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**IMPLEMENTATION OF GENERAL ASSEMBLY RESOLUTION 60/251  
OF 15 MARCH 2006 ENTITLED “HUMAN RIGHTS COUNCIL”**

**Impunity**

**Report of the Secretary-General\***

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\* The present report was submitted after the deadline in order to incorporate the latest information.

## Summary

The Human Rights Council, by its decision 2/102 of 6 October 2006, requested 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”. On the current issue of impunity, a comprehensive annual report (E/CN.4/2006/93) was submitted to the sixty-second session of the Commission on Human Rights pursuant to its resolution 2005/81. The information in the report remains relevant. The Office of the High Commissioner for Human Rights understands decision 2/102 as preserving the previous annual reporting cycle in respect of this issue until otherwise decided by the Council. The current report to the Human Rights Council accordingly addresses developments in respect of impunity over the last year.

In this respect, the present report provides a short update on notable examples of State practice relevant to combating impunity, where the Office of the High Commissioner for Human Rights played a supporting role. Also relevant for combating impunity has been the commencement of the operations of the International Criminal Court. The report is not intended as an exhaustive account of developments relevant to combating impunity, and there is a scope for documenting examples of other cases of practice and jurisprudence, as such situations evolve in the future.

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## I. INTRODUCTION

1. 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”.
2. The updated Set of Principles for the protection and promotion of human rights through action to combat impunity (E/CN.4/2005/102/Add.1) affirms the need for a comprehensive approach towards combating impunity, including undertaking investigations and prosecutions of those suspected of criminal responsibility, ensuring effective remedies and reparations to victims, ensuring the inalienable right to know the truth about violations, and taking other necessary steps to prevent a recurrence of violations. The Commission on Human Rights, in its resolution 2005/81 on impunity, *inter alia*, encouraged “States, intergovernmental organizations and non-governmental organizations to consider the recommendations and best practices identified in the independent study on impunity (E/CN.4/2004/88) as well as the updated Set of Principles, as appropriate, in developing and implementing effective measures to combat impunity, including efforts ... in the design of judicial mechanisms and truth and reconciliation commissions and other commissions of inquiry” (para. 21).
3. The resolution also requested the Secretary-General, *inter alia*, to report on the latest developments in international law and practice relevant to combating impunity, including international jurisprudence and State practice, and the work of the High Commissioner for Human Rights and other parts of the United Nations system.
4. The independent study on impunity, undertaken by Diane Orentlicher, identified best practices and recommendations to assist States in strengthening their domestic capacity to combat all aspects of impunity. The study noted, *inter alia*, that since its submission to the Commission in 1997, the Set of Principles for the protection and promotion of human rights through action to combat impunity has played an influential role in strengthening domestic efforts to combat impunity and received strong affirmation in decisions by international criminal tribunals and human rights treaty bodies. Furthermore, the study found that recent experience reinforced a central premise of the Set of Principles that an effective programme for combating impunity requires a comprehensive strategy and that another factor behind a successful programme is the broad participation of citizens, including victims, in deliberations about their design. Another recurring theme was that domestic efforts to combat impunity have been significantly enhanced by States’ adherence to human rights treaties and their acceptance of optional complaint procedures.
5. Subsequently, and pursuant to Commission resolution 2004/72, the Set of Principles has been updated (E/CN.4/2005/102/Add.1) to reflect developments in substantive international law and major institutional developments, such as the emergence of courts comprising both national and international elements. Furthermore, some revisions reflected developments in State practice that have provided valuable insights concerning effective strategies for combating impunity, such as affirming the central importance of promoting the broad participation of victims and other citizens in the design and implementation of programmes for combating impunity. Additional revisions reflected the cumulative experience of States, the

United Nations, and other institutions and organizations that have played leading roles in addressing the challenges of justice after the wholesale collapse of legal process. In this context, the updated Set of Principles, for example, recognized the need to consider comprehensive institutional reform as a foundation for sustainable justice during periods of democratic transition.

6. Another significant development for combating impunity was carrying out a number of international investigations into violations of international human rights law and international humanitarian law. The last report submitted to the Commission on Human Rights (E/CN.4/2006/93) focused on the work of international commissions of inquiry in protecting human rights and combating impunity.

## II. UPDATE ON RECENT DEVELOPMENTS

7. The present report provides a short update on notable examples of State practice relevant to combating impunity, where the Office of the High Commissioner for Human Rights played a supporting role. Also relevant for combating impunity has been the commencement of the operations of the International Criminal Court (ICC).

8. The report is not intended as an exhaustive account of developments relevant to combating impunity. In this respect, there is a scope for documenting examples of other cases of practice and jurisprudence, as such situations evolve in the future.

9. With regard to country situations, it is relevant to note that on 10 December 2006, the Government of Afghanistan commemorated the day of adoption of the Universal Declaration of Human Rights with the launch of an Action Plan on Peace, Reconciliation and Justice. The development of the Action Plan was a collaborative effort which included, inter alia, the Office of the President, the Afghanistan Independent Human Rights Commission (AIHRC) and the United Nations Assistance Mission in Afghanistan (UNAMA). The Action Plan lays out a comprehensive approach for transitional justice tackling the legacy of human rights violations committed during more than two decades of armed conflict, through an integrated set of measures. The primary catalyst for the development of a comprehensive strategy was the national consultation on transitional justice, undertaken by the AIHRC in 2004 and set out in their report "A Call for Justice". In December 2005, OHCHR, in cooperation with the AIHRC and UNAMA, organized a conference on truth-seeking and reconciliation in Kabul. The conference was attended by more than 120 participants, including representatives of the Government, civil society, academia and the religious community. Participants affirmed the importance of addressing the legacy of past human rights violations in a comprehensive and practical fashion. Subsequently, UNAMA, OHCHR and conference participants held workshops in various provinces within Afghanistan regarding the outcome of the conference and so as to raise awareness on transitional justice.

10. The Action Plan on Peace, Reconciliation and Justice in Afghanistan focuses on five areas of activity, including (a) acknowledgement of the suffering of the Afghan people; (b) ensuring credible and accountable State institutions; (c) truth-seeking and documentation; (d) promotion of reconciliation and national unity; and (e) establishment of effective and

reasonable accountability mechanisms. The launching of the Action Plan was welcomed, *inter alia*, by the Special Representative of the Secretary-General in Afghanistan, who underlined that “[t]he decades of human rights violations in Afghanistan left huge numbers of victims whose suffering needs proper recognition and respect. Launching of the Action Plan is only a first step towards coming to terms with this legacy, but it shows that the dignity of victims is being respected. It also gives hope that the truth may be established, that justice may be achieved, and that tolerance, solidarity, and trust may be restored”.<sup>1</sup> The implementation will require concerted effort by all, including the Government, the international community and civil society.

11. In Bosnia and Herzegovina, the transfer of certain cases from the International Criminal Tribunal for the former Yugoslavia to the State Court of Bosnia and Herzegovina, a new entity, represented an important opportunity to combat impunity through formal legal process taking place within the territory where the crimes were committed. The protection of witnesses has been a significant issue in this regard. The OHCHR Office in Bosnia and Herzegovina supported the process by working with the State Court to better protect the interests of the victim witnesses, providing a legal adviser to victims of sexual violence, and ensuring that laws for their protection throughout proceedings were adhered to.

12. OHCHR Bosnia and Herzegovina has also been advising the relevant ministries on how to better secure social and economic protections for those who had been made vulnerable by the conflict. In this context, OHCHR supported the elaboration and distribution of the Guide for Families of Missing Persons on Application of the Law on Missing Persons of Bosnia and Herzegovina. The Guide has been developed by the Bosnia and Herzegovina Ministry of Human Rights with the support of several other national and international organizations, including the International Commission on Missing Persons (ICMP), the International Committee of the Red Cross and the Centre for Free Access to Information. The main aim of this document is to facilitate access to information and justice, as well as enjoyment of some guaranteed rights to the families of missing persons.

13. Additionally, in a follow-up to the recommendations of the Committee against Torture and the Committee on Economic, Social and Cultural Rights,<sup>2</sup> the OHCHR office in Bosnia and Herzegovina supported the Government’s efforts to address the issue of reparation for civilian war victims, in particular victims of torture and sexual violence. In that regard, the Bosnia and Herzegovina authorities have established a working group on the State Law on Civilian Victims of War, composed of representatives of different Entity’s ministries, representatives of victims’ associations and NGOs dealing with victims’ issues.

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<sup>1</sup> See “United Nations Special Representative of the Secretary-General in Afghanistan, Tom Koenigs, welcomes today’s launch of the Action Plan on Peace, Reconciliation and Justice”, 10 December 2006, at [http://www.unama-afg.org/news/\\_statement/SRSG/2006/06dec10-HR-day.htm](http://www.unama-afg.org/news/_statement/SRSG/2006/06dec10-HR-day.htm).

<sup>2</sup> Conclusions and recommendations of the Committee against Torture (CAT/C/BIH/CO) and concluding observations of the Committee on Economic, Social and Cultural Rights (E/C.12/BIH/CO/1).

14. In March 2006, the Government of Colombia launched a policy to fight impunity (Decree 3411). This policy recognizes the grave problem of impunity in Colombia and contains measures to combat it. The office in Colombia of OHCHR assisted the policymakers in its formulation of the policy and is a key observer in its implementation. In addition, the office in Colombia, in cooperation with the European Commission, has a technical cooperation programme aimed at enhancing the capacity of the Attorney General's Office to fight impunity.

15. Furthermore, during 2006, the Colombian Supreme Court opened an investigation against nine members of the Congress accused of grave violations of human rights, links with paramilitaries and corruption. The office in Colombia of OHCHR has followed the above developments.

16. At the same time, the Attorney General's Office continued to investigate members of the security forces, particularly the army, accused of committing extrajudicial executions. OHCHR Colombia has followed developments in these cases.

17. On 18 May 2006, the Constitutional Court decided that some major aspects of Law 975/05, known as the Justice and Peace Law, should be modified. The office in Colombia of OHCHR presented an *amicus curiae* brief before the court, in which the High Commissioner outlined the international human rights obligations of Colombia guaranteeing victims' rights to the truth, justice and reparation. The court decided that some aspects of the law as pointed out by the office in Colombia should be modified.

18. In Guatemala in December 2006, the Government and the United Nations signed an agreement to create an International Commission Against Impunity in Guatemala (CICIG) to support the Office of the Public Prosecutor and other State institutions to investigate and dismantle illegal security forces and other clandestine organizations that are implicated in criminal activities as well as human rights violations in the country. This initiative was welcomed by the High Commissioner, whose office in Guatemala has provided advice to the Government on judicial issues connected with the establishment of the Commission. The OHCHR office in Guatemala also advised the Government on the elaboration of the recently adopted legislation establishing the National Institute of Forensic Science. This institute is expected to play a crucial role in combating impunity, in relation to past as well as ongoing human rights violations.

19. Furthermore, OHCHR has been supporting and advising the authorities charged with combating impunity in Guatemala, in particular the Unit on Special Investigations of the Human Rights Ombudsman, which deals with some investigations related to gross human rights violations during the armed conflict, and the Office of the Public Prosecutor. The office in Guatemala has been also training the staff of the Unit which deals with past human rights violations on the normative framework for the prosecution and punishment of extrajudicial executions. It has also been closely involved in the drafting of a new Law on the establishment of a National Fact-finding Commission on Disappearances, through supporting the Preparatory Commission composed of State institutions and civil society organizations that was tasked with elaborating a proposal to that end. The High Commissioner is encouraging the Guatemalan Congress to approve that law, and also to approve legislation that recognizes the legal status of absence due to forced disappearance.

20. Finally, the office in Guatemala of OHCHR signed a Memorandum of Understanding with the Public Ministry, with the aim of strengthening the institution's capacity to investigate violations of human rights and international humanitarian law. Under the agreement, the office in Guatemala will train the prosecutors in investigation and prosecution techniques, and will monitor the human rights situation as concerns the institution's activities. A manual on the investigation of human rights violations will also be drawn up for the Public Ministry, as will a plan on how to deal with the institution's current problems and weaknesses in relation to criminal investigation.

21. In Nepal in November 2006, the Seven-Party Alliance and the Communist Party of Nepal (Maoist) reached a Comprehensive Peace Agreement. The United Nations High Commissioner for Human Rights welcomed the agreement as a crucial step towards ending the conflict in Nepal and strengthening respect for human rights. She stressed that ending impunity remains one of the biggest human rights challenges for Nepal and welcomed the announcement that a high-level truth and reconciliation commission would be formed.<sup>3</sup>

22. The High Commissioner noted that a truth and reconciliation commission can be an important mechanism to address accountability for past human rights violations, and to tackle the underlying causes of the conflict. It can also help to heal wounds and social divisions, as well as to recognize the rights of victims to justice and reparation. It is essential that the commission be independent and impartial, and be established only after widespread public consultation as to its mandate and the composition of commissioners. At the same time, it is important that there also be prosecutions for serious human rights violations in order to restore community trust in the rule of law and prevent abuses in the future.<sup>4</sup>

23. The High Commissioner also reiterated her commitment to support Nepalis in all aspects of human rights promotion and protection. The parties have asked that OHCHR continue to monitor the human rights situation across the country and recommitted the Office to this task.<sup>5</sup>

24. In November 2006, the President of Sri Lanka established a Commission of Inquiry into extrajudicial killings and disappearances. The High Commissioner for Human Rights welcomed the establishment of the Commission, expressing hope that it will see the perpetrators of serious human rights violations brought to justice, and underlined the significance of this initiative in addressing impunity for human rights violations related to the ongoing conflict in Sri Lanka.

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<sup>3</sup> See "United Nations High Commissioner for Human Rights welcomes agreement", 11 November 2006, at [http://nepal.ohchr.org/resources/Documents/English/pressreleases/NOV2006/2006\\_11\\_11\\_HC\\_PressRelease\\_E.pdf](http://nepal.ohchr.org/resources/Documents/English/pressreleases/NOV2006/2006_11_11_HC_PressRelease_E.pdf) .

<sup>4</sup> See *ibid.*

<sup>5</sup> See *ibid.*



The Government has also invited a group of international observers in the form of an International Independent Group of Eminent Persons to monitor, provide advice as requested, and report on the Commission's work.<sup>6</sup>

25. In this context, the High Commissioner thanked the Government for inviting her to provide advice on the terms of reference for the Commission of Inquiry and the observer group in line with international standards. Many of the comments provided by OHCHR were taken into account in establishing the Commission, including the need for witness protection and measures to increase the transparency of the inquiry. The High Commissioner expressed concern, however, over several shortcomings in the national legal system that could potentially hamper the effectiveness of the Commission of Inquiry, particularly the absence of any legal tradition of establishing command responsibility for human rights violations. She noted that many recommendations of past commissions of inquiry, including into disappearances, had not yet been fully implemented.<sup>7</sup>

26. The High Commissioner underlined that it will be critically important for the Commission to establish not only individual responsibility for crimes, but the broader patterns and context in which they occur. She added that any commission of inquiry can only investigate a selection of cases and a broader international mechanism is still needed to monitor, ultimately prevent, human rights violations in the longer term. At the invitation of the Government, OHCHR has submitted a list of names of suitable candidates who could potentially serve as observers to the inquiry. These persons, if selected, would serve in their personal capacities and would not represent the High Commissioner or OHCHR.<sup>8</sup>

27. Another notable development for ending impunity has been the commencement of the operations of the International Criminal Court. By the end of December 2006, the Prosecutor had opened investigations into three situations - northern Uganda, the Democratic Republic of the Congo, and Darfur, Sudan. Regarding the situation in northern Uganda, the first warrants of arrest were issued in 2005 against five commanders of the Lord's Resistance Army. Regarding the situation in Darfur, the Prosecutor announced in December 2006 that his office was moving towards the completion of the investigation and the presentation of evidence in relation to the first case.<sup>9</sup> In the Democratic Republic of the Congo, the Court entered a new phase in its operations with the holding of the confirmation hearings in the case against Thomas Lubanga Dyilo in November 2006. If the judges confirm the charges, the first trial will be conducted during 2007.

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<sup>6</sup> See "High Commissioner for Human Rights hopes new inquiry commission on killings and disappearances in Sri Lanka will prove effective", 6 November 2006, at <http://www.unhcr.ch/hurricane/hurricane.nsf/view01/67DAEA0611B7C3D0C125721E005F3EA4?opendocument> .

<sup>7</sup> Ibid.

<sup>8</sup> Ibid.

<sup>9</sup> Fourth report of the Prosecutor of the International Criminal Court, Mr. Luis Moreno-Ocampo, to the Security Council pursuant to Security Council resolution 1593 (2005), 14 December 2006.

28. During 2006, the Court also rendered several important decisions acknowledging the rights of victims. These decisions concern victims' participation in proceedings,<sup>10</sup> confirmation of victims' rights to non-disclosure of identity during the application procedure,<sup>11</sup> and granting legal aid to victims.<sup>12</sup> The Court also issued the first request for freezing of assets and seizure of property to secure reparations.<sup>13</sup> Additionally, the Court continued to build on its outreach efforts in the situations in northern Uganda and the Democratic Republic of the Congo. The outreach included both general awareness-building and programmes targeting specific groups such as victims, counsel or the media.<sup>14</sup>

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<sup>10</sup> ICC-01/04-01/06-228.

<sup>11</sup> ICC-01/04-73 and ICC-01/04-01/06-672.

<sup>12</sup> ICC-01/04-01/06.

<sup>13</sup> ICC-01/04-01/06-62.

<sup>14</sup> Judge Philippe Kirsch, President of the International Criminal Court, address to the United Nations General Assembly, 9 October 2006.