PRINCIPLE 33

IN

**THE UNITED NATIONS PRINCIPLES TO COMBAT
IMPUNITY: A COMMENTARY**

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Principle 33. Publicizing Reparation Procedures

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Ad hoc procedures enabling victims to exercise their right to reparation should be given the widest possible publicity by private as well as public communication media. Such dissemination should take place both within and outside the country, including through consular services, particularly in countries to which large numbers of victims have been forced into exile.

A. Summary of Findings

Principle 33 highlights the obligation of states to publicize 'ad hoc procedures' set up to distribute reparations. For example, a government might establish an administrative reparation programme following the work of a truth commission, as a non-judicial mechanism to distribute a range of measures, including compensation, restitution, and non-material and symbolic reparations. The 'publicity principle' assures the right to these remedies and places the onus on policymakers to design outreach campaigns to inform victims of these rights and how to access them.² Otherwise, 'a reparation mechanism has little practical value if potentially eligible victims are not aware of the opportunity to make claims or are not given timely information on how to do so in a language they can understand'.³

B. Contextual and Historical Introduction

The publicity principle appeared in early versions of Special Rapporteur Louis Joinet's reports on impunity with very little textual change.⁴ Special expert Diane Orentlicher retained the same text, although renamed as Principle 33, and explained in the commentary that the phrase 'widest possible publicity' should be understood 'to include other appropriate measures for identifying potential beneficiaries of reparations programmes that may, under some circumstances, be more effective than dissemination through public media'.⁵

¹ The author would like to acknowledge the research assistance of Brian Flaherty, Joyell Johnson, Matthew Burns, and Jacob Edmister.

² Outreach, as a technical term, refers to a set of materials and activities that builds *direct* channels of communication with affected communities in order to raise awareness of the justice process. See C Ramírez-Barat, *Guidelines on Designing and Implementing Outreach Programs for Transitional Justice* (Center for Transitional Justice 2011) 7.

³ International Committee on Reparations for Victims of Armed Conflict, *Commentary to Principle 5, Draft Procedural Principles for Reparation Mechanisms* (International Law Association 2014).

⁴ Principle 39, *Question of the impunity of perpetrators of human rights violations (civil and political)*, Revised final report prepared by Mr Joinet pursuant to Sub-Commission decision 1996/119, UN Doc E/CN.4/Sub.2/1997/20/Rev.1 (2 October 1997).

⁵ D Orentlicher, *Report of the independent expert to update the Set of Principles to combat impunity*, UN Doc E/CN.4/2005/102 (18 February 2005) para 60.

C. Theoretical Framework

- 2 In her 2005 report, Special Expert Orentlicher explains that publicity assures effective implementation of reparations programmes, as well as advancing two core aims of reparations programmes: 'providing recognition to victims as citizens who bear equal rights vis-à-vis other citizens and facilitating their trust in State institutions'.⁶
- 3 Principle 33 plays a fundamental role in assuring the protection of the substantive right to a remedy and reparation. When governments develop administrative programmes to distribute reparations, policymakers must ensure that they design proper and adequate outreach campaigns to assure that victims are informed of their right to a remedy and how to access it. This information assures the 'accessibility' of a remedy and is a due process right, since access to information ensures 'equality of arms' and procedural fairness.⁷

D. Practice

- 4 Normative justifications for the publicity principle arises out of human rights law, which recognizes the right to 'impart and receive' information. Interpreting Article 19 of the International Covenant on Civil and Political Rights,⁸ the United Nations Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression indicates that the freedom of information implies that 'public bodies publish and widely disseminate documents of significant public interest'.⁹ The right to information includes certain 'procedural characteristics', such as maximum disclosure and the presumed public nature of meetings and key documents.¹⁰
- 5 The Organization of American States General Assembly 'urge[d] the States to respect and promote respect for everyone's access to public information and to promote the adoption of any necessary legislative or other types of provisions to ensure its recognition and effective application'.¹¹ The Declaration of Principles on Freedom of Expression (2000) in which '[a]ccess to information held by the state' is considered a fundamental right of every individual and 'States have the obligation to guarantee the full exercise of this right'.¹²

⁶ Ibid.

⁷ Due Process of Law Foundation (DPLF), *Disclosing Justice: A Study on Access to Judicial Information in Latin America* (DPLF with the support of Open Society Justice Initiative 2007) <www.dplf.org/en/resources/disclosing-justice-study-access-judicial-information-latin-america> accessed 13 January 2018. See M Freeman, *Truth Commissions and Procedural Fairness* (CUP 2006) 162–68 (writing that publicity and outreach assures 'procedural fairness' and victims' right to participation); Inter-American Commission on Human Rights (IACoHR), *Principal Guidelines for a Comprehensive Reparations Policy*, OEA/SER/L/V/II.131 Doc. 1 (19 February 2008) paras 9–11 (writing that reparation procedures must be respectful of the rights and due process guarantees established by Arts 8 and 25 of the Organization of American States, American Convention on Human Rights (ACHR) (22 November 1969) 1144 UNTS 123).

⁸ International Covenant on Civil and Political Rights (ICCPR) (16 December 1966) 999 UNTS 171.

⁹ Economic and Social Council, *Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, submitted in accordance with Commission resolution 1999/36*, UN Doc E/CN.4/2000/63 (18 January 2000) para 44.

¹⁰ Human Rights Council, *Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression*, UN Doc A/HRC/14/23 (20 April 2010) para 32.

¹¹ Cf Resolution (Res) AG/RES. 2252 (XXXVI-O/06) on Access to public information: strengthening democracy (6 June 2006) second operative paragraph.

¹² Art 4, Declaration of Principles on Freedom of Expression (2000) <www.oas.org/en/iachr/expression/showarticle.asp?artID=26> accessed 24 November 2017.

I. United Nations guidelines and principles

The Office of the United Nations High Commissioner for Human Rights (OHCHR) 6 remarks, '[e]ven a well-designed reparation programme will fail to distribute benefits to every potential beneficiary if it is not accompanied by effective outreach efforts once it is set in place'.¹³

Principle 12(a) of the Basic Principles and Guidelines on the Right to a Remedy and 7 Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law directs states to 'Disseminate, through public and private mechanisms, information about all available remedies for gross violations of international human rights law and serious violations of international humanitarian law'.¹⁴

The United Nations Declaration on Justice for Victims of Crime and Abuse of Power 8 directs that '[v]ictims should be informed of their right in seeking redress through [judicial and administrative] mechanisms'.¹⁵ Other principles elaborated under the aegis of the UN similarly include the publicity principle.¹⁶

The Special Rapporteur on the promotion of truth, justice, reparation and guarantees 9 of non-recurrence has recognized that 'Victim participation in reparation programmes is not possible without effective outreach, information and access'.¹⁷ He recommends that 'Strategies need to be designed in order to overcome cleavages related to differences between urban and rural populations, indigenous and other cultural and ethnic groups, linguistic factors and literacy rates.'

In 2015, the European Union recommended that Transitional Justice Policy include 'ap- 10 propriate outreach and communication activities', especially with affected populations.¹⁸

II. International mass claims processes

Despite the importance of publicizing reparations, it is an often overlooked detail in the 11 design of such programmes. However, there exists growing practice that lends guidance on how the publicity principle works in the field.¹⁹

¹³ OHCHR, *Rule-of-Law Tools for Post-Conflict States: Reparations programmes* (United Nations 2008) 16.

¹⁴ Adopted and proclaimed by General Assembly Res 60/147 of 16 December 2005, UN Doc A/RES/60/147 (21 March 2006).

¹⁵ Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, UN Doc A/RES/40/34 (29 November 1985) paras 4 and 5.

¹⁶ See, eg, the UN Secretary-General's set of operational guidelines for working with victims of conflict-related sexual violence, which calls for supporting '[m]eaningful participation and consultation of victims in the mapping, design, implementation, monitoring and evaluation of reparations'. United Nations General Secretary, *Guidance Note of the Secretary-General: Reparations for conflict-related sexual violence* (June 2014) 10. See also Protocol to Prevent, Suppress and Punish Trafficking in Persons especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (25 December 2003) 2237 UNTS 319; United Nations Convention against Transnational Organized Crime, Art 6 (29 September 2003) 2225 UNTS 209; Nairobi Declaration on Women's and Girls' Right to a Remedy and Reparation: Basic Principles Relating to Women's and Girls' Right to a Remedy and Reparation (March 2007) Principle 2.

¹⁷ Report of the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence, UN Doc A/69/518 (14 October 2014) para 76 <ap.ohchr.org/documents/dpage_e.aspx?m=193> accessed 13 January 2018.

¹⁸ The EU's Policy Framework on support to transitional justice (2015) <ec.europa.eu/archives/docs/top_stories/pdf/the_eus_policy_framework_on_support_to_transitional_justice.pdf> accessed 13 January 2018.

¹⁹ Ramírez-Barat, n 2, 6: 'Reparations programs, finally, have rarely engaged in comprehensive outreach efforts, despite the fact that they need not only to reach as large a number of potential beneficiaries as possible,

- 12 Based on the experience of mass claims processes, the Committee on Reparation for Victims of Armed Conflict of the International Law Association drafted the 'Draft Procedural Principles for Reparation Mechanisms' in 2014, which advise that outreach may vary due to particular circumstances but should address:
- (a) where most of the eligible victims live and whether publicity should be directed to a limited geographical area;
 - (b) whether victims speak various languages;
 - (c) whether victims have a basic educational level; and
 - (d) whether claims arise from recent events or from events that date back a long time.²⁰
- 13 The Commission for Real Property Claims of Displaced Persons and Refugees, established to redress victims of the 1992–95 war in Bosnia and Herzegovina, ensured potential claimants would receive oral and written instructions through the media, via pamphlets and by direct communication from government officials on radio, television, and at community meetings.²¹ Likewise, the United Nations Compensation Commission established in 1991 considered its extensive outreach and publicity as essential to the success of its large-scale victims' compensation programme.²²
- 14 Similarly, a class action settlement agreement for Holocaust victims in the US led to the Claims Resolution Tribunal's including direct mail and worldwide publication through the Internet, the grassroots community, newspapers, and direct mailing.²³

III. International courts, commissions, and committees

- 15 Rule 96 of the International Criminal Court (ICC)'s Rules of Procedure and Evidence requires the Prosecutor to 'take all the necessary measures to give adequate publicity of the reparation proceedings before the Court, to the extent possible, to other victims, interested persons and interested States'.²⁴ The Registrar is obligated to consider the 'specific context, such as languages or dialects spoken, local customs and traditions, literacy rates and access to the media'.²⁵
- 16 In 2012, the ICC declared that 'any reparation proceedings before the Court should be publicized by all necessary means, including by outreach activities with the national

but also to promote a broad message of recognition among the rest of the population (not to mention the mobilization of public resources on behalf of groups of people who are rarely popular). As a consequence, outreach has not been widely systematized.'

²⁰ Declaration of International Law Principles on Reparation for Victims of Armed Conflict, adopted on 20 August 2010 at the ILA Hague Conference, Art 6, Res 2/2010, International Law Association, *Report of the Seventy-Fourth Conference held in The Hague* (15–19 August 2010) (discussing fifteen mass claims commissions). See also AJ Carrillo and JS Palmer, 'Transnational Mass Claims Processes International Law and Practice' (2010) 28(2) *Berkeley Journal of International Law* 343–430.

²¹ HM Holtzmann and E Kristjánsson (eds), *International Mass Claims Processes: Legal and Practical Perspectives* (OUP 2007) 143–44.

²² LA Taylor, 'The United Nations Compensation Commission' in C Ferstman, M Goetz, and A Stephens (eds), *Reparations for Victims of Genocide, War Crimes and Crimes Against Humanity* (Martinus Nijhoff 2009) 197–214, 203–04; HM Holtzmann and E Kristjánsson (eds), n 21, 144–47 (writing that publicity occurs in many forms, including public service announcements, posters, brochures, press releases, newspapers advertisements, radio and television spots, websites, hotlines, and special campaigns targeting particularly disadvantaged victim communities).

²³ Holtzmann and Kristjánsson (eds), n 21, 144–45.

²⁴ ICC Rules of Procedure and Evidence, Rule 96, ICC-PIDS-LT-02-002/13 (2013).

²⁵ See Regulation 103 of ICC, Regulations of the Registry, ICC-BD/03/01/06 (6 March 2006).

authorities, local communities and the affected populations'.²⁶ Transparency requires timely notice of these proceedings and access to awards.²⁷

The Inter-American Court of Human Rights (IACtHR) recognized the right to 'seek, receive and impart information' in its landmark judgment in *Claude Reyes et al v Chile* in 2006.²⁸ Interpreting Article 13 of the ACHR, the Court held that the state has a positive obligation to protect 'the right of all individuals to request access to State-held information'.²⁹

Specific to reparations, the IACtHR has also recognized the importance of publicizing reparations, in *The Street Children* and *White Van* cases brought against Guatemala. The Court ordered the State to publicize these cases in national newspapers, and on radio and television, to ensure that the relatives of victims could participate in the reparation proceedings.³⁰

The IAComHR has issued guidelines for administrative reparation programmes in transitional justice settings, which call upon the state to 'pursue an active strategy of disseminating information and reaching victims', which might include broad information campaigns and administrative decentralization.³¹

In its guidelines on reparation programmes, the IAComHR recognizes that the procedures designed to implement comprehensive reparation programmes must be respectful of the rights and due process guarantees established by Articles 8 and 25 of the ACHR, which include the principle of transparency.³² Ultimately, publicity and outreach assure a type of 'procedural fairness', especially within the larger context of transitional justice processes.³³

Within the United Nations, the Human Rights Committee noted that General Comment no 31 on the nature of the general legal obligation imposed on the parties to the ICCPR states that persons should, pursuant to Article 2 of the Covenant, be in receipt of information regarding their Covenant rights in general.³⁴ The Committee has recognized the general right 'seek' and 'receive' information contained in Article 19(2) included the right of individuals to receive state-held information, subject to the exceptions provided for in the Covenant.³⁵ Moreover, the Committee has recognized that accessing positive rights depends on receiving information.³⁶

²⁶ ICC, *Prosecutor v Thomas Lubanga Dyilo* (Decision establishing the principles and procedures to be applied to reparations) ICC-01/04-01/06 (7 August 2012) para 258.

²⁷ *Ibid*, para 259.

²⁸ *Claude Reyes et al v Chile* (Judgment) (Merits, Reparations and Costs) IACtHR Series C no 151 (19 September 2006) para 76.

²⁹ *Ibid*, para 77.

³⁰ *Paniagua Morales et al v Guatemala (The White Van Case)* (Judgment) (Reparations) IACtHR Series C no 37 (25 May 2001) para 13; *Villagrán Morales et al v Guatemala (The Street Children Case)* (Judgment) IACtHR Series C no 77 (26 May 2001) para 17.

³¹ IAComHR, *Principal Guidelines*, n 7, para 12.

³² *Ibid*, paras 9–11.

³³ See M Freeman, *Truth Commissions and Procedural Fairness* (CUP 2006) 166 (referring to outreach and publicity mandates of truth commissions and how they ensure victims' right to participation and access to reparations).

³⁴ Human Rights Committee, General Comment no 31, Nature of the general legal obligation imposed on States Parties to the Covenant, CCPR/C/21/Rev.1 (26 May 2004), (2004) 11 IHRR 905.

³⁵ *Toktakunov v Kyrgyzstan* App no 1470/2006 (Merits) CCPR/C/101/D/1470/2006 (21 April 2011), (2011) 18 IHRR 1039.

³⁶ UN Committee on Economic, Social and Cultural Rights, General Comment no 19, The right to social security (Art 9) UN Doc E/C.12/GC/19 (4 February 2008), (2008) 15 IHRR 605 (determining that the

- 22 The European Court of Human Rights (ECtHR) has generally recognized the right to receive information through Article 10 of the European Convention on Human Rights,³⁷ but it has been more conservative in its approach to the right to impart information, limiting the 'positive information dissemination obligations' of the state and viewing the role of the state as being merely not to interfere with the dissemination of information.³⁸ However, the ECtHR does recognize procedural obligations to information under other articles of the ECHR that protect fundamental rights.³⁹ It has also held that the lack of information about a violation and the availability of redress may violate the right to remedy as recognized in Article 13 of the ECHR.⁴⁰ The Court has held that 'the remedy required by Article 13 must be "effective" in practice as well as in law, in particular in the sense that its exercise must not be unjustifiably hindered by acts or omissions of the authorities of the respondent State'.⁴¹

IV. Country-specific practice

- 23 The International Organization for Migration (IOM) currently assists governments with reparation programmes in the aftermath of conflict. For example, it helped the National Commission for Social Action in Sierra Leone to include outreach campaigns to inform victims of the conflict, including amputees, the severely war-wounded, victims of sexual violence, and other vulnerable groups, about reparations. Messages in newspapers and posters included general information on why reparations were being implemented, the eligibility criteria, and how to submit a claim and what to expect. Given that 90 per cent of the victims reside within national borders, the campaign did not include outreach in other countries where refugees might be found. The publicity helped to manage the expectations of the victims, while increasing the programme's legitimacy overall.⁴²
- 24 Similarly, the IOM works with local partners in Colombia to provide reparations for victims of that country's internal armed conflict between the Government, FARC, and paramilitary groups. As a part of its transitional justice process, the country passed the 'Victims Law' in 2011. The Law includes provisions specific to the rights of victims to information, requiring the Colombian Government to promote effective publicity mechanisms to inform victims of the administrative and judicial avenues for exercising their right to reparation, including information on how to file a claim.⁴³

ability to access positive rights requires the state to 'ensure the right of individuals and organizations to seek, receive and impart information on all social security entitlements in a clear and transparent manner'.

³⁷ European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) (4 November 1950) 213 UNTS 221.

³⁸ M McDonagh, 'The Right to Information in International Human Rights Law' (2013) 13 Human Rights Law Review 25–55, 35, 37.

³⁹ *Pereira Henriques v Luxembourg* [2006] ECHR 60255/00 (Fourth Section, 9 May 2006) (finding the right to information is essential for protecting the right to life under Art 2 ECHR); *Roche v United Kingdom* (2006) 42 EHRR 30 (finding a breach of Art 8 ECHR because the state failed to operate an effective and accessible procedure allowing the applicant access to all relevant and appropriate information about the impact of chemical weapons).

⁴⁰ *Case of Association for European Integration and Human Rights and Ekimdzhiev v Bulgaria* App no 62540/00 (ECtHR, 28 June 2007) paras 95, 103.

⁴¹ *Case of Kolyadenko and others v Russia* (Judgment) Application nos 17423/05, 20534/05, 20678/05, 23263/05, 24283/05, and 35673/05 (ECtHR, 28 February 2012) para 225.

⁴² Author's interview with Igor Cvetkovski, Land, Property, and Reparations Specialist for the Land, Property, and Reparations Division (LPR), Department of Operations and Emergencies (DOE) at the IOM (3 March 2014).

⁴³ Congreso de la República, Ley 1448 de 2011, *Por la cual se dictan medidas de atención, asistencia y reparación integral a las víctimas del conflicto armado interno y se dictan otras disposiciones*, Diario Oficial no

The Law also required the Colombian Government to reach victims residing outside 25
of the country through various embassies for six months. It targeted Ecuador and Chile,
on the understanding that most refugees lived there. It also employed different commu-
nication strategies, using the mass media to inform Colombian citizens of the law and its
implications.⁴⁴

E. Critical Assessment

Despite the importance of outreach and publicity, there are practical hurdles that ob- 26
struct their full implementation. There are particular challenges with reaching vulnerable
groups, such as women, children, the illiterate, and rural populations. The means by
which a government disseminates information must be capable of reaching every sector
of the population, regardless of language, gender, age, socioeconomic status, and other
demographic characteristics. Victims often present a diversified population that may re-
quire a comprehensive outreach strategy, which may exhaust local resources and capacity.

There are special challenges with reaching victims in exile, especially if they are refugees. 27
Despite the fact that the OHCHR has reinforced the need to reach people forced into
exile, this group tends to be considered less in country outreach campaigns, with some
exceptions.⁴⁵

Historically few countries have formalized an approach to publicity and outreach.⁴⁶ Yet 28
it is most often the lack of information that explains why a significant number of victims
never receive the relief to which they are entitled.⁴⁷

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⁴⁴ Interview with Felipe Cortes, Advisor to the IOM (5 March 2014).

⁴⁵ OHCHR, n 13, 16–17.

⁴⁶ Personal interview with Ruben Carranza, Director, Reparative Justice Program, International Center for
Transitional Justice (19 June 2014).

⁴⁷ See, eg, International Center for Transitional Justice, *From Relief to Reparations: Listening to the Voices
of Victims* (2012) <ictj.org/publication/relief-reparations-listening-voices-victims> accessed 13 January 2018.

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