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**ANNUAL REPORT OF THE UNITED NATIONS HIGH COMMISSIONER  
FOR HUMAN RIGHTS AND REPORTS OF THE OFFICE OF THE HIGH  
COMMISSIONER AND THE SECRETARY-GENERAL\***

**Analytical study on human rights and transitional justice**

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\* Late submission.

## Summary

The present analytical study on human rights and transitional justice is submitted pursuant to resolution 9/10 of the Human Rights Council. The study first contains an overview of activities undertaken by the Office of the United Nations High Commissioner for Human Rights (OHCHR) field presences and human rights components of United Nations peacekeeping and political missions. OHCHR has actively supported transitional justice programmes in more than 20 countries around the world, offering human rights expertise during peace negotiations; assisting in the design and implementation of transitional justice processes and mechanisms, such as truth commissions and other fact-finding processes, prosecution initiatives, reparations programmes and institutional reform; and providing conceptual and policy support at headquarters.

The study also includes an examination of lessons learned and best practices, an assessment of additional needs, as well as conclusions and recommendations. OHCHR continues to explore new areas of transitional justice, based on recent developments in international law and the needs of field presences, with a view to assisting post-conflict States. The study discusses the relationship between justice and peace, including human rights and transitional justice aspects of peace agreements. The study also explores the potential for more systematic inclusion of economic, social and cultural rights in transitional justice mechanisms and processes. Furthermore, the study considers the linkages between disarmament, demobilization and reintegration, and transitional justice processes.

Finally, the study outlines additional areas for future exploration. Further understanding of the human rights aspects of vetting processes, witness and victim protection during truth-seeking processes and prosecution initiatives, and the relationship between traditional justice and transitional justice mechanisms is needed to ensure that transitional justice programmes work effectively to achieve justice, peace and reconciliation in post-conflict States.

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## I. INTRODUCTION

1. In its resolution 9/10, the Human Rights Council requested the Office of the United Nations High Commissioner for Human Rights (OHCHR) “to submit, in consultation with other parts of the United Nations system, civil society and other stakeholders, an analytical study on human rights and transitional justice which contains an overview of activities undertaken by the United Nations human rights system, including the human rights components of peace missions, an analysis of the work accomplished, a compilation of lessons learned and best practices, an assessment of overall needs, as well as conclusions and recommendations, with a view to assisting countries in the context of transitional justice, as well as an inventory of human rights and transitional justice aspects in recent peace agreements”. The present study is submitted in accordance with that request. The inventory of human rights and transitional justice aspects in post-2000 peace agreements is contained in the addendum to this study (A/HRC/12/18/Add.1).

2. The present study provides an overview of key transitional justice activities of OHCHR field presences and human rights components of peacekeeping and political missions since 2006 (see E/CN.4/2006/93 and A/HRC/4/87). OHCHR would like to acknowledge input provided by the United Nations Department of Peacekeeping Operations and the Department of Political Affairs, Amnesty International and the research institute swisspeace. The study also analyses current developments in the transitional justice field and presents recommendations based on lessons learned and best practices. On 27 and 28 May 2009, OHCHR organized the Expert Seminar on Developments and Future Directions of Transitional Justice, in Geneva. The discussions at the Expert Seminar are reflected in the present study.

## II. TRANSITIONAL JUSTICE

### A. Concepts

3. In his 2004 report to the Security Council on the rule of law and transitional justice in conflict and post-conflict societies, the Secretary-General defined transitional justice as “the full range of processes and mechanisms associated with a society’s attempts to come to terms with a legacy of large-scale past abuses, in order to ensure accountability, serve justice and achieve reconciliation” (S/2004/616, para. 8). Transitional justice consists of both judicial and non-judicial processes and mechanisms, such as truth-seeking, prosecution initiatives, reparations programmes, institutional reform, or an appropriate combination thereof. Furthermore, transitional justice should seek to more comprehensively address the root causes of conflicts and the related violations of all rights, including civil, political, economic, social and cultural rights.<sup>1</sup>

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<sup>1</sup> See Louise Arbour, “Economic and social justice for societies in transition”, *New York University Journal of International Law and Politics*, vol. 40, No. 1 (Fall 2007), pp. 26-27.

## **B. Office of the United Nations High Commissioner for Human Rights**

4. During the past decade, OHCHR has actively supported transitional justice programmes in more than 20 countries around the world. OHCHR support includes ensuring that human rights and transitional justice considerations are reflected in peace agreements; engaging in the design and implementation of inclusive national consultations on transitional justice mechanisms; supporting the establishment of truth-seeking processes, judicial accountability mechanisms and reparations programmes; and enhancing institutional reform. OHCHR provides dedicated transitional justice programmes at the country level; conceptual and policy support at headquarters; and partnerships with multiple actors, including national authorities, national human rights institutions, civil society and other United Nations departments and agencies.

5. The Secretary-General's decision on the rule of law in November 2006 designated OHCHR as the lead entity within the United Nations system in the area of transitional justice (see A/61/636-S/2006/980).<sup>2</sup> As such, OHCHR is responsible for policy development, standard-setting, substantive guidance, capacity-building, and coordination with actors within and outside the United Nations system on transitional justice issues. In resolution 9/10, the Human Rights Council requested OHCHR "to continue to enhance its leading role, including with regard to conceptual and analytical work regarding transitional justice, and to assist States to design, establish and implement transitional justice mechanisms from a human rights perspective".

6. OHCHR has produced a series of publications, *Rule of Law Tools for Post-Conflict States*, to develop the long-term institutional capacity of United Nations field presences, transitional administrations and civil society to respond to transitional justice demands. These tools are grounded in international human rights law and contain lessons learned and best practices from United Nations field operations with regard to truth commissions, prosecution initiatives, maximizing the legacy of hybrid tribunals, vetting, reparations programmes, mapping the justice sector, legal systems monitoring and amnesties. OHCHR will finalize *Rule of Law Tools: National consultations* and *Rule of Law Tools: Archives* in 2009.<sup>3</sup>

7. OHCHR continues to explore and develop additional areas related to transitional justice, taking into account the needs of field presences and emerging international legal developments. The Expert Seminar was attended by academics, practitioners, and representatives of OHCHR field presences and other United Nations agencies. It provided a forum for presenting recent conceptual developments, sharing the experiences of OHCHR field presences, and discussing

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<sup>2</sup> This includes national consultative processes, truth and reconciliation mechanisms, reparations, vetting processes, ad hoc investigations, and fact-finding and commissions of inquiry. OHCHR co-leads, with the Office of Legal Affairs, on international and hybrid tribunals.

<sup>3</sup> Series available online at <http://www.ohchr.org/EN/PublicationsResources/Pages/SpecialIssues.aspx>.

lessons learned, additional needs and the future of transitional justice. The participants discussed the relationship between justice and peace, and economic and social justice for countries in transition, as well as areas for further study.

### C. Activities of United Nations human rights field presences

#### 1. Truth-seeking

8. Truth-seeking processes assist post-conflict States investigate past human rights violations. The right of individuals to know the truth about these violations is supported by several treaty bodies, regional courts and international tribunals (see E/CN.4/2004/88 and E/CN.4/2006/91). Truth-seeking processes are undertaken by truth commissions, commissions of inquiry, or other fact-finding mechanisms (see E/CN.4/2005/102/Add.1, principles 6-13). Truth commissions are non-judicial investigative bodies which map patterns of past violence and unearth the causes and consequences of these destructive events. Commissions of inquiry and other fact-finding mechanisms similarly seek to unravel the truth behind allegations of past human rights abuses, but operate under more narrowly defined mandates. Each truth commission is a unique institution, designed within a specific societal context, and should be founded on national consultations with the inclusion of victims and civil society organizations. OHCHR assists in the design and establishment of truth commissions, including by sharing applicable standards and best practices. OHCHR also supports the work of commissions of inquiry and undertakes fact-finding missions.

##### (a) Africa

9. From July 2008 to June 2009, OHCHR, in collaboration with the Department of Peacekeeping Operations and the United Nations Development Programme (UNDP), conducted a mapping exercise to document serious violations of human rights and international humanitarian law committed in the **Democratic Republic of the Congo** between March 1993 and June 2003. The mapping exercise will outline the pattern of past human rights abuses, assess national judicial capacities to combat impunity, and present recommendations for the implementation of transitional justice mechanisms.

10. The power-sharing agreement of March 2008 in **Kenya** provides for the establishment of the Commission of Inquiry into Post-Election Violence and the Truth, Justice and Reconciliation Commission (TJRC). The former issued its report in October 2008, documenting cases of post-election violence and recommending the establishment of a special tribunal and comprehensive police reform. In February 2009, the Kenyan Parliament failed to approve a constitutional amendment bill to establish the special tribunal. TJRC was established by law in November 2008. OHCHR commented on various drafts of the TJRC Bill, drawing attention to the need, inter alia, to amend clauses granting amnesty and jeopardizing the independence of the Commission. The OHCHR presence in Kenya supports civil society efforts to operationalize provisions of the TJRC Act in accordance with international standards. In February 2009, the OHCHR presence in Kenya, in partnership with the Federation of Women Lawyers in Kenya and the Urgent Action Fund-Africa, organized a workshop to review the process to establish TJRC and the engagement of women's non-governmental organizations (NGOs). The OHCHR presence in Kenya is also in the process of establishing a reference group composed of representatives from various sectors of Kenyan society to discuss TJRC.

11. The 2003 Comprehensive Peace Agreement in **Liberia** envisaged the creation of the Truth and Reconciliation Commission (TRC), which the National Legislative Assembly established by law in June 2005. The Human Rights and Protection Section (HRPS) of the United Nations Mission in Liberia (UNMIL) supported the promulgation of the Act and participated in the commissioners' selection process through publicity efforts and dissemination of nomination forms. OHCHR and UNDP jointly executed a conflict mapping project, collecting and compiling up to 13,000 witness statements, which were handed over to the Commission upon its establishment in February 2006. HRPS UNMIL has also supported capacity-building of the Commission by offering training programmes on investigatory procedures, case management, and human rights and international humanitarian law. The Commission released its preliminary report in January 2009 and its final report in June 2009.

12. The 1999 Lomé Peace Agreement includes a provision for a truth and reconciliation commission in **Sierra Leone**, which Parliament established by law in February 2000. The Commission completed its hearings in July 2003 and, with the assistance of OHCHR, prepared a report summarizing its findings and recommendations. The Human Rights Section (HRS) of the United Nations Assistance Mission in Sierra Leone (UNAMSIL) helped distribute the report through district dissemination committees, and also issued a shorter user-friendly version for use in sensitization seminars throughout the country. The Human Rights and Rule of Law Section (HRRLS) of the United Nations Integrated Office in Sierra Leone (UNIOSIL) has continued dissemination and sensitization efforts, in addition to assisting the Government to implement several TRC recommendations, including enactment of legislation protecting the rights of women and children, establishment of the Human Rights Commission, and initiation of a reparations programme. HRRLS of the United Nations Integrated Peacebuilding Office in Sierra Leone (UNIPSIL) has continued to provide technical support to the Government in implementing the reparations programme. In 2009, UNIPSIL issued a Joint Vision Paper, developed in collaboration with other United Nations agencies, identifying several TRC recommendations as continuing priorities for intervention.

13. The Djibouti Agreement, signed in August 2008, provides for the establishment of a High-level Committee to address justice and reconciliation in **Somalia**, as part of its overall effort to combat impunity. In November 2008, the Human Rights Unit (HRU) of the United Nations Political Office for Somalia (UNPOS) hosted a workshop for members of the Committee to discuss the possible establishment of a commission of inquiry. UNPOS is currently collaborating with the Transitional Federal Government of Somalia to organize further discussions on the subject. The next meeting is scheduled to take place in August 2009.

14. The Government of **Uganda** has initiated an official Government study on truth-seeking to be completed in 2009. Civil society groups have taken the initiative with regard to a truth commission by drafting a relevant bill, with the assistance of OHCHR Uganda. The bill has yet to be considered by the Government. Acholi traditional and religious leaders have also recommended traditional and religious reconciliation processes as necessary avenues for truth-seeking. OHCHR Uganda will monitor any implementation of these truth-seeking mechanisms to ensure their conformity with international human rights standards.

**(b) Asia and the Pacific**

15. The 2005 Action Plan on Peace, Reconciliation and Justice in **Afghanistan** mandates the Afghanistan Independent Human Rights Commission (AIHRC) to undertake truth-seeking activities. AIHRC has been investigating and documenting human rights violations committed during conflict, and is planning to publish a mapping document in 2009. HRU UNAMA (United Nations Assistance Mission in Afghanistan) has provided technical assistance to this project, particularly with regard to collecting victim and witness testimonies and devising strategies to protect mass graves to safeguard evidence. It has also been raising awareness on the right to truth, collaborating with AIHRC and two victims' groups to organize a travelling theatre project portraying the plight of victims and advocating for truth in April 2008. The Unit subsequently distributed a video documentary that contains scenes from the play as well as interviews with victims and human rights activists on the need for truth-seeking.

16. The 2006 Comprehensive Peace Agreement and the Interim Constitution in **Nepal** both contain commitments to establish a TRC. In mid-2007, the Ministry of Peace and Reconstruction produced a draft TRC bill without prior national consultations. The Ministry subsequently commenced a series of regional consultations at which interested parties are afforded an opportunity to comment on the legislation. OHCHR Nepal has shared information on comparative experiences and relevant human rights and international humanitarian law standards, provided financial and logistical assistance for consultations, and assisted the Ministry's efforts to document the consultative process. OHCHR Nepal continues to support the Ministry in conducting further thematic and district-level consultations, as well as undertaking initiatives to empower civil society and national institutions to participate in the transitional justice process. OHCHR Nepal continues to provide commentary on successive versions of the TRC bill. In February 2009, the President promulgated the Disappearances (Crime and Punishment) Ordinance, which criminalized enforced disappearances and provided a framework for the establishment of a commission of inquiry on disappearances. However, the ordinance has lapsed since it did not receive parliamentary approval. The Government is proceeding with further draft legislation. In addition to distributing model provisions, OHCHR Nepal is providing recommendations on ensuring the legislation's consistency with international human rights standards.

**(c) Latin America and the Caribbean**

17. In June 2005, the Congress of **Colombia** approved the Justice and Peace Law, which established a special judicial process for demobilized members of illegal armed groups who offer information about their past activities and provide reparations to the victims of crimes for which they are responsible. OHCHR Colombia has been monitoring implementation of the Law by attending voluntary depositions of demobilized soldiers, promoting better coordination between different units of the Prosecutor-General's Office, observing the exhumation of bodies of disappeared persons and providing information to victims and victims' groups seeking to assert their rights under the Law.

18. The agreement to establish the International Commission against Impunity in **Guatemala** entered into force in September 2007. The Commission is a hybrid mechanism with the capacity to conduct independent investigations, present criminal complaints to Guatemala's Public Prosecutor and take part in criminal proceedings as a complementary prosecutor in the

Guatemalan courts. It also carries out efforts to promote legal and institutional reform. OHCHR Guatemala, in coordination with the Commission, provided technical assistance to the Department of Civilian Intelligence with regard to the creation of a criminal analysis unit, and to the National Civilian Policy authorities on a plan to restructure criminal investigations. OHCHR Guatemala, jointly with the Commission, also trained assigned police in the investigation of human rights abuses. OHCHR Guatemala also provided technical assistance to the Public Prosecutor's Office in strengthening the disciplinary system as well as protection of witnesses and others involved in criminal proceedings.

## 2. Prosecution initiatives

19. Prosecution initiatives aim to ensure that those responsible for perpetrating serious violations of human rights and international humanitarian law are tried and duly punished. States have primary responsibility to exercise jurisdiction over these crimes (see E/CN.4/2005/102/Add.1, principle 20). Therefore, a sustainable transitional justice strategy seeks to develop national prosecutorial capacities. At the same time, States emerging from years of conflict may be unable or unwilling to conduct effective investigations and prosecutions. In such situations, international and internationalized criminal tribunals may exercise concurrent jurisdiction. Regardless of the form prosecution initiatives take, they must rest on a clear commitment to combating impunity, focus attention on the needs of the victims, and comply with international standards of fair trial. OHCHR has provided technical assistance and monitored prosecution initiatives to ensure their compliance with international human rights standards.

### (a) Africa

20. HRU UNMIS (United Nations Mission in the **Sudan**) monitored trials conducted by the Special Criminal Court on the Events in Darfur and reported its concerns about the Court's failure to deal with major violations of human rights and international humanitarian law which were committed during the conflict in Darfur.

21. The United Nations Organization Mission in the **Democratic Republic of the Congo** (MONUC) has provided information and technical support to prosecutors in certain high-profile human rights cases. To build the long-term prosecutorial capacities of the civilian and military justice systems of the country, MONUC is exploring the possibility of establishing mixed prosecution support cells in several eastern provinces. Led by a MONUC judicial adviser and composed of civilian and military prosecutors and police officers, such cells would train and assist judicial officials in the Democratic Republic to ensure impartial and effective investigation and prosecution of serious crimes.

22. The Special Court for **Sierra Leone** is a hybrid tribunal established in 2002 pursuant to Security Council resolution 1315 (2000) and following an agreement between the Government of Sierra Leone and the United Nations, with jurisdiction over persons bearing the greatest responsibility for serious crimes committed during the conflict. The human rights and rule of law components of the peacekeeping missions in Sierra Leone have monitored the trials of indictees, provided expert testimony to the Court, and facilitated a technical conference between the Special Court and the Truth and Reconciliation Commission. Two cases addressing human rights violations committed during the conflict have also been prosecuted in the national courts.

Customary law courts have been involved in adjudicating disputes, particularly at community level. In 2008, HRRLS UNIPSIL collaborated with UNDP in organizing training programmes on human rights in the administration of justice, and international human rights instruments for customary law court officers.

23. Pursuant to the 2008 annex to the Agreement on Accountability and Reconciliation, the Government of **Uganda** announced the establishment of a war crimes court, as a special division of the Uganda High Court, in May 2008. The Government has assigned three Ugandan judges to the Court and expects to select two additional international judges. OHCHR Uganda plans to monitor the trials once cases begin appearing before the Court.

#### **(b) Asia and the Pacific**

24. In 2003, the United Nations and the Government of **Cambodia** agreed to create Extraordinary Chambers in the Courts of Cambodia to try those who were most responsible for the crimes committed during the period of Khmer Rouge rule from 1975 to 1979. OHCHR is following the proceedings in the Extraordinary Chambers in order to identify best practices and encourage their incorporation into the national justice system. OHCHR is further monitoring implementation of the new Code of Penal Procedure, promulgated in August 2007, in the domestic courts.

25. Several high-profile cases of conflict-related human rights violations are currently pending in the national court system of **Nepal**. OHCHR Nepal has provided technical support to authorities investigating these cases and continues to monitor judicial developments. OHCHR Nepal has also been documenting and publicizing evidence of other violations, advocating for their investigation and requesting cooperation from relevant authorities. The Supreme Court of Nepal has taken steps towards combating impunity, ordering the police to file First Information Reports and conduct appropriate investigations into a number of conflict-related cases of serious human rights violations. In June 2007 the Court also ordered the Government to criminalize enforced disappearances and to undertake investigations and prosecutions of relevant cases. OHCHR Nepal continues to provide technical assistance with a view to strengthening the legal framework to support prosecutions, particularly through the criminalization of serious human rights violations.

26. The Human Rights Transitional Justice Section (HRTJS) of the United Nations Integrated Mission in **Timor-Leste** (UNMIT) is assisting the Office of the Prosecutor-General (OPG) to implement relevant recommendations of the United Nations Independent Special Commission of Inquiry in Timor-Leste, which investigated incidents that took place in April and May 2006. Thus far, 18 investigations have been opened by OPG. The Government, with the assistance of HRTJS UNMIT, has recruited an international prosecutor to assist OPG with these investigations. Two trials have been completed, three trials are currently under way, four cases have been archived and nine cases are under active investigation.

#### **(c) Latin America and the Caribbean**

27. In **Colombia**, 3,637 of over 50,500 demobilized members of illegal armed groups have been processed under the Justice and Peace Law; 430 of the 3,637 remain actively engaged in the judicial process and over 20 have been partially indicted. As a result of revelations made by

these ex-paramilitaries, the Supreme Court of Colombia began investigations into alleged links between high-level public officials and illegal armed groups in 2006. By the end of 2008, 73 members of Congress had been indicted, 11 of whom were convicted and 4 of whom were acquitted. The Office of the Attorney-General is currently investigating 250 additional cases of alleged links between senior public officials and illegal armed groups. OHCHR Colombia has publicly supported these investigations and provided technical assistance to the Supreme Court, sharing information on international standards and comparative country experiences. OHCHR Colombia is organizing a seminar on international mechanisms of criminal responsibility to raise awareness about the use of the International Criminal Court to be held in November 2009.

### 3. Reparations programmes

28. Reparations programmes seek to redress systemic violations of human rights by providing a range of material and symbolic benefits to victims. The General Assembly, in resolution 60/147, has reaffirmed the right of victims to reparations in 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. Redress may take a variety of forms, including restitution, compensation, rehabilitation, satisfaction, and guarantees of non-repetition. Experience has shown that the most successful reparations programmes are designed in consultation with affected communities, particularly victims. OHCHR has provided technical assistance in the design and implementation of reparations programmes, supported the participation of civil society organizations in reparations discussions, and advocated for full implementation of reparations initiatives.

#### (a) Africa

29. The Darfur Peace Agreement in the **Sudan** includes a provision for the establishment of Darfur Compensation Commissions (DCCs) to address compensation claims from victims of the conflict. Commissions have been established in the Darfur states but a reparations policy has not yet been developed. In December 2008, HRS UNAMID (African Union-United Nations Hybrid Operation in Darfur) invited staff members from the North DCC to participate in a transitional justice workshop in El Fasher. The North DCC Director subsequently requested capacity-building support from HRS UNAMID, which organized a training session in July 2009. The training session reviewed the international legal framework on victims' right to a remedy, discussed the challenges of implementing reparations programmes and compared country experiences. HRS UNAMID expects to replicate this training with the other DCCs.

30. The 2005 Act to Establish the Truth and Reconciliation Commission in **Liberia** entrusts TRC with the responsibility to establish a trust fund for the benefit of victims of the conflict. HRPS UNMIL has been involved in awareness-raising and sensitization efforts regarding reparations among war victims, conflict-affected communities and TRC commissioners. TRC has also organized hearings and published information on reparations in local newspapers, but public consultations have been sporadic.

31. The 2004 final report of the TRC in **Sierra Leone** recommends the establishment of a reparations programme. In early 2006, HRRLS UNIOSIL and a national NGO, Forum of Conscience, organized a consultative meeting to discuss appropriate reparations measures. The Government subsequently formed the Task Force on Reparations, which produced an

implementation strategy in June 2007 on the basis of national consultations. HRRLS UNIOSIL served as a member of the Task Force and also provided assistance in developing a project, requesting funding from the United Nations Peacebuilding Fund, which granted US\$ 3.4 million in start-up funding for the reparations programme. UNIOSIL currently serves as a member of the National Steering Committee of the reparations programme, assisting its implementation. The Steering Committee has resolved to provide services to address the immediate needs of victims in the areas of health, education, psychological support and economic development. Some 12,500 beneficiaries have been registered to date and 16,500 beneficiaries are expected to register in total.

32. The Government of **Uganda** has been preparing a development package for northern Uganda. However, OHCHR Uganda has advocated for a more comprehensive reparations programme. In 2008, OHCHR Uganda began implementing the Reparations, Research and Capacity-Building Project in northern Uganda, in collaboration with the Uganda Human Rights Commission, conducting training sessions to build awareness on reparations. OHCHR Uganda simultaneously conducted research on the views of conflict-affected communities towards reparations, and presented its preliminary findings to civil society in northern Uganda at a major forum on transitional justice in February 2009. Based on this research, OHCHR Uganda plans to work with the Commission to issue a report with recommendations on a reparations policy to the Government in 2009.

#### **(b) Asia and the Pacific**

33. The Government of **Nepal** has stated that a comprehensive reparations policy will be developed in conjunction with TRC. In the meantime, it has initiated several programmes designed to provide interim relief to victims of the conflict. The Ministry of Peace and Reconciliation has authorized the distribution of financial benefits to families of individuals who were killed or disappeared during the conflict as well as those internally displaced persons (IDPs) who wish to return to their home communities. OHCHR Nepal has made recommendations with regard to victim consultations, the categorization and identification of victims, and the benefits distribution process. The Government has also approved relief measures to victims or their immediate beneficiaries in the form of scholarships, medical treatment and compensation. The National Human Rights Commission has a mandate to investigate human rights violations and to recommend compensation measures from the Government. The Supreme Court of Nepal has also issued several decisions relevant to reparations, directing the Government to establish and implement a relief package for families of the disappeared and IDPs in 2007.

34. HRTJS UNMIT supports efforts to establish a reparations programme for victims in **Timor-Leste** and has recruited a consultant to support committee A of the National Parliament in drafting relevant legislation.

#### **(c) Latin America and the Caribbean**

35. The Government of **Colombia** offers victims of the conflict two primary forms of reparations measures. Under the Justice and Peace Law, victims may submit a reparations claim against an ex-combatant who has completed the judicial process. Few reparations have been awarded under this process and benefits are limited to a narrow category of victims. Victims of

human rights abuses committed by illegal armed groups may also seek reparations under an administrative reparations programme established by the Government in April 2008. The Government has received approximately 180,000 applications, but has yet to begin rewarding reparations. OHCHR Colombia provided expert advice during the formulation of the programme and currently monitors its implementation. The draft victims law may have the potential to fill some of the gaps of existing reparations programmes. OHCHR Colombia has provided technical advice on the draft.

36. In **Guatemala**, the National Reparations Programme proceeded to dispense financial compensation to victims, and the Government also carried out symbolic reparations to help restore the dignity of victims. OHCHR Guatemala has been providing technical assistance to the Programme on existing international standards on reparations and comparative experiences in implementing compensation programmes.

#### 4. Institutional reform

37. Public institutions that helped perpetuate conflict must be transformed into institutions that sustain peace, protect human rights, and foster a culture of respect for the rule of law. By building fair and efficient public institutions, institutional reform enables post-conflict Governments to prevent the recurrence of human rights violations. Vetting is critical to facilitating this transformation by removing from service those public officials and employees, particularly in the security and justice sectors, personally responsible for gross violations of human rights. The removal of these persons should comply with due process of law and the principle of non-discrimination. Institutional reform should further incorporate comprehensive training programmes for public officials and employees on applicable human rights and international humanitarian law standards (see E/CN.4/2005/102/Add.1, principle 36). OHCHR has assisted the implementation of institutional reform programmes through training, monitoring and resource provision. Below are some examples of recent initiatives that have been taken in this regard.

##### (a) Africa

38. The Government of **Liberia** has instituted a census and identification programme to vet serving Liberian National Police and new recruits. HRPS UNMIL has assisted this process by providing background information on individual recruits who do not meet jointly agreed criteria for hiring. HRPS UNMIL has also helped train army recruits on basic human rights and international humanitarian law.

##### (b) Asia and the Pacific

39. Several mechanisms in **Afghanistan** perform vetting of persons entering public office, including the Independent Afghanistan Reform and Civil Service Commission, the Police Probation Board, the Electoral Complaints Commission and the Advisory Panel on Senior Appointments. UNAMA has provided technical, financial and political assistance to these processes.

40. OHCHR **Nepal** provided commentary to the Government of Nepal on amendments to the Army Act to increase civilian oversight of the military by transferring jurisdiction over certain

categories of cases from military to civilian courts. OHCHR Nepal is promoting discussion of vetting programmes with the Government and security forces, and has already begun integrating issues of transitional justice into human rights training programmes for the Nepal Police, Armed Police Force and Nepal Army. The Armed Police Force instituted a new policy in late 2008 on the selection of personnel prior to deployment on United Nations peacekeeping operations and OHCHR Nepal is engaged in preliminary discussions on providing assistance to improve this process.

41. HRTJS UNMIT supports the police vetting process in **Timor-Leste** by serving as an observer on the evaluation panel, which makes recommendations with regard to individual police officers and provides information based on UNMIT monitoring records. HRTJS UNMIT also participates in joint assessments by UNMIT and the Government to establish whether district police units are ready to assume executive policing authority from UNMIT police. HRTJS UNMIT has organized human rights training programmes as well as published and distributed human rights booklets for UNMIT and Timorese police officers and senior military officials.

### (c) **Latin America and the Caribbean**

42. The United Nations Stabilization Mission in **Haiti** (MINUSTAH) has been assisting the Government of Haiti to vet the Haitian National Police (HNP) in accordance with the framework set out in the HNP Reform Plan adopted in August 2006. The vetting process includes a background check of HNP officers carried out by a joint team made up of representatives from the HNP General Inspectorate and United Nations Police officers. This team evaluates the disciplinary, judicial and bank records of each HNP officer based on criteria drawn from Haitian regulations governing police service and international standards. HRS MINUSTAH also provides information to this team with regard to allegations of human rights violations committed by Haitian police officers. There are approximately 9,200 active police officers in Haiti. As of March 2009, the vetting process had evaluated 6,574 officers and completed investigation of 2,273 of these cases; 1,009 cases have been sent to the authorities for appropriate action.

## **5. National consultations**

43. National consultations are a critical element of the human rights-based approach to transitional justice, and founded on the principle that successful transitional justice strategies necessitate meaningful public participation. Public participation reveals the needs of conflict-affected communities, allowing States to craft an appropriate context-specific transitional justice strategy. Moreover, the consultative process endows victims and other members of civil society with local ownership of the resulting strategy. Although national consultations can shape the design of an overarching transitional justice strategy, they can also take place within the context of a specific mechanism, such as truth commissions or reparations programmes. OHCHR has supported national consultative processes by providing legal and technical advice, promoting victim participation, supporting capacity-building and mobilizing resources.

(a) **Africa**

44. In June 2005, the Security Council adopted resolution 1606 requesting the Secretary-General to organize consultations with the Government of **Burundi** and Burundian stakeholders regarding the establishment of a TRC and a special tribunal. In November 2007, the Government and the Executive Representative of the Secretary-General concluded an operational framework agreement which established a tripartite steering committee, composed of the United Nations, Government and civil society representatives, to lead the national consultations. Pre-consultations were held in Bujumbura in May 2009, and methodological tools have been elaborated in the light of these discussions. The Human Rights and Justice Division (HRJD) of the United Nations Integrated Office in Burundi (BINUB) represents the United Nations on the tripartite steering committee and has worked actively to ensure the inclusion of a gender perspective within the methodological tools. HRJD BINUB has simultaneously organized sensitization and training programmes for target groups, such as civil society representatives, religious leaders, students, local political officials and media. Implementation of the national consultations began in July 2009.

45. The Darfur Peace Agreement established the Darfur-Darfur dialogue and consultation (DDDC) to foster dialogue and consultation among Darfuris in the **Sudan** on issues related to the implementation of the Peace Agreement. The Agreement was signed by only two parties to the conflict and has not been implemented, yet DDDC remains a vehicle to gather and document views on justice issues. Consultations have been held with government officials, IDPs, members of civil society and other groups throughout Darfur. HRS UNAMID has encouraged DDDC coordinators to include specific transitional justice questions during their consultations. HRS UNAMID is also organizing a workshop in North Darfur to train DDDC facilitators to be attuned to relevant transitional justice issues raised by participants during consultations. This pilot training may eventually be replicated in other Darfur states.

46. The August 2006 Global Political Agreement in **Togo** includes a provision for establishing a commission to shed light on past violence and address the needs of victims, and another to recommend measures for facilitating reconciliation. In April 2008, President Faure Gnassingbé launched a national consultative process to raise public awareness on transitional justice issues and seek the views of national stakeholders on these potential mechanisms. OHCHR Togo facilitated these consultations by organizing 167 meetings in five administrative regions of the country, attracting approximately 2,000 participants. In July 2008, OHCHR Togo produced a report summarizing the findings of the national consultations and outlining recommendations, including for the establishment of a TRC. The Commission was established by presidential decree in May 2009.

47. OHCHR **Uganda** commenced its transitional justice programme in 2006 by conducting field research among conflict-affected communities on their perceptions of transitional justice. The study focused on four subregions of northern Uganda and addressed issues such as exposure to various types of violence, preferences among various forms of reparation, and attitudes towards traditional and formal justice mechanisms. In 2007, OHCHR Uganda published the study's findings, which provided the foundation for further research efforts regarding reparations and traditional forms of justice. The Government and the Lord's Resistance Army (LRA) subsequently agreed to support national consultations on accountability and reconciliation over the course of the ongoing peace negotiations. OHCHR Uganda has been assisting Ugandan civil

society to adequately represent its views during the peace process. For example, OHCHR Uganda provided funding and technical assistance to civil society organizations in northern Uganda for the publication of a position paper during the Juba peace talks. OHCHR Uganda has also supported the development of civil society networks, which engage the Government and the public in discussions on transitional justice.

#### **(b) Asia and the Pacific**

48. OHCHR **Nepal** plays a key role in supporting victim participation in transitional justice dialogues in Nepal, organizing preparatory meetings on transitional justice issues, sharing information on comparative experiences and developing community education materials. OHCHR Nepal notes that the development of victim-oriented tools can significantly empower conflict-affected communities to participate in transitional justice activities. OHCHR Nepal also recognizes the marginalization of certain groups during transitional justice discussions and has worked to enhance their involvement. For example, OHCHR Nepal has facilitated greater engagement by women's groups by supporting a transitional justice and gender coordination group to share information and advocacy strategies.

49. HRTJS UNMIT participated in the Support Working Group of the National Consensus Dialogue process in **Timor-Leste** initiated by the Office of the President and Norwegian Bishop Gunnar Stålsett. At a dialogue held in June 2009, representatives from all political parties agreed to table the report of the Commission for Reception, Truth and Reconciliation in Parliament during 2009 and to consider the report's recommendations. HRTJS and the Serious Crimes Investigations Team also work with civil society and the Office of the Provedor for Human Rights and Justice to support victims' associations in the lead-up to the National Congress of Victims' Groups to be held in Dili in September 2009.

#### **(c) Europe**

50. A number of transitional justice approaches have been utilized in **Kosovo** since the introduction of the international administration under the United Nations Interim Administration Mission in Kosovo (UNMIK) in 1999. OHCHR Kosovo has been advocating for the development of a comprehensive framework to ensure that the full range of transitional justice approaches are being considered. OHCHR Kosovo has also been raising awareness about transitional justice processes and encouraging space for discussion of regional initiatives such as the initiative for establishing a regional commission for truth-seeking and truth-telling about war crimes.

### **D. Lessons learned and best practices**

#### **1. Justice and peace**

51. OHCHR has been involved in complex discussions articulating the relationship between justice and peace. In the past, the dilemma presented was between securing peace with the cooperation of perpetrators of international crimes or addressing justice at the cost of perpetuating conflict. In recent years, however, this assumed tension between justice and peace has gradually dissolved. The United Nations now recognizes that, when properly pursued, justice and peace can promote and sustain one another.

52. The growing realization that justice and peace are mutually reinforcing is reflected in current international law and United Nations policy on amnesties. Under various sources of international law and United Nations policy, amnesties are impermissible if they prevent prosecution of individuals who may be criminally responsible for war crimes, genocide, crimes against humanity, gross violations of human rights,<sup>4</sup> or serious violations of international humanitarian law. Both international law and United Nations policy also recognize the right of victims to an effective remedy, including reparations, and the right of victims and societies to know the truth about violations.<sup>5</sup> The continuing work of the United Nations in the area of justice and peace, particularly with regard to amnesties, aims to safeguard room for justice both during and after peace processes.

53. The lawfulness of amnesty for war crimes, genocide and crimes against humanity was first questioned in relation to the 1999 Lomé Peace Agreement between the Government of Sierra Leone and the Revolutionary United Front, which contained a broad amnesty. Upon witnessing the Agreement, the Special Representative of the Secretary-General in Sierra Leone appended a disclaimer to his signature, reading “The United Nations does not recognize amnesty for genocide, crimes against humanity, war crimes, and other serious violations of international humanitarian law.”

54. The United Nations position has subsequently been upheld in Angola, the Sudan and Uganda, where United Nations representatives have first attempted to limit the scope of amnesties and, if unsuccessful, have appended a reservation to their signatures. Upon witnessing the 2002 memorandum of understanding between the Angolan Armed Forces and the National Union for the Total Independence of Angola (UNITA), the Special Representative of the Secretary-General entered a reservation on the non-recognition by the United Nations of any blanket amnesty. In the Sudan, the Government agreed to delete a blanket amnesty clause from the 2004 Agreement between the Government and the Sudan People’s Liberation Movement. The Government of Uganda and LRA similarly removed a blanket amnesty clause from the 2008 agreement on disarmament, demobilization and reintegration.

55. States have the duty to combat impunity and to ensure effective investigation and prosecution of those responsible for serious violations of international law. The simultaneous pursuit of national peace processes and international justice is further grounded in experience.

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<sup>4</sup> Gross violations of human rights include torture and similar cruel, inhuman or degrading treatment; extrajudicial, summary or arbitrary executions; slavery; enforced disappearances; and rape and other forms of sexual violence of comparable gravity.

<sup>5</sup> See 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 (General Assembly resolution 60/147), 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) and the Study on the right to the truth (E/CN.4/2006/91).

Criminal indictments have been successfully sought in circumstances where investigation and prosecution of alleged perpetrators of gross human rights violations was said to be a stumbling block to peace.<sup>6</sup>

56. The establishment of the International Criminal Court in 2002 represents the most significant recent development in efforts to combat impunity. The Rome Statute's commitment to complementarity, articulated in article 17, affirms the primacy of national Governments in ensuring accountability for those who bear the greatest responsibility for perpetrating international crimes. Thus, while the Court will bring alleged perpetrators of international crimes to justice where national authorities are unable or unwilling to do so, the Court has also catalysed the development of national capacities to meet this obligation.

57. As indicated in the addendum to the present study, post-2000 peace agreements reflect developments in international law and United Nations policy with regard to amnesties and accountability. Blanket amnesties, though still present in some accords, are less pervasive. Moreover, a growing number of agreements contain provisions for transitional justice processes, such as truth-seeking, prosecution initiatives, reparations programmes and institutional reform.

58. Special envoys and special representatives of the Secretary-General mediating peace processes should continue to advocate for the inclusion of commitments to combat impunity and the protection and promotion of human rights in peace agreements. To this effect, United Nations special envoys should inform the parties of their obligations under human rights and international humanitarian law. United Nations mediators thus need to be equipped with relevant human rights expertise during peace negotiations and should call upon such expertise available within the United Nations system. Human rights experts should also be present to participate in peace negotiations.

## **2. Economic, social and cultural rights and transitional justice**

59. Transitional justice strives not only to deliver justice to victims of mass atrocities, but also to assist societies devastated by conflict achieve sustainable peace and reconciliation. Peace and reconciliation demand comprehensive societal transformation that must embrace a broad notion of justice, addressing the root causes of conflict and the related violations of all rights. Nevertheless, the international community has yet to embrace a transitional justice approach that comprehensively addresses violations of economic, social and cultural rights.

60. Transitional justice mechanisms offer the potential for incorporating economic, social and cultural rights. Truth commissions, charged with revealing the pattern of past human rights violations, are well placed to investigate violations of economic, social and cultural rights. Where appropriate, truth commission mandates could be expanded to include the examination of such violations, in addition to recommendations on how best to redress these abuses. In

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<sup>6</sup> For example, the May 1999 indictment of Slobodan Milošević by the International Criminal Tribunal for the former Yugoslavia and the 2003 indictment of Charles Taylor by the Special Court for Sierra Leone.

Timor-Leste, the Commission for Reception, Truth and Reconciliation devoted a chapter (chap. 7.9) to violations of economic, social and cultural rights in its final report, noting that these violations were as devastating to victims of the conflict as other human rights abuses.

61. International criminal tribunals have investigated and prosecuted cases of violations of economic, social and cultural rights. For example, the International Criminal Tribunal for the former Yugoslavia has recognized that the widespread destruction of homes and property may constitute a crime against humanity.<sup>7</sup> Some regional and national courts have also identified and adjudicated violations of economic, social and cultural rights. In South Africa, the *Treatment Action Campaign* decision of the Constitutional Court led to the establishment of a comprehensive and effective programme to stop mother-to-child transmission of HIV/AIDS.<sup>8</sup>

62. Reparations programmes also offer opportunities for redressing the needs of victims in the areas of health, education and economic viability. Finally, institutional reform may help ensure that violations of economic, social and cultural rights are not perpetrated in the future by guaranteeing victims non-discriminatory access to services. Key legislation should be adopted, revised and strengthened to ensure national recognition and protection of these rights.

63. Constitutions and peace agreements offer further entry points for enshrining protections for economic, social and cultural rights in post-conflict societies. The Constitution of South Africa, for example, includes protections for rights related to housing, health care, food, water, education and culture. The Darfur Peace Agreement articulates a list of fundamental human rights, which include access to medical care and education (art. 3 (28)) and contains an article on wealth sharing. The Nepal Comprehensive Peace Agreement similarly enshrines protections for rights of access to food, health care and education (art. 7.5).

64. Inclusion of the gender perspective offers another approach for widening the scope of transitional justice. Gender inequality is one of the most pervasive forms of societal inequality and is often exacerbated by conflict. Transitional justice must recognize the need to address systemic gender inequality, particularly by addressing the economic, social and cultural rights of women. Accountability mechanisms can end impunity for violence against women by prosecuting those responsible for committing sexual violence during conflict. Women should also be active participants throughout the peace process, sharing their gender-specific experiences of the conflict, and their priorities for achieving sustainable peace and accountability through appropriate transitional justice mechanisms.

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<sup>7</sup> *Prosecutor v. Kupreskic et al.*, case No. IT-95-16-T, judgement of 14 January 2000, paras. 628-631.

<sup>8</sup> See e.g. *Minister of Health v. Treatment Action Campaign* (No. 2) 2002 (5) SA 721 (CC) (S.Afr.), available at [www.constitutionalcourt.org.za/Archimages/2378.PDF](http://www.constitutionalcourt.org.za/Archimages/2378.PDF).

65. OHCHR will further explore linkages between economic, social and cultural rights and transitional justice. Special rapporteurs and treaty bodies should also continue to give due considerations to this subject. The development of national capacities should be further encouraged, and national human rights institutions, for example, could take on the responsibility for monitoring and ensuring that these rights are realized in post-conflict States.

### **3. Disarmament, demobilization and reintegration, and transitional justice**

66. Transitional justice mechanisms and disarmament, demobilization and reintegration initiatives have both come to play increasingly important roles in assisting States in their transition from violence to peace. At the same time, it has become increasingly evident that when implemented in a coordinated fashion, disarmament, demobilization and reintegration and transitional justice can positively reinforce each other. Disarmament, demobilization and reintegration processes contribute to securing the stability necessary to implement transitional justice mechanisms, while transitional justice mechanisms strengthen the legitimacy of disarmament, demobilization and reintegration initiatives by helping conflict-affected communities accept the reintegration of ex-combatants into society.

67. Understanding the connections between disarmament, demobilization and reintegration and transitional justice is critical to successfully integrating both initiatives to work in a mutually reinforcing manner. Truth commissions, for instance, can facilitate the reintegration of ex-combatants into conflict-affected communities by affording them the opportunity to reveal their experiences of the conflict.

68. Prosecution initiatives may distinguish ex-combatants from perpetrators of human rights violations, diminishing public perception that disarmament, demobilization and reintegration programmes are reintegrating all ex-combatants without regard for crimes they may have committed over the course of the conflict. Prosecution initiatives may also contribute by removing obstacles such as uncooperative commanders, from the disarmament, demobilization and reintegration process, thereby supporting the cessation of hostilities.

69. Reparations programmes should also be designed in conjunction with disarmament, demobilization and reintegration initiatives to combat perceptions of inequity in the treatment of ex-combatants and victims. Reparations programmes, which offer redress to conflict-affected populations, can help quell resentment that victims and communities may harbour towards ex-combatants who receive disarmament, demobilization and reintegration benefits.

70. Disarmament, demobilization and reintegration programmes are also critical to the success of institutional reform. Such programmes contribute to security in the short to medium term, while institutional reform seeks to transform the larger security environment, altering the relationship between citizens and State. Thus, they are often one of the first security initiatives in a post-conflict society, and their success provides the foundation for long-term reform of the security sector as well as other institutions. Without coordinating disarmament, demobilization and reintegration and vetting processes, some ex-combatants who have committed or are suspected of committing serious crimes could be reintegrated into national police or military structures. The United Nations must insist that such individuals be excluded from serving in these capacities, at the risk of undermining public trust in government institutions.

71. Further research on the relationship between disarmament, demobilization and reintegration and transitional justice is needed to develop a deeper understanding of how the two processes can promote and sustain one another. OHCHR in collaboration with Department of Peacekeeping Operations has been studying the linkages between the two processes while encouraging the United Nations system to recognize and incorporate conclusions in their work in the field.

#### **E. Additional needs**

72. Analysis of the work of OHCHR field presences and the discussions at the Expert Seminar have highlighted several additional issues that would benefit from further exploration.

73. Vetting processes, while a component of transitional justice, are often undertaken without due consideration for a human rights approach, which is necessary for successful institutional reform. Further consideration of the human rights aspects of vetting is thus needed with a view to systematically incorporating a human rights approach into future vetting processes.

74. Witness and victim protection is the foundation for effective investigation and prosecution of perpetrators of gross violations of human rights. Further exploration of the best means to adequately protect witnesses and victims in post-conflict environments is necessary to ensuring the success of prosecutions and truth-seeking mechanisms.

75. Various post-conflict societies may advocate for the use of traditional judicial mechanisms to address past violations and achieve reconciliation. The relationship between traditional justice mechanisms and various transitional justice processes needs to be further explored.

### **III. CONCLUSIONS AND RECOMMENDATIONS**

**76. The overview of activities by United Nations human rights field presences and analysis of lessons learned and best practices reaffirm the increasing role OHCHR plays in providing a broad range of assistance in the field of transitional justice. OHCHR has also offered conceptual and policy support at headquarters, taking into account international legal developments and the needs of field presences. Other parts of the United Nations human rights system, including special rapporteurs and treaty bodies, are encouraged to continue to give due attention to transitional justice in the discharge of their mandates.**

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