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**Promotion and protection of all human rights, civil,
political, economic, social and cultural rights,
including the right to development**

Report of the United Nations High Commissioner for Human Rights on human rights and transitional justice

Summary

The present report on human rights and transitional justice is submitted pursuant to resolution 12/11 of the Human Rights Council. The report contains an update of the activities undertaken by the Office of the United Nations High Commissioner for Human Rights (OHCHR) in the context of transitional justice, including by the human rights components of peace missions. OHCHR has actively supported transitional justice programmes in more than 20 countries worldwide. OHCHR provides conceptual and analytical support, advice and assistance in the design and implementation of transitional justice processes from a human rights perspective, as well as capacity building and partnership with multiple national and international actors. This support is provided through dedicated programmes at headquarters as well as country level.

The report also includes an analysis of the relationship between disarmament, demobilization and reintegration (DDR) and transitional justice, prepared in consultation with the United Nations Development Programme, the Department of Peacekeeping Operations and other stakeholders. In 2009, the Inter-Agency Working Group on DDR published the module, “Transitional Justice and DDR” as part of the Integrated Disarmament, Demobilization and Reintegration Standards. The report also draws on discussions held during the Expert Workshop on Maximizing Opportunities for Coordination between DDR Initiatives and Transitional Justice Processes, organized by OHCHR in Geneva in December 2010. DDR and transitional justice processes are interrelated and coordination between the two efforts is essential to facilitate their coherence and mutual reinforcement. Establishing reparations for victims in conjunction with DDR programmes for ex-combatants may mitigate the perception of inequity in their respective treatment and foster reintegration. The enhanced understanding of the

connections between DDR and transitional justice should contribute to increased coordination between DDR and transitional justice practitioners.

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I. Introduction

1. In its resolution 12/11, the Human Rights Council requested the Office of the United Nations High Commissioner for Human Rights (OHCHR) to submit a report containing an update of the activities undertaken by the Office in the context of transitional justice, including by the human rights components of peace missions, as well as an analysis of the relationship between disarmament, demobilization and reintegration and transitional justice, in consultation with the United Nations Development Programme (UNDP), the Department of Peacekeeping Operations and other relevant parts of the United Nations system, civil society, States and other stakeholders (para. 21).

2. The present report, submitted in accordance with the above-mentioned request, provides an overview of key transitional justice activities of OHCHR, including the human rights components of peace missions since 2009 (see A/HRC/12/18). The report also analyses the relationship between disarmament, demobilization and reintegration (DDR) and transitional justice. On 8 and 9 December 2010, OHCHR organized in Geneva the Expert Workshop on Maximizing Opportunities for Coordination between DDR Initiatives and Transitional Justice Processes. The discussions of the workshop are reflected in the present report, which also takes account of contributions received from the Governments of Bosnia and Herzegovina, Canada, France, Finland, Guatemala, Lebanon, Mauritania, Switzerland, and the United Kingdom of Great Britain and Northern Ireland, as well as from UNDP, the Department of Peacekeeping Operations, the United Nations Office on Drugs and Crime, and the International Center for Transitional Justice.¹

II. Transitional justice activities of the Office of the High Commissioner for Human Rights

3. The Office of the High Commissioner has been supporting transitional justice programmes in more than 20 countries worldwide, including engaging in the design and implementation of inclusive national consultations; supporting the establishment of truth-seeking processes, judicial accountability mechanisms, and reparations programmes; enhancing institutional reform; and ensuring that human rights and transitional justice considerations are reflected in peace agreements. 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.

A. Enhancing the understanding of transitional justice

4. In decision No. 2006/47 on the rule of law, the Secretary-General designated OHCHR as the lead entity within the United Nations system for transitional justice.² As such, OHCHR is responsible for policy development, standard setting, substantive guidance, capacity building, and coordination with United Nations and other actors on transitional justice issues. In its resolution 12/11 of 2010, the Human Rights Council requested OHCHR “to continue to enhance its leading role within the United Nations,

¹ The full text of the contributions is available from the secretariat.

² This includes national consultative processes; truth and reconciliation mechanisms; reparations; vetting processes; ad hoc investigations; fact finding; and commissions of inquiry. OHCHR and the Office of Legal Affairs jointly lead on the development of international and hybrid tribunals.

including with regard to conceptual and analytical work regarding transitional justice, and to assist States, with their consent, to design, establish and implement transitional justice mechanisms from a human rights perspective” (para. 20).

5. In order to build the long-term institutional capacity of United Nations field presences, transitional administrations and civil society to respond to transitional justice demands, OHCHR has been producing the *Rule-of-Law Tools for Post-Conflict States*.³ The tools are grounded in international human rights law and contain lessons learned and best practices from United Nations field operations. In 2010, OHCHR published the Tool on National consultations on transitional justice, emphasizing that a comprehensive process of national consultations is a crucial element for effective and sustainable transitional justice strategies. It identifies the main applicable human rights instruments, discusses the focus and form of consultations and considers various issues important for their conduct, as well as reporting and follow-up.

6. OHCHR also led the process of elaboration of the Guidance note of the Secretary-General: United Nations approach to transitional justice, published in March 2010. The guidance note provides a rights-based perspective on transitional justice and offers three approaches for further strengthening the transitional justice activities of the United Nations, including: (1) striving to take into account the root causes of conflict or repressive rule, and address the related violations of all rights, including economic, social and cultural rights; (2) taking human rights and transitional justice considerations into account during peace processes; and (3) coordinating disarmament, demobilization and reintegration initiatives with transitional justice processes in a positively reinforcing manner.

7. OHCHR has been exploring and developing additional areas related to transitional justice, taking into account the needs of United Nations field presences and emerging international legal developments. In follow up to the Secretary-General’s guidance note, and in order to address this emerging issue, OHCHR organized the Expert Workshop on Experiences of Transitional Justice Processes in Dealing with Violations of Economic, Social and Cultural Rights in Geneva in October 2010. The workshop considered various experiences and assessed more comprehensively the potential of transitional justice mechanisms and processes for dealing with violations of economic, social and cultural rights, as well as challenges in this regard. In follow-up, OHCHR is currently developing a special issues paper on this topic.

8. OHCHR has also been exploring the linkages between DDR processes and transitional justice. In 2009, the Inter-Agency Working Group on DDR published the module, “Transitional Justice and DDR”⁴ as part of the Integrated Disarmament, Demobilization and Reintegration Standards (IDDRS), the United Nations-wide guidance on DDR. The module was developed by the Department of Peacekeeping Operations and OHCHR, in cooperation with the International Center for Transitional Justice. Building on the IDDRS module and the Secretary-General’s guidance note, OHCHR organized in December 2010 the Expert Workshop on Maximizing Opportunities for Coordination between DDR Initiatives and Transitional Justice Processes. The workshop assessed selected experiences of DDR initiatives as they relate to transitional justice processes, and further identified lessons learned in this context.⁵

³ See OHCHR, *Rule-of-Law Tools for Post-Conflict States: Truth commissions; Prosecution initiatives; Maximizing the legacy of hybrid tribunals; Vetting; Reparations programmes; Mapping the justice sector; Legal systems monitoring; Amnesties*.

⁴ See IDDRS, module 6.20, *Transitional Justice and DDR*, sect. 8.3, box 7 - Action points for DDR and TJ practitioners.

⁵ See section B of this report for an analysis of the relationship between DDR and transitional justice.

B. Activities of field presences

1. Truth-seeking

9. Truth-seeking processes help post-conflict States to 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.⁶ Truth-seeking processes are undertaken by truth commissions, commissions of inquiry or other fact-finding mechanisms.⁷ 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 inclusive 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

10. In October 2010, the United Nations High Commissioner for Human Rights released the report of the Mapping exercise documenting the most serious violations of human rights and international humanitarian law committed within the territory of the **Democratic Republic of the Congo** between March 1993 and June 2003. The report also formulates options for appropriate transitional justice mechanisms to deal with the legacy of these violations in terms of truth, justice, reparation and reform. In follow up, the Government of the Democratic Republic of the Congo, in October 2010, announced the creation of specialized chambers and prepared a draft law for consideration by Parliament. In March 2011, OHCHR held meetings with the national authorities and other stakeholders regarding the follow-up to the mapping exercise report, and shared recommendations on the draft law.

11. The Truth, Justice and Reconciliation Commission (TJRC) of **Kenya** was established by law in November 2008 and inaugurated in July 2009. The TJRC has been experiencing operational difficulties since its inception. Despite the difficulties, OHCHR Kenya has been providing technical support to the TJRC, including assisting the Ministry of Justice in organizing induction training for commissioners, as well as training on transitional justice for technical staff, authorities and civil society. OHCHR Kenya also provided technical expertise and funding towards the creation of a database for the TJRC.

12. In December 2009, the Truth and Reconciliation Commission (TRC) in **Liberia** released its final report, but only a few of its recommendations have been implemented so far. The Human Rights and Protection Section (HRPS) of the United Nations Mission in Liberia (UNMIL) encouraged civil society organizations to inform the public about the content of the report through a program funded by UNDP and advocated for the establishment of the Independent National Commission on Human Rights (INCHR). INCHR was officially established in October 2010, and tasked, inter alia, with ensuring the implementation of the TRC recommendations.

13. The Truth and Reconciliation Commission in **Sierra Leone** presented a report summarizing its findings and outlining recommendations in October 2004. The Human Rights Section (HRS) of successive peacekeeping and peace consolidation missions in

⁶ See E/CN.4/2004/88; E/CN.4/2006/91.

⁷ See E/CN.4/2005/102/Add.1, principles 6-13.

Sierra Leone has been assisting the Government with the implementation of the TRC recommendations. In November 2010, the HRS of the United Nations Integrated Peacebuilding Office in Sierra Leone (UNIPSIL), together with the Human Rights Commission, organized the second National Consultative Conference on the Status of Implementation of the TRC Recommendations in order to facilitate their full implementation, including with regard to reparations.

14. In July 2008, OHCHR **Togo** produced a report summarizing the findings of the national consultations and outlining recommendations, including for the establishment of a truth and reconciliation commission. The Truth, Justice and Reconciliation Commission of Togo was established by Presidential Decree in 2009. OHCHR Togo has been providing logistical, technical and administrative support to the Commission, including organizing seminars for the commissioners, as well as training on transitional justice and witness protection for technical staff, authorities and civil society.

15. The Government of **Uganda** initiated a study on truth-seeking in 2009, but consultations regarding a transitional justice policy were delayed until 2011. Civil society groups have taken the initiative with regard to the establishment of a truth commission by drafting a bill to this effect, with the assistance of OHCHR Uganda. The bill has yet to be considered by the Government. OHCHR Uganda plans to monitor the implementation of the truth-seeking processes to ensure their conformity with international human rights standards. OHCHR Uganda also supports a community project on memorialization.

(b) *Asia-Pacific*

16. As part of a national strategy for implementing truth-seeking processes under the Action Plan on Peace and Reconciliation in **Afghanistan**, the Afghanistan Independent Human Rights Commission (AIHRC) is expected to release a report in 2011 mapping human rights violations committed during the first twenty-three years of the conflict from 1978-2001. The Human Rights Unit (HRU) of the United Nations Assistance Mission in Afghanistan (UNAMA) has provided initial technical assistance to this project and intends to provide full support to its follow-up.

17. In **Nepal**, the 2006 Comprehensive Peace Agreement and the Interim Constitution contain commitments to establish a truth and reconciliation commission, as well as a commission of inquiry on disappearances. In February 2010, the Government submitted to Parliament draft bills to establish both commissions; over 80 proposed amendments are currently under consideration. OHCHR Nepal has provided comments as well as technical assistance during the revision of the draft bills and the formulation of by-laws to facilitate their compliance with international human rights standards. Since 2009, OHCHR Nepal has also been implementing a large United Nations Peace Fund for Nepal project to provide support to the Government and civil society on transitional justice.

(c) *Latin America and the Caribbean*

18. The Government of **Colombia** approved the Justice and Peace Law in 2005, which provides for a special judicial procedure and judicial benefits for demobilized members of illegal armed groups. Those procedures partially contributed to the establishment of the truth through voluntary depositions, although the information derived from those processes appears far from complete and has not resulted in a comprehensive and systematic understanding of crimes committed by paramilitaries. Furthermore, the number of demobilized members of illegal armed groups processed under the Law is very low, compared with the number of persons that could contribute information relevant for the

establishment of the truth.⁸ OHCHR Colombia has monitored the implementation of the Law and made recommendations for modifications regarding, inter alia, the extension of the requirements of voluntary depositions to demobilized persons not processed under the Law, the possibility of collective voluntary depositions, and the explicit indication that depositions should be instrumental to the right to the truth.

19. OHCHR **Guatemala** participates in a working group which aims to promote the adoption of a draft law by Congress on the establishment of a national commission to search for victims of enforced disappearance during the internal armed conflict. Furthermore, OHCHR Guatemala has provided technical assistance to the Presidential Commission for the Declassification of Military Archives.

2. Prosecution initiatives

20. Prosecution initiatives aim to ensure that those responsible for perpetrating serious violations of human rights and international humanitarian law that constitute crimes are tried and duly punished. States have primary responsibility to exercise jurisdiction over these crimes.⁹ 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 their form, prosecution initiatives must rest on a clear commitment to combat impunity, focus attention on the needs of the victims, and comply with international standards relating to fair trial. OHCHR provides technical assistance and monitors prosecution initiatives to ensure their compliance with international human rights standards.

(a) Africa

21. The United Nations Organization Stabilization Mission in the **Democratic Republic of the Congo** (MONUSCO) has provided information and technical support relating to the investigation and prosecution of certain high-profile human rights cases, and has monitored the justice proceedings. In 2011, several trials involving allegations of human rights violations, including rape, were held by military tribunals and resulted in a series of convictions. The Joint Human Rights Office (JHRO) of MONUSCO, in collaboration with international and national NGOs and other partners, provided technical and logistic support to the authorities. While the convictions constitute a positive step towards combating impunity, sexual violence remains a serious concern in the Democratic Republic of the Congo. JHRO-MONUSCO continues to support the authorities in the fight against impunity.

22. HRS-UNIPSIL has participated in the projects related to the legacy of the Special Court for **Sierra Leone** which are aimed at building the capacity of national stakeholders. HRS also implements the United Nations Peacebuilding Fund project which provided seed funding to establish a Peace Museum within the complex of the Special Court.

23. During 2011, the War Crimes Division of the High Court of **Uganda** has been preparing itself operationally to begin the trial of one member of the Lord Resistance Army who had been captured during a Uganda People's Defence Force operation. OHCHR has provided technical support in developing guidelines on witness protection.

⁸ See A/HRC/16/22, para. 38.

⁹ See E/CN.4/2005/102/Add.1, principle 20.

(b) Asia-Pacific

24. Perpetrators of serious crimes under international law may not benefit from measures such as amnesty until the State has met its obligations to ensure that those responsible are prosecuted, tried and duly punished. In 2009, a broad amnesty law which appears to preclude ex officio investigations and prosecutions by the State of perpetrators of serious international crimes was published in the Official Gazette of **Afghanistan**. UNAMA, the United Nations Country Team, civil society and international organizations objected to the adoption of this legislation which contravenes Afghanistan's international legal obligations.

25. Since June 2007, the Extraordinary Chambers in the Courts of **Cambodia** (ECCC) has been trying "senior leaders and those most responsible" for the atrocities committed during the period of Khmer Rouge rule from 1975 to 1979. As part of OHCHR commitment to help maximize the impact of hybrid tribunals internationally, OHCHR Cambodia has been working closely with the ECCC, the Royal Government of the Kingdom of Cambodia and civil society to facilitate a legacy program aimed at ensuring that the skills, knowledge and practices of the tribunal can positively impact on the practice of criminal justice domestically, through concrete initiatives which incorporate the jurisprudence of the Court.

26. OHCHR **Nepal** has provided technical support to authorities investigating high-profile cases related to the conflict period and has monitored judicial developments. OHCHR Nepal has also been documenting and publicizing evidence of other violations, advocating for their investigation and requesting cooperation from relevant authorities. Furthermore, OHCHR Nepal provides technical assistance towards strengthening the legal framework for prosecutions of serious human rights violations. It published a legal opinion underlying the necessity for the regular criminal justice system to continue investigation and prosecution of conflict-related cases regardless of the commitment to establish transitional justice mechanisms. The Office has also supported exhumations and conducted an assessment with a view to strengthening victim and witness protection.

27. As of March 2011, investigations of all cases identified by the Independent Special Commission of Inquiry for **Timor-Leste** have been opened by the Office of the Public Prosecutor. Seven trials have been completed, one indictment is pending trial, four cases have been archived and 12 cases are under active investigation. The Human Rights Transitional Justice Section (HRTJS) of the United Nations Integrated Mission in Timor-Leste (UNMIT) has continued to assist the Office of the Prosecutor General in implementing the recommendations of the commission.

(c) Latin America and the Caribbean

28. In March 2011, OHCHR convened a seminar in Argentina on the protection of witnesses of serious human rights violations. Representatives of national and provincial authorities, witness protection agencies, civil society, as well as judges and prosecutors engaged in discussions on current challenges in the area of witness protection and on practical measures to improve the protection framework in Argentina.

29. Under the Justice and Peace Law of **Colombia**, 4,484 out of approximately 53,000 demobilized persons were being processed as of November 2010. However, almost six years since the adoption of the Law, there has only been one partial ruling against two ex-paramilitaries who received the benefit of a reduced conviction. OHCHR has recommended that efforts be focused on the most serious violations at the higher level of responsibility. Based on the revelations made by the persons processed, the Supreme Court commenced criminal investigations against Congressional members for alleged links with illegal organizations. As of December 2010, the Supreme Court had decided 28 cases out of 120

filed. OHCHR has been following the process under the Justice and Peace Law and has formulated recommendations for its modifications, with a view to improving possibilities for the Law to serve as an instrument of judicial accountability.

30. In 2008, OHCHR presented an amicus curiae brief to the Constitutional Court of **Guatemala** in a case of enforced disappearance. Recognition in July 2009 by the Constitutional Court of enforced disappearance as a continuing or permanent crime, in accordance with international standards, led to a number of convictions by national courts. OHCHR Guatemala provides training and technical assistance to the Human Rights Section of the Public Prosecutors' Office, as well as capacity-building for civil society organizations that represent the victims of armed conflict and often play a significant role in the investigation of past crimes and as civil parties in legal proceedings.

31. In February 2011, the High Commissioner for Human Rights offered the authorities in **Haiti** technical assistance towards the prosecution of persons responsible for serious human rights violations committed from 1971 to 1986. The Human Rights Section (HRS) of the United Nations Stabilization Mission in Haiti (MINUSTAH) has collaborated with the national authorities and civil society in this regard.

3. Reparations programmes

32. Reparations programmes seek to redress systemic violations of human rights by providing a range of material and symbolic benefits to victims. In its resolution 60/147, 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, the General Assembly reaffirmed the right of victims to reparations. 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 the affected communities, particularly victims. OHCHR provides technical assistance in the design and implementation of reparations programmes, supports the participation of civil society organizations in reparations discussions, and advocates for the full implementation of reparations initiatives.

(a) *Africa*

33. In **Sudan**, Darfur Compensation Commissions have been established to address compensation claims from victims of the conflict, but a reparations policy has not yet been developed. The Human Rights Section (HRS) of the African Union/United Nations Hybrid Operation in Darfur (UNAMID) has provided training for members of the commissions, including on victims' right to a remedy and comparative experiences regarding reparations.

34. In 2010, the High Commissioner convened a High-level Panel to hear directly from victims of sexual violence in the **Democratic Republic of the Congo** regarding their needs and perception of remedies and reparations available to them. The report of the Panel was presented in the margins of the Human Rights Council session in March 2011. In follow-up, JHRO-MONUSCO plans to work with national authorities and other relevant stakeholders to assist in developing options for reparations for victims of sexual violence.

35. HRPS-UNMIL has continued to be involved in awareness-raising and sensitization discussions regarding reparations in **Liberia**, with a view to ensuring that various types of reparations are taken into account.

36. In **Sierra Leone**, HRS-UNIPSIL, through the United Nations Peacebuilding Fund, has supported the establishment of reparations programmes which have conducted symbolic community reparations events and delivered partial benefits to 20,000 of the 32,000 registered victims. The National Trust Fund for Victims was established to facilitate

the sustainability of the programme. Lack of adequate funding has been a serious challenge in implementing the programme.

37. Since 2008, OHCHR has advocated for a separate and comprehensive reparations programme in **Uganda**. In 2008, OHCHR Uganda began implementing the Reparations Research and Capacity-Building project in northern Uganda, in collaboration with the Uganda Human Rights Commission (UHRC), 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 forum on transitional justice in February 2009. In 2010, OHCHR and UHRC conducted specialized field research on gender and reparations; the findings were presented to the Government and donors in a validation workshop held in Kampala, as well as to civil society organizations in a separate meeting.

(b) *Asia-Pacific*

38. The Extraordinary Chambers in the Courts of **Cambodia** has instituted a victims participation process whereby victims who become party to the proceedings have the right to claim for moral and collective reparation. OHCHR Cambodia has been monitoring the victims participation process to ensure that valuable lessons learned, both domestically and from an international perspective, are documented and can be appraised.

39. The Government of **Nepal** has begun the implementation of the Interim Relief Programme for victims of conflict, while a more comprehensive reparations policy is expected to be established in conjunction with the TRC. OHCHR Nepal has worked with the International Organization for Migration to analyse the inefficiencies of the interim relief projects, and has shared the findings with the Ministry of Peace and Reconstruction. Amid the delays in setting up transitional justice mechanisms, OHCHR Nepal has been supporting the Ministry of Peace and Reconstruction in the development of a comprehensive reparations policy in line with international human rights standards. OHCHR Nepal has initiated extensive consultations with victims as part of the formulation of the policy.

40. Both truth commissions in **Timor-Leste** have recommended the establishment of a reparations programme. In 2010, Parliament approved in a second reading a draft law establishing a framework for a reparations programme, and a law to establish an institution to follow up on the recommendations of the two truth and reconciliation commissions, including with regard to reparations, disappeared and missing persons, human rights training and archives. However, the final enactment of the laws has been pending as of May 2011. HRTJS-UNMIT continues to support efforts to establish a reparations programme, and has provided technical assistance towards the elaboration of the above draft legislation.

(c) *Latin America and the Caribbean*

41. Under the Justice and Peace Law in **Colombia**, victims may submit a reparations claim against an ex-combatant who has completed the judicial process. However, application of the Law is limited and there have only been two rulings on reparations under it. OHCHR Colombia is currently providing recommendations for modifications to the provisions on judicial reparations in the Law. Victims of human rights abuses committed by illegal armed groups could also have sought reparations under an administrative programme established in 2008 and closed in April 2010. The programme conferred compensation to some victims, but lacked a comprehensive approach and did not apply to victims of crimes attributed to State agents; OHCHR Colombia monitored the implementation of the programme. Furthermore, it also provided advice regarding the Law on Victims and Restitution of Land, adopted by Parliament in May 2011, with a view to facilitating its compliance with international standards.

42. OHCHR **Guatemala** has advocated for the adoption of adequate legislation to strengthen and bring sustainability to State policies on reparations. It further worked to sensitize civil society and victims organizations about international standards and comparative experiences regarding reparations. In 2011, OHCHR Guatemala plans to monitor the implementation of the National Reparations Programme at the local and regional levels.

4. Institutional reform

43. Public institutions that have helped to 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 future human rights violations. Vetting, by removing from service those public officials and employees, particularly in the security and justice sectors, who have been personally responsible for gross violations of human rights, is critical to facilitating this transformation. 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.¹⁰ OHCHR assists the implementation of institutional reform programmes through training, monitoring and resource provision.

(a) *Africa*

44. HRPS-UNMIL has continued to assist in the vetting of new recruits in the **Liberia** National Police (LNP) and the Armed Forces of Liberia (AFL) by providing background information on individual recruits who do not meet jointly agreed criteria for hiring. HRPS-UNMIL has also continued to conduct training on human rights and international humanitarian law for the LNP and AFL, and has started a similar programme with the Special Security Service personnel. HRPS-UNMIL also works to reinforce accountability mechanisms within the security sector.

(b) *Asia-Pacific*

45. In follow-up to the June 2010 National Consultative Peace Jirga, HRU-UNAMA has been advocating for accountability and inclusivity in the process of developing the **Afghan** Peace and Reintegration Program (APRP). As the framework of the APRP was imprecise and created uncertainty with regard to certain aspects of the reintegration process, HRU-UNAMA has been advocating with the joint secretariat of the High Peace Council to ensure that both the “political amnesty” provisions and the grievance resolution process are clearly understood as not applicable to gross violations of human rights and serious violations of international humanitarian law, and that effective vetting of former combatants, prior to determining whether they are eligible for reintegration, is conducted.

46. OHCHR **Nepal** has continued its advocacy on the prospective establishment of vetting mechanisms in Nepal, including through direct engagement with, and technical assistance to, the security forces. In particular, it has taken a position in a number of cases relating to promotions and/or appointments to public positions of individuals against whom there are credible allegations of human rights violations. OHCHR Nepal has also engaged in developing a vetting policy for United Nations peacekeeping operations, given the important contribution provided by Nepali security forces in those operations.

¹⁰ See E/CN.4/2005/Add.1, principle 36.

47. The vetting process for the national police in **Timor-Leste** was conducted between 2006 and 2009. Out of a total of approximately 3,118 officers, about 200 were not certified, and 7 were dismissed. HRTJS-UNMIT assisted in establishing the vetting process, served as an observer on the Evaluation Panel, and supplied the process with information based on its monitoring records. HRTJS also participates in the joint assessments by the Government and UNMIT to establish whether police units are ready to assume executive policing authority. HRTJS has provided training on international humanitarian law and human rights for the national police and military officers.

(c) *Latin America and the Caribbean*

48. MINUSTAH, the United Nations Police and HRS, have been assisting the Government of **Haiti** in vetting the Haitian National Police (HNP), in accordance with the framework set out in the HNP Reform Plan adopted in August 2006. HRS contributed to the strengthening of the criteria for certification process and provided information relating to investigations of human rights violations allegedly committed by Haitian police officers. Between December 2006 and January 2010, the Haitian National Police and the United Nations Police opened 7,177 cases for investigation, of which 3,584 completed cases were submitted to the authorities for appropriate action. The remaining 3,593 files are being investigated.

5. National consultations

49. 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 require 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. OHCHR supports national consultative processes by providing legal and technical advice, promoting victim participation, supporting capacity building, and mobilizing resources. Below are some examples of steps taken towards consultations, however, not all of the efforts should be considered as comprehensive consultations.

(a) *Africa*

50. In resolution 1606 (2005), the Security Council requested the Secretary-General to organize consultations with the Government of **Burundi** and Burundian stakeholders regarding the establishment of a Truth Commission and a Special Tribunal. Pursuant to the operational framework agreement of November 2007, a tripartite steering committee, composed of United Nations, Government and civil society representatives was established to organize the national consultations. The Human Rights and Justice Division (HRJD) of the United Nations Integrated Office in Burundi (BINUB) represented the United Nations on the tripartite steering committee, and has worked actively to ensure the inclusion of a human rights perspective in the national consultations. HRJD-BINUB has simultaneously organized sensitization and training programmes for locally elected representatives, civil society and vulnerable groups. The national consultations began in July 2009 and was completed in April 2010 with the publication of the report, which was forwarded to the President of Burundi. HRJD of the United Nations Office in Burundi (BINUB) has begun disseminating the report in all provinces. It plans to continue working with the national authorities, as appropriate, towards the establishment of the proposed mechanisms in conformity with international standards.

51. In **Sudan**, HRS-UNAMID, in collaboration with the Darfur Joint Mediation Team, launched a series of civil society consultations aimed at building their participation in the Darfur peace process. At the inaugural civil society conference in Doha in November 2009, the HRS supported civil society members in articulating their views and interests into any future negotiations. The HRS has since continued to build the capacity of diverse communities and civil society groups on transitional justice issues, with a view to facilitating their meaningful contribution to the peace process and to the development of transitional justice measures for Darfur.

(b) *Asia-Pacific*

52. In **Afghanistan**, HRU-UNAMA has continued to advocate for greater civil society representation and involvement in the bodies and mechanisms designed to implement the peace and reintegration process. In order to facilitate civil society's participation in the APRP and assist them in making their views on peace and reconciliation heard, HRU supported a civil society-led National Victims Jirga prior to the June 2010 National Consultative Peace Jirga. Unfortunately, civil society advocacy was unsuccessful as they were virtually unrepresented on the High Peace Council, the 70-member body appointed to oversee the implementation of the APRP at both national and local levels, as well as in provincial peace committees. HRU-UNAMA continues to work on strengthening the ability of civil society to take an active part in the work of the APRP.

53. OHCHR **Nepal** has continued to play a key role in supporting victim participation in transitional justice dialogues in Nepal and advocating for increasing access to authorities by victims groups. OHCHR Nepal conducted several thematic consultations on the draft TRC legislation in 2009; provided training to victims groups on the elements of the TRC and commission of inquiry on disappearances bills in April and October 2010; and held three consultations on the bills in April and May 2011, designed to draw nationwide participation of victims groups. OHCHR, UNICEF, UN Women and civil society organizations have worked to facilitate the incorporation of rights and perspectives of women and children into transitional justice initiatives.

54. In **Timor-Leste**, HRTJS-UNMIT supported the establishment of a comprehensive victims association whose members participated in the public consultations on the draft laws on reparations and the follow-up institution for the two truth commissions.

(c) *Europe*

55. The OHCHR office in Kosovo¹¹ has supported the initiative for a "regional commission tasked with establishing the facts about all victims of war crimes and other serious human rights violations committed on the territory of the former Yugoslavia in the period from 1991-2001" (RECOM). After extensive consultations in the region, the coalition of civil society organizations in the former Yugoslavia adopted a proposed statute for the commission in March 2011. OHCHR contributed through participation in expert panels, informal discussions, as well as disseminating materials, such as the OHCHR Rule-of-Law Tools series. It also sensitized international partners about the importance of the initiative.

¹¹ Reference to Kosovo should be understood in full compliance with United Nations Security Council Resolution 1244 and without prejudice to the status of Kosovo.

III. Relationship between disarmament, demobilization and reintegration and transitional justice

56. Transitional justice processes and DDR initiatives both play important roles in post-conflict transitions and can contribute to preventing the recurrence of violations and fostering reconciliation. They are both distinct and limited processes which should be encouraged as part of a comprehensive framework of efforts in societies recovering from conflict. These efforts have to be context-specific and inclusive of relevant stakeholders, including State institutions and civil society. The relationship between DDR programmes and transitional justice measures varies depending on the national context, nature of the conflict and the manner in which it ended, and role of the international community, among other factors.

57. In some cases, the initiation of DDR programmes earlier in the post-conflict period than the establishment of transitional justice processes can constrain their interconnections. In other cases, this type of sequencing could be beneficial for both processes. DDR and transitional justice processes also have different core constituencies, with DDR programmes primarily directed at ex-combatants, and transitional justice processes focused on victims and society more generally. When appropriately connected, however, DDR and transitional justice can positively reinforce one another. DDR processes can contribute to securing the stability necessary for implementing transitional justice mechanisms, and transitional justice processes can strengthen the legitimacy and integrity of DDR initiatives and facilitate reintegration.

58. In all cases where the two processes coexist, coherent and constructive coordination must be created that ensures, at a minimum, that DDR programmes and transitional justice mechanisms do not hinder their respective objectives of maintaining stability and promoting accountability, truth seeking and reconciliation. Coordination between transitional justice and DDR practitioners should also aim to capitalize on opportunities for linkages between DDR programmes and transitional justice mechanisms and to constructively connect the two processes in ways that contribute to a just and sustainable peace.

1. Peace agreements

59. Peace agreements provide an important opportunity to establish a framework linking DDR and transitional justice. The political and security issues on the agenda of peace agreements must be addressed in a manner that complies with international legal obligations, including with regard to accountability, truth, reparations and guarantees of non-recurrence. By including these obligations, peace agreements, at a minimum, keep the door open to the later establishment of transitional justice mechanisms. The inclusion of international legal obligations also signals to victims and their advocates that the violations suffered by affected populations will not be disregarded, and may decrease initial resentment towards ex-combatants. In particular, peace agreements must not provide for amnesties for genocide, crimes against humanity, war crimes or gross violations of human rights. Certain targeted amnesties for political offences, such as treason or rebellion, however, may act as an incentive for demobilization, while allowing for the prosecution of those responsible for serious violations of international humanitarian law and gross violations of human rights, in compliance with international obligations. Where express provision is made for the establishment of both transitional justice processes and DDR programmes in a peace agreement, consideration should be given to establishing institutional linkages between the two processes so as to provide a framework for effective coordination in the post-conflict period.

60. In this context, mediators and others involved in peace negotiations should be aware of the impact of DDR and transitional justice processes on one another. Integrating transitional justice and DDR into training modules for mediators would ensure an initial understanding of transitional justice processes and challenges involved in disarming, demobilizing and reintegrating ex-combatants and associated groups. Victims and civil society actors should also have a role in peace negotiations which allows them to articulate demands for accountability, truth and reparations.

2. Criminal investigations and prosecutions

61. Criminal investigations and prosecutions have important potential connections with DDR programmes. Information gathered through DDR processes can be useful to criminal investigations and prosecutions. Information does not need to be individualized nor require the disclosure of identities. For example, general and contextual information related to location, composition and structure of certain armed groups, their level of organization and hierarchy, type of activities engaged in, or demographics of combatants within particular groups or their weaponry can provide important assistance in the context of criminal investigations and prosecutions. Information gathered through DDR programmes can also be important in corroborating other evidence gathered. Early information sharing about the DDR process itself may also be useful in the context of investigations, for example, by providing leads as to possible witnesses. In all cases of information sharing, there must be transparency about the ways in which information shared will be used.

62. Prosecution initiatives can also support DDR processes. By individualizing the guilt of specific perpetrators, prosecution initiatives may distinguish perpetrators of violations of international humanitarian law or human rights law from other ex-combatants, thereby lessening public perception that all ex-combatants are guilty of serious violations. Prosecution initiatives can also contribute to DDR by removing spoilers, such as uncooperative commanders, from the DDR process. The issuing of an arrest warrant can itself isolate and contribute to the marginalization of such spoilers, and thereby removing them from the DDR process. Prosecution initiatives may also act as incentives for parties in other conflict situations to engage in DDR and to release child soldiers, for instance.

63. When the processes overlap, the pursuit of accountability through prosecutions can also create tensions with DDR efforts, as DDR requires the cooperation of ex-combatants and their leaders, while prosecutions aim to hold those responsible for serious violations of international law accountable. Despite these concerns, in a number of contexts, DDR programmes have coexisted with prosecutorial efforts, without prosecutions impeding the DDR process. Possible tensions can be minimized through effective communication and sensitization or outreach, including about the objectives of the prosecution strategy, and coordination between DDR practitioners and prosecutors on issues of timing.

3. Truth-seeking processes

64. Truth-seeking processes can reinforce DDR programmes, including by assisting in the process of reconciliation and contributing to stability. Truth processes may assist in the reintegration of ex-combatants by affording them the opportunity to reveal their experiences of the conflict and to apologize. Allowing ex-combatants to tell their own stories of victimization may break down rigid representations of combatants and victims, thereby assisting reconciliation. Testifying may also be of psychological benefit for the individual ex-combatant involved, assisting their personal reintegration. Truth processes can also play a more direct role in reintegration by, for example, including a process of community reconciliation for those involved in “less serious crimes”.

65. Truth-seeking processes and DDR programmes also have significant potential for information exchange. Information collected by DDR processes may be very useful to

efforts to establish the truth, for instance in relation to the command structure of armed groups, weapons used or where bodies might be found. Conversely, truth-seeking processes may establish the institutional dynamics of human rights abuses, which can assist DDR processes in screening for eligibility for DDR benefits.

4. Reparations

66. DDR programmes providing benefits to ex-combatants and reparations programmes for victims are generally developed in isolation from one another, with far greater financial commitment made to DDR. Reinsertion assistance is offered to demobilized combatants in order to assist with their immediate civilian resettlement. The result is that ex-combatants participating in DDR often receive this assistance in the form of allowances, food, clothes, shelter, counselling and skills training as part of the benefits of DDR programmes, while in many cases no programmes to redress the violations of the rights of victims are established.

67. The failure to coordinate benefits for victims with those provided to combatants is inequitable and can give rise to additional grievances which could undermine effective community reintegration. The provision of reparations may therefore contribute to successful reintegration by reducing the resentment and grievances of the communities concerned.

68. Where the preconditions for the successful establishment of a reparations programme are not present, benefits to victims should be provided instead in the context of victims' assistance payments. DDR programmes are increasingly adopting community-based reintegration approaches, which include assistance to vulnerable individuals in the community beyond ex-combatants. While these efforts cannot substitute for reparations, which are distinct in nature and objective, and critical in their recognition of victims' rights, they may nonetheless make an important contribution to avoiding inequity and grievances and, thus assist with reintegration.

69. In all cases, coordination in commitments to ex-combatants and benefits to victims is necessary, in order to ensure that funds are made available for the benefit of victims and ex-combatants at the same time. In this context, donors to DDR programmes should consider making comparable commitments to victims, and mechanisms such as dual-window financing should be explored.

5. Guarantees of non-recurrence

70. DDR programmes contribute to ending violence and establishing security in the short to medium term, and are often one of the first security initiatives in a post-conflict society. The success of DDR programmes thus provides a foundation for long-term institutional reform. Conversely, DDR programmes alone cannot build peace or guarantee long-term security and stability. To be successful in achieving these aims, the programmes must take place in the context of larger political and socio-economic transformation and institutional reform.

71. DDR programmes are also closely connected with security sector reform (SSR), which may lead to the integration of ex-combatants in national armed forces or other security sector institutions. Therefore, coordination between DDR and SSR programmes on vetting strategies and processes is particularly crucial to ensure that ex-combatants who have committed gross violations of human rights or serious violations of international humanitarian law, or against whom indictments, judicial investigations or credible allegations of having committed such violations are pending, are excluded from integration into security sector institutions. Failure to do so risks jeopardizing reforms and undermining trust in Government institutions. Screening of the human rights records of ex-combatants should be conducted as a condition for integration into legitimate security-related

employment. Furthermore, timely institutional and legislative reforms clearly separating military and other security sector responsibilities and establishing separate career tracks for military and police forces are of key importance. Such reforms can influence the integration process, including creating an enabling context for screening the human rights records of ex-combatants.

6. Women associated with armed forces and armed groups

72. Gender inequality is a pervasive form of social inequality and is often exacerbated by conflict situations. Women who have been associated with armed forces and groups, and who are returning to civilian life in the post-conflict context may face greater social barriers, stigmatization and exclusion than men. Both transitional justice and DDR face a common imperative to be responsive to women's particular experience of conflict and to adopt a gender-sensitive approach. Transitional justice processes and DDR initiatives should strive to ensure that women can fully participate in these processes, and that women's rights and perspectives are adequately addressed.

73. Women associated with armed forces and groups have frequently been the victims of human rights violations, in particular sexual violence. In order to end impunity for sexual violence and facilitate social reconstruction, those responsible for transitional justice processes should send a clear message that the perpetrators of these crimes will be brought to justice and provide support for the victims of such crimes. Furthermore, transitional justice processes should endeavour to prevent revictimization of women who have suffered sexual violence.

7. Children associated with armed forces and armed groups

74. Children associated with armed forces and groups represent a special category of protected persons under international law. These children should be released and reintegrated into families and communities at all times, even before a DDR process is formally implemented. Transitional justice processes can play a positive role in reintegrating children, and there may be scope for linkages between the release or demobilization and reintegration of children and transitional justice.

75. Prosecution of commanders who have conscripted, enlisted and used children may help the reintegration of children by highlighting that children associated with armed forces and groups who may have been responsible for violations of human rights and international humanitarian law should be considered primarily as victims, not as perpetrators. Likewise statements from children during truth-seeking processes can offer an opportunity for their participation in post-conflict reconciliation, improve understanding of the impact of war on children, facilitate reintegration and prevent future victimization. Children released or demobilized from armed forces and groups may also be eligible for reparations as victims, as well as financial benefits through a reintegration programme. Provision of reparations or benefits should not create additional grievances in affected communities, which may hinder reintegration. In all cases, the best interests of the child should guide decisions about their participation in transitional justice and DDR processes. Participation must be voluntary and in accordance with child-friendly procedures. Coordination between reintegration and transitional justice practitioners in the context of interviewing children released or demobilized from armed forces and groups should also be further explored. Interview processes can be retraumatizing for children involved, therefore unnecessary duplication in efforts should be avoided to the extent possible.

8. Traditional justice processes

76. Traditional justice processes can complement both reintegration programmes and transitional justice processes by providing a community level means of addressing issues of

accountability of ex-combatants, and facilitating their reintegration through an approach that involves victims and communities in defining the responsibility and obligations of those who have committed crimes. Traditional justice may be an important process through which to link DDR and transitional justice. Care must be taken, however, to ensure that traditional justice processes do not violate national and international human rights standards, including those related to gender and other forms of discrimination.

IV. Conclusions

77. The present overview of activities reaffirms the increasing role played by OHCHR in providing a broad range of assistance in the field of transitional justice. Other parts of the United Nations human rights system are encouraged to continue to give due attention to transitional justice in the discharge of their mandates.

78. Disarmament, demobilization and reintegration (DDR) and transitional justice processes are interrelated and coordination between the two efforts is essential for facilitating their coherence and mutual reinforcement. Establishing reparations for victims in conjunction with DDR programmes for ex-combatants may mitigate the perception of inequity in their respective treatment, and foster reintegration. Enhanced understanding of the connections between DDR and transitional justice should contribute to increased coordination between DDR and transitional justice practitioners.
