



General Assembly

Distr.
LIMITED

A/HRC/12/L.26
28 September 2009

Original: ENGLISH

HUMAN RIGHTS COUNCIL
Twelfth session
Agenda item 3

**PROMOTION AND PROTECTION OF ALL HUMAN RIGHTS, CIVIL,
POLITICAL, ECONOMIC, SOCIAL AND CULTURAL RIGHTS,
INCLUDING THE RIGHT TO DEVELOPMENT**

**Argentina, Austria*, Bosnia and Herzegovina, Chile, Costa Rica*,
Croatia*, Czech Republic*, Denmark*, Germany*, Hungary,
Ireland*, Latvia*, Liechtenstein*, Luxembourg*, Mexico,
Norway, Peru*, Poland*, Portugal*, Republic of Moldova*,
Romania*, Slovakia, Spain*, Sweden*, Switzerland*, Ukraine,
United Kingdom of Great Britain and Northern Ireland:
draft resolution**

12/... Human rights and transitional justice

The Human Rights Council,

Guided by the Charter of the United Nations, the Universal Declaration of Human Rights, the International Covenants on Human Rights, the Geneva Conventions of 12 August 1949 and the Protocols Additional thereto of 8 June 1977, other relevant international human rights law and international humanitarian law instruments and the Vienna Declaration and Programme of Action,

* Non-Member State of the Human Rights Council.

Recalling Commission on Human Rights resolutions on human rights and transitional justice (2005/70 of 20 April 2005), impunity (2005/81 of 21 April 2005) and the right to the truth (2005/66 of 20 April 2005), General Assembly resolution 60/147 of 16 December 2005 on 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, as well as Council resolutions 9/10 of 24 September 2008 on human rights and transitional justice and 9/11, also of 24 September 2008, on the right to the truth,

Recalling also the report of the Secretary-General on the rule of law and transitional justice in conflict and post-conflict societies (S/2004/616), including relevant recommendations contained therein, and the report of the Secretary-General entitled “Uniting our strengths: Enhancing United Nations support for the rule of law” (A/61/636-S/2006/980), which designates the Office of the United Nations High Commissioner for Human Rights as the lead entity within the United Nations system on, inter alia, transitional justice, as well as the report of the Secretary-General on enhancing mediation and its support activities (S/2009/189),

Recalling further the set of principles for the protection and promotion of human rights through action to combat impunity (E/CN.4/Sub.2/1997/20/Rev.1, annex II) and taking note with appreciation of the updated version of those principles (E/CN.4/2005/102/Add.1), as well as the report of the Special Rapporteur on the independence of judges and lawyers (E/CN.4/2006/52),

Recalling Security Council resolution 1325 (2000) on women, peace and security and reaffirming the important role of women in the prevention and resolution of conflicts and in peacebuilding, and the need to increase their role in decision-making with regard to conflict prevention and resolution,

Welcoming the role of the Peacebuilding Commission in this regard, and recalling the necessity for the Commission to intensify its efforts, within its mandate, in cooperation with national and transitional Governments and in consultation with the relevant United Nations entities, to incorporate human rights, when advising on or proposing country-specific peacebuilding strategies for post-conflict situations in cases under consideration, where applicable,

Recognizing the role of the International Criminal Court in a multilateral system that aims to end impunity, establish the rule of law, promote and encourage respect for human rights and achieve sustainable peace, in accordance with international law and the purposes and principles of the Charter,

Welcoming the activities of the United Nations, including through its field presences, in assisting States to design, establish and implement transitional justice mechanisms and promote the rule of law as well as its conceptual and analytical work on transitional justice and human rights,

Welcoming also the increased integration of a human rights perspective, including through activities of the Office of the United Nations High Commissioner for Human Rights in cooperation with other relevant parts of the United Nations system, in the United Nations activities related to transitional justice, as well as the importance given to the rule of law and transitional justice by the High Commissioner for Human Rights and her Office, including its Rule of Law and Democracy Unit,

Stressing that the full range of civil, cultural, economic, political and social rights should be taken into account in any transitional justice context, in order to promote, inter alia, the rule of law and accountability,

1. *Takes note with appreciation* of the analytical study on human rights and transitional justice (A/HRC/12/18 and Add.1);
2. *Underlines* the importance and urgency of national and international efforts to end human rights violations, restore justice and the rule of law in conflict and post-conflict situations and, where relevant, in the context of transitional processes;
3. *Also underlines* that, when designing a transitional justice strategy, the specific context of each situation must be taken into account in order to prevent future violations of human rights law, the recurrence of crises and to ensure social cohesion, nation-building, ownership and inclusiveness at the national and local levels;
4. *Emphasizes* the importance of a comprehensive approach to transitional justice, incorporating the full range of judicial and non-judicial measures, including, among others,

individual prosecutions, reparations, truth-seeking, institutional reform, vetting of public employees and officials, or an appropriately conceived combination thereof, in order to, inter alia, ensure accountability, serve justice, provide remedies to victims, promote healing and reconciliation, establish independent oversight of the security system and restore confidence in the institutions of the State and promote the rule of law in accordance with international human rights law;

5. *Underlines* the fact that truth-seeking processes, such as truth and reconciliation commissions, that investigate patterns of past human rights violations and their causes and consequences are important tools and, when established, such mechanisms have to be designed within a specific societal context and to be founded on broad national consultations, including with victims, civil society and non-governmental organizations, and established in conformity with international human rights law;

6. *Stresses* the need within a sustainable transitional justice strategy to develop national prosecutorial capacities that are based on a clear commitment to combat impunity, to take into account the victim's perspective and to ensure compliance with human rights obligations with regard to the holding of fair trials;

7. *Reaffirms* the responsibility of States to comply with their relevant obligations under international law to end impunity and prosecute those responsible for gross violations of human rights and serious violations of international humanitarian law that constitute international crimes, and therefore urges States not to grant any amnesties or immunities that are in contradiction with those obligations;

8. *Recognizes* the conclusion of the Secretary-General that peace agreements endorsed by the United Nations can never promise amnesties for genocide, crimes against humanity, war crimes and gross violations of human rights;

9. *Emphasizes* that a human rights approach should be incorporated into vetting processes that are part of institutional reform aiming at preventing the recurrence of human rights violations;

10. *Also emphasizes* that justice, peace, democracy and development are mutually reinforcing imperatives;

11. *Welcomes* the fact that a growing number of peace agreements contain provisions for transitional justice processes, such as truth-seeking, prosecution initiatives, reparations programmes and institutional reform;

12. *Stresses* the importance of a comprehensive process of national consultation, particularly with those affected by human rights violations, in contributing to a holistic transitional justice strategy that takes into account the particular circumstances of every situation and is in conformity with human rights;

13. *Underlines* the importance of giving vulnerable groups, including those marginalized for political, socio-economic or other reasons, a voice in these processes and to ensure that discrimination, the root causes of conflict and violations of all human rights, including economic, social and cultural rights, are addressed;

14. *Recognizes* the important role played in the realization of transitional justice goals and in the reconstruction of the society, as well as in the promotion of the rule of law and accountability, by:

(a) Victims' associations, human rights defenders and other actors of civil society, as well as national human rights institutions created in conformity with the Paris Principles;

(b) Women's organizations in the design, establishment and implementation of transitional justice mechanisms, so as to ensure that women are represented in their structures and that a gender perspective is reflected in their mandates and work;

(c) Free and independent media in informing the public about the human rights dimension in the area of transitional justice mechanisms locally, nationally and internationally;

15. *Emphasizes* the need to provide gender-sensitive human rights training in the context of transitional justice to all relevant national actors, including police, military, intelligence and

security services, prosecution staff and members of the judiciary, in dealing with victims of human rights violations, particularly women and girls, in order to ensure gender sensitivity in the restoration of the rule of law and transitional justice processes;

16. *Underlines* the need for the rights of both victims and accused persons to be respected, in accordance with international human rights law, with particular attention paid to those most affected by conflicts and the breakdown of the rule of law, among them women, children, migrants, refugees, persons with disabilities and persons belonging to minorities and indigenous peoples, and to ensure that specific measures are taken for their free participation and protection and for the sustainable return of refugees and internally displaced persons in safety and dignity;

17. *Calls upon* States to assist the United Nations in its ongoing work on the relevant recommendations of the report of the Secretary-General on the rule of law and transitional justice in conflict and post-conflict societies and the one entitled “Uniting our strengths: Enhancing United Nations support for the rule of law”, including by incorporating international human rights law, principles and best practices into the development and implementation of transitional justice mechanisms and by cooperating fully with United Nations field presences in the area of human rights and transitional justice and by facilitating the work of relevant special procedures;

18. *Calls upon* the international community and regional organizations to assist countries, who so consent, in the context of transitional justice, to ensure the promotion and protection of human rights and to incorporate best practices into the development and implementation of transitional justice mechanisms;

19. *Recommends* that human rights and transitional justice expertise be integrated into peace negotiations, and that United Nations special envoys, special representatives and mediators be systematically equipped with the relevant human rights and transitional justice expertise when conducting peace negotiations, and draw upon the expertise available within the United Nations system;

20. *Requests* the Office of the United Nations High Commissioner for Human Rights to continue to enhance its leading role within the United Nations, including with regard to

conceptual and analytical work regarding transitional justice, and to assist States with their consent to design, establish and implement transitional justice mechanisms from a human rights perspective, while stressing the importance of close cooperation between the Office of the High Commissioner and other relevant parts of the United Nations as well as other international and non-governmental organizations with regard to incorporating human rights and best practices into the development and implementation of transitional justice mechanisms and to the ongoing process of strengthening the United Nations system in the area of the rule of law and transitional justice;

21. *Also requests* the Office of the High Commissioner to research further the relationship between disarmament, demobilization and reintegration and transitional justice in order to develop a deeper understanding of how the two processes can promote and sustain one another, and to submit to the Council at its eighteenth session a report on this issue, in consultation with the United Nations Development Programme and other relevant parts of the United Nations system, civil society, States and other stakeholders;

22. *Requests* other parts of the United Nations system to cooperate fully with the Office of the High Commissioner in the area of human rights and transitional justice;

23. *Invites* relevant special procedures of the Council, as appropriate, in the framework of their mandates, to take into account the issue of transitional justice;

24. *Decides* to continue its consideration of this matter at its eighteenth session or at the corresponding session in conformity with its annual programme of work.
