



General Assembly

Distr.
GENERAL

A/HRC/5/7
7 June 2007

ENGLISH
Original: FRENCH

HUMAN RIGHTS COUNCIL

Fifth session

Item 2 of the provisional agenda

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

Right to the truth

Report of the Office of the High Commissioner for Human Rights

Summary

The present report is submitted pursuant to decision 2/105 of the Human Rights Council, in which the Council requested the Office of the High Commissioner for Human Rights “to prepare a follow-up report on the study on the right to the truth, which shall include best national and international practices, in particular legislative, administrative or any other measures, as well as individual and societal dimensions of this right, taking into account the views of States and relevant intergovernmental and non-governmental organizations, to be examined at its fifth session in June 2007”. A verbal note to this effect was circulated on 6 December 2006.

International instruments and domestic law, and also domestic and international jurisprudence are all increasingly recognizing the right to the truth about gross human rights violations and serious violations of human rights law. The contributions received in response to the note verbale dated 14 July 2005 and addressed to all States and relevant intergovernmental and non-governmental organizations confirm the close links between the right to the truth and other rights, as highlighted in the study on the right to the truth contained in document E/CN.4/2006/91. In addition, the information submitted demonstrates the existence of highly valuable and diversified experience in efforts to uphold and strengthen the right to the truth. The present report is concerned exclusively with topics and examples provided in the communications submitted, and does not undertake to cover all aspects of the right to the truth, as defined in the study. With the information provided, it has been possible to identify essential issues which merit closer consideration.

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Introduction

1. Pursuant to resolution 2005/66 of the Human Rights Commission, the Office of the United Nations High Commissioner for Human Rights submitted a study on the right to truth, contained in document E/CN.4/2006/91, surveying and analysing different aspects of this law: its legal and historical basis, its material scope, its holders, its nature and content, its relationship with other rights and the institutional and procedural mechanisms for its implementation.
2. The study concludes that the right to the truth about gross human rights violations and serious violations of human rights law is an inalienable and autonomous right, linked to the duty and obligation of the State to protect and guarantee human rights, to conduct effective investigations and to guarantee effective remedy and reparations. The study also stresses that this right is closely linked with other rights and has both an individual and a societal dimension and should be considered as a non-derogable right and not be subject to limitations.
3. The study affirms in its conclusions that the right to the truth implies knowing the full and complete truth as to the events that transpired, their specific circumstances, and who participated in them, including knowing the circumstances in which the violations took place, as well as the reasons for them (E/CN.4/2006/91, para. 59). From the conceptual viewpoint, this right therefore occupies a central and fundamental position in action to combat impunity and in the quest for justice.
4. The present report is principally organized around examples drawn from the responses sent to the Office of the High Commissioner by a number of States and non-governmental organizations.
5. For the purposes of its analysis, the report draws on such existing instruments 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 Serious Violations of International Humanitarian Law (resolution 60/147, annex - hereinunder referred to as "the Basic Principles and Guidelines") and the updated set of principles for the protection and promotion of human rights through action to combat impunity (E/CN.4/2005/102/Add.1 - hereinunder referred to as "the set of principles") and uses them as points of reference.
6. On 6 December 2006, the Office of the High Commissioner sent a verbal note to all States and requested information from various intergovernmental and non-governmental organizations, in compliance with Human Rights Council decision 2/105, on measures adopted to give effect to the right to the truth. The present report has been drawn up on the basis of the comments sent in by 16 countries: Argentina, Brazil, Chile, Colombia, Costa Rica, Cuba, Cyprus, Finland, Ireland, Israel, Mexico, Morocco, Paraguay, Philippines, Serbia and Switzerland. Responses were also received from three non-governmental organizations: the International Federation of Human Rights Leagues (FIDH), the Argentine Centre for Legal and Social Studies (CELS) and the International Commission of Jurists (ICJ). The report presents a summary of the information provided.
7. The Office of the High Commissioner expresses its appreciation to the States and organizations which have contributed to the preparation of the present report.

I. ASPECTS, NATURE AND CONTENT OF THE RIGHT TO THE TRUTH

8. The conclusions of the study on the right to the truth indicate that the right to the truth is rooted in a series of resolutions adopted by the United Nations General Assembly during the 1970s on the issue of disappeared persons. This right was subsequently given implicit recognition in international humanitarian law, through article 32 of the Protocol Additional to the Geneva Conventions of 12 August 1949, relating to the Protection of Victims of International Armed Conflicts (Protocol I).

9. The right to the truth subsequently featured as one of the three mainstays of action to combat impunity, alongside the right to justice and the right to reparation.

10. In the same spirit, disclosure of the truth has been promoted as a form of reparation - or, more precisely, of satisfaction - in the Basic Principles and Guidelines adopted by the General Assembly in its resolution 60/147.

11. The study on the right to the truth recalls the contributions made by the jurisprudence of regional human rights courts and the views adopted by the United Nations treaty monitoring bodies, which have helped flesh out this right.

12. The adoption by the General Assembly, in its resolution 61/177, of the recent International Convention for the Protection of All Persons from Enforced Disappearance marked an important milestone in giving recognition to the right to the truth, an achievement welcomed by a number of States in their responses to the note verbale. In article 24, paragraph 2, the Convention enshrines the right of the victims of enforced disappearances to know the truth, while paragraph 3 of the same article spells out the corresponding obligations of the State.

13. Following on from the study, certain States have reaffirmed the autonomy of the right to the truth and its connections with other rights, including the right to information, the right to justice, the right to reparation and the right to an identity. They have also given particular attention to the purpose of the right to the truth, namely, to restore to the victims of manifest violations of human rights their dignity and to ensure that such misdeeds do not recur.

14. Beyond this international recognition, some States, like Colombia, have incorporated the right to the truth in their domestic legal system through legislative measures and through their jurisprudence.¹ In several judgements, the Colombian Constitutional Court has developed jurisprudence recognizing the right of the victims of gross human rights violations to know the truth and has reaffirmed that this right is conducive to the eradication of impunity.² It has

¹ Act 600 of 2000, or the Code of Criminal Procedure; Act 906 of 2004, or the new Code of Criminal Procedure; and Act 975 of 2005, referred to as the Justice and Peace Act, and also through the jurisprudence of the Constitutional Court.

² Judgements T-249/03 of 20 January 2003; C-228/32 of 2 April 2002; C-580/02 of 2002; and C-458/06 of 2006, among others.

affirmed that the right to the truth is both an individual right of the victims and their families and a social right, since all members of society should be informed about all facts related to such violations.

15. Article 7 of the Colombian Justice and Peace Act states: "Society, and in particular victims, have an inalienable, full and effective right to know the truth about violations committed by organized armed groups operating outside the law and about the fate and destiny of the victims of abduction and enforced disappearance. Judicial inquiries and proceedings to which the present Act applies must promote action to ascertain what has happened to the victims of such acts and must inform their families accordingly. The criminal proceedings which are initiated under the present Act shall not impede the possible application in the future of other non-judicial arrangements for the restoration of the truth."

16. For its part, Argentina stresses that the right to the truth is an autonomous right, both individual and communal in nature, and that, alongside justice, memory and reparation, constitutes one of the four mainstays of action to combat impunity, in cases involving gross violations of human rights. The right to the truth is viewed as an indispensable element in any process of restoring democracy, since it plays an essential role in the historical reconstruction of the causes and consequences of human rights violations. This right also entails the right to full knowledge of gross human rights violations, of the circumstance and reasons for their perpetration and the identity of those responsible for them.

17. In its case, however, Switzerland argues that there is no human rights instrument which identifies the right to the truth as a specific and autonomous right and that only certain of the provisions of Protocol I to the Geneva Conventions touch on the "right" to know. Accordingly, the only provision which is concerned explicitly with the right of victims to know the truth is that contained in article 24, paragraph 2, of the International Convention for the Protection of All Persons from Enforced Disappearance (see paragraph 12 above). At the same time, it is generally accepted that States have a certain number of obligations, dictated by human rights, that are connected with the issue of victims' right to know the truth.

18. Neither, according to Switzerland, do the human rights treaties, taken in their entirety, make any provision for the right of peoples to know the truth, although they do recognize the inherent rights of victims of massive human rights violations, such as the right to know, the right to reparation and to justice, and the right to guarantee of non-recurrence.

II. RELATIONSHIP BETWEEN THE RIGHT TO THE TRUTH AND OTHER RIGHTS AND DUTIES OF THE STATE

19. The contributions sent in highlight the close links between the right to the truth and other human rights, including the right to have access to justice, the right to an effective remedy and the right to objective information.³

³ Cuba, Mexico and Paraguay, among others.

20. Accordingly, a direct connection is made between the right to the truth and such measures as amnesties or other juridical arrangements of comparable effect, since these measures not only promote impunity: they also pose a major obstacle to efforts to uphold the right to the truth by inhibiting the conduct of full inquiries.

21. Some States also see links between the right to the truth and other rights, such as the right to information, and stress that it is enshrined in law and that there should be bodies entrusted with monitoring its observance. States also reaffirm the connection between the right to the truth and the right to reparation, since, by shedding light on violations, the right to the truth helps ensure that victims receive reparations and that further human rights violations are stopped. The right to the truth has also been associated with the duty of States to preserve memory: it requires the State to take the necessary steps to preserve the collective memory of gross human rights violations and of breaches of international humanitarian law, including by maintaining national archives and by making these available to the public.

A. Obligation to investigate

22. As affirmed in the Basic Principles and Guidelines on the Right to a Remedy and Reparation, “the obligation to respect, ensure respect for and implement international human rights law and international humanitarian law … includes, *inter alia*, the duty to: … investigate violations effectively, promptly, thoroughly and impartially” (resolution 60/147, annex, para. 3 (b)).

23. To achieve this, the right to the truth is given effect through the conduct of judicial or non-judicial inquiries, which are of key significance (such as those conducted by an ombudsman). The right to the truth is tied up with the State’s obligation to conduct investigations and to prosecute, try and punish the perpetrators of gross human rights violations. States stress that, in the case of enforced disappearances, this obligation to investigate with a view to exposing human rights violations continues so long as the fate and welfare of the disappeared person and the circumstances in which the offence was committed remain unknown.

24. In this context, Argentina points out that the right to the truth must be interpreted as part of the general duty of States to investigate gross human rights violations, to accord reparation to victims and prosecute, try and punish those responsible for such violations.

25. Morocco refers to the obligation to seek the truth through a process of inquiry and, in this context, draws attention to its Equity and Reconciliation Commission. It explains that investigations conducted under the auspices of the Commission are concerned with gross human rights violations which are of a massive or systematic nature.

26. More specifically, Mexico stresses the vital role played by prosecutors and by the ombudsman’s office in conducting inquiries, both judicial and non-judicial, into human rights violations and in upholding the right to the truth. It points out that the goal of reasserting the truth was considerably promoted by disseminating the findings and their recommendations of inquiries conducted by the ombudsman’s office. The new special services set up under the office

of the Attorney General, such as the special prosecutor for enforced disappearances committed during the 1970s and early 1980s, also provide institutional arrangements conducive to upholding the right to the truth. Mexico also stresses that the lack of any preliminary investigations or negligence in the conduct of such investigations by the government officials responsible pose serious obstacles to exercise of the right to the truth.

B. Right to justice and an effective remedy

27. The right to have access to justice also includes the right to an effective judicial remedy pursuant to international law and represents one of the means of seeking the truth. Finland states its view that criminal procedure also offers a means of ascertaining the truth regarding atrocities committed in the past and that amnesty measures evade the issue of the liability of perpetrators of gross human rights violations.

28. In November 2005, the Working Group on Enforced or Involuntary Disappearances adopted a new general comment, entitled: “Disappearances, amnesty and impunity: general comment on article 18 of the Declaration on the Protection of all Persons from Enforced Disappearance” (E/CN.4/2006/56, para. 49). The Working Group recommended that: “States should refrain from making or enacting amnesty laws that would exempt the perpetrators of enforced disappearance from criminal proceedings and sanctions, and also prevent the proper application and implementation of other provisions of the Declaration.” It was of the view that “An amnesty law should be considered as being contrary to the provisions of the Declaration ... if, directly or indirectly, as a consequence of its application or implementation, it results in any or all of the following: ... Concealing the names of the perpetrators of disappearance, thereby violating the right to truth and information, which can be inferred from articles 4 (2) and 9 of the Declaration.” It also stressed that measures similar to amnesties were contrary to the obligations set out by the Declaration, particularly when they had the effect of making “the victim’s right to truth, information, redress, reparation, rehabilitation, or compensation conditional on the withdrawal of charges or the granting of pardon to the alleged perpetrators of the disappearance”.

29. In Chile the task of investigating violations of the right to life committed under the military regime, of ensuring accountability and of punishing the culprits has been entrusted to the courts. Over the last two years there have been significant developments in the process relating to the right of victims to justice, notwithstanding the practical problems posed by the decree on amnesty. From the end of the 1990s, there has been a shift in the Supreme Court’s jurisprudence, as it began overturning the judgements of military courts based on application of the amnesty decree. Another important development in the jurisprudence of the Supreme Court consisted in its decision to accord “disappeared detainees” the status of victims not of murder, but of abduction, which had the effect of voiding any request for amnesty or prescription until such time as the fate of the victim had been ascertained.

30. Mention here should also be made of a new trend in the country’s higher courts to rule that amnesty is inapplicable in their judgements, and to invoke, as the legal foundation, the obligation to abide by the international human rights treaties ratified by Chile.

C. Right to reparation

31. As the study on the right to the truth stated, the right to the truth may well be an autonomous one with its own legal basis but it is nevertheless closely linked to other rights including the right to reparation. Despite the link between them, these two rights are distinct because the object of the right to the truth is to shed light on the facts and identify those individually responsible.

32. The Basic Principles and Guidelines stipulate that victims should receive full and effective reparation, as laid out in principles 19-23, in the form of restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition, as appropriate and in proportion to the gravity of the violation and the circumstances of each case.

33. As the Basic Principles and Guidelines put it, satisfaction includes verification of the facts and full and public disclosure of the truth (principle 22). The Basic Principles and Guidelines also say that victims and their representatives should be entitled to seek and obtain information on the causes leading to their victimization and on the causes and conditions pertaining to the gross violations of international human rights law and serious violations of international humanitarian law, and to learn the truth in regard to these violations.

34. Under the right to reparation, the Basic Principles and Guidelines provide a useful framework for considering the various initiatives that States have taken in this area. In their replies to the Office of the High Commissioner, some States mention reparation programmes that they have launched in response to the work and recommendations of the truth commissions that they set up. These programmes have offered individual or collective reparations.

35. In the case of individual reparations, States have offered compensation and adopted recommendations on medical and psychological rehabilitation, reintegration into society, the settlement of legal, administrative and professional issues which, in the case of some victims, had remained pending, and the award of pensions. Some individual reparation programmes have also provided educational benefits for victims' children, such as the payment of enrolment fees and charges.

36. For collective reparations, States have adopted a wide range of measures to ensure that violations are not repeated, in part by preserving memories and conducting institutional reforms. The principal object of such moves is to clear away the aftermath of violations, restore confidence in institutions and ensure respect for the rule of law and human rights.

37. States have used various means to perpetuate historical memory through culture, family recollection, collective and social memory, and historical sites offering tangible proof of past events. They have reformed institutions and taken steps to promote the rule of law in order to guarantee that violations are not repeated.

38. Some States have given particular prominence to community reparation through the adoption and execution of social, economic and cultural development programmes for towns and regions affected by violence.

D. Right to information

39. One of the most decisive ways of ensuring the right to the truth is still the right to information. On this subject, Israel mentions its Freedom of Information Law of 1998, which establishes the right to information, in part by giving all citizens and residents the right to obtain information from the public authorities whether or not they have any personal interest in the information requested, and without having to justify their request. The Act also applies to people who are neither citizens nor residents. Exceptions are permitted in certain specific situations which include matters of public safety and questions of privacy. Refusal to satisfy the right to information can be appealed before the national courts, and the burden of proof lies with the public authorities, which must explain and justify their refusal.

III. INSTITUTIONAL MECHANISMS AND MEASURES PROMOTING THE RIGHT TO THE TRUTH

A. Truth commissions and machinery to follow up on their recommendations

40. It is becoming more and more commonplace for countries emerging from civil war or authoritarian regimes to set up a truth commission to operate during the immediate transition period. Such commissions - officially approved temporary, non-judicial investigative bodies - are given a period of time for collecting testimony, holding inquiries, mounting investigations and holding public hearings before publishing the final report. The work of a truth commission may be used in support of any subsequent prosecutions.

41. In their submissions to the Office of the High Commissioner, several countries report on commissions of this type, such as the Equity and Reconciliation Commission in Morocco and the truth and reconciliation commissions in Serbia, Chile and Paraguay.

42. Giving effect to the recommendations of truth commissions is a major challenge. Once the commissions have submitted their final reports, other bodies must carry out their recommendations. The follow-up mechanism may take the form of an official watchdog committee or a standing public authority responsible for putting the recommendations into effect.

43. In Morocco, for example, the Consultative Council on Human Rights was given the mandate of following upon the recommendations of the Equity and Reconciliation Commission.

44. Chile set up various mechanisms to follow up on the report of the Truth and Reconciliation Commission, notably the National Reparation and Reconciliation Corporation (Act No. 19123), reporting to the Ministry of the Interior, in 1992. Then in 1996 it instituted a programme of investigations to establish the fate of missing detainees and people whose deaths had been legally recognized but whose bodies had never been found.

B. Commissions of inquiry

45. As the set of principles emphasizes, measures to guarantee the right to the truth may include "non-judicial processes that complement the role of the judiciary. Societies that have experienced heinous crimes perpetrated on a massive or systematic basis may benefit in particular from the creation of a truth commission or other commission of inquiry to establish the

facts surrounding those violations so that the truth may be ascertained and to prevent the disappearance of evidence" (principle 5). In their responses to the note verbale, States give both recent and older examples of commissions of inquiry they have established.

46. Having admitted that people who had disappeared because of their involvement or alleged involvement in political activities in a period between September 1961 and October 1988 had died, Brazil passed a law (No. 10.875/2004 of 24 March 2004) setting up an ad hoc commission to identify the disappeared persons whose names did not appear in the annex to the law, find their bodies and express an opinion on applications for compensation.

47. A decree (No. 4.850/2003 of October 2003) established an inter-ministerial committee for the purpose of obtaining information leading to the location, identification, transport and burial of the remains of people who had taken part in the guerrilla movement in Araguaia. Administrative steps were also taken, including the establishment of a database of biological samples and genetic profiles for use in identifying the human remains of victims of the military regime.

48. Similarly, the Philippines mentions a commission of inquiry into involuntary disappearances, which was responsible for scientific elucidation of the circumstances of each disappearance and for the safe keeping of evidence relating to the identities of the individuals involved and the causes of death.

49. Argentina's experience led, in connection with the link between the right to the truth and the right to an identity, to the creation of the Argentine Forensic Anthropology Team, which has been playing a very important role in seeking out and identifying disappeared persons, locating people killed in extrajudicial executions, helping the courts bring the facts to light and helping, with victims' families, to establish the truth. Argentina has established a National Commission on the Right to an Identity (Act No. 25.457 of 1992) and a National Genetic Data Bank (Act No. 23.511 of 1987) in which genetic maps of all the families which have lost children in forced disappearances are archived and indexed.

50. From the peace agreement of 10 April 1998 in Ireland (the "Good Friday Agreement") stemmed moves to acknowledge and tackle the suffering caused to victims of the conflict. A Victims' Commissioner was appointed to identify what further steps to take to acknowledge and take account of the suffering of those concerned. Later, commissions of inquiry were set up to shed light on the bombings in Dublin and Monaghan and, more generally, on the violence which began in the 1970s.

51. Separately, an independent commission was set up to locate the remains of victims of paramilitary violence.

C. Court proceedings

52. Besides setting up truth commissions and non-judicial commissions of inquiry, some States report proceedings brought before national courts against those responsible for war crimes against civilian groups, explaining, where cases might also come under the jurisdiction of an international tribunal, what cooperative mechanisms had been established with the tribunal concerned.

53. Argentina emphasizes that the right to the truth could be satisfied by a number of different institutional means and mechanisms, some judicial, some not. It comments on the importance of the “truth trials” at the Federal Court in La Plata: the court had instituted judicial proceedings limited to investigations and the compilation of case files on forced disappearances which, because of the amnesty laws in force, were not followed by prosecutions and punishment. When the laws in question were repealed, the court handling the various “truth trials” was able to hand the case files over to the criminal justice system. Further to these two judicial steps, the “truth trials” and the criminal trials proper, the Argentine Government set up a support and assistance programme with a Federal Human Rights Council for complainants, victims and witnesses of State terrorism, and a national protection programme for complainants and victims of human rights violations.

54. Serbia describes cases brought before Serbian courts against the perpetrators of war crimes against civilian groups, and the cooperative machinery that it has set up with the International Criminal Tribunal for the Former Yugoslavia.

55. Serbia reports the judgements handed down by national courts in the *Podujevo*, *Strbci* and *Sjeverin* trials on charges of war crimes punishable under article 142 of the Criminal Code of the Federal Republic of Yugoslavia. It also draws attention to a change in its own judicial system made in 2003: the creation of a war crimes division in the Belgrade district court, with jurisdiction over war crimes as stipulated in the Criminal Code and article 5 of the Statute of the International Criminal Tribunal for the Former Yugoslavia.

56. Mention has been made, in connection with judicial proceedings, of the role played by applicants for civil indemnification in connection with criminal trials. In a number of judgements, the Colombian Constitutional Court has emphasized the importance of having such applicants present at the criminal trials of those responsible for grave human rights violations, as a means of guaranteeing victims and their families the right to the truth.

57. On a similar note, FIDH advocates a study of national legislation to see whether it allows victims to attend trials and be kept regularly informed of inquiries in progress, and whether it establishes a general right of access to information on human rights violations. The Federation also suggests that the issue of the right to the truth should be further studied in the context of the development of international criminal justice. With a view to better understanding of the right to the truth, Argentina has suggested preparing and distributing a handbook on best practice in the exercise and protection of this right. To facilitate the exercise of the right to the truth, Switzerland suggests guidelines on the protection of archives relating to human rights violations, and considers that thought might be given to the establishment of a special adviser or United Nations rapporteur on the question of the “treatment of the past”.

D. Preservation of and access to archives on human rights violations and the question of memory

58. Archives of human rights violations, originally intended to buttress repressive regimes of all kinds, are vital in making reparation for the injury suffered by victims of repression and in prosecuting those responsible for atrocities. They have an intrinsic value directly related to the exercise of victims’ rights, the work of the courts and non-judicial mechanisms for establishing

the facts, the preservation of memory and history. The question of archives is closely bound up with the right to information, the fundamental right of each individual to have access to information on the public record relating to himself or herself.

59. Other individual rights can be upheld by using the archives as evidence: public rehabilitation of people convicted on political grounds, families' rights to know where their missing relatives are, political prisoners' right to amnesty and victims' rights to reparation and compensation.

60. Archives also enable every nation to exercise its right to an undistorted written record, and the right of each people to know the truth about its past.

61. As Louis Joinet has very aptly put it,⁴ “establishing responsibility for human rights violations, allowing justice to be done and victims to know the truth, requires evidence. People tend, however, to overlook the obvious point that much of the evidence comes from archives”. He emphasizes the fundamental role of oppressive regimes' archives as political, legal, historical and testamentary sources, and the need for action to ensure that they are kept, handled and used in secure conditions.

62. The topics of the preservation of and access to archives bearing witness to violations are also broached in the set of principles (principles 14-18). “The right to know implies that archives must be preserved. Technical measures and penalties should be applied to prevent any removal, destruction, concealment or falsification of archives, especially for the purpose of ensuring the impunity of perpetrators of violations of human rights and/or humanitarian law” (principle 14). “Access to archives shall be facilitated in order to enable victims and their relatives to claim their rights” and “as necessary, for persons implicated … for their defence” and “in the interest of historical research” (principle 15).

63. At its thirty-seventh session, the International Conference of the Round Table on Archives (CITRA) passed a resolution on archives and human rights violations in which, taking into account the fundamental importance of archives in all States as “evidence supporting victims' rights for reparation; as an essential element of collective memory; as a means of determining responsibilities for rights violations; and as a basis for reconciliation and universal justice”,⁵ it recommended that government authorities and international organizations should facilitate the effective exercise of the right to know, by taking steps to ensure the preservation and conservation of archives of all kinds which document these crimes, make the existence of these archival fonds known and facilitate access to them by adapting or creating adequate legal frameworks for their accessibility, and ensuring that these arrangements respect both privacy and the need to make the truth known.

64. Some States have indicated that they have taken steps to conserve and provide access to archives on human rights violations.

⁴ *Le Monde*, 23 June 2004, “Les archives contre l'oubli”.

⁵ <http://old.ica.org/new/citra.php?ptextid=resolutions&ptextannee=2003&plangue=eng>.

65. Brazil has both adopted legislation and taken administrative steps. Act No. 8.159/91 defines national policy on public and private archives. Anyone is allowed access, upon application, to information in the archives of public services; exceptions may be made where information must be kept confidential for reasons linked to the security of society or the State, or the protection of people's private lives, honour or good names.

66. The administrative measures relate to the transfer to the national archives of documents from the army, the police and the secret services so that the public can consult non-confidential documents in accordance with the law in force.

67. The question of archives has also given rise to projects such as the creation of a reference centre on political repression in Brazil (1964-1985) to serve as a depository for information, documents, files and artwork of symbolic value connected with the human rights violations committed during the period of military dictatorship.

68. By presidential decree (No. 1259/2003), Argentina set up the National Memory Archives where all documents relating to the human rights violations committed under the military regime are preserved and organized. This, again, is to safeguard the right to the truth.

69. Colombia emphasizes the importance of establishing, organizing and preserving archives on serious human rights violations and breaches of international humanitarian law. It has passed an act (No. 594 of 2000) laying down measures to prevent the destruction, removal or falsification of archives. It also reports that the Office of the Attorney-General of the Nation has begun to set up a "right to the truth, historical memory and preservation of archives" programme.

70. Switzerland has taken initiatives on a number of fronts as regards the handling of archives on human rights violations. It is supporting three war crimes archives in the Balkans and is helping, in Guatemala, to salvage the archives of the national civil police.

IV. NEW DEVELOPMENTS AT THE INTERGOVERNMENTAL LEVEL

A. UNITED NATIONS

71. On 20 December 2006, the General Assembly adopted the International Convention for the Protection of All Persons from Enforced Disappearance (see paragraph 12 above). In the last preambular paragraph of the Convention, the States parties recognize the right to the truth: "*Affirming the right of any victim to know the truth about the circumstances of an enforced disappearance and the fate of the disappeared person, and the right to freedom to seek, receive and impart information to this end.*" Paragraph 2 of article 24 of the Convention furthermore states: "*Each victim has the right to know the truth regarding the circumstances of the enforced disappearance, the progress and results of the investigation and the fate of the disappeared person. Each State Party shall take appropriate measures in this regard.*"

72. The Working Group on Enforced or Involuntary Disappearances, in its report to the General Assembly, affirmed that "*In any peace and reconciliation scheme the victims' rights to truth, justice and reparation must be maintained*" (A/61/289, para. 66).

73. In its concluding observations regarding the reports submitted by States parties under article 40 of the International Covenant on Civil and Political Rights, the Human Rights Committee has expressed support for the creation of mechanisms to give effect to the right to the truth. In one case, the Committee expressed regret at a State party's "failure to adopt an appropriate law on the establishment of a Committee for Truth and Reconciliation, as well as of other initiatives to promote reconciliation" and suggested that the State party should "intensify its efforts to adopt a systematic approach to re-establishing mutual trust between different ethnic groups and accounting for past human rights abuses".⁶ In another case,⁷ it suggested that a State party should act swiftly to implement the recommendations of the "national dialogue" on the establishment of a truth and reconciliation commission.

74. The Committee has also frequently reminded States parties that, in the event of violations of human rights and of international law, they are under an obligation to investigate the violations and to bring the perpetrators to justice.⁸ The Committee has, for example, recommended that the competent authority should ensure that the relatives of disappeared and abducted persons have access to information about the fate of the victims, as well as to adequate compensation.⁹

75. In another case, which illustrates the relationship between the right to the truth and other rights, the Committee asked the State party to consider other methods of accountability for human rights crimes committed under the military dictatorship, including disqualifying gross human rights violators from relevant public office and establishing justice and truth inquiry processes. The Committee expressed the view that the State party should make public all documents relevant to human rights abuses, including the documents currently withheld pursuant to a presidential decree.¹⁰

76. Moreover, in early 2006, the Office of the High Commissioner for Human Rights published a series of five "rule-of-law tools" designed to ensure long-term, sustainable institutional capacity to respond to the demands of justice in periods of transition. These tools outline the basic principles involved in: mapping the justice sector, prosecution initiatives, truth commissions and vetting and monitoring legal systems. A new series dealing with subjects such as reparation and the legacy of international tribunals is to be published shortly. Other topics are being considered, in particular, national consultations on the implementation of transitional justice mechanisms, amnesties and mainstreaming the gender perspective in the transitional justice process.

⁶ See document CCPR/C/BIH/CO/1.

⁷ See document CCPR/C/CAF/CO/2.

⁸ See, for example, CCPR/C/UNK/CO/1, CCPR/C/CAF/CO/2 and CCPR/C/HND/CO/1.

⁹ CCPR/C/UNK/CO/1.

¹⁰ CCPR/C/BRA/CO/2.

B. Inter-American system

77. The Organization of American States (OAS), at its thirty-sixth regular session held in June 2006, adopted a resolution¹¹ on the right to the truth, in which it recalls that the Inter-American Court of Human Rights has recognized the right to the truth and that the regional community supports recognition of the right of victims of gross violations of human rights and serious violations of international humanitarian law, and their families and society as a whole, to know the truth regarding such violations to the fullest extent practicable, in particular the identity of the perpetrators, the causes and facts of such violations, and the circumstances under which they occurred. It also recognizes that States, within the framework of their own internal legal systems, should preserve records and other evidence concerning gross violations of human rights and serious violations of international humanitarian law, in order to facilitate knowledge of such violations, investigate allegations, and provide victims with access to an effective remedy in accordance with international law and in order to prevent these violations from occurring again in the future. It stresses the importance of ad hoc or non-judicial mechanisms, such as truth and reconciliation commissions, that complement the justice system and encourages States members of OAS to disseminate and implement their recommendations. It has furthermore tasked the Inter-American Commission on Human Rights with the preparation of a report on the right to the truth.

78. In numerous cases which it adjudicated in 2006 and 2007,¹² the Inter-American Court of Human Rights recalled that the families of victims of serious human rights violations had the right to know the truth and that that right was linked to the right to reparation and to the obligations of States to conduct impartial and thorough investigations and to prohibit impunity. The Court affirmed that when that right to the truth was recognized and exercised in a specific situation, it constituted an important measure of reparation for the victim and his family and was an expectation that the State must satisfy.¹³ According to the Court, the establishment of the truth as to the facts and the circumstances in which human rights violations were committed helps to preserve the historical memory, to make reparation to the victims' next of kin and to avoid the repetition of similar acts.¹⁴

¹¹ AG/RES. 2175 (XXXVI-O/06), 6 June 2006.

¹² Judgement of 22 September 2006, *Goiburu et al. v. Paraguay*; judgement of 4 July 2006, *Ximenes Lopes v. Brazil*; judgement of 31 January 2006, *Pueblo Bello massacre v. Colombia*; judgement of 29 November 2006, *La Cantura v. Peru*; judgement of 6 April 2006, *Baldéon Garcia v. Peru*, para. 56; judgement of 1 July 2006, *Ituango massacres v. Colombia*; judgement of 5 July 2006, *Montero Arangurén et al. (Réten de Cati) v. Venezuela*.

¹³ Judgement of 22 September 2006, *Goiburu et al. v. Paraguay*, para. 164.

¹⁴ Judgement of 22 September 2006, *Goiburu et al. v. Paraguay*, para. 53.

79. Finally, the Inter-American Court stresses that, while the establishment of truth commissions is an important means of seeking and establishing the truth, the “historical truth” which commissions establish “does not substitute the State’s obligation to also establish the truth through judicial proceedings”.¹⁵

C. Mercosur

80. In the framework of Mercosur (the Common Market of the Southern Cone), the question of the right to truth was discussed at the sixth meeting of Mercosur high-level human-rights authorities and foreign ministries (5 and 6 December 2006). After that meeting, the States members of Mercosur and of the “Somos Mercosur” programme adopted a declaration, at the Mercosur Social Summit held on 14 December 2006, highlighting “the importance of guaranteeing the right to truth and to memory”.

V. CONCLUSIONS AND RECOMMENDATIONS

81. **The right to know the truth about gross human rights violations and serious violations of humanitarian law is recognized in some international treaties and instruments, in the national legislation of several countries, in national, regional and international jurisprudence and by many international and regional intergovernmental organizations.**

82. **The right to the truth presupposes the disclosure of the whole and complete truth about the events that occurred, the specific circumstances attending them and the individuals involved, including the circumstances in which the violations were committed and the reasons for their commission.**

83. **While the right to the truth is an individual right of victims and their families, it also has a collective and a societal dimension. At that level, the right to the truth is closely linked to the rule of law and the principles of transparency, accountability and good governance in a democratic society. Together with justice, memory and reparation, it constitutes one of the mainstays of action to combat impunity for grave human rights violations and breaches of international humanitarian law.**

84. **The question of the right to the truth is a complex one, because this right is closely linked to several obligations of States, particularly those of protecting and guaranteeing human rights, effectively investigating gross human rights violations and serious violations of humanitarian law and guaranteeing adequate remedies and reparation for victims and their families.**

85. **Although the right to the truth is an autonomous right, it is closely linked to other human rights such as the right to an effective remedy; the right to the protection of the law and the courts; the right to a family life; the right to an effective investigation; the right to a hearing by a competent, independent and impartial tribunal; the right to obtain**

¹⁵ Judgement of 29 November 2006, *La Cantura v. Peru*.

reparation; the right not to be subjected to torture or ill-treatment; and the right to seek and to impart information. As indicated in many communications which States and non-governmental organizations have submitted to the Office of the High Commissioner for Human Rights, the right to the truth is a fundamental right which States must guarantee fully and effectively.

86. Because it is linked to other fundamental rights and to the fundamental obligations of States, particularly the obligation to combat impunity, the right to the truth is an inalienable and inderogable right. Amnesties and similar measures and restrictions on the right to seek information must not be used to limit, nullify or impair the right to the truth.

87. The right to the truth, as is clear from the communications received, is evolving steadily. In recent years, national laws and other measures have been adopted. In many countries, international and regional human rights organizations and courts and national courts have developed a significant body of jurisprudence on the right to the truth, its essence and scope, thereby helping to flesh out the meaning of the right. New international legal instruments, which deal with the question of the right to the truth, have been adopted in recent years. Many aspects and dimensions of the right to the truth require further analysis, however.

88. The right to the truth touches on many questions. For example, as many States and non-governmental organizations have acknowledged, the right to the truth is closely related to the question of historical memory and the duty of both the State and society to preserve that memory. The societal dimension of the right to the truth, which is linked to the question of historical memory, raises specific issues that would repay a closer study, including the question of records and of the historical memory.

89. With regard to the workings of criminal justice, many communications stress the vital role of criminal proceedings in upholding the right to the truth. The role of victims and their families in criminal proceedings, the relevant international standards and national and international practices should be analysed in detail.

90. With regard to institutional means and mechanisms for guaranteeing, safeguarding and implementing the right to the truth, the national experiences of which the Office of the United Nations High Commissioner for Human Rights has been apprised point to a diverse range of modalities. International criminal courts, truth commissions, investigation commissions, national criminal courts, national human rights institutions and other bodies and administrative procedures, means of recourse such as *habeas corpus* and *habeas data* and historical records can be important means of guaranteeing the right to truth. When it comes to guaranteeing and implementing the right to truth, however, experiences differ and results are uneven. These institutional means and mechanisms should be analysed more fully.

91. The above-mentioned aspects - records, the historical memory, the role of victims and their families in criminal proceedings and institutional means and mechanisms - should be studied and analysed in greater detail in order not only to draw lessons from them but also to elaborate recommendations and standards to better protect and guarantee the right to the truth.

92. The Office of the United Nations High Commissioner for Human Rights recommends that the right to the truth should continue to be examined with a view to a better understanding of this right, particularly the aspects mentioned in the preceding paragraph. To that end, the Office recommends that one or several in-depth studies be conducted on the following aspects of the right to the truth:

- (a) The contribution of criminal justice systems - both national and international - to the implementation and effective protection of the right to the truth and particularly the role of victims and their families in criminal proceedings;
- (b) The question of records and the right to the truth, with a view to the creation of guidelines on protecting records concerning human rights violations;
- (c) Institutional means, procedures and mechanisms to improve the implementation of the right to the truth - on the individual and the societal levels - taking account of national experiences and developments in international law.
