Impunity and the rule of law

Combating impunity and strengthening accountability, the rule of law and democratic society

Background

The rule of law is the bedrock of the legal protection of all human rights, whether they are civil, cultural, economic, political or social rights. For the United Nations system, the rule of law is a principle of governance in which all persons, institutions and entities, public and private, including the State itself, are accountable to laws that are publicly promulgated, equally enforced and independently adjudicated, and which are consistent with international human rights norms and standards.

Where the rule of law collapses, violent conflict erupts. Mass killings, disappearances, torture, arbitrary detention, destruction, sexual assault, rape, displacement, fear, hunger, and trauma follow. Establishing effective mechanisms to ensure that perpetrators of such violations will not go unpunished is an important step in restoring the rule of law in the aftermath of conflict.

Impunity is often the main obstacle to upholding the rule of law. Human rights are reduced to a mockery when acts such as torture or rape go unpunished, when amnesty laws exempt perpetrators from responsibility, when inquiries into excessive use of force produce little results, when court decisions providing remedies and redress for victims are not enforced and when economic, social and cultural rights cannot be attained through a judicial process.

OHCHR’s role

OHCHR engages in dialogue with States on the best ways to achieve legal protection of human rights and accountability for violations. At the country level, efforts focus on dialogue with governments, institutions concerned with the administration of justice, law enforcement agencies, national human rights institutions (NHRIs) and civil society organizations to promote principles of accountability.

Women in North Darfur marching to demand the end of gender-based violence.
and the rule of law, to share examples of best practice and to provide technical advice.

At the global level, OHCHR supports the development of relevant international norms and standards, and collects good practices, elaborates guidance tools, and carries out capacity-building activities. It also supports human rights mechanisms in their efforts to enhance legal protection of human rights and accountability. The Office has assumed a lead role within the UN system on transitional justice and chairs the working group on protecting human rights while countering terrorism of the Counter-Terrorism Implementation Task Force established by the Secretary-General.

OHCHR is dedicated to seeing the end of impunity and strengthening the rule of law; the following are some of the results it contributed to in 2010.

**National laws, policies and institutions**

*EAI – Increased number of democratic institutions engaged in issues related to combating impunity*

On matters of rule of law and constitution-making, OHCHR continues to advocate for strengthened legislation and provisions with regard to human rights. Following such advocacy, the European Commission proposal for a directive on the right to information in criminal proceedings included a “non-regression clause” according to which a directive should not be interpreted as lowering higher standards that may be binding on Member States, in this case ICCPR standards.

In Mexico, the Federal Senate approved a constitutional reform that takes into account proposals made by the Office. The reform includes 11 articles on human rights and recognizes international human rights treaties as national law. The reform is currently pending the approval of the Federal Congress.

Cambodia began using an implementation guide for the Law on peaceful demonstration (adopted in late 2009) that had been drafted by the Government in consultation with the East West Management Institute, civil society and OHCHR-Cambodia.

Recognizing that data, its collection and compilation are essential in the quest to realize human rights, OHCHR has developed a framework which promotes a common approach to the identification of indicators for the monitoring of civil, cultural, economic, political and social rights. This framework makes precise and up-to-date data available, thereby assisting States to assess progress in human rights implementation and capacity-building.

Using OHCHR’s methodology, OHCHR-Mexico, in collaboration with the National Institute of Statistics and the National Human Rights Commission, designed and formulated indicators on the rights to health, education, freedom of expression and opinion, life, liberty and security. Mexico City’s Government also enacted a Human Rights Plan Law. This Law, currently being implemented through the Mexico City Human Rights Programme, emphasizes the inclusion of a gender and human rights perspective in the City’s public policies and budgets.

With the same methodology, indicators on the right to a fair trial have been adopted by Mexico City’s Court of Justice. Twelve out of 14 analytical documents submitted by OHCHR-Mexico to the Mexican Courts were included in decisions and/or judicial debates. As a result, Supreme Court rulings incorporating international human rights standards increased both in number and quality. In October 2010, the President proposed a bill which would exclude from military jurisdiction cases of grave human rights violations such as torture, forced disappearance and rape. While this is a positive step, the Office recommended that Congress broadens the reach of the initiative to include all human rights violations.

An independent and fair judiciary is at the heart of the rule of law. In Haiti, seven courts and tribunals across the Western and Artibonite departments became operational again, with technical advice provided by OHCHR, in partnership with UNHCR.

In Ecuador, the Ministry of Justice elaborated a strategic plan for implementing the new Organic Code of the Judiciary in accordance with human rights standards. The Human Rights Adviser supported the process by advising on an organizational model for the Judicial Council, as the Government administrator of the judiciary, and a system for judicial education.

Trials in Timor-Leste increasingly complied with human rights standards. The Human Rights and Transitional Justice Section monitored several trials, including one related to the assassination attempts on the President and Prime Minister, and all cases proceeded in compliance with most basic international fair trial standards.

As the judicial process runs its course, police and other security agents must fulfill their duties in detaining suspects without abusing their position of
authority. OHCHR works with States to support this process. In Ecuador, a regulation on the use of force and firearms by the police, incorporating applicable human rights standards, was developed and adopted by the Ministry of Interior. In Timor-Leste, progress was made towards improving the accountability of national police officers. Disciplinary mechanisms improved because a wider range of possibilities for case referrals was adopted. In Lebanon, the code of conduct for police finalized in 2010 will provide the basis for future trainings and activities.

Among the most important mechanisms to ensure the compliance of States with their human rights obligations are the NHRIs, along with ombudsmen’s offices. Their mandate can include advising a government on its international obligations, reviewing legislation and administrative practices, monitoring the national human rights situation, and responding to human rights violations. These institutions act as an important bridge within society as well as with regional and international fora. The effective functioning of an NHRI, as spelled out in the Paris Principles, requires independence, pluralism, accessibility and functional autonomy. The Office works with States to strengthen the mandate and capacity of these institutions and ensure they are adequately funded. With support from OHCHR, institutions were established or strengthened in 52 countries, including in Afghanistan, Cameroon, Bahrain, Burundi, Chile, Haïti, Kosovo1, Liberia, Oman, the Russian Federation, Serbia, the former Yugoslav Republic of Macedonia, Timor-Leste and Uruguay.

OHCHR provides advice on electoral laws and procedures and assists in observing UN-supported electoral processes. In 2010, fifty years of independence were marked in 22 African States by crucial electoral processes. As citizens of these States went to the polls, OHCHR presences on the continent monitored the human rights situation during elections in several of these countries.

The long-awaited presidential polls in Côte d’Ivoire, which had been postponed six times since 2005, saw an estimated 85 per cent of voters turn out, the majority of whom were women. The Human Rights Division of the UN Operation in Côte d’Ivoire (ONUCI) organized a series of workshops promoting human rights during the electoral process, with a particular emphasis on the protection of women and girls in rural areas.

1 Reference to Kosovo should be understood in full compliance with United Nations Security Council resolution 1244 and without prejudice to the status of Kosovo
In Guinea, while the first round of the presidential elections in June 2010 was predominantly peaceful, tensions between the two remaining candidates and disputes over the leadership of the Electoral Commission jeopardized the organization of the second round. At least four civilians were killed and scores injured during clashes between the candidates’ supporters and security forces in the capital Conakry between 15-17 November. Other human rights violations linked to the organization of the elections were also reported by staff of the newly-established OHCHR Office in Guinea. In the run-up to the polls, OHCHR-Guinea helped train 175 human rights monitors operating across the country. The Office also engaged in conflict prevention activities, including holding talks with both presidential candidates and their teams and providing human rights training for security forces and youth groups. Staff worked closely with NGOs and other local partners throughout the country to monitor the human rights situation before, during and after the elections. The UN Human Rights Office also expressed concern at the manner in which Guinea’s security forces had quelled supporters’ demonstrations both in October and November 2010.

The joint UNDP-OHCHR Togo Office programme directed towards non-violent presidential elections in March 2010 was a marked success. The Office remained in close consultation with the authorities of the country, assisted with the training of the security forces and devised a comprehensive human rights promotion programme. The presence of the Office throughout the country through its six sub-offices and its networks proved to have a preventive effect and was expressly appreciated by the Government. By the end of October, no more election-related detentions were noted.

OHCHR recognizes the importance of training personnel involved in electoral processes, including police and other security agents. To this end, the Office assisted in the elaboration of training material for police in Ecuador, Liberia, Sierra Leone and the Sudan, and for defence lawyers in Georgia.

OHCHR also contributed to the UN-wide policy on democracy and to the development of UN-coordinated policies and actions to enhance national efforts for combating democratic deficits and for strengthening democratic institutions. In this context, in 2010, OHCHR conducted several training seminars for parliamentarians in various regions with a focus on their oversight and legislative role with regard to the protection and promotion of human rights.

Ratification

The ICCPR was ratified by Pakistan and Guinea-Bissau, and the Second Optional Protocol to the ICCPR on the death penalty was acceded to by the Kyrgyz Republic and signed by Kazakhstan.

The Convention against Torture (CAT) was ratified by Pakistan and signed by the Lao People’s Democratic Republic, and the Optional Protocol (OPCAT) was ratified by Ecuador, Panama and Togo.

The International Convention for the Protection of All Persons from Enforced Disappearance (ICPPED) was ratified by Brazil, Iraq and Paraguay, and signed by Indonesia. Iraq became the twentieth State Party to the ICPPED in November, thus bringing the Convention into force on 23 December 2010.

National accountability mechanisms

OHCHR supports institution-building efforts by developing guidance materials for use by judges and judicial trainers, as well as new policy and training tools on accountability mechanisms, including commissions of inquiry.

The work of two truth commissions in Timor-Leste will be furthered thanks to draft legislation on a follow-up institution. The draft, which was discussed in Parliament, was based on a concept paper produced by a working group, including the Human Rights and Transitional Justice Section in Timor-Leste which provided technical advice.

In many countries, individuals endure appalling conditions of detention. As soon as they are behind bars, detainees frequently lose enjoyment of their human rights and are often forgotten by those in the outside world. This was emphasized by the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment in a global report presented to the Human Rights Council.

In 2010, the Republic of Moldova acted on most of the eight recommendations made by CAT in November 2009, in particular concerning the functioning of Moldova’s National Preventative Mechanism (NPM). Access to places of detention by the NPM significantly improved during the
However, other problems remained; the NPM was not applying appropriate standards for documenting torture and related abuse in places of detention, and the timely publication of monitoring reports. OHCHR provided technical advice to the National Commission of Inquiry established by the Moldovan National Parliament to investigate the violence that took place in the aftermath of the April 2009 elections.

In Honduras, a National Mechanism against Torture was established. The Human Rights Adviser contributed to the promotion of a public debate on its role and importance based on the recommendations of the Subcommittee on Prevention of Torture. A National Torture Prevention Mechanism Law was also adopted in Guatemala.

OHCHR attaches particular importance to victim- and witness-protection programmes, including in cases of sexual violence, and develops guidance materials to assist States in this regard. In 2010, OHCHR deployed international witness protection experts to Argentina, Nepal and Uganda to review national legislation in these countries. Following this review, and based on the framework for the protection of witnesses and victims presented in the High Commissioner’s report to the Human Rights Council on the right to the truth (A/HRC/15/33), a senior-level expert meeting was organized in Uganda to discuss good practices for setting up a national witness protection programme and, in December 2010, OHCHR organized in Nepal a South Asian regional meeting on witness and victim protection.

### Transitional justice mechanisms

**EA3 - Transitional justice mechanisms progressively established and functioning in accordance with international human rights standards and best practices**

For countries recovering from conflict or repressive rule, the rights to justice, truth and reparations and guarantees of non-recurrence are recognized as essential for achieving the transition to democracy, combating impunity and overcoming a legacy of human rights violations.

The Office helped design and support national consultations on transitional justice mechanisms; supported the establishment of truth-seeking processes, judicial accountability mechanisms and reparations programmes; and provided advice on relevant institutional reforms. It is also developing guidance materials on new transitional justice-related areas, the most recent of which include the linkages among transitional justice processes and economic, social and cultural rights; disarmament, demobilization and reintegration; gender, including addressing sexual violence; and vetting processes. The Office’s work also focuses on the different elements of the right to truth, such as the importance of the preservation and use of archives in truth-seeking processes and ensuring witness protection.

In 2010, OHCHR provided advice and assistance on accountability and transitional justice issues in a number of countries. In Burundi, OHCHR supported the successful conduct of national consultations on
transitional justice in April 2010. OHCHR also assisted in the establishment of the Transitional Justice and Reconciliation Commission (TJRC) in Togo, and over 17,000 statements were gathered during the collection of testimonies phase (6 August to 17 December 2010). OHCHR assisted the TJRC in training and capacity building for the commissioners, as well as the recruitment and training of staff for its local antennas and mobile teams. In November 2010, OHCHR organized a seminar on witness and victim protection, in which the staff of the TJRC participated.

Steps were taken towards accountability for crimes committed during the 2006 crisis in Timor-Leste. All cases recommended for prosecution by the United Nations Independent Special Commission of Inquiry have been taken up for investigation. By December 2010, trials in seven cases had been completed, including four in 2010.

The Government of Brazil committed itself to establishing a Truth Commission. The Government of Nepal has committed itself to establishing a Disappearances Commission and a Truth and Reconciliation Commission to address both the causes and the conduct of the ten-year conflict that took place in the country. Progress is being made towards the adoption of the necessary legislation. Uganda established a War Crimes Division of the High Court, whose jurisdiction covers the crimes against humanity in the Rome Statute. In addition, as a State Party, Uganda, has integrated the Rome Statute into domestic law, by enacting the ICC Act 2010, which annexes the Statute in its entirety.

The Human Rights Adviser in Kenya, working closely with UNIFEM and UNDP, helped to ensure a gender sensitive approach in the support provided to transitional justice and accountability measures and the constitutional review processes undertaken by the Government of Kenya.

In August 2010, OHCHR published a report on the mapping exercise documenting the most serious violations of human rights and international humanitarian law, including sexual violence, committed within the territory of the DRC between March 1993 and June 2003.

**Access to justice and basic services**

*EA4 – Increased access to justice for marginalized groups*

Violence against women is endemic in almost every society. The fact that it is often hidden from public view makes it difficult to address. It is therefore imperative to make sure that the legal structures which protect women are sound and that they have full access to justice and legal assistance.

A comprehensive Special Law on a Life Free of Violence for Women, on which extensive support and advice was provided during the drafting process, was adopted by the Salvadorian Congress in November 2010. In Mexico, changes in existing legislation on reproductive rights and a new law forbidding violence against women were approved in November 2010 in Guanajuato. Indicators on violence against women have been selected and validated, and are currently pending approval and adoption by the National Commission to Prevent and Eradicate Violence against Women.

In Timor-Leste, a law against domestic violence was adopted in May. The Parliament in Uganda enacted the Domestic Violence Act in March, but supporting regulations have not been completed. The Prohibition of Female Genital Mutilation Act was passed in Uganda to outlaw this practice, punish offenders and provide protection to victims.

In Afghanistan, the draft law on Dispute Resolution Council Jirgas and Shuras was reviewed by OHCHR and UNAMA for compliance with international human rights standards and to ensure that the law safeguards women’s rights. In Iraqi Kurdistan, the Regional Government has taken steps to improve legislation protecting and promoting women’s and children’s rights, including through the law for social health security and a quota system for women.

OHCHR continues to advocate for detainees to enjoy the right to judicial review of their detention by an independent, impartial court, as well the right to seek redress following torture, ill-treatment or other violations, and, in the case of pre-trial detainees, their rights to legal counsel, the presumption of innocence, release pending trial, and the right to a speedy trial or release.

Throughout the year, the High Commissioner for Human Rights advocated in different forums for an expeditious and fair trial before regular courts for those being held by the Government of the United
States of America in the Guantanamo Bay detention facility and other places. She also called for a thorough investigation of allegations of torture at the facility and raised concerns about detention in locations outside the United States. The High Commissioner also expressed concern over the US programme of targeted killings of suspected terrorists in circumstances that challenged international norms established to protect the right to life and the rule of law.

The Office obtained authorization to visit all civilian prisons in Cambodia. In 2010, our staff installed rain-water harvesting systems and increased water storage facilities in the prisons of the Banteay Manchey, Siem Reap, Mondolkiri, and Kratie provinces and in Correctional Center No. 4, thus improving the daily life of over 2,500 prisoners.

An action plan to reduce the prison population in Burundi, adopted in September 2009, is currently being implemented. Short-term measures have led to a significant decrease in the number of detainees, however, for sustainable results the in-depth reforms foreseen in the plan should be implemented.

The Office assisted 60 youths detained after demonstrations in Guinea in September 2010 to obtain pro bono legal aid from a pool of lawyers. All detainees were released thanks to this assistance and most of them were acquitted.

**Responsiveness of the international community and the United Nations system**

EA10 – International entities, including the International Criminal Court (ICC), international tribunals and the Human Rights Council and other UN human rights mechanisms increasingly responsive to critical accountability situations

The thematic report on reparations for women who have been subjected to violence prepared by the Special Rapporteur on violence against women, filled a gap in the research on the issue, and attracted the interest of a number of UN agencies which are active either in the more general field of the rule of law and access to justice, or more specifically on women’s rights. These have used the report as a reference guide for their own national level projects and have expressed interest in further cooperating with the Special Rapporteur on this topic.

The International Criminal Court (ICC) is the principal justice and accountability mechanism at the international level. Established by the Rome Statute in 1998 and entering into force on 1 July 2002, OHCHR encourages States that have not yet ratified the Statute to do so; supports civil society efforts to promote ratification; and, when requested, provides technical advice on national implementing legislation.

The number of States Parties to the Rome Statute rose to 114, with the ratifications by Bangladesh, the Republic of Moldova, the Seychelles, and St Lucia.

The High Commissioner participated in the stocktaking panel on complementarity. Held during the ICC Review Conference in Kampala from 31 May to 11 June 2010, OHCHR strengthened its relationship with the ICC on the basis of the UN-ICC Relationship Agreement approved by the General Assembly (A/RES/58/318).

OHCHR contributed to making the UN framework for transitional justice activities more human rights-based. Amongst other things, the Office had a lead role in the process of elaborating the Secretary-General’s Guidance Note on the UN’s approach to Transitional Justice, adopted in March 2010. This note is now used by the United Nations at Headquarters and in the field as a common standard on transitional justice.
During 2010, OHCHR advised and supported the Secretary-General on the establishment of his Panel of Experts on Accountability in Sri Lanka, which examined the Government’s follow-up to joint commitments on accountability relating to alleged violations of international human rights and humanitarian law during the final stages of the conflict in Sri Lanka that ended in 2009. The Panel's report identifying credible allegations of war crimes and crimes against humanity by both sides of the conflict was made public by the Secretary-General in April 2011.

The three thematic reports presented by the Special Rapporteur on counter-terrorism to the General Assembly and the Human Rights Council during 2010 raised awareness amongst Member States and the international community about the importance of the promotion and protection of human rights and the rule of law while countering terrorism. They also contributed to the mainstreaming of human rights standards and principles within the United Nations’s work and raising awareness about the specific responsibilities of the United Nations in this context.

Challenges and lessons learned

Enhancing the rule of law and ending impunity require sustained efforts. Demonstrating will and capacity are essential in this regard. The basic tools are there. The technical advice is available. Best practices abound. But without clear political commitment to countering impunity seriously, capacity-building efforts will have little effect.

Although some progress has been made in addressing the worst crimes through the adoption of new standards and the conduct of international criminal prosecutions, much remains to be done at the national level to enforce basic human rights guarantees, not least through establishing and defending judicial independence.

There is no single model to enhance the rule of law. Rule of law programmes can be adapted to the needs of every country depending on the challenges faced, whether it be a situation of conflict, the threat of terrorism, insecurity and general criminality or serious economic deprivation. But the vital ingredient is for the State to honour the human rights obligations that it has voluntarily accepted.

OHCHR has greatly benefited from its partnership with other institutions within the UN system and beyond. Its leadership role in enhancing accountability for violations, fostering transitional justice measures, and supporting institution-building is acknowledged. A coordinated, coherent, and responsive approach to rule of law and accountability strengthens the delivery of assistance and the human rights message. OHCHR is committed to this approach.
On 1 January 2000, in the municipality of La Dorada, Putumayo, in southern Colombia, Nancy Galarraga’s four sisters disappeared. A paramilitary commander told Nancy not to worry and that the girls would come home later. But Patricia, 22; Monica and Nelsy, 19-year-old twins; and Maria Nelly, 13, never returned.

On 7 July 2010, a ceremony was held at the United Nations Human Rights Office in Bogota to help provide closure for the bereaved family and friends. The young women’s mother, Nieves, their sister Nancy and four orphaned children displayed a profound sorrow that is difficult to describe as they confronted the four white coffins adorned with flowers and portraits. Ten years after their disappearance, torture and murder, the dignity of these women was finally returned to them.

Six months earlier, a Colombian prosecutor reported that a mass grave had been exhumed by the Attorney-General’s office. The coordinates for the site had been provided by two former paramilitaries. Nieves and Nancy Galarraga dug up over 100 clandestine graves with their own hands and handed the human remains over to the Attorney-General’s office.

Though relieved that the waiting and searching was over, Nieves Galarraga said their pain still continues. She is angry that after their disappearance, no one did anything, and she asks that justice be done.

Enforced disappearances occur when, with the involvement of State authorities, a person is forcibly removed from public view and his or her whereabouts is intentionally undisclosed. As a consequence, victims are placed outside the protection of the law. In most cases, the only verifiable information provided will relate to the circumstances in which the victim was last seen alive and free.

The UN Human Rights Office in Colombia was honoured when it received the request to convene this ceremony. Handing over the mortal remains to the victims’ family was a profoundly sad experience. At the same time, it was an opportunity to emphasize that laws must be passed to enable processes of truth, justice and reparations.

“It is very sad to receive the remains of these young women, but at the same time it’s an honour to receive your family in this office”, the head of OHCHR in Colombia, Christian Salazar, said during the ceremony. “We express our solidarity and join together in demanding justice for the serious human rights violations committed by paramilitary groups. The right to the truth and the need for reconciliation do not diminish the call for justice.”

In consultation with civil society organizations, the Attorney-General recently adopted a protocol for the search for disappeared persons, exhumation and identification of bodies. However, a protocol for the dignified handing over of remains to families is necessary, as these ceremonies are still conducted, for the most part, as judicial proceedings. It is also important to establish mechanisms that will permit “declarations of absence”, rather than obliging families to “declare presumed death” of disappeared persons, in order to have access to State protection and assistance.