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Agenda item 3

Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development

Resolution adopted by the Human Rights Council*

21/15.

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,

Recalling General Assembly resolution 60/147 of 16 December 2005, in which the Assembly adopted 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,

Recalling also Commission on Human Rights resolutions 2005/70 of 20 April 2005, on human rights and transitional justice, 2005/81 of 21 April 2005, on impunity, and 2005/66 of 20 April 2005, on the right to the truth, and Human Rights Council resolutions 12/11 of 12 October 2009, on human rights and transitional justice, 9/11 of 18 September 2008 and 12/12 of 1 October 2009, on the right to the truth, 10/26 of 27 March 2009 and 15/5 of 29 September 2010, on forensic genetics and human rights, as well as Council decisions 2/105 of 27 November 2006, on the right to the truth, and 4/102 of 23 March 2007, on transitional justice,

Welcoming Human Rights Council resolution 18/7 of 29 September 2011, in which the Council created the mandate of special rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence, and the appointment of a mandate holder by the Council at its nineteenth session,

* The resolutions and decisions adopted by the Human Rights Council will be contained in the report of the Council on its twenty-first session (A/HRC/21/2), chap. I.

Welcoming also the decision of the General Assembly to convene a high-level meeting on the theme “The rule of law at the national and international levels” during the high-level segment of its sixty-seventh session,¹

Recalling the reports of the Secretary-General on the rule of law and transitional justice in conflict and post-conflict societies,² including the relevant recommendations contained therein, the report of the Secretary-General entitled “Uniting our strengths: Enhancing United Nations support for the rule of law”,³ which designated 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, subsequent reports of the Secretary-General on the rule of law and⁴ the report of the Secretary-General on enhancing mediation and its support activities,⁵ and taking note of the guidance note of the Secretary-General on the United Nations Approach to Transitional Justice of March 2010,

Recalling also the set of principles for the protection and promotion of human rights through action to combat impunity,⁶ and taking note with appreciation of the updated version of those principles,⁷ as well as the report of the Special Rapporteur on the independence of judges and lawyers submitted to the Commission on Human Rights,⁸

Recalling further Security Council resolution 1325 (2000) of 31 October 2000 and its subsequent resolutions 1820 (2008) of 19 June 2008, 1888 (2009) of 30 September 2009, 1889 (2009) of 5 October 2009 and 1960 (2010) of 16 December 2010 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 international humanitarian law and achieve sustainable peace, in accordance with international law and the purposes and principles of the Charter,

Noting the inclusion of a range of sexual violence offences in the Rome Statute of the International Criminal Court and the statutes of the ad hoc international criminal tribunals, and also that rape and other forms of sexual violence can constitute a war crime, a crime against humanity, or a constitutive act with respect to genocide,

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

¹ General Assembly resolution 65/32, para. 13.

² S/2004/616 and S/2011/634.

³ A/61/636-S/2006/980.

⁴ A/63/226, A/63/64, A/64/298, A/65/318 and A/66/133..

⁵ S/2009/189.

⁶ E/CN.4/Sub.2/1997/20/Rev.1, annex II.

⁷ E/CN.4/2005/102/Add.1.

⁸ E/CN.4/2006/52.

and human rights, and encouraging greater efforts to ensure that a gender perspective and a victim-centred approach are fully integrated into all of these activities,

Welcoming also the increased integration of a human rights perspective, including through activities of the Office of the High Commissioner in cooperation with other relevant actors 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 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. *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;

2. *Underlines* that, when designing a transitional justice strategy, the specific context of each situation has to be taken into account with a view to preventing the recurrence of crises and future violations of human rights, and to ensure social cohesion, institution-building, ownership and inclusiveness at the national and local levels;

3. *Also underlines* 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 that can complement judicial processes and that, when established, such mechanisms have to be designed within a specific societal context and to be founded on broad national consultations with the inclusion of victims and civil society, including non-governmental organizations;

4. *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 concerning fair trials;

5. *Reaffirms* the responsibility of States to comply with their relevant obligations to prosecute those responsible for gross violations of human rights and serious violations of international humanitarian law constituting crimes under international law, with a view to end impunity;

6. *Calls upon* States, in particular, to comply with their obligations under applicable international law when prosecuting persons for gender-based and sexual violence, to ensure that all victims of such violence have equal access to justice, and stresses the importance of ending impunity for such acts as part of a comprehensive approach to seeking truth, justice, reparation and guarantees of non-recurrence;

7. *Notes with interest* the position of the Secretary-General that peace agreements endorsed by the United Nations can never permit amnesties for genocide, crimes against humanity, war crimes and gross violations of human rights;

8. *Reaffirms* that remedies for gross violations of international human rights law and serious violations of international humanitarian law include, as provided for under international law, the victim's right to:

- (a) Equal and effective access to justice;

- (b) Adequate, effective and prompt reparation for harm suffered;
 - (c) Access to relevant information concerning violations and reparation mechanisms;
9. *Emphasizes* that a human rights-based approach should be incorporated into vetting processes as part of institutional reform aiming at preventing the recurrence of human rights violations and at building confidence in State institutions;
10. *Welcomes* the report of the United Nations High Commissioner for Human Rights on human rights and transitional justice,⁹ taking note of the analysis of the relationship between disarmament, demobilization and reintegration and transitional justice, and stressing that disarmament, demobilization and reintegration and transitional justice processes are interrelated and that coordination between the two efforts is essential to facilitate their coherence and mutual reinforcement;
11. *Emphasizes* that justice, peace, democracy and development are mutually reinforcing imperatives;
12. *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, and do not provide for blanket amnesties;
13. *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;
14. *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;
15. *Underlines* the importance of giving vulnerable groups, including those marginalized for political, socioeconomic 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;
16. *Recognizes* the important role played in the realization of transitional justice goals and in the reconstruction of 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;
17. *Strongly condemns* violence against women and girls committed in conflict and post-conflict situations, such as murder, rape, including systematic rape, sexual slavery, forced pregnancy and enforced sterilization, recognizing that the term "violence against

⁹ A/HRC/18/23.

women” is not limited to sexual violence but includes any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, and calls for effective measures of accountability and redress where those acts amount to violations of international human rights and humanitarian law;

18. *Recognizes* that sexual and gender-based violence is also committed against men and boys in conflict and post-conflict situations and, as such, can also constitute a gross violation of international human rights law and a serious violation of international humanitarian law and that such violations must be investigated, prosecuted and punished, and redress be provided to victims in accordance with applicable domestic law obligations under international law;

19. *Also recognizes* that sexual and gender-based violence, particularly in conflict and post-conflict situations, affects victims, families, communities and societies, and stresses that effective remedies in those situations should include access to health care, psychosocial support, legal assistance and socioeconomic reintegration services for victims of such violence;

20. *Underlines* the needs of women and the particular needs of children in transitional justice processes and the obligation and importance of enabling the full and equal participation of women, and the importance of engaging children, consistent with their age and maturity, in all aspects of post-conflict recovery, recognizing their crucial role in facilitating the reconstruction of society, the promotion of the rule of law and ensuring accountability;

21. *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 to be paid to those most affected by conflicts and the lack of effective rule of law mechanisms, among them women, children, migrants, refugees, internally displaced persons, persons with disabilities and persons belonging to national or ethnic, religious or linguistic 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;

22. *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 and gender mainstreaming in the restoration of the rule of law and transitional justice processes;

23. *Calls upon* States to assist the United Nations in its ongoing work on the relevant recommendations of the reports of the Secretary-General on the rule of law and transitional justice in conflict and post-conflict societies,² the report of the Secretary-General entitled “Uniting our strengths: Enhancing United Nations support for the rule of law”³ as well as subsequent reports of the Secretary-General on the rule of law,⁴ 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;

24. *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;

25. *Recommends* that a human rights and transitional justice perspective be taken into account in peace negotiations, and that those conducting peace negotiations draw upon the relevant human rights and transitional justice expertise available within the United Nations system;

26. *Welcomes* the report of the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence,¹⁰ in which the Special Rapporteur concluded that, as a set of measures, the four components of his mandate are interrelated and mutually reinforcing when implemented to redress gross violations of human rights and serious violations of international humanitarian law and that, with respect to the meaningful participation of victims, the participatory procedures necessary to address the different needs and opportunities of women, men and children have yet to be established;

27. *Acknowledges* the fundamental importance of human rights education and training in contributing to the promotion, protection and effective realization of all human rights, including the area of human rights and transitional justice;

28. *Invites* States to avail themselves of the expertise and advisory services of the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence in the area of human rights and transitional justice, and encourages the Special Rapporteur, within his mandate, to share experience and information relating to good practices, technical assistance and capacity-building in his interaction with States in this regard;

29. *Encourages* the Special Rapporteur on the promotion of truth, justice, reparations and guarantees of non-recurrence to work, within his mandate, in close cooperation with relevant special procedures of the Human Rights Council and relevant actors within the United Nations system, including the United Nations Entity for Gender Equality and the Empowerment of Women, the Department of Peacekeeping Operations, the Special Representative of the Secretary-General on Sexual Violence in Conflict, the Special Representative of the Secretary-General for Children and Armed Conflict and the Committee on the Elimination of Discrimination against Women, as appropriate, in the fulfilment of the gender-specific dimension of his mandate;

30. *Requests* the Office of the High Commissioner 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 the Special Rapporteur on the promotion of truth, justice, reparations and guarantees of non-recurrence, as well as with other relevant actors of the United Nations and 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;

31. *Invites* other relevant actors of the United Nations system to cooperate fully with the Office of the High Commissioner and the Special Rapporteur on the promotion of truth, justice, reparations and guarantees of non-recurrence in the area of human rights and transitional justice;

32. *Requests* the Office of the High Commissioner to submit an analytical study to the Human Rights Council, prior to its twenty-seventh session, focusing on gender-based

¹⁰ A/HRC/21/46.

and sexual violence in relation to transitional justice in conflict and post-conflict situations, the effective participation of victims and the participatory procedures necessary to address the different needs and opportunities of women, men and children, including good practices of States in the field of truth-seeking, justice, reparation and institutional reform and undertaken in consultation with the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence, the Special Rapporteur on violence against women, its causes and consequences, other relevant mandate holders, the United Nations Entity for Gender Equality and the Empowerment of Women, the Special Representative of the Secretary-General on Sexual Violence in Conflict, the Special Representative of the Secretary-General for Children and Armed Conflict, other relevant actors of the United Nations system, civil society and other stakeholders;

33. *Decides* to continue its consideration of this matter at its twenty-seventh session or at the corresponding session in conformity with its annual programme of work.

*37th meeting
27 September 2012*

[Adopted without a vote.]
