

Disarmament, Demobilisation, and Reintegration

A Guide for National Human Rights Institutions



NORTHERN
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Foreword

I am delighted to write a foreword for the first publication produced by the Northern Ireland Human Rights Commission in its role as the Chair of the Commonwealth Forum of National Human Rights Institutions.

The purpose of this guide is to assist national human rights institutions working in post-conflict societies by setting out the United Nations Disarmament, Demobilisation and Reintegration framework and the role it can play when seeking to develop a sustainable and long lasting transition to a peaceful, stable, human rights compliant society.

I hope this guide is a practical and valuable tool for national human rights institutions who are working in post conflict environments. The guide recognises that national human rights institutions are one of a number of important organisations involved in this work. This guide recognises the centrality that international human rights standards play in any peace building process alongside the necessity of ensuring an inclusive, societal owned process which is victim-centred and recognises the discrete roles played by women and by children.

I hope you find this guide useful in your work and the Northern Ireland Human Rights Commission would welcome your feedback on this guide including ways it has proved valuable in your work and anything that can be done to improve on the publication.

Les Allamby
Chief Commissioner
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Introduction

A.1 The Northern Ireland Human Rights Commission (NIHRC) has produced this guide for members of the Commonwealth Forum of National Human Rights Institutions (CFNHRI). It is a guide which identifies a human rights-based approach to salient issues in post-conflict societies utilising 'Disarmament, Demobilisation, and Reintegration' (DDR) and 'Transitional Justice' frameworks.

A.2 DDR and transitional justice are terms used within the analysis of international human rights law as frameworks to help post-conflict societies address their past and achieve a long-lasting and sustainable peace. Transitional justice is a framework which has a focus on the victims of conflict. DDR is a complementary internationally recognised framework designed for post-conflict societies which helps ex-combatants (those who have been directly involved in organisations engaged in violence or the use of force, including both non-state and state actors) leave violence behind and become part of a peaceful, integrated, and functioning society.

A.3 The UN Integrated Disarmament, Demobilization and Reintegration Standards provide the following definitions:

'DISARMAMENT

Disarmament is the collection, documentation, control and disposal of small arms, ammunition, explosives and light and heavy weapons of combatants and often also of the civilian population. Disarmament also includes the development of responsible arms management programmes.

DEMOBILIZATION

Demobilization is the formal and controlled discharge of active combatants from armed forces or other armed groups. The first stage of demobilization may extend from the processing of individual combatants in temporary centres to the massing of troops in camps designated for this purpose (cantonment sites, encampments, assembly areas or barracks). The second stage of demobilization encompasses the support package provided to the demobilized, which is called reinsertion.

REINSERTION

Reinsertion is the assistance offered to ex-combatants during demobilization but prior to the longer-term process of reintegration. Reinsertion is a form of transitional assistance to help cover the basic needs of ex-combatants and their families and can include transitional safety allowances, food, clothes, shelter, medical services, short-term education, training, employment and tools. While reintegration is a long-

term, continuous social and economic process of development, reinsertion is a short-term material and/ or financial assistance to meet immediate needs, and can last up to one year.

REINTEGRATION

Reintegration is the process by which ex-combatants acquire civilian status and gain sustainable employment and income. Reintegration is essentially a social and economic process with an open time-frame, primarily taking place in communities at the local level. It is part of the general development of a country and a national responsibility, and often necessitates long-term external assistance.¹

A.4 The UN Secretary-General has stated that Transitional Justice:

'comprises the full range of processes and mechanisms associated with a society's attempts to come to terms with a legacy of large-scale past abuses, in order to ensure accountability, serve justice and achieve reconciliation. These may include both judicial and non-judicial mechanisms, with differing levels of international involvement (or none at all) and individual prosecutions, reparations, truth-seeking, institutional reform, vetting and dismissals, or a combination thereof.'²

A.5 The UN Secretary-General has also noted that transitional justice further includes 'prosecution initiatives, facilitating initiatives in respect of the right to truth ... and national consultations.'³

A.6 Specific regional human rights legal frameworks are explicitly highlighted throughout this guide. These are limited examples of frameworks, and are not a conclusive list of all regional laws or standards on a particular area. The examples are largely drawn from Europe, with a smaller focus on Africa. Other regional mechanisms which have addressed topics covered in this guide, including those operating in the Americas, are not included within this guide.

¹ [Integrated Disarmament Demobilization and Reintegration Standards \(2006\) Section 1.10](#), p2

² [UN SC, The rule of law and transitional justice in conflict and post-conflict societies. Report of the Secretary-General Security Council, UN Doc. S/2004/616 \(2004\)](#) para 8

³ [UN, Guidance Note of the Secretary-General, 'United Nations Approach to Transitional Justice' \(2010\)](#) p2

Acronyms

CAT	Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment
CEDAW	Convention on the Elimination of all Forms of Discrimination Against Women
CERD	Convention on the Elimination Discrimination
CESCR	Committee on Economic, Social and Cultural Rights
CFR	Charter of Fundamental Rights of the European Union
CoE	Council of Europe
CRPD	Convention on the Rights of Persons with Disabilities
DDR	Disarmament, Demobilisation, and Reintegration
ECHR	European Convention on Human Rights
ECtHR	European Court of Human Rights
EU	European Union
ICCPR	International Covenant on Civil and Political Rights
ICJ	International Court of Justice
IDDRS	UN Integrated Disarmament Demobilization and Reintegration Standards
IHL	International Humanitarian Law
ILO	International Labour Organization
NHRI	National Human Rights Institution
NIHRC	Northern Ireland Human Rights Commission
OECD	The Organisation for Economic Co-operation and Development
SIDDR(FR)	Stockholm Initiative On Disarmament Demobilisation Reintegration, Final Report of 2007

Acronyms

SIDDR(TP)	Stockholm Initiative On Disarmament Demobilisation Reintegration, Testing The Principles of 2007
SSR	Security Sector Reform
UN	United Nations
UN GA	United Nations General Assembly
UN HRC	United Nations Human Rights Committee
UN OHCHR	United Nations Office of the High Commissioner for Human Rights
UN SC	United Nations Security Council

Blue boxes contain summaries

Green boxes highlight points of particular importance

Pink boxes contain relevant regional perspectives

Relevant Laws and Standards

B.1 The relevant international treaties and hard law in this context include:

- The Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (CAT)
- The Convention on the Privileges and Immunities of the Specialized Agencies
- The Convention on the Privileges and Immunities of the United Nations
- The Convention on the Rights of Persons with Disabilities (CRPD)
- The Convention on the Rights of the Child
- The International Convention for the Protection of all Persons from Enforced Disappearance
- The International Convention on the Elimination of All Forms of Racial Discrimination (CERD)
- The International Covenant on Civil and Political Rights (ICCPR)
- The Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict states
- The Rome Statute of the International Criminal Court
- The UN Convention Against Transnational Organized Crime
- The United Nations Convention on Jurisdictional Immunities of States and Their Property
- The Vienna Convention on Consular Relations
- The Vienna Convention on Diplomatic Relations
- United Nations Security Council (UN SC), Resolution 2151 (2014), 2014

B.2 Relevant regional treaties and hard law in this context include:

- Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA, 2012
- The Charter of Fundamental Rights of the European Union (CFR)
- The European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, (as amended by Protocols No. 1 and No. 2)
- The European Convention on Compensation for Victims of Violent Crimes
- The European Convention on Human Rights (ECHR)
- The European Convention on the Compensation of Victims of Violent Crimes

B.3 In addition, there exists a body of 'soft law'. These declarations and principles are non-binding but provide further guidance in respect of specific areas. Standards relevant to the following report include:

- United Nations Security Council (UN SC), Resolution 2151 (2014), 2014
- European Union, EU Concept for support to Disarmament, Demobilisation and Reintegration (DDR), 2006
- Harnessing Institutional Capacities In Support Of The Disarmament, Demobilization and Reintegration Of Former Combatants, Prepared by the ECHA Working Group on Disarmament, Demobilization, and Reintegration, Submitted to ECHA on 19 July 2000
- Integrated Disarmament Demobilization and Reintegration Standards, 2006 (including modules subsequently added)
- Operational Guide to the Integrated Disarmament Demobilization and Reintegration Standards, 2010
- Socio-Economic Reintegration of Ex-Combatants, Guidelines, ILO Programme for Crisis Response and Reconstruction, 2010
- Stockholm Initiative On Disarmament Demobilisation Reintegration, Final Report, 2007
- Stockholm Initiative On Disarmament Demobilisation Reintegration, Testing The Principles, 2007
- The Declaration on the Protection of All Persons from Enforced Disappearance, 1992
- The UN 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, 2005
- The UN Fourth World Conference on Women, The Beijing Platform for Action, 1995
- UN CESCR, Civil and Political Rights, Including the Questions of Independence of the Judiciary, Administration, of Justice, Impunity, Report of the Special Rapporteur on the independence of judges and lawyers, 2006
- UN CESCR, Civil and Political Rights, The right to a remedy and reparation for victims of violations of international human rights and humanitarian law, Note by the High Commissioner for Human Rights, Annex, Report of the Second Consultative Meeting on the Basic Principles and Guidelines on the Right to Remedy and Reparation for Victims of Violations of International Human Rights and Humanitarian Law, 2003
- UN CESCR, Principles on the Effective Prevention and Investigation on Extra-legal, Arbitrary and Summary Executions, 1989
- UN CESCR, Promotion and Protection of Human Rights, Impunity, Report of the independent expert to update the Set of principles to combat impunity, Diane Orentlicher, Addendum, Updated Set of

Principles for the Protection and Promotion of Human Rights through Action to Combat Impunity, 2005

- UN CESCR, Promotion and Protection of Human Rights, Study on the right to the truth, Report of the Office of the United Nations High Commissioner for Human Rights, 2006
- UN CESCR, Substantive Issues Arising in the Implementation of the International Covenant on Economic, Social and Cultural Rights, General Comment 12 (Twentieth session, 1999), The right to adequate food (art. 11), 1999
- UN CESCR, The Administration of Justice and the Human Rights of Detainees, Question of the Human Rights of Persons subjected to any form of Detention or Imprisonment, Study on amnesty laws and their role in the safeguard and promotion of human rights, 1985
- UN CESCR, The New International Economic Order and the Promotion of Human Rights, Report on the right to adequate food as a human right submitted by Mr Asbjørn Eide, Special Rapporteur, 1987
- UN Committee Against Torture, General Comment No. 2, Implementation of article 2 by States parties, 2008
- UN Committee against Torture, General Comment No. 3: Implementation of article 14 by States parties, 2012
- UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, 1985
- UN GA, Administrative and budgetary aspects of the financing of the United Nations peacekeeping operations, Note by the Secretary-General, 2005
- UN GA, Annual Report of the United Nations High Commissioner for Human Rights and Reports of the Office of the High Commissioner and the Secretary-General, Right to the truth, 2009
- UN GA, Disarmament, demobilization and reintegration, Report of the Secretary-General, 2006
- UN GA, Principles relating to the Status of National Institutions (The Paris Principles), 1994
- UN GA, Promotion and Protection of All Human Rights, Civil, Political, Economic, Social and Cultural Rights, Including the Right to Development, Human Rights Council, Right to the truth, 2009
- UN GA, Report of the United Nations High Commissioner for Human Rights on human rights and transitional justice, 2011
- UN GA, Report of the United Nations High Commissioner for Human Rights on human rights and transitional justice, 2011
- UN GA, Resolution adopted by the General Assembly on 22 June 2005, 2005
- UN GA, United Nations Standards Minimum Rules for Non-custodial Measures (The Tokyo Rules), 1990
- UN GA-SC, Comprehensive review of the whole question of peacekeeping operations in all their aspects, 2000
- UN Guidance Note of the Secretary-General, United Nations Approach to Transitional Justice, 2010

- UN HRC, General Comment 31 on The Nature of the General Legal Obligation Imposed on State Parties to the Covenant, 2004
- UN HRC, General Comment 31: Nature of the general legal obligation imposed on state parties to the Covenant, 2004
- UN HRC, General Comment 6, Article 6 (Sixteenth session, 1982), Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies, 1994
- UN Human Rights Council, Torture and other cruel, inhuman or degrading treatment or punishment: rehabilitation of torture victims, 2013
- UN, Integrated Disarmament, Demobilization and Reintegration Standards, 2006-2014
- UN OHCHR, National Human Rights Institutions, History, Principles, Roles and Responsibilities, Professional Training Series No. 4 (Rev. 1), 2010
- UN OHCHR, Office of the High Commissioner for Human Rights, Rule-of-law Tools for Post-conflict States, Amnesties, 2009
- UN OHCHR, Office of the High Commissioner for Human Rights, Rule-of-law Tools for Post-conflict States, Reparations programmes, 2008
- UN OHCHR, The Maastricht Guidelines on Violations of Economic, Social and Cultural Rights, 1997
- UN, Operational Guide to the Integrated Disarmament, Demobilization and Reintegration Standards, 2014
- UN Policy for Post-Conflict Employment Creation, Income Generation and Reintegration, 2009
- UN SC, Report of the Secretary-General 'The Role of United Nations Peacekeeping in Disarmament, Demobilization and Reintegration, 2000
- UN SC, Statement by the President of the Security Council, 2004
- UN SC, The rule of law and transitional justice in conflict and post-conflict societies, Report of the Secretary-General, 2004
- UN SC, The rule of law and transitional justice in conflict and post-conflict societies, Report of the Secretary-General, 2011
- UNDP-OHCHR Toolkit for collaboration with National Human Rights Institutions, 2010
- UN, Resolutions and Decisions adopted by the General Assembly during its Tenth Special Session, 23 May – 30 June 1978, Official Records: Tenth Special Session Supplement No. 4, 1978
- Vienna Declaration and Programme of Action, Adopted by the World Conference on Human Rights in Vienna on 25 June 1993
- Women, Peace and Security, Study submitted by the Secretary-General, 2002

B.4 Relevant regional soft law declarations and principles include:

Africa

- Seventh Conference of African National Human Rights Institutions,

Rabat Declaration, Rabat 3-5 November 2009

Europe

- CoE Guidelines of the Committee of Ministers of the Council of Europe on eradicating impunity for serious human rights violations, Guidelines adopted by the Committee of Ministers on 30 March 2011 at the 1110th meeting of the Ministers' Deputies, H/Inf (2011) 7 (2011)
- CoE Guidelines on the Protection of Victims of Terrorist Acts, Council of Europe, 2005
- CoE Parliamentary Assembly Resolution 1463, 2005
- CoE Parliamentary Assembly Resolution 1868, 2012
- CoE Parliamentary Assembly Resolution 828, 1984
- CoE, Committee of Ministers, Recommendation Rec(2006)8, 2006

Chapter 1

The Role of National Human Rights Institutions

There are a wide variety of National Human Rights Institutions (NHRIs) which may exist in, or may have been specifically established for, a post-conflict society. The powers and functions of NHRIs around the world differ, with some containing the authority of 'quasi-judicial competence'. (1.1-1.2)

An NHRI conducting work in a post-conflict society:

- May wish to recognise that an NHRI, within its powers and functions, can itself form part of a DDR and transitional justice approach, and should be cognisant that its work conforms to DDR and transitional justice standards. An NHRI may be mandated to undertake such work, or may choose to undertake it independently to facilitate the fulfilment of the rights of victims and the reintegration of ex-combatants (both state and non-state forces). (1.10)

1.1 There have been a wide variety of NHRIs established following the Vienna Declaration and Programme of Action which encouraged 'the establishment and strengthening of national institutions, having regard to the "Principles relating to the status of national institutions" and recognizing that it is the right of each State to choose the framework which is best suited to its particular needs at the national level.'⁴ Accordingly, an NHRI can exist in, or be specifically established for, a post-conflict society.

1.2 The powers and functions of NHRIs around the world differ, with some containing the authority of 'quasi-judicial competence'. The Paris Principles relating to the status of NHRIs includes '[a]dditional principles concerning the status of commissions with quasi-judicial competence', detailing that:

'A national institution may be authorized to hear and consider complaints and petitions concerning individual situations. Cases may be brought before it by individuals, their representatives, third parties, non-governmental organizations, associations of trade unions or any other representative organizations. In such circumstances, and without prejudice to the principles stated above concerning the other powers of the commissions, the functions entrusted to them may be based on the following principles:

⁴ [Vienna Declaration and Programme of Action, Adopted by the World Conference on Human Rights in Vienna on 25 June 1993](#), para 36

- (a) Seeking an amicable settlement through conciliation or, within the limits prescribed by the law, through binding decisions or, where necessary, on the basis of confidentiality;
- (b) Informing the party who filed the petition of his rights, in particular the remedies available to him, and promoting his access to them;
- (c) Hearing any complaints or petitions or transmitting them to any other competent authority within the limits prescribed by the law;
- (d) Making recommendations to the competent authorities, especially by proposing amendments or reforms of the laws, regulations and administrative practices, especially if they have created the difficulties encountered by the persons filing the petitions in order to assert their rights.⁵

1.3 The UN Office of the High Commissioner on Human Rights (OHCHR) has noted that:

'There are two main types of institutions with complaint-handling functions. The first are NHRIs that can themselves impose a binding decision on the parties following an investigation. The second—more common than the first—can make a finding and refer the matter to a specialized board or tribunal that is independent of the institution or to the courts in order to obtain a binding decision.'⁶

1.4 The UN OHCHR has highlighted that:

'Quasi-judicial NHRIs have the authority to make findings, usually in the form of a final report, after the investigation. They can make recommendations to the authorities proposing amendments or law reform. The parties may choose to comply with the finding or the NHRI can refer the matter to a specialized tribunal or board or to the courts. In many jurisdictions, the case then undergoes a full hearing.'⁷

1.5 Consequently, an NHRI conducting work in a post-conflict society may have quasi-judicial competence relevant to a DDR and transitional justice approach.

1.6 The UN OHCHR has highlighted the specific role of NHRIs in conflict and post-conflict situations, stating that:

'Accountability can be ensured and impunity combated by documenting and investigating violations, and monitoring and recording abuses both during conflict and during transitional periods. These efforts can support

⁵ [UN GA, Principles relating to the Status of National Institutions \(The Paris Principles\), UN Doc. A/RES/48/134 \(1994\), p7](#)

⁶ [UN OHCHR, National Human Rights Institutions, History, Principles, Roles and Responsibilities, Professional Training Series No. 4 \(Rev. 1\), 2010, p43](#)

⁷ [UN OHCHR, National Human Rights Institutions, History, Principles, Roles and Responsibilities, Professional Training Series No. 4 \(Rev. 1\), 2010, p43](#)

future prosecution initiatives, truth-seeking and truth-telling bodies, reparations measures and vetting processes. National human rights institutions can assist victims by ensuring that they have equal and effective access to justice; adequate, effective and prompt reparation for harm suffered; and access to relevant information. They can also support the reintegration in society of demobilized forces, displaced persons and returning refugees, and support special initiatives for child soldiers and child abductees; and gender-sensitive approaches to transitional justice. They can also assist victims and witnesses with measures such as relocation and resettlement.⁸

1.7 The UN OHCHR has further noted that:

'Whether an NHRI has responsibility for any of these roles will depend at least in part on its enabling statute or on other legislation that may confer additional powers. Some NHRIs have the power to deal only with matters that arise from the time that they were created; others have a broader mandate to address past abuses. A number of NHRIs have themselves been established as part of institutional reform in the transitional justice process.'⁹

1.8 A broad range of work and activities an NHRI may conduct in a post-conflict society, dependent on its mandated powers and functions, are relevant to a DDR and transitional justice approach.

1.9 The Rabat Declaration, adopted at the Seventh Conference of African National Human Rights Institutions (with the support of the Office of the United Nations High Commissioner for Human Rights (OHCHR), the Organisation Internationale de la Francophonie (OIF), and the Commonwealth Secretariat), details that the participants resolved:

- d) 'To raise awareness of transitional justice mechanisms and lessons learned, to engage relevant stakeholders, including civil society and institutional actors in transitional justice discourse, and to mobilize the society's action in this area,
- e) To facilitate the national consultations for the establishment of transitional justice mechanisms in close cooperation with other national and international stakeholders, and ensure participation of victims, and other vulnerable or marginalized groups, and make appropriate recommendations to ensure an open and transparent process,
- f) To engage in information gathering and documenting of human rights abuses, and cooperate with transitional justice mechanisms in

⁸ [UN OHCHR, National Human Rights Institutions, History, Principles, Roles and Responsibilities, Professional Training Series No. 4 \(Rev. 1\), 2010](#), p27

⁹ [UN OHCHR, National Human Rights Institutions, History, Principles, Roles and Responsibilities, Professional Training Series No. 4 \(Rev. 1\), 2010](#), p27, also see [UNDP-OHCHR Toolkit for collaboration with National Human Rights Institutions, 2010](#), p47-48

- investigation of human rights violations,
- g) To ensure preservation and protection of information on human rights abuses, including through appropriate archiving,
 - h) To interact with and reinforce the justice mechanisms and ensure that cases of human rights violations are submitted to the justice system and adequately addressed,
 - i) To cooperate in the design and, as appropriate, in implementation of transitional justice mechanisms, and to ensure the centrality of victims in such processes,
 - j) To ensure that the establishment and operation of any transitional justice mechanism is in compliance with international human rights standards and practices,
 - k) To ensure that the rights of those facing transitional justice mechanisms, including alleged perpetrators and victims, are respected,
 - l) To promote provision of assistance to victims and witnesses participating to transitional justice processes, so they are informed of their rights and responsibilities and have access to medical and psychosocial care; and to promote provision of victims and witness protection;
 - m) To monitor and report on the implementation of the recommendation of transitional justice mechanisms,
 - n) To recommend to the relevant authorities legislative and administrative reforms to ensure their compliance with international standards, and to prevent recurrence of human rights abuses and to restore respect for the rule of law and trust in government institutions,
 - o) To engage and interact with international and regional human rights mechanisms, including by submitting reports, and making statements, and following up of recommendations related to transitional justice and human rights in general,
 - p) To participate in the development and revision of education programs to include aspects on culture of peace, conflicts prevention, tolerance and fight against discrimination and human rights.¹⁰

1.10 An NHRI conducting work in a post-conflict society may wish to recognise that an NHRI, within its powers and functions, can itself form part of a DDR and transitional justice approach, and should be cognisant that its work conforms to DDR and transitional justice standards. An NHRI may be mandated to undertake such work, or may choose to undertake it independently to facilitate the fulfilment of the rights of victims and the reintegration of ex-combatants (both state and non-state forces).

¹⁰ [Seventh Conference of African National Human Rights Institutions, Rabat Declaration, Rabat 3-5 November 2009](#), para 1

Chapter 2

Disarmament, Demobilisation, and Reintegration

Summary

Disarmament, Demobilisation, and Reintegration (DDR) is applicable in a post-conflict society and the UN Integrated Disarmament Demobilization and Reintegration Standards (IDDRS) definition of post-conflict is broad. It can describe the time, period or events taking place in a given state or region that has experienced an outbreak of violence or conflict in its recent past. (2.13)

The IDDRS identifies two main ways to measure whether a society is ready for DDR:

- (1) Do the parties reject violence as a means to achieve political objectives?
- (2) Do the parties agree to redirect their political and organisational structures to pursue peaceful, development-related aims? (2.14)

The UN Secretary-General has stated that DDR programmes can occur with or without the presence of peacekeeping or peace-building missions and with or without the United Nations taking the lead. This is reflected in the IDDRS, which provides that the standards will also be applicable for non-peacekeeping contexts. (2.20)

'Combatant' and 'ex-combatant' are the standard terms used in a post conflict society to describe those who have been directly involved in organisations engaged in violence or the use of force (including both non-state and state actors). These are difficult terms that convey for many people an unjustifiable sense of equivalency, in particular between those who may have engaged in, or been convicted of terrorism and those who were not. It is important however to note that DDR is not premised on a value judgment of this sort and there should be no misinterpretation of what is, or is not meant, by the terms combatant and ex-combatant. There is no presumption that non-state and state actors are morally or legally equivalent. Nor is there a prescribed set of programmes to apply universally or on a basis of equal access. (2.23-2.28)

The IDDRS states that an individual may be eligible for inclusion in DDR programmes if they are, or have during the period of conflict, been:

- A member of a national army or an irregular military organisation;
- Actively participating in military activities and hostilities;

- Involved in recruiting or training military personnel; or,
- In a command or decision-making position within a national army or an armed organisation. (2.24)

An NHRI conducting work in a post-conflict society:

- Should recognise that DDR is an internationally approved framework that can assist ex-combatants (both non-state and state actors) to access and exercise their human rights. With appropriate application, DDR programmes may be part of, or complementary to, transitional justice initiatives. Crucially in this regard, DDR programmes can contribute to securing the human rights of victims; (2.7)
- Should recognise that DDR programmes may be applicable in a society that has experienced an outbreak of violence or conflict in its recent past. This is irrespective of UN involvement. DDR programmes may be implemented where and when the definition of post conflict under the IDDRS is satisfied. These programmes should be flexible and adapted to meet the particular context and owned by the local society within which they will operate. Key elements of DDR include being 'people-centred; flexible, accountable and transparent; nationally owned; integrated; and well planned.' DDR programmes should respect and promote international human rights law; (2.22)
- Should recognise that all ex-combatants (both non-state and state actors) are eligible to enter DDR programmes. This does not suggest any moral or legal equivalency between these actors and their actions during the period of conflict. It also does not prescribe a set of programmes to apply universally or on a basis of equal access; (2.32)
- May wish to recognise that in most instances disarmament and demobilisation will have been completed before reintegration. However, there is no requirement that DDR is sequenced in this way. The flexibility of the international standards means the designers of a DDR programme can choose when ex-combatants (both non-state and state actors) can access reintegration programmes; (2.54)
- May wish to recognise that measures aimed at reintegrating ex-combatants (both non-state and state actors) must be balanced with addressing the needs of the wider society and communities. This is especially relevant when considering the victims of the conflict. This requires tailored, individually focused approaches; (2.78)
- Should recognise that DDR measures must respond to, and reflect the needs of, ex-combatants who are women; (2.93)
- Should recognise that DDR measures must respond to, and reflect the

needs of, ex-combatants who are children; (2.94)

- Should recognise that the design and implementation of DDR measures must include the participation of women. (2.98)

Introduction

2.1 Internationally accepted frameworks for post conflict societies can assist a state to discharge its duties and obligations, and simultaneously enable individuals to access their human rights. Disarmament Demobilisation and Reintegration (DDR) is one internationally recognised framework to help recovery in a post-conflict society. The UN Secretary-General has noted that '[i]t is vital that [DDR] programmes are coordinated with the wider peace, recovery and development frameworks'.¹¹ DDR includes programmes aimed at removing weapons from those directly engaged in the conflict, progressing demilitarisation, and helping social and economic re-integration. DDR may be part of, or complementary to transitional justice.¹² Transitional justice entails processes and mechanisms associated with a society's attempt to come to terms with a legacy of past abuses and violations, in order to ensure accountability, serve justice, and achieve reconciliation.¹³

2.2 The UN Integrated Disarmament Demobilization and Reintegration Standards (IDDRS) acknowledge that DDR programmes are aimed primarily at ex-combatants (both non-state and state actors) while transitional justice initiatives focus on victims and on society more generally.¹⁴

2.3 The UN OHCHR has noted that when:

'appropriately connected ... DDR and transitional justice can positively reinforce one another. DDR processes can contribute to securing the stability necessary for implementing transitional justice mechanisms, and transitional justice processes can strengthen the legitimacy and integrity of DDR initiatives and facilitate reintegration.'¹⁵

¹¹ [UN GA, Disarmament, demobilization and reintegration, Report of the Secretary-General, UN Doc. A/60/705 \(2006\)](#) para 9(a)

¹² [Integrated Disarmament Demobilization and Reintegration Standards \(2006\) Section 1.10](#), p2

¹³ [UN, Guidance Note of the Secretary-General, 'United Nations Approach to Transitional Justice' \(2010\)](#) p2. In regards to Transitional Justice and Human Rights, see [UN, Annual Report of the United Nations High Commissioner for Human Rights and Reports of the Office of the High Commissioner and the Secretary-General, Analytical study on human rights and transitional justice, UN Doc. A/HRC/12/18 \(2009\)](#)

¹⁴ [Integrated Disarmament Demobilization and Reintegration Standards \(2009\) Section 6.20](#), p3

¹⁵ [UN GA, Report of the United Nations High Commissioner for Human Rights on human rights and transitional justice, UN Doc. A/HRC/18/23 \(2011\)](#) p15

2.4 The IDDRS states that '[i]ntegrated DDR originates from various parts of the UN's core mandate, as set out in the Charter of the UN, particularly the areas of peace and security, economic and social development, human rights, and humanitarian support.'¹⁶ Key elements of DDR include being 'people-centred; flexible, accountable and transparent; nationally owned; integrated; and well planned.'¹⁷ DDR programmes should respect and promote international human rights law. This includes supporting ways of preventing reprisal or discrimination against, or stigmatisation of those who participate in DDR programmes as well as protecting the rights of the communities that are asked to receive them, and members of the society at large.

2.5 The IDDRS provides that DDR programmes must provide a commitment to gender, age, and disability specific principles, and comply with principles of non-discrimination.¹⁸ This echoes a UN Secretary-General Report which states that:

'Non-discrimination and fair and equitable treatment are core principles in both the design and implementation of disarmament, demobilization and reintegration, as is ... the promotion of human rights.'¹⁹

2.6 The Europe Union (EU) has developed the EU Concept for support to DDR (the EU Concept) provides that:²⁰

'DDR should be carried out ... in relation to democratic principles, rule of law, human rights, development and security issues.'²¹

2.7 An NHRI conducting work in a post-conflict society should recognise that DDR is an internationally approved framework which can assist ex-combatants (both non-state and state actors) to access and exercise their human rights. With appropriate application, DDR programmes may be part of, or complementary to, transitional justice initiatives. Crucially, in this regard they can contribute to securing the human rights of victims.

¹⁶ [Integrated Disarmament Demobilization and Reintegration Standards \(2006\) Section 2.10](#), p3

¹⁷ [Integrated Disarmament Demobilization and Reintegration Standards \(2006\) Section 2.10](#), p2

¹⁸ [Integrated Disarmament Demobilization and Reintegration Standards \(2009\) Section 6.20](#), p7

¹⁹ [UN GA, Disarmament, demobilization and reintegration, Report of the Secretary-General, UN Doc. A/60/705 \(2006\)](#) p9

²⁰ The EU Concept is a key international DDR document and so forms part of the substantive body of this guide rather than being applicable only to Europe.

²¹ [EU Concept for support to Disarmament, Demobilisation and Reintegration \(DDR\), Approved by the European Commission on 14 December 2006 and by the Council of the European Union on 11 December 2006](#), p21

The Objectives of DDR

2.8 The UN Security Council has recognised DDR as an important element in moving a society along the path towards long term and sustainable peace and development to 'transition out of conflict and back to normalcy.'²² The UN Security Council has further acknowledged that DDR plays an important role in 'stabilization and reconstruction' after a conflict,²³ and helps augment the 'recovery and development' process.²⁴

2.9 The UN General Assembly has noted that DDR is integral in reducing the likelihood of a conflict reoccurring.²⁵ The Stockholm Initiative on DDR, Final Report of 2007 (SIDDR(FR)) acknowledges that DDR is only 'one of many elements in a peace process'.²⁶

2.10 The EU Concept recognises:

'that DDR needs to be part of the political and social developments and will be most successful when properly linked to an overall peace process, democratic governance issues, transitional justice and long-term development criteria.'²⁷

2.11 The EU Concept highlights that:

'The ultimate objective of DDR processes is the social and economic reintegration of former combatants in order to contribute to sustainable peace, reconciliation of society, stability and long-term development.'²⁸

Where and When DDR Programmes Apply

2.12 The applicability of DDR is not dependent on International Humanitarian Law (IHL). Questions over the applicability of IHL, including

²² [UN SC, The rule of law and transitional justice in conflict and post-conflict societies, Report of the Secretary-General Security Council, UN Doc. S/2004/616 \(2004\) p11](#)

²³ [UN SC, Resolution 2151\(2014\), UN Doc. S/RES/2151 \(2014\) p3](#)

²⁴ [Integrated Disarmament Demobilization and Reintegration Standards \(2006\) Section 1.10, p1](#)

²⁵ [UN SC and UN GA, Comprehensive review of the whole question of peacekeeping operations in all their aspects, UN Doc. A/55/305-S/2000/809 \(2000\) p7](#)

²⁶ [Stockholm Initiative On Disarmament Demobilisation Reintegration, Final Report, \(2007\) p21](#)

²⁷ [EU Concept for support to Disarmament, Demobilisation and Reintegration \(DDR\), Approved by the European Commission on 14 December 2006 and by the Council of the European Union on 11 December 2006, p4](#)

²⁸ [EU Concept for support to Disarmament, Demobilisation and Reintegration \(DDR\), Approved by the European Commission on 14 December 2006 and by the Council of the European Union on 11 December 2006, p4 and see Integrated Disarmament Demobilization and Reintegration Standards \(2006\) Section 2.10, p4](#)

Common Article 3 of all four of the Geneva Conventions of 1949,²⁹ are distinct from the question over the applicability of DDR.

2.13 DDR is applicable in a post-conflict society,³⁰ and the IDDRS definition of 'post-conflict' is broad. It can describe 'the time, period or events taking place in a given state or region that [has] ... experienced an outbreak of violence or conflict in its recent past.'³¹

2.14 The IDDRS identifies two main ways to measure whether a society is ready for DDR:

- (1) Do the parties reject violence as a means to achieve political objectives?
- (2) Do the parties agree to redirect their political and organisational structures to pursue peaceful, development-related aims?³²

2.15 The IDDRS considers these questions from a practical perspective, noting that '[t]he establishment of a DDR process is usually agreed to and defined within a ceasefire, the ending of hostilities or a comprehensive peace agreement.'³³ It is intended to be flexible and adapt to meet the context of each domestic application.³⁴ Nevertheless, DDR programmes need to be 'well planned' and an agreed methodology should be established to maximise their effectiveness.³⁵

2.16 The SIDDR(FR) notes, that '[u]ltimately, the success of DDR programmes depends on genuine, effective and broad national ownership and responsibility.'³⁶ The UN Secretary-General is clear that 'the

²⁹ See [Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field 1949, 75 UNTS 31](#); [Geneva Convention for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea 1949, 75 UNTS 85](#); [Geneva Convention Relative to the Treatment of Prisoners of War 1949 75 UNTS 135](#); [Geneva Convention Relative to the Protection of Civilian Persons in Time of War 1949 75 UNTS 287](#)

³⁰ See [Integrated Disarmament Demobilization and Reintegration Standards \(2006\) Section 1.10](#), p1, and [UN, Women, Peace and Security, Study submitted by the Secretary-General pursuant to Security Council resolution 1325 \(2000\), \(2002\)](#) p129

³¹ [Integrated Disarmament Demobilization and Reintegration Standards \(2006\) Section 1.20](#), p16

³² [Integrated Disarmament Demobilization and Reintegration Standards \(2006\) Section 2.20](#), p2

³³ [Integrated Disarmament Demobilization and Reintegration Standards \(2006\) Section 2.10](#), p3

³⁴ See [Escola de Cultura de Pau, Introducción al Desarme, Desmovilización y Reintegración \(DDR\) de excombatientes, \(Nov 2011\) \(Spanish\)](#), Chart on p10, which lists, as of 2011, the countries, the peace agreement/ceasefire date, the start of the DDR process, and the difference between these dates in months, respectively.

³⁵ [Integrated Disarmament Demobilization and Reintegration Standards \(2006\) Section 2.10](#), p2 and [UN SC, Resolution 1327 \(2000\), UN Doc. S/RES/1327 \(2000\)](#) p5

³⁶ [Stockholm Initiative On Disarmament Demobilisation Reintegration, Final Report \(2007\)](#) p21

responsibility for moving the process forward in terms of planning, coordinating and implementing these programmes rests with national and local actors and stakeholders.³⁷

2.17 The UN Secretary-General has highlighted, alongside national ownership, the need for 'political will and the commitment of national actors'.³⁸ The IDDRS maintains that domestic ownership 'involves more than just central government leadership: it includes the participation of a broad range of state and non-state actors at national, provincial and local levels',³⁹ which includes 'civil society and women's organizations'.⁴⁰ Involving civil society and communities in the process of designing and implementing a DDR programme increases the chance of achieving a sustainable peace. It imbues a programme with confidence and allows the specific cultural, social, economic, and historical context to shape a DDR programme.⁴¹

2.18 For DDR programmes to fully represent the fundamental characteristics of the society, communities, and peoples in which they are to be applied, there has to be a high degree of flexibility to adapt the international standards. Using the guidelines and methodology developed from experiences over the last 35 years the Stockholm Initiative On Disarmament Demobilisation Reintegration, Testing The Principles of 2007 (SIDDR(TP)) acknowledges that it is possible to adapt 'the terminology and sequencing and even design of the DDR process ... to each particular situation'.⁴² The IDDRS provides that this flexibility extends to the point where, '[d]epending on circumstances, not all of its aspects [of the DDR process] may be employed in a particular situation'.⁴³

³⁷ [UN GA, Disarmament, demobilization and reintegration, Report of the Secretary-General, UN Doc. A/60/705 \(2006\)](#) p8-9. Also see [UN GA, Disarmament, demobilization and reintegration, Report of the Secretary-General, UN Doc. A/65/741 \(2011\)](#) para 26 and 51

³⁸ [UN GA, Disarmament, demobilization and reintegration, Report of the Secretary-General, UN Doc. A/65/741 \(2011\)](#) para 51; and see [UN GA Disarmament, demobilization and reintegration, Report of the Secretary-General, UN Doc. A/60/705 \(2006\)](#) para 9(b)

³⁹ [Integrated Disarmament Demobilization and Reintegration Standards \(2006\) Section 2.10](#), p12

⁴⁰ [UN GA, Disarmament, demobilization and reintegration, Report of the Secretary-General, UN Doc. A/60/705 \(2006\)](#) p9

⁴¹ See, also the statement by the UN Secretary-General, [UN GA, Disarmament, demobilization and reintegration, Report of the Secretary-General, UN Doc. A/60/705 \(2006\)](#) p10

⁴² [Stockholm Initiative On Disarmament Demobilisation Reintegration, Testing The Principles \(2007\)](#) p9

⁴³ [Integrated Disarmament Demobilization and Reintegration Standards \(2006\) Section 2.10](#), p4

2.19 The EU Concept states that adopting such flexibility allows a domestic DDR programme to be 'context-driven'.⁴⁴

2.20 The UN Secretary-General has stated that DDR programmes 'can occur with or without the presence of peacekeeping or peace-building missions and with or without the United Nations taking the lead.'⁴⁵ This is reflected in the IDDRS, which provides that the standards 'will also be applicable for non-peacekeeping contexts'.⁴⁶

2.21 The UN Security Council has stressed 'the critical importance of a regional approach to conflict prevention, particularly to programmes of disarmament, demobilization and reintegration, as well as the effective and sustainable reintegration of ex-combatants'.⁴⁷

2.22 An NHRI conducting work in a post-conflict society should recognise that DDR programmes may be applicable in a society that has experienced an outbreak of violence or conflict in its recent past. This is irrespective of UN involvement. DDR programmes may be implemented where and when the definition of post conflict under the IDDRS is satisfied. These programmes should be flexible and adapted to meet the particular context and owned by the local society within which they will operate. Key elements of DDR include being 'people-centred; flexible, accountable and transparent; nationally owned; integrated; and well planned.' DDR programmes should respect and promote international human rights law

Who Can Enter A DDR Programme

2.23 'Combatant' and 'ex-combatant' are the terms used in the IDDRS to describe those who in a post conflict society have been directly involved in organisations engaged in violence or the use of force (including both non-state and state actors).

2.24 The IDDRS states that an individual may be eligible for inclusion in DDR programmes if they are, or have during the period of conflict, been:

- A member of a national army or an irregular military organisation;
- Actively participating in military activities and hostilities;

⁴⁴ [EU Concept for support to Disarmament, Demobilisation and Reintegration \(DDR\), Approved by the European Commission on 14 December 2006 and by the Council of the European Union on 11 December 2006](#), p11

⁴⁵ [UN, Women, Peace and Security, Study submitted by the Secretary-General pursuant to Security Council resolution 1325 \(2000\), \(2002\)](#) para 393

⁴⁶ [Integrated Disarmament Demobilization and Reintegration Standards \(2006\) Section 1.10](#), p3 and see [UN GA, Disarmament, demobilization and reintegration, Report of the Secretary-General, UN Doc. A/60/705 \(2006\)](#) para 17

⁴⁷ [UN SC, Resolution 1625 \(2005\) UN Doc. S/RES/1625 \(2005\)](#) p3

- Involved in recruiting or training military personnel; or,
- In a command or decision-making position within a national army or an armed organisation.⁴⁸

2.25 The IDDRS provides a definition of an ex-combatant as:

'A person who has assumed any of the responsibilities or carried out any of the activities mentioned in the definition of 'combatant', and has laid down or surrendered his/her arms with a view to entering a DDR process.'⁴⁹

2.26 The International Labour Organization (ILO) recognises 'that ex-combatants are not a homogenous group.'⁵⁰ There are a large range of individuals, including regular and irregular, state and non-state actors,⁵¹ who fall within the definition and should be included within the eligibility criteria laid out for DDR programmes.

2.27 The EU Concept and the IDDRS both recognise that the definition should include 'non-fighters associated with armed groups',⁵² including those in support roles.⁵³

2.28 It is important to recognise that DDR does not necessitate a 'one-size-fits-all' approach. The SIDDR provides that '[d]ifferent groups within the armed parties might require different approaches in a comprehensive DDR strategy.'⁵⁴ The IDDRS states that '[d]ifferent incentive (and disincentive) structures are required for senior-, middle- and lower-level members of an armed force or group.'⁵⁵ Any varying approach must

⁴⁸ [Integrated Disarmament Demobilization and Reintegration Standards \(2006\) Section 1.20](#), p4

⁴⁹ [Integrated Disarmament Demobilization and Reintegration Standards \(2006\) Section 1.20](#), p7

⁵⁰ [ILO, Socio-Economic Reintegration of Ex-Combatants, Guidelines, ILO Programme for Crisis Response and Reconstruction \(2010\)](#) p21

⁵¹ The need to include parastatal armed forces within a DDR programme is supported by Principle 37 of the Updated Set of principles for the protection and promotion of human rights through action to combat impunity, [UN CESCR, Commission on Human Rights, Promotion and Protection of Human Rights, Impunity, Report of the Independent expert to update the Set of principles to combat impunity, Diane Orentlicher, Addendum, Updated Set of principles for the protection and promotion of human rights through action to combat impunity, UN Doc. E/CN.4/2005/102/Add.1 \(2005\)](#) p19

⁵² [EU Concept for support to Disarmament, Demobilisation and Reintegration \(DDR\), Approved by the European Commission on 14 December 2006 and by the Council of the European Union on 11 December 2006](#), p8

⁵³ [Integrated Disarmament Demobilization and Reintegration Standards \(2006\) Section 2.30](#), p2

⁵⁴ [Stockholm Initiative On Disarmament Demobilisation Reintegration, Final Report, \(2007\)](#) p21

⁵⁵ [Integrated Disarmament Demobilization and Reintegration Standards \(2006\) Section 3.10](#), p14

respect international human rights law,⁵⁶ but can respond to specific needs of individuals and of society as a whole to achieve a sustainable peace.⁵⁷ In particular, it may be necessary to recognise that a response differentiating between non-state and state actors can be highly important considering the sensitivities when dealing with those who have engaged in, or been convicted of terrorism, and those who were not. Crucially, DDR does allow for a context sensitive approach when addressing such legitimate concerns.⁵⁸

2.29 The IDDRS states that it is important to establish 'detailed and transparent eligibility criteria' for any DDR programme.⁵⁹ These should include 'a concrete understanding' of who has been directly involved in organisations engaged in violence or the use of force (including both non-state and state actors).⁶⁰ They should also be 'tightly defined' and not based on those merely surrendering arms,⁶¹ but should look to establish 'tests to determine an individual's membership of an armed force or group.'⁶²

2.30 The UN Secretary-General has noted that although the eligibility criteria of groups can be established through a ceasefire or peace agreement 'sometimes the political circumstances during the negotiations of a peace agreement may affect the precise definition of factional participation, in particular in the case of militia-type forces.'⁶³

2.31 The EU Concept provides that eligibility criteria should be established as soon as possible as 'expectations need to be carefully managed from the outset'.⁶⁴

⁵⁶ [Integrated Disarmament Demobilization and Reintegration Standards \(2006\) Section 2.10](#), p9

⁵⁷ [Integrated Disarmament Demobilization and Reintegration Standards \(2006\) Section 2.30](#), p2

⁵⁸ [Integrated Disarmament Demobilization and Reintegration Standards \(2006\) Section 2.10](#), p2 and 4; [Stockholm Initiative On Disarmament Demobilisation Reintegration, Testing The Principles \(2007\)](#) p9; [EU Concept for support to Disarmament, Demobilisation and Reintegration \(DDR\), Approved by the European Commission on 14 December 2006 and by the Council of the European Union on 11 December 2006](#), p11

⁵⁹ [Integrated Disarmament Demobilization and Reintegration Standards \(2006\) Section 2.30](#), p2

⁶⁰ [UN, Women, Peace and Security, Study submitted by the Secretary-General pursuant to Security Council resolution 1325 \(2000\), \(2002\)](#) para 395

⁶¹ [EU Concept for support to Disarmament, Demobilisation and Reintegration \(DDR\), Approved by the European Commission on 14 December 2006 and by the Council of the European Union on 11 December 2006](#), p8

⁶² [Integrated Disarmament Demobilization and Reintegration Standards \(2006\) Section 2.30](#), p2

⁶³ [UN GA, Disarmament, demobilization and reintegration, Report of the Secretary-General, UN Doc. A/60/705 \(2006\)](#) p9-10

⁶⁴ [EU Concept for support to Disarmament, Demobilisation and Reintegration \(DDR\), Approved by the European Commission on 14 December 2006 and by the Council of the European Union on 11 December 2006](#), p8

2.32 An NHRI conducting work in a post-conflict society should recognise that ex-combatants (both non-state and state actors) are eligible to enter DDR programmes. This does not suggest any moral or legal equivalency between these actors and their actions during the period of conflict. It also does not prescribe a set of programmes to apply universally or on a basis of equal access.

The Constituent Elements of DDR

2.33 The constituent elements of DDR ('disarmament', 'demobilisation', and 'reintegration') are laid out in the IDDRS,⁶⁵ which itself adopted its definitions from those laid out by the UN General Assembly.⁶⁶ These have been reaffirmed by the UN Secretary-General.⁶⁷

2.34 The EU Concept adopts the definitions set out in the IDDRS and closely follows the approach which the IDDRS and both the SIDDR(FR) and the SIDDR(TP) encourage.⁶⁸

2.35 The issues addressed in this guide relate to DDR programmes that are principally concerned with the reintegration of ex-combatants (both non-state and state actors). In particular, there is a focus on reintegration when examining procedural options related to amnesties or other forms of conditional immunity and their link to transitional justice measures aimed at securing the rights of victims.

2.36 Before progressing on to this aspect of the guide, it is however necessary to understand the relationship between the disarmament and demobilisation elements of DDR and reintegration. More specifically, it is necessary to understand to what extent eligibility for reintegration is contingent upon the successful completion of disarmament and demobilisation initiatives.

⁶⁵ [Integrated Disarmament Demobilization and Reintegration Standards \(2006\) Section 1.10, p2](#)

⁶⁶ [UN GA, Administrative and budgetary aspects of the financing of the United Nations peacekeeping operations, Note by the Secretary-General, UN Doc. A/C.5/59/31 \(2005\) p1-2](#)

⁶⁷ [UN GA, Disarmament, demobilization and reintegration, Report of the Secretary-General, UN Doc. A/60/705 \(2006\) p8](#)

⁶⁸ [EU Concept for support to Disarmament, Demobilisation and Reintegration \(DDR\), Approved by the European Commission on 14 December 2006 and by the Council of the European Union on 11 December 2006](#)

Disarmament

2.37 The IDDRS states that:

'Disarmament is the collection, documentation, control and disposal of small arms, ammunition, explosives and light and heavy weapons of combatants and often also of the civilian population. Disarmament also includes the development of responsible arms management programmes.'⁶⁹

2.38 The IDDRS further states that:

'The disarmament component of a DDR programme should usually consist of four main phases: (1) information collection and operational planning; (2) weapons collection or retrieval operations; (3) stockpile management; and (4) destruction.'⁷⁰

2.39 The development of DDR away from a strictly operational rationale is highlighted by the SIDDR(TP) which stresses that:

'The central challenge, especially in situations using the peace agreement as an instrument for the process, is to accomplish a transformation of a mindset rather than a quantitative disarmament.'⁷¹

2.40 This does not diminish the need for a quantitative disarmament, but highlights the fundamental shift required in a society to embed and maintain sustainable peace.

Demobilisation

2.41 The IDDRS provides that:

'Demobilization is the formal and controlled discharge of active combatants from armed forces or other armed groups. The first stage of demobilization may extend from the processing of individual combatants in temporary centres to the massing of troops in camps designated for this purpose (cantonment sites, encampments, assembly areas or

⁶⁹ [Integrated Disarmament Demobilization and Reintegration Standards \(2006\) Section 1.10](#), p2, with note made to [UN GA, Administrative and budgetary aspects of the financing of the United Nations peacekeeping operations, Note by the Secretary-General, UN Doc. A/C.5/59/31 \(2005\)](#)

⁷⁰ [Integrated Disarmament Demobilization and Reintegration Standards \(2006\) Section 4.10](#), p1

⁷¹ [Stockholm Initiative On Disarmament Demobilisation Reintegration, Testing The Principles \(2007\)](#) p30

barracks). The second stage of demobilization encompasses the support package provided to the demobilized, which is called reinsertion.⁷²

2.42 The IDDRS outlines that:

'Demobilization is both a physical and a mental process. The physical aspect involves the separation of an armed element (i.e., a soldier/combatant) from the systematic command and control structure of an armed force or group, thereby either reducing the number of combatants in an armed force or group, or disbanding it in its entirety. ... The mental aspect of the demobilization process involves preparing the disarmed individual to find his/her place in civil society without the camaraderie and support systems of the structured armed force or group. This is a longer-term objective, and can be regarded as a by-product of successful reinsertion.'⁷³

2.43 The IDDRS notes that:

'Reinsertion is the assistance offered to ex-combatants during demobilization but prior to the longer-term process of reintegration. Reinsertion is a form of transitional assistance to help cover the basic needs of ex-combatants and their families and can include transitional safety allowances, food, clothes, shelter, medical services, short-term education, training, employment and tools. While reintegration is a long-term, continuous social and economic process of development, reinsertion is a short-term material and/ or financial assistance to meet immediate needs, and can last up to one year.'⁷⁴

⁷² [Integrated Disarmament Demobilization and Reintegration Standards \(2006\) Section 1.10](#), p2, with note made to [UN GA, Administrative and budgetary aspects of the financing of the United Nations peacekeeping operations, Note by the Secretary-General, UN Doc. A/C.5/59/31 \(2005\)](#)

⁷³ [Integrated Disarmament Demobilization and Reintegration Standards \(2006\) Section 4.20](#), p1.

⁷⁴ [UN GA, Administrative and budgetary aspects of the financing of the United Nations peacekeeping operations, Note by the Secretary-General, UN Doc. A/C.5/59/31 \(2005\), para 1\(c\), and contained with Integrated Disarmament Demobilization and Reintegration Standards \(2006\) Section 4.20](#), p13. Current references are made to DDRR, with the addition of Reinsertion as a third phase. The UN General Assembly has reaffirmed that 'reinsertion activities are part of the disarmament and demobilization process', [UN GA, Administrative and budgetary aspects of the financing of the United Nations peacekeeping operations: cross-cutting issues, UN Doc. A/RES/59/296 \(2005\)](#) p5. Similarly, the internationally accepted definition of DDR includes Reinsertion. See [UN GA, Administrative and budgetary aspects of the financing of the United Nations peacekeeping operations, Note by the Secretary-General, UN Doc. A/C.5/59/31 \(2005\)](#) p1, and [UN GA, Disarmament, demobilization and reintegration, Report of the Secretary-General, UN Doc. A/60/705 \(2006\)](#) p8, [Integrated Disarmament Demobilization and Reintegration Standards \(2006\) Section 1.10](#), p2. However it is often viewed as an important but final sub-section in the Demobilisation phase, occurring before Reintegration. The International Labour Organization has clarified that '[r]einsertion is essentially a short-term, targeted and stabilizing measure. Reinsertion does not guarantee a sustainable income, nor return to communities. It is concerned with quick

Security Sector Reform

2.44 Consideration should be given to Security Sector Reform (SSR) in discussions on disarmament and demobilisation as both SSR and DDR include measures to address the state security sector in a post-conflict society.

2.45 In contrast to DDR's focus on individuals, communities, and society, 'SSR concerns reform of both the bodies which provide security to citizens and the state institutions responsible for management and oversight of those bodies.'⁷⁵

2.46 The UN SC has stressed that:

'reforming the security sector in post-conflict environments is critical to the consolidation of peace and stability, promoting poverty reduction, rule of law and good governance, extending legitimate State authority, and preventing countries from relapsing into conflict'⁷⁶

2.47 The UN Secretary-General has stated that:

'Security sector reform describes a process of assessment, review and implementation as well as monitoring and evaluation led by national authorities that has as its goal the enhancement of effective and accountable security for the State and its peoples without discrimination and with full respect for human rights and the rule of law.'⁷⁷

2.48 The UN GA and UN SC have noted that:

''Security sector'' is a broad term often used to describe the structures, institutions and personnel responsible for the management, provision and oversight of security in a country. It is generally accepted that the

impact and with providing ex-combatants with their immediate needs. Reintegration is, by definition, a longer-term, community-based, inclusive process. By making a clear distinction but an intimate connection between reinsertion and reintegration, and by moving reintegration assistance as follow-up of reinsertion into a well-designed, broader economic recovery framework, many of the challenges currently experienced in socio-economic reintegration of ex-combatants can be successfully tackled. When designing programmes, it is important to separate these distinct phases.' [ILO, Socio-Economic Reintegration of Ex-Combatants, Guidelines, ILO Programme for Crisis Response and Reconstruction \(2010\)](#) p27

⁷⁵ [Commission of the European Communities, Communication from the Commission to the Council and the European Parliament, A Concept for European Community Support for Security Sector Reform, SEC\(2006\) 658 COM \(2006\) 253 final \(2006\)](#) p3

⁷⁶ [UN SC, Resolution 2151\(2014\), UN Doc. S/RES/2151 \(2014\)](#) p1

⁷⁷ [UNGA, UNSC, Securing peace and development: the role of the United Nations in supporting security sector reform, Report of the Secretary-General, UN Doc. A/62/659-S/2008/39 \(2008\)](#) para 17

security sector includes defence, law enforcement, corrections, intelligence services and institutions responsible for border management, customs and civil emergencies.⁷⁸

2.49 The Organisation for Economic Co-operation and Development (OECD) has highlighted that:

'SSR and DDR programmes need to be implemented in close alignment to prevent the creation of a security vacuum. It is important that state law enforcement agencies or legitimate non-state actors are able to provide security for local communities when the military and armed groups are demobilised.'⁷⁹

2.50 The IDDRS acknowledges that a strength of DDR is its flexibility to adapt to a specific context but it should be noted that '[t]iming is important in DDR, and the different components of DDR programmes should be properly sequenced in order to be as effective as possible.'⁸⁰

2.51 The SIDDR(FR) highlights that past experience of DDR programmes worldwide suggests that 'disarmament in most cases takes place prior to demobilisation'.⁸¹ However, the UN Secretary-General notes that:

'[A DDR] process cannot be viewed as a simple sequence of events. Rather, these activities form a continuum whose elements overlap with one another, and are related and mutually reinforcing. The success of the process is dependent on the success of each of its steps.'⁸²

2.52 The EU Concept asserts that this continuum is such that:

⁷⁸ [UNGA, UNSC, Securing peace and development: the role of the United Nations in supporting security sector reform, Report of the Secretary-General, UN Doc. A/62/659-S/2008/39 \(2008\)](#) para 14. Furthermore 'Elements of the judicial sector responsible for the adjudication of cases of alleged criminal conduct and misuse of force are, in many instances, also included. Furthermore, the security sector includes actors that play a role in managing and overseeing the design and implementation of security, such as ministries, legislative bodies and civil society groups. Other non-State actors that could be considered part of the security sector include customary or informal authorities and private security services.' The OECD has formulated a wider definition, which has been referenced by the EU, see [OECD, OECD DAC Handbook on Security System Reform, Supporting Security and Justice \(2007\)](#), p22 and [Council of the European Union, EU Concept for ESDP support to Security Sector Reform \(SSR\), 12566/4/05 REV 4 \(2005\)](#) para 14

⁷⁹ [OECD, OECD DAC Handbook on Security System Reform, Supporting Security and Justice \(2007\)](#) p105

⁸⁰ [Integrated Disarmament Demobilization and Reintegration Standards \(2006\) Section 2.10](#), p13

⁸¹ [Stockholm Initiative On Disarmament Demobilisation Reintegration, Final Report, \(2007\)](#) p15

⁸² [UN SC, The Role of United Nations Peacekeeping in Disarmament, Demobilization and Reintegration, Report of the Secretary-General, UN Doc. S/2000/101 \(2000\)](#) para 8

'Components of DDR processes do not necessarily follow one after another in a fixed order, nor do these components necessarily happen at the same time throughout a country or region.'⁸³

2.53 The sequencing and timing of each of the DDR phases should be made clear. The EU Concept states that:

'For DDR to be successful, both the target group and potential host communities need to know exactly what the process involves, what is to be achieved, what is expected from them.'⁸⁴

2.54 An NHRI conducting work in a post-conflict society may wish to recognise that in most instances disarmament and demobilisation will have been completed before reintegration. However, there is no requirement that DDR is sequenced in this way. The flexibility of the international standards means the designers of a DDR programme can choose when ex-combatants (both non-state and state actors) can access reintegration programmes.

Reintegration

2.55 According to the IDDRS reintegration is the process by which ex-combatants (both non-state and state actors):

'acquire civilian status and gain sustainable employment and income. Reintegration is essentially a social and economic process with an open time-frame, primarily taking place in communities at the local level. It is part of the general development of a country and a national responsibility, and often necessitates long-term external assistance.'⁸⁵

2.56 The UN Secretary-General has stated that:

'Effective and sustainable reintegration depends on early planning and all-encompassing assessments, which enable the identification of realistic

⁸³ [EU Concept for support to Disarmament, Demobilisation and Reintegration \(DDR\), Approved by the European Commission on 14 December 2006 and by the Council of the European Union on 11 December 2006](#), p12

⁸⁴ [EU Concept for support to Disarmament, Demobilisation and Reintegration \(DDR\), Approved by the European Commission on 14 December 2006 and by the Council of the European Union on 11 December 2006](#), p11

⁸⁵ [Integrated Disarmament Demobilization and Reintegration Standards \(2006\) Section 1.10](#), p2. Reintegration is designed to respond to the different needs of five groups: male and female adult combatants; children associated with armed forces and groups; those working in non-combat roles (including women); ex-combatants with disabilities and chronic illnesses; and dependants. [Integrated Disarmament Demobilization and Reintegration Standards \(2006\) Section 2.10](#), p1

time frames, the human and material resources needed and funding requirements.⁸⁶

2.57 Reintegration programmes should be well planned and holistic in nature. The UN Secretary-General has noted that:

‘The cost of not funding more holistic sustainable reintegration programmes is invariably higher than adequately funding programmes from the outset.’⁸⁷

2.58 The UN Secretary-General recognises that the reintegration phase of DDR has seen a large amount of development, with experience demonstrating that those who are demobilised:

‘(who almost never fully disarm) will tend to return to a life of violence if they find no legitimate livelihood, that is, if they are not “reintegrated” into the local economy.’⁸⁸

2.59 However, reintegration can be a ‘misnomer’ in the sense that a community may have altered or disappeared, possibly as a result of a conflict, to the stage where ‘it may be impossible for them to reintegrate in their area of origin.’⁸⁹ Furthermore, if a conflict has lasted a significant length of time, some people ‘will have no experience, or memory, of pre-war peaceful patterns of life.’⁹⁰ Conversely, some may reject reintegration on the grounds that they operated from within their communities during the conflict and, as a result, have no need to reintegrate into a community they were never separate from.

2.60 The UN Secretary-General acknowledges that reintegration requires:

‘a context specific approach. This could include a mix of reintegration strategies, for example combining a tailored, individually focused reintegration strategy ... with an approach that addresses the main priorities of the receiving communities’⁹¹

⁸⁶ [UN GA, Disarmament, demobilization and reintegration, Report of the Secretary-General, UN Doc. A/65/741 \(2011\)](#) para 20

⁸⁷ [UN GA, Disarmament, demobilization and reintegration, Report of the Secretary-General, UN Doc. A/65/741 \(2011\)](#) para 37

⁸⁸ [UN SC and UN GA, Comprehensive review of the whole question of peacekeeping operations in all their aspects, UN Doc. A/55/305-S/2000/809 \(2000\)](#) p7-8. Also see [UN GA, Disarmament, demobilization and reintegration, Report of the Secretary-General, UN Doc. A/65/741 \(2011\)](#) para 17

⁸⁹ [Integrated Disarmament Demobilization and Reintegration Standards \(2006\) Section 4.30](#), p1

⁹⁰ [UN GA, Disarmament, demobilization and reintegration, Report of the Secretary-General, UN Doc. A/60/705 \(2006\)](#) p14

⁹¹ [UN GA, Disarmament, demobilization and reintegration, Report of the Secretary-General, UN Doc. A/60/705 \(2006\)](#) p15

2.61 The ILO notes that communities play a large role in reintegration as:

'Ultimately, it is local communities which will allow or prevent the reintegration ... so context relevant approaches ... which utilize a holistic picture of the social and economic environment are essential to success.'⁹²

2.62 Similarly, the IDDRS refers to communities as the 'central stakeholders' in a DDR programme.⁹³

2.63 Although there may be a need for an initial focus on individuals, the UN Secretary-General acknowledges that reintegration measures must strike a balance between addressing the needs of ex-combatants (both non-state and state actors) and those of 'the wider community in order to prevent feelings of resentment between the two groups. This is especially relevant when considering that communities will often contain victims of the conflict.'⁹⁴

2.64 This is a view shared by the EU Concept which states that depending on the context, the focus may also need to 'gradually shift to the needs of the wider community in this process.'⁹⁵

2.65 The UN Secretary-General has noted that '[t]here is therefore a need for multidimensional reintegration programmes, including economic, psychosocial, political and security components',⁹⁶ as well as 'social reintegration interventions, such as reconciliation, psychosocial support, mental health counselling and clinical treatment and medical health support'.⁹⁷

2.66 The IDDRS notes that:

'challenges faced by ex-combatants include ... psychosocial issues, including trauma-spectrum disorders, and physical health issues, such as living with a disability. These challenges may leave former combatants in

⁹² [ILO, Socio-Economic Reintegration of Ex-Combatants, Guidelines, ILO Programme for Crisis Response and Reconstruction \(2010\)](#) p16

⁹³ [Integrated Disarmament Demobilization and Reintegration Standards \(2006\) Section 2.30](#), p1

⁹⁴ [UN GA, Disarmament, demobilization and reintegration, Report of the Secretary-General, UN Doc. A/60/705 \(2006\)](#) p15

⁹⁵ [EU Concept for support to Disarmament, Demobilisation and Reintegration \(DDR\), Approved by the European Commission on 14 December 2006 and by the Council of the European Union on 11 December 2006](#), p4

⁹⁶ [UN GA, Disarmament, demobilization and reintegration, Report of the Secretary-General, UN Doc. A/65/741 \(2011\)](#) Summary

⁹⁷ [UN GA, Disarmament, demobilization and reintegration, Report of the Secretary-General, UN Doc. A/65/741 \(2011\)](#) para 22

particularly vulnerable social and/or mental health situations and at risk for developing “anti-social” behaviors such as drug and alcohol abuse or engaging in violence against others or themselves.⁹⁸

2.67 The UN has also noted that “[t]he critical contribution of employment and income generation to reintegration and peacebuilding is now being acknowledged.”⁹⁹

2.68 The UN Secretary-General has submitted that “[s]ocial reintegration includes the sensitization of communities to assist in reconciliation and help to integrate’ ex-combatants (both non-state and state actors) into the communities.”¹⁰⁰ The UN Secretary-General has highlighted that “[s]uch community support is necessary to build confidence in disarmament and demobilisation processes and to ensure sustainable peace.”¹⁰¹ The UN Secretary-General has further highlighted that long term reintegration measures can include ‘credit programmes ... professional and vocational training, public works job creation, income-generation programmes, hiring incentives, business and legal advice, and children’s programmes.”¹⁰²

Vetting

2.69 When designing and implementing reintegration measures there is a need to consider vetting. The UN OHCHR has stated that:

‘Vetting is an important aspect of personnel reform in countries in transition. Vetting can be defined as assessing integrity to determine suitability for public employment. Integrity refers to an employee’s adherence to international standards of human rights and professional conduct, including a person’s financial propriety. Public employees who are personally responsible for gross violations of human rights or serious crimes under international law revealed a basic lack of integrity and breached the trust of the citizens they were meant to serve. The citizens, in particular the victims of abuses, are unlikely to trust and rely on a public institution that retains or hires individuals with serious integrity deficits, which would fundamentally impair the institution’s capacity to deliver its mandate. Vetting processes aim at excluding from public

⁹⁸ [Integrated Disarmament Demobilization and Reintegration Standards \(2006\) Section 4.30](#), p40

⁹⁹ [UN, United Nations Policy for Post-Conflict Employment Creation Income Generation and Reintegration \(2009\)](#) p13

¹⁰⁰ [UN, Women, Peace and Security, Study submitted by the Secretary-General pursuant to Security Council resolution 1325 \(2000\), \(2002\)](#) para 413

¹⁰¹ [UN, Women, Peace and Security, Study submitted by the Secretary-General pursuant to Security Council resolution 1325 \(2000\), \(2002\)](#) para 413

¹⁰² [UN, Women, Peace and Security, Study submitted by the Secretary-General pursuant to Security Council resolution 1325 \(2000\), \(2002\)](#) para 414

service persons with serious integrity deficits in order to (re-)establish civic trust and (re-)legitimize public institutions.¹⁰³

2.70 The UN Secretary-General has noted that:

'Programmes should ... where possible, immediately adopt a community-based approach. Strategies that have been piloted in different reintegration programmes are now consolidated in the Standards, such as (a) targeting ex-combatants and conflict-affected or vulnerable groups within the same reintegration programme; (b) involving ex-combatants in socio-economic activities that have great potential for benefiting the community as a whole; and (c) providing resources for the community to jump-start socio-economic activities that have the potential to reintegrate ex-combatants and associated individuals, together with other conflict-affected and vulnerable groups.'¹⁰⁴

2.71 DDR measures need to be time-sensitive. The EU Concept highlights that:

'while reintegration processes will continue over many years, specific and time limited programmes will come to an end. Instead long-term reintegration efforts should be integrated into broader development programmes.'¹⁰⁵

2.72 The ILO notes that the '[s]ocio-economic reintegration of ex-combatants is a particularly complex part of DDR.'¹⁰⁶ The UN warns that ensuring effective and sustainable reintegration as part of an overall DDR strategy 'has often proved to be an elusive goal. This can undermine or reverse early disarmament and demobilisation achievements and fuel insecurity in post conflict settings.'¹⁰⁷

¹⁰³ [UN OHCHR, Rule-of-law Tools for Post-Conflict States, Vetting: an operational framework, 2006](#), p4. Also see [Integrated Disarmament Demobilization and Reintegration Standards \(2009\) Section 6.10](#), p10; [UN SC, The rule of law and transitional justice in conflict and post-conflict societies, Report of the Secretary-General Security Council, UN Doc. S/2004/616 \(2004\)](#) para 52-53; [UN DP, Vetting Public Employees in Post-conflict Settings, Operational Guidelines \(2006\)](#); [UN SC Resolution 2151 \(2014\) UN Doc. S/RES/2151 \(2014\)](#)

¹⁰⁴ [UN GA, Disarmament, demobilization and reintegration, Report of the Secretary-General, UN Doc. A/65/741 \(2011\)](#) para 21. Further see [ILO, Socio-Economic Reintegration of Ex-Combatants, Guidelines, ILO Programme for Crisis Response and Reconstruction \(2010\)](#) p21

¹⁰⁵ [EU Concept for support to Disarmament, Demobilisation and Reintegration \(DDR\), Approved by the European Commission on 14 December 2006 and by the Council of the European Union on 11 December 2006](#), p12

¹⁰⁶ [ILO, Socio-Economic Reintegration of Ex-Combatants, Guidelines, ILO Programme for Crisis Response and Reconstruction \(2010\)](#) p9

¹⁰⁷ [UN, United Nations Policy for Post-Conflict Employment Creation Income Generation and Reintegration \(2009\)](#) p17

2.73 The UN Secretary-General has stated that:

‘Carefully crafted amnesties can help in the return and reintegration of both groups and should be encouraged, although, as noted above, these can never be permitted to excuse genocide, war crimes, crimes against humanity or gross violations of human rights.’¹⁰⁸

2.74 The IDDRS echoes these sentiments, noting:

‘that amnesties can play a valuable role in ending armed conflicts and reconciling divided communities, provided that they do not grant immunity to individuals responsible for serious violations of international law’¹⁰⁹

2.75 The UN OHCHR has clarified that:

‘International law and United Nations policy are not opposed to amnesties per se, but set limits on their permissible scope. It has been recognized that amnesties can play a valuable role in ending armed conflicts, reconciling divided communities and restoring human rights - provided that they do not grant immunity to individuals responsible for genocide, crimes against humanity, war crimes or gross violations of human rights.’¹¹⁰

2.76 An early UN study on amnesties identified that:

‘In the field of human rights, amnesty for ordinary offences is an expression of the relatively broad power of civil society to grant every citizen the right of oblivion, if only to facilitate his reintegration into society.’¹¹¹

2.77 The SIDDR(FR), however, notes that:

‘DDR programmes should be designed and implemented in relation to transitional justice measures. The programmes should not only seek to minimise potential tensions with transitional justice measures (by, e.g. avoiding blanket amnesties), but should capitalise on the potential

¹⁰⁸ [UN SC, The rule of law and transitional justice in conflict and post-conflict societies, Report of the Secretary-General Security Council, UN Doc. S/2004/616 \(2004\) para 32](#)

¹⁰⁹ [Integrated Disarmament Demobilization and Reintegration Standards \(2009\) Section 6.20, p20](#)

¹¹⁰ [UN OHCHR, Rule-of-law Tools for Post-conflict States, Amnesties \(2009\) p44](#)

¹¹¹ [UN Commission on Human Rights, The Administration of Justice and the Human Rights of Detainees, Question of the Human Rights of Persons subjected to any form of Detention or Imprisonment, Study on amnesty laws and their role in the safeguard and promotion of human rights, Preliminary report by Mr. Louis Joinet, Special Rapporteur, UN Doc. E/CN.4/Sub.2/1985/16 \(1985\) para 23](#)

complementarities with transitional justice measures to reconstitute civic trust and smooth the process of social reintegration.¹¹²

2.78 An NHRI conducting work in a post-conflict society may wish to recognise that measures aimed at reintegrating ex-combatants (both non-state and state actors) must be balanced with addressing the needs of the wider society and communities. This is especially relevant when considering the victims of the conflict. This requires tailored, individually focused approaches.

The Role of Women and of Children

2.79 The UN Secretary-General Study on Women, Peace and Security highlights that:

'In order to be successful, DDR initiatives must be based on a concrete understanding of who combatants are – women, men, girls, boys. Recent analyses of DDR processes from a gender perspective have highlighted that women combatants are often invisible and their needs overlooked.'¹¹³

2.80 The UN Secretary-General Study on Women, Peace and Security further highlights that:

'Most disarmament, demobilization and reintegration programmes in the past targeted only males above the age of 18 years, who fit the international definitions of soldiers.'¹¹⁴

2.81 The IDDRS has a specific chapter for women and for children.¹¹⁵ On women, the IDDRS states that:

'Women are increasingly involved in combat or are associated with armed groups and forces in other roles, work as community peace-builders, and play essential roles in disarmament, demobilization and reintegration (DDR) processes.'¹¹⁶

2.82 The IDDRS notes that:

¹¹² [Stockholm Initiative On Disarmament Demobilisation Reintegration, Final Report, \(2007\)](#) p32

¹¹³ [UN, Women, Peace and Security, Study submitted by the Secretary-General pursuant to Security Council resolution 1325 \(2000\), \(2002\)](#) para 395

¹¹⁴ [UN, Women, Peace and Security, Study submitted by the Secretary-General pursuant to Security Council resolution 1325 \(2000\), \(2002\)](#) para 396

¹¹⁵ [Integrated Disarmament Demobilization and Reintegration Standards \(2006\) Section 5.10](#) and [Integrated Disarmament Demobilization and Reintegration Standards \(2006\) Section 5.30](#). There is a further chapter on [Youth](#)

¹¹⁶ [Integrated Disarmament Demobilization and Reintegration Standards \(2006\) Section 5.10](#), p1

'Despite stereotypical beliefs, women and girls are not peacemakers only, but can also contribute to ongoing insecurity and violence during wartime and when wars come to an end.'¹¹⁷

2.83 The IDDRS states that DDR programmes should be open on an equal basis to women.¹¹⁸ This requires removing policies based on gender-stereotypes and those which reinforce inequality, for example:

'Weapons possession has traditionally been a criterion for eligibility in DDR programmes. Because women and girls are often less likely to possess weapons even when they are actively engaged in armed forces and groups, and because commanders have been known to remove weapons from the possession of women and girls before assembly, this criterion often leads to the exclusion of women and girls from DDR processes '¹¹⁹

2.84 The IDDRS further requires that specific female-specific interventions are developed, for example:

'Resources should be allocated to train female community members, ex-combatants and supporters to understand and cope with traumatized children, including how to help abducted girls gain demobilization and reintegration support. It is unfair to burden women with the challenges of reintegrating and rehabilitating child soldiers simply because they are usually the primary caregivers of children.'¹²⁰

2.85 On children,¹²¹ the IDDRS states that:

'child DDR is not the same as that for adults. Rather, it is a specific process with its own requirements, several of which are fundamentally different from adult demobilization programmes.'¹²²

2.86 The IDDRS notes that:

'Child DDR requires that the demobilization (or 'release') and reintegration of children, especially girls, be actively carried out at all times, even during a conflict, and that actions to prevent child

¹¹⁷ [Integrated Disarmament Demobilization and Reintegration Standards \(2006\) Section 5.10](#), p2

¹¹⁸ See [Integrated Disarmament Demobilization and Reintegration Standards \(2006\) Section 5.10](#)

¹¹⁹ [Integrated Disarmament Demobilization and Reintegration Standards \(2006\) Section 5.10](#), p17-18.

¹²⁰ [Integrated Disarmament Demobilization and Reintegration Standards \(2006\) Section 5.10](#), p20

¹²¹ Persons below the age of 18, as noted in The Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict

¹²² [Integrated Disarmament Demobilization and Reintegration Standards \(2006\) Section 5.30](#), p1

recruitment should be continuous. When DDR exercises have made the presentation of a weapon for disarmament as a criterion for eligibility for DDR, children, especially girls, have been excluded — whether intentionally or not. Because children are associated with armed forces and groups in a variety of ways, not only as combatants, some may not have access to weapons. These children must still be considered child soldiers, released by the groups that recruited them, and receive reintegration support.¹²³

2.87 The IDDRS highlights that:

‘Child DDR has a different scope and time-frame from that for peacekeeping operations and national reconstruction efforts. It must not wait until a mechanism for adult DDR is established. Efforts should be made to ensure that child DDR is not contingent on adult DDR or the conclusion of broader security sector reform (SSR) and power-sharing negotiations, because interdependency between child and adult DDR programmes has negative consequences for children associated with armed forces and groups.’¹²⁴

2.88 The IDDRS provides that:

‘Child-specific reintegration shall allow a child to access education, a livelihood, life skills and a meaningful role in society. The socio-economic and psychosocial aspects of reintegration for children are central to global DDR programming and budgeting. Successful reintegration requires long-term funding of child protection agencies and programmes to ensure continuous support for education and training for children, and essential follow-up/ monitoring once they return to civilian life. For sustainability, and to ensure that the whole community can benefit from a child’s return and reintegration, while avoiding tension, stigmatization or envy when a child is returned to a village with a reintegration package containing material goods that are unavailable to others, reintegration must be based on broader community development processes. There is no simple formula for the DDR of children that can be routinely applied in all circumstances, so each programme needs to be context-specific and developed and managed in order to be sustainable.’¹²⁵

2.89 The Convention on the Rights of the Child, Article 39, provides that:

¹²³ [Integrated Disarmament Demobilization and Reintegration Standards \(2006\) Section 5.30](#), p1

¹²⁴ [Integrated Disarmament Demobilization and Reintegration Standards \(2006\) Section 5.30](#), p1

¹²⁵ [Integrated Disarmament Demobilization and Reintegration Standards \(2006\) Section 5.30](#), p2

'States Parties shall take all appropriate measures to promote physical and psychological recovery and social reintegration of a child victim of: any form of neglect, exploitation, or abuse; torture or any other form of cruel, inhuman or degrading treatment or punishment; or armed conflicts. Such recovery and reintegration shall take place in an environment which fosters the health, self-respect and dignity of the child.'¹²⁶

2.90 The Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict, Article 6(3), notes that:

'States Parties shall take all feasible measures to ensure that persons within their jurisdiction recruited or used in hostilities contrary to the present Protocol [under eighteen years of age] are demobilized or otherwise released from service. States Parties shall, when necessary, accord to such persons all appropriate assistance for their physical and psychological recovery and their social reintegration.'¹²⁷

2.91 The Optional Protocol, Article 7(1), provides that:

'States Parties shall cooperate in the implementation of the present Protocol, including in the prevention of any activity contrary thereto and in the rehabilitation and social reintegration of persons who are victims of acts contrary thereto, including through technical cooperation and financial assistance.'¹²⁸

2.92 The UN Secretary-General Study on Women, Peace and Security recommends that DDR programmes:

'Action 1: Incorporate the needs and priorities of women and girls as ex-combatants, "camp-followers" and families of ex-combatants in the design and implementation of DDR programmes, including the design of camps, the distribution of benefits, and access to basic resources and services, including food, water, health care, counselling, in order to ensure the success of such programmes and the participation and full access to benefits for women and girls.

Action 2: Increase the number of programmes for child soldiers and fully incorporate attention to the specific situation and needs of girl soldiers, and identify means to support child soldiers, including girls, who do not enter DDR programmes.

¹²⁶ [Convention on the Rights of the Child](#), Article 39

¹²⁷ [The Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict](#), Article 6(3)

¹²⁸ [The Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict](#), Article 7(1)

Action 3: Recognize the impact of armed conflict and displacement on family relations and develop awareness of the risks for increased domestic violence, especially in the families of ex-combatants; and develop programmes on the prevention of domestic violence which target families and communities, and especially male ex-combatants.

Action 4: Recognize and utilize the contributions of women and girls in encouraging ex-combatants to lay down arms, in weapons collections programmes and ensure that they benefit from any incentives provided for such activities.

Action 5: Ensure full access of women and girls to all resources and benefits provided in reintegration programmes, including skills development programmes.¹²⁹

2.93 An NHRI conducting work in a post-conflict society should recognise that DDR measures must respond to, and reflect the needs of, ex-combatants who are women

2.94 An NHRI conducting work in a post-conflict society should recognise that DDR measures must respond to, and reflect the needs of, ex-combatants who are children.

2.95 The IDDRS notes that:

'It is important to remember that women are present in every part of a society touched by DDR — from armed groups and forces to receiving communities. Exclusionary power structures, including a backlash against women entering into political, economic and security structures in a post-conflict period, may make their contributions difficult to assess. It is therefore the responsibility of all DDR planners to work with female representatives and women's groups, and to make it difficult for male leaders to exclude women from the formulation and implementation of DDR processes.'¹³⁰

2.96 The UN Committee on the Elimination of Discrimination against Women General Recommendation No. 30 recommends that state parties:

'Ensure women's equal participation in all stages of disarmament, demobilization and reintegration, from negotiation of peace agreements

¹²⁹ [UN, Women, Peace and Security, Study submitted by the Secretary-General pursuant to Security Council resolution 1325 \(2000\), \(2002\)](#) p31-32

¹³⁰ [Integrated Disarmament Demobilization and Reintegration Standards \(2006\) Section 5.10](#), p3. Also see [The UN Fourth World Conference on Women \(1995\), The Beijing Platform for Action](#), Strategic Objective E.1

and establishment of national institutions to the design and implementation of programmes¹³¹

2.97 General Recommendation No. 30 also states that:

'The fulfilment of States parties' obligations to ensure women's equal representation in political and public life (art. 7) and at the international level (art. 8) requires measures, including temporary special measures under article 4 (1), to address this broader context of gender discrimination and inequality in conflict-affected areas, in addition to the specific and multiple barriers to women's equal participation that are linked to additional conflict-related restrictions on mobility, security, fundraising, campaigning and technical skills.... The implementation of these obligations apply in particular to States parties on whose territory hostilities have occurred, in addition to other States parties involved in peace-making processes that are required to ensure that women are represented in their own institutions and to support local women's participation in peace processes. Their implementation, in conjunction with Security Council resolution 1325 (2000) on women, peace and security, guarantee women's meaningful participation in processes relating to the prevention, management and resolution of conflicts.'¹³²

2.98 An NHRI conducting work in a post-conflict society should recognise that the design and implementation of DDR measures must include the participation of women.

¹³¹ [UN CEDAW, General recommendation No. 30 on women in conflict prevention, conflict and post-conflict situations, UN Doc. CEDAW/C/GC/30 \(2013\)](#) para 69(d)

¹³² [UN CEDAW, General recommendation No. 30 on women in conflict prevention, conflict and post-conflict situations, UN Doc. CEDAW/C/GC/30 \(2013\)](#) para 44-45

Chapter 3

Transitional Justice

Summary

Transitional justice 'is the full range of processes and mechanisms associated with a society's attempt to come to terms with a legacy of large-scale past abuses, in order to ensure accountability, serve justice and achieve reconciliation.' Transitional justice 'consists of both judicial and non-judicial processes and mechanisms, including prosecution initiatives, facilitating initiatives in respect of the right to truth, delivering reparations, institutional reform and national consultations.' A 'human rights-based approach to transitional justice demands that programmes should be designed in a context of in-depth consultation with affected communities.' (3.1, 3.9)

The international standards do not expressly permit or prevent an offender from falling within the definition of victim of a human rights violation or abuse. (3.17)

The international standards do not expressly permit or prevent an offender from being a victim simultaneously, as a consequence of the same incident. However, references in the standards to offender and their provision of compensation, involvement in mediation or contact suggest that the victim and perpetrator are two separate people. Therefore, it may be inferred that the standards do not recognise the possibility of a perpetrator simultaneously being a victim of the one event. (3.19)

An NHRI conducting work in a post-conflict society:

- May wish to recognise that measures to implement transitional justice should be designed and implemented with measures complementary to DDR; (3.12)
- May wish to recognise that there is no single definition of a victim in international human rights law. Furthermore, it is possible for a perpetrator of one event or more during the conflict to also be a victim of a separate event, although this may affect their right to a remedy in the form of compensation; (3.20)
- Should recognise, in considering the rights of victims, that there is an obligation to protect victims from secondary victimisation. (3.26)

3.1 The UN Secretary-General has highlighted that transitional justice:

'comprises the full range of processes and measures associated with a society's attempts to come to terms with a legacy of large-scale past abuses, in order to ensure accountability, serve justice and achieve reconciliation. These may include both judicial and non-judicial mechanisms, with differing levels of international involvement (or none at all) and individual prosecutions, reparations, truth-seeking, institutional reform, vetting and dismissals, or a combination thereof',¹³³

3.2 The UN Secretary-General has also noted that transitional justice further includes 'prosecution initiatives, facilitating initiatives in respect of the right to truth ... and national consultations.'¹³⁴

3.3 Transitional justice strategies 'must be grounded in international human rights standards',¹³⁵ 'must be holistic',¹³⁶ and the elements of these strategies 'should be thought of as parts of a whole'.¹³⁷ Furthermore, measures to ensure truth, justice, reparations and guarantees of non-recurrence 'should be "externally coherent", meaning that they should be conceived of and implemented not as discrete and independent initiatives but rather as parts of an integrated policy.'¹³⁸

3.4 The UN OHCHR and the UN Secretary-General have noted that:

'Transitional justice strives not only to deliver justice to victims of mass atrocities, but also to assist societies devastated by conflict achieve sustainable peace and reconciliation. Peace and reconciliation demand comprehensive societal transformation that must embrace a broad notion of justice, addressing the root causes of conflict and the related violations of all rights.'¹³⁹

¹³³ [UN SC, The rule of law and transitional justice in conflict and post-conflict societies, Report of the Secretary-General Security Council, UN Doc. S/2004/616 \(2004\) para 8](#)

¹³⁴ [UN, Guidance Note of the Secretary-General, 'United Nations Approach to Transitional Justice' \(2010\) p2](#)

¹³⁵ [UN OHCHR, Rule-of-law Tools for Post-Conflict States, National Consultations on Transitional Justice, 2009, p9](#)

¹³⁶ [UN SC, The rule of law and transitional justice in conflict and post-conflict societies, Report of the Secretary-General Security Council, UN Doc. S/2004/616 \(2004\) para 26](#)

¹³⁷ [UN GA, Report of the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence, Pablo de Greiff, UN Doc. A/HRC/21/46 \(2012\) para 20](#)

¹³⁸ [UN GA, Report of the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence, Pablo de Greiff, UN Doc. A/HRC/21/46 \(2012\) para 27](#)

¹³⁹ [UN, Annual Report of the United Nations High Commissioner for Human Rights and Reports of the Office of the High Commissioner and the Secretary-General, Analytical study on human rights and transitional justice, UN Doc. A/HRC/12/18 \(2009\) para 59](#)

3.5 The UN Secretary-General has stated that 'transitional justice processes should seek to ensure that States undertake investigations and prosecutions of gross violations of human rights'.¹⁴⁰

3.6 The UN OHCHR has noted that '[t]ransitional justice should seek to examine more comprehensively the root causes of conflicts and the related violations of all human rights, including economic, social and cultural rights as well as civil and political rights'.¹⁴¹

3.7 The UN OHCHR and the UN Secretary-General have highlighted that:

'it has become increasingly evident that when implemented in a coordinated fashion, disarmament, demobilization and reintegration and transitional justice can positively reinforce each other. Disarmament, demobilization and reintegration processes contribute to securing the stability necessary to implement transitional justice mechanisms, while transitional justice mechanisms strengthen the legitimacy of disarmament, demobilization and reintegration initiatives by helping conflict-affected communities accept the reintegration of ex-combatants into society'.¹⁴²

3.8 The UN Approach to Transitional Justice notes that to strengthen transitional justice activities, the following approaches should be considered:

1. 'Adopt an approach that strives to take account of the root causes of conflict or repressive rule, and addresses the related violations of all rights
2. Take human rights and transitional justice considerations into account during peace processes

¹⁴⁰ [UN, Guidance Note of the Secretary-General, 'United Nations Approach to Transitional Justice' \(2010\)](#) p4. Also see [UN OHCHR, Rule-of-law Tools for Post-conflict States, Prosecution Initiatives, 2006](#), and [UN CESCR, Commission on Human Rights, Promotion and Protection of Human Rights, Impunity, Report of the Independent expert to update the Set of principles to combat impunity, Diane Orentlicher, Addendum, Updated Set of principles for the protection and promotion of human rights through action to combat impunity, UN Doc. E/CN.4/2005/102/Add.1 \(2005\)](#) Principle 19. The definition of a gross violation is discussed in paragraph 5.8 below, but includes violations and abuses of the right to life and the prohibition on torture or other cruel, inhuman or degrading treatment or punishment.

¹⁴¹ [UN OHCHR, Rule-of-law Tools for Post-Conflict States, National Consultations on Transitional Justice, 2009](#), p9

¹⁴² [UN, Annual Report of the United Nations High Commissioner for Human Rights and Reports of the Office of the High Commissioner and the Secretary-General, Analytical study on human rights and transitional justice, UN Doc. A/HRC/12/18 \(2009\)](#) para 66

3. Coordinate disarmament, demobilization, and reintegration initiatives with transitional justice activities in a positively reinforcing manner¹⁴³

3.9 The UN Approach to Transitional Justice states, as a guiding principle, that transitional justice measures should '[e]nsure the centrality of victims in the design and implementation of transitional justice processes and mechanisms'.¹⁴⁴ The UN OHCHR has stated that '[a] human rights-based approach to transitional justice demands that programmes should be designed in a context of in-depth consultation with affected communities.'¹⁴⁵ The UN Secretary-General has noted that 'the most successful transitional justice experiences owe a large part of their success to the quality and quantity of public and victim consultation carried out.'¹⁴⁶

3.10 The UN Secretary-General has noted that coordinating 'disarmament, demobilization, and reintegration initiatives with transitional justice activities in a positively reinforcing manner' includes '[f]acilitating the reintegration of ex-combatants into conflict-affected communities by encouraging them to participate in truth-seeking processes and affording them the opportunity to reveal their experiences of the conflict'.¹⁴⁷

3.11 Transitional justice is just one part of a package of frameworks available to help heal a post-conflict society. It is designed to work in tandem with DDR programmes in a positively reinforcing manner.

3.12 An NHRI conducting work in a post-conflict society may wish to recognise that measures to implement transitional justice should be designed and implemented with measures complementary to DDR.

Who is a Victim?

3.13 There is no single definition of a victim in human rights law. A number of instruments have defined the term victim as follows:

3.14 The Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power provides:

¹⁴³ [UN, Guidance Note of the Secretary-General, 'United Nations Approach to Transitional Justice' \(2010\)](#) p2

¹⁴⁴ [UN, Guidance Note of the Secretary-General, 'United Nations Approach to Transitional Justice' \(2010\)](#) p2

¹⁴⁵ [UN OHCHR, Rule-of-law Tools for Post-Conflict States, National Consultations on Transitional Justice, 2009](#), p10

¹⁴⁶ [UN SC, The rule of law and transitional justice in conflict and post-conflict societies, Report of the Secretary-General Security Council, UN Doc. S/2004/616 \(2004\)](#) para 16

¹⁴⁷ [UN, Guidance Note of the Secretary-General, 'United Nations Approach to Transitional Justice' \(2010\)](#) p2 and p11

"Victims" means persons who, individually or collectively, have suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights, through acts or omissions that are in violation of criminal laws operative within Member States, including those laws proscribing criminal abuse of power.¹⁴⁸

3.15 The UN Basic Principles and Guidelines for Victims include the family of a victim as victims themselves:

'For purposes of the present document, victims are persons who individually or collectively suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights, through acts or omissions that constitute gross violations of international human rights law, or serious violations of international humanitarian law. Where appropriate, and in accordance with domestic law, the term "victim" also includes the immediate family or dependants of the direct victim and persons who have suffered harm in intervening to assist victims in distress or to prevent victimization.¹⁴⁹

3.16 The Council of Europe (CoE) Guidelines of the Committee of Ministers of the Council of Europe on eradicating impunity for serious human rights violations notes that:

'In the guidelines, the term "victim" refers to a natural person who has suffered harm, including physical or mental injury, emotional suffering or economic loss, caused by a serious human rights violation. The term "victim" may also include, where appropriate, the immediate family or dependants of the direct victim. A person shall be considered a victim regardless of whether the perpetrator of the violation is identified, apprehended, prosecuted or convicted, and regardless of the familial relationship between the perpetrator and the victim.¹⁵⁰

3.17 The international standards do not expressly permit or prevent an offender from falling within the definition of victim of a human rights violation or abuse.

¹⁴⁸ [UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power UN Doc. A/RES/40/34 \(1985\) Annex, para 1](#)

¹⁴⁹ [UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power UN Doc. A/RES/40/34 \(1985\) Annex, para 8](#)

¹⁵⁰ [CoE Guidelines of the Committee of Ministers of the Council of Europe on eradicating impunity for serious human rights violations, Guidelines adopted by the Committee of Ministers on 30 March 2011 at the 1110th meeting of the Ministers' Deputies, H/Inf \(2011\) 7, Section II, para 5; also see the definition contained within The \[CoE Guidelines on the Protection of Victims of Terrorist Acts, Adopted by the Committee of Ministers on 2 March 2005 at the 917th meeting of the Ministers' Deputies\]\(#\), I. Principles](#)

3.18 The European Convention on Compensation for Victims of Violence Crimes allows compensation to be reduced on account of the victim's conduct before, during or after the crime; their involvement with an organisation that engages in violence; or if it is contrary to the public interest.¹⁵¹ This suggests that there is no automatic bar, in human rights law, for an offender also being classified as a victim.

3.19 The international standards do not expressly permit or prevent an offender from being a victim simultaneously, as a consequence of the same incident. However, references in the standards to offender and their provision of compensation, involvement in mediation or contact suggest that the victim and perpetrator are two separate people. Therefore, it may be inferred that the standards do not recognise the possibility of a perpetrator simultaneously being a victim of the one event.

3.20 An NHRI conducting work in a post-conflict society may wish to recognise that there is no single definition of a victim in international human rights law. Furthermore, it is possible for a perpetrator of one event or more during the conflict to also be a victim of a separate event, although this may affect their right to a remedy in the form of compensation.

Secondary victimisation

3.21 The international standards protect against the re-traumatisation or secondary victimisation of victims when accessing justice mechanisms.

3.22 The CoE Committee of Ministers has characterised secondary victimisation, in the scope of the criminal justice system, as 'the victimisation that occurs not as a direct result of the criminal act but through the response of institutions and individuals to the victim.'¹⁵²

3.23 The Committee against Torture and the UN 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 (UN Basic Principles and Guidelines for Victims) require that:

'domestic laws provide that a victim who has suffered violence or trauma should benefit from adequate care and protection to avoid his or her re-traumatisation in the course of legal and administrative procedures designed to provide justice and reparation.'¹⁵³

¹⁵¹ [European Convention on Compensation for Victims of Violent Crimes, 1983](#), Article 8

¹⁵² [CoE, Committee of Ministers Recommendation to member states on assistance to crime victims, Rec\(2006\)8](#), para 1.3

¹⁵³ [UN Committee against Torture, General Comment 3, Implementation of article 14 by States parties, UN Doc. CAT/C/GC/3 \(2012\)](#) para 21; [UN GA, Basic Principles and](#)

3.24 Specifically in relation to the involvement of victims in the criminal justice process, the CoE Committee of Ministers requires that victims 'should be protected as far as possible from secondary victimisation.'¹⁵⁴ The EU directive provides additional detail on the precise protections that should be afforded to victims. In general it requires:

'Without prejudice to the rights of the defence, Member States shall ensure that measures are available to protect victims and their family members from secondary and repeat victimisation, from intimidation and from retaliation, including against the risk of emotional or psychological harm, and to protect the dignity of victims during questioning and when testifying. When necessary, such measures shall also include procedures established under national law for the physical protection of victims and their family members.'¹⁵⁵

3.25 Failure to provide the required support for victims involved in mechanisms to access their rights may inhibit victims from making complaints due to the fear of secondary victimisation by the process.¹⁵⁶ The failure to provide the appropriate protection for victims can be construed as an obstacle to the right to redress.¹⁵⁷ It may also breach the rights of those victims who have sought to engage in the justice system. The European Court of Human Rights (ECtHR) has recognised the impact of criminal proceedings on victims of sexual violence,¹⁵⁸ and in the course of an investigation of a disappearance.¹⁵⁹ The ECtHR has stated that:

'applicants, who are close relatives of the disappeared, must be considered victims of a violation of Article 3 of the [ECHR] on account of the distress and anguish which they suffered, and continue to suffer, as a result of their inability to ascertain the fate of their family members and of the manner in which their complaints have been dealt with.'¹⁶⁰

[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, UN Doc. A/RES/60/147 \(2006\) Annex, Article 10](#)

¹⁵⁴ [CoE, Committee of Ministers Recommendation to member states on assistance to crime victims, Rec\(2006\)8](#), para 3.3

¹⁵⁵ [EU Directive 2012/29/EU establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA \(2012\)](#) Article 18

¹⁵⁶ [UN CESCR, Report of the Special Rapporteur on violence against women, its causes and consequences, Ms. Radhika Coomaraswamy UN Doc. E/CN.4/1997/47 \(1997\)](#) para 22

¹⁵⁷ [UN Committee against Torture, General Comment 3, Implementation of article 14 by States parties, UN Doc. CAT/C/GC/3 \(2012\)](#) para 38

¹⁵⁸ ECtHR, [S.N. v. Sweden, Application No 34209/96, 2 July 2002](#), para 47

¹⁵⁹ ECtHR, [Bazorkina v. Russia, Application No. 69481/01, 27 July 2006](#), paras 139-141

¹⁶⁰ ECtHR, [Malika Yusupova and Others v. Russia, Application Nos. 14705/09, 4386/10, 68860/10 and 70695/10, 1 June 2015](#), para 210; ECtHR, [Bazorkina v. Russia, Application No. 69481/01, 27 July 2006](#), paras 139-141

3.26 An NHRI conducting work in a post-conflict society should recognise, in considering the rights of victims, that there is an obligation to protect victims from secondary victimisation.

Chapter 4

International Human Rights Laws and Standards

Summary

A state may have voluntarily accepted a range of international human rights treaties and documents which are relevant when considering conflict related incidents as binding. The core treaties and documents in this regard are highlighted below. However, further commitments by a state beyond these core treaties and documents may provide further additional human rights protections. (4.4)

The human rights engaged when considering conflict related offences include; the right to life, the prohibition on torture or other cruel, inhuman or degrading treatment or punishment, the right to liberty and security, and the right to a private and family life, ICCPR Articles 6,7,9, and 17 respectively. (4.5)

In addition to the substantive right to life and the prohibition on torture or cruel, inhuman or degrading treatment or punishment, human rights law requires that allegations of violations or abuses of this nature are investigated. This is often referred to as the procedural limb of the rights. A failure to conduct a compliant investigation can lead to a violation. (4.23)

A further body of human rights engaged when considering conflict related offences include victims' rights. (4.46-4.47)

Justice is often narrowly conceived as constituting only criminal proceedings. However, justice is a much broader legal concept and includes civil, administrative and criminal processes, all of which should be responsive to the specific needs of victims. (4.68)

Public participation forms part of the right to take part in the conduct of public affairs, ICCPR, Article 25 and extends to all aspects of public administration, and the formulation and implementation of policy at international, national, regional and local levels. (4.76)

An NHRI conducting work in a post-conflict society:

- Should recognise that alleged violations or abuses of the right to life and the prohibition on torture or cruel, inhuman or degrading treatment or punishment require credible, thorough, prompt, and effective investigations through independent and impartial bodies.

Investigations must be conducted to ensure a full, transparent and credible account of the circumstances surrounding alleged violations or abuses, with a view to identifying, prosecuting and punishing perpetrators, of establishing the truth, and of providing effective remedies to victims; (4.42)

- Should recognise that victims' rights include the right to the truth (right to know), the right to a remedy (right to reparations, right to redress), and access to justice; (4.74)
- Should recognise that alongside the right to take part in the conduct of public affairs, measures to fulfil the rights of specific peoples and affected communities, including victims and women, should provide for their participation. (4.82)

Introduction

4.1 In a post conflict society there is an acute tension between the need to deliver initiatives that focus on the human rights of victims, particularly with regard to truth recovery and justice, and the introduction of DDR programmes aimed at ex-combatants (both non-state and state actors).

4.2 The UN OHCHR has noted that '[w]hen appropriately connected ... DDR and transitional justice can positively reinforce one another.'¹⁶¹ Nonetheless, striking an appropriate balance is a difficult task. The expectations of both victims and those eligible to take part in DDR programmes may differ significantly, and both groups can be subject to a range of internal divisions. Added to this is the further complexity that there could be a variety of views held by members of the wider society.

4.3 Respecting, protecting and fulfilling the rights of victims in a post conflict society requires a delicate negotiation. The right to the truth (to know what happened and why), the right to a remedy (to reparations and redress), and access to justice are established in international law. In addition, the procedural obligations of the right to life and the prohibition on torture or other cruel, inhuman or degrading treatment or punishment require an effective official investigation into allegations of deaths, torture, cruel, inhuman or degrading treatment or punishment.

4.4 A state may have voluntarily accepted a range of international human rights treaties and documents which are relevant in post-conflict societies as binding. The core treaties and documents in this regard are highlighted below. However, further commitments by a state beyond these core treaties and documents may provide further additional human rights protections.

¹⁶¹ [UN GA, Report of the United Nations High Commissioner for Human Rights on human rights and transitional justice, UN Doc. A/HRC/18/23 \(2011\)](#), p15

Categories of human rights violations and abuses

4.5 The human rights engaged when considering conflict related offences include: the right to life, the prohibition on torture or other cruel, inhuman or degrading treatment or punishment, the right to a private and family life, the right to liberty and security, and the right to the historical truth.

The right to life

4.6 The ICCPR, Article 6(1) states:

'Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.'

4.7 The ECHR, Article 2 states:

1. Everyone's right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law.
2. Deprivation of life shall not be regarded as inflicted in contravention of this article when it results from the use of force which is no more than absolutely necessary:
 - a. in defence of any person from unlawful violence;
 - b. in order to effect a lawful arrest or to prevent the escape of a person lawfully detained;
 - c. in action lawfully taken for the purpose of quelling a riot or insurrection.

4.8 A state must 'not only ... refrain from the intentional and unlawful taking of life, but also to take appropriate steps to safeguard the lives of those within its jurisdiction'.¹⁶² Violations occur when public authorities do not meet this positive obligation and do 'all that could be reasonably expected of them to avoid a real and immediate risk to life of which they have or ought to have knowledge.'¹⁶³

¹⁶² ECtHR, [L.C.B. v. The United Kingdom, Application No. 14/1997/798/1001, 9 June 1998](#), para 36

¹⁶³ ECtHR, [Osman v. The United Kingdom, Application No. 87/1997/871/1083, 28 October 1998](#), para 116. ECHR, Article 2 'covers not only intentional killing but also situations where it is permitted to use force which may result, as an unintended outcome, in the deprivation of life.' See ECtHR, [Ciorcan and Others v. Romania, Application Nos. 29414/09 and 44841/09, 27 January 2015](#), para 97. Consequently situations which do not result in a death may be subject to the ECHR, Article 2, although the ECtHR has highlighted that 'it is only in exceptional circumstances that physical ill-treatment by State agents which does not result in death may [result in] a violation of Article 2', ECtHR, [Ciorcan and Others v. Romania, Application Nos. 29414/09 and](#)

4.9 The Charter of Fundamental Rights of the European Union (CFR), Article 2(1), further states:

'Everyone has the right to life.'

The prohibition on torture or cruel, inhuman or degrading treatment or punishment

4.10 The prohibition on torture or cruel, inhuman or degrading treatment or punishment is codified in a number of international documents and is universally accepted as a *jus cogen*.¹⁶⁴

4.11 The ICCPR, Article 7 states:

'No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation.'

4.12 The CAT requires 'that all acts of torture are offences under its criminal law' which should be 'punishable by appropriate penalties'.¹⁶⁵

4.13 The ECHR, Article 3, and the CFR, Article 4, state:

'No one shall be subjected to torture or to inhuman or degrading treatment or punishment.'

The right to liberty and security

4.14 The ICCPR, Article 9, states:

1. 'Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.'

[44841/09, 27 January 2015](#), para 98. Also see ECtHR, [Kitanovski v. The Former Yugoslav Republic of Macedonia, Application No. 15191/12, 22 January 2015](#), para 52

¹⁶⁴ A *jus cogen* is a fundamental, overriding principle of international law, from which no derogation is ever permitted. [UN Committee Against Torture, General Comment No. 2, Implementation of article 2 by States parties UN Doc. CAT/C/GC/2 \(2008\)](#), para 1; also see the House of Lords Judgment in [R v. Bow Street Metropolitan Stipendiary Magistrate and others, Ex Parte Pinochet Ugarte \(No. 3\) \[2000\] 1 AC 147](#) where there was no dispute over the inclusion of torture as a peremptory norm in international law. Further see [Prosecutor v. Furundžija, Case No. IT-95-17/1 - ICTY \(1998\)](#) para 153-157, which are quoted in [A\(FC\) and others \(FC\) v. Secretary of State \[2005\] UKHL 71](#), para 33. In the following paragraph 34 Lord Bingham of Cornhill states 'As appears from the passage just cited, the jus cogens erga omnes nature of the prohibition of torture requires member states to do more than eschew the practice of torture.'

¹⁶⁵ [CAT](#), Article 4

2. Anyone who is arrested shall be informed, at the time of arrest, of the reasons for his arrest and shall be promptly informed of any charges against him.
3. Anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release. It shall not be the general rule that persons awaiting trial shall be detained in custody, but release may be subject to guarantees to appear for trial, at any other stage of the judicial proceedings, and, should occasion arise, for execution of the judgement.
4. Anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that that court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful.
5. Anyone who has been the victim of unlawful arrest or detention shall have an enforceable right to compensation.'

4.15 The UN Human Rights Committee (UN HRC) has noted that '[t]he right to security of person protects individuals against intentional infliction of bodily or mental injury, regardless of whether the victim is detained or non-detained.'¹⁶⁶ There is some overlap with the right to life, the ICCPR, Article 6,¹⁶⁷ but protection under the right to liberty and security, the ICCPR, Article 9, 'may be considered broader to the extent that it also addresses injuries that are not life-threatening.'¹⁶⁸ The UN HRC notes States must 'take appropriate measures in response to death threats against persons in the public sphere, and more generally to protect individuals from foreseeable threats to life or bodily integrity proceeding from any governmental or private actors.'¹⁶⁹ Threats need not be direct messages as such, but can be much more general in nature, and arise from factors present in a state, including patterns of violence.¹⁷⁰ Furthermore, states 'must take both measures to prevent future injury and retrospective measures, such as enforcement of criminal laws, in response to past injury.'¹⁷¹

¹⁶⁶ [UN HRC, General Comment No. 35, Article 9 \(Liberty and security of person\), UN Doc. CCPR/C/GC/35 \(2014\)](#) para 9; also see [UN HRC, William Eduardo Delgado Páez v. Colombia, Communication No. 195/1985, UN Doc. CCPR/C/39/D/195/1985 \(1990\)](#) para 5.5 [UN HRC, Carlos Dias v. Angola, Communication No. 711/1996, UN Doc. CCPR/C/68/D/711/1996 \(2000\)](#) para 8.3; [UN HRC, Rodger Chongwe v. Zambia, Communication No. 821/1998, UN Doc. CCPR/C/70/D/821/1998 \(2000\)](#) para 5.3

¹⁶⁷ [UN HRC, General Comment No. 35, Article 9 \(Liberty and security of person\), UN Doc. CCPR/C/GC/35 \(2014\)](#) para 55

¹⁶⁸ [UN HRC, General Comment No. 35, Article 9 \(Liberty and security of person\), UN Doc. CCPR/C/GC/35 \(2014\)](#) para 55

¹⁶⁹ [UN HRC, General Comment No. 35, Article 9 \(Liberty and security of person\), UN Doc. CCPR/C/GC/35 \(2014\)](#) para 9

¹⁷⁰ [UN HRC, General Comment No. 35, Article 9 \(Liberty and security of person\), UN Doc. CCPR/C/GC/35 \(2014\)](#) para 9

¹⁷¹ [UN HRC, General Comment No. 35, Article 9 \(Liberty and security of person\), UN Doc. CCPR/C/GC/35 \(2014\)](#) para 9

4.16 The ECHR, Article 5, states:

1. 'Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:
 - a. the lawful detention of a person after conviction by a competent court;
 - b. the lawful arrest or detention of a person for noncompliance with the lawful order of a court or in order to secure the fulfilment of any obligation prescribed by law;
 - c. the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so;
 - d. the detention of a minor by lawful order for the purpose of educational supervision or his lawful detention for the purpose of bringing him before the competent legal authority;
 - e. the lawful detention of persons for the prevention of the spreading of infectious diseases, of persons of unsound mind, alcoholics or drug addicts or vagrants;
 - f. the lawful arrest or detention of a person to prevent his effecting an unauthorised entry into the country or of a person against whom action is being taken with a view to deportation or extradition.
2. Everyone who is arrested shall be informed promptly, in a language which he understands, of the reasons for his arrest and of any charge against him.
3. Everyone arrested or detained in accordance with the provisions of paragraph 1 (c) of this Article shall be brought promptly before a judge or other officer authorised by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release pending trial. Release may be conditioned by guarantees to appear for trial.
4. Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful.
5. Everyone who has been the victim of arrest or detention in contravention of the provisions of this Article shall have an enforceable right to compensation.'

4.17 The CFR, Article 6, further states:

'Everyone has the right to liberty and security of person.'

The right to a private and family life

4.18 The ICCPR, Article 17, states:

- a. 'No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation.
- b. Everyone has the right to the protection of the law against such interference or attacks.'

4.19 The ECHR, Article 8, states:

1. 'Everyone has the right to respect for his private and family life, his home and his correspondence.
2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic wellbeing of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.'

4.20 The right to a private and family life includes the right to physical, moral, and psychological integrity of a person.¹⁷² The ECtHR has stated that 'treatment which does not reach the severity of [ECHR] Article 3 treatment may nonetheless breach Article 8 in its private-life aspect where there are sufficiently adverse effects on physical and moral integrity'.¹⁷³

4.21 The ECHR, Article 8 includes positive obligations which 'may involve the adoption of measures even in the sphere of the relations of individuals between themselves'.¹⁷⁴

4.22 The CFR, Article 7, further states:

'Everyone has the right to respect for his or her private and family life, home and communications.'

¹⁷² ECtHR, [Botta v. Italy, Application No. 153/1996/772/973, 24 February 1998](#), para 32; ECtHR, [Costello-Roberts v. The United Kingdom, Application No. 13134/87, 25 March 1993](#), para 34; ECtHR, [Bensaid v. The United Kingdom, Application No. 44599/98, 6 May 2001](#), para 46

¹⁷³ See ECtHR, [Bensaid v. The United Kingdom, Application No. 44599/98, 6 May 2001](#), paras 46-47; ECtHR, [Storck v. Germany, Application No. 61603/00, 16 September 2005](#), para 143

¹⁷⁴ ECtHR, [Szula v. The United Kingdom, Application No. 18727/06, 4 January 2007](#), The Law Section, para 1

Procedural obligations

4.23 In addition to the substantive right to life and the prohibition on torture or cruel, inhuman or degrading treatment or punishment, human rights law requires that allegations of violations or abuses of this nature are investigated. This is often referred to as the procedural limb of the rights. A failure to conduct a compliant investigation can lead to a violation.

4.24 The UN HRC has highlighted that the ICCPR, Article 2(3), creates a 'general obligation to investigate allegations of violations promptly, thoroughly and effectively through independent and impartial bodies.'¹⁷⁵ When read in conjunction with the ICCPR, Article 6, this creates an obligation to investigate allegations of violations or abuses of the right to life.¹⁷⁶

4.25 The UN HRC has noted that:

'purely disciplinary and administrative remedies cannot be deemed to constitute adequate and effective remedies within the meaning of article 2, paragraph 3, of the Covenant, in the event of particularly serious violations of human rights, notably in the event of an alleged violation of the right to life.'¹⁷⁷

4.26 The UN HRC has further noted that 'a criminal investigation and consequential prosecution are necessary remedies for violations of human rights such as those protected by [ICCPR] article 6.'¹⁷⁸

4.27 The UN HRC has concluded a state should:

'launch ... credible, independent investigations into the serious violations of international human rights law, such as violations of the right to life, prohibition of torture, right to humane treatment of all persons in custody and right to freedom of expression.'¹⁷⁹

4.28 The UN HRC has further concluded a state should:

¹⁷⁵ [UN HRC, General Comment 31, Nature of the General Legal Obligations on States Parties to the Covenant, UN Doc CCPR/C/21/Rev.1/Add.13 \(2004\)](#) para 15; [UN, Comments and General Recommendations Adopted by Human Rights Treaty Bodies, General Comment 6 on Article 6 \(Sixteenth session, 1982\) contained within UN Doc. HRI/GEN/1/Rev.1 at 6 \(1994\)](#) para 4

¹⁷⁶ See [UN HRC Concluding Observations \(Yemen\), UN Doc. CCPR/C/YEM/CO/5 \(2012\)](#) para 24 where there is direct reference to non-state actors

¹⁷⁷ [UN HRC, *Bautista de Arellana v. Colombia*, Communication No. 563/1993, UN Doc. CCPR/C/55/D/563/1993 \(1995\)](#) para 8.2

¹⁷⁸ [UN HRC, *Orly Marcellana and Daniel Guamanoy v. The Philippines*, Communication No. 1560/2007, UN Doc. CCPR/C/94/D/1560/2007 \(2008\)](#) para 7.2

¹⁷⁹ UN HRC, *Concluding Observations (Israel)*, UN Doc. CCPR/C/ISR/CO/3 (2010) para 9

'Ensure, as a matter of particular urgency, that independent, impartial, prompt and effective investigations ... are conducted to ensure a full, transparent and credible account of the circumstances surrounding events ... with a view to identifying, prosecuting and punishing perpetrators of human rights violations, in particular the right to life, and providing appropriate remedies for victims'¹⁸⁰

4.29 The UN HRC has found that the failure to initiate an independent investigation into allegations of threats to life or bodily integrity constitutes a violation of the ICCPR, Article 9(1).¹⁸¹

4.30 The CAT requires a 'prompt and impartial investigation, wherever there is reasonable ground to believe that an act of torture has been committed',¹⁸² and the UN Principles on the Effective Prevention and Investigation on Extra-legal, Arbitrary and Summary Executions requires a 'thorough, prompt and impartial investigation' in all cases where complaints are made suggesting an unnatural death.¹⁸³

4.31 The duty to investigate in the case of enforced disappearances is included within the International Convention for the Protection of All Persons from Enforced Disappearance, Article 3. An enforced disappearance has been declared to constitute 'a violation of ... the right not to be subjected to torture and other cruel, inhuman or degrading treatment or punishment. It also violates or constitutes a grave threat to the right to life.'¹⁸⁴

4.32 The procedural obligations to investigate have been particularly well developed in Europe by the ECtHR and the CoE.

4.33 The CoE has highlighted that:

¹⁸⁰ [UN HRC, Concluding Observations \(United Kingdom\), UN Doc. CCPR/C/GBR/CO/7 \(2015\)](#) para 8; Further, in relation to state violations, see [UN HRC, Concluding Observations \(Russian Federation\), UN Doc. CCPR/C/RUS/CO/6 \(2009\)](#) para 14 and [UN HRC, Concluding Observations \(Mauritania\), UN Doc. CCPR/C/MRT/CO/1 \(2013\)](#) para 13

¹⁸¹ [UN HRC, Rodger Chongwe v. Zambia, Communication No. 821/1998, UN Doc. CCPR/C/70/D/821/1998 \(2000\)](#) para 5.3; [UN HRC, Jayawardena v. Sri Lanka, Communication No. 916/2000, UN Doc. A/57/40 at 234 \(2002\)](#) para 7.3; [UN HRC, Rajapakse v. Sri Lanka, Communication No. 1250/2004, UN Doc. CCPR/C/87/D/1250/2004 \(2006\)](#) para 9.7; [UN Human Rights Commission, Njaru v. Cameroon, Communication No. 1353/2005, UN Doc. CCPR/C/89/D/1353/2005 \(2007\)](#) para 6.3; [UN HRC, Gunaratna v. Sri Lanka, Communication No. 1432/2005, UN Doc. CCPR/C/95/D/1432/2005 \(2009\)](#) para 8.4;

¹⁸² [CAT, Article 12](#)

¹⁸³ [UN CESCR, Principles on the Effective Prevention and Investigation on Extra-legal, Arbitrary and Summary Executions, Recommended by Economic and Social Council resolution 1989/65 of 24 May 1989, UN Doc. E/1989/65 \(1989\)](#) Annex, Principle 9

¹⁸⁴ [The Declaration on the Protection of All Persons from Enforced Disappearance, 1992, Article 1\(2\)](#)

'Combating impunity requires that there be an effective investigation in cases of serious human rights violations. This duty has an absolute character.'¹⁸⁵

4.34 The ECHR, Article 13 includes a general procedural obligation to provide an 'effective remedy'. In addition, the ECtHR has articulated, in relation to the ECHR, Articles 2 and 3, that 'an "effective remedy" entails, in addition to the payment of compensation where appropriate, a thorough and effective investigation capable of leading to the identification and punishment of those responsible'.¹⁸⁶

4.35 The ECtHR requires that such an investigation must include the following essential elements:

1. the persons responsible for and carrying out the investigation to be independent from those implicated in the events. This means not only a lack of hierarchical or institutional connection but also a practical independence';¹⁸⁷
2. an investigation 'should be capable of leading to the identification and punishment of those responsible',¹⁸⁸ and as a result States 'must have taken the reasonable steps available to them to secure the evidence concerning the incident';¹⁸⁹
3. '[a] requirement of promptness and reasonable expedition is implicit';¹⁹⁰
4. 'there must be a sufficient element of public scrutiny of the investigation or its results';¹⁹¹
5. 'the next-of-kin of the victim must be involved in the procedure to the extent necessary to safeguard his or her legitimate interests'¹⁹²

¹⁸⁵ [CoE Guidelines of the Committee of Ministers of the Council of Europe on eradicating impunity for serious human rights violations, Guidelines adopted by the Committee of Ministers on 30 March 2011 at the 1110th meeting of the Ministers' Deputies, H/Inf \(2011\) 7](#), Section V. para 1

¹⁸⁶ ECtHR, [Aksoy v. Turkey, Application No. 21987/93, 18 December 1996](#), para 98; ECtHR, [McCann v. the United Kingdom Application No. 18984/91, 27 September 1995](#), para 161

¹⁸⁷ ECtHR, [Jordan v. The United Kingdom, Application No. 24746/94, 04 August 2001](#), para 106; in respect of torture see ECtHR, [El-Masri v. The Former Yugoslav Republic of Macedonia, Application No. 39690/09, 13 December 2012](#), para 184

¹⁸⁸ ECtHR, [Jordan v. The United Kingdom, Application No. 24746/94, 04 August 2001](#), para 107

¹⁸⁹ ECtHR, [Jordan v. The United Kingdom, Application No. 24746/94, 04 August 2001](#), para 107; ECtHR, [Aksoy v. Turkey, Application No. 21987/93, 18 December 1996](#), para 98; ECtHR, [El-Masri v. The Former Yugoslav Republic of Macedonia, Application No. 39690/09, 13 December 2012](#), para 182-3

¹⁹⁰ ECtHR, [Jordan v. The United Kingdom, Application No. 24746/94, 04 August 2001](#), para 108

¹⁹¹ ECtHR, [Jordan v. The United Kingdom, Application No. 24746/94, 04 August 2001](#), para 109

4.36 Although the above principles were established in the ECHR, Article 2, right to life cases, the ECtHR has confirmed that these essential elements of an investigation also apply to cases under the ECHR, Article 3.¹⁹³

4.37 In relation to the ECHR, Article 2, the ECtHR has stated that the form of the investigation 'may vary in different circumstances' as the responsibility for the form lies with the State.¹⁹⁴ The ECtHR has noted that 'whatever form the investigation takes, the available legal remedies, taken together, must amount to legal means capable of establishing the facts, holding accountable those at fault and providing appropriate redress.'¹⁹⁵ The fact that an investigation may end 'without concrete, or with only limited, results is not indicative of any failings as such.'¹⁹⁶

4.38 The ECtHR has stated, with regards to both the ECHR, Articles 2 and 3, that whichever mode of investigation is employed 'the authorities must act of their own motion'.¹⁹⁷ It has been clarified that the obligation to investigate is one of means and not of result,¹⁹⁸ and that 'there is no

¹⁹² ECtHR, [Jordan v. The United Kingdom, Application No. 24746/94, 04 August 2001](#), para 109. Also see [CoE Guidelines of the Committee of Ministers of the Council of Europe on eradicating impunity for serious human rights violations, Guidelines adopted by the Committee of Ministers on 30 March 2011 at the 1110th meeting of the Ministers' Deputies, H/Inf \(2011\) 7, Section VI](#)

¹⁹³ ECtHR, [Assenov and Others v. Bulgaria, Application No. 90/1997/874/1086, 28 October 1998](#), para 102; ECtHR, [Mocanu and Others v. Romania, Application Nos. 10865/09, 45886/07 and 32431/08, 17 September 2014](#), para 319-325, noting that '[i]n all cases, the next of kin of the victim must be involved in the procedure to the extent necessary to safeguard his or her legitimate interests. Equally, with regard to Article 3 of the [ECHR], the victim should be able to participate effectively in the investigation', para 324

¹⁹⁴ ECtHR, [McShane v. The United Kingdom, Application No. 43290/98, 28 August 2002](#), para 94 and ECtHR, [Jordan v. The United Kingdom, Application No. 24746/94, 04 August 2001](#), para 105

¹⁹⁵ ECtHR, [Ciobanu v. The Republic of Moldova, Application No. 62578/09, 24 May 2015](#), para 32

¹⁹⁶ ECtHR, [Brecknell v. The United Kingdom, Application No. 32457/04, 27 February 2008](#), para 66. Also see ECtHR, [McCartney v. The United Kingdom, Application No. 34575/04, 27 February 2008](#); ECtHR, [McGrath v. The United Kingdom, Application No. 34651/04, 27 February 2008](#); ECtHR, [O'Dowd v. The United Kingdom, Application No. 34622/04, 27 February 2008](#); ECtHR, [Reavey v. The United Kingdom, Application No. 34640/04, 27 February 2008](#).

¹⁹⁷ ECtHR, [Finucane v. The United Kingdom, Application No. 29178/95, 01 October 2003](#), para 67; ECtHR, [Mocanu and Others v. Romania, Application Nos. 10865/09, 45886/07 and 32431/08, 17 September 2014](#), para 321

¹⁹⁸ ECtHR, [Avsar v. Turkey, Application No. 25657/94, 27 March 2002](#), para 404; ECtHR, [Mocanu and Others v. Romania, Application Nos. 10865/09, 45886/07 and 32431/08, 17 September 2014](#), para 321

absolute right to obtain the prosecution or conviction of any particular person.¹⁹⁹

4.39 The ECtHR has ruled that an effective investigation must be capable of 'establishing the truth.'²⁰⁰ The ECtHR has noted that when 'the authorities have not assisted the applicant in her search for the truth about the whereabouts of [a missing relative], which has led it to find a breach of Articles 3 and 13 in her respect, the Court considers that an award of compensation is also justified in [the applicant's] favour'.²⁰¹ The ECtHR has also found 'a continuing violation of Article 2 on account of the failure of the authorities of the respondent State to conduct an effective investigation aimed at clarifying the whereabouts and fate of ... missing persons who disappeared in life-threatening circumstances.'²⁰²

4.40 The interplay between the procedural element of the ECHR, Article 2 and Article 3 is such that the ECtHR has made it clear that it often 'does not deem it necessary to make a separate finding under Article 3 in respect of the alleged deficiencies of the investigation, since it examines this aspect under the procedural aspect of Article 2 ... and under Article 13'.²⁰³

4.41 The right to a private and family life under the ECHR, Article 8 does not contain an investigative procedural obligation equivalent to the ECHR, Articles 2 and 3. However, the ECHR, Article 13 still requires an effective remedy.²⁰⁴ In addition, the ECtHR has noted that it 'has not excluded the possibility that the 'positive obligation under Article 8 to safeguard the

¹⁹⁹ ECtHR, [Szula v. The United Kingdom, Application No. 18727/06, 4 January 2007](#), see Section 1, The Law; ECtHR, [Brecknell v. The United Kingdom, Application No. 32457/04, 27 February 2008](#), para 66

²⁰⁰ ECtHR, [El-Masri v. The Former Yugoslav Republic of Macedonia, Application No. 39690/09, 13 December 2012](#), para 193

²⁰¹ ECtHR, [Kurt v. Turkey, Application No. 15/1997/799/1002, 25 May 1998](#), para 175

²⁰² ECtHR, [Cyprus v. Turkey, Application No. 25781/94, 10 May 2001](#), para 136; also see ECtHR, [Aslakhanova and Others v Russia, Application Nos. 2944/06, and 8300/07, 50184/07, 332/08, 42509/10, 29 April 2013](#), para 122

²⁰³ ECtHR, [Bazorkina v. Russia, Application No. 69481/01, 27 July 2006](#), para 136, and see ECtHR, [Janowiec and Others v. Russia, Applications Nos. 55508/07 and 29520/09, 21 October 2013](#), para 179; Indeed in the case of ECtHR, [Mocanu and Others v. Romania, Application Nos. 10865/09, 45886/07 and 32431/08, 17 September 2014](#), paras 314-326 and ECtHR, [Kitanovski v. The Former Yugoslav Republic of Macedonia, Application No. 15191/12, 22 January 2015](#), paras 83-86, the ECtHR jointly considered the procedural obligations of the ECHR, Articles 2 and 3; also see ECtHR, [Alecú and Others v. Romania, Application No. 56838/08, 27 January 2015](#) (French) para 36,

²⁰⁴ See [CoE Guidelines of the Committee of Ministers of the Council of Europe on eradicating impunity for serious human rights violations, Guidelines adopted by the Committee of Ministers on 30 March 2011 at the 1110th meeting of the Ministers' Deputies, H/Inf \(2011\) 7](#), Section V. para 1, with reference to the duty to investigate under the ECHR, Articles 4, 5, and 8

individual's physical integrity may extend to questions relating to the effectiveness of a criminal investigation'.²⁰⁵

4.42 An NHRI conducting work in a post-conflict society should recognise that alleged violations or abuses of the right to life and the prohibition on torture or cruel, inhuman or degrading treatment or punishment require credible, thorough, prompt, and effective investigations through independent and impartial bodies. Investigations must be conducted to ensure a full, transparent and credible account of the circumstances surrounding alleged violations or abuses, with a view to identifying, prosecuting and punishing perpetrators, of establishing the truth, and of providing effective remedies to victims.

The right to the historical truth

4.43 The ECtHR has recognised 'that it is an integral part of freedom of expression to seek historical truth'.²⁰⁶ Freedom of expression is protected under the ECHR, Article 10. The ECtHR has further highlighted 'the efforts that every country must make to debate its own history openly and dispassionately'.²⁰⁷

4.44 The ECtHR has stated that 'it is not the Court's role to arbitrate the underlying historical issues, which are part of a continuing debate between historians that shapes opinion as to the events which took place and their interpretation'.²⁰⁸ However, encouraging open debate has raised questions over individuals questioning clearly established historical facts, including the Holocaust. The ECtHR has stated that:

'There can be no doubt that denying the reality of clearly established historical facts, such as the Holocaust ... does not constitute historical research akin to a quest for the truth ... Such acts are incompatible with democracy and human rights because they infringe the rights of others. Their proponents indisputably have designs that fall into the category of aims prohibited by Article 17 of the [ECHR]'.²⁰⁹

²⁰⁵ ECtHR, [Szula v. The United Kingdom, Application No. 18727/06, 4 January 2007](#), The Law Section, para 1

²⁰⁶ ECtHR, [Chauvy and Others v. France, Application No. 64915/01, 29 September 2004](#), para 69; ECtHR, [Fatullayev v. Azerbaijan, Application No. 40984/07, 4 October 2010](#), para 87; ECtHR, [Dzhugashvili v. Russia, Application No. 41123/10, 9 December 2014](#), para 33

²⁰⁷ ECtHR, [Monnat v. Switzerland, Application No. 73604/01, 21 December 2006](#), para 64

²⁰⁸ ECtHR, [Chauvy and Others v. France, Application No. 64915/01, 29 September 2004](#), para 69; ECtHR, [Dzhugashvili v. Russia, Application No. 41123/10, 9 December 2014](#), para 33

²⁰⁹ ECtHR, [Garaudy v. France \(dec.\) Application No. 65831/01, ECHR 2003-IX \(translated\)](#). ECHR, Article 17, the Prohibition of abuse of rights, states that 'Nothing in this Convention may be interpreted as implying for any State, group or person any right

4.45 The ECtHR has indicated that the passage of time is important when open discussion on the historical truth touches upon other human rights and limits on freedom of expression must be assessed. The ECtHR has stated that '[e]ven though remarks such as those by the applicant are always likely to reopen the controversy among the public, the lapse of time makes it inappropriate to deal with such remarks, fifty years on, with the same severity as ten or twenty years before.'²¹⁰

Victims' rights

4.46 The UN High Commissioner for Human Rights has noted that:

'When a period characterized by widespread or systematic human rights abuses comes to an end, people who suffered under the old regime find themselves able to assert their rights and to begin dealing with their past. As they exercise their newly freed voices, they are likely to make four types of demands of the transitional State, namely demands for truth, justice, reparations and institutional reforms to prevent a recurrence of violence.'²¹¹

4.47 International law recognises victims' rights, including the right to the truth (right to know), the right to a remedy (right to reparations, right to redress), and access to justice. DDR programmes, in particular the reintegration of individuals who have been directly involved in organisations engaged in violence or the use of force (including both non-state and state actors) can be utilised to assist victims in accessing their rights.²¹²

The right to the truth (right to know)

4.48 The UN Principles to Combat Impunity states that '[e]very people has the inalienable right 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

to engage in any activity or perform any act aimed at the destruction of any of the rights and freedoms set forth herein or at their limitation to a greater extent than is provided for in the Convention.'

²¹⁰ ECtHR, [Monnat v. Switzerland, Application No. 73604/01, 21 December 2006](#), para 64; See the cases of ECtHR, [Orban and Others v. France, Application No. 20985/05, 15 April 2009 \(French\)](#); ECtHR, [Dink v. Turkey, Application No.s 2668/07, 6102/08, 30079/08, 7072/09, and 7124/09, 14 December 2010 \(French\)](#); ECtHR, [Karsai v. Hungary, Application No. 5380/07, 1 March 2010](#)

²¹¹ [UN GA Annual Report of the United Nations High Commissioner for Human Rights and Reports of the Office of the High Commissioner and the Secretary-General, Right to the truth, UN Doc. A/HRC/12/19 \(2009\)](#) para 4

²¹² [UN, Annual Report of the United Nations High Commissioner for Human Rights and Reports of the Office of the High Commissioner and the Secretary-General, Analytical study on human rights and transitional justice, UN Doc. A/HRC/12/18 \(2009\)](#) para 67

perpetration of those crimes.²¹³ These Principles further provide that '[i]rrespective of any legal proceedings, victims and their families have the imprescriptible right to know the truth about the circumstances in which violations took place and, in the event of death or disappearance, the victims' fate.'²¹⁴

4.49 The Special Rapporteur on the independence of judges and lawyers has stated that the right to truth is customary international law,²¹⁵ and 'is both an independent right on its own and the means for the realization of other rights, such as the right to information, to identity, to mourning and especially the right to justice.'²¹⁶ The UN OHCHR recognises the right to the truth as a 'stand-alone right' and a 'fundamental right of the individual and therefore should not be subject to limitations.'²¹⁷

4.50 The right to the truth is both an individual and collective right. The UN OHCHR has noted 'that a person has a right to know the truth about what happened to him/her and that society as a whole has both a right to know and a responsibility to remember.'²¹⁸

4.51 The UN OHCHR has clarified that:

²¹³ [UN CESCR, Commission on Human Rights, Promotion and Protection of Human Rights, Impunity, Report of the Independent expert to update the Set of principles to combat impunity, Diane Orentlicher, Addendum, Updated Set of principles for the protection and promotion of human rights through action to combat impunity, UN Doc. E/CN.4/2005/102/Add.1 \(2005\) Principle 2](#)

²¹⁴ [UN CESCR, Commission on Human Rights, Promotion and Protection of Human Rights, Impunity, Report of the Independent expert to update the Set of principles to combat impunity, Diane Orentlicher, Addendum, Updated Set of principles for the protection and promotion of human rights through action to combat impunity, UN Doc. E/CN.4/2005/102/Add.1 \(2005\) Principle 4](#)

²¹⁵ [UN CESCR, Civil and Political Rights, Including the Questions of Independence of the Judiciary, Administration, of Justice, Impunity, Report of the Special Rapporteur on the independence of judges and lawyers, Leandro Despouy UN Doc. E/CN.4/2006/52 \(2006\) para 23](#)

²¹⁶ [UN CESCR, Civil and Political Rights, Including the Questions of Independence of the Judiciary, Administration, of Justice, Impunity, Report of the Special Rapporteur on the independence of judges and lawyers, Leandro Despouy UN Doc. E/CN.4/2006/52 \(2006\) para 61](#)

²¹⁷ [UN CESCR, Promotion and Protection of Human Rights, Study on the right to the truth, Report of the Office of the United Nations High Commissioner for Human Rights, UN Doc. E/CN.4/2006/91 \(2006\) para 60](#)

²¹⁸ [UN GA Annual Report of the United Nations High Commissioner for Human Rights and Reports of the Office of the High Commissioner and the Secretary-General, Right to the truth, UN Doc. A/HRC/12/19 \(2009\) para 5; Also see UN GA, Promotion and Protection of All Human Rights, Civil, Political, Economic, Social and Cultural Rights, Including the Right to Development, Human Rights Council, Human Rights and Transitional Justice UN Doc. A/HRC/RES/12/12 \(2009\), p3; UN CESCR, Promotion and Protection of Human Rights, Study on the right to the truth, Report of the Office of the United Nations High Commissioner for Human Rights, UN Doc. E/CN.4/2006/91 \(2006\) para 58](#)

'The right to the truth implies knowing the full and complete truth as to the events that transpired, their specific circumstances, and who participated in them, including knowing the circumstances in which the violations took place, as well as the reasons for them. In cases of enforced disappearance ... secret executions and secret burial place, the right to the truth also has a special dimension: to know the fate and whereabouts of the victim.'²¹⁹

4.52 The CoE has recognised the right to the truth.²²⁰ The ECtHR has held that a State's failure to conduct an effective investigation 'aimed at clarifying the whereabouts and fate ...[of]... missing persons who disappeared in life-threatening circumstances' was a continuing violation of the ECHR, Article 2.²²¹ The ECtHR has also held that a persistent failure to account for the disappeared persons constituted a 'continuing violation of Article 3 [the ECHR] in respect of the relatives of the ... missing persons.'²²² The ECtHR has 'emphasised the importance of the right of victims and their families and heirs to know the truth about the circumstances surrounding events involving a massive violation of rights as fundamental as that of the right to life'.²²³ It also underlined in *El-Masri v. The Former Yugoslav Republic of Macedonia* 'the great importance of the present case not only for the applicant and his family, but also for other victims of similar crimes and the general public, who had the right to know what had happened.'²²⁴

4.53 The right to the truth often overlaps with the right to information. The UN Basic Principles and Guidelines for Victims provides that 'victims and their representatives should be entitled to seek and obtain information on the causes leading to their victimization and on the causes and conditions pertaining to the gross violations of international human rights law and serious violations of international humanitarian law and to learn the truth in regard to these violations.'²²⁵

4.54 EU Directive 2012/29 articulates a range of information which should be offered to victims 'without unnecessary delay' including 'any decision not to proceed with or to end an investigation or not to prosecute

²¹⁹ [UN CESCR, Promotion and Protection of Human Rights, Study on the right to the truth, Report of the Office of the United Nations High Commissioner for Human Rights, UN Doc. E/CN.4/2006/91 \(2006\)](#) para 59

²²⁰ [CoE Parliamentary Assembly, Resolution 1868 \(2012\), The International Convention for the Protection of all Persons from Enforced Disappearance](#), para 6.1.4.

²²¹ ECtHR, [Cyprus v. Turkey, Application No. 25781/94, 10 May 2001](#), para 136

²²² ECtHR, [Cyprus v. Turkey, Application No. 25781/94, 10 May 2001](#), para 158

²²³ ECtHR, [Association "21 December 1989" and Others v. Romania, Application No. 33810/07, 24 May 2011](#), para 144

²²⁴ ECtHR, [El-Masri v. The Former Yugoslav Republic of Macedonia, Application No. 39690/09, 13 December 2012](#), para 191

²²⁵ [UN GA, 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, UN Doc. A/RES/60/147 \(2006\) Annex, Article 24](#)

the offender' and information 'about the state of the criminal proceedings'.²²⁶

4.55 The ECtHR has found violations of the procedural element of the ECHR, Article 2, where 'the investigating authorities failed properly to acquaint the applicant with the results of the investigation'.²²⁷ However, the ECtHR has held that the possibility of sensitive issues surrounding an investigation means there cannot be 'an automatic requirement under Article 2 that a deceased victim's surviving next-of-kin be granted access to the investigation as it goes along. The requisite access of the public or the victim's relatives may be provided for in other stages of the available procedures'.²²⁸ The ECtHR has clarified that a violation of procedural element of the ECHR, Article 2 occurs where victims are denied access to information 'for no valid reason'.²²⁹

*The right to a remedy (the right to reparations, the right to redress)*²³⁰

4.56 International human rights law requires an effective remedy where an individual's rights or freedoms have been violated. The legal source of the right to a remedy is dependent upon the origin of the right violated; for example a violation of a right under the ICCPR (e.g. Article 6, the right to life) is subject to the ICCPR, Article 2(3), which obligates States:

- a. 'To ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity;
- b. To ensure that any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy;

²²⁶ [EU Directive 2012/29/EU establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA \(2012\)](#) Article 6(1)(a) and 6(2)(b)

²²⁷ ECtHR, [Karandja v. Bulgaria, Application No. 69180/01, 7 January 2011](#), para 67

²²⁸ ECtHR, [Ramsahai and Others v. The Netherlands, Application No. 52391/99](#), 15 May 2007, para 347; also see ECtHR, [McKerr v. The United Kingdom, Application No. 28883/95, 4 August 2001](#), para 129

²²⁹ ECtHR, [Eremiášová and Pechová v. The Czech Republic, Application No. 23944/04, 16 May 2012](#), para 149

²³⁰ For an explanation on the use of these terms, see [UN CESCR, Civil and Political Rights, The right to a remedy and reparation for victims of violations of international human rights and humanitarian law, Note by the High Commissioner for Human Rights, Annex, Report of the Second Consultative Meeting on the Basic Principles and Guidelines on the Right to Remedy and Reparation for Victims of Violations of International Human Rights and Humanitarian Law \(Rev. 24 October 2003\) UN Doc. E/CN.4/2004/57 \(2003\)](#) para 37

c. To ensure that the competent authorities shall enforce such remedies when granted.'

4.57 The UN HRC explains that the ICCPR, 'Article 2, paragraph 3, requires that in addition to effective protection of Covenant rights, States Parties must ensure that individuals also have accessible and effective remedies to vindicate those rights'.²³¹

4.58 The former Permanent Court of International Justice stated:

'It is a principle of international law that the breach of an engagement involves an obligation to make reparations in an adequate form. Reparation therefore is the indispensable complement of a failure to apply a convention and there is no necessity for this to be stated in the convention itself.'²³²

4.59 The right to an effective remedy is also contained within the ECHR, Article 13, which states:

'Everyone whose rights and freedoms as set forth in this Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity.'²³³

4.60 The ECtHR has noted that:

'An effective judicial system, as required by Article 2, may, and under certain circumstances must, include recourse to the criminal law ... but if the infringement of the right to life is not intentional, Article 2 does not necessarily require such remedies; the State may meet its obligation by affording victims a civil-law remedy, either alone or in conjunction with a criminal-law one, enabling any responsibility of the individuals concerned to be established and any appropriate civil redress, such as an order for damages, to be obtained'²³⁴

4.61 However, the ECtHR has further noted that 'a civil action to obtain

²³¹ [UN HRC, General Comment 31, Nature of the General Legal Obligations on States Parties to the Covenant, UN Doc CCPR/C/21/Rev.1/Add.13 \(2004\)](#) para 15

²³² [The Factory at Chorzów, \(Claim for Indemnity\)\(Jurisdiction\) Series A, No. 9, 26 July 1927](#), p21. A number of cases provide support for reparations being customary international law, see [Palmarejo Gold Fields 5 RIAA at 298 \(1931\)](#), Spanish Zones of Morocco Claims 2 RIAA 615 (1925), Russian Indemnity 11 RIAA at 431 (1912), Martini 2 RIAA 975 at 1002 (1930)

²³³ The ECHR, Article 13 has not been incorporated into domestic law by virtue of the [Human Rights Act 1998](#); also see [The Charter of Fundamental Rights of the European Union](#), Article 47

²³⁴ ECtHR, [Ciobanu v. The Republic of Moldova, Application No. 62578/09, 24 May 2015](#), para 32

redress ... alone cannot be regarded as an effective remedy in the context of claims brought under Article 2',²³⁵ although noting that in systemic cases of disappearances by the State 'that criminal investigations were not an effective remedy'.²³⁶

4.62 The right to a remedy has been interpreted to include the following elements:

- 1) Equal and effective access to justice;²³⁷
- 2) Adequate, effective, and prompt reparation;
- 3) Access to relevant information concerning violations and reparations mechanisms;²³⁸
- 4) Cessation of any on-going violation.²³⁹

4.63 Reparation consists of:²⁴⁰

²³⁵ ECtHR, [Malika Yusupova and Others v. Russia, Application Nos. 14705/09, 4386/10, 68860/10 and 70695/10, 1 June 2015](#), para 170

²³⁶ ECtHR, [Aslakhanova and Others v Russia, Application Nos. 2944/06, and 8300/07, 50184/07, 332/08, 42509/10, 29 April 2013](#), para 217; also see ECtHR, [Malika Yusupova and Others v. Russia, Application Nos. 14705/09, 4386/10, 68860/10 and 70695/10, 1 June 2015](#)

²³⁷ As explored below

²³⁸ [UN GA, 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, UN Doc. A/RES/60/147 \(2006\), Annex, Principle 11; UN CESCR, Commission on Human Rights, Promotion and Protection of Human Rights, Impunity, Report of the Independent expert to update the Set of principles to combat impunity, Diane Orentlicher, Addendum, Updated Set of principles for the protection and promotion of human rights through action to combat impunity, UN Doc. E/CN.4/2005/102/Add.1 \(2005\); ECtHR, \[Aksoy v. Turkey, Application No. 21987/93, 18 December 1996\]\(#\), para 98; ECtHR, \[Iatridis v. Greece, Application No. 31107/96, 19 October 2000\]\(#\), para 33](#)

²³⁹ [UN HRC, General Comment 31, Nature of the General Legal Obligations on States Parties to the Covenant, UN Doc CCPR/C/21/Rev.1/Add.13 \(2004\)](#) para 15. The ECtHR has required specific remedial action in a number of cases including the restitution of land in ECtHR, [Papamichalopoulos and Others v. Greece \(Article 50\), Application No. 14556/89, 31 October 1995](#), paras 38-9; ECtHR, [Brumarescu v. Romania \(Article 41\), Application No. 28342/95, 23 January 2001](#), paras 22-3; The release of prisoners in ECtHR, [Assanidze v. Georgia, Application No. 71403/01, 8 April 2004](#), para 203; ECtHR, [Ilascu and Others v. Moldova and Russia, Application No. 48784/99, 8 July 2004](#), para 490; Also see ECtHR, [Aslakhanova and Others v Russia, Application Nos. 2944/06, and 8300/07, 50184/07, 332/08, 42509/10, 29 April 2013](#), para 225-237, and para 238 where the ECtHR noted that 'it would appear necessary that a comprehensive and time-bound strategy to address the problems enumerated above (see paragraphs 223-237 above) is prepared by the Respondent State without delay and submitted to the Committee of Ministers for the supervision of its implementation.'

²⁴⁰ [UN GA, 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, UN Doc. A/RES/60/147 \(2006\) Annex](#), para 18 and [UN CESCR, Commission on Human Rights, Promotion and Protection of Human Rights, Impunity, Report of the Independent expert to update the Set of principles to combat impunity, Diane Orentlicher, Addendum, Updated Set of principles for the protection and promotion of human rights through action to combat impunity, UN Doc.](#)

- i. Restitution; Restitution should 'restore the victim to the original situation before the gross violations of international human rights law or serious violations of international humanitarian law occurred. Restitution includes, as appropriate: restoration of liberty, enjoyment of human rights, identity, family life and citizenship, return to one's place of residence, restoration of employment and return of property.'²⁴¹
- ii. Compensation; Compensation 'should be provided for any economically assessable damage, as appropriate and proportional to the gravity of the violation and the circumstances of each case, resulting from gross violations of international human rights law and serious violations of international humanitarian law' including physical or mental harm, lost opportunities (employment, education, social benefits), moral damage, and costs for legal and medical assistance.²⁴²
- iii. Rehabilitation; Rehabilitation 'should include medical and psychological care as well as legal and social services.'²⁴³
- iv. Satisfaction; Satisfaction includes '(a) an apology, (b) nominal damages, (c) in case of gross infringements of rights, damages reflecting the gravity of the infringement, (d) in cases of serious misconduct or criminal conduct, disciplinary action, or punishment of, those responsible',²⁴⁴ and public memorials.²⁴⁵ It has also been interpreted to

[E/CN.4/2005/102/Add.1 \(2005\)](#) Principle 34 and 35, although guarantees of non-repetition are addressed separately to Reparation

²⁴¹ [UN GA, 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, UN Doc. A/RES/60/147 \(2006\) Annex](#), para 19; [UN CESCR, Commission on Human Rights, Promotion and Protection of Human Rights, Impunity, Report of the Independent expert to update the Set of principles to combat impunity, Diane Orentlicher, Addendum, Updated Set of principles for the protection and promotion of human rights through action to combat impunity, UN Doc. E/CN.4/2005/102/Add.1 \(2005\)](#) para 48;

²⁴² [UN GA, 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, UN Doc. A/RES/60/147 \(2006\) Annex](#), para 20

²⁴³ [UN GA, 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, UN Doc. A/RES/60/147 \(2006\) Annex](#), para 21; [CAT](#), Article 14, states that victims should receive 'the means for as full rehabilitation as possible.' The Committee against Torture has clarified that CAT, Article 14, includes 'the provision of means for as full rehabilitation as possible for anyone who has suffered harm as a result of a violation of the Convention should be holistic and include medical and psychological care as well as legal and social services.' [UN Committee against Torture, General Comment 3, Implementation of article 14 by States parties, UN Doc. CAT/C/GC/3 \(2012\)](#) para 11; Further see the [CRPD](#), Article 26; [UN Human Rights Council, Torture and other cruel, inhuman or degrading treatment or punishment: rehabilitation of torture victims UN Doc. A/HRC/22/L.11 \(2013\)](#) para 11-12; [CoE, Committee of Ministers, Recommendation Rec 2006\(8\) of the Committee Ministers to members states on assistance to crime victims, Adopted by the Committee of Ministers on 14 June 2006 at the 967th meeting of the Ministers' Deputies](#), para 3.1

²⁴⁴ [UN CESCR, Commission on Human Rights, Promotion and Protection of Human Rights, Impunity, Report of the Independent expert to update the Set of principles to combat impunity, Diane Orentlicher, Addendum, Updated Set of principles for the](#)

include the 'cessation of continuing violations' and the 'public disclosure of the truth'.²⁴⁶

- v. Guarantees of non-repetition;²⁴⁷ Guarantees of non-repetition 'includes institutional reforms tending towards civilian control of military and security forces, strengthening judicial independence, the protection of human rights workers, human rights training, the promotion of international human rights standards in public service, law enforcement, the media, industry, and psychological and social services.'²⁴⁸

4.64 There is both an individual and collective element to reparations, with the UN Basic Principles and Guidelines for Victims noting that 'States should endeavor to develop procedures to allow groups of victims to present collective claims for reparation and to receive reparation collectively, as appropriate.'²⁴⁹

4.65 Access to the relevant information about violations engages the right to information, as discussed above.

4.66 The EU and CoE have made provisions to ensure victims have access to information about their rights and the availability of services.²⁵⁰

[protection and promotion of human rights through action to combat impunity, UN Doc. E/CN.4/2005/102/Add.1 \(2005\)](#) para 48

²⁴⁵ [UN HRC, General Comment 31, Nature of the General Legal Obligations on States Parties to the Covenant, UN Doc CCPR/C/21/Rev.1/Add.13 \(2004\)](#) para 16

²⁴⁶ [UN GA, 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, UN Doc. A/RES/60/147 \(2006\) Annex](#), para 22

²⁴⁷ [UN GA, 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, UN Doc. A/RES/60/147 \(2006\) Annex](#), para 23, and see [UN CESCR, Commission on Human Rights, Promotion and Protection of Human Rights, Impunity, Report of the Independent expert to update the Set of principles to combat impunity, Diane Orentlicher, Addendum, Updated Set of principles for the protection and promotion of human rights through action to combat impunity, UN Doc. E/CN.4/2005/102/Add.1 \(2005\)](#), Principle 34, and [CoE Guidelines of the Committee of Ministers of the Council of Europe on eradicating impunity for serious human rights violations, Guidelines adopted by the Committee of Ministers on 30 March 2011 at the 1110th meeting of the Ministers' Deputies, H/Inf \(2011\) 7, Part XVI](#); [UN Committee against Torture, General Comment 3, Implementation of article 14 by States parties, UN Doc. CAT/C/GC/3 \(2012\)](#) para 2; [UN GA, Declaration on the Protection of All Persons from Enforced Disappearance, UN Doc. A/RES/47/133 \(1992\)](#), Article 19; [European Convention on Compensation for Victims of Violent Crimes, 1983](#), Article 1; [UN HRC, General Comment 31, Nature of the General Legal Obligations on States Parties to the Covenant, UN Doc CCPR/C/21/Rev.1/Add.13 \(2004\)](#) para 16

²⁴⁸ [UN OHCHR, Rule-of-law Tools for Post-conflict States, Reparations programmes, 2008](#), p7-8

²⁴⁹ [UN GA, 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, UN Doc. A/RES/60/147 \(2006\)](#) Principle 13

²⁵⁰ [EU Directive 2012/29/EU establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA \(2012\)](#) Principle 15; [CoE, Committee of Ministers Recommendation to member states on](#)

4.67 Access to a reparations mechanism obliges states to ensure that victims are able to access their right to a remedy. Such access can be achieved through access to justice, or an alternative and/or complementary mechanism, which could be incorporated in DDR programmes.

Access to justice

4.68 Justice is often narrowly conceived as constituting only criminal proceedings. However, justice is a much broader legal concept and includes civil, administrative and criminal processes, all of which should be responsive to the specific needs of victims.²⁵¹

4.69 Transitional justice 'is the full range of processes and mechanisms associated with a society's attempt to come to terms with a legacy of large-scale past abuses, in order to ensure accountability, serve justice and achieve reconciliation.'²⁵² Transitional justice 'consists of both judicial and non-judicial processes and mechanisms, including prosecution initiatives, facilitating initiatives in respect of the right to truth, delivering reparations, institutional reform and national consultations.'²⁵³

4.70 Although forming an element of the right to a remedy, access to justice exists independently as a victims' right.

4.71 The UN Basic Principles and Guidelines for Victims highlights 'the right to access justice and fair and impartial proceedings',²⁵⁴ and notes that a state must provide 'equal and effective access to justice ... irrespective of who may ultimately be the bearer of responsibility for the violation'.²⁵⁵ The state has a procedural obligation to provide access to

[assistance to crime victims, Rec\(2006\)8](#), para 5.2, [UN Human Rights Council, Torture and other cruel, inhuman or degrading treatment or punishment: rehabilitation of torture victims, UN Doc. A/HRC/22/L.11/Rev.1 \(2013\)](#) para 16

²⁵¹ See, for example, [OSCE, Handbook for Monitoring Administrative Justice \(2013\)](#); [ECtHR, Guide on Article 6, Right to a Fair Trial \(civil limb\) \(2013\)](#); [ECtHR, Guide on Article 6, Right to a Fair Trial \(criminal limb\) \(2014\)](#); [UN HRC, General Comment No. 32, Article 14: Right to equality before courts and tribunals and to a fair trial, UN Doc. CCPR/C/GC/32 \(2007\)](#)

²⁵² [UN, Guidance Note of the Secretary-General, 'United Nations Approach to Transitional Justice' \(2010\)](#) p2

²⁵³ [UN, Guidance Note of the Secretary-General, 'United Nations Approach to Transitional Justice' \(2010\)](#) p2

²⁵⁴ [UN GA, 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, UN Doc. A/RES/60/147 \(2006\) Annex](#), para 12

²⁵⁵ [UN GA, 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, UN Doc. A/RES/60/147 \(2006\) Annex](#), para 3(c) and 11(a)

justice, which includes access to a criminal justice process, but can also extend to other forms of justice including transitional justice processes.

4.72 Access to justice includes access to mechanisms to achieve justice, including civil, criminal, and administrative means, and requires that the relevant judicial or administrative processes are responsive to the specific needs of victims.²⁵⁶ It also requires the dissemination 'through public and private mechanisms, information about all available remedies for gross violations of international human rights law'.²⁵⁷

4.73 Access to justice further includes 'access to administrative and other bodies, as well as mechanisms, modalities and proceedings conducted in accordance with domestic law'.²⁵⁸ This includes accessing other victims' rights, such as the right to the truth and to a remedy, through DDR programmes.

4.74 An NHRI conducting work in a post-conflict society should recognise victims' rights include the right to the truth (right to know), the right to a remedy (right to reparations, right to redress), and access to justice.

Participation

4.75 Public participation is a right which extends to the conduct of all public affairs and is contained within the ICCPR, Article 25:

'Every citizen shall have the right and the opportunity, without any of the distinctions mentioned in [ICCPR] article 2 and without unreasonable restrictions:

²⁵⁶ [UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power UN Doc. A/RES/40/34 \(1985\)](#) Principles 4, 6; also see [UN GA, 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, UN Doc. A/RES/60/147 \(2006\) Annex](#), para 12(b)-(d)

²⁵⁷ [UN GA, 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, UN Doc. A/RES/60/147 \(2006\) Annex](#), para 12(a); also see [EU Directive 2012/29/EU establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA \(2012\)](#) Article 9; [UN GA, 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, UN Doc. A/RES/60/147 \(2006\) Annex](#), Principle 15; [CoE, Committee of Ministers Recommendation to member states on assistance to crime victims, Rec\(2006\)8](#), para 5.2, [UN Human Rights Council, Torture and other cruel, inhuman or degrading treatment or punishment: rehabilitation of torture victims, UN Doc. A/HRC/22/L.11/Rev.1 \(2013\)](#) para 16

²⁵⁸ The [UN GA, 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, UN Doc. A/RES/60/147 \(2006\) Annex](#), para 12

(a) To take part in the conduct of public affairs, directly or through freely chosen representatives'

4.76 The UN HRC has noted that 'the conduct of public affairs' extends to 'all aspects of public administration, and the formulation and implementation of policy at international, national, regional and local levels.'²⁵⁹ The UN HRC further provides that '[c]itizens also take part in the conduct of public affairs by exerting influence through public debate and dialogue with their representatives or through their capacity to organize themselves.'²⁶⁰ The UN OHCHR has stated that '[i]nternational human rights instruments and mechanisms acknowledge the right of all people to be fully involved in and to effectively influence public decision-making processes that affect them.'²⁶¹

4.77 Measures for the participation of specific peoples are included in international human rights conventions, including the CRC, Article 23, the CEDAW, Article 7, the CERD, Article 5, and the CRPD, Article 3.²⁶²

4.78 In addition to public participation there exists the obligation to facilitate the participation of victims. The UN Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence has stated that the 'meaningful participation' of victims is necessary to integrate 'a victim-centred approach' throughout measures designed 'to promote "truth, justice, reparations, and guarantees of non-recurrence"'.²⁶³ The UN Special Rapporteur has noted that '[s]uch meaningful participation can take different forms'.²⁶⁴ Truth seeking measures require 'the active participation of individuals' and 'will only be regarded a justice measure if civil society, in particular victims organizations, is adequately represented in the composition of a truth commission. Prosecutions, for their part, can only serve as actual justice measures if the victims and their families are effectively involved in the processes and provided with the necessary information relevant to their

²⁵⁹ [UN HRC, General Comment No. 25 \(57\) on ICCPR Article 25, UN Doc. CCPR/C/21/Rev.1/Add.7 \(1996\)](#) para 5

²⁶⁰ [UN HRC, General Comment No. 25 \(57\) on ICCPR Article 25, UN Doc. CCPR/C/21/Rev.1/Add.7 \(1996\)](#) para 8

²⁶¹ [UN Human Rights Council, Promotion, protection and implementation of the right to participate in public affairs in the context of the existing human rights law: best practices, experiences, challenges and ways to overcome them, Report of the Office of the United Nations High Commissioner for Human Rights, UN Doc. A/HRC/30/26 \(2015\)](#) para 9

²⁶² Amongst others

²⁶³ [UN GA, Report of the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence, Pablo de Greiff, UN Doc. A/HRC/21/46 \(2012\)](#) para 10 and 54

²⁶⁴ [UN GA, Report of the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence, Pablo de Greiff, UN Doc. A/HRC/21/46 \(2012\)](#) para 54

participation in proceedings.²⁶⁵ Reparation measures require the involvement of 'victims and civil society ... in the design of the schemes', and guarantees of non-recurrence need 'to have a firm grounding in the views of the population and specifically of the victims'.²⁶⁶

4.79 The ECtHR has noted that, where possible, 'the victim should be able to participate effectively in the investigation',²⁶⁷ and that in all cases 'the next-of-kin of the victim must be involved in the procedure to the extent necessary to safeguard his or her legitimate interests'.²⁶⁸

4.80 The participation of women in the design and implementation of DDR and transitional justice measures is recognized in Security Council Resolution 1325 (2000) and in the UN Committee on the Elimination of Discrimination against Women General Recommendation No. 30, which notes that:

'The fulfilment of States parties' obligations to ensure women's equal representation in political and public life (art. 7) and at the international level (art. 8) requires measures, including temporary special measures under article 4 (1), to address this broader context of gender discrimination and inequality in conflict-affected areas, in addition to the specific and multiple barriers to women's equal participation that are linked to additional conflict-related restrictions on mobility, security, fundraising, campaigning and technical skills.... The implementation of these obligations apply in particular to States parties on whose territory hostilities have occurred, in addition to other States parties involved in peace-making processes that are required to ensure that women are represented in their own institutions and to support local women's participation in peace processes. Their implementation, in conjunction with Security Council resolution 1325 (2000) on women, peace and security, guarantee women's meaningful participation in processes relating to the prevention, management and resolution of conflicts.'²⁶⁹

²⁶⁵ [UN GA, Report of the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence, Pablo de Greiff, UN Doc. A/HRC/21/46 \(2012\)](#) para 54

²⁶⁶ [UN GA, Report of the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence, Pablo de Greiff, UN Doc. A/HRC/21/46 \(2012\)](#) para 54

²⁶⁷ ECtHR, [Mocanu and Others v. Romania, Application Nos. 10865/09, 45886/07 and 32431/08, 17 September 2014](#), para 324

²⁶⁸ ECtHR, [Jordan v. The United Kingdom, Application No. 24746/94, 04 August 2001](#), para 109

²⁶⁹ [UN CEDAW, General recommendation No. 30 on women in conflict prevention, conflict and post-conflict situations, UN Doc. CEDAW/C/GC/30 \(2013\)](#) para 44-45. Also see para 69(d)

4.81 The UN OHCHR has stated that '[a] human rights-based approach to transitional justice demands that programmes should be designed in a context of in-depth consultation with affected communities.'²⁷⁰

4.82 An NHRI conducting work in a post-conflict society should recognise that, alongside the right to take part in the conduct of public affairs, measures to fulfil the rights of specific peoples and affected communities, including victims and women, should provide for their participation.

²⁷⁰ [UN OHCHR, Rule-of-law Tools for Post-Conflict States, National Consultations on Transitional Justice, 2009](#), p10; also see [UN, Guidance Note of the Secretary-General, 'United Nations Approach to Transitional Justice' \(2010\)](#) p2, and [UN SC, The rule of law and transitional justice in conflict and post-conflict societies, Report of the Secretary-General Security Council, UN Doc. S/2004/616 \(2004\)](#) para 16

Chapter 5

Criminal Sanctions and Conflict Related Incidents

Summary

In a post-conflict society ex-combatants (both non-state and state actors) may have been convicted of a conflict-related offence, or may face allegations of gross violations or abuses of human rights law from the conflict period. On conviction the punishment might be imprisonment or another form of criminal sanction. (5.1)

Criminal sanctions can fulfil certain rights for some victims. However, a criminal justice process may not necessarily fulfil the victims' right to know the truth of what happened and why, or the right to a remedy (including an apology and the public disclosure of the truth). The reintegration of those eligible to take part in DDR programmes may assist in this regard. In particular, mitigating measures to implement forms of conditional immunity from prosecution (pre-trial) or reducing/removing the effect of a conviction (post-trial) can be beneficial to transitional justice. More specifically, mitigating measures to facilitate reintegration might help create the conditions in which the victims of human rights abuses and violations can realise their rights to the truth, a remedy and access to justice. (5.2)

There are a range of mitigating measures which exist, or have existed, to mitigate the consequences for those who have violated or abused human rights, including the right to life, and the prohibition on torture or other cruel, inhuman or degrading treatment or punishment, the ICCPR, Articles 6 and 7. These include amnesties (including blanket amnesties, disguised amnesties, and conditional amnesties), measures to limit the admissibility of evidence, official immunities, reduced sentence measures, pardons (pre-trial and post-conviction), and spent convictions. (5.3)

An NHRI conducting work in a post-conflict society:

- Should recognise that an amnesty (either pre-trial or post-conviction) to excuse categories of gross human rights violations and abuses (including the right to life and the prohibition on torture or other cruel, inhuman or degrading treatment or punishment) is incompatible with human rights law; (5.14)
- Should recognise that a conditional amnesty to excuse an individual on a case-by-case basis for non-gross human rights violations and abuses is compatible with human rights law provided an effective investigation

is conducted into allegations of human rights violations and abuses, and the conditional amnesty meaningfully contributes toward the fulfilment of victims' rights and the achievement of a long-lasting and sustainable peace; (5.15)

- Should recognise that forms of mitigating measures including the admissibility of evidence, official immunity, and pre-trial pardons do not amount to an amnesty. These may be compatible with human rights law as long as they do not interfere with the obligation to conduct an effective investigation; (5.26)
- Should recognise that further forms of mitigating measures including reduced sentence measures, post-conviction pardons, and spent convictions do not amount to an amnesty. These can be compatible with human rights law. (5.33)

Introduction

5.1 In a post-conflict society ex-combatants (both non-state and state actors) may have been convicted of a conflict-related offence, or may face allegations of gross violations or abuses of human rights law from the conflict period. On conviction the punishment might be imprisonment or another form of criminal sanction.

5.2 Criminal sanctions can fulfil certain rights for some victims. However, a criminal justice process may not necessarily fulfil the victims' right to know the truth of what happened and why, or the right to a remedy (including an apology). The reintegration of those eligible to take part in DDR programmes may assist in this regard. In particular, mitigating measures to implement forms of conditional immunity from prosecution (pre-trial) or reducing/removing the effect of a conviction (post-trial) can be beneficial to transitional justice. More specifically, mitigating measures to facilitate reintegration might help create the conditions in which the victims of human rights abuses and violations can realise their rights to the truth, a remedy and access to justice.

5.3 There are a range of mitigating measures which exist, or have existed, to mitigate the consequences for those who have violated or abused human rights, including the right to life, the ICPPR, Article 6, and the prohibition on torture or other cruel, inhuman or degrading treatment or punishment, the ICCPR, Article 7. These include amnesties (including blanket amnesties, disguised amnesties, and conditional amnesties), measures to limit the admissibility of evidence, official immunities, reduced sentence measures, pardons (pre-trial and post-conviction), and spent convictions.

Amnesty

5.4 The UN OHCHR has clarified that an amnesty can include:

'[A] failure to enact laws prohibiting crimes that should, under international law, be punished; [a] failure to bring criminal prosecutions against those responsible for human rights violations even when their laws present no barriers to punishment; [a] failure to provide prosecutors the resources they need to ensure effective prosecution; and intimidation of witnesses whose testimony is needed to ensure a full legal reckoning.'²⁷¹

5.5 An amnesty can be applied to categories of offences pre-trial to prevent investigations, prosecutions, and convictions, or post-conviction to erase a prior conviction.²⁷²

5.6 The UN OHCHR defines an amnesty as having the effect of:

- a) 'prospectively barring criminal prosecution and, in some cases, civil actions against certain individuals or categories of individuals in respect of specified criminal conduct committed before the amnesty's adoption; or
- b) retroactively nullifying legal liability previously established.'²⁷³

5.1 Amnesties can take many forms, often exempting 'criminal prosecution and, possibly, civil action ... typically limited to conduct occurring during a specific period and/or involving a specified event or circumstance'.²⁷⁴ Furthermore, amnesties 'commonly specify a category or categories of beneficiaries, such as members of rebel forces, State agents or political exiles. Amnesties often and increasingly specify particular crimes or circumstances for which criminal prosecution and/or civil actions are barred.'²⁷⁵

Blanket amnesty

5.2 The UN OHCHR notes that the term 'blanket amnesty' is one which exempts:

'broad categories of serious human rights offenders from prosecution and/or civil liability without the beneficiaries' having to satisfy preconditions, including those aimed at ensuring full disclosure of what

²⁷¹ [UN OHCHR, Rule-of-law Tools for Post-conflict States, Amnesties, 2009](#), p6

²⁷² [UN OHCHR, Rule-of-law Tools for Post-conflict States, Amnesties, 2009](#), p5

²⁷³ [UN OHCHR, Rule-of-law Tools for Post-conflict States, Amnesties, 2009](#), p5

²⁷⁴ [UN OHCHR, Rule-of-law Tools for Post-conflict States, Amnesties, 2009](#), p6

²⁷⁵ [UN OHCHR, Rule-of-law Tools for Post-conflict States, Amnesties, 2009](#), p7

they know about crimes covered by the amnesty, on an individual basis.²⁷⁶

Disguised amnesty²⁷⁷

5.3 The UN OHCHR highlights 'disguised amnesties'; situations where laws, decrees or regulations, while not officially enacting an amnesty, and 'while not explicitly ruling out criminal prosecution or civil remedies ... may have the same effect as an explicit amnesty law.'²⁷⁸

5.4 A statute of limitation is a piece of legislation which prevents legal proceedings being initiated after a set period of time following the event itself, or it coming to light. A statute of limitation can amount to a disguised amnesty if it ultimately prevents alleged human rights violations and abuses from being addressed.

Conditional amnesty

5.5 The UN OHCHR highlights that amnesties can be conditional; requiring the beneficiary to contribute in some way towards peace and reconciliation, and permitting the amnesty to be forfeited if the conditions are not met.²⁷⁹ For example a conditional amnesty can 'exempt an individual from prosecution if he or she applies for amnesty and satisfies several conditions, such as full disclosure of the facts about the violations committed.'²⁸⁰

Human rights and amnesties

5.6 The UN Secretary-General has stated that:

'Disarmament, demobilization and reintegration processes are one of the keys to a transition out of conflict and back to normalcy ... Carefully crafted amnesties can help in the return and reintegration of both groups and should be encouraged, although ... these can never be permitted to excuse genocide, war crimes, crimes against humanity or gross violations of human rights.'²⁸¹

²⁷⁶ [UN OHCHR, Rule-of-law Tools for Post-conflict States, Amnesties, 2009](#), p8

²⁷⁷ Distinctions can be drawn between a *de facto* amnesty and a *de jure* amnesty. An amnesty in name and practice meets the definition of a *de jure* amnesty. A disguised amnesty which is not called amnesties, but has the effect of an amnesty in practice, meets the definition of a *de facto* amnesty. See [UN OHCHR, Rule-of-law Tools for Post-conflict States, Amnesties, 2009](#)

²⁷⁸ [UN OHCHR, Rule-of-law Tools for Post-conflict States, Amnesties, 2009](#), p8

²⁷⁹ [UN OHCHR, Rule-of-law Tools for Post-conflict States, Amnesties, 2009](#), p7

²⁸⁰ [UN OHCHR, Rule-of-law Tools for Post-conflict States, Amnesties, 2009](#), p43

²⁸¹ [UN SC, The rule of law and transitional justice in conflict and post-conflict societies, Report of the Secretary-General Security Council, UN Doc. S/2004/616 \(2004\)](#) para 32

5.7 The UN OHCHR echoes this reasoning noting that '[i]nternational law and United Nations policy are not opposed to amnesties per se, but set limits on their permissible scope.'²⁸² The UN Secretary-General has stated that UN policy is 'to reject any endorsement of amnesty for genocide, crimes against humanity, or gross violations of human rights'.²⁸³

5.8 Adjectives including serious, gross, grave, systemic, and severe are used, sometimes interchangeably and without uniformity, to describe the gravity of human rights violations and abuses, and violations of other international laws. The UN OHCHR has noted that:

'gross violations of human rights have been widely recognized to include extrajudicial, summary or arbitrary executions; torture and similar cruel, inhuman or degrading treatment; slavery; and enforced disappearance, including gender-specific instances of these offences. Although the phrase "gross violations of human rights" is used widely in human rights law, it has not been formally defined.'²⁸⁴

5.9 The UN Special Rapporteur, Theo van Boven, produced a study which highlights that:

'No agreed definition exists of the term "gross violations of human rights". It appears that the word "gross" qualifies the term "violations" and indicates the serious character of the violations but that the word "gross" is also related to the type of human right that is being violated.'²⁸⁵

5.10 The UN Special Rapporteur, Theo van Boven, further noted that:

'while under international law the violation of any human right gives rise to a right to reparation for the victim, particular attention is paid to gross violations of human rights and fundamental freedoms which include at least the following: genocide; slavery and slavery-like practices; summary or arbitrary executions; torture and cruel, inhuman or degrading treatment or punishment; enforced disappearance; arbitrary and prolonged detention; deportation or forcible transfer of population; and systematic discrimination, in particular based on race or gender'²⁸⁶

²⁸² [UN OHCHR, Rule-of-law Tools for Post-conflict States, Amnesties, 2009](#), p44

²⁸³ [UN SC, The rule of law and transitional justice in conflict and post-conflict societies, Report of the Secretary-General, UN Doc. S/2011/634 \(2011\)](#), para 12

²⁸⁴ [UN OHCHR, Rule-of-law Tools for Post-conflict States, Amnesties \(2009\)](#), p21

²⁸⁵ [UN Commission on Human Rights, Study concerning the right to restitution, compensation and rehabilitation for victims of gross violations of human rights and fundamental freedoms, Final report submitted by Mr. Theo van Boven, Special Rapporteur, UN Doc. E/CN.4/Sub.2/1993/8 \(1993\)](#), para 8

²⁸⁶ [UN Commission on Human Rights, Study concerning the right to restitution, compensation and rehabilitation for victims of gross violations of human rights and](#)

5.11 The CoE Guidelines for Eradicating impunity for serious human rights violations states that:

'Serious human rights violations may include, for example:

- extra-judicial killings;
- negligence leading to serious risk to life or health;
- torture or inhuman or degrading treatment by security forces, prison officers or other public officials;
- enforced disappearances;
- kidnapping;
- slavery, forced labour or human trafficking;
- rape or sexual abuse;
- serious physical assault, including in the context of domestic violence;
- the intentional destruction of homes or property.²⁸⁷

5.12 The ECtHR has used the term 'serious' in relation to individual violations of the right to life, and the prohibition on torture or other cruel, inhuman or degrading treatment or punishment, the ECHR, Articles 2 and 3, originating from both the substantive and procedural limbs of these rights.²⁸⁸ The ECtHR has also found serious violations of further rights, including the right to a private and family life, the ECHR, Article 8.²⁸⁹

5.13 The ECtHR has not ruled directly on amnesties,²⁹⁰ but recently highlighted:

[fundamental freedoms, Final report submitted by Mr. Theo van Boven, Special Rapporteur, UN Doc. E/CN.4/Sub.2/1993/8 \(1993\), para 13](#)

²⁸⁷ [CoE, Eradicating impunity for serious human rights violations, Guidelines and reference texts, H/Inf\(2011\)7, p23; also see Vienna Declaration and Programme of Action, Adopted by the World Conference on Human Rights in Vienna on 25 June 1993, para 30; also see UN OHCHR, The Corporate Responsibility to Respect Human Rights, An Interpretive Guide HR/PUB/12/02 \(2012\), p6](#)

²⁸⁸ ECtHR, [Velikova v. Bulgaria, Application No. 41488/98, 4 October 2000, para 82](#); ECtHR, [Kuzmenko v. Russia, Application No. 18541/04, 20 June 2011, para 58](#); ECtHR, [El-Masri v. The Former Yugoslav Republic of Macedonia, Application No. 39690/09, 13 December 2012, para 269](#); ECtHR, [Eremiášová and Pechová v. The Czech Republic, Application No. 23944/04, 16 May 2012, para 132 and 168](#); ECtHR, [Ghimp and Others v. The Republic of Moldova, Application No. 32520/09, 3 January 2013, para 68](#); ECtHR, [Timus and Tarus v. The Republic of Moldova, Application No. 70077/11, 15 January 2014, para 68](#); ECtHR, [Husayn \(Abu Zubaydah\) v. Poland, Application No. 7511/13, 16 February 2015, para 566](#); ECtHR, [Al Nashiri v. Poland, Application No. 28761/11, 16 February 2015, para 592-595](#)

²⁸⁹ ECtHR, [Moldovan and Others v. Romania \(No.2\), Applications No.s 41138/98 and 64320/01, 30 November 2005, para 109](#)

²⁹⁰ In 2012 the ECtHR stated that 'even in such fundamental areas of the protection of human rights as the right to life, the State is justified in enacting, in the context of its criminal policy, any amnesty laws it might consider necessary, with the proviso,

'[A] growing tendency in international law is to see such amnesties [for acts which amounted to grave breaches of fundamental human rights] as unacceptable because they are incompatible with the unanimously recognised obligation of States to prosecute and punish grave breaches of fundamental human rights.'²⁹¹

5.14 An NHRI conducting work in a post-conflict society should recognise that an amnesty (either pre-trial or post-conviction) to excuse categories of gross human rights violations and abuses (including the right to life and the prohibition on torture or other cruel, inhuman or degrading treatment or punishment) is incompatible with human rights law.

5.15 An NHRI conducting work in a post-conflict society should recognise that a conditional amnesty to excuse an individual on a case-by-case basis for non-gross human rights violations and abuses is compatible with human rights law provided an effective investigation is conducted into allegations of human rights violations and abuses, and the conditional amnesty positively contributes toward the fulfilment of victims' rights.

Mitigating measures that do not amount to amnesty

Admissibility of evidence

5.16 Evidence can be categorised as admissible or inadmissible. Only admissible evidence can be used in criminal, civil, or administrative proceedings. However, should a piece of evidence gathered through a process utilising inadmissibility powers be gathered separately through another independent process which is not covered by inadmissibility measures, then this evidence can be used, regardless of whether it is the same evidence as that gathered through the process guaranteeing inadmissibility. Limiting the use of evidence in criminal, or civil, proceedings may create impunity as it may prevent a trial from taking place.

however, that a balance is maintained between the legitimate interests of the State and the interests of individual members of the public.' ECtHR, [Tarbuk v. Croatia, Application No. 31360/10, 29 April 2013](#), para 50. However this can be contrasted against the comment in ECtHR, [Association "21 December 1989" and Others v. Romania, Application No. 33810/07, 24 May 2011](#), para 106. On ECHR, Article 3, the ECtHR has similarly not ruled directly on the legality of amnesties, but in 2004 stated that 'the granting of an amnesty or pardon should not be permissible.' ECtHR, [Abdulsamet Yaman v. Turkey, Application No. 32446/96, 2 February 2005](#) para 55, and stated in 2009 that 'the [ECtHR] considers that an amnesty is generally incompatible with the duty incumbent on the States to investigate [violations or abuses or the ECHR, Article 3]' ECtHR, [Ould Dah v. France, Application No. 13113/03, 17 March 2009](#) (French)

²⁹¹ ECtHR, [Marquš v. Croatia, Application No. 4455/10, 27 May 2014](#), para 139, also see para 130

5.17 A 'use immunity' (otherwise known as a 'testimonial immunity') is a common form the admissibility of evidence can take to provide protection for the right against self-incrimination, the ICCPR, Article 14(3)(g).²⁹² A 'use immunity' provides that information provided by a witness 'cannot be used as evidence against them in a later criminal proceeding.'²⁹³

Official immunities and privileges

5.18 Other forms of pre-trial measures include official immunities, including forms of diplomatic immunity and head of state immunity. The UN OHCHR has noted that these 'immunities shield officials from the exercise of a foreign State's jurisdiction but should not immunize them from accountability for human rights atrocities.'²⁹⁴ The International Court of Justice (ICJ) recognises that '[j]urisdictional immunity may well bar prosecution for a certain period or for certain offences; it cannot exonerate the person to whom it applies from all criminal responsibility.'²⁹⁵

5.19 Head of state immunity has developed largely through case law, with the ICJ stating in 2008 that '[a] Head of State enjoys in particular "full immunity from criminal jurisdiction and inviolability" which protects him or her "against any act of authority of another State which would hinder him or her in the performance of his or her duties"'.²⁹⁶ Certain states provide, explicitly or inexplicitly, for head of state immunity from domestic legal actions.

5.20 Individuals other than the head of state are provided with certain official immunities and privileges. The Vienna Convention on Diplomatic Relations 1961, Article 31, states that:

1. A diplomatic agent shall enjoy immunity from the criminal jurisdiction of the receiving State. He shall also enjoy immunity from its civil and administrative jurisdiction, except in the case of:

²⁹² [ICCPR, Article 14\(3\)\(g\)](#), and see the [ECHR, Article 6](#), read in conjunction with ECtHR, [Funke v. France, Application No. 10828/84, 25 February 1993](#), para 44; [International Criminal Court, Rules of Procedure and Evidence](#), Rule 70

²⁹³ [UN OHCHR, Rule-of-law Tools for Post-conflict States, Amnesties, 2009](#), p34

²⁹⁴ [UN OHCHR, Rule-of-law Tools for Post-conflict States, Amnesties, 2009](#), p5-6

²⁹⁵ [Democratic Republic of Congo v. Belgium, Judgment of 14 February 2002, ICJ Reports 2002](#), para 60; Further see [Benkharbouche & Janah v. Embassy of the Republic of Sudan & Others \[2015\] EWCA Civ 33](#) where the Court of Appeal held that broad immunity measures relating to employment contained within the State Immunity Act 1978 were 'not required by international law' and contravened ECHR, Article 6 and Article 14, as well as the EU Charter, Article 47. Paras 53, 66, and 85

²⁹⁶ [Case Concerning Certain Questions of Mutual Assistance in Criminal Matters \(Djibouti v. France\) \(2008 ICJ Reports 177\)](#)

- (a) A real action relating to private immovable property situated in the territory of the receiving State, unless he holds it on behalf of the sending State for the purposes of the mission;
 - (b) An action relating to succession in which the diplomatic agent is involved as executor, administrator, heir or legatee as a private person and not on behalf of the sending State;
 - (c) An action relating to any professional or commercial activity exercised by the diplomatic agent in the receiving State outside his official functions.
2. A diplomatic agent is not obliged to give evidence as a witness.
 3. No measures of execution may be taken in respect of a diplomatic agent except in the cases coming under subparagraphs (a), (b) and (c) of paragraph 1 of this article, and provided that the measures concerned can be taken without infringing the inviolability of his person or of his residence.
 4. The immunity of a diplomatic agent from the jurisdiction of the receiving State does not exempt him from the jurisdiction of the sending State.²⁹⁷

5.21 The Vienna Convention on Consular Relations 1963, Article 43, provides that:

1. Consular officers and consular employees shall not be amenable to the jurisdiction of the judicial or administrative authorities of the receiving State in respect of acts performed in the exercise of consular functions.
2. The provisions of paragraph 1 of this article shall not, however, apply in respect of a civil action either:
 - (a) arising out of a contract concluded by a consular officer or a consular employee in which he did not contract expressly or impliedly as an agent of the sending State; or
 - (b) by a third party for damage arising from an accident in the receiving State caused by a vehicle, vessel or aircraft.²⁹⁸

5.22 Official immunities and privileges extend beyond states and state representatives to specific international bodies and their representatives. The Convention on the Privileges and Immunities of the United Nations 1946, provides for juridical personality of the UN,²⁹⁹ that 'its property and assets wherever located and by whomsoever held, shall enjoy immunity from every form of legal process',³⁰⁰ and that its representatives shall hold '[i]mmunity from personal arrest or detention and from seizure of their personal baggage, and, in respect of words spoken or written and all acts done by them in their capacity as representatives, immunity from

²⁹⁷ [Vienna Convention on Diplomatic Relation 1961](#)

²⁹⁸ [Vienna Convention on Consular Relations 1963](#), see Chapter III. Measures include the liability to give evidence, Article 44.

²⁹⁹ [The Convention on the Privileges and Immunities of the United Nations 1946](#), Article I

³⁰⁰ [The Convention on the Privileges and Immunities of the United Nations 1946](#), Article

legal process of every kind'.³⁰¹ The Convention on the Privileges and Immunities of the Specialized Agencies 1947, Article I, established similar privileges and immunities for:

- (a) The International Labour Organization;
- (b) The Food and Agriculture Organization of the United Nations;
- (c) The United Nations Educational, Scientific and Cultural Organization;
- (d) The International Civil Aviation Organization;
- (e) The International Monetary Fund;
- (f) The International Bank for Reconstruction and Development;
- (g) The World Health Organization;
- (h) The Universal Postal Union;
- (i) The International Telecommunication Union; and
- (j) Any other agency in relationship with the United Nations in accordance with Articles 57 and 63 of the Charter.³⁰²

5.23 Further official immunities and privileges have been developed as new bodies have emerged, including the International Criminal Court,³⁰³ the Council of Europe,³⁰⁴ and the European Union.³⁰⁵

5.24 Parliamentary privilege, or Parliamentary immunity, is the concept that proceedings in a Parliament, or the actions of its members, are exempt from certain legal protections to allow for full and open debate in Parliament. To facilitate this defamation laws may not apply to Parliamentary proceedings. Further immunities and privileges from specific legal actions exist for Parliamentarians in certain jurisdictions.

Pre-trial pardon

5.25 A pardon, in theory, can be exercised both pre-trial and post-conviction,³⁰⁶ to limit liability for an illegal activity, and the consequences for engaging in illegal activity.

5.26 An NHRI conducting work in a post-conflict society should recognise that forms of mitigating measures including the

³⁰¹ [The Convention on the Privileges and Immunities of the United Nations 1946](#), Article IV

³⁰² [Convention on the Privileges and Immunities of the Specialized Agencies 1947](#)

³⁰³ [ICC, Agreement on the Privileges and Immunities of the International Criminal Court, Adopted by the Assembly of States Parties, First session New York, 3-10 September 2002, Official Records ICC-ASP/1/3 \(2002\)](#)

³⁰⁴ [General Agreement on Privileges and Immunities of the Council of Europe, Paris, 2.IX.1949](#)

³⁰⁵ [Lisbon Treaty, Protocol on the Privileges and Immunities of the European Union](#)

³⁰⁶ In the USA a presidential pardon is a post-conviction measure, and does not expunge or erase a conviction, see [USA, Department of Justice, Pardon Information and Instructions](#). However a Presidential Proclamation can be applied pre-trial to provide a pardon, see, for example [Proclamation 4311 - Granting Pardon to Richard Nixon, September 8, 1974](#)

admissibility of evidence, official immunity, and pre-trial pardons do not amount to an amnesty. These may be compatible with human rights law as long as they do not interfere with the obligation to conduct an effective investigation into allegations of gross violations or abuses of human rights.

Further mitigating measures that do not amount to an amnesty

Reduced sentence measures

5.27 Reduced sentence measures encompass the reduction (or mitigation) of sentences at any stage following a conviction. These can include the use of non-custodial measures in lieu of custodial sentences, the use of post-sentencing dispositions, and the reduction of a sentence without further sanctions or measures.

5.28 The United Nations Standard Minimum Rules for Non-custodial Measures (the Tokyo Rules) state on non-custodial measures that:

'The judicial authority, having at its disposal a range of non-custodial measures, should take into consideration in making its decision the rehabilitative needs of the offender, the protection of society and the interests of the victim, who should be consulted whenever appropriate.'³⁰⁷

5.29 The Tokyo Rules note a range of non-custodial measures may include:

- (a) 'Verbal sanctions, such as admonition, reprimand and warning;
- (b) Conditional discharge;
- (c) Status penalties;
- (d) Economic sanctions and monetary penalties, such as fines and day-fines;
- (e) Confiscation or an expropriation order;
- (f) Restitution to the victim or a compensation order;
- (g) Suspended or deferred sentence;
- (h) Probation and judicial supervision;
- (i) A community service order;
- (j) Referral to an attendance centre;
- (k) House arrest;
- (l) Any other mode of non-institutional treatment;
- (m) Some combination of the measures listed above.'³⁰⁸

³⁰⁷ [UN GA, United Nations Standards Minimum Rules for Non-custodial Measures \(The Tokyo Rules\), UN Doc. A/RES/45/110 \(1990\), Annex](#), para 8.1

³⁰⁸ [UN GA, United Nations Standards Minimum Rules for Non-custodial Measures \(The Tokyo Rules\), UN Doc. A/RES/45/110 \(1990\), Annex](#), para 8.2

5.30 The Tokyo Rules highlight that post-sentencing dispositions may include:

- (a) 'Furlough and halfway houses;
- (b) Work or education release;
- (c) Various forms of parole;
- (d) Remission;
- (e) Pardon.³⁰⁹

Post-conviction pardon

5.31 A post-conviction pardon is 'an official act that exempts a convicted criminal or criminals from serving his, her or their sentence(s), in whole or in part, without expunging the underlying conviction.'³¹⁰

Spent convictions

5.32 Spent convictions are convictions which have been served, but are later expunged, or hidden from public view, on an individual's criminal record.

5.33 An NHRI conducting work in a post-conflict society should recognise that further forms of mitigating measures including reduced sentence measures, post-conviction pardons, and spent convictions do not amount to an amnesty. These can be compatible with human rights law.

³⁰⁹ [UN GA, United Nations Standards Minimum Rules for Non-custodial Measures \(The Tokyo Rules\), UN Doc. A/RES/45/110 \(1990\), Annex](#), para 9.2

³¹⁰ [UN OHCHR, Rule-of-law Tools for Post-conflict States, Amnesties, 2009](#), p5; An CESCR study on amnesty noted that the concept of amnesty 'is an outgrowth of the right of pardon', [UN Commission On Human Rights, The Administration of Justice and the Human Rights of Detainees, Question of the Human Rights of Persons subjected to any form of Detention or Imprisonment, Study on amnesty laws and their role in the safeguard and promotion of human rights, Preliminary report by Mr. Louis Joinet, Special Rapporteur, UN Doc. E/CN.4/Sub.2/1985/16 \(1985\)](#) para 9

Chapter 6

Truth Commissions or Similarly Mandated Institutions

Summary

DDR and transitional justice standards acknowledge that approaches to help a post-conflict society address their past and achieve a long-lasting and sustainable peace can incorporate a truth-seeking mechanism, often referred to as a 'truth commission'. A truth commission or similarly mandated institution should be tailored to a society's specific contexts and needs to be 'nationally owned'. (6.1-6.2)

An NHRI conducting work in a post-conflict society:

- May wish to recognise that a truth commission or similarly mandated institution can facilitate the fulfilment of the victims' right to truth through a truth-seeking investigation to establish what happened and why, and right to a remedy including the public disclosure of the truth; (6.9)
- May wish to recognise that information gathered in a truth-seeking investigation may be of interest to criminal justice investigations. Whether these investigatory processes are separated entirely, or integrated (and if so, to what degree) should be clearly established at the outset in order to protect the right against self-incrimination, the ICCPR, Article 14(3)(g); (6.10)
- May wish to recognise that engagement with a truth commission or similarly mandated institution can function as a reintegration measure for ex-combatants (both non-state and state actors); (6.14)
- May wish to recognise that mitigating measures, and making progress to later reintegration measures dependent on active and positive engagement with a truth commission or similarly mandated institution, can facilitate the participation of ex-combatants (both non-state and state actors) with such initiatives. (6.21)

6.1 DDR and transitional justice standards acknowledge that approaches to help post-conflict society address their past and achieve a long-lasting and sustainable peace can incorporate a truth-seeking mechanism, often referred to as a 'truth commission'.³¹¹ Truth

³¹¹ [Integrated Disarmament Demobilization and Reintegration Standards \(2009\) Section 6.20](#), p8; [UN, Guidance Note of the Secretary-General, 'United Nations Approach to Transitional Justice' \(2010\)](#) p8

commissions or similarly mandated institutions have been developed in a multitude of forms with numerous examples from Africa, the Americas, Asia, Europe, and Oceania.³¹² Although truth commissions and similarly mandated institutions serve their society's specific needs, good practice and overarching lessons have been developed and captured by the UN.³¹³

6.2 DDR and transitional justice approaches recognise that a specific and tailored approach is necessary to develop 'nationally owned' bodies which reflect the nature and needs of each post-conflict society.³¹⁴ This requires an approach which utilises public participation and national consultations.³¹⁵ The UN OHCHR has noted that:

'It should be expected that every truth commission will be unique, responding to the national context and special opportunities present. While many technical and operational best practices from other commissions' experiences may usefully be incorporated, no one set truth commission model should be imported from elsewhere.'³¹⁶

6.3 When considering the applicability of a truth commission or similarly mandated institution to a post-conflict society, the UN OHCHR has asked:

'When is a country ripe for a truth commission? Three critical elements should be present. First, there must be the political will to allow and, hopefully, encourage or actively support a serious inquiry into past abuses. Ideally, the Government will show its active support for the process by providing funding, open access to State archives or clear direction to civil servants to cooperate. Second, the violent conflict, war or repressive practices must have come to an end. It is possible that the de facto security situation will not yet have fully improved, and truth commissions often work in a context where victims and witnesses are afraid to speak publicly or be seen to cooperate with the commission.

³¹² See [UN OHCHR, Rule-of-law Tools for Post-conflict States, Truth commissions, 2006](#). Also see [United States Institute of Peace, Truth Commission Digital Collection](#)

³¹³ [UN OHCHR, Rule-of-law Tools for Post-conflict States, Truth commissions, 2006](#); [UN SC, The rule of law and transitional justice in conflict and post-conflict societies, Report of the Secretary-General Security Council, UN Doc. S/2004/616 \(2004\)](#); [UN, Guidance Note of the Secretary-General, 'United Nations Approach to Transitional Justice' \(2010\)](#)

³¹⁴ [Integrated Disarmament Demobilization and Reintegration Standards \(2006\) Section 2.10](#), p12, [UN GA, Disarmament, demobilization and reintegration, Report of the Secretary-General, UN Doc. A/60/705 \(2006\)](#) p9, [UN GA, Disarmament, demobilization and reintegration, Report of the Secretary-General, UN Doc. A/60/705 \(2006\)](#) p10, [UN SC, The rule of law and transitional justice in conflict and post-conflict societies, Report of the Secretary-General Security Council, UN Doc. S/2004/616 \(2004\)](#) para 16

³¹⁵ [UN OHCHR, Rule-of-law Tools for Post-Conflict States, National Consultations on Transitional Justice, 2009](#), p10; also see [UN, Guidance Note of the Secretary-General, 'United Nations Approach to Transitional Justice' \(2010\)](#) p2, [UN SC, The rule of law and transitional justice in conflict and post-conflict societies, Report of the Secretary-General Security Council, UN Doc. S/2004/616 \(2004\)](#) para 16, and [Integrated Disarmament Demobilization and Reintegration Standards \(2006\) Section 2.10](#), p12

³¹⁶ [UN OHCHR, Rule-of-law Tools for Post-conflict States, Truth commissions, 2006](#), p5

Indeed, the commission itself may receive threats while undertaking its work ... Third, there must be interest on the part of victims and witnesses to have such an investigative process undertaken and to cooperate with it.³¹⁷

6.4 A truth commission or similarly mandated institution is just one part of a DDR and transitional justice approach to fulfil human and victims' rights in a post-conflict society. The UN OHCHR has noted that:

'When considering and designing a truth commission ... care should be taken not to raise undue and unfair expectations among the victims that they, or the country as a whole, will or should feel quickly "reconciled" as a result of knowing the truth about unspeakable past atrocities — or, in some cases, receiving official acknowledgement of a truth that they already knew.'³¹⁸

6.5 The UN OHCHR has highlighted the benefits of a truth commission or similarly mandated institution, stating that:

'While truth commissions do not replace the need for prosecutions, they do offer some form of accounting for the past, and have thus been of particular interest in situations where prosecutions for massive crimes are impossible or unlikely — owing to either a lack of capacity of the judicial system or a de facto or de jure amnesty ... the work of a truth commission may also strengthen any prosecutions that do take place in the future.'³¹⁹

6.6 Developing a truth commission or similarly mandated institution does not in any way negate the procedural obligation to investigate alleged violations and abuses of the ICCPR, Articles 6 and 7, as detailed in chapter four.

6.7 A truth commission or similarly mandated institution in a post-conflict society can itself contain an investigatory function which can facilitate the fulfilment of the victims' right to truth through a truth-seeking transitional justice investigation.³²⁰ Developing a truth-seeking investigatory function can complement a criminal justice investigatory function to help a post-conflict society address their past and achieve a long-lasting and sustainable peace The UN OHCHR has noted that:

'the information collected by a truth commission may be useful to those investigating cases for prosecution, be it while the commission is still operating, immediately after its conclusion or many years later.

³¹⁷ [UN OHCHR, Rule-of-law Tools for Post-conflict States, Truth commissions, 2006](#), p2-3

³¹⁸ [UN OHCHR, Rule-of-law Tools for Post-conflict States, Truth commissions, 2006](#), p2

³¹⁹ [UN OHCHR, Rule-of-law Tools for Post-conflict States, Truth commissions, 2006](#), p2-3

³²⁰ [UN, Guidance Note of the Secretary-General, 'United Nations Approach to Transitional Justice' \(2010\)](#) p8

Generally, a truth commission should be viewed as complementary to judicial action. Even where prosecutions are not immediately expected, it is important to keep that option open, and to act accordingly. Possibilities for prosecution may open up in time, and the commission's report and its other records might then be important as background materials and to provide leads to witnesses. Even if the commission's report does not point to specific perpetrators, the commission's information would reveal greater patterns of violations and can show institutional involvement and responsibility, as well as command responsibility of those at the top.³²¹

6.8 Some of the information gathered by a transitional justice investigation and information sought during a criminal justice investigation is likely to be the same. Consequently there needs to be a clear relationship between the transitional and criminal justice systems detailing access to information and relationships between investigatory processes and bodies. The UN OHCHR has noted that '[s]ystems of communication should be set up from the start between the office of the prosecutor and the truth commission'.³²²

6.9 An NHRI conducting work in a post-conflict society may wish to recognise that a truth commission or similarly mandated institution can facilitate the fulfilment of the victims' right to truth through a truth-seeking investigation to establish what happened and why,³²³ and right to a remedy including the public disclosure of the truth.

6.10 An NHRI conducting work in a post-conflict society may wish to recognise that information gathered in a truth-seeking investigation may be of interest to criminal justice investigations. Whether these investigatory processes are separated entirely, or integrated (and if so, to what degree) should be clearly established at the outset in order to protect the right against self-incrimination, the ICCPR, Article 14(3)(g).

6.11 A truth commission or similarly mandated institution, as well as forming part of a wider transitional justice approach, and facilitating the fulfilment of the victims' right to truth, can also form an important stage in the reintegration of ex-combatants (both non-state and state actors). The UN Secretary-General and UN High Commissioner for Human Rights have noted that:

³²¹ [UN OHCHR, Rule-of-law Tools for Post-conflict States, Truth commissions, 2006](#), p27

³²² [UN OHCHR, Rule-of-law Tools for Post-conflict States, Truth commissions, 2006](#), p27

³²³ [UN, Guidance Note of the Secretary-General, 'United Nations Approach to Transitional Justice' \(2010\)](#) p8

'Truth commissions ... can facilitate the reintegration of ex-combatants into conflict-affected communities by affording them the opportunity to reveal their experiences of the conflict.'³²⁴

6.12 The IDDRS notes the potential for truth commissions or similarly mandated institutions to be a measure to facilitate reintegration:

'Truth commissions seek to provide societies with an even-handed account of the causes and consequences of armed conflict. The reports created by truth commissions may provide recommendations for reform and reparation as well as, in a few cases, recommendations for judicial proceedings. Truth commissions may demonstrate to victims and victimized communities a willingness to acknowledge and address past injustices.'³²⁵

6.13 The UN Secretary-General has highlighted the links between a truth commission or similarly mandated institution, criminal justice, and reintegration, stating that:

'creating links between locally based justice processes and truth commissions on the one hand, and community-based reintegration strategies on the other, may foster acceptance of returning ex-combatants among reintegration communities.'³²⁶

6.14 An NHRI conducting work in a post-conflict society may wish to recognise that engagement with a truth commission or similarly mandated institution can function as a reintegration measure for ex-combatants (both non-state and state actors).

6.15 The active engagement of ex-combatants (both non-state and state actors) is important to the successful operation of a truth commission or similarly mandated institution. It is these actors, amongst others, who are likely to have knowledge about what happened and why during a conflict. Measures available to encourage the participation of ex-combatants (both non-state and state actors) can include mitigating measures and making access to later reintegration measures dependent on active and positive engagement with a truth commission or similarly mandated institution.³²⁷

³²⁴ [UN, Annual Report of the United Nations High Commissioner for Human Rights, and Reports of the Office of the High Commissioner and the Secretary-General, Analytical study on human rights and transitional justice, UN Doc. A/HRC/12/18 \(2009\)](#) para 67

³²⁵ [Integrated Disarmament Demobilization and Reintegration Standards \(2009\) Section 6.20](#), p8

³²⁶ [UN GA, Disarmament, demobilization and reintegration, Report of the Secretary-General, UN Doc. A/65/741 \(2011\)](#) para 48

³²⁷ [UN, Annual Report of the United Nations High Commissioner for Human Rights, and Reports of the Office of the High Commissioner and the Secretary-General, Analytical study on human rights and transitional justice, UN Doc. A/HRC/12/18 \(2009\)](#) para 67

6.16 Many truth commissions or similarly mandated institutions have been empowered to provide mitigating measures,³²⁸ including measures on the admissibility of evidence, official immunity, and pre-trial pardons. These may be compatible with human rights law as long as they do not interfere with the obligation to conduct an effective investigation. Further forms of mitigating measures including reduced sentence measures, post-conviction pardons, and spent convictions (these can also be compatible with human rights law). However, there are limits to how far mitigating measures can extend.

6.17 Although human rights law does not oblige states to impose specific punishments or sanctions for human rights violations,³²⁹ the UN HRC has stated that 'purely disciplinary and administrative remedies cannot be deemed to constitute adequate and effective remedies within the meaning of [ICCPR] article 2, paragraph 3, of the Covenant, in the event of particularly serious violations of human rights, notably in the event of an alleged violation of the right to life.'³³⁰ Violations and abuses of certain human rights, including the right to life and the prohibition on torture or other cruel, inhuman or degrading treatment or punishment, the ICCPR, Articles 6 and 7, may always result in criminal sanctions.³³¹

³²⁸ See [United States Institute of Peace, Truth Commission Digital Collection](#). Although a number of these offered amnesties, see the previous chapter for details on amnesties and their compatibility with human rights law.

³²⁹ Certain measures are required, see Principle 1 of [Principles Relative to the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions, E.S.C. res. 1989/65, annex, 1989 UN ESCOR Supp. \(No. 1\) at 52, UN Doc. E/1989/89 \(1989\)](#) which states 'Governments shall prohibit by law all extra-legal, arbitrary and summary executions and shall ensure that any such executions are recognized as offences under their criminal laws, and are punishable by appropriate penalties which take into account the seriousness of such offences. Exceptional circumstances including a state of war or threat of war, internal political instability or any other public emergency may not be invoked as a justification of such executions. Such executions shall not be carried out under any circumstances including, but not limited to, situations of internal armed conflict, excessive or illegal use of force by a public official or other person acting in an official capacity or by a person acting at the instigation, or with the consent or acquiescence of such person, and situations in which deaths occur in custody. This prohibition shall prevail over decrees issued by governmental authority.' Also see The [CoE Guidelines of the Committee of Ministers of the Council of Europe on eradicating impunity for serious human rights violations, Guidelines adopted by the Committee of Ministers on 30 March 2011 at the 1110th meeting of the Ministers' Deputies, H/Inf \(2011\) 7, Section X](#)

³³⁰ [UN HRC, *Bautista de Arellana v. Colombia*, Communication No. 563/1993, UN Doc. CCPR/C/55/D/563/1993 \(1995\)](#) para 8.2

³³¹ Certain measures are required, see Principle 1 of [Principles Relative to the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions, E.S.C. res. 1989/65, annex, 1989 UN ESCOR Supp. \(No. 1\) at 52, UN Doc. E/1989/89 \(1989\)](#) which states 'Governments shall prohibit by law all extra-legal, arbitrary and summary executions and shall ensure that any such executions are recognized as offences under their criminal laws, and are punishable by appropriate penalties which take into account the seriousness of such offences. Exceptional circumstances including a state of war or threat of war, internal political instability or any other public emergency may not be invoked as a justification of such executions. Such executions shall not be carried out

6.18 It is possible to make progress to later stages of reintegration dependent on active and positive engagement with a truth commission or similarly mandated institution. Integrating DDR and transitional justice to support a truth commission or similarly mandated institution is supported by the international standards. The UN Secretary-General has noted that '[i]t is vital that [DDR] programmes are coordinated with the wider peace, recovery and development frameworks'.³³²

6.19 The EU Concept recognises:

'that DDR needs to be part of the political and social developments and will be most successful when properly linked to an overall peace process, democratic governance issues, transitional justice and long-term development criteria.'³³³

6.20 The SIDDR(TP) acknowledges that for effective domestic ownership it is possible to adapt 'the terminology and sequencing and even design of the DDR process ... to each particular situation.'³³⁴ The IDDRS provides that this flexibility extends to the point where, '[d]epending on circumstances, not all of its aspects [of the DDR process] may be employed in a particular situation'.³³⁵

6.21 An NHRI conducting work in a post-conflict society may wish to recognise that mitigating measures, and making progress to later reintegration measures dependent on active and positive engagement with a truth commission or similarly mandated institution, can facilitate the participation of ex-combatants (both non-state and state actors) with such initiatives.

under any circumstances including, but not limited to, situations of internal armed conflict, excessive or illegal use of force by a public official or other person acting in an official capacity or by a person acting at the instigation, or with the consent or acquiescence of such person, and situations in which deaths occur in custody. This prohibition shall prevail over decrees issued by governmental authority.' Also see The [CoE Guidelines of the Committee of Ministers of the Council of Europe on eradicating impunity for serious human rights violations, Guidelines adopted by the Committee of Ministers on 30 March 2011 at the 1110th meeting of the Ministers' Deputies, H/Inf \(2011\) 7](#), Section X; [UN HRC, Bautista de Arellana v. Colombia, Communication No. 563/1993, UN Doc. CCPR/C/55/D/563/1993 \(1995\)](#) para 8.2

³³² [UN GA, Disarmament, demobilization and reintegration, Report of the Secretary-General, UN Doc. A/60/705 \(2006\)](#) para 9(a)

³³³ [EU Concept for support to Disarmament, Demobilisation and Reintegration \(DDR\), Approved by the European Commission on 14 December 2006 and by the Council of the European Union on 11 December 2006](#), p4

³³⁴ [Stockholm Initiative On Disarmament Demobilisation Reintegration, Testing The Principles \(2007\)](#) p9

³³⁵ [Integrated Disarmament Demobilization and Reintegration Standards \(2006\) Section 2.10](#), p4