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Human rights and transitional justice

Report of the Office of the United Nations High Commissioner for Human Rights

Summary

The present report is submitted pursuant to Human Rights Council decision 2/102 of 6 October 2006, requesting the High Commissioner for Human Rights to “continue with the fulfilment of her activities, in accordance with all previous decisions adopted by the Commission on Human Rights and to update the relevant reports and studies”. The present update outlines the progress achieved in the area of human rights and transitional justice since the last report to the Commission on Human Rights (E/CN.4/2006/93).

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I. INTRODUCTION

1. In its resolution 2005/70, the Commission on Human Rights requested the Office of the United Nations High Commissioner for Human Rights (OHCHR) to submit, in consultation with other parts of the United Nations system, civil society and other stakeholders, a study on human rights and transitional justice activities undertaken by the human rights components of the United Nations that would include an analysis of the work accomplished, a compilation of lessons learned and best practices as well as conclusions and recommendations, with a view to assisting countries in the context of transitional justice (para. 4). This study was submitted to the Commission on Human Rights as document E/CN.4/2006/93 and, inter alia, indicated that future reports would include a compilation of lessons learned and best practices.

2. The present report is submitted pursuant to Human Rights Council decision 2/102 of 6 October 2006, requesting the High Commissioner for Human Rights to “continue with the fulfilment of her activities, in accordance with all previous decisions adopted by the Commission on Human Rights and to update the relevant reports and studies”. The present report outlines the progress achieved by OHCHR in the development of lessons learned and best practices since the last report to the Commission on Human Rights (E/CN.4/2006/93).

II. TRANSITIONAL JUSTICE

A. Concepts, frameworks and coordination

3. In his report to the Security Council on the rule of law and transitional justice in conflict and post-conflict societies, the Secretary-General defined the concept of transitional justice as comprising “the full range of processes and mechanisms associated with a society’s attempts to come to terms with the legacy of large-scale past abuses, in order to ensure accountability, serve justice and achieve reconciliation” (S/2004/616, para. 8). According to this definition, such processes and mechanisms include prosecutions, reparations, truth-seeking, institutional reform, vetting and dismissals. In addition, the report emphasized that in the context of transitional justice strategies must be “holistic, incorporating integrated attention to individual prosecutions, reparations, truth-seeking, institutional reform, vetting and dismissals, or an appropriately conceived combination thereof” (ibid., para. 26).

4. At the country level, United Nations expertise on transitional justice issues can be found within OHCHR field presences, and human rights and rule of law components of peacekeeping missions. While most transitional justice-related issues are within the domain of the human rights component of peacekeeping missions, rule of law components also have much to offer in the context of judicial reform issues. Elsewhere, other United Nations agencies, funds and programmes also engage in transitional justice-related activities. While OHCHR has the leading

role in the area of human rights and transitional justice,¹ it is important that all departments, agencies, programmes and funds work together so as to strengthen the capacity of national stakeholders.

B. Office of the United Nations High Commissioner for Human Rights

5. OHCHR support to United Nations field presences on transitional justice includes needs assessments, mission planning, selection and deployment of specialized staff, assistance in the design and conceptualization of transitional justice mechanisms in the field, and the provision of guidance in the form of policy tools. The Office has a dedicated capacity on transitional justice.

6. OHCHR is seeking to develop sustainable, long-term institutional capacity within United Nations field presences, transitional administrations and civil society to respond to the demands in this area. In this context, OHCHR has continued to elaborate transitional justice tools. The tools are meant to provide field missions, transitional administrations and civil society with the fundamental information required to effectively advise on the development of transitional justice mechanisms, in line with international human rights standards and best practices.

7. At the beginning of 2006, the first series of the OHCHR rule of law policy tools addressing different aspects of transitional justice were published. This included tools on (a) truth commissions; (b) prosecution initiatives; (c) vetting and institutional reform; (d) mapping the justice sector in post-conflict States; and (e) legal systems monitoring.

8. In 2006, OHCHR also initiated the development of the second series of tools, consisting of a tool on reparations programmes and on legacy of hybrid tribunals.

9. The policy tool on reparations programmes consists of the basic principles involved in setting up and implementing models of reparations programmes in post-conflict States and countries in transition. It also addresses the challenges faced by reparations programmes, including which violations should be subject to reparations and which kinds of benefits reparations programmes should distribute. In May and July 2006, OHCHR conducted field missions to Chile and Morocco to study practices and recent development in the area of reparations which would assist in the preparation of this tool. In August 2006, the Office organized a workshop to solicit expert views and feedback on the tool. It provided a forum to discuss the tool's approach and analyse its effectiveness from the practical standpoint. Participants represented a wide range of expertise and practical experiences in the area of reparations programmes.

9. The policy tool on the legacy of hybrid tribunals aims to explore the potential for such tribunals to have a positive impact on the domestic justice system of post-conflict States so

¹ See Commission on Human Rights resolution 2005/70.

as to ensure a lasting legacy for the rule of law and respect for human rights. The tool suggests effective and meaningful policies, processes and techniques regarding the interrelationship between hybrid and domestic courts. The tool aims to enhance the credibility and impact of hybrid tribunals on the long-term stability and development of the domestic justice system, including respect for human rights protections, the rule of law and legal institutions. In June 2006, the Office held a workshop to solicit expert views on the tool and to evaluate its effectiveness from the standpoint of post-conflict missions needs. Participants represented a wide range of expertise and practical experiences in hybrid tribunals.

10. Furthermore, OHCHR, the Department of Peacekeeping Operations, the United Nations Development Programme and the United Nations Office on Drugs and Crime are collaborating in the development of the Rule of Law Index (ROLIX), with the objective of allowing for an empirical and objective assessment of a cross-section of factors important for the rule of law in a given country or locality, particularly in conflict and post-conflict societies. The outcome document will then be used by the United Nations, other international agencies and other stakeholders to carry out assessments of the rule of law institutions and legal framework in various countries. ROLIX will focus on the legal system, law enforcement agencies, the judicial system and the correctional services drawing, inter alia, on administrative data and community perceptions. A particular priority will be given to criminal justice legislation and institutions owing to their importance for peace and security.

11. In October 2006, the High Commissioner for Human Rights focused attention on economic and social justice for societies in transition.² She noted that transitional justice mechanisms have not yet dealt with economic, social and cultural rights adequately or systematically, and that transitional justice should take up the challenge, acknowledge that there is no hierarchy of rights and provide protection for all human rights, including economic, social and cultural rights.³ The proposal that a comprehensive transitional justice strategy should address the gross violations of all human rights during the conflict should be further explored.

12. Besides normative and policy development, OHCHR has also provided assistance, including advisory services and conceptualization of transitional justice mechanisms, to the field presences, other parts of the United Nations system and national authorities. This has included aspects such as participation in the negotiations held between the United Nations and the Government of Burundi on the establishment of a truth and reconciliation commission and a special tribunal in Burundi. In August 2006, OHCHR sent an expert mission to share experiences and lessons learned with United Nations engagement and coordination with the United Nations Operation in Burundi about the need for and method of conducting a broad-based consultation on transitional justice issues.

² See Louise Arbour, "Economic and Social Justice for Societies in Transition", Second Annual Transitional Justice Lecture, New York University School of Law, 25 October 2006, at www.nyuhr.org/docs/Arbour_25_October_2006.pdf.

³ Ibid.

13. OHCHR has continued to strengthen partnerships with various actors involved in transitional justice policy development. The International Centre for Transitional Justice provided expert advice, including technical assistance, with respect to issues pertaining to transitional justice, including substantial input to the rule of law tools.

III. CONCLUSION

14. **As identified in the present report, the Office of the United Nations High Commissioner for Human Rights has continued to enhance its leading role in the area of human rights and transitional justice, including through the development of transitional justice policies, tools and best practices and in assisting in the conceptualization of transitional justice mechanisms.**
