



General Assembly

Distr.
GENERAL

A/HRC/4/62
13 February 2007

Original: ENGLISH

HUMAN RIGHTS COUNCIL
Fourth session
Item 2 of the provisional agenda

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

**Question of the realization in all countries of economic,
social and cultural rights**

Report of the Secretary-General*

* The present report is submitted late so as to reflect the most up-to-date information possible.

Summary

The present report is submitted in accordance with Human Rights Council decision 2/102 and paragraph 16 of Commission on Human Rights resolution 2005/22.

Section I provides a brief overview of main activities of the United Nations human rights mechanisms and of the Office of the United Nations High Commissioner for Human Rights related to economic, social and cultural rights during the year 2006.

Section II elaborates upon the realization of economic, social and cultural rights in conflict and post-conflict societies. The report discusses how, in spite of the constant reaffirmation of the interdependence of all human rights, the protection and realization of economic, social and cultural rights in many areas of law and practice, including in conflict and post-conflict settings, still appear weaker than for other rights. Against this backdrop, the report underlines that, for reasons of law and effectiveness, measures must be taken to protect economic, social and cultural rights. The non-fulfilment of these rights is often the root cause of conflict, and in the aftermath of a conflict specific strategies for the realization of economic, social and cultural rights are crucial to the preservation and maintenance of peace.

CONTENTS

	<i>Paragraphs</i>	<i>Page</i>
I. INTRODUCTION	1 - 2	4
II. ACTIVITIES OF THE HUMAN RIGHTS SYSTEM - SELECTED DEVELOPMENTS	3 - 19	4
A. Intergovernmental bodies	3 - 4	4
B. Treaty bodies	5 - 7	5
C. Special procedures	8 - 15	5
D. Office of the United Nations High Commissioner for Human Rights	16 - 19	7
III. ECONOMIC, SOCIAL AND CULTURAL RIGHTS IN CONFLICT AND POST-CONFLICT SOCIETIES	20 - 50	8
A. The importance of economic, social and cultural rights	22 - 26	8
B. Economic, social and cultural rights in conflict	27 - 32	9
C. The realization of economic, social and cultural rights in post-conflict settings	33 - 50	11
IV. CONCLUSION	51 - 54	18

I. INTRODUCTION

1. The Human Rights Council, by decision 2/102 of 6 October 2006, requested the High Commissioner for Human Rights to “continue with the fulfilment of her activities, in accordance with all previous decisions adopted by the Commission on Human Rights and to update the relevant reports and studies”. On the current issue of the “Question of the realization of economic, social and cultural rights”, a comprehensive annual report (E/CN.4/2006/38) was submitted to the Commission on Human Rights at its sixty-second session pursuant to resolution 2005/22. The information in that report remains relevant. The Office of the United Nations High Commissioner for Human Rights (OHCHR) understands decision 2/102 to preserve the previous annual reporting cycle in respect of this issue until otherwise decided by the Council. The current report to the Council accordingly addresses developments in respect of the question of the realization of economic, social and cultural rights over the last year.

2. The report provides a brief overview of the activities of the United Nations human rights system in relation to economic, social and cultural rights during the year 2006. In addition, the main section of the report elaborates upon the realization of economic, social and cultural rights in conflict and post-conflict societies. The international community has a particularly important role to play in the protection and realization of all human rights in such contexts. Economic, social and cultural rights have been comparatively neglected in strategies aimed at restoring peace and ensuring accountability in conflict and post-conflict settings. It seems therefore timely to explore the relevance of these rights to situations of conflict or post-conflict.

II. ACTIVITIES OF THE HUMAN RIGHTS SYSTEM - SELECTED DEVELOPMENTS

A. Intergovernmental bodies

3. The Convention on the Rights of Persons with Disabilities was adopted by the General Assembly on 13 December 2006 (resolution 61/106). The Convention is a comprehensive instrument covering the full range of rights - civil, political, economic, social and cultural - of persons with disabilities, thereby reaffirming the indivisibility of all rights.

4. The open-ended working group on an optional protocol to the International Covenant on Economic, Social and Cultural Rights (ICESCR) held its third session in February 2006. On the basis of a report prepared by the Chairperson-Rapporteur (E/CN.4/2006/WG.23/2), the working group held focused discussions on the main elements of a possible communications procedure under ICESCR. In June, the Chairperson-Rapporteur, Ms. Catarina de Albuquerque, presented the report of the working group (E/CN.4/2006/47) to the first session of the Human Rights Council. The Council, in its resolution 1/3, extended the mandate of the working group for a period of two years, giving it a mandate to start drafting an optional protocol and requesting the Chairperson-Rapporteur to prepare a first draft to be used as a basis for the forthcoming negotiations. The Chairperson-Rapporteur will submit the draft to the fourth session of the working group, to be held in July 2007.

B. Treaty bodies

5. As of 6 December 2006, 155 States had ratified or acceded to ICESCR, with 4 new ratifications during the present reporting period. At its thirty-sixth session in May 2006, the Committee on Economic, Social and Cultural Rights (CESCR) held a day of general discussion on article 9 of the Covenant (the right to social security). On the basis of this discussion, CESCR began a first reading of a draft general comment at its thirty-seventh session in November 2006. At the same session CESCR also continued its consideration of its draft general comment on article 2, paragraph 2, of the Covenant (non-discrimination).

6. In May and November 2006, the Joint Expert Group of UNESCO (CR) [Committee on Recommendations]/ECOSOC (CESCR) on the Monitoring of the Right to Education held meetings to discuss and clarify the right to compulsory primary education available free to all. In November 2006, Committee members participated in a colloquium organized by the ILO Committee of Experts on the Application of Conventions and Recommendations to review progress made in protecting labour rights through international supervision. Also in November, CESCR held an informal consultation on the impact of international trade on the enjoyment of economic, social and cultural rights with experts in the field of trade and human rights.

7. In the process of considering States parties' reports in 2006, the Committee on the Rights of the Child continued to emphasize the enjoyment of economic, social and cultural rights by children. The Committee in particular referred to the use of the "maximum extent of available resources" and States' responsibility to take steps towards the progressive realization of these rights; discrimination in enjoyment of economic, social and cultural rights including in access to services; as well as disproportionately vulnerable or disadvantaged groups or regional disparities. Given the importance of the topic, the Committee decided, at its forty-third session in September 2006, to devote its next day of general discussion, scheduled for 21 September 2007, to article 4 of the Convention on the Rights of the Child. At the same session, the Committee adopted a general comment on the rights of children with disabilities (CRC/C/GC/9), in which it provides guidance and assistance to States parties in a comprehensive manner that covers all the provisions of the Convention, including in particular with regard to the rights to education and health.

C. Special procedures

8. During the reporting period, the Special Rapporteur on the right to housing as a component of the right to an adequate standard of living, Miloon Kothari, carried out missions to Australia and Spain. In September, he took part in the joint mission of special procedures mandate holders to Lebanon and Israel (see A/HRC/2/7). The Special Rapporteur continued to actively engage with States on housing rights, whether through direct talks with State representatives or through communications, the majority of which related to cases of forced evictions. In this respect, he presented a set of "Basic principles and guidelines on development-based evictions and displacement" at the second session of the Human Rights Council (see E/CN.4/2006/41). The Special Rapporteur also presented a study on women and adequate housing, based on regional consultations (E/CN.4/2006/118).

9. The Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health ("right to health"), Paul Hunt, undertook

a mission to Sweden and participated in the joint mission to Lebanon and Israel. In February 2006, together with other special procedures mandate holders, he submitted a report to the Human Rights Council on the human rights situation of detainees at the United States of America base at Guantánamo Bay. The Special Rapporteur submitted a report to the General Assembly (see A/61/338) on the relationship between the right to health and the reduction of maternal mortality and access to medicines, and a report to the Human Rights Council (E/CN.4/2006/48 and Corr.1) on health indicators and health systems.

10. The Special Rapporteur on the right to food, Jean Ziegler, participated in conferences and seminars on topics such as migration, the national implementation of the right to food, food insecurity, and indicators. The Special Rapporteur further cooperated with WFP and FAO. He collaborated closely with the Secretariat of the Convention to Combat Desertification, 2006 being the International Year of Deserts and Desertification, to analyse the linkages between desertification, hunger and the right to food, and participated in an international conference on this topic. The Special Rapporteur also undertook a mission to Lebanon in the aftermath of the Israeli-Lebanon conflict (see A/HRC/2/8 and Corr.1).

11. The Special Rapporteur on the right to education, Vernor Muñoz Villalobos, undertook country visits to Germany and Morocco. He issued press statements expressing concern over, among other things, the attacks by anti-Government groups on schools and the education system in Afghanistan. To assist the preparation of the Special Rapporteur's report on the right to education of persons with disabilities, OHCHR organized a seminar on this topic in November 2006.

12. In his report to the Human Rights Council, the Special Rapporteur on the adverse effects of the illicit movement and dumping of toxic and dangerous products and wastes on the enjoyment of human rights, Okechukwu Ibeanu, focused on the human rights impact and dimensions of the widespread exposure of individuals and communities to toxic chemicals from everyday household goods and food, including concerns in relation to the right to health. The Special Rapporteur expressed concern in response to the dumping of toxic waste in Abidjan.

13. The Special Representative of the Secretary-General on human rights of internally displaced persons (IDPs), Walter Kälin, has paid close attention to the protection of IDPs' economic, social and cultural rights. In the reports on his missions to Côte d'Ivoire (A/HRC/4/38/Add.2) and Colombia (A/HRC/4/38/Add.3), for instance, he raises issues faced by IDPs in relation to their access to health care, education, food and adequate standard of living.

14. The Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous peoples, Rodolfo Stavenhagen, assessed how economic, social and cultural rights were protected in national legislation in his report to the Commission on Human Rights at its sixty-second session (E/CN.4/2006/78) and raised issues pertaining to economic, social and cultural rights in the report on his mission to New Zealand (E/CN.4/2006/78/Add.3).

15. Country rapporteurs have often addressed economic, social and cultural rights. For instance, the Special Rapporteur on the situation of human rights in Myanmar addressed issues concerning land, housing and property rights, among others, in his report to the

General Assembly (see A/61/369 and Corr.1). The Special Representative of the Secretary-General for Human Rights in Cambodia addressed issues related to land and housing rights (in particular the impact of government land and natural resources policies, and forced evictions) during his mission in March and in his statement to the Human Rights Council in September. The Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967 examined right to health and education issues during his mission to the Occupied Palestinian Territory in June 2006.

D. Office of the United Nations High Commissioner for Human Rights

16. Many OHCHR field presences worked on economic, social and cultural rights in 2006. For example, in Uganda, OHCHR organized, together with WHO and the Ministry of Health, a workshop on health and human rights; in Angola, the Office conducted with FAO an international forum on the right to food; and in Guatemala, the Office has been assisting the Government in the follow-up to the mission of the Special Rapporteur on the right to food. Moreover, the High Commissioner's annual report to the Commission on Colombia incorporated an analysis of economic, social and cultural rights (E/CN.4/2006/9). A subregional judicial workshop on "Justiciability of Economic, Social and Cultural Rights in the Pacific" was organized in Fiji in June 2006.

17. National human rights institutions (NHRIs) are increasingly involved in economic, social and cultural rights. The NHRI Unit at OHCHR supported or co-organized with NHRIs several related workshops and conferences, such as a training workshop in the Philippines for NHRIs in the Asian-Pacific region (January 2006), the Second Regional Conference on NHRIs in the Arab region (March 2006), the First Regional Conference on Building Networks to Strengthen ASEAN Human Rights Cooperation (April 2006), and a seminar in Ecuador, organized jointly with the Network of NHRIs of the Americas and UNESCO, on the right to education and NHRIs (May 2006).

18. Two OHCHR publications issued in 2006, *Frequently Asked Questions on a Human Rights-based Approach to Development Cooperation* and *Principles and Guidelines on a Human Rights Approach to Poverty Reduction Strategies*, provide guidance on how development programming could be aligned with human rights, linking international standards on economic, social and cultural rights to operational principles and processes for poverty reduction strategies at the national level. OHCHR continues to lead the Action 2 inter-agency programme which supports a number of United Nations country teams in integrating human rights into their operational activities, including a particularly strong focus on supporting State efforts to implement economic, social and cultural rights.

19. Finally, the High Commissioner continued her advocacy on economic, social and cultural rights. She submitted a report to the Economic and Social Council on the legal protection of economic, social and cultural rights (E/2006/86), which elaborates upon legal protection as an essential element in any strategy to promote and protect these rights. In October, the High Commissioner gave a lecture on "Economic and social justice for societies in transition" at the New York University School of Law, in which she examined the comparatively limited protection afforded to economic, social and cultural rights within transitional justice mechanisms.

III. ECONOMIC, SOCIAL AND CULTURAL RIGHTS IN CONFLICT AND POST-CONFLICT SOCIETIES

20. The present section discusses the relevance of economic, social and cultural rights to conflict and post-conflict contexts. It examines how these rights can be protected and realized in conflict and post-conflict settings more systematically and comprehensively than has previously been the case.

21. This section does not purport to provide a comprehensive view of post-conflict justice and development. Rather, it considers selected instruments and strategies that appear crucial to the protection and realization of economic, social and cultural rights in those contexts. While the following discussion focuses on conflict and post-conflict societies, much of it would equally apply to societies undergoing political and economic transition from regimes that may have committed gross human rights violations in contexts other than a conflict, and which would require similar types of intervention and measures.

A. The importance of economic, social and cultural rights

22. The comparative neglect of economic, social and cultural rights in the context of post-conflict development and justice is symptomatic of the weaker attention that the international community has traditionally devoted to these rights. The reasons for this comparative neglect of economic, social and cultural rights are not the focus of this report; however, it is relevant to note that the categorization of human rights into civil and political rights on the one hand and economic, social and cultural rights on the other has exacerbated the different emphasis placed on different rights, while in fact the breach of a civil or political right will often be related to a breach of an economic, social or cultural right. The converse is equally the case.¹

23. Partly as a consequence of the formal divisions between the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights, there has been a tendency to underestimate the similarities and differences between rights. Such oversimplification has too easily considered civil and political rights as freedoms from the abuse of State power, in relation to which violations can be found, and economic, social and cultural rights as aspirational goals or “luxury goods”, which may only be reached or provided in countries with a certain level of economic development. Those arguments assume that protection of economic, social and cultural rights is by definition expensive and burdensome, while the realization of other rights is resource free.

24. In fact, while the realization of many aspects of economic, social and cultural rights requires sustained commitment of resources, a number of civil and political rights require similar

¹ For further elaboration on the nature of economic, social and cultural rights, see the report of the United Nations High Commissioner for Human Rights (E/2006/86) and, in relation to transitional justice, see High Commissioner for Human Rights, “Economic and social justice for societies in transition”, Second Annual Transitional Justice Lecture, Center for Human Rights and Global Justice, New York University School of Law, and International Center for Transitional Justice, 25 October 2006, New York.

investment, such as ensuring legal guarantees to a fair trial through the establishment of effective justice systems. National and international experiences alike demonstrate the resource-intensive nature of the endeavour. The establishment of international and hybrid criminal tribunals, for instance, has proven extremely costly.² Conversely, the High Commissioner for Human Rights has emphasized that “[m]any aspects of economic, social and cultural rights are clearly as immediately realizable as many civil and political rights. ‘Forced’ eviction (that is, eviction that is arbitrary or does not respect minimum guarantees), for example, requires the same type of immediate action and redress as does the prohibition of torture”.³

25. The division of human rights into two separate groups of rights runs contrary to the integral vision of human rights that is at the historical origins of human rights law, as indicated in United States President Franklin D. Roosevelt’s articulation of the “four freedoms”⁴ indispensable for a just and secure world in a post-conflict setting, and further reflected in the Universal Declaration of Human Rights. Today, the international community has moved away from any strict categorization of rights to reaffirm repeatedly the indivisibility and interdependence of all human rights. The Convention on the Rights of the Child and the new Convention on the Rights of Persons with Disabilities provide clear illustrations of that acknowledgement. Economic, social and cultural rights have now the status of binding law in international and regional human rights treaties and in numerous constitutions.

26. Accordingly, while implementation strategies may vary from right to right, there is no basis for their categorical separation and for denying the full protection and realization of economic, social and cultural rights. State obligations in this context include ensuring the legal protection of these rights and providing remedies for their violation. These two aspects are of particular relevance to conflict and post-conflict societies.

B. Economic, social and cultural rights in conflict

27. The idea that economic, social and cultural rights are only programmatic or aspirational objectives reinforces the misconception that these rights are not really susceptible to violations. It can further result in reluctance to consider that violations of economic, social and cultural rights may be as egregious as violations of the prohibition of torture or breaches of the right to life. The Committee on Economic, Social and Cultural Rights expressed concern in this respect in its often quoted report to the World Conference on Human Rights: “States and the international community as a whole continue to tolerate all too often breaches of economic, social and cultural rights which, if they occurred in relation to civil and political rights, would provoke expressions of horror and outrage and would lead to concerted calls for immediate remedial action” (A/CONF.157/PC/62/Add.5, para. 5).

² High Commissioner for Human Rights, “Economic and social justice for societies in transition”, *ibid.* See also the report of the Secretary-General on the rule of law and transitional justice in conflict and post-conflict societies (S/2004/616), para. 42.

³ High Commissioner for Human Rights, *ibid.*, having in mind CESCR general comment No. 7 (1997).

⁴ These were: freedom of speech and expression, freedom of religious worship, freedom from want, and freedom from fear. F.D. Roosevelt, State of the Union address, January 1941.

28. In conflict situations, the systematic destruction of civilian objects, or the forced displacement of the population, is often deliberately used alongside other gross human rights violations (such as mass rape or murder) as political or military objectives.⁵ A further example is the intentional actions that can lead to starvation, notably through the raiding of food, the destruction of harvests or wilfully impeding the distribution of relief supplies. Studies have shown that starvation or famines are not only due to economic and institutional failures, but can arise directly from deliberate policy choices by ruling elites or warring factions against another group of people.⁶

29. Some violations of economic, social and cultural rights are already prohibited under humanitarian law and considered international crimes, such as the denial of medical attention,⁷ the destruction and appropriation of property⁸ or the deliberate starvation of civilians as a method of warfare.⁹ In addition, violations of these rights have been increasingly documented by truth commissions set up to examine gross human rights violations by past regimes, even though their primary focus is generally on a few selected civil and political rights.¹⁰ The

⁵ High Commissioner for Human Rights, “Economic and social justice for societies in transition”, op. cit.

⁶ See R. Väyrynen, “Complex Humanitarian Emergencies”, in: E. Nafziger, F. Stewart and R. Väyrynen, *War, Hunger and Displacement: The Origins of Humanitarian Emergencies* (Oxford: Oxford University Press, 2000); A. Sen, *Poverty and Famines: An Essay on Entitlements and Deprivation* (Oxford: Clarendon Press, 1981); J. Edkins, “Legality with a Vengeance: Famines and Humanitarian Relief in ‘Complex Emergencies’”, *Millennium: Journal of International Studies*, vol. 25, No. 3 (1996), pp. 547-575.

⁷ See e.g. articles 29-31, 47, 89 and 110 of the Third Geneva Convention of 1949, articles 92 and 125 of the Fourth Geneva Convention of 1949 and article 10 of Additional Protocol I of 1977. See more generally A. Rosas and M. Sandvik-Nylund, “Armed Conflicts”, *Economic, Social and Cultural Rights: A Textbook*, A. Eide, C. Krause and A. Rosas (eds.), (The Netherlands: Kluwer Law International, 2001).

⁸ Rome Statute of the International Court, art. 8 (2) (a) (iv) - War crimes.

⁹ Additional Protocol I of 1977 to the Geneva Conventions, art. 54 (1) and Rome Statute of the International Criminal Court, art. 8 (2) (b) (xxv) - War crimes. The Rome Statute provides additional examples: intentionally directing attacks against buildings dedicated to religion, education, art, science or charitable purposes, historic monuments and hospitals (art. 8 (2) (b) (ix) - War crimes); pillaging a town or place (art. 8 (2) (b) (xvi) - War crimes); and “deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part” (art. 6 (c) - Genocide).

¹⁰ The Truth and Reconciliation Commission of South Africa for instance documented the discriminatory provision of health care to the majority population. TRC Report, <http://www.info.gov.za/otherdocs/2003/trc>. See also Commission for Reception, Truth and Reconciliation in Timor-Leste, Chapter 7.9: Economic and Social Rights, final report.

attention paid by international law and truth commissions to violations of economic, social and cultural rights confirms that these often serve as instruments of war and are a common feature of conflicts.

30. Violations of economic, social and cultural rights, or indeed any rights, do not take place in a vacuum. Such violations often result from, as well as are the cause of violations of civil and political rights. The different types of violations interact and mutually reinforce each other, often with devastating effects. Systematic discrimination and inequalities in access to health care or housing, sometimes in the context of competition over scarce or dwindling resources, may lead to, or exacerbate, social or political tensions leading to conflict or violent confrontation, which in turn perpetuate cycles of deprivation and exclusion.¹¹ This close interrelationship has been acknowledged by truth commissions as well.¹²

31. In a similar vein, organizations combating torture have come to the conclusion that there is a continuum between infringements of socio-economic rights and torture or other massive violations of civil and political rights. Research shows that torture and collective violence - on the part of those who control the State in order to serve their own interests and among the victims - emerge in societies in which social injustice, marginalization and unrestrained exploitation thrive.¹³ A comprehensive strategy to fight torture or prevent violence should therefore address the socio-economic root causes of conflict and promote the respect of economic, social and cultural rights in addition to civil and political rights.

32. No transition to a just peace would be possible without addressing violations of economic, social and cultural rights along with violations of civil and political rights, and putting into place a non-discriminatory framework of access to resources and power. In addition to conceptual and legal arguments about the obligation to promote economic, social and cultural rights, this is also a matter of effectiveness. All sources and aspects of the violence (be it manifested through torture or disappearances, or through an armed conflict) must be addressed and victims of these violations must be offered remedies.

C. The realization of economic, social and cultural rights in post-conflict settings

33. There is thus no legal, conceptual or instrumental justification for the comparative neglect of economic, social and cultural rights in conflict and post-conflict societies. An examination of post-conflict situations confirms the functional interaction between factors such as access to justice, political participation, control over economic resources, income, and

¹¹ F. Stewart, "Policies towards Horizontal Inequalities in Post-Conflict Reconstruction", CRISE working paper 7, March 2005. www.crise.ox.ac.uk.

¹² See e.g. Commission of Timor-Leste, *op. cit.*, p.10.

¹³ World Organization Against Torture, *Attacking the Root Causes of Torture: Poverty, Inequality and Violence, An Interdisciplinary Study*, September 2006. Available at: www.omct.org.

enjoyment of social rights. Civil, political, economic, social and cultural rights are too strongly interdependent to be treated separately. Action on any one front alone is not likely to work. Accordingly, strategies in post-conflict societies must be comprehensive, including specific measures to address violations of economic, social and cultural rights and to realize these rights alongside civil and political rights.

34. A wide range of strategies are necessary to ensure accountability for past abuses and to construct a society in which those abuses are less likely to occur. While acknowledging that other strategies can be considered, the following section focuses on measures often adopted in post-conflict settings that seem particularly crucial to the protection and realization of economic, social and cultural rights and that have already shown their potential in this regard. This selective examination of a few mechanisms and processes should not be taken to diminish the importance of other measures, such as peacekeeping, security measures, disarmament, demobilization, and reintegration of ex-combatants, or reconciliation processes, all of which are vital for the prospects for sustainable peace in any context.

35. Transitional justice mechanisms¹⁴ are one of the obvious avenues for ensuring accountability for past abuses and establishing the true facts about crimes committed. Some of these mechanisms have already considered economic, social and cultural rights in their work. International criminal tribunals have also been investigating and determining accountability for violations of economic, social and cultural rights in some instances, although approaches to these rights have been neither systematic nor comprehensive. International criminal tribunals have found on several occasions that provided certain criteria are fulfilled, the “appropriation or plunder of property” and the “intentional or wanton destruction of private property including homes and business and public property including cultural monuments and sacred sites” may constitute acts of persecution amounting to crimes against humanity.¹⁵ In addition, penalties envisaged by the statutes of international courts include the ordering of the return of any property and proceeds acquired by criminal conduct to their rightful owners.¹⁶

36. Such cases illustrate that there is no fundamental legal or institutional obstacle to the judicial protection of economic, social and cultural rights and the provision of redress for any such violation under international criminal law. On this basis, the High Commissioner for Human Rights has encouraged the international community to make greater use of existing statutes to adjudicate economic, social and cultural rights violations and to consider the possibility of international criminal law ultimately reaching beyond its current focus on property

¹⁴ See definition in S/2004/616, para. 8.

¹⁵ See for example International Criminal Tribunal for the Former Yugoslavia, *Prosecutor v. Ratko Mladic*, amended indictment, case IT-95-5/18-I, 11 October 2002, count 3 (persecutions), para. 37; *Prosecutor v. Radovan Karadzic*, amended indictment, 31 May 2000, count 7 (persecutions), para. 34.

¹⁶ Statute of the International Criminal Tribunal for Rwanda, art. 23 (3); Statute of the International Criminal Tribunal for the Former Yugoslavia, art. 24.

to encompass other gross violations of these rights, such as the deliberate denial of health care or education.¹⁷ The High Commissioner further noted that national or regional courts and quasi-judicial bodies mandated to protect human rights may be well placed to undertake the evidentiary assessment to determine the facts and responsibilities for violations committed, including those of economic, social and cultural rights.¹⁸

37. Truth commissions play important roles in identifying the true course of the past, examining the causes, consequences and nature of gross human rights violations and making recommendations accordingly. For that reason, the High Commissioner has commented that they lend themselves well to the investigation and protection of economic, social and cultural rights.¹⁹ Some commissions have already made efforts to identify economic and social rights violations, on the basis that the impact of these violations on victims was as damaging as violations of civil and political rights.²⁰ It is difficult to argue that gross violations of economic, social and cultural rights, such as massive forced evictions or interference with access to food or water, resulting in famine, loss of shelter or of livelihoods, should not be the subject of attention of truth commissions. Where contextually appropriate, truth commissions can and should investigate violations of economic, social and cultural rights more systematically and provide effective and comprehensive remedies in case of clear violations.²¹

38. Reparations programmes offer a means to redress the economic and social problems that might have led to or exacerbated gross human rights and humanitarian law violations. Some reparations programmes have already included measures related to socio-economic rights, such as housing and property restitution programmes, physical and mental health care, or social reinsertion measures.²² The practice to date, however, has been more limited, with the truth commissions that have proposed reparation measures generally focusing - with few exceptions - on victims of war crimes and other gross civil and political rights violations, thereby limiting the scope of reparation. Against this backdrop, a significant recent development in the work of truth

¹⁷ High Commissioner for Human Rights, “Economic and social justice for societies in transition”, *op. cit.*

¹⁸ *Ibid.*

¹⁹ *Ibid.*

²⁰ See e.g. Commission for Reception, Truth and Reconciliation in Timor-Leste, *op. cit.*

²¹ Making the case for the integration of economic, social and cultural rights in transitional justice processes does not imply that courts, truth commissions or commissions of inquiry should investigate and provide remedies for economic, social and cultural rights violations under all circumstances and unconditionally. Specific criteria must be developed. See High Commissioner for Human Rights, “Economic and social justice for societies in transition”, *op. cit.*

²² See for instance reparations or restitution programmes in South Africa, Guatemala, Bosnia and Herzegovina, Chile and Morocco. The International Criminal Court foresees reparations (art. 75, Rome Statute), which could in principle relate to economic, social and cultural rights.

commissions has been the inclusion of communal reparations in addition to individual ones, in order, for instance, to promote the development and reintegration of specific regions that had been particularly affected by violence and marginalized.²³ This proposal reflects the understanding that an approach focused solely on individual victims of selected civil and political rights violations would ignore the plight of many other people who suffered differently but were equally affected by the conflict.

39. Communal reparations are a significant expansion of the scope of reparations programmes and would be an appropriate tool for truth commissions. It remains the case, however, that, in the words of the High Commissioner for Human Rights, “[communal reparations do not] substitute for more broad-based and longer term socio-economic policies that aim to redress and prevent widespread inequalities and discrimination”.²⁴

40. Ensuring accountability for a few civil and political rights violations will not bring full justice if the surrounding conditions leading to those violations are not addressed and discrimination between groups remains a reality. Judicial redress, albeit crucial, has limitations. If unlawful discrimination is occurring, it must be challenged as a matter of principle, as with any other violation. It is, however, equally crucial to address the legitimate grievances which, if ignored, are likely to fuel the next conflagration. To the extent that socio-economic inequalities constitute a significant source of conflict and remain acute in the post-conflict period, correcting them should form a central aspect of policy design. As the Committee on Economic, Social and Cultural Rights noted: “Democracy, stability and peace cannot long survive in conditions of chronic poverty, dispossession and neglect” (A/CONF.157/PC/62/Add.5, para. 9).

41. Policies to redress inequalities can take several forms, such as temporary “special measures”²⁵ or programmes for vulnerable groups (such as minorities, women, children or civilian victims of war) who have been particularly discriminated against, or an emphasis on social policies, which have proven effective and more beneficial to growth than macroeconomic policies, in the immediate aftermath of a conflict.²⁶ The rationale for these measures reflects the fact that entire groups may have been either discriminated against economically and socially or particularly affected by the conflict, groups who may not be the subject of attention from courts,

²³ See the Moroccan Equity and Reconciliation Commission’s final report at: www.ier.ma.

²⁴ High Commissioner for Human Rights, “Economic and social justice for societies in transition”, *op. cit.*

²⁵ See e.g. International Convention on the Elimination of All Forms of Racial Discrimination, arts. 1 (4), 2 (2); Convention on the Elimination of All Forms of Discrimination against Women, art. 4; and S/2004/616, para. 25.

²⁶ P. Collier, P. and A. Hoeffler, “Aid, Policy and Growth in Post-Conflict Societies”, policy research working paper No. 2902, The World Bank, 2002, quoted in P. Collier et al., *A World Bank Policy Research Report: Breaking the Conflict Trap* (Washington: The World Bank, 2003), p. 155.

truth commissions or reparation programmes. While such measures are arguably a crucial part of the necessary reparation for victims of all types of violations and of a comprehensive strategy for the preservation of peace, they have often been neglected.²⁷

42. The issues of sequencing and prioritization should be briefly examined in this context. Resistance to developing specific programmes for implementing economic, social and cultural rights is often based on the assumption that their realization will flow automatically from the enjoyment of civil and political rights, and that any imbalance in the full realization of economic, social and cultural rights could in the long term be corrected by the discipline of market forces in open economies. Truth commissions have shown themselves vulnerable to these assumptions as well: when investigating violations of economic, social and cultural rights, they have generally stopped short of proposing reparations to redress these violations, citing such concerns as feasibility and needs-based prioritization.²⁸

43. The Committee on Economic, Social and Cultural Rights has emphasized that the full realization of human rights is rarely if ever achieved as a mere by-product, or fortuitous consequence, of some other programmes or developments - be it transition to a system of democracy or economic growth (see A/CONF.157/PC/62/Add.5, para. 3).²⁹ The latter, for instance, does not automatically translate into an improvement of the standards of living of specific groups, unless special measures or policies are directed to those ends.³⁰ The Committee further noted: "Just as carefully targeted policies and unremitting vigilance are necessary to ensure that respect for civil and political rights will follow from, for example, the introduction or restoration of an essentially democratic system of government, so too is it essential that specific policies and programmes be devised and implemented by any Government which aims to ensure the respect of the economic, social and cultural rights of its citizens" (A/CONF.157/PC/62/Add.5, para. 4).

44. It is therefore crucial to specifically address violations of economic, social and cultural rights which have been at the root of the conflict or are consequences of it, as soon as the conflict ends. In addition to being a matter of law, addressing socio-economic inequalities between groups as early as possible would also contribute to peacebuilding efforts. Research suggests that once a country has had a civil war it is at greater risk of further war. The typical country reaching the end of a civil war faces around a 44 per cent risk of returning to conflict within five years. Reasons for this high risk seem twofold: the same factors that caused the initial war are usually still present and, in addition, a civil war generally results in the deterioration of all

²⁷ S/2004/616, para. 4.

²⁸ See e.g. Commission for Reception, Truth and Reconciliation in Timor-Leste, Part 11: Recommendations, final report, pp. 40-41.

²⁹ See also *Human Development Report 2000: Human Rights and Human Development*, chapters 2 and 4, at <http://hdr.undp.org/reports/global/2000/en>.

³⁰ *Human Development Report 2000*, *ibid.*, pp. 80-82.

aspects of economic, political and social life.³¹ Accordingly, efforts to address serious violations of international humanitarian law on the one hand and promote economic growth on the other, however crucial, will not bring the expected results - sustainable peace - if systemic violations of economic, social and cultural rights are not explicitly addressed alongside them. This calls for legal and institutional foundations for the protection of economic, social and cultural rights.

45. In post-conflict settings, legislative and institutional frameworks are marked by the conflict in a variety of ways: they may contribute to impunity or contain discriminatory elements, while they rarely reflect the minimum requirements set by international human rights standards.³² Therefore, a further step towards ensuring that human rights violations will not be perpetuated in the future is the creation or strengthening of an inclusive system of governance, politically, economically and socially, which guarantees non-discriminatory access to public services, power and resources for all. This is extremely relevant for the realization of economic, social and cultural rights.

46. A compelling starting point in this respect is peace agreements, which are usually seen to precede the post-conflict phase. Peace agreements not only end a conflict and a pattern of gross human rights violations. In addition, they often lay the foundations for a wide range of political, legal or judicial arrangements and processes which may greatly support renewed State accountability and the reconstruction of a society based on the rule of law. In this respect, the potential of peace agreements for protecting human rights in the long run should be further explored, notwithstanding the tensions between human rights considerations and the need for a rapid peace settlement.³³

47. The High Commissioner for Human Rights has stressed that when peace agreements include human rights,³⁴ they should give adequate consideration to economic, social and cultural rights.³⁵ The inclusion of these rights in peace agreements would seem particularly crucial if violations of them were sources of the conflict. While peace agreements tend to recognize only civil and political rights, some agreements have expressly acknowledged the importance of social justice and the need to guarantee a number of economic, cultural and social rights, in particular those of marginalized groups, as a means to address widespread patterns of

³¹ P. Collier, et al., op. cit.

³² S/2004/616, para. 27.

³³ Ibid., para. 64 (Recommendations).

³⁴ See, for example, The International Council on Human Rights Policy, *Human Rights in Peace Agreements*, 2006.

³⁵ High Commissioner for Human Rights, "Economic and social justice for societies in transition", op. cit.

discrimination and ensure sustainable peace.³⁶ Other peace agreements ensured the right to equal opportunity in social and economic activities, and proposed measures related to combating unemployment and strengthening non-discrimination legislation in order to eliminate the differential in unemployment rates between communities,³⁷ or recognized the application in the State territory of the International Covenant on Economic, Social and Cultural Rights, among other treaties.³⁸

48. Key measures to ensure the protection and realization of all human rights, including economic, social and cultural rights, in post-conflict settings comprise their incorporation or recognition in the domestic legal system, starting - if possible and relevant to the context - with the State's constitutional instrument. Some constitutions have incorporated economic, social and cultural rights, such as rights related to labour, property, housing, health care, food, social security, or education. In some cases, the integration of these rights into a new constitution might be a direct result of the experience of violations of economic, social and cultural rights in the past.³⁹

49. Legislation provides an important means of recognizing economic, social and cultural rights at the domestic level and is an important step towards their effective realization. The legislative recognition of these rights can further contribute to the redress of discriminatory patterns and inequalities, thereby complementing other mechanisms of redress and reparation.⁴⁰ By themselves, however, legislative measures are not sufficient, but are dependent on implementation. In this respect, institutions specifically aimed at monitoring and protecting human rights, in particular national human rights institutions or quasi-judicial bodies, should be set up or strengthened. Existing ones already play an increasingly important role in ensuring legal protection of economic, social and cultural rights.⁴¹

³⁶ See for the most recent example of such peace agreements: Comprehensive Peace Agreement held between the Government of Nepal and the Communist Party of Nepal (Maoist) (November 2006), which recognizes various economic and social rights under paragraph 7.5 and sets up a series of measures to address widespread inequities (see in particular paragraphs 3.5-3.7, 3.9-3.12).

³⁷ Good Friday/Belfast Agreement (April 1998).

³⁸ General Framework Agreement for Peace in Bosnia and Herzegovina (December 1995).

³⁹ See the Constitutions of India (1950), South Africa (1996), Timor-Leste (2002) and Afghanistan (2004).

⁴⁰ For examples of countries that addressed legislative gaps contributing to impunity, see the independent study on best practices, including recommendations, to assist States in strengthening their domestic capacity to combat all aspects of impunity, by Professor Diane Orentlicher (see E/CN.4/2004/88), paras. 47-48. For more elaboration on legislation of economic, social and cultural rights, see E/2006/86, sect. II.

⁴¹ See *Economic, Social and Cultural Rights: Handbook for National Human Rights Institutions*, United Nations, New York and Geneva, 2005.

50. While acknowledging the constraints put on the justice system in a post-conflict situation, and its possible complicity in past abuses (whether through the facilitation of abuse or in its failure to provide redress), judicial protection remains key to the protection of economic, social and cultural rights.⁴² Even though national courts have traditionally focused more on civil and political rights, the judicial protection of certain economic, social and cultural rights is far from new - examples include workers' rights or protection against discrimination. Relevant jurisprudence has burgeoned in the last decade, enforcing a wide range of economic, social and cultural rights, such as the rights to health, food, social security or adequate housing. This growing corpus of case law at national, regional and international levels on a full range of economic, social and cultural rights clearly demonstrates that these rights lend themselves to judicial scrutiny and enforcement.⁴³ Moreover, judicial protection can be very effective and even have life-saving implications, such as in recent cases of court-mandated food distribution or access to essential medication. Therefore, programmes to strengthen national justice systems and institutions in the aftermath of conflict should pay equal attention to economic, social and cultural rights. The inclusion of particular protection for economic, social and cultural rights alongside civil and political rights throughout the legal and institutional foundations of post-conflict societies would exponentially increase the chances for the preservation of peace in the long term.

IV. CONCLUSION

51. **In considering and determining strategies for ensuring accountability and peace in conflict and post-conflict societies, it is important to keep in mind the indivisibility and interrelatedness of human rights. Civil, cultural, economic, political and social rights are too interdependent to be realized in isolation. While it may seem at first difficult to embark on a comprehensive strategy for protecting all rights, such an approach will pay off in the long term. Indeed, an exclusive preoccupation with civil and political rights violations and the failure to recognize the role of economic, social and cultural rights violations in triggering or fuelling conflict may make conflicts more pervasive than they would otherwise be. Similarly, post-conflict strategies to consolidate peace and maintain it in the long run should recognize the contribution that the realization of economic, social and cultural rights could make in this respect.**

52. **A comprehensive strategy for post-conflict settings should not wait for long-term development to protect and realize economic, social and cultural rights. Rather, these rights should be taken into consideration at each step of the way. While transitional justice mechanisms have started to address economic, social and cultural rights violations to some**

⁴² See E/2006/86 and CESCR general comment No. 9 (1998) on the domestic application of the Covenant.

⁴³ For summaries of national, regional and international cases on economic, social and cultural rights, see e.g. notes prepared by the Secretariat for the sessions of the open-ended working group on an optional protocol to ICESCR (E/CN.4/2004/WG.23/CRP.1, E/CN.4/2005/WG.23/CRP.1, E/CN.4/2006/WG.23/CRP.1).

extent, there is much room for further development and complementarity, notably with other strategies such as targeted socio-economic policies to redress the denial of economic, social and cultural rights for specific groups.

53. Further requirements include that protective constitutional, legislative and judicial measures be put in place to ensure that gross human rights violations, including of economic, social and cultural rights, will not be perpetuated in the future. The systematic anchoring of economic, social and cultural rights in the political, legal and social edifice of societies is key in this context.

54. This report has briefly examined conceptual, legal and instrumental reasons why economic, social and cultural rights must be addressed in societies emerging from conflict. Strategies to protect and realize these rights should be further explored, so as to ensure true protection to victims of conflicts and comprehensively address complex post-conflict realities, as part of the transition to a sustainable, peaceful society based on the rule of law.
