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Transitional Justice in the  
United Nations Human Rights  
Council

## Transitional Justice in the United Nations Human Rights Council

### Executive Summary

Five years after the establishment of the United Nations Human Rights Council (the Council), this report offers some initial findings on the extent to which its work has addressed different forms of accountability for gross human rights violations and how this accords with the approach to transitional justice within the broader United Nations (UN) system.

Based on an initial review of the Council's practice, the report concludes that the Council and its mechanisms have approached justice in a piecemeal and sometimes politicized manner. Transitional justice measures offer practical strategies to address the complex legacy of serious human rights abuses that are responsive to victims' interests and reinforce a human rights-based rule of law. The report concludes that there is a need for more comprehensive discussion among member states, the Office of the High Commissioner on Human Rights (OHCHR), and independent experts on how transitional justice could be more effectively integrated, thereby enabling the Council to fulfill its mandate to address human rights violations and prevent future abuses. Specific findings include:

- **The existing normative framework for transitional justice could be better integrated in the work of UN Special Procedures and the Council.**<sup>1</sup> In addition to treaty-based obligations, the Updated Set of Principles for the Protection and Promotion of Human Rights through Action to Combat Impunity and 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 remain underutilized by Special Procedures and the Council as a whole. These offer a useful toolbox of interrelated justice approaches, including prosecution, truth-seeking, reparation, and institutional reform.
- **The Council's political response to possible forms of justice in situations of gross, systematic human rights violations has been selective and lacks follow-through.** Implementation of recommendations by human rights mechanisms on accountability for gross, systematic human rights violations is rarely monitored, which negatively impacts the Council's credibility. The second cycle of the

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<sup>1</sup> Special Procedures includes special rapporteurs, special representatives, independent experts, and working groups mandated by the UN's political bodies to monitor and report on human rights violations and to recommend ways to promote and protect human rights. Under criteria established by the Council in 2007, these experts are selected based on their expertise, experience in the field of human rights, independence, impartiality, personal integrity, and objectivity. See Human Rights Council Resolution 5/1. Sect. II.A, June 18, 2007.

Universal Periodic Review offers a potentially important mechanism to ensure implementation of transitional justice processes in various countries.

- **The current network of Special Procedures does not provide adequate coverage of transitional justice.** With some important exceptions, both thematic and country-specific Special Procedures do not systematically apply a comprehensive approach to justice measures for the serious violations that fall within their mandates, despite a standing request from the Council to this end. Resources that could allow them to do so need to be strengthened; the OHCHR could better link its transitional justice expertise with its support to special procedures.
- **The Council could benefit from a greater connection to UN system-wide developments on transitional justice.** The UN's approach to transitional justice policy and programming in national contexts could be strengthened if Geneva and New York actors were more closely aligned. The role of the OHCHR as the UN system-wide lead agency on transitional justice (as a subset of its rule of law engagements) offers a key role for connections between Council activity and other processes in New York. The forthcoming report to the Security Council of the Secretary-General on the rule of law and transitional justice may be a useful tool in Geneva.

## Introduction

Transitional justice refers to a set of approaches and mechanisms designed to address the situation of massive violations of human rights in the wake of repressive rule or conflict. The scale and impact of such violations requires solutions that not only provide a meaningful measure of justice for very large numbers of victims but also which help reconstruct the basic elements of trust between citizens and the government institutions that are necessary for the rule of law to function effectively. Determining which mechanisms and approaches should be adopted requires technical and comparative expertise on the methods themselves, as well as a detailed understanding of the context in which they are to be applied.

The Secretary-General has defined transitional justice in the following way:

The full range of processes and mechanisms associated with a society's attempts to come to terms with a legacy of large-scale past abuses, in order to ensure accountability, serve justice and achieve reconciliation. These may include both judicial and non-judicial mechanisms, with differing levels of international involvement (or none at all) and individual prosecutions, reparations, truth-seeking, institutional reform, vetting and dismissals, or a combination thereof.<sup>2</sup>

As the primary UN forum for discussion of human rights issues, the Human Rights Council (the Council) has acknowledged the importance of transitional justice in various ways, including through such initiatives as its resolutions on Human Rights and Transitional Justice and Right to the Truth. The Council's predecessor, the Commission on Human Rights, oversaw the development of important normative framework instruments, such as the Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and

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<sup>2</sup> Report of the Secretary General on the rule of law and transitional justice in conflict and post-conflict societies, S/2004/6168, Aug. 23, 2004, para 8.

Serious Violations of International Humanitarian Law (Basic Principles on Reparation) and the Set of Principles for the Protection and Promotion of Human Rights Through Action to Combat Impunity, first produced in 1997 and updated in 2005 (the Updated Set of Principles to Combat Impunity).<sup>3</sup> These form part of the legal basis for the field of transitional justice by demonstrating the relationship between existing state obligations to protect the core rights of victims of gross, systematic human right violations: the right to truth, the right to justice, and the right to reparation, including through other guarantees of non-recurrence like institutional reforms.

This briefing paper is based on a survey of the practice and work of the Council from a transitional justice perspective. It aims to contribute to the current review of the work of the Council five years after its establishment, other UN review processes that touch upon transitional justice, especially in the area of the rule of law, and discussions among countries about future directions. The survey comprised a comprehensive review of relevant resolutions of the Council and the Commission on Human Rights, the content of both mandates and reports by Special Procedures, and interviews with key stakeholders, including government officials, the OHCHR, current and former Special Procedures mandate-holders, as well as representatives of NGOs and academic institutions. The briefing considers the role of the Council in developing the normative framework of transitional justice, the consistency of its political responses to questions of accountability and justice, the role of Special Procedures, and the relationship with approaches to transitional justice within the broader UN system. It is clear that further work on each of these and other related issues require more exploration, and the paper concludes with policy recommendations for stakeholders.

## Direct Engagement on Transitional Justice

### Resolutions on Transitional Justice

The Commission on Human Rights regularly adopted a series of resolutions that addressed questions of impunity, the right to restitution, and forensic science.<sup>4</sup> This tradition was revived by the Council in the form of two thematic initiatives that relate to transitional justice: the resolutions on human rights and transitional justice, and the various resolutions related to the right to the truth.<sup>5</sup> Although both were adopted by consensus, some issues have provoked more debate, including the question of amnesties and the scope of the obligation of countries to investigate and prosecute international crimes, such as crimes against humanity and genocide. Overall the strong engagement of the Group of Latin American and Caribbean (GRULAC) nations on matters of transitional justice over the years has given the topic more legitimacy and credibility at the Council. Nevertheless, no broader cross-regional alliance is pushing the transitional justice

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<sup>3</sup> 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. A/RES/60/147, Dec. 16, 2005; and Report of the independent expert to update the Set of principles to combat impunity, Addendum Updated Set of principles for the protection and promotion of human rights through action to combat impunity, U.N. Commission on Human Rights, E/CN.4/2005/102/Add.1, Feb. 8, 2005.

<sup>4</sup> Commission on Human Rights Resolutions: Human rights and forensic science (1998/36, the resolution continued at the Human Rights Council; see A/HRC/RES/15/5, 2009); The right to restitution, compensation and rehabilitation for victims of grave violations of human rights and fundamental freedoms (1998/43, the resolution ended in 2005 when the Basic Principles on Reparation were adopted); Impunity (1998/53, the resolution ended in 2005 and was not continued by the main sponsor, Canada, in the Council).

<sup>5</sup> Both resolutions were introduced in 2005 during the Commission on Human Rights and continued after 2006 at the Council. For more recent information on human rights and transitional justice, see A/HRC/RES/12/11 (2009); Right to Truth, A/HRC/RES/12/12 (2009). In addition see Forensic genetics and human rights, A/HRC/RES/15/5 (Oct. 6, 2010); Mandate of the Special Rapporteur on extrajudicial, summary or arbitrary executions, A/HRC/RES/8/3 (June 18, 2008); Independence and impartiality of the judiciary, jurors and assessors and the independence of lawyers, A/HRC/RES/15/3 (Oct. 5, 2010); Enforced or involuntary disappearances, A/HRC/RES/10/10 (March 26, 2009).

agenda forward currently, despite the recent proliferation of transitional justice processes, particularly in Africa. Both resolutions regularly emphasize the important role of the OHCHR in promoting transitional justice issues in the UN system.

### Standard-setting Processes Relevant to Transitional Justice

The Council inherited a comprehensive set of normative standards from the Commission on Human Rights. The 2005 Updated Set of Principles to Combat Impunity lays out the core understanding that victims of gross human right violations that amount to crimes under international law have three basic rights: the right to the truth, the right to justice, and the right to reparation, including through other guarantees of non-recurrence.

To date, the Commission, the Council, or the General Assembly have not formally adopted the Set of Principles to Combat Impunity, which may in part reflect lingering concerns about their impact on peace processes.<sup>6</sup> Although the principles offer guidance for nations and the broader UN system, they have been widely used and cited by international and regional human rights bodies, and, with further endorsement and usage by countries, they may contribute to the development of customary international law.<sup>7</sup> There is also a risk that a more formal process could weaken the standards as currently articulated.

The second important framework document is the Basic Principles on Reparation, which took more than 20 years to negotiate. Their unanimous adoption by the General Assembly in 2005 provides them with authoritative backing. They emphasize that under existing international human rights law, redress and reparation for serious human rights violations entail more than monetary compensation, and include restitution, rehabilitation, satisfaction, and guarantees of non-repetition. The Basic Principles on Reparation have become an important and influential reference point in the field of transitional justice.<sup>8</sup>

The OHCHR plays a key role in promoting the Set of Principles to Combat Impunity and the Basic Principles on Reparation within the wider UN system. In recent years, the office has relied on both documents for training its field presences, as well as in its technical assistance and advisory functions. At the Council's request, the OHCHR has also produced several key reports on transitional justice-related issues.<sup>9</sup> It has also produced a series of rule of law tools for post-conflict states, such as on reparations program and national consultations on transitional justice, which provide policy guidance on some of the aspects of the two sets of principles. More needs to be done, however, to integrate the Set of Principles to Combat Impunity into the work of the

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<sup>6</sup> The Commission "took note with appreciation" of the principles in 2005, although they were not considered by the General Assembly.

<sup>7</sup> The principles do not purport to constitute legal standards and are offered as "guiding principles intended not to thwart reconciliation but to avoid distortions in certain reconciliation policies so that, once beyond the first stage, which is more concerned with 'conciliation' than reconciliation, the foundations of a 'just and lasting reconciliation' may be laid." See Question of the impunity of perpetrators of human rights violations (civil and political): Revised final report prepared by Mr. Joinet pursuant to Sub-Commission decision 1996/119, E/CN.4/Sub.2/1997/20/Rev.1 (Oct. 2, 1997). The principles have already received strong affirmation in decisions by international criminal tribunals and human rights treaty bodies, as well as in the reports of commissions of inquiry: See Impunity Report of the independent expert to update the Set of Principles to combat impunity, E/CN.4/2004/88 (Feb. 27, 2004).

<sup>8</sup> See the discussion on reparations, *Final Report, Truth and Reconciliation Commission of Peru*, Vol IX, Part IV, chapter 2.2. p 150.

<sup>9</sup> OHCHR, Study on human rights and transitional justice activities undertaken by the human rights components of the United Nations system, E/CN.4/2006/93 (Feb. 7, 2006); OHCHR, Analytical study on human rights and transitional justice, A/HRC/12/18 (Aug. 6, 2009); OHCHR, Study on the Right to the Truth, E/CN.4/2006/91 (Feb. 8, 2006); OHCHR, Inventory of human rights and transitional justice aspects of recent peace agreements, A/HRC/12/18/Add.1 (Aug. 21, 2009).

Special Procedures and other bodies created by the Council, as well as in state practice more broadly.

### **The Council's Political Response on Matters Relevant to Transitional Justice**

Questions of accountability for serious violations of human rights are often politically sensitive and contested. Although no state in the Council would challenge the importance of the general principle to fight impunity for gross, systematic human rights violations, in practice the Council is not consistent in holding nations accountable to provide justice for such violations.<sup>10</sup>

The Council's establishment of Special Procedures or commissions of inquiry can constitute important first steps toward accountability for serious human rights violations, but there is often little political will in the Council to follow up on recommendations and urgent appeals afterward. For instance, a number of long-outstanding recommendations on steps needed to combat impunity in the Democratic Republic of Congo (DRC), Sudan, and Sri Lanka have not been pursued.<sup>11</sup>

The recent examples of Libya, Cote d'Ivoire, and Syria, in which the Council established commissions of inquiry in response to credible reports of gross human rights violations, are important indications of the Council's capacity to act in transitional justice situations, although they stand in contrast to the Council's inaction in other countries.<sup>12</sup> These commissions can accomplish transitional justice goals directly by contributing to truth-seeking and laying the groundwork for subsequent criminal investigations. They also can make broader justice recommendations that are useful to the transitional contexts in which they are operating. In order to be effective, such bodies need clear mandates from the Council that direct them to existing standards and to be equipped with expertise on transitional justice, a role often played by the OHCHR. Additional dedicated transitional justice expertise within the OHCHR rapid deployment roster could bolster this.

Independent commissions of inquiry can counterbalance politicized rhetoric sometimes found in intergovernmental processes. However, in order to ensure effective follow-up, they must ensure that their recommendations are well substantiated and feasible. Longer-term or standing mandates for specific situations, as is recommended by the Commission of Inquiry on Libya regarding its own mandate could ensure greater follow-up by the Council, in particular on the questions of accountability.<sup>13</sup>

### **The Universal Periodic Review**

The Universal Periodic Review (UPR) was an innovation of the 2006 reform process. Practice so far has shown that nations treat the review seriously, which is reflected in

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<sup>10</sup> Currently, only four nations have been criticized for their violations and subjected to review by country-specific Special Procedures: Israel/Occupied Palestinian Territory, the Democratic People's Republic of Korea, Burma/Myanmar, and most recently Iran. Four other nations have been singled out by the country-specific resolutions, although without a specific country mandate: Sudan, Sri Lanka, Honduras, and Cote d'Ivoire. In the context of technical cooperation and advisory services, the following nations are on the Council's agenda: Burundi, Cambodia, Haiti, Liberia, and Somalia. While the mandate of the independent expert on Liberia was terminated in 2008, the Republic of Guinea was added in March 2010 to the list of nations receiving technical cooperation through a newly established OHCHR field office.

<sup>11</sup> Report of the independent expert on the situation of human rights in the Sudan, Mohammed Chande Othman-Addendum: Status of implementation of the compilation of recommendations of the Group of Experts to the Government of the Sudan for the implementation of Human Rights Council resolution 4/8, pursuant to Council resolutions 6/34, 6/35, 7/16 and 11/10, A/HRC/15/57 (September 2010), 2 (); Third joint report of seven United Nations experts on the situation in the Democratic Republic of the Congo, A/HRC/16/68 (March 2011), 9.

<sup>12</sup> Examples of these include Sri Lanka, Afghanistan, Zimbabwe, China, Chechnya, Bahrain, and Yemen.

<sup>13</sup> See temporary limited mandate of Commission of Inquiry for Libya in Operative Paragraph(OP) 11 of A/HRC/RES/S-15/1.

high-level presences at the respective reviews. The UPR offers an important mechanism to follow up at the political level on national transitional justice processes. In at least 40 reviews to date, transitional justice issues have been raised, largely prompted by written submissions from NGOs.<sup>14</sup> The UPR could be used more systematically as a platform for exchange of best practices by country, particularly in light of the second round of the UPR cycle that starts in 2012; to a great extent, this should focus on implementation of recommendations addressed during the first cycle.

### The Work of Special Procedures on Transitional Justice

The work of independent experts mandated by the UN system to monitor the application of human rights standards on the ground has been widely viewed as a major achievement in the organization's human rights work in recent decades.<sup>15</sup> There is no special procedure mandated to specifically address the full scope of transitional justice approaches, although different aspects are touched upon under other mandates. The issue has mainly been addressed by mandates related to civil and political rights, which often face opposition from countries of the global South.<sup>16</sup> Yet transitional justice approaches are largely absent from the work of mandates related to the promotion of economic, social, and cultural rights. Transitional justice also regularly comes up in the context of the Council's country-specific mandates, such as in Cambodia, Sudan, or Burundi. Compared with thematic mandates that have global coverage, country-specific mandates have a better possibility for targeted follow-up. However, country-specific Special Procedures rarely have directly addressed the need for transitional justice processes, in particular non-judicial measures such as reparations and truth-seeking.<sup>17</sup>

Overall, none of the mandate holders comprehensively and consistently address the actual or potential use of transitional justice measures in their missions or reports, although impunity for human rights violations is a recurrent theme of many reports. Most commonly, Special Procedures might call on countries to investigate human rights violations and to provide redress and compensation to victims, but without reference to the recognized UN framework of applying a comprehensive approach that includes prosecutions, truth-telling, reparation, and institutional reform.<sup>18</sup> Similarly, Special Procedures rarely make use of best practices developed in the field of transitional justice in their dialogues and engagements with governments.

There are several possible explanations for this. First, with the exception of country-specific mandates, most deal with the implementation of one specific human rights obligation, such as the prohibition on torture. In this context, they are required to take a global nonselective approach to their work, looking at rights violations in developing and developed countries, as well as in conflict and non-conflict situations. As a consequence,

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<sup>14</sup> More information is available upon request from the International Center for Transitional Justice, [nsiddiqui@ictj.org](mailto:nsiddiqui@ictj.org).

<sup>15</sup> Ted Piccone, *Catalysts for Rights: The Unique Contribution of the UN's Independent Experts on Human Rights* (Washington, DC: Brookings Institution, October 2010). Currently there are 33 thematic and eight country-specific mandates covering issues as diverse as specific human rights (such as torture or the right to safe drinking water and sanitation) to broader areas, such as the effects of toxic waste or protecting human rights while combating terrorism). The most recent Special Procedures established are the Working Group on the Elimination of Discrimination Against Women in Law and Practice, a Special Rapporteur on Freedom of Assembly and Association, and a country-specific mandate on Iran.

<sup>16</sup> See the 2010 report of the special rapporteur on contemporary forms of racism, racial discrimination, xenophobia, and related intolerance. Githu Muigai dedicated a whole section on the issue of transitional justice and linking the importance of addressing the past to fighting racism. See also the reports of the special rapporteurs on torture, extrajudicial executions, violence against women, and the independence of judges and lawyers.

<sup>17</sup> See the call for a commission of inquiry in the Report of the Special Rapporteur on the situation of human rights in Cambodia, A/HRC/15/46 (Dec. 16, 2010); Report of the Special Rapporteur on the situation of human rights in Myanmar, Tomás Ojea Quintana, A/65/368 (Sept. 15, 2010).

<sup>18</sup> A more comprehensive approach on transitional justice can be found in the work of the special rapporteurs on extrajudicial, summary, or arbitrary executions, violence against women, and the independence of judges and lawyers.

with some exceptions—like the Special Rapporteur on Internally Displaced Persons—Special Procedures do not exclusively work on post-conflict or post-authoritarian situations in which transitional justice issues most often arise. Second, special procedures also more frequently address urgent human rights situations, which are brought to their attention by communications from victims or NGOs, with little time for longer-term follow-up. Third, mandate holders can usually conduct only two or three missions per year and issue relatively brief reports. A review of transitional justice situations is also not systematically part of the annual planning for upcoming missions. With some individual exceptions, most mandate holders lack specialized expertise on transitional justice. Even in cases when different mandate holders have collaborated and produced joint reporting, as in the case of the DRC, problems of coordination and limited time and resources have limited their effectiveness.

As noted above, a recurrent obstacle is that the Council is generally reluctant to follow up on politically sensitive recommendations, such as those that relate to accountability for violations committed by state-actors. The limitations of resources and the breadth of their coverage leave mandate holders poorly placed to revisit issues covered in previous reports. Not acting on these questions has the effect of perpetuating impunity for the countries concerned. The case of the DRC is particularly illustrative in this respect, because a high number of recommendations on the question of impunity and transitional justice remain unfulfilled.<sup>19</sup>

The main responsibility to support thematic Special Procedures rests with the OHCHR's Special Procedures Division, which allocates an average of two staff per mandate. There is transitional justice expertise in the office's Rule of Law and Democracy Section.<sup>20</sup> This appears to be drawn on to only a limited degree by Special Procedures, and could be better resourced, coordinated, and mainstreamed within the office to ensure that mandate holders use it more effectively. In 2009, the Council invited all Special Procedures to take transitional justice issues into account in their work, yet this remains for the moment largely unfulfilled.<sup>21</sup>

### The Role of Treaty Bodies

A full exploration of transitional justice in the work of treaty bodies goes beyond the scope of this study and warrants further research. However, their role in clarifying the legal obligations of countries under international human rights law to provide redress in the face of gross human rights violations remains crucial to the field of transitional justice. This has been done both through country-specific examinations, decisions on individual communications, and through the use of general comments. For example, the Human Rights Committee (HRC) that monitors compliance with the International Covenant on Civil and Political Rights (ICCPR) has said on various occasions that Article 2(3) requires the country to provide an effective remedy to victims of humanrights violations.<sup>22</sup> The HRC interpreted that provision to require countries to investigate all violations of the covenant and, in the case of gross violations or those constituting international crimes, to bring the alleged perpetrator to justice. The HRC has confirmed that the right to an effective remedy also includes the right of victims to

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<sup>19</sup> Third joint report of seven United Nations experts on the situation in the Democratic Republic of the Congo A/HRC/16/68 (March 9, 2011).

<sup>20</sup> This section supports the Council by producing reports like those referred to in footnote 8. The section also elaborates on lessons learned and good practices from UN field operations on transitional justice, provides advice and assistance in designing and implementing transitional justice processes, supports capacity building, and is the central repository of learning within the OHCHR for the purposes of its role as the UN system-wide lead on transitional justice.

<sup>21</sup> Human Rights Council Resolution on Transitional Justice, A/HRC/RES/12/11, OP 23.

<sup>22</sup> See in particular General Comment 31 on the Nature of General Legal Obligations imposed on States Parties to the Covenant, U.N. Doc. CCPR/C/21/Rev.1/Add.13 (March 29, 2004).

adequate reparation and the obligations of nations to put in place measures of non-recurrence. It has also stated that amnesties for violations of *non-derogable* rights such as freedom from torture are contrary to international law. Sometimes this attention reflects a comprehensive transitional justice approach, as in the HRC's recent recommendation that El Salvador repeal its General Amnesty Act, lift statutes of limitations, investigate the human rights violations as documented by the truth commission, bring the national reparation program into accordance with the victims' rights to reparation, and systematically look into human rights violations, especially cases of torture, by the police.<sup>23</sup> Overall, the full potential of treaty bodies as a forum in which a comprehensive approach to justice for serious human rights abuses can be addressed remains unutilized, both in terms of individual communications and consideration of state reports.

### Toward Greater Coherence Within the UN System on Transitional Justice

Transitional justice issues arise in relation to various areas of UN activity outside the human rights institutions, primarily through its work in peacemaking, peacekeeping, and peacebuilding. Considerations of such strategies can inform HRC discussion as resolving justice issues should be seen against the backdrop of current discussions under way in other parts of the UN system that include transitional justice and vice versa. In general, transitional justice is a small part of the UN's work on rule of law in post-conflict contexts, although it also is relevant to other cross-cutting thematic priority areas, such as children affected by armed conflict, and protecting civilians, women, peace, and security. In 2006, the Secretary-General's Policy Committee designated the OHCHR as the rule of law lead agency on transitional justice. The work is also undertaken by other programs and agencies' rule of law work, including the UN Development Programme, UN Women, the Office of Rule of Law and Security Institutions in the Department of Peacekeeping Operations, the Office of Legal Affairs, and the Department of Political Affairs. The UN Peacebuilding Fund has also supported transitional justice work. In 2010 the Secretary-General issued a policy guidance note on transitional justice with a view to ensuring a coherent approach across the system.<sup>24</sup> This further developed the approach laid out in the landmark 2004 report of the UN Secretary-General on strengthening the rule of law and transitional justice in conflict and post-conflict situations.<sup>25</sup> In June 2010 the Security Council requested an update on the UN's progress in implementing the recommendations of the 2004 report and consideration of future directions.<sup>26</sup> This is expected to be done by mid-2011.

An important way that the Security Council addresses accountability for gross human rights violations is through the area of protection of civilians, including women and children. In 2009, the Security Council made reference for the first time to the full range of transitional justice mechanisms (prosecution, truth-seeking, reparation, and institutional reform), reflecting the UN's holistic approach to the issue of fighting impunity for serious violations of international law.<sup>27</sup> The Security Council is less consistent when it comes to referring to such mechanisms in country-specific resolutions.

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<sup>23</sup> CCPR/C/SLV/CO/6, (Nov. 18, 2010). Another example is the recent Committee against Torture report on Cambodia, CAT/C/KHM/CO/2 (Jan. 20, 2011).

<sup>24</sup> Guidance Note of the Secretary-General on the United Nations Approach to Transitional Justice, March 2010.

<sup>25</sup> S/2004/616, (Aug. 23, 2004). The report placed transitional justice squarely on the emerging rule of law agenda of the UN, raising awareness of the need for coordination and cooperation throughout the UN system as well as with actors outside the organization.

<sup>26</sup> S/PRST/2010/11 (June 29, 2010).

<sup>27</sup> Security Council Resolution on the protection of civilians in armed conflict, S/RES/1894 (Nov. 11, 2009).

There are also opportunities for the UN General Assembly to address transitional justice outside of the Human Rights Council's reports. At the 2005 World Summit, the General Assembly recognized the need for universal adherence to and implementation of the rule of law at both the national and international levels, and reaffirmed its commitment to an international order based on the rule of law and international law. The Assembly's Sixth (Legal) Committee has been addressing various aspects of this theme and plans to consider transitional justice for the first time ever during its 66th session. These discussions should then inform preparations for a high-level meeting on the rule of law in 2012 in the General Assembly, which offers an important opportunity for attention to transitional justice issues.

There is room for improvement to ensure better exchange between the New York-based organs of the Security Council and the General Assembly, and the Human Rights Council. The OHCHR plays a key role in this regard, and that should be further developed. A good example is the recent practice of the high commissioner for human rights addressing regular open debates of the Security Council on protecting civilians. A similar approach could be pursued in relation to the Security Council's discussions of other relevant thematic areas and country situations. Likewise, there is a useful standing practice of regular visits and exchange by Special Procedures whose mandates originate outside the Human Rights Council, like the special representatives to the Secretary-General on the question of sexual violence or on children and armed conflict, to the regular sessions of the Council.

### Conclusions and Recommendations

The Council and its mechanisms have not sufficiently used the potential transitional justice provides, namely to offer principled, pragmatic answers about the challenges of addressing the legacy of past human rights abuses. Bringing this wealth of national and international experience closer to the Council could strengthen its ability to fulfill its mandate to address violations and prevent their commission.

There is a lack of awareness and expertise on transitional justice among the various actors in the Council, including not only many member states and civil society but also the Special Procedures. Most of these actors associate transitional justice with criminal justice as the primary weapon in the fight against impunity, although the 2009 resolution sought to remedy this interpretation. Only recently have some Special Procedures begun to rely on a broader approach. The OHCHR's work to promote the whole transitional justice toolbox, including criminal justice, is important in this respect as well. More needs to be done by countries, civil society, and other stakeholders to demonstrate how transitional justice initiatives can be useful to the Council's work.

Although transitional justice does feature on the Council's agenda through the resolutions on it and the right to truth, the practical application in specific country situations is selective and lacks concrete follow-up. A strong cross-regional "group of friends" on transitional justice that operates both in Geneva and New York is currently missing.

The Updated Set of Principles to Combat Impunity provides a detailed framework for addressing the legacy of past gross, systematic human rights violations. They should play a more prominent role in consolidating and framing the debate on the question of impunity in the human rights work of the UN and beyond. Transitional justice measures offer ways in which to implement these principles in practice. The OHCHR's

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promotion of the principles in its trainings, technical assistance, and advisory functions should continue, including in relation to both country practice and the work of Special Procedures.

The current network of Special Procedures provides only ad hoc coverage of transitional justice matters at the Council. They already play a key role in highlighting systematic violations, and calling on nations to investigate violations and provide redress for victims. A more comprehensive, systematic transitional justice focus within their respective mandates seems unrealistic. There is, however, room for improvement to better mainstream transitional justice into the work of the Special Procedures. To better mainstream this into their work would contribute to more targeted, effective policies in addressing the challenges on the ground in the aftermath of gross, systematic human rights violations. It would help the Council take a more victim-centered approach, which is currently missing. In their reports and work with governments, Special Procedures should, thus, refer more frequently to transitional justice experiences. The annual coordination meeting of all Special Procedures could be a venue to have a first exchange of views on transitional justice. The OHCHR should examine ways in which it can ensure better coordination between its support to Special Procedures and its work on transitional justice.

As transitional justice cuts across a range of areas of UN engagement, discussions in different fora are not always connected or consistent. Regular exchanges and flow of information between New York and Geneva, including within state representation, could enhance the effectiveness of the UN's efforts both at headquarters and on the ground. The regular briefings of the High Commissioner for Human Rights in the Security Council in the context of the thematic debates on protecting civilians, as well as the interactive debates with New York-based protection mandates, are important steps forward. The 2012 high-level debate in the General Assembly on the rule of law provides an excellent opportunity to connect the two worlds.

This overview of practice to date has demonstrated that there is a range of areas that could benefit from more in-depth consideration of how to ensure that the Council's discussions are proceeding on possible new mechanisms. A process of inter-state dialogue, supported by the OHCHR with the involvement of experienced independent experts, would be a judicious means by which to take this process forward.

## Recommendations

### *To OHCHR*

- Integrate transitional justice better in the work of Special Procedures, through:
  - Improving the resources and technical support on transitional justice.
  - Encouraging the Special Procedures to more frequently visit countries where transitional justice is playing out.
  - Encouraging all thematic mandates to more consistently consider transitional justice approaches in their work.
  - Including an exchange on transitional justice strategies at the annual coordination meeting of Special Procedures.
- Continue to promote the existing legal and normative frameworks of transitional justice, including the Updated Set of Principles to Combat Impunity and the Basic Principles on Reparation.

*To Member States*

- Ensure more consistent follow-up to recommendations by mechanisms of the Council addressing the question of impunity.
- Promote better understanding and consistent application of the existing practical and legal framework, including the Updated Set of Principles to Combat Impunity and the Basic Principles on Reparations, in negotiations and debates before the Council.
- Use the second cycle of the UPR to monitor follow-up on transitional justice issues raised in the first cycle, and also to share country experiences.

*To Member States and OHCHR*

- Raise more awareness on transitional justice strategies in the Council by organizing regular side events on such matters; profile best practices and lessons learned from a wide range of country contexts.
- Support better coordination between the attention to transitional justice in the Council and activities on this issue within the wider UN system. To this end, continue to ensure regular visits and exchanges with the Council by New York-based protection mechanisms, like the special representative to the Secretary-General on the question of sexual violence or on children and armed conflict. Continue to support the practice of the High Commissioner for Human Rights to brief the Security Council in the context of the thematic debates on protecting civilians.
- Use the forthcoming report of the UN Secretary-General to the Security Council to stimulate substantive debate within the Council on transitional justice and to ensure that a commitment to accountability features prominently in the 2012 high-level panel discussion on rule of law at the General Assembly.