced Disappearance, art. 7; Convention against Torture, art. 4 (2). See also Inter-American Court of Human Rights, *Almonacid-Arellano et al. v. Chile*, para. 99; and CCPR/C/LBR/CO/1, para. 11 (a).

¹⁰⁷ Rome Statute, art. 78.

¹⁰⁸ Art. 77.

¹⁰⁹ A/HRC/48/60, paras. 27 and 97 (b).

the sentence must be served.¹¹⁰ Leniency should not have the effect of rendering criminal justice illusory¹¹¹ and any request for early release or annulment of the execution of the penalty should be assessed in terms of necessity and proportionality, taking into account the victims' right to justice.¹¹² Extraordinary measures in cases of health emergencies or prison overcrowding are not a justification for dispensation or remission; any relocation or house arrest required by emergency contexts must be strictly temporary.¹¹³

VI. Reparation

A. General considerations

46. In the context of serious violations of human rights and humanitarian law, States must provide a readily available, prompt and effective reparation to victims for the harm suffered.¹¹⁴ This obligation derives from the general duty of States to provide remedy to victims of human rights violations and breaches of international humanitarian law.¹¹⁵ The Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law contain a compilation of relevant rules on reparations and are increasingly applied by international courts. Human rights mechanisms and national, regional and international courts have developed a rich jurisprudence on reparations.¹¹⁶ States should ensure the enforcement of reparation judgments and may establish programmes, pursuant to administrative and legislative decisions and with national or international funding, to provide reparation to victims.¹¹⁷

47. Reparations should cover all injuries and be proportionate to the gravity of the violations and the harm suffered.¹¹⁸ For the right to reparation to be fulfilled, it is essential that the State and any other actors involved in the violations acknowledge their responsibility.¹¹⁹ The Special Rapporteur has noted that judicial approaches to reparations have settled on the criterion of *restitutio in integrum* to decide on the magnitude of the reparations.¹²⁰ This means that reparation must encompass compensation, restitution, rehabilitation, satisfaction and guarantees of non-repetition.¹²¹ It is important that reparations be linked to the provision of truth, justice and guarantees of non-recurrence; it is deemed unacceptable to utilize generous reparation schemes to make impunity more acceptable.¹²²

¹¹⁰ Rome Statute, art. 110.

¹¹¹ Inter-American Court of Human Rights, *Cepeda Vargas v. Colombia*, Judgment, 26 May 2010, para. 152.

¹¹² Inter-American Court of Human Rights, *Barrios Altos and La Cantuta v. Peru*, Resolution, 30 May 2018, para. 45.

¹¹³ [A/HRC/48/60](#), paras. 40 and 97 (g).

¹¹⁴ Basic Principles and Guidelines, para. 11; and updated set of principles, principle 32.

¹¹⁵ Universal Declaration of Human Rights, art. 8; International Covenant on Civil and Political Rights, art. 2; International Convention on the Elimination of All Forms of Racial Discrimination, art. 6; Convention against Torture, art. 14; Convention on the Rights of the Child, art. 39; Protocol I Additional to the Geneva Conventions of 1949, art. 91; and Rome Statute, art. 75.

¹¹⁶ [A/69/518](#), para. 17.

¹¹⁷ Basic Principles and Guidelines, paras. 15–17; and [A/HRC/42/45](#), paras. 31–37, 74, 84, 85 and 96.

¹¹⁸ Basic Principles and Guidelines, para. 15.

¹¹⁹ [A/HRC/42/45](#), para. 30.

¹²⁰ [A/69/518](#), para. 45.

¹²¹ Basic Principles and Guidelines, paras. 15 and 18–23; and [A/HRC/22/45](#) and [A/HRC/22/45/Corr.1](#), para. 79.

¹²² [A/69/518](#), para. 11.

B. Specific considerations

1. Elements of reparation

(a) Restitution

48. Restitution measures should be aimed at restoring, whenever possible, the victim to the original situation before the gross violation occurred and must include, as appropriate, restoration of liberty, the enjoyment of human rights, identity, family life and citizenship, restoration of employment, and return to one's place of residence, and return of property or land,¹²³ among others.

(b) Compensation

49. Provision of compensation should entail economic assessments of the damage inflicted on victims, including loss of earnings or opportunities, and material or moral damage; the amount of compensation should be appropriate and proportional.¹²⁴

(c) Rehabilitation

50. Victims of serious human rights violations have a very high incidence of trauma induced by the experience of violence. Rehabilitation can address the mental and physical harm suffered, can help victims reconstruct their lives and can provide transformative opportunities.¹²⁵ States should provide rehabilitation services for victims, including medical and psychological care, legal and social services,¹²⁶ and measures to restore their civic status.¹²⁷

(d) Satisfaction

51. Satisfaction measures are symbolic actions that carry meaning and help victims and society make sense of the painful events of the past. Such actions should include the cessation of violations; truth-seeking and disclosure; the search for disappeared persons and/or recovery of their remains; decisions restoring the dignity of victims; public apologies; judicial and administrative sanctions against those liable; commemoration; and the inclusion of accurate accounts of violations in training and education material at all levels.¹²⁸ In designing and implementing apologies, States should carefully assess the nature of the apology and the nature of the acknowledgement of the facts and responsibilities, the authority offering the apology, the context of the apology and, decisively, the participation and agreement of victims in the apology process.¹²⁹

2. Domestic reparation programmes

52. The establishment of national reparation programmes is essential to provide effective reparation to victims. Such programmes must be comprehensive, include all five forms of reparation, and be underpinned by a solid legal and institutional framework and adequate resource allocation or financing mechanisms that provide sustainability to their work. Donors can play an important role in this regard. States should develop national registries of victims with processes that are flexible and reach out widely to victims, in order to adequately estimate the potential universe of victims and the expected costs of reparation programmes. Emergency reparation programmes or services should be envisaged to address the urgent needs of victims. Special measures should be adopted to address the special needs of victims of sexual violence, refugees and internally displaced persons.¹³⁰

¹²³ Basic Principles and Guidelines, para. 19; and [A/76/180](#), para. 107.

¹²⁴ Basic Principles and Guidelines, para. 20.

¹²⁵ [A/42/45](#), para. 98.

¹²⁶ Basic Principles and Guidelines, para. 21.

¹²⁷ [A/69/518](#), para. 37.

¹²⁸ Basic Principles and Guidelines, para. 22.

¹²⁹ [A/74/147](#).

¹³⁰ [A/HRC/42/45](#), para. 129.

3. Gender perspective

53. States should take into account that persons subjected to structural or systemic discrimination, such as women, girls and lesbian, gay, bisexual, transgender and intersex persons, suffer differentiated and disproportionate effects on their rights. Reparation programmes should incorporate a gender perspective: violations should be assessed through a gender lens and measures having a differential impact between the sexes and in relation to lesbian, gay, bisexual, transgender and intersex persons should be identified. Reparations should not reproduce patterns of gender discrimination. Measures should consider gender and its intersectionality; the complexity of the damage suffered; the potential stigmatizing effect of crimes and reparations; and the potential transformative effect of certain measures on the structure of gender exclusion.¹³¹ Concerted efforts should be made to ensure that women and minority groups participate in public consultations.¹³²

4. Participation and information

54. Victims must be recognized as rights holders; they and civil society at large must be meaningfully involved early on in the design and implementation of reparation schemes.¹³³ To that effect, States must give programmes the widest possible publicity and provide effective outreach, information and access to ensure victim participation.¹³⁴ Dissemination outside the country, including through consular services, should be considered where large numbers of victims have been forced into exile.¹³⁵

55. Despite the aforementioned standards, there is a strikingly large implementation gap, often because States argue that reparations are unaffordable or because their motivations are generally political and they lack the will to implement such measures.

VII. Memorialization

A. General considerations

56. States have adopted various instruments that recognize the fundamental role played by memorialization processes in the wake of serious violations of human rights and humanitarian law. Memorialization, while not expressly mentioned in most human rights treaties, is deeply related to the general obligation of protecting and guaranteeing human rights, which is set out in several instruments.¹³⁶

57. The updated set of principles for the protection and promotion of human rights through action to combat impunity establish that States have a responsibility to preserve and transmit memory concerning violations of human rights. This responsibility derives from the duty of States to guarantee the inalienable right of all persons to know the truth about such violations and the duty to preserve archives and other evidence concerning such violations, with a view to preserving the collective memory from extinction and, in particular, guarding against the development of revisionist and negationist arguments.¹³⁷ Similarly, the Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law include commemorations and tributes as measures of satisfaction.¹³⁸ As noted by the Special Rapporteur, memory processes cut across all aspects of full reparation – especially the dimensions of satisfaction and guarantees of non-recurrence – as a new

¹³¹ [A/75/174](#), paras. 27–29 and 101–103.

¹³² Updated set of principles, principle 32.

¹³³ *Ibid.*; Basic Principles and Guidelines, para. 11; and [A/HRC/42/45](#), para. 61.

¹³⁴ [A/69/518](#), para. 76.

¹³⁵ Updated set of principles, principle 33.

¹³⁶ See, e.g., International Covenant on Civil and Political Rights, art. 2; European Convention on Human Rights, art. 1; American Convention on Human Rights, art. 1; African Charter on Human and Peoples' Rights, art. 1; and Arab Charter on Human Rights, art. 3.

¹³⁷ Updated set of principles, principle 3.

¹³⁸ Para. 22 (g).

obligation arising from the violations committed.¹³⁹ In the Durban Declaration, it is emphasized that remembering the crimes or wrongs of the past is essential for reconciliation and the creation of societies based on justice, equality and solidarity.¹⁴⁰ Judicial and quasi-judicial mechanisms have required States to adopt memorialization processes as a form of reparation and prevention of recurrence. The Inter-American Court of Human Rights has ruled that memory policies should be comprehensive, and has issued extensive jurisprudence urging States to adopt such measures.¹⁴¹ The Inter-American Commission on Human Rights has issued principles on public policies on memory.¹⁴²

58. As the obligation to adopt memorialization processes derives from both primary and secondary sources of international human rights and international humanitarian law, States cannot circumvent their compliance on the basis of budgetary, political or structural arguments or claims that efforts should be focused on other areas of transitional justice.¹⁴³

B. Specific considerations

1. Purpose and impact of memorialization

59. Memorialization is aimed at preserving, and transmitting to present and future generations, accurate and comprehensive accounts of past human rights violations and the harm suffered by all victims, with a view to informing society, restoring the dignity of victims, promoting healing and reconciliation and preventing the recurrence of violations.

60. Memory is a vital tool for enabling societies to emerge from the cycle of hatred and conflict and begin taking definite steps towards building a culture of peace and to help change toxic cultures of political violence.¹⁴⁴ Memorialization efforts should create the conditions for a debate within society about the causes and consequences of past human rights violations and the attribution of responsibility, thus allowing society to live more peacefully with the legacy of past divisions without falling prey to a dangerous relativism, establishing a homogeneous way of thinking or resorting to denialism or relativization of the violations committed. As a basis for reflection on the past and identification of contemporary challenges, memory processes can facilitate social reconstruction in the aftermath of conflict, promote a culture of democracy and respect for human rights, and transform structural forms of exclusion, discrimination, marginalization and abuse of power.¹⁴⁵

2. Public policies on memorialization

61. Public policies on memorialization should be comprehensive, ensuring the accurate and holistic memorialization of all violations committed and the harm suffered by all victims. They should be multidimensional and include measures related to public spaces (including memorials, parks and squares), artistic expression (including museum exhibits, plays, concerts and pictorial exhibits), media initiatives and State-sponsored public events and activities held on significant dates. Memory policies should also be established at all levels of formal and informal education.¹⁴⁶

62. Policies on memory must be progressively developed and should be guided by a *pro personae* perspective. In other words, national policies must be designed and implemented in a way that dignifies the memory of the victims. In application of this principle, memory processes should place victims at the centre of the process and never result in their revictimization by failing to recognize or attach sufficient importance to the harm they have

¹³⁹ A/HRC/45/45, para. 31.

¹⁴⁰ Para. 106.

¹⁴¹ “*Street Children*” (*Villagrán Morales et al.*) v. *Guatemala*, Judgment, 26 May 2001; *Ituango Massacres v. Colombia*, Judgment, 1 July 2006; *Miguel Castro Prison v. Peru*, Judgment, 25 November 2006; and *La Rochela Massacre v. Colombia*.

¹⁴² Available at <https://www.oas.org/en/iachr/decisions/pdf/Resolution-3-19-en.pdf>.

¹⁴³ A/HRC/45/45, para. 99.

¹⁴⁴ *Ibid.*, paras. 21 and 112.

¹⁴⁵ *Ibid.*, paras. 22, 36, 37 and 107.

¹⁴⁶ *Ibid.*, para. 105.

suffered.¹⁴⁷ The voices of victims, including women and girls, play a key role in the construction of memory. Memory policies should be informed by the views of different groups of victims and duly reflect a gender perspective. States should ensure that policies are developed in full consultation with victims and duly represent their views. Victims must be treated appropriately and kept informed, and must have their expectations met as far as possible.¹⁴⁸

63. When designing memorialization processes, States should take into account the potential controversies that may arise out of conflicting memories from different groups in society.¹⁴⁹ Effective consultation with all victims and affected actors will help develop legitimate and concerted memorialization policies that assist in the process of healing and reconciliation. Memory policies should be able to represent different experiences of harm endured by victims, promote tolerance and mutual understanding among societal groups, and foster good collaboration with social actors.

64. Memorialization processes should be based on accurate accounts of past violations, especially those established by truth commissions and national or international courts and the testimonies of victims. Conversely, memory policies should not incur in vengeful memorialization,¹⁵⁰ the manipulation of memory for political gain, or the instrumentalization of past events to justify and incite new acts of violence.¹⁵¹ To prevent the weaponization of memory by political or sectarian interests that seek to rekindle violence, States must prevent the mass dissemination of false information about past human rights violations, and the denial or relativization of the related findings of national or international accountability and truth-seeking mechanisms.¹⁵² Where required in compliance with international standards and the test of proportionality and necessity for restrictions on freedom of expression, the acts of ideologues and spreaders of hateful and discriminatory speech must be regulated, as recognized by international courts and mechanisms.¹⁵³

65. States should enact legislation that sets out the criteria and the process for the establishment of memorials. The establishment and maintenance of such memorial sites is the responsibility of the State. States should establish by law appropriate resources to ensure that the sites are erected, well maintained, protected from vandalization and decay,¹⁵⁴ and accessible to the public.

66. States should adopt measures to protect the archives of State agencies and civil society organizations related to human rights violations. Archives should be accessible in accordance with established standards. Governments and international organizations should remove obstacles to such access,¹⁵⁵ as should civil society.

3. Jurisprudence and State practice

67. International courts have ordered States to adopt diverse measures of memorialization. The Inter-American Court of Human Rights has ordered the construction of museums;¹⁵⁶ the

¹⁴⁷ Ibid., para. 16.

¹⁴⁸ Ibid., paras. 103, 104 and 111.

¹⁴⁹ A/HRC/22/45 and A/HRC/22/45/Corr.1, para. 64; and A/HRC/16/48/Add.1, paras. 48 and 84 (g).

¹⁵⁰ A/HRC/45/45, para. 40, citing OHCHR, *Report of the Mapping Exercise Documenting the Most Serious Violations of Human Rights and International Humanitarian Law Committed within the Territory of the Democratic Republic of the Congo between March 1993 and June 2003* (August 2010).

¹⁵¹ A/HRC/45/45, paras. 40, 41, 78 and 79.

¹⁵² Ibid., paras. 108 and 109.

¹⁵³ Ibid., paras. 80–84; European Court of Human Rights, *Norwood v. the United Kingdom*, Application No. 23131/03, Decision on Admissibility, 16 November 2004; Committee on the Elimination of Racial Discrimination, general recommendation No. 35 (2013); and International Criminal Tribunal for Rwanda, *Prosecutor v. Nahimana, Barayagwiza and Ngeze*, case No. ICTR-99-52-T, Judgment, 3 December 2003.

¹⁵⁴ A/HRC/22/45 and A/HRC/22/45/Corr.1, para. 64; and A/HRC/22/45/Add.1, para. 50.

¹⁵⁵ Updated set of principles, principle 3; and A/HRC/45/45, para. 76.

¹⁵⁶ *Río Negro Massacres v. Guatemala*.

creation and broadcast of documentaries;¹⁵⁷ the construction, inauguration and broadcast of memorials attended by high-ranking officials;¹⁵⁸ the inclusion of teaching about the history of human rights violations in the formal education curriculum,¹⁵⁹ the renaming of public spaces,¹⁶⁰ and the installation of plaques.¹⁶¹

68. Some States have declared national days to commemorate the victims of gross violations of human rights and grave violations of international humanitarian law,¹⁶² organized temporary installations¹⁶³ and guided tours,¹⁶⁴ changed the names of buildings and public spaces that were named after persons who committed serious crimes,¹⁶⁵ and incorporated teaching on the history of serious human rights violations in educational curricula and textbooks.¹⁶⁶ State practice also includes measures aimed at facilitating broad debates and understanding in society about the mechanisms of oppression and dehumanization that preceded large-scale violence,¹⁶⁷ as evidenced in Argentina,¹⁶⁸ Canada¹⁶⁹ and Sierra Leone.¹⁷⁰ In the inputs received for the present report, the Special Rapporteur was informed about State practice regarding the construction of memorials in several countries, including Argentina,¹⁷¹ Ecuador,¹⁷² El Salvador,¹⁷³ Ireland,¹⁷⁴ Serbia¹⁷⁵ and Uruguay.¹⁷⁶

4. Interrelations between memorialization and the other pillars of transitional justice

69. The Special Rapporteur considers that memory processes constitute the fifth pillar of transitional justice, both as a stand-alone and a cross-cutting pillar.¹⁷⁷ Memory processes complement, but cannot replace, mechanisms for truth, justice, reparation and guarantees of non-recurrence.¹⁷⁸ Without memory, the rights to truth, justice and full reparation cannot be

¹⁵⁷ *Cepeda Vargas v. Colombia; Village of Los Josefinos Massacre v. Guatemala*, Judgment, 3 November 2021; and *Gudiel Álvarez et al. ("Diario Militar") v. Guatemala*, Judgment, 19 August 2013.

¹⁵⁸ *Deras García et al. v. Honduras*, para. 110.

¹⁵⁹ *Ibid.*, para. 116.

¹⁶⁰ "*Street Children*" (*Villagrán Morales et al.*) *v. Guatemala* (2001).

¹⁶¹ *Ituango Massacres v. Colombia*.

¹⁶² For example, Argentina, Croatia, El Salvador, Hungary, the Republic of Korea and Serbia.

¹⁶³ For example, Argentina, Colombia, El Salvador and Lebanon.

¹⁶⁴ For example, in Germany, Lebanon and Poland.

¹⁶⁵ Spain removed Francoist symbology, and El Salvador renamed a military brigade that was named after the colonel responsible for the El Mozote massacre.

¹⁶⁶ For example, Argentina and Germany.

¹⁶⁷ [A/HRC/45/45](#), paras. 59 and 32.

¹⁶⁸ The National Commission on Enforced Disappearance of Persons helped forge a common understanding of State terrorism under the military dictatorship.

¹⁶⁹ The Truth and Reconciliation Commission promoted reflection on the legacy of residential schools for Indigenous children.

¹⁷⁰ The Truth and Reconciliation Commission launched a national cross-disciplinary project that triggered a broad reflection on the country's vision for the future.

¹⁷¹ The Office of the Ombudsman referred to the existence of over 40 memorialization sites.

¹⁷² Ecuador has constructed three sites of memory, in the provinces of Esmeraldas, Guayas and Manabí, but has failed to construct the Museum of Memory ordered in the law on reparation for victims.

¹⁷³ El Salvador declared four sites of massacres (El Calabozo, Bermuda, Santa Cruz and Sisiguayo) as cultural property and has made progress towards making similar declarations for the sites of La Quesera and San Francisco de Ayutuxtepeque. It also installed commemorative plaques in schools in Morazán, San Vicente and Santa Ana.

¹⁷⁴ The State has funded memorials in Belturbet, Castleblayney, Dublin and Dundalk, in Ireland, and Omagh, in the United Kingdom of Great Britain and Northern Ireland, to memorialize victims killed in bombings and other circumstances and has placed plaques at the sites of conflict-related incidents.

¹⁷⁵ The State placed a memorial in Tašmajdan Park dedicated to persons who went missing or were killed during the conflicts in the territory of the former Yugoslavia.

¹⁷⁶ Uruguay established a national commission on sites of memory. The commission comprises State authorities, civil society organizations and academic institutions, and involves victims throughout its processes.

¹⁷⁷ [A/HRC/45/45](#), para. 21.

¹⁷⁸ *Ibid.*, para. 102.

fully realized and there can be no guarantee of non-recurrence.¹⁷⁹ Memory processes must comprehensively and accurately address the truth about past violations and cannot, under any circumstances, attempt to deny, relativize or manipulate the truth about violations that have been verified by truth commissions or legal proceedings.¹⁸⁰ In this sense, adequate memorialization can help prevent social conflict fuelled by misinformation. Also, memory processes cut across all aspects of full reparation – especially the dimensions of satisfaction and guarantees of non-recurrence as described.¹⁸¹ Regarding justice, memory mechanisms should never serve as a pretext for granting de jure or de facto impunity to the perpetrators of gross violations of human rights or serious violations of international humanitarian law.¹⁸² Memory is but a complement to the criminal prosecution and sentencing of perpetrators and the award of reparations to victims.¹⁸³ For example, judgments handed down by an international or hybrid criminal court are not in themselves sufficient to change perceptions within societies.¹⁸⁴ Also, memory and truth are needed for effective justice, especially after social breakdown.

VIII. Guarantees of non-recurrence

A. General considerations

70. States should guarantee non-recurrence of grave crimes in order to ensure that victims do not have to endure again violations of their rights.¹⁸⁵ States must promote mechanisms for preventing and monitoring social conflicts and ensuring their resolution and, to this end, must undertake institutional reforms and other measures necessary to ensure respect for the rule of law, foster and sustain a culture of respect for human rights, and restore or establish public trust in government institutions.¹⁸⁶ The overall aim of guarantees of non-recurrence is to break the structural causes of societal violence¹⁸⁷ and systemic human rights violations. As with all of the pillars, adequate representation of women and minority groups is essential to the effectiveness of such measures.¹⁸⁸

B. Specific considerations

1. Reform or adoption of laws in accordance with international standards

71. Most international human rights treaties¹⁸⁹ and instruments of soft law¹⁹⁰ include the obligation of States to take the steps necessary to adopt, review, reform or repeal laws or other measures to give effects to the rights of persons and to eliminate the rules that were contributing to or allowing gross violations. The Human Rights Committee¹⁹¹ and the Inter-

¹⁷⁹ *Ibid.*, para. 100.

¹⁸⁰ *Ibid.*, paras. 39, 40 and 108.

¹⁸¹ *Ibid.*, para. 31.

¹⁸² *Ibid.*, para. 102.

¹⁸³ *Ibid.*, paras. 20 and 21.

¹⁸⁴ *Ibid.*, para. 51.

¹⁸⁵ Updated set of principles, principle 35.

¹⁸⁶ *Ibid.*

¹⁸⁷ African Commission on Human and Peoples' Rights, general comment No. 4 (2017), para. 45.

¹⁸⁸ Updated set of principles, principle 35.

¹⁸⁹ See, e.g., International Covenant on Civil and Political Rights, art. 2 (2); American Convention on Human Rights, arts. 2 and 63 (1); and African Charter on Human and Peoples' Rights, art. 1.

¹⁹⁰ See, e.g., updated set of principles, principle 35 (b); and Basic Principles and Guidelines, para. 23 (h).

¹⁹¹ [CCPR/C/BIH/CO/3](#), 13 April 2017, paras. 5–16; and [CCPR/C/MEX/CO/6](#), 4 December 2019, paras. 4 and 5.

American Court of Human Rights have indicated that States must codify serious human rights violations,¹⁹² or take the measures necessary to ratify a specific convention.¹⁹³

2. Institutional reform and enforcement of rules of conduct to strengthen a culture of respect for human rights

72. An adequate institutional response builds trust in public institutions, which is needed for reconciliation, as it ensures that individuals under the jurisdiction of a given State are sufficiently committed to the norms and values that motivate their ruling institutions and that individuals are sufficiently confident that those who operate those institutions are similarly committed.¹⁹⁴ Situations in which certain groups receive the backing of the authorities while others are marginalized must be avoided, as this could reopen past wounds, intensify hatred and incite new acts of violence.¹⁹⁵

73. States must ensure that public officials and employees who are personally responsible for gross violations of human rights, in particular those involved in military, security, police, intelligence and judicial sectors, do not continue to serve in State institutions and are suspended from official duties during the criminal or disciplinary proceedings. Their removal must comply with the requirements of due process of law and the principle of non-discrimination.¹⁹⁶

74. The Special Rapporteur has recommended that States reform the justice, security and armed forces sectors by adopting fair and transparent vetting processes.¹⁹⁷ Vetting of public officials can induce confidence and trust by demonstrating a commitment to systemic norms governing employee hiring and retention, disciplinary oversight and prevention of cronyism.¹⁹⁸ The practice of vetting is guided by the idea of guaranteeing the conditions under which individuals can relate to one another and to the authorities as holders of equal rights and in a context of trust.¹⁹⁹ Even basic reforms consisting merely of the screening and dismissing of those who abused their positions increase the integrity of rule of law systems.²⁰⁰ It is important to note, however, that vetting, in the absence of the other mechanisms of reparation, will be both inadequate to respond to the violations to which the institutions seek to respond and insufficient to guarantee non-recurrence.²⁰¹

75. Education measures are also part of the reforms needed to prevent the recurrence of serious crimes and grave violations. Education policies should help nurture dialogue, democratic citizenship and respect for human rights. States should provide human rights education to all sectors of society and provide human rights training to public and law enforcement officials, and military and security forces.²⁰² In the context of one massacre, the Inter-American Court of Human Rights ordered the State to take steps to permanently train the members of its armed forces, at all hierarchical levels, and of its security agencies on the principles and provisions for protections of human rights and of international humanitarian law.²⁰³ In another case, the Court ordered the implementation of programmes that included studies on the Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Istanbul Protocol) and the United Nations Manual on the Effective Prevention and Investigation of Extra-legal, Arbitrary and

¹⁹² See, e.g., [CCPR/C/BIH/CO/3](#), 13 April 2017, paras. 5–16; [CCPR/C/MEX/CO/6](#), 4 December 2019, paras. 4 and 5; and Inter-American Court of Human Rights, *Casierra Quiñonez et al. v. Ecuador*, Judgment, 11 May 2022, para. 201; and *Goiburú et al. v. Paraguay*, Judgment, 22 September 2006, para. 179.

¹⁹³ See, e.g., Inter-American Court of Human Rights, *Contreras et al. v. El Salvador*, Judgment, 31 August 2011, paras. 218 and 219.

¹⁹⁴ [A/HRC/21/46](#), para. 38.

¹⁹⁵ [A/HRC/45/45](#), paras. 39 and 40.

¹⁹⁶ Updated set of principles, principle 36 (a).

¹⁹⁷ [A/75/174](#), para. 110.

¹⁹⁸ [A/HRC/21/46](#), para. 34.

¹⁹⁹ *Ibid.*, paras. 30 and 32.

²⁰⁰ *Ibid.*, para. 41.

²⁰¹ *Ibid.*, para. 23.

²⁰² Basic Principles and Guidelines, para. 23 (e).

²⁰³ *“Mapiripán Massacre” v. Colombia*, para. 316.

Summary Executions.²⁰⁴ The Special Rapporteur has recommended the development of training programmes with and on the gender perspective.²⁰⁵ He considers that every person who performs functions in any State organ must receive education and training in human rights, because the main purpose of the contemporary democratic State is to duly guarantee those rights. States should also adopt policies in the fields of culture and the media aimed at promoting mutual understanding, cultural diversity and coexistence.

3. Inclusive, non-discriminatory participation of victims, and civilian oversight of public institutions

76. Institutional reforms aimed at preventing a recurrence of violations should be developed through a process of broad public consultations, including the participation of victims and other sectors of civil society.²⁰⁶ Processes conducted in such a manner help to counteract attempts at denialism, revisionism and manipulation.²⁰⁷ Such measures of institutional and personnel reform need to have a firm grounding in the views of the population and specifically of the victims, who should be actively involved in the related processes so that legislation and institutions are built to prevent future violations and public officials selected in a manner in which the principle of the rule of law is given force.²⁰⁸

77. Moreover, States must ensure the effective civilian control of military and security forces,²⁰⁹ and of the intelligence agencies and, where necessary, establish or restore that control.²¹⁰ To this end, States should establish effective institutions of civilian control, including legislative oversight bodies.²¹¹ Civil complaint procedures should be established and their effective operation assured.²¹² Also, it is necessary to undertake all other measures necessary to assure the independent, impartial and effective operation of courts in accordance with international standards,²¹³ so that all civilian and military proceedings abide by the standards of due process, fairness and impartiality.²¹⁴

4. Lawful limitations to freedom of speech

78. In order to avoid messages that contribute to and encourage violence, States should regulate the acts of ideologues and spreaders of hateful and discriminatory speech. This should be done in accordance with international human rights law and following a test of proportionality and necessity.²¹⁵ This standard has also been recognized by regional human rights courts²¹⁶ as well as international tribunals such as the International Criminal Tribunal for Rwanda²¹⁷ and the International Military Tribunal (Nuremberg).²¹⁸ In its judgments, the International Criminal Tribunal for Rwanda has determined that incitement requires the person to not only incite others to commit the crimes (*actus reus*), but also to have the intent to directly and publicly incite others (*mens rea*).²¹⁹ Also, in regulating hate speech, States and

²⁰⁴ *González et al. ("Cotton Field") v. Mexico*, Judgment, 16 November 2009, para. 542.

²⁰⁵ [A/75/174](#), para. 110.

²⁰⁶ Updated set of principles, principle 35.

²⁰⁷ [A/HRC/45/45](#), para. 109.

²⁰⁸ [A/HRC/21/46](#), para. 54.

²⁰⁹ Basic Principles and Guidelines, para. 23 (a).

²¹⁰ Updated set of principles, principle 36 (c).

²¹¹ *Ibid.*

²¹² *Ibid.*, principle 36 (d).

²¹³ *Ibid.*, principle 36 (b).

²¹⁴ Basic Principles and Guidelines, para. 23 (b).

²¹⁵ [A/HRC/45/45](#), para. 84; and Committee on the Elimination of Racial Discrimination, general recommendation No. 35 (2013).

²¹⁶ See, e.g., European Court of Human Rights, *Norwood v. the United Kingdom*; and Inter-American Court of Human Rights, *Palacios Urrutia v. Ecuador*, Judgment, 24 November 2021.

²¹⁷ The Tribunal imposed penalties of up to 30 years in jail for citizens and public officials who worked together to incite violence through radio broadcasts and newspaper articles, on the grounds that hate media played a key role in the instigation of genocide and the killing of several thousand Tutsis. See *Prosecutor v. Nahimana, Barayagwiza and Ngeze*.

²¹⁸ Judgement of 1 October 1946, in which Julius Streicher was convicted for the crime of persecution, for his incitement to murder and extermination.

²¹⁹ See, e.g., *Prosecutor v. Nyiramasuhuko et al.*, case No. ICTR-98-42-T, Judgment, 24 June 2011.

technology companies should work together in avoiding the use of their networks in ways that may cause acts of violence, as occurred in Myanmar, against the Rohingya.²²⁰ The Special Rapporteur believes that States must also actively work against discriminatory speech and punish it in accordance with international human rights law.

IX. Conclusion and recommendations

79. Transitional justice processes are established in contexts of transition from armed conflict or authoritarian rule to address the legacy of serious violations of human rights and humanitarian law. Respect for and compliance with international human rights law and international humanitarian law, and the obligations established in those normative regimes, are the parameters by which the legitimacy of a transitional justice process must be measured.

80. The violations committed give rise to clear legal obligations for States, which are identified in relation to the five pillars of the mandate: truth, justice, reparations, guarantees of non-repetition and memorialization. These legal obligations derive from the general duty to respect and guarantee human rights, which apply to all States, and are contained in treaty provisions and other secondary sources of law.

81. The Special Rapporteur notes with great concern the reality of many transitional justice processes that are wrecked by political decisions that result in the delegitimization of truth-seeking processes, impunity, lack of comprehensive reparations for victims, maintenance of institutional frameworks that have favoured violations, vindication of violations committed in the past, and the absence or boycotting of memory programmes. These setbacks revictimize victims and their families, and severely compromise the future of societies. The actors involved in the design and implementation of transitional justice processes must take into account the international legal standards on transitional justice reviewed in the present report in order to avoid repeating the mistakes of the past and the painful effects they have on victims.

82. The content of the obligations deriving from the need to address serious violations of human rights and humanitarian law is underpinned by clear legal standards, as highlighted in the report; those standards are clarified through the outcomes of the work of national and international courts and human rights mechanisms – jurisprudence, concluding observations, general comments, country visit reports and views – and of other bodies created for this purpose, such as truth commissions. The clarified standards must be considered, utilized and applied in good faith by States, which must be accountable in a transparent manner to the international community for the measures taken to that effect.

83. The national, regional and international actors involved in the design and implementation of transitional justice processes must ensure that the related programmes comply with the standards identified by these bodies, and establish adequate mechanisms to monitor implementation and compliance with such standards through a system of indicators.

84. The international human rights courts at the regional level and the United Nations treaty bodies should, within their competence, pay due attention to addressing cases of non-compliance with obligations arising from transitional justice processes, and issue rulings or judgments accordingly when non-compliance results in new violations of treaty obligations.

85. The United Nations, international or regional agencies or institutions and international donors present or active in countries undergoing or expecting to undergo a transitional justice process should take into consideration the international legal standards reviewed in the present report when designing and implementing their programmes and activities to ensure that such measures do not lead to breaches of the

²²⁰ [A/HRC/45/45](#), para. 86; see also paras. 87–89.

duties and responsibilities established in those standards, and should actively ensure implementation of the five pillars of transitional justice.

86. To make the realization of the rights of victims a reality, the measures derived from the obligations assumed in the field of transitional justice must be implemented. Only full compliance with human rights will generate truth, justice, peace and security.
