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PROMOTION AND PROTECTION OF HUMAN RIGHTS

Impunity

Report of the Secretary-General

Summary

This report is submitted pursuant to Commission on Human Rights resolution 2005/81 requesting the Secretary-General to report on the latest developments in international law and practice relevant to combating impunity, including international jurisprudence and State practice, and the work of the Office of the High Commissioner for Human Rights and other parts of the United Nations system, taking into account 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 independent study, as well as comments received pursuant to the present resolution.

The updated Set of Principles for the protection and promotion of human rights through action to combat impunity provides guidelines that address various aspects of the establishment and conduct of commissions of inquiry, including commissions that are international in character. These guidelines emphasize the need to assure the independence, impartiality and competence of such commissions; the importance of clearly defining the commissions' terms of reference in a manner consistent with the principle that such commissions are not intended as substitutes for courts; the need to provide appropriate guarantees for persons implicated as well as for victims and witnesses testifying on behalf of victims; and the need to ensure adequate resources for such commissions. They also provide recommendations relating to the advisory functions of the commissions, and the importance of publicizing the commission's reports.

Commission on Human Rights resolution 2005/81, *inter alia*, emphasized that the work of "commissions of inquiry can be complementary to the essential role of judicial mechanisms in protecting human rights and combating impunity", and welcomed the "establishment in some States of judicial proceedings and commissions of truth and reconciliation and other commissions of inquiry, including international mechanisms and those with international participation, to address violations of human rights and international humanitarian law". The resolution also requested the High Commissioner for Human Rights "to continue to support judicial mechanisms and commissions of inquiry and to provide, upon request, technical and legal assistance in developing national legislation and institutions to combat impunity in accordance with international standards of justice, fairness and due process of law".

OHCHR has increasingly been called upon by United Nations intergovernmental bodies, including the Commission on Human Rights and the Security Council, to provide support and legal expertise for commissions of inquiry investigating allegations of serious violations of human rights and international humanitarian law. Furthermore, various High Commissioners have invoked their general mandate under General Assembly resolution 48/141 to carry out fact-finding missions to investigate serious and widespread human rights abuses. OHCHR has provided support to two to three such commissions or fact-finding missions each year and the trend is towards an increase in such missions.

This report surveys a selection of international commissions of inquiry and fact-finding missions supported by OHCHR in several countries that have continued to suffer throughout the years from conflict and/or massive human rights violations. In particular, the report outlines the work of the international commissions of inquiry established for the then East Timor in 1999,

Togo in 2000, the Occupied Palestinian Territory in 2001, Côte d'Ivoire in April 2004 and in June 2004, and the Darfur Region of the Sudan in 2004. Additionally, the OHCHR fact-finding missions conducted during 2005 with regard to events in Andijan, Uzbekistan, and Togo are reflected. Finally, the report discusses referral by the Security Council of the situation in Darfur since 1 July 2005 to the International Criminal Court.

It has been widely recognized that the commissions of inquiry and fact-finding missions can play an important role in combating impunity. As demonstrated in this report, recent international commissions of inquiry have been established with comprehensive mandates, including specific requests for complex legal determinations and identification of perpetrators. Thorough and comprehensive work by the Commission of Inquiry can assist the United Nations intergovernmental bodies, including the Commission on Human Rights and the Security Council, in their decision-making processes on action when serious violations of international human rights law and international humanitarian law are taking place.

These initiatives have increasingly required support, including a range of legal, investigative and forensic expertise. OHCHR has provided comprehensive support to these international commissions of inquiry and fact-finding missions and has strengthened its capacity to fulfil this role and, through the High Commissioner's Plan of Action, is committed to further enhancing its capacity and expertise to provide legal and technical advice and support to such investigative missions. The increased support for such activities exemplifies the direction of OHCHR's future endeavours as the Office seeks to play an effective and much stronger protection role, especially at the country level.

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Introduction

1. This report is submitted pursuant to Commission on Human Rights resolution 2005/81, which requested the Secretary-General to report on the latest developments in international law and practice relevant to combating impunity, including international jurisprudence and State practice, and the work of the High Commissioner for Human Rights and other parts of the United Nations system, taking into account 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 independent study, as well as comments received pursuant to the present resolution. Pursuant to the resolution, information was provided by the Governments of Algeria, Azerbaijan, Lebanon, Lithuania, Mexico, Morocco, the Philippines, Portugal, Qatar, the Russian Federation and Slovenia as well as the Office of the United Nations High Commissioner for Refugees and the United Nations Office on Drugs and Crime. These replies are available in the Secretariat of the OHCHR for further consultation.
2. The updated Set of Principles for the protection and promotion of human rights through action to combat impunity provides guidelines that address various aspects of the establishment and conduct of commissions of inquiry, including commissions that are international in character. These guidelines emphasize the need to assure the independence, impartiality and competence of such commissions;¹ the importance of clearly defining the commissions' terms of reference in a manner consistent with the principle that such commissions are not intended as substitutes for courts;² the need to provide appropriate guarantees for persons implicated as well as for victims and witnesses testifying on behalf of victims;³ and the need to ensure adequate resources for commissions.⁴ They also provide recommendations relating to the advisory functions of the commissions,⁵ and the importance of publicizing the commission's reports.⁶ Additionally, the following international standards are relevant for the conduct of international commissions of inquiry and fact-finding missions: the 1995 Guidelines for the conduct of United Nations inquiries into allegation of massacres,⁷ the Principles on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions,⁸ and the 1991 Manual on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions.⁹
3. Commission on Human Rights resolution 2005/81, inter alia, emphasized that the work of "commissions of inquiry can be complementary to the essential role of judicial mechanisms in protecting human rights and combating impunity" and welcomed the "establishment in some States of judicial proceedings and commissions of truth and reconciliation and other commissions of inquiry, including international mechanisms and those with international participation, to address violations of human rights and international humanitarian law". The resolution also requested the High Commissioner for Human Rights "to continue to support judicial mechanisms and commissions of inquiry and to provide, upon request, technical and legal assistance in developing national legislation and institutions to combat impunity in accordance with international standards of justice, fairness and due process of law".
4. OHCHR has increasingly been called upon by the United Nations intergovernmental bodies, including the Commission on Human Rights and the Security Council, to provide support and legal expertise for commissions of inquiry investigating allegations of serious violations of human rights and international humanitarian law. Furthermore, various High Commissioners have invoked their general mandate under General Assembly resolution 48/141 to carry out

fact-finding missions investigating serious and widespread human rights abuses. OHCHR has provided support to several such commissions or fact-finding missions each year and the trend is towards an increase in such missions. These assignments are complex, must be carried out diligently and thoroughly, and often include a need for expert skills such as forensic investigations. This has also been acknowledged in the OHCHR Plan of Action of May 2005, which stressed that “support for such work is crucial, and developing OHCHR capacity in this area is a priority”.¹⁰

5. OHCHR’s work with international commissions of inquiry as well as fact-finding missions has evolved in recent years. Earlier commissions of inquiry had been supported by an OHCHR secretariat composed of around six members. As the commissions’ mandate became more comprehensive, particularly with regard to specific requests for identification of perpetrators, the need for a larger secretariat as well as new expertise, including in gender violence, military analysis and forensic science, arose. Furthermore, the most recent experiences have shown the importance of establishing an appropriate archiving mechanism to organize the material collected by the Commissions and to record incidents analysis. OHCHR has strengthened its capacity to fulfil this role and, through the High Commissioner’s Plan of Action, is committed to further enhancing its capacity and expertise to provide legal and technical advice and support to such fact-finding missions and commissions of inquiry”.¹¹

6. While the special procedures of the Commission on Human Rights play a crucial role in monitoring and following up on the human rights situation at the country level, their impact cannot substitute for the role that an international commission of inquiry can play. Comparatively, international commissions have operated with much larger resources, support and expertise and have been able to issue long and comprehensive reports allowing for the detailed description of events and extensive legal analysis. This in turn has assisted in raising public awareness and influencing intergovernmental action.

7. This report surveys a selection of international commissions of inquiry and fact-finding missions supported by OHCHR in several countries that have continued to suffer throughout the years from conflict and/or massive human rights violations. OHCHR has engaged in several investigative missions with regard to most of these countries. In particular, the report outlines the work of the international commissions of inquiry established for the then East Timor in 1999, Togo in 2000, the Occupied Palestinian Territory in 2001, Côte d’Ivoire in April 2004 and in June 2004, and Darfur in 2004. Additionally, the OHCHR fact-finding missions conducted during 2005 with regard to events in Andijan, Uzbekistan, and Togo are reflected. Finally, the report discusses referral by the Security Council of the situation in Darfur since 1 July 2005 to the International Criminal Court.

I. INTERNATIONAL COMMISSIONS OF INQUIRY

8. This section surveys several international commissions of inquiry, including those established for the then East Timor in 1999, Togo in 2000, the Occupied Palestinian Territory in 2001, Cote d’Ivoire in April 2004 and in June 2004, and the Darfur Region of the Sudan in 2004.

A. International Commission of Inquiry on East Timor

9. In 1999, OHCHR was requested to support the International Commission of Inquiry on East Timor. Additionally, in 2005, the Secretary-General appointed a Commission of Experts to Review the Prosecution of Serious Violations of Human Rights in Timor-Leste (the then East Timor) in 1999.

10. The International Commission of Inquiry on East Timor was established pursuant to Commission on Human Rights resolution 1999/S-4/1, adopted at its special session on 27 September 1999, as endorsed by the Economic and Social Council in its decision 1999/293 of 15 November 1999, to “gather and compile systematically information on possible violations of human rights and acts which might constitute breaches of international humanitarian law committed in East Timor since the announcement in January 1999 of the vote and to provide the Secretary-General with its conclusions with a view to enabling him to make recommendations on future actions”. The mandate of the Commission also included cooperation with the Indonesian National Commission on Human Rights and thematic rapporteurs. The resolution also requested the Secretary-General to make the report of the Commission available to the Security Council, the General Assembly and the Commission on Human Rights.

11. On 15 October 1999, the High Commissioner for Human Rights announced the appointment of five international experts as members of the Commission of Inquiry. The Commission was supported by an OHCHR secretariat composed of six persons, including the secretary, human rights officer, methodology officer, data management officer and security/logistics officer. On 18 November 1999, the Commission began its work in Geneva, and later during that month travelled to Darwin, Australia, where it finalized its methods of work, met with several United Nations Mission in East Timor officials, as well as members of the Indonesian National Commission of Inquiry on East Timor. From 25 November to 3 December 1999, the Commission visited East Timor, where it travelled extensively around Dili and surrounding areas to verify material destruction, to hear witnesses and to collect testimonies and documents. During this nine-day period, the Commission received detailed testimonies from more than 170 individuals, as well as information provided by United Nations bodies and agencies, international and non-governmental organizations. The Commission gave special attention to receiving testimony from women victims and it heard accounts from child victims. In addition to first-hand witness statements, the Commission reviewed reports and documents made available by UNAMET and United Nations Transnational Administration in East Timor and international and national NGOs, and took note of the joint report by Special Rapporteurs and initial findings of the Indonesian National Commission of Inquiry on East Timor. The Commission was, however, unable to conduct the planned visit to West Timor so as to obtain first-hand information on the situation of displaced people there. From 5 to 8 December 1999, the Commission visited Jakarta, where it conducted meetings with the Indonesian Human Rights Commission and its National Commission of Inquiry on East Timor, as well as representatives of the Government of Indonesia and NGOs. While the Government of Indonesia had agreed for this visit to take place, it maintained its position that, in view of the fact that the National Commission of Inquiry was established with the task of conducting an investigation on alleged human rights violations in East Timor, the establishment of an International Commission of Inquiry was unnecessary.

12. The Commission of Inquiry completed its work within seven weeks and, in preparing its report, carefully considered the testimony of witnesses, the reports of experts, information provided by the United Nations, reports of other organizations, its own observations in East Timor, as well as information and views provided by the Government of Indonesia and the Indonesian Commission of Inquiry. On 31 January 2000, the Secretary-General released the Commission's report to the Security Council, the General Assembly and the Commission on Human Rights.¹² The report, *inter alia*, concluded that there had been "patterns of gross violations of human rights and breaches of humanitarian law which varied over time and took the form of systematic and widespread intimidation, humiliation and terror, destruction of property, violence against women and displacement of people",¹³ and that "patterns were also found relating to the destruction of evidence and the involvement of the Indonesian Army (TNI) and the militias in the violations".¹⁴ The report called for the rapid return of displaced persons back to East Timor, the disarmament of the militias in West Timor and demobilization of all non-regular forces in East Timor, further investigations, prosecutions, reparations for victims, and the establishment of an international human rights tribunal for East Timor.¹⁵ Subsequently, Indonesia established the Ad Hoc Human Rights Court for Timor-Leste in Jakarta to try individuals responsible, *inter alia*, for crimes against humanity committed in April and September 1999 in East Timor. The Serious Crimes Unit and Special Panels for Serious Crimes were established in 2000 by UNTAET to conduct investigations, prosecutions and judicial proceedings relevant to crimes against humanity and other serious crimes committed in East Timor.

B. International Commission of Inquiry for Togo

13. In 2000, OHCHR provided support to the International Commission of Inquiry for Togo. Allegations of human rights violations during the events set off by the death of the former President of Togo in February 2005 have warranted further dispatching of the OHCHR mission to the country (see section II below, "Fact-finding missions").

14. The International Commission of Inquiry for Togo was established on 7 June 2000 under the auspices of the United Nations and the Organization of African Unity (OAU), at the request of the Government of Togo, to verify the truth of allegations contained in an Amnesty International report of 5 May 1999 that hundreds of extrajudicial executions had taken place in Togo during 1998. This was in a follow-up to the statement delivered by the Chairperson of the Sub-Commission on the Promotion and Protection of Human Rights on 20 August 1999, endorsing the proposal of the Government of Togo requesting the Secretaries-General of the United Nations and the Organization of African Unity to set up the commission of inquiry in accordance with international norms.

15. The United Nations and OAU jointly appointed three international experts as members of the Commission. OHCHR created a relatively small secretariat composed of eight staff, including two support staff and two security officers. The Commission held its first meeting in Geneva from 18 to 22 September 2000, at which it adopted its rules of procedure, studied background documentation and discussed its methods of work. During its second meeting in Geneva, from 18 to 22 September 2000, the Commission prepared its field mission. From 11 November to 12 December 2000, the Commission conducted a five-week field mission to Togo and the neighbouring countries of Benin and Ghana. The Commission, *inter alia*, thanked

the authorities of Togo, Benin and Ghana for their cooperation and noted that the mission had enabled it to collect the data and information necessary for the discharge of its mandate. The Commission heard representatives of the Governments of Togo and Benin, the heads and members of several foreign diplomatic missions, representatives of Amnesty International and other international and national human rights organizations, journalists and more than 60 witnesses, in both Geneva and the field. It also held several working meetings with the National Commission set up by the Government of Togo to serve as a liaison body. The Commission collected numerous documents, photographs and pieces of evidence from the concerned persons and institutions. During its third meeting in Geneva from 15 to 22 December 2000, the Commission finalized and adopted its report.

16. On 26 December 2000, the Commission transmitted its report to the Secretaries-General of the United Nations and the Organization of African Unity. The Commission's report, inter alia, concluded that "allegations of extrajudicial executions in Togo should be given due consideration"¹⁶ and that the mentioned facts "point to the existence of a systematic pattern of human rights violations in Togo in the course of 1998".¹⁷ The Commission also made several recommendations, including "the appointment of a special rapporteur on the situation of human rights in Togo".¹⁸ In February 2001, based on the request of the Secretaries-General, the High Commissioner transmitted the report to the Commission on Human Rights. In April 2002, the Commission ended its consideration of the human rights situation in Togo under its confidential procedure. In 2000, the Government of Togo agreed to withdraw its criminal complaint brought against the Secretary-General of Amnesty International and three Togolese nationals in connection with the Amnesty International report of 1999, once the Commission commenced its work in Togo.

C. The Human Rights Inquiry Commission to Investigate Violations of Human Rights and Humanitarian Law in the Occupied Palestinian Territories after 28 September 2000

17. OHCHR provided support to the Human Rights Inquiry Commission established in January 2001 to investigate violations of human rights and humanitarian law in the occupied Palestinian territories after 28 September 2000. In November 2000, the High Commissioner for Human Rights visited the occupied Palestinian territories at the urgent request of the Commission on Human Rights.¹⁹

18. The Human Rights Inquiry Commission was established pursuant to Commission on Human Rights resolution S-5/1, adopted at its special session, on 19 October 2000, which was later endorsed by the Economic and Social Council in its decision 2000/311 (22 November 2000), "to gather and compile information on violations of human rights and acts which constitute grave breaches of international humanitarian law by the Israeli occupying Power in the occupied Palestinian territories and to provide the Commission with its conclusions and recommendations, with the aim of preventing the repetition of the recent human rights violations". The inquiry was thus limited to violations committed by the "Israeli occupying Power in the occupied Palestinian territories", and some perceived its mandate as restricted.

19. On 2 January 2001, the Bureau of the Commission on Human Rights established the Commission of Inquiry comprising of three international experts. OHCHR created a secretariat of 13 persons, including the coordinator, methodology adviser, human rights officers, security

and military expert, and support staff. From 10 to 18 February 2001, the Commission of Inquiry visited the occupied Palestinian territories and Israel. It met with members of the Palestinian authority, non-governmental organizations, the Palestinian Red Crescent, ICRC, international agencies, journalists, lawyers and members of the Palestinian Legislative Council. The Commission also met with Israeli NGOs and Israeli interlocutors, who provided a broader understanding of the context of the conflict and the legal position adopted by the Government of Israel, and spoke with Christian and Muslim leaders. A number of victims of violence in Gaza, Ramallah, Hebron and Jerusalem were also interviewed. The Government of Israel made it clear from the outset that it would not cooperate with the Commission of Inquiry. The Commission, however, was pleased to report that the Government did not in any way obstruct its work and indeed facilitated its visit to Israel and the occupied territories. While the Commission was not able to obtain specific responses to allegations of human rights violations and violations of international humanitarian law or benefit from interaction on these concerns with the Israeli officials, it believed that it had been adequately informed about the official Israeli position through its study of their submissions to the Mitchell Commission and the Government's response to the report of the High Commissioner for Human Rights and by speaking to informed Israeli interlocutors. In the preparation of its report, the Commission was guided by the best available evidence. During its visit to Israel and the Occupied Palestinian Territory, the Commission heard a considerable amount of evidence, experienced violence at first hand, spoke to victims and inspected destroyed properties and the site of some of the worst confrontations. It also took into account the findings of respected NGOs where they were supported by reliable eyewitness accounts and where they coincided with other evidence received by the Commission.

20. The Commission of Inquiry completed its mandate within nine weeks and its report, *inter alia*, concluded that "a comprehensive, just and durable peace is to be sought through negotiations ... that would end the occupation"; "an adequate and effective international presence needs to be established to monitor and regularly report on compliance by all parties with human rights and humanitarian law standards in order to ensure full protection of the human rights of the people of the occupied territories"; and "it seems incontestable that the Israeli Security Forces ... have used excessive and disproportionate force from the outset of the second intifada".²⁰ The Commission also recommended that the Commission on Human Rights should "establish a high-profile periodic monitoring and reporting undertaking to consider the degree to which the recommendations of the report are implemented".²¹ The Commission's report was published on 16 March 2001 and presented to the Commission on Human Rights on 28 March 2001. Commission resolution 2001/7 welcomed "the recommendations contained in the report of the United Nations High Commissioner for Human Rights and those contained in the report of the Human Rights Inquiry Commission, urges the Government of Israel to implement them and requests the Special Rapporteur on the situation of human rights in the Palestinian territories occupied by Israel since 1967, acting as a monitoring mechanism, to follow up on the implementation of those recommendations", and to submit reports thereon to the General Assembly and the Commission on Human Rights.

D. Independent Commissions of Inquiry into the events in Côte d'Ivoire

21. OHCHR has taken an active role in investigating serious international crimes committed in Côte d'Ivoire, including dispatching a fact-finding mission in 2002 and providing support to two commissions of inquiry during 2004. In December 2002, upon the request of the

Secretary-General, the High Commissioner for Human Rights dispatched a fact-finding mission to gather precise information regarding the violations of human rights and international humanitarian law in Côte d'Ivoire.

22. The one-week mission, headed by the Deputy High Commissioner accompanied by two human rights officers, a security adviser, an administrative assistant and a forensic expert, travelled to different parts of the country, spoke to government officials and other leaders, representatives of civil society, human rights organizations, representatives of international and regional organizations and others in a position to assist in assessing the human rights situation. On 24 January 2003, the Secretary-General submitted the mission's report²² to the Security Council which, inter alia, recommended that "it would be important to undertake serious investigations into grave breaches of human rights and humanitarian law" and that there should be no impunity. The majority of the recommendations contained in the report were reflected in the Linas-Marcoussis Agreement signed in January 2003 by the round table of Ivorian political parties under the auspices of France and guaranteed by the international community.

1. Independent Commission of Inquiry on the events connected with the march planned for 25 March 2004 in Abidjan, Côte d'Ivoire

23. The Independent Commission of Inquiry on the events connected with the march planned for Abidjan on 25 March 2004 was established by OHCHR pursuant to the request of the Secretary-General and in response to requests from the President and the Prime Minister of the Government of National Reconciliation of Côte d'Ivoire, as well as from the monitoring committee established under the Linas-Marcoussis Agreement.

24. On 8 April 2004, the Acting High Commissioner appointed three internationally recognized experts as members of the Commission and specified that its mandate would consist of establishing the facts concerning the responsibility for alleged atrocities committed in connection with the planned march. The Commission was supported by four OHCHR staff members and a forensic expert. From 15 to 28 April 2004, the Commission visited Abidjan where it met with several official interlocutors, the commanders of the national armed forces, leaders of all political parties, United Nations officials, the French-led Licorne force, representatives of diplomatic missions, interested local non-governmental organizations, religious leaders and women's groups. Concerned governmental structures, such as the Abidjan detention centre and police stations, were also visited. The Commission expressed its thanks to the President and the Government of National Reconciliation of Côte d'Ivoire, as well as to other individuals with whom it met, for their cooperation and assistance. The principal source of the Commission's findings were extensive meetings and interviews with eyewitnesses, survivors of the events, other individuals and groups of people with first-hand information, testimonies, reports and accounts relating to its mandate.

25. The Commission's report, inter alia, recommended that "criminal investigations before an independent court should be carried out with a view to prosecuting those responsible for the indiscriminate killings on 25 and 26 March 2004"²³ and that an "International Commission of Inquiry needs to be established promptly and properly funded and resourced and should be tasked with investigating all allegations of grave violations of human rights committed in Côte d'Ivoire since 19 September 2002."²⁴ On 13 May 2004, the Secretary-General transmitted the report of the Commission of Inquiry to the Security Council.

2. International Commission of Inquiry into allegations of serious violations of human rights and international humanitarian law committed in Côte d'Ivoire since 19 September 2002

26. The International Commission of Inquiry into allegations of serious violations of human rights and international humanitarian law committed in Côte d'Ivoire since 19 September 2002 was established on 22 June 2004 pursuant to the request from the Security Council in its Presidential Statement,²⁵ in accordance with the Linas-Marcoussis Agreement, and responding to the request from the Government of Côte d'Ivoire. The Commission was mandated to “investigate serious violations of human rights and international humanitarian law committed in Côte d'Ivoire since 19 September 2002”, to “establish the facts and circumstances concerning such violations and, to the extent possible, those responsible for them”, and extend to neighbouring countries its investigations of such violations, to the extent that it deems necessary.

27. Five international experts were appointed as members of the Commission. The Commission was supported by a OHCHR secretariat team composed of six staff, three security officers and a forensic expert. It arrived in Côte d'Ivoire on 15 July 2004 and met with various Ivorian authorities, including the President and key opposition leaders. It undertook its investigations throughout Côte d'Ivoire and visited Burkina Faso, Ghana, Liberia and Mali.

28. The Commission completed its work within three months. On 23 December 2004, the Commission's report was transmitted to the Security Council. The report has a confidential annex with a list of names of persons allegedly involved in serious violations of human rights and international humanitarian law committed since 19 September 2002. As of January 2006, the report had not yet been discussed by the Security Council and had not been made public. OHCHR has preserved all written materials and records of the Commission of Inquiry, which could be relevant for further action and shared with the ICC or an ad hoc tribunal, if the Security Council so decides.

E. International Commission of Inquiry on Darfur

29. OHCHR has further been active in responding to the situation in Darfur, including by dispatching a mission to Chad and the Sudan in April 2004²⁶ and by providing support to the International Commission of Inquiry on Darfur established in October 2004.²⁷

30. The International Commission of Inquiry on Darfur was established in September 2004 by Security Council resolution 1564 (2004), adopted under Chapter VII of the Charter of the United Nations “to investigate reports of violations of international humanitarian law and human rights law in Darfur by all parties”; “to determine also whether or not acts of genocide have occurred”; and “to identify the perpetrators of such violations”, “with a view to ensuring that those responsible are held accountable”. This was the first time that an international commission of inquiry had been created with such a comprehensive mandate, including specific requests for formal determination of whether “genocide” had occurred and for the identification of perpetrators.

31. In October 2004, the Secretary-General appointed five international experts as members of the Commission and requested that the Commission report back on their findings within three months. OHCHR created a secretariat composed of 30 staff, including legal researchers supporting the day-to-day work of the Commissioners, as well as field-based investigative teams composed of investigators, military analysts, experts in gender violence and forensic experts. This was the first time that a commission of inquiry was supported in such a comprehensive way.

32. On 25 October 2004, the Commission started its work in Geneva and discussed and agreed upon its terms of reference and methods of work. Subsequently, the Commission and the investigative team visited and closely examined a total of about 40 sites and locations in Darfur and travelled to Chad, Eritrea and Ethiopia. They interviewed hundreds of victims and witnesses. A database was developed to organize 20,000 pages of material and to record the incidents analysis. During its presence in the Sudan, the Commission also held extensive meetings with representatives of the Government, the Governors of the Darfur States and other senior officials in the capital at the provincial and local levels, members of the armed forces and police, leaders of rebel forces, tribal leaders, United Nations representatives and NGOs. The Commission noted that both the Government of the Sudan and the rebel groups had willingly accepted to cooperate with the Commission.

33. The Commission completed its mandate within the three months and elaborated a comprehensive report that described its terms of reference, methodological approach, activities, overview of the historical and social background to the conflict, as well as a detailed description of the Commission's four key tasks and its findings in that respect. On 27 January 2005, the Commission submitted a full report on its findings to the Secretary-General and provided him with a sealed file containing the names of 51 individuals suspected of committing international crimes in Darfur to be handed over to a competent prosecutor. The Commission decided to withhold the names of these persons from the public domain so as to ensure respect for due process and the rights of the suspects and also to ensure the protection of witnesses from possible harassment or intimidation.

34. According to its mandate, the Commission considered a broad range of accountability measures and strongly recommended that the Security Council refer the situation of Darfur to the International Criminal Court, pursuant to article 13 (b) of the ICC Statute. The Commission held the view that ICC was the only credible way of bringing alleged perpetrators to justice and strongly advised against other measures. Additionally, the Commission considered that the Council must act not only against the perpetrators, but also on behalf of the victims. It therefore proposed the establishment of an International Compensation Commission, designed to grant reparation to the victims of the crimes, whether or not the perpetrators of such crimes had been identified. The report of the Commission of Inquiry has been noted for its comprehensiveness, including the detailed factual account of the situation, clarification of the legal principles which could be relied upon as precedents in the future, as well as its contribution to the follow up by the Security Council and efforts to bring an end to grave violations of humanitarian law and human rights law in Darfur.²⁸ It has been suggested that the report "should, in many respects, be seen as a model for future responses to comparable crisis situations".²⁹

F. Referral by the Security Council of the situation in Darfur to the International Criminal Court

35. On the basis of the findings of the International Commission of Inquiry on Darfur, the Security Council, in its resolution 1593 (2005) of 31 March 2005, decided “to refer the situation in Darfur since 1 July 2002 to the Prosecutor of the International Criminal Court”.³⁰ The resolution further invited the Prosecutor “to address the Council within three months of the date of adoption of this resolution and every six months thereafter on actions taken pursuant to this resolution”. This first Security Council referral to ICC constitutes a historical development in an effort to combat impunity. The Secretary-General commended the Council “for using its authority under the Rome Statute to provide an appropriate mechanism to lift the veil of impunity that has allowed human rights crimes in Darfur to continue unchecked” and congratulated “all Members for overcoming their differences to allow the Council to act to ensure that those responsible for atrocities in Darfur are held to account”.³¹ The process of bringing the findings of the International Commission of Inquiry to the attention of the Security Council and its subsequent follow up further contributed to the institutionalization of human rights consideration by the Council.

36. In April 2005, the High Commissioner for Human Rights handed over to the ICC Office of the Prosecutor (OTP) documentation, video footage and interview transcripts gathered by the International Commission of Inquiry on Darfur. The Prosecutor also received a sealed envelope from the Secretary-General containing the names of 51 individuals whom the Commission had found suspect of committing international crimes in Darfur. On 1 June 2005, after carrying out a preliminary analysis, the ICC Prosecutor determined that there was a reasonable basis to initiate an investigation into the situation in Darfur since 1 July 2002. This determination opened the way to the full exercise of the Prosecutor’s investigative powers under the Rome Statute. In the first phase of the investigation, OTP collected information relating to the universe of crimes alleged to have taken place in Darfur, as well as the groups and individuals responsible for those crimes. In the second phase, the investigation is to focus on a selected number of criminal incidents and those persons bearing greatest responsibility for those incidents.

II. FACT-FINDING MISSIONS

37. This section surveys investigative missions conducted by OHCHR in connection with the events in Andijan, Uzbekistan, during May 2005 as well as the events in Togo from February to May 2005.

A. Mission to Kyrgyzstan concerning the killings in Andijan, Uzbekistan

38. In response to the events in Andijan, Uzbekistan, from 12 to 14 May 2005, the High Commissioner for Human Rights, based on her general mandate as contained in General Assembly resolution 48/141, called on the Government of Uzbekistan to permit the deployment of an international independent investigation to Uzbekistan. After no positive response was received, the High Commissioner decided to send a OHCHR mission to neighbouring Kyrgyzstan to gather information from eyewitnesses who had fled there. The mission was tasked with collecting information on the causes and circumstances of the incidents in Andijan and sought to “gather information from eyewitnesses and others having credible knowledge of the events in and around the city of Andijan, Uzbekistan, since 12 May 2005 with

regard to the alleged serious violations of human rights which took place during that time”, “to the extent possible, establish the facts and circumstances concerning such violations and those responsible for them” and to “make recommendations on the necessity of further investigation”. From 13 to 21 June 2005, the mission, composed of four human rights officers and a security officer, was deployed to Kyrgyzstan where it conducted interviews with eyewitnesses and collected written testimonies about the events relating to the mission’s mandate.

39. On 12 July 2005, OHCHR published the report of the mission which, inter alia, concluded that “grave human rights violations mostly of the right to life were committed by Uzbek military and security forces”; that it was “not excluded, as described by eyewitnesses interviewed, that the incidents amounted to a mass killing”. The report also recommended that a “properly funded and resourced international commission of inquiry were to be established promptly”. Based on the results of the OHCHR mission, the High Commissioner for Human Rights addressed a letter to the President of Uzbekistan reiterating her call for an independent international investigation. Subsequently, in December 2005, the General Assembly in its resolution 60/174 on the “Situation of human rights in Uzbekistan”, strongly called upon the Government of Uzbekistan “to implement fully without any delay the recommendations contained in the report of the mission of the [OHCHR] in June 2005, most notably with respect to granting permission for the establishment of an international commission of inquiry into the events in Andijan”.

B. Fact-finding mission to Togo

40. On 10 June 2005, following the consultations with the Secretary-General and based on her general mandate as contained in General Assembly resolution 48/141, the High Commissioner decided to establish a fact-finding mission to look into allegations of human rights violations in Togo from 5 February³² to 5 May 2005.³³ The Mission was headed by a Special Envoy appointed by the High Commissioner and consisted of four human rights officers, two security officers and one forensic expert, who assessed the human rights issues arising from the conduct of the presidential elections of April 2005, verified reports of alleged violations, compiled information on perpetrators and prepared a report with recommendations aimed at combating impunity for human rights violations and actions to prevent future violence in general. From 13 to 24 June 2005, the mission conducted investigations in Togo and visited the neighbouring countries of Benin and Ghana to interview people who had fled the violence in Togo. While in Togo, the mission met with the new President, the new Prime Minister, several members of the former and the new Government, the United Nations country team, members of the diplomatic community, representatives of civil society, religious leaders and non-governmental organizations. The team interviewed witnesses and other persons whose rights had allegedly been violated, including refugees in Ghana and Benin. After returning to Geneva, the mission reported its findings and recommendations to the High Commissioner.

41. In September 2005, OHCHR published the mission’s report, which emphasized the need to put an end to the culture of impunity that had prevailed during the 38 years of the reign of the former President of Togo. The mission, inter alia, recommended that the principles of truth, justice and reconciliation must constitute the central foundation of all programmes addressing the crisis in Togo.

III. CONCLUSIONS

42. It has been widely recognized that the commissions of inquiry and fact-finding missions can play an important role in combating impunity. Recent international commissions of inquiry have been established with comprehensive mandates, including specific requests for complex legal determinations and identification of perpetrators. As demonstrated in this report, thorough and comprehensive work by the Commission of Inquiry can assist the United Nations intergovernmental bodies, including the Commission on Human Rights and the Security Council, in their decision-making processes on action when serious violations of international human rights law and international humanitarian law are taking place.

43. These initiatives have increasingly required support, including a range of legal, investigative and forensic expertise. OHCHR has been providing increasingly comprehensive support to the international commissions of inquiry and fact-finding missions. In recent years, OHCHR has strengthened its capacity to fulfil this role and, through the High Commissioner's Plan of Action, is committed to further enhancing its capacity and expertise to provide legal and technical advice and support to such investigative missions. The increased support for such activities exemplifies the direction of OHCHR's future endeavours as the Office seeks to play an effective and much stronger protection role, especially at the country level.

Notes

¹ See document E/CN.4/2005/102/Add.1, principle 7.

² See *ibid.*, principle 8.

³ See *ibid.*, principles 9 and 10.

⁴ See *ibid.*, principle 11.

⁵ See *ibid.*, principle 12.

⁶ See *ibid.*, principle 13.

⁷ DPI/1710.

⁸ Recommended by Economic and Social Council resolution 1989/65 of 24 May 1989.

⁹ E/ST/CSDHA/.12 (1991).

¹⁰ OHCHR Plan of Action, para. 62.

¹¹ OHCHR Plan of Action, para. 127.

¹² See A/54/726-S/2000/59.

¹³ *Ibid.*, para. 123.

¹⁴ Ibid.

¹⁵ See *ibid.*, paras. 143-156.

¹⁶ E/CN.4/2001/134, para. 63.

¹⁷ *Ibid.*, para. 68.

¹⁸ *Ibid.*, para. 74.

¹⁹ Commission on Human Rights resolution S-5/1, adopted at its special session, on 19 October 2000.

²⁰ See E/CN.4/2001/121, paras. 111, 114 and 116.

²¹ See *ibid.*, para. 134.

²² See S/2003/90.

²³ See S/2004/384, para. 84.

²⁴ See *ibid.*, para. 86.

²⁵ PRST/2004/17 of 25 May 2004.

²⁶ See E/CN.4/2005/3 for the report of the OHCHR mission.

²⁷ Note also that the High Commissioner for Human Rights, together with the Special Adviser to the Secretary-General on the Prevention of Genocide, visited Darfur in September 2004. Several Special Rapporteurs of the Commission on Human Rights and a Special Representative also visited Darfur.

²⁸ See, The Darfur Commission as a Model for Future Responses to Crisis Situations, Philip Alston, *Journal of International Criminal Justice*, Oxford University Press, 2005.

²⁹ *Ibid.*, para. 1, Introduction.

³⁰ *Ibid.*, para. 1.

³¹ Press release, SG/SM/9797, 31 March 2005.

³² Death of General Gnassingbe Eyadema, the former President of the Republic of Togo.

³³ Official date of the nomination of the new President.
