

Combating Impunity: The Role of Judges and Lawyers

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UN Approaches to Combating Impunity

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Chairperson, ladies and gentlemen,

Good afternoon. Today I would like to describe the operational framework which OHCHR endeavors to use to combat impunity. This operational framework contains three aspects: knowledge of human rights standards; capacity building; and perhaps most importantly persuading the state in question to make the changes necessary to end to impunity for human rights violations, and to take the necessary steps to prevent human rights violations in the future. Taking such a step requires considerable political will by the state concerned, and a very significant change in a state's practices.

Let me now briefly discuss each of these three aspects of OHCHR's operational framework to combating impunity.

I. Knowledge

First, knowledge of international human rights instruments, and knowledge concerning possible avenues for their implementation can be an important first step to combat impunity. The provisions of the International Covenant on Civil and Political Rights, the

Convention against Torture and the International Convention on Enforced Disappearances are but some of the international instruments of particular relevance. In addition, I would like to draw your attention to the UN's Updated Set of Principles to Combat Impunity. Without being exhaustive, the broad themes that are contained in the Updated Principles to Combat Impunity include the victims' right to the truth, the right to justice, the right to reparation and the right to guarantees of non-recurrence of the violations in question.

It is very important for a state to have a good knowledge about the extent and scope of human rights violations, and the degree of impunity for such violations, before it can adopt a strategic programme to take remedial action. The UN human rights system is equipped to assist states to understand the extent of human rights violations so that they can take effective steps to significantly reduce and eventually put an end to human rights violations and related impunity. For example, knowledge can be derived through the work of the Special Procedures of the Human Rights Council, Commissions of Inquiry into particular situations, as well as the work of the UN Treaty Bodies.

NGOs, legal professionals and journalists also can play an important role in bringing key human rights violations and a pattern of impunity to the attention of a state. Public denunciation of human rights violations and impunity for such acts can often play a useful and constructive role in influencing state action.

I would like to draw attention to one situation that has generated a measure of disagreement in approach. In post-conflict situations, transitional justice institutions may be established to deal with gross violations of human rights and serious violations of international humanitarian law that occurred during the conflict. Frequently there may be efforts to investigate and prosecute perpetrators of past crimes, as well as truth and reconciliation commissions. Some have argued that such processes should focus on the future, with the particular goals of ending divisions, preserving the peace and promoting reconciliation; and that it is therefore justified to provide amnesties for perpetrators of serious crimes, particularly if they participate in truth and reconciliation processes. However, this approach has been rejected by the United Nations. The Commission on

Human Rights in its resolution 2005/81 specifically rejected this approach. Similarly, the Secretary-General's Guidance Note on Transitional Justice Processes states that amnesties should not be provided in particular for serious violations of international humanitarian law or gross violations of human rights that constitute crimes.

II. Capacity

The second aspect of OHCHR's operational framework in combating impunity focuses on building capacity within the state. It is, for example, fundamentally important that States develop or refine their own capacity to investigate and prosecute gross violations of human rights and serious violations of international humanitarian law. Implementing human rights and combating impunity requires expertise, trained personnel and often logistical, technical and financial assistance. It may require training of police, military and prison officials, as well as workshops for judges, prosecutors and lawyers. It may require establishing witness protection programmes, or securing, preserving and organizing archives relating to past human rights violations. Furthermore, vetting of state officials is frequently necessary to ensure that those who have committed violations of human rights law and international humanitarian law that constitute crimes are not allowed to remain in their functions. Combating impunity may also require establishing new institutions, new laws or even amending the constitution,

Many states, therefore, may be in considerable need of assistance to build capacity to address human rights problems. OHCHR undertakes this role in the 54 countries where there are UN human rights presences. It also works with other UN agencies such as UNDP, DPKO and UNODC that may also have tools and programmes to promote the rule of law and combat impunity.

III. Securing the engagement of the state in question to change

In addition to knowledge and capacity, the third aspect of OHCHR's operational framework to combat impunity is to persuade the state in question to bring to justice perpetrators of human rights abuses and to put an end to impunity. This may be difficult

in states that historically have had a problematic approach to the rule of law, and where impunity for human rights violations has been tolerated. And it may be extremely difficult in states where there is protracted conflict or where a state has only recently emerged from conflict.

The UN intergovernmental system has an important role in reminding states of their obligations. The UN High Commissioner for Human Rights also constantly undertakes dialogue with states with the objective of protecting human rights and ending human rights violations.

There are times, however, when states may be unwilling or unable to stop human rights violations; and the international community in such circumstance must seek other avenues for action. The United Nations generally, and OHCHR and the Human Rights Council in particular, have been active in their support for international commissions of inquiry which have become an essential tool in the fight against impunity. For example, the Human Rights Council has recently established international commissions of inquiry to investigate alleged violations of international human rights law in Libya and in Côte d'Ivoire.

Other avenues for action include encouraging states to establish universal jurisdiction in their domestic law and to use it to bring perpetrators to justice. Respect for the principle of prosecute or extradite is also an important tool to combat impunity. Finally, the work of the International Criminal Court - functioning under the principle of complementarity – also is a very important institution to fight impunity at the international level, when a state is unable or unwilling to hold perpetrators of serious crimes under international law accountable domestically.

Mr. Chairman, ladies and gentlemen, this concludes my presentation. Thank you.
