

Distr.: General
24 February 2010
Arabic
Original: English



مجلس حقوق الإنسان

الدورة الثالثة عشرة

البند ٣ من جدول الأعمال

تعزيز وحماية جميع حقوق الإنسان، المدنية والسياسية والاقتصادية والاجتماعية والثقافية، بما في ذلك الحق في التنمية

معلومات مقدمة من شبكة المؤسسات الوطنية الأفريقية لحقوق الإنسان باسم المؤسسات الوطنية لحقوق الإنسان في أفريقيا المعتمدة ضمن الفئة "ألف"

مذكرة من الأمانة

تحيل أمانة مجلس حقوق الإنسان طيه الرسالة المقدمة من شبكة المؤسسات الوطنية الأفريقية لحقوق الإنسان باسم المؤسسات الوطنية لحقوق الإنسان في أفريقيا المعتمدة ضمن الفئة "ألف"، وهي مستنسخة أدناه وفقاً للمادة ٧(ب) من النظام الداخلي الوارد في مرفق قرار المجلس ١/٥ والتي تنص على أن مشاركة المؤسسات الوطنية لحقوق الإنسان تتحقق استناداً إلى ترتيبات وممارسات وافقت عليها لجنة حقوق الإنسان، بما في ذلك القرار ٢٠٠٥/٧٤ المؤرخ ٢٠ نيسان/أبريل ٢٠٠٥.

* مستنسخة في المرفق كما وردت، باللغة التي قدمت بما فقط.

ANNEX

Written contribution by the Network of African National Human Rights Institutions to the Panel on the right to truth

Human Rights Council, 13th session, 1st to 26th March 2010

The concept of truth

In order to know what a right to the truth entails, there needs to be some understanding as to what is meant by truth. A commonly accepted definition of truth is the agreement of the mind with reality. True ideas are those we can assimilate, validate, corroborate and verify. In other words, the truth is measured by way of evidence. The definition of truth accepts that judgment needs to be involved in ascertaining the truth, but a judgment is only said to be true when it conforms to the external reality.

This theory is clearly represented in some of the implementing mechanisms of the right to the truth, such as truth and reconciliation commissions, which by virtue of their mandate often formulate their inquiries into the “truth” of past events with an eye to how the truth-seeking process will contribute to reconciliation.

The right to truth is a fundamental emerging principle of international human rights law, and central to the project of confronting transitions to democracy and the legacy of massive human rights violations. International law entitles the families of disappeared persons to know the totality of circumstances surrounding the fate of their relatives and imposes an obligation of investigation — the right to truth — on states.

The right to truth is an integral part of the right to justice, despite moves to separate truth from criminal conviction. The right to the truth has emerged as a legal concept at the national, regional and international levels, and relates to the obligation of the state to provide information to victims or to their families or even society as a whole about the circumstances surrounding serious violations of human rights.

The origins of the right to truth may be traced to the right under international humanitarian law of families to know the fate of their relatives, recognized by Articles 32 and 33 of the 1977 Additional Protocol I to the Geneva Conventions of 1949, as well as obligations incumbent on parties to armed conflicts to search for persons who have

been reported missing. Broadly speaking, the right to the truth is closely linked at its inception to the notion of a victim of a serious human rights violation. Like procedural rights, it arises after the violation of another human right has taken place, and would appear to be violated when particular information relating to the initial violation is not provided by the authorities, be it by the official disclosure of information, the emergence of such information from a trial or by other truth-seeking mechanisms. The rationale for such a right would appear to lie in the right of victims or of their families to be informed about the events in question so as to aid the healing process. Among other things, it would offer a sense of closure, enable their dignity to be restored and provide a remedy and reparation for violations of their rights and/or the loss suffered. In addition, the right to the truth has been a safeguard against impunity. For this reason, it has been used to contest the validity of blanket amnesty laws shielding perpetrators of gross violations of human rights under international law, as well as to encourage more transparent and accountable government.

In the aftermath of armed conflict or periods of internal strife, the right to the truth has often been invoked to help societies understand the underlying causes of conflicts or widespread violations of human rights. Many countries have sought to implement this right by establishing truth commissions or commissions of inquiry. Arguably, the right to the truth may also be implemented by other processes, such as public trials, the disclosure of state documents and the proper management of archives, and by ensuring public access to information.

African National Human Rights Institutions

Participants at the Seventh Conference of African National Human Rights Institutions, convening in Rabat, Morocco, from 3rd to 5th November 2009 under the theme: “Peace and Justice: Role of National Human Rights Institutions”, under the auspices of the Advisory Council for Human Rights of Morocco in cooperation with the Network of African National Human Rights Institutions and with the support of the Office of the United Nations High Commissioner for Human Rights (OHCHR), the *Organisation Internationale de la Francophonie* (OIF), and the Commonwealth Secretariat, noted that the Nairobi Declaration on the role of NHRIs in the Administration of Justice adopted by NHRIs in 2008 underlined the crucial role of NHRIs in relation to access to justice, the judiciary, law enforcement and correctional and detention facilities as part of their contribution to a peaceful and human rights respectful society,

The conference recognized the need for comprehensive approach when addressing the legacy of large scale abuses, comprising of investigations

and prosecutions, truth seeking processes, reparations programs, and vetting processes; and that any such combination must be in conformity with international legal standards and obligations, and take into account national context;

As a result, the conference resolved:

- a. To promote the inter-dependency of peace and justice,
- b. To promote and disseminate relevant international and regional human rights instruments and standards, including the Universal Declaration on Human Rights, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, and the African Charter on Democracy, Elections and Governance; and to promote their wide implementation,
- c. To raise awareness about international instruments and standards as well as best practices relating to transitional justice and combating impunity,
- d. To raise awareness of transitional justice mechanisms and lessons learned, to engage relevant stakeholders, including civil society and institutional actors in transitional justice discourse, and to mobilize the society's action in this area,
- e. To facilitate the national consultations for the establishment of transitional justice mechanisms in close cooperation with other national and international stakeholders, and ensure participation of victims, and other vulnerable or marginalized groups, and make appropriate recommendations to ensure an open and transparent process,
- f. To engage in information gathering and documenting of human rights abuses, and cooperate with transitional justice mechanisms in investigation of human rights violations,
- g. To ensure preservation and protection of information on human rights abuses, including through appropriate archiving,
- h. To interact with and reinforce the justice mechanisms and ensure that cases of human rights violations are submitted to the justice system and adequately addressed,
- i. To cooperate in the design and, as appropriate, in implementation of transitional justice mechanisms, and to ensure the centrality of victims in such processes,

- j. To ensure that the establishment and operation of any transitional justice mechanism is in compliance with international human rights standards and practices,
- k. To ensure that the rights of those facing transitional justice mechanisms, including alleged perpetrators and victims, are respected,
- l. To promote provision of assistance to victims and witnesses participating to transitional justice processes, so they are informed of their rights and responsibilities and have access to medical and psychosocial care; and to promote provision of victims and witness protection;
- m. To monitor and report on the implementation of the recommendation of transitional justice mechanisms,
- n. To recommend to the relevant authorities legislative and administrative reforms to ensure their compliance with international standards, and to prevent recurrence of human rights abuses and to restore respect for the rule of law and trust in government institutions,
- o. To engage and interact with international and regional human rights mechanisms, including by submitting reports, and making statements, and following up of recommendations related to transitional justice and human rights in general,
- p. To participate in the development and revision of education programs to include aspects on culture of peace, conflicts prevention, tolerance and fight against discrimination and human rights.

Role of NHRIs

- a. NHRIs play a vital role in reviewing and commenting on the human rights aspects of truth and justice commissions' legislation and in emphasizing the importance of adopting long term measures and policies to rectify inequity, injustice, inequality and insecurity so as to reduce the potential for terrorism and violent conflict.
- b. NHRIs should examine violations of human rights committed by the State during violent conflict and advocate against the establishment of national ad hoc tribunals and decision making bodies like truth and justice commissions. They should also examine infringements of rights by non-state actors in the

context of violent conflict and identify potential areas of conflict in a timely and accurate manner.

- c. Subsequently, NHRIs should provide human rights and humanitarian law related advice to conflicting parties, or otherwise apply, facilitate and support the utilization of alternative as well as traditional methods of dispute resolution, including mediation.
- d. NHRIs and States should integrate these conflict resolution tools into plans, strategies and mechanisms for the peaceful and negotiated resolution of conflict. These strategies should include elements of truth and reconciliation processes and the role that NHRIs should play in this respect. Particular attention should be paid to the establishment of a victims fund and payment of appropriate compensation.
- e. NHRIs should act in a proactive way by placing human rights concerns in a broader societal context so as to focus not only on the manifestations of violent conflict but also on their underlying causes.

ANNEX: Rabat Declaration

SEVENTH CONFERENCE OF
AFRICAN NATIONAL HUMAN RIGHTS INSTITUTIONS
Rabat, 3-5 November 2009

RABAT DECLARATION

Participants at the Seventh Conference of African National Human Rights Institutions, convening in Rabat, Morocco, from 3 to 5 November 2009 under the theme: "Peace and Justice: Role of National Human Rights Institutions", under the auspices of the Advisory Council for Human Rights of Morocco in cooperation with the Network of African National Human Rights Institutions and with the support of the Office of the United Nations High Commissioner for Human Rights (OHCHR), the Organisation Internationale de la Francophonie (OIF), and the Commonwealth Secretariat,

Acknowledging with appreciation the welcome and hospitality of the Government and people of Morocco in the hosting the Seventh Conference,

Expressing their warm gratitude to the Advisory Council for Human Rights of Morocco for its notable organization and hosting of the Conference,

Expressing their appreciation for the presence at the Conference of the Registrar of the International Criminal Tribunal for Rwanda, OHCHR, and the Chair of the International Coordinating Committee of National Human Rights Institutions,

Noting with gratitude the continued support of the Office of the United Nations High Commissioner for Human Rights (OHCHR) towards the strengthening of the Permanent Secretariat of the Network, and welcoming the assistance given by the Kenya National Commission on Human Rights in hosting it,

Reaffirming their commitment to the Kigali Declaration of 10 October 2007 and its attachment to the values enshrined in the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the African Charter on Human and Peoples' Rights, the United Nations Declaration on the Right of Peoples to Peace (1984), the African Charter on Democracy, Elections and Governance (2007), and various other international instruments concerning human rights to which their States have subscribed and ratified,

Recalling the need for all the African national human rights institutions to function independently and in full conformity with the Paris Principles as adopted by the United Nations General Assembly in its resolution 48/134 of 20 December 1993,

Recalling also that the effective promotion of and respect for human rights and fundamental freedoms require that States ratify United Nations instruments concerning human rights, reinforce them and forward periodically, in conformity with these instruments, reports to the respective monitoring committees,

Noting that the Nairobi Declaration on the role of NHRIs in the Administration of Justice adopted by NHRIs in 2008 underlined the crucial role of NHRIs in relation to access to justice, the judiciary, law enforcement and correctional and detention facilities as part of their contribution to a peaceful and human rights respectful society,

Convinced that justice, peace and democracy are mutually reinforcing imperatives and that accountability is an important aspect for preventing future violations,

Concerned by the recurrence of armed conflict in many African countries, and the crackdowns on democracy resulting from the lack of accountability and existence of impunity which further represent threats against peace,

Recognizing the need for comprehensive approach when addressing the legacy of large scale abuses, comprising of investigations and prosecutions, truth-seeking processes, reparations programs, and vetting processes; and that any such combination must be in conformity with international legal standards and obligations, and take into account national context;

Recognizing the important role NHRIs, especially those in line with the Paris Principles, have been playing in transitional justice processes, in order to ensure accountability, serve justice and achieve reconciliation, and considering that this role could be further strengthened,

Recognizing the need to address the root-causes of conflict, and to ensure the protection and fulfilment of all rights, including economic, social and cultural rights,

Recognizing the need to promote political and economic good governance as the basis of a peaceful democratic society,

Aware of all the above issues concerning human rights,

1. Resolved:

- a) To promote the inter-dependency of peace and justice,
- b) To promote and disseminate relevant international and regional human rights instruments and standards, including the Universal Declaration on Human Rights, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, and the African Charter on Democracy, Elections and Governance; and to promote their wide implementation,
- c) To raise awareness about international instruments and standards as well as best practices relating to transitional justice and combating impunity,
- d) To raise awareness of transitional justice mechanisms and lessons learned, to engage relevant stakeholders, including civil

society and institutional actors in transitional justice discourse, and to mobilize the society's action in this area,

- e) To facilitate the national consultations for the establishment of transitional justice mechanisms in close cooperation with other national and international stakeholders, and ensure participation of victims, and other vulnerable or marginalized groups, and make appropriate recommendations to ensure an open and transparent process,
- f) To engage in information gathering and documenting of human rights abuses, and cooperate with transitional justice mechanisms in investigation of human rights violations,
- g) To ensure preservation and protection of information on human rights abuses, including through appropriate archiving,
- h) To interact with and reinforce the justice mechanisms and ensure that cases of human rights violations are submitted to the justice system and adequately addressed,
- i) To cooperate in the design and, as appropriate, in implementation of transitional justice mechanisms, and to ensure the centrality of victims in such processes,
- j) To ensure that the establishment and operation of any transitional justice mechanism is in compliance with international human rights standards and practices,
- k) To ensure that the rights of those facing transitional justice mechanisms, including alleged perpetrators and victims, are respected,
- l) To promote provision of assistance to victims and witnesses participating to transitional justice processes, so they are informed of their rights and responsibilities and have access to medical and psychosocial care; and to promote provision of victims and witness protection;
- m) To monitor and report on the implementation of the recommendation of transitional justice mechanisms,
- n) To recommend to the relevant authorities legislative and administrative reforms to ensure their compliance with international standards, and to prevent recurrence of human rights abuses and to restore respect for the rule of law and trust in government institutions,

- o) To engage and interact with international and regional human rights mechanisms, including by submitting reports, and making statements, and following up of recommendations related to transitional justice and human rights in general,
- p) To participate in the development and revision of education programs to include aspects on culture of peace, conflicts prevention, tolerance and fight against discrimination and human rights.

Participants at the Conference:

2. *Call* for direct contributions from African NHRIs and continued assistance, substantive and financial, by international and regional intergovernmental organizations, including OHCHR and OIF, UNDP and other partners to the Permanent Secretariat of NHRIs in Nairobi, Kenya,

3. *Note* that a number of national human rights institutions in Africa have affiliate status with the African Commission on Human and Peoples' Rights and call on others that have not attained such status to do so, and urges the African Commission to expedite the establishment of the Unit on NHRIs as recommended in the report on the role of NHRIs in strengthening the African Commission on Human and Peoples' Rights published in May 2009,

4. *Reaffirm* their commitment to cooperate with the African Commission on Human and Peoples' Rights in the area of the promotion, protection and enforcement of human rights,

5. *Resolve* to work with international and regional organizations, including the African Union through the Peace and Security Council, in the promotion, protection and enforcement of democracy, rule of law and human rights,

Agree to hold their next bi-annual conference in South Africa in 2011.

Adopted in Rabat , 5 November 2009.
