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GUIDANCE NOTE OF THE SECRETARY-GENERAL

United Nations Approach to
Transitional Justice

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SUMMARY

This note provides the guiding principles and framework for United Nations approach to transitional justice processes and mechanisms. It outlines key components of transitional justice, and ways to further strengthen these activities. The note is informed by the Guidance Note of the Secretary-General on United Nations Approach to Rule of Law Assistance.

For the United Nations, 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 processes and mechanisms are a critical component of the United Nations framework for strengthening the rule of law.

A. Guiding Principles

1. Support and actively encourage compliance with international norms and standards when designing and implementing transitional justice processes and mechanisms
2. Take account of the political context when designing and implementing transitional justice processes and mechanisms
3. Base assistance for transitional justice on the unique country context and strengthen national capacity to carry out community-wide transitional justice processes
4. Strive to ensure women's rights
5. Support a child-sensitive approach
6. Ensure the centrality of victims in the design and implementation of transitional justice processes and mechanisms
7. Coordinate transitional justice programmes with the broader rule of law initiatives
8. Encourage a comprehensive approach integrating an appropriate combination of transitional justice processes and mechanisms
9. Strive to ensure transitional justice processes and mechanisms take account of the root causes of conflict and repressive rule, and address violations of all rights
10. Engage in effective coordination and partnerships

B. Components of Transitional Justice

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. Whatever combination is chosen must be in conformity with international legal standards and obligations.

C. Ways to Further Strengthen UN Transitional Justice Activities

The note outlines that the following approaches should be incorporated into transitional justice activities of the United Nations:

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

INTRODUCTION

Assisting societies devastated by conflict or emerging from repressive rule to re-establish the rule of law and come to terms with large-scale human rights violations, especially within a context marked by broken institutions, exhausted resources, diminished security, and a distressed and divided population, presents a daunting challenge. Over the years, the United Nations has acquired significant experience in developing the rule of law and pursuing transitional justice in States emerging from conflict or repressive rule. Experience has demonstrated that promoting reconciliation and consolidating peace in the long-term necessitates the establishment or re-establishment of an effective governing administrative and justice system founded on respect for the rule of law and the protection of human rights.

For the United Nations system, 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.¹ Transitional justice processes and mechanisms are a critical component of the United Nations framework for strengthening the rule of law.

Transitional justice consists of both judicial and non-judicial processes and mechanisms, including prosecution initiatives, truth-seeking, reparations programmes, institutional reform or an appropriate combination thereof. Whatever combination is chosen must be in conformity with international legal standards and obligations. Transitional justice should further seek to take account of the root causes of conflicts and the related violations of all rights, including civil, political, economic, social and cultural rights. By striving to address the spectrum of violations in an integrated and interdependent manner, transitional justice can contribute to achieving the broader objectives of prevention of further conflict, peacebuilding and reconciliation.

United Nations rule of law and transitional justice activities include developing standards and best practices, assisting in the design and implementation of transitional justice mechanisms, providing technical, material and financial support, and promoting the inclusion of human rights and transitional justice considerations in peace agreements.

A. GUIDING PRINCIPLES

1. Support and actively encourage compliance with international norms and standards by transitional justice processes and mechanisms

The UN should consistently promote the compliance of transitional justice processes and mechanisms with international norms and standards. The normative foundation for the work of the UN in advancing transitional justice is the Charter of the United Nations, along with four of the pillars of the modern international legal system: international human rights law, international humanitarian law, international criminal law, and international refugee law. Specifically, various UN instruments enshrine rights and duties relative to the right to justice,² the right to truth,³ the

¹ See S/2004/616.

² See e.g., International Covenant on Civil and Political Rights, article 2, Convention against Torture and Other Cruel, Inhuman, Degrading Treatment or Punishment, articles 4, 5, 7 and 12, International Convention for the Protection of All Persons from Enforced Disappearance, articles 3, 6, 7 and 11. See also E/CN.4/2005/102/Add.1, Principle 19.

³ See e.g., International Covenant on Civil and Political Rights, article 2, International Convention for the Protection of All Persons from Enforced Disappearance, article 24. See also E/CN.4/2005/102/Add.1, Principles 2-5.

right to reparations,⁴ and the guarantees of non-recurrence of violations (duty of prevention).⁵ In addition, treaty bodies and court jurisprudence, as well as a number of declarations, principles, and guidelines⁶ have been instrumental in ensuring the implementation of treaty obligations.

To comply with these international legal obligations, transitional justice processes should seek to ensure that States undertake investigations and prosecutions of gross violations of human rights and serious violations of international humanitarian law, including sexual violence. Moreover, they should ensure the right of victims to reparations, the right of victims and societies to know the truth about violations, and guarantees of non-recurrence of violations, in accordance with international law.

These international standards further set the normative boundaries of UN engagement, for example: the UN will neither establish nor provide assistance to any tribunal that allows for capital punishment, nor endorse provisions in peace agreements⁷ that include amnesties for genocide, war crimes, crimes against humanity, and gross violations of human rights.⁸

2. Take account of the political context when designing and implementing transitional justice processes and mechanisms

Transitional justice processes and mechanisms do not operate in a political vacuum, but are often designed and implemented in fragile post-conflict and transitional environments. The UN must be fully aware of the political context and the potential implications of transitional justice mechanisms. In line with the Charter, the UN supports accountability, justice and reconciliation at all times. Peace and justice should be promoted as mutually reinforcing imperatives and the perception that they are at odds should be countered. The question for the UN is never whether to pursue accountability and justice, but rather when and how. The nature and timing of such measures should be framed first of all in the context of international legal obligations and taking due account of the national context and the views of the national stakeholders, particularly victims. In situations in which national conditions do not allow for or limit the effectiveness of transitional justice measures, the UN supports activities that encourage and lay the foundation for effective mechanisms and processes. These could include dialogue to assist national stakeholders to promote interest in and understanding of transitional justice measures. The UN cannot endorse provisions in peace agreements that preclude accountability for genocide, war crimes, crimes against humanity, and gross violations of human rights, and should seek to promote peace agreements that safeguard room for accountability and transitional justice measures in the post-conflict and transitional periods.

⁴ See e.g., Universal Declaration of Human Rights, article 8, International Covenant on Civil and Political Rights, article 2, International Convention on the Elimination of All Forms of Racial Discrimination, article 6, Convention against Torture and Other Cruel, Inhuman, Degrading Treatment or Punishment, article 6, International Convention for the Protection of All Persons from Enforced Disappearance, article 24, the Convention on the Rights of the Child, article 39. See also A/RES/60/147.

⁵ See e.g., International Covenant on Civil and Political Rights, article 2, Convention against Torture and Other Cruel, Inhuman, Degrading Treatment or Punishment, article 2, International Convention for the Protection of All Persons from Enforced Disappearance, article 23. See also *LaGrand Case (Germany v. United States)*, Judgment of 27 June 2001, I.C.J. Reports 2001. See E/CN.4/2005/102/Add.1, Principle 35.

⁶ *Inter alia*, founded on the 1948 Universal Declaration of Human Rights.

⁷ See Guidelines for UN Representatives on Certain Aspects of Negotiations for Conflict Resolution (1 Dec. 2006).

⁸ Gross violations of human rights include torture and similar cruel, inhuman or degrading treatment; extra-judicial, summary or arbitrary executions; slavery; enforced disappearances; and rape and other forms of sexual violence of comparable gravity.

3. Base assistance for transitional justice on the unique country context and strengthen national capacity to carry out community-wide transitional justice processes

Each transitional justice programme is a unique set of processes and mechanisms, implemented within a specific context. The UN eschews one-size-fits-all formulas and the importation of foreign models, and bases its work upon a thorough analysis of national needs and capacities, drawing upon national expertise to the greatest extent possible. The careful consideration of the transitional justice needs of a country may include assessing factors such as the root causes of the underlying conflict, the identification of vulnerable groups, such as minorities, women, and children, and the condition of the country's justice and security sectors. To enhance the sustainability and relevance of transitional justice processes, these should be carried out, where feasible, by local and national actors. In this regard, international assistance has to concentrate on development of national capacity to initiate and lead the process. This involves identification, support for, and empowerment of domestic reform constituencies to develop and implement their own transitional justice and rule of law agenda. National human rights institutions may play an important role in advancing public participation in these processes, and, where appropriate, they may also directly participate in the implementation of transitional justice mechanisms, or in implementing recommendations of such mechanisms.

4. Strive to ensure women's rights through transitional justice processes and mechanisms

Transitional justice approaches should pay special attention to abuses committed against groups most affected by conflict, particularly women. Gender inequality is one of the most pervasive forms of societal inequality and is often exacerbated by conflict and situations of gross human rights violations. Entrenched forms of gender-based violence also make women and girls particularly vulnerable to conflict-related human rights abuses, including systematic sexual violence which often continues unabated even after conflict ends. The social stigma and trauma associated with reporting such crimes and women's exclusion from public-decision making processes make it particularly challenging for women to engage with transitional justice mechanisms. Transitional justice mechanisms must thus provide for special measures to ensure that women receive adequate redress for conflict-related violations, that women can fully participate in these processes and that their rights and perspectives are adequately addressed. Transitional justice mechanisms that incorporate a gender and women's human rights perspective, such as prosecution initiatives that punish those responsible for committing sexual violence and other women's rights abuses during conflict, or consultations with women to determine their priorities for transitional justice initiatives, can help ensure accountability for conflict-related women's rights abuses and that oppression or maltreatment of women is not perpetuated into the future.

5. Support a child-sensitive approach to transitional justice processes and mechanisms

Children are among those most affected by armed conflict and destabilizing political environments. Transitional justice processes and mechanisms should investigate and prosecute international crimes against children, offer effective remedies to children, and strengthen government institutions to protect and promote the rights of children. Children associated with armed forces or armed groups who may have been involved in the commission of crimes under international law should be considered primarily as victims, not only as perpetrators. In principle, children should not be held criminally responsible under an international jurisdiction. When children are subject to judicial proceedings, they must be treated in accordance with the International Covenant on Civil and Political Rights, the Convention on the Rights of the Child, the United Nations Standard Minimum Rules for the Administration of Juvenile Justice, and the Guidelines on Justice Matters involving Child Victims and Witnesses of Crime. The UN

approach to transitional justice should recognize that children have the right to express their views in matters and proceedings affecting them, in accordance with their evolving capacities, and that child-friendly policies and procedures must be put in place to protect the rights of child victims and witnesses of crime involved. The best interest of the child should guide the process. When children are supported and guided, their participation can help to build their capacity for active citizenship in post-conflict recovery, also laying the foundation for a more just and peaceful society. Transitional justice processes and mechanisms should strengthen the protective environment for children in their families and communities.

6. Ensure the centrality of victims in the design and implementation of transitional justice processes and mechanisms

Successful transitional justice programmes recognize the centrality of victims and their special status in the design and implementation of such processes. The UN must respect and advocate for the interests and inclusion of victims where transitional processes are under consideration. National consultations, conducted with the explicit inclusion of victims and other traditionally excluded groups, are particularly effective in allowing them to share their priorities for achieving sustainable peace and accountability through appropriate transitional justice mechanisms. Placing victims at the centre of this work also requires ensuring that victim's rights and views are fully respected in the implementation of transitional justice processes, including, as appropriate, through the use of victim-sensitive procedures that guarantee victims' safety and dignity, and the development of specific capacities to assist, support and protect victims and witnesses.

7. Coordinate transitional justice programmes with the broader rule of law initiatives so they can positively reinforce each other

Transitional justice measures usually take place in situations where national and international efforts are targeted at enhancing the rule of law generally. The UN works to strengthen national systems for the administration of justice and security, including formal and informal dispute settlement processes, building capacity and providing technical advice and assistance. Due regard should be given to indigenous and informal traditions for administering justice or settling disputes, to help them to continue their vital role and to do so in conformity with international legal standards. Transitional justice measures, such as prosecution initiatives and institutional reform, are interdependent with these broader efforts. The UN must ensure that transitional justice programmes, by definition exceptional and of limited duration, are coordinated and positively reinforce the broader justice and security reform initiatives so as to strengthen the entire rule of law architecture of the country and, if applicable, the overarching peacebuilding framework.

8. Encourage a comprehensive approach integrating an appropriate combination of transitional justice processes and mechanisms

Effective transitional justice programmes utilize coherent and comprehensive approaches that integrate the full range of judicial and non-judicial processes and measures, including truth-seeking, prosecution initiatives, reparations programmes, institutional reform including vetting processes, or an appropriately conceived combination thereof. Through careful planning and extensive consultations with national stakeholders, the UN should support national constituencies in considering issues such as jurisdiction, evidence collection, victims and witness protection to ensure that various transitional justice mechanisms can positively complement each other in post-conflict and transitional environments.

9. Strive to ensure transitional justice processes and mechanisms take account of the root causes of conflict and repressive rule, and address violations of all rights, including economic, social and cultural rights

Violations of economic, social, and cultural rights not only exacerbate or spark social or political tensions resulting in conflict or repression, but conflict or repression often precipitate further violations of these rights. Successful strategic approaches to transitional justice necessitate taking account of the root causes of conflict or repressive rule, and must seek to address the related violations of all rights, including economic, social, and cultural rights (e.g., loss or deprivation of property rights). Peace can only prevail if issues such as systematic discrimination, unequal distribution of wealth and social services, and endemic corruption can be addressed in a legitimate and fair manner by trusted public institutions.

10. Engage in effective coordination and partnerships in designing and implementing transitional justice processes and mechanisms

The work of the UN in rule of law and transitional justice encompasses a multitude of activities carried out by many entities across the UN system and the wider international community. Successful transitional justice initiatives require the continued support and active engagement of all relevant actors working together in a coordinated fashion. The Rule of Law Tools for Post-Conflict States,⁹ which are grounded in international human rights standards and based on experiences and best practices accumulated from UN field operations, have been developed to ensure the long-term institutional capacity of UN field presences, transitional administrations and civil society to respond to transitional justice demands. Coordination between UN and non-UN actors, such as donors, aid agencies, non-governmental organizations, and private foundations is equally critical, and should be enhanced through information sharing and cooperation in the field.

B. COMPONENTS OF TRANSITIONAL JUSTICE

Transitional justice programmes include the following elements:

1. Prosecution initiatives

Prosecution initiatives aim to ensure that those responsible for committing crimes, including serious violations of international humanitarian law and gross violations of international human rights law, are tried in accordance with international standards of fair trial and, where appropriate, punished. The credibility and legitimacy of prosecution initiatives require that they are conducted in a non-discriminatory and objective manner, regardless who the alleged perpetrators may be. States have the primary responsibility to exercise jurisdiction over these crimes.¹⁰ Therefore, in relation to the alleged crimes committed in the context of the conflict or repressive rule, transitional justice programmes will seek to reinforce or develop national investigative and prosecutorial capacities, an independent and effective judiciary, adequate legal defense, witness and victims' protection and support, and humane correctional facilities. National legislation that is in conformity with international human rights law and international criminal law is essential. Assistance of the international community might also be required for exhumations, forensic analysis, investigations of mass crimes, and preservation of evidence. The justice proceedings need to be undertaken impartially, objectively and in timely manner, according to international standards. Systematic monitoring of the justice system can be a useful tool for assessing and improving its effectiveness and compliance with international standards.

⁹ <http://www.ohchr.org/EN/PublicationsResources/Pages/SpecialIssues.aspx>

¹⁰ See id., Principle 20.

At the same time, States emerging from years of conflict or repressive rule may be unable or unwilling to conduct effective investigations and prosecutions. In such situations, international and hybrid criminal tribunals may exercise concurrent jurisdiction. The establishment of these various criminal tribunals represents a historic achievement in seeking accountability for international crimes. When establishing an international or hybrid criminal tribunal, it is essential that priority consideration is given to their legacy¹¹ in the country concerned as well as to the exit strategy. The establishment of the International Criminal Court (ICC), the only permanent international criminal tribunal, represents the most significant recent development in combating impunity. The ICC operates on the basis of the principle of complementarity articulated in article 17 of the Rome Statute. As such, it should also contribute to the development of national capacities to bring alleged perpetrators of international crimes to justice.

2. Facilitating initiatives in respect of the right to truth

Truth-seeking processes assist post-conflict and transitional societies investigate past human rights violations and are undertaken by truth commissions, commissions of inquiry, or other fact-finding missions.¹² The right of individuals to know the truth is supported by several treaty bodies, regional courts, and international tribunals.¹³ Truth commissions are non-judicial or quasi-judicial investigative bodies, which map patterns of past violence, and unearth the causes and consequences of these destructive events. Each truth commission is a unique institution, but their core activities usually include collecting statements from victims and witnesses, conducting thematic research, including gender and children analysis of violations including their causes and consequences, organizing public hearings and other awareness programs, and publishing a final report outlining findings and recommendations. Commissions of inquiry and other fact-finding mechanisms similarly seek to unravel the truth behind allegations of past human rights abuses, but generally operate under more narrowly defined mandates. Mapping and documenting serious violations of human rights abuses is an important step in realizing the right to the truth.

The effective implementation of the right to the truth requires a strong national archival system. In many societies emerging from conflict or repressive rule, however, such systems are weak or non-existent, and vulnerable to efforts to destroy evidence of human rights violations. Moreover, transitional justice programmes generate documents of their own, which should be subsequently archived, as they represent a rich source of information regarding the history of conflict or repressive rule. Effective victim and witness protection is also vital to ensuring victims' and societies' right to the truth.

3. Delivering reparations

Reparations programmes seek to redress systemic violations of human rights by providing a range of material and symbolic benefits to victims. Reparations can include monetary compensation, medical and psychological services, health care, educational support, return of property or compensation for loss thereof, but also official public apologies, building museums and memorials, and establishing days of commemoration. The General Assembly has reaffirmed the right of victims to reparations in the Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law.¹⁴ Redress may take a variety of forms,

¹¹ Legacy is defined as a court's lasting impact on bolstering the rule of law in a particular society, including by conducting effective trials to contribute to ending impunity, while also strengthening domestic judicial capacity.

¹² See E/CN.4/2005/102/Add.1, Principles 6-13.

¹³ See E/CN.4/2004/88 and E/CN.4/2006/91.

¹⁴ See A/RES/60/147.

including restitution,¹⁵ compensation, rehabilitation,¹⁶ satisfaction,¹⁷ and guarantees of non-repetition.¹⁸ Experience has shown that the most successful reparations programmes are designed in consultation with affected communities, particularly victims and women groups. Reparations programmes can also be effective and expeditious complements to truth-seeking processes and prosecution initiatives, by providing concrete remedies to victims, promoting reconciliation, and restoring public trust in the State. Similarly, it is important that States while developing and implementing transitional justice programmes also develop and support official programmes and popular initiatives to memorialize victims, educate society and preserve historical memory.

4. Institutional reform

Public institutions that helped perpetuate conflict or repressive rule must be transformed into institutions that sustain peace, protect human rights, and foster a culture of respect for the rule of law. By reforming or building fair and efficient public institutions, institutional reform enables post-conflict and transitional governments to prevent the recurrence of future human rights violations. Vetting members of the public service, particularly in the security and justice sectors, is critical to facilitating this transformation, by removing from office or refraining from recruiting those public employees personally responsible for gross violations of human rights. This may also include the disbandment of military, police or other security units that may have been systematically responsible for human rights violations. The removal of these persons should comply with due process of law and the principle of non-discrimination.¹⁹ Institutional reform should further incorporate comprehensive training programmes for public officials and employees on applicable human rights and international humanitarian law standards.

5. National consultations

National consultations are a critical element of the human rights-based approach to transitional justice, founded on the principle that successful transitional justice programmes necessitate meaningful public participation, including the different voices of men and women. Public participation reveals the needs of communities affected by conflict or repressive rule, allowing States to craft an appropriate context-specific transitional justice programme. Moreover, the consultative process helps victims and other members of civil society to develop local ownership of the resulting programme. Although national consultations can shape the design of an overarching transitional justice strategy, they can also take place within the context of a specific mechanism, such as during the planning stages of a truth commission or reparations programme. The UN should facilitate the process of national consultations by organizing forums for discussions, providing legal and technical advice, promoting the participation of traditionally excluded groups, such as victims, minorities, women, and children, supporting capacity building, and mobilizing financial and material resources.

Associated with the practice of national consultations is the issue of outreach. The impact and sustainability of transitional justice processes will depend significantly on ensuring that they are understood and communicated coherently during and after their implementation. Effective

¹⁵ E.g., 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.

¹⁶ E.g., medical and psychological care as well as legal and social services.

¹⁷ E.g., official declaration or a judicial decision restoring the dignity, the reputation and the rights of the victim; public apology, including acknowledgement of the facts and acceptance of responsibility; and commemorations and tributes to the victims.

¹⁸ E.g., ensuring effective civilian control of military and security forces; ensuring that all civilian and military proceedings abide by international standards of due process, fairness and impartiality; strengthening the independence of the judiciary.

¹⁹ See E/CN.4/2005/102/Add.1, Principle 36.

outreach must address both specific groups affected by the particular mechanisms involved as well as the broader community. It requires careful planning during the design phase and adequate resources.

C. WAYS TO FURTHER STRENGTHEN UN TRANSITIONAL JUSTICE ACTIVITIES

Taking into account the emerging developments in international law, the principles outlined in this Note, and needs of UN, including its field presences, the following approaches should be incorporated into transitional justice activities of the UN:

1. Adopt an approach to transitional justice that strives to take account of the root causes of conflict or repressive rule, and address the related violations of all rights, including economic, social, and cultural rights in a comprehensive and integrated manner

- Mandating truth commissions, where appropriate, to examine violations of economic, social, and cultural rights and make recommendations on how best to redress these abuses;
- Investigating and prosecuting crimes under national or international law where the conduct involves violations of economic, social and cultural rights as well as civil and political rights;
- Redressing violations of victims' rights in the areas of health, housing, education, and economic viability through reparations measures, and ensuring that redress for both women and men's rights violations is taken into account in the design of such programmes;
- Guaranteeing victims non-discriminatory access to government services;
- Adopting, revising, and strengthening key legislation to ensure national recognition and protection for economic, social, and cultural rights and non-discrimination;
- Enshrining protections for economic, social, and cultural rights, as well as non-discrimination clauses, in peace agreements and constitutions.

2. Take human rights and transitional justice considerations into account during peace processes

- Encouraging the parties to include commitments to protect and promote human rights, combat impunity, and pursue transitional justice in peace agreements;
- Insisting that peace agreements not grant amnesties for war crimes, crimes against humanity, genocide, and gross violations of human rights;
- Encouraging the development of transitional justice processes, recognizing that they can reinforce each other and that they are not mutually exclusive (e.g., truth seeking, prosecutions and reparations);
- Encouraging the parties to acknowledge harms inflicted on women and children in peace agreements;
- Equipping UN mediators with relevant human rights and transitional justice expertise within the UN system;
- Ensuring participation of UN human rights experts during peace negotiations;
- Supporting widespread consultation on transitional justice issues, including the involvement of victims and other marginalized communities;

- Encouraging women and children to actively participate in the peace process, by sharing their gender-specific experiences of the conflict, and their priorities for achieving sustainable peace and accountability through appropriate transitional justice mechanisms;
- Supporting the strengthening of national capacities for designing and implementing transitional justice processes and mechanisms;
- Supporting efforts to assess the status of national archiving system, and supporting the strengthening of these capacities as needed.

3. Coordinate disarmament, demobilization, and reintegration (DDR) initiatives with transitional justice processes and mechanisms, where appropriate, in a positively reinforcing manner

- Insisting on the exclusion from reintegration into national police or military structures of ex-combatants who have committed or against whom the indictments, judicial investigations or credible allegations of perpetrating serious crimes are pending;
- Designing DDR initiatives in conjunction with reparations programmes to combat perceptions of inequity in the treatment of ex-combatants and victims. Reparations programmes which provide redress to conflict-affected populations can help quell resentment that victims and communities may harbour towards ex-combatants who receive DDR;
- Incorporating a gender approach to DDR initiatives which addresses the violations suffered by former female combatants and women and girls associated with armed forces and groups. Community reintegration benefits should not single out former female combatants and associates but be targeted at vulnerable populations at large to avoid stigmatization;
- Facilitating 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;
- Utilizing prosecution initiatives to distinguish perpetrators of human rights violations from other ex-combatants, thus diminishing public perception that DDR are reintegrating all ex-combatants without regard for crimes they may have committed.



Guidance Note of the Secretary-General on Democracy

I. Introduction

At the World Summit in 2005, as in the Millennium declaration in 2000, Member States of the United Nations (UN) recommitted themselves to protecting and promoting human rights, the rule of law and democracy, recognizing that they are interlinked and mutually reinforcing and that they belong to the universal and indivisible core values and principles of the United Nations. This commitment was reiterated by Member States in 2007 in General Assembly resolution A/RES/62/7.

The majority of States in the world today describe themselves as democratic. However, democracy is a dynamic social and political system whose ideal functioning is never fully “achieved”. Democratization, furthermore, is neither linear nor irreversible and thus both state institutions and citizens must monitor and maintain oversight of this process. Accordingly, all countries, as well as the international community itself, could benefit from continued strengthening of, and support to, their democratic processes.

In the twenty-first century, we continue to be confronted with the triple challenge of building or restoring democracies, preserving democracies, as well as improving the quality of democracies. Key challenges for the UN in this context are: how to more effectively promote universally recognized democratic principles, institutions and practices; how to respond, in a consistent and predictable manner, to ruptures with democracy, as triggered by coups d'état or other unconstitutional transfers of power; and how to respond to, or even help to prevent, the slow and gradual erosion in the quality of democracy and the weakening of democratic freedoms, practices and institutions which sometimes occur.

In the face of such on-going challenges, and given the intensive debate surrounding democracy assistance, it is more important than ever to find an effective and acceptable universal framework for conducting such support. To address this issue, in November 2007, the Secretary-General requested the development of an “organization-wide strategy that further defines the UN approach to supporting democracy”, anchoring this in the three pillars of the UN’s work – peace and security, development and human rights.

This note sets out the United Nations framework for democracy based on universal principles, norms and standards, emphasizing the internationally agreed normative content, drawing on lessons learned from experience and outlining the areas of support in which the UN has comparative advantages. It commits the Organization to principled, coherent and consistent action in support of democracy.

II. Normative and Conceptual Foundations

Democracy, based on the rule of law, is ultimately a means to achieve international peace and security, economic and social progress and development, and respect for human rights – the three pillars of the United Nations mission as set forth in the Charter of the UN. Democratic principles are woven throughout the normative fabric of the United Nations. Indeed, the first three words of the Charter itself are “We the peoples,” followed closely thereafter by important references to essential democratic underpinnings such as “human rights,” “fundamental freedoms,” “the equal rights of women and men,” “life in larger freedom,” “self-determination,” and the removal of distinctions on the basis of “race, sex, language or religion.” The General Assembly, in “The Universal Declaration of Human Rights” elaborated on the general human rights provisions of the Charter including the obligations of non-discrimination, equality before law, freedom of movement, thought, opinion, information, expression, assembly and association — recognized as rights necessary for democracy. The Declaration contains explicit provisions declaring that “[t]he will of the people shall be the basis of the authority of government; this will shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures” and guaranteeing everyone “the right to take part in the government of his country, directly or through freely chosen representatives [and] the right of equal access to public service...” (article 21). It further requires that any limitations on human rights and freedoms must be “determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society” (article 29). The Declaration has been given legal effect in many subsequent UN treaties and instruments.

At the 2005 World Summit, all the world’s governments reaffirmed “that democracy is a universal value based on the freely expressed will of people to determine their own political, economic, social and cultural systems and their full participation in all aspects of their lives”, stressed “that democracy, development and respect for all human rights and fundamental freedoms are interdependent and mutually reinforcing” and renewed their “commitment to support democracy by strengthening countries’ capacities to implement the principles and practices of democracy and resolve to strengthen the capacity of the United Nations to assist Member States”.

The UN has long advocated a concept of democracy that is holistic: encompassing the procedural and the substantive; formal institutions and informal processes; majorities and minorities; men and women; governments and civil society; the political and the economic; at the national and the local levels. It has been recognized as well that, while these norms and standards are both universal and essential to democracy, there is no one model: General Assembly resolution 62/7 posits that “while democracies share common features, there is no single model of democracy” and that “democracy does not belong to any country or region”. Indeed, the ideal of democracy is rooted in philosophies and traditions from many parts of the world. The Organization has never sought to export or promote any particular national or regional model of democracy.

The appeal of democracy stems in part from its association with the advancement of the quality of life for all human beings, and thus, with the work to reach the Millennium Development Goals. Development is more likely to take hold if people are given a genuine say in their own governance, and a chance to share in the fruits of progress.

III. Guiding Principles for Effective Assistance

The United Nations has learned many lessons from decades of engagement in democracy support. Our knowledge base, however, requires constant input and revitalization.

A key lesson is that democracy is indeed inextricably linked with the three pillars of the United Nations, in that genuinely democratic institutions and practices are essential for fostering long-term security and stability by allowing peaceful political dialogue and contestation; creating a conducive and legitimate environment for good governance, development and meeting basic human needs; and promoting and protecting human rights.

Another valuable lesson learned is the need to ensure that the UN is actively and continually evaluating its efforts on how best to provide sustainable democracy assistance that builds local capacity and nurtures a democratic culture. This assistance, while technical in nature, cannot be separated from the political realities.

Bearing in mind this framework, and based on experience to date, the following principles should guide UN democracy efforts:

Adopt proactive approaches to threats to democracy

The UN should develop a consistent, predictable and pragmatic framework for preventive diplomacy, including adopting a proactive approach, consistently reminding Member States of their obligations under internationally agreed norms and principles, and facilitating efforts to prevent or address such threats, through mediation and other support measures as appropriate. The UN framework should seek to address both immediate threats to democratic governance as well as the underlying or structural causes of such interruptions. Whilst some countries continue to face external threats to democracy, most threats are internal, such as bad governance, abuses of state power, endemic corruption and entrenched discrimination and inequality, lack of voice of the poor and the marginalized and their right to remedy and justice. Also of concern are unconstitutional transfers of power. The record in past years statistically demonstrates that coups tend to worsen a State's human rights situation, do not lead to improvements in the quality of democracy and lead to poorer governance.

Do no harm

UN democracy assistance, while remaining proactive and innovative, must nevertheless 'do no harm.' For example, ill-timed, and in particular premature elections encouraged by the international community in fragile societies have sometimes entrenched undemocratic, nationalist or extremist groups in power, and radicalized political discourse. Ill-conceived and poorly conceptualized programmes, and the promotion of inappropriate foreign models, also have the potential to endanger democratic transitions and, in some cases, they have even contributed to enhanced societal violence and conflict.

Uphold local ownership

UN democracy assistance should aim to support legitimate democratic forces, provide a platform for expression of diverse viewpoints and perspectives, connect these forces to global knowledge and expertise, including south-south collaboration, and nurture a national environment open to transparent and democratic political discourse, transition and change. Local norms and practices must be taken into consideration and weaved into emerging democratic institutions and processes

to the extent possible, while at the same time promoting internationally agreed norms and principles. UN assistance should also be explicitly requested by local actors and never imposed. The major responsibility for democratic transitions and consolidation lies with forces within the national society and no amount of external assistance will create democracy.

Broaden domestic engagement and participation in democracy-building

The UN should support a broad, inclusive approach that reaches out to all sectors of and movements in the national society to engage them in dialogue on democracy, including women, minorities, indigenous peoples, adolescents and young people, displaced persons, vulnerable and disadvantaged communities, and other poor, excluded or marginalized groups. Efforts should be made by the UN to actively engage with traditionally marginalized and excluded groups or those who are less amenable to democratic transition rather than focus on engaging a small group of likeminded national actors as is often the case.

Explicitly address the effects of discrimination against women

Empowering women and promoting women's rights must form an integral part of any United Nations democracy assistance, including through explicitly addressing gender discrimination that contributes to women's exclusion and the marginalization of their concerns. While fewer women today are denied political and civil rights by law, many women are far from enjoying these rights on an equal basis with men in practice. The benefits of democratic engagement remain out of reach for many women. Gender-based discrimination, which is perpetuated through biased legal, economic and social institutions and practices, and can be exacerbated by other forms of exclusion, prevents women from engaging effectively in democratic processes.

Develop democracy support strategies with a long-term horizon

UN democracy assistance needs to be premised on a long-term commitment to the society in transition, and involve realistic objectives and timeframes based on the particular context. It is also essential that capacity-building be part of the UN's activities in democracy assistance from the outset, in order to ensure long-term sustainability and local ownership. The international community has often been impatient with the pace of democratic transition in societies, expecting complex changes to unfold rapidly. It has expected fragmented and resource-starved countries, including those devastated by conflict, to achieve what has taken more developed countries many decades. High, unmet expectations can result in a crisis of confidence within the society about its capacity to move toward democracy and premature conclusions being drawn about the effectiveness of democracy assistance.

Invest in a comprehensive approach to democratization

UN democracy assistance should focus on building trust across various constituencies, developing the state institutions required to peacefully manage democratic transition and consolidation as well as nurturing a strong civil society and civic-engagement mechanisms. Fostering momentum for democratic change in environments where state institutions are too weak to effectively handle disagreements and conflicting demands can create negative outcomes. A heavy investment solely in state institutions, however, can be futile and even counter-productive in situations where these are inherently autocratic or deeply and irrevocably flawed. Similarly, support should avoid an excessive focus on election winners.

IV. UN Democracy Assistance: Areas of UN Focus and Comparative Advantage

All potential UN assistance should start with a thorough and participatory assessment of national and public needs, capacities and aspirations in the country concerned. Assessments and measurements of democracy should be driven by national actors and stakeholders to the extent possible. These processes can further democratic debate within the country, raise awareness about democratic values and standards, and encourage and support the development of domestic ownership. Building national capacity in this regard is critical.

Democracy needs strong, accountable and transparent institutions of governance, based on the rule of law, and including an accountable executive, an effective legislature and an independent and impartial judiciary, efficient and inclusive public administration, as well as an informed, empowered and politically active civil society and population. Where should the UN, with its universal legitimacy, focus its efforts in this wide range of needs, with a view to the implementation of the universal instruments and declarations adopted by its membership? The conceptual areas below identify the most useful dimensions for UN democracy assistance. These areas are interlinked and should be mutually reinforcing. Assistance in the areas below, beyond fostering democratic principles, practices and institutions, also help to strengthen peace and security, and build an environment conducive to development, and the fulfillment of human rights. It is important to bear in mind that even though UN democracy assistance is often technical in nature, democracy is ultimately a political process.

1. Provide political facilitation

The supportive role the international community plays to assist national democratization efforts, can be strategic and even pivotal. Political facilitation by the United Nations and others engaged in democracy assistance can unlock blocked transitions or foster a sense of stability and bolster confidence in fragile situations. Political facilitation can take many forms, including mediation and negotiation, convening forums for policy discussion, supporting inclusive processes and national dialogue based on democratic values and principles. This can help lower tensions and stabilize political discourse, thereby easing the way to democratic transition and consolidation. The UN, with its ability to provide support in an impartial manner, is particularly well placed to play this role. The 2006 Guidelines for UN Representatives on Certain Aspects of Negotiations for Conflict Resolution contain key provisions, including the need for upholding UN principles and purposes, special attention to institution and capacity-building, and the importance of issues of governance, legal, electoral, and socio-economic reform, pointing to the need for UN representatives to alert the parties about UN system resources in this regard and to engage UN system partners in the provision of support.

2. Encourage popular participation and support free and fair elections

Popular participation, collective deliberation and political equality are essential to democracy, and should be realized through a framework and structure of accessible, representative, transparent and accountable institutions subject to periodic change or renewal. Democracy is a reflection of self-determination, and must be based on the freely expressed will of the people, both women and men, facilitated through free access to information, opinion, expression,

association and assembly. Based on respect for all human rights, in a democracy, the rights, interests and “voice” of minorities, indigenous peoples, children, disempowered majorities, and vulnerable, disadvantaged and unpopular groups or individuals must be safeguarded.

One type of support entails providing assistance to electoral processes and the conduct of elections, including supporting independent institutions or mechanisms entrusted with managing elections, as well as national election observation and monitoring processes. Electoral assistance must enhance confidence and credibility in both the process and outcome of an election. Linked to the right to vote is the right to stand for election, and in this regard the UN advises on the use of special measures to ensure that the voice of people who have been excluded and/or marginalized is heard and represented as well as measures to “level the political playing field”.

But citizens’ participation does not end with periodic elections. It is important that citizens are included and actively engaged in all processes of governance, including deliberations over public decisions and the design, implementation, monitoring and evaluation of public policies and their outcomes, forms of engagement which the UN actively supports.

3. Foster the development of a culture of democracy

Particularly in emerging democracies, the development of a culture of democracy is essential. The gradual embedding of democratic principles into the broader social fabric, while taking into account existing societal norms, practices and traditions, should be nurtured and strengthened. “Education for democracy” is a broad concept which can help to inculcate democratic values and principles in a society, encouraging citizens to be informed of their rights and the existing laws and policies designed to protect them, as well as training individuals to become democratic leaders in their societies. Education for democracy should begin with the young, to promote democratic values and principles at an early stage, and also focus on guiding youth to learn and exercise democratic leadership. Education is also critical for empowering citizens to hold accountable those institutions designed to put laws and policies into effect that will safeguard their rights. In this regard, the UN assists with an array of support activities, including civic and voter education, training, and technical and other support for media and political outreach initiatives, all of which are necessary to strengthen democratic citizenship and ensure effective popular participation.

4. Support political pluralism

Political pluralism requires that more than one political party participate in elections and play a role in governance. Political parties play an essential role in democracy by aggregating interests and integrating citizens into the political process. Decisions are more likely to be accepted, even by those who oppose them, if citizens feel that their views have been represented. As an impartial and independent actor that stands for inclusiveness, pluralism and tolerance, the UN has a unique comparative advantage in supporting the development of strong, transparent and inclusive multi-party structures.

5. Advance transparency and accountability arrangements

In a democracy, and in accordance with the rule of law, elected and appointed officials and the institutions within which they work are responsible for their actions and are accountable to the people. For this to work, the people must be aware of what is happening in their country's governance. Therefore transparency and access to information about public affairs must be guaranteed, and states should be encouraged to adopt and implement legislation ensuring broad access to information by the public. To be effective, these institutions must be free from government control, mandated with specific decision-making or investigative and reporting powers and adequately resourced. One means of accomplishing these goals is through e-governance whereby relevant information and public services can be provided to citizens instantaneously.

The UN provides support to ombuds institutions, electoral commissions, anti-corruption commissions, gender equality observatories or commissions, human rights commissions, inspectors general, auditor services and other such bodies, in their tasks of monitoring human rights observance, supervising the conduct of elections, auditing government expenditures, inspecting government services, investigating allegations of corruption and abuse of power, and recommending ways to reform and improve governance. The UN also plays a role in encouraging states to adopt and implement legislation informing efforts in this regard, and also on ensuring broad access to information by the public. Where required and appropriate, the UN also deploys monitoring, fact-finding, investigatory and good offices missions, with particular attention to respect for human rights, to free and fair elections, and to other essential elements of the democratic process.

6. Promote the rule of law

For the United Nations, the rule of law is a principle of governance in which all persons, institutions and entities, public and private, including the State itself, are accountable to laws that are publicly promulgated, equally enforced and independently adjudicated, and which are consistent with international human rights norms and standards. It requires as well measures to ensure adherence to the principles of supremacy of the law, equality before the law, accountability to the law, fairness in the application of the law, separation of powers, participation in decision-making, legal certainty, avoidance of arbitrariness, and procedural and legal transparency. The UN provides key expertise and support to the development of legislation and the strengthening of, in particular, legislative, executive and judicial institutions under such principles to ensure that they have the capacity, resources and necessary independence to play their respective roles. The Guidance Note of the Secretary-General on the United Nations Approach to Rule of Law Assistance (2008) provides overarching guiding principles and a policy framework to guide UN rule of law activities at the national level. In addition, the Guidance Note of the Secretary-General on United Nations Assistance to Constitution-making Processes (2009) also provides the principles which should underlie UN engagement in constitution-making, and outlines the components of a constitution-making process, recognizing the centrality of constitution-making to democratic transitions.

7. Encourage responsive and inclusive governance

Progressing towards higher levels of human development – meaning enhanced availability and accessibility of opportunities and capacities for people to make informed choices – requires state interventions that are, to a large extent, conducted by the public administration at the national and sub-national levels. The way in which the public administration operates, provides or restricts information, delivers services in an equitable or discriminatory manner and provides or prevents opportunities for people’s voice in the policy making debate has a direct impact on the way citizens perceive the degree of legitimacy of the democratic system. Strong and effective local democratic institutions are an underlying basis for a healthy democracy. When state institutions and government are closer to the people, they are more likely to be responsive and held accountable. Local levels of democracy are more accessible for citizens to question local officials, monitor what they do, present their interests and concerns and resolve their disputes in a fair, just and impartial manner, and can be an arena for attracting new political actors, including women and young people.

The UN therefore considers effective and responsive public administration, national and local, as vital, not only from the perspective of its role in managing resources and in steering economic and social development, but also as a key instrument for shaping democratic state-society relationships and good governance. UN assistance to building and supporting public administration spans a variety of efforts from early recovery to longer-term development and includes both the national and local levels.

8. Support a strong and vibrant civil society

A freely functioning, well-organized, vibrant and responsible civil society is essential for a democracy. This presumes an active role for non-governmental organizations and democratic reform groups, human rights groups, women’s groups, youth groups, social movements, trade unions, minority representatives, professional societies and community groups, watchdog associations and others. Such groups have historically made important contributions to the formulation, advocacy and defence of democratic rights. To ensure the freedom of the media to perform their essential role and the right of the public to have access to information is also critical to the democratic process. The UN actively assists and supports these vital elements of society.

V. Conclusion: Enhancing Coherence and Coordination

The UN must ensure principled, coherent and consistent messages and actions in support of democracy that complement the initiatives of the many other actors that work in this field. In reflecting the aspirations of its membership, the United Nations is well placed to bring together critical partners at the global, regional and country levels to deepen support for democracy and rule of law, and to promote consensus on ways to achieve sustainable outcomes. The Organization should also improve its ability to take advantage of the wealth of analysis on democracy work being carried out outside the United Nations system.

Many parts of the United Nations system are engaged in one or more aspects of democracy assistance. It is therefore critical that coherence among UN initiatives in this area be improved, including interactions with stakeholders, partners and the wider international community. Better

coherence requires an approach that ensures that democracy assistance is more effectively integrated into the three main pillars of the Organization's work: peace and security; development; and human rights.

The present note should provide a platform for working together on the basis of shared principles, joint analyses and demand-driven strategies to help ensure that our work is not only coherent and synergetic but also effective and responsive. The forthcoming Democracy Portal of the UN Website will be an essential tool in this regard. The present note should be disseminated through the Portal and by the various UN system partners as a useful tool for fostering coherence and a shared understanding of the principles and areas of UN democracy assistance. This would be supported by continuing inter-agency discussions through the ECPS Working Group on Democracy as a forum for feedback and reflection on the present note.