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PROMOTION AND PROTECTION OF HUMAN RIGHTS

**Study by the Office of the United Nations High Commissioner for Human Rights
on human rights and transitional justice activities undertaken by the human rights
components of the United Nations system***

* The report was submitted after the deadline in order to incorporate the received replies.

Summary

The present report, submitted pursuant to resolution 2005/70 of the Commission on Human Rights, is a study on transitional justice activities undertaken by human rights components of the United Nations system. The present report concentrates on transitional justice activities of the Office of the United Nations High Commissioner for Human Rights (OHCHR) field presences and human rights components of United Nations peacekeeping operations (hereafter field presences). Future reports will include a compilation of lessons learned and best practices, as well as conclusions and recommendations with regard to specific transitional justice mechanisms.

Field presences have been increasingly called upon to provide assistance to transitional justice mechanisms. Such mechanisms, formal and informal, include mixed tribunals established to address past crimes in war-torn societies; truth commissions that take a victim-centred approach and help to establish a historical record and recommend remedial action; reparations programmes that help ensure that justice focuses not only on perpetrators but also victims, and, vetting processes that aid in restoring public trust in national institutions of governance.

Field presences provide a broad range of assistance, from advisory services to more pivotal roles in the design, establishment and implementation of transitional justice mechanisms. Field presences have been involved in assisting in the design of truth commissions and vetting processes, providing legal expertise to review draft legislation of such mechanisms, advisory services to transitional Governments and national assemblies, monitoring judicial accountability mechanisms, lobbying and public awareness-raising, and working with civil society actors to design and implement consultation processes.

To complement and reinforce this work, OHCHR has developed methodological tools to address different aspects of transitional justice, including best practices with regard to truth commissions, prosecution initiatives and vetting. In addition, the Office has developed a tool for mapping the justice sector in post-conflict States and a methodology for monitoring legal systems. These tools are intended to provide practical guidance to field missions and transitional administrations in critical transitional justice and rule of law-related areas. Additional tools will be developed in the area of legacy of tribunals and human rights performance indicators for justice sectors in post-conflict States.

Although United Nations support to transitional justice mechanisms has been generally through OHCHR field presences and human rights components of peacekeeping missions, in some instances, rule of law components as well as United Nations programmes have been increasingly engaged in this field. So as to ensure greater coherence of approach, further clarification of roles and responsibilities regarding United Nations engagement and coordination among United Nations departments, agencies and programmes will be essential.

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I. INTRODUCTION

1. In its resolution 2005/70, the Commission on Human Rights requested the Office of the United Nations High Commissioner for Human Rights (OHCHR) to submit, in consultation with other parts of the United Nations system, civil society and other stakeholders, a study on human rights and transitional justice activities undertaken by the human rights components of the United Nations that would include an analysis of the work accomplished, a compilation of lessons learned and best practices as well as conclusions and recommendations, with a view to assisting countries in the context of transitional justice (para. 4). The present report is submitted in accordance with that request.

2. The present report concentrates on transitional justice activities of OHCHR field presences and human rights components of peacekeeping missions. The present report primarily reflects the information provided in response to a letter, sent in September 2005, by OHCHR to Special Representatives and heads of field presences. OHCHR would like to acknowledge input provided by the Department of Peacekeeping Operations (DPKO), United Nations Office on Drugs and Crime and the Office of the United Nations High Commissioner for Refugees. Future reports will include a compilation of lessons learned and best practices, as well as conclusions and recommendations with regard to specific transitional justice mechanisms.

II. TRANSITIONAL JUSTICE

A. Concepts, frameworks and coordination

3. In the report of the Secretary-General to the Security Council on the rule of law and transitional justice in conflict and post-conflict societies, the Secretary-General articulated a common language of justice for the United Nations (S/2004/616). Defining such concepts was "... essential to understanding the international community's efforts to enhance human rights, protect persons from fear and want, address property disputes, encourage economic development, promote accountable governance and peacefully resolve conflict" (ibid., para. 5).

4. The report of the Secretary-General defined rule of law as "a concept at the very heart of the Organization's mission. It refers to a principle of governance in which all persons, institutions and entities, public and private, including the State itself, are accountable to laws that are publicly promulgated, equally enforced and independently adjudicated, and which are consistent with international human rights norms and standards. It requires, as well, measures to ensure adherence to the principles of supremacy of law, equality before the law, accountability to the law, fairness in the application of the law, separation of powers, participation in decision-making, legal certainty, avoidance of arbitrariness and procedural and legal transparency" (para. 6). Justice was defined as "an ideal of accountability and fairness in the protection and vindication of rights and the prevention and punishment of wrongs. Justice implies regard for the rights of the accused, for the interests of victims, and for the well-being of society at large. It is a concept rooted in all national cultures and traditions and, while its administration usually implies formal judicial mechanisms, traditional dispute resolution mechanisms are equally relevant" (para. 7).

5. Though the concept of transitional justice has been part of the human rights lexicon for many years, it was defined in the report of the Secretary-General as comprising “the full range of processes and mechanisms associated with a society’s attempts to come to terms with the legacy of large-scale past abuses, in order to ensure accountability, serve justice and achieve reconciliation” (para. 8). The definition identified such processes and mechanisms to include prosecutions, reparations, truth-seeking, institutional reform, vetting and dismissals. In addition, the report emphasized that in the context of transitional justice strategies must be “holistic, incorporating integrated attention to individual prosecutions, reparations, truth-seeking, institutional reform, vetting and dismissals, or an appropriately conceived combination thereof” (para. 26).

6. In field presences, United Nations expertise on transitional justice issues can be found within OHCHR field presences, and human rights and rule of law components of peacekeeping missions (e.g., Burundi, Democratic Republic of the Congo, Liberia and Sierra Leone). Though, to date, most transitional justice-related issues are within the domain of the human rights component of peacekeeping missions, rule of law components also have much to offer in the context of judicial reform issues, such as vetting. Elsewhere, other United Nations agencies, funds and programmes also engage in transitional justice-related activities. For example, in Côte d’Ivoire, transitional justice issues are solely within the domain of the rule of law component of the United Nations Operation in Côte d’Ivoire. In Bosnia and Herzegovina, public consultations on the creation of a truth commission have been undertaken by the United Nations Development Programme (UNDP). Though no single entity can or should have exclusivity in the transitional justice area, it will be important that departments, agencies, programmes and funds work together to capitalize upon their respective strengths. The challenge is to ensure that there is coherence, consistency, effectiveness and coordination in political, policy and programmatic work in a way that builds on what the United Nations has learned so far, maximizing efforts and effectively strengthening the capacities of national stakeholders.

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

7. OHCHR support for transitional justice activities is conducted through its transitional justice coordinator, part of the Rule of Law and Democracy Unit, a post that has been operational for more than three years. The Office support to United Nations field presences on transitional justice includes needs assessments, mission planning, selection and deployment of specialized staff and the provision of guidance and support to United Nations staff in the form of methodological tools.

8. In 2003, OHCHR, as the United Nations focal point for coordinating system-wide attention to human rights, democracy and the rule of law, initiated the development of rule-of-law tools for post-conflict States. This was to ensure sustainable, long-term institutional capacity within United Nations field presences and transitional administrations to respond to the demand for policy guidance on transitional justice issues. The policy tools are intended to outline the basic principles involved in: Mapping the Justice Sector, Prosecution Initiatives, Truth Commissions, Vetting and Monitoring Legal Systems.

9. The focus of the policy tools is mainly on the strategic and technical challenges faced when advising on the development of transitional justice mechanisms, and sets out the guiding considerations that should be applied. The principles used in the tools have been primarily

garnered from previous experience and lessons learned. The tools are meant to provide field missions and transitional administrations with the fundamental information required to effectively advise on the development of transitional justice mechanisms, in line with international human rights standards and best practices.

10. The policy tool on Mapping of the Justice Sector specifically addresses the issue of mapping the justice sector and some key related institutions and is intended to assist United Nations field staff in understanding how the justice sector actually worked in the State prior to and during the conflict, and how it should function if the rule of law is to take root. It provides an overview of the key institutions, related entities or mechanisms, and identifies priorities such as the linkages between core institutions and the utility of oversight bodies.

11. The policy tool on Prosecution Initiatives sets out basic considerations on prosecution initiatives, and is intended to assist United Nations field staff when advising on approaches to addressing the challenges of prosecuting perpetrators of crimes such as genocide, crimes against humanity and war crimes. The focus of this guidance is mainly on the strategic and technical challenges that these prosecutions face domestically, and sets out the principal considerations that should be applied to all prosecutorial initiatives: the need for a clear political commitment to accountability; the need for a clear strategy; the need to ensure that initiatives are endowed with the necessary capacity and technical ability to investigate and prosecute the crimes in question; the need to pay particular attention to victims; and the need to have a clear understanding of the relevant law and an appreciation of trial management skills, as well as a strong commitment to due process.

12. The policy tool on Truth Commissions sets out best practices and approaches to truth commissions and is intended to assist United Nations and other policymakers in advising on the development of truth-seeking mechanisms. The principles used in this tool have been primarily garnered from previous experience and lessons learned in the implementation of these techniques and mechanisms in United Nations field missions, including those in Sierra Leone and Timor-Leste.

13. The policy tool on Vetting: An Operational Framework sets out an operational framework for vetting and institutional reform and is intended to assist United Nations field staff in advising on approaches to addressing the challenges of institutional and personnel reform in post-conflict States through the creation of vetting processes that exclude from public institutions, persons who lack integrity. The tool is divided into three sections: the concept of vetting in the context of institutional reform and transitional justice; the political conditions of post-conflict or post-authoritarian reform, identifying the sources of a personnel reform mandate, recommending priorities in transitional personnel reform and proposing the development of a public consultation and information strategy; and the operational guidelines themselves.

14. The policy tool on Monitoring Legal Systems addresses human rights monitoring of the justice system through the creation of a methodology. This tool is intended to reflect a comprehensive overview of the principles, techniques and approaches involved in legal systems monitoring, principles which have been primarily garnered from previous experience and lessons learned from United Nations, the Organization for Security and Cooperation in Europe and

non-governmental organizations (NGOs) legal systems monitoring programmes. The objective of this tool is to provide a framework for developing a monitoring programme to analyse institutions and the justice system as a whole from which good practices can be reinforced and bad practices or deficiencies addressed.

15. In 2006, OHCHR will be developing additional tools focusing on the legacy of hybrid tribunals and human rights performance indicators for justice sectors in post-conflict States.

16. In July and October 2005, OHCHR held regional meetings in, respectively, Monrovia and Amman. The objective of the meetings was to take stock of the transitional justice-related activities in the respective regions (e.g., monitoring prosecutions of war crimes and vetting law enforcement); to introduce OHCHR rule of law tools and strategize on the steps to ensure their effective implementation. The meetings were attended by staff from United Nations field presences as well as DPKO, UNDP and national experts on transitional justice.

17. From 26 to 30 September 2005, OHCHR conducted a preparatory assessment mission to Burundi with the primary objective of discussing the process of United Nations engagement and coordination with United Nations Operation in Burundi (ONUB) in connection with the preparations for the establishment of a mixed truth commission and a chamber within the court system of Burundi, as requested by the Security Council in its resolution 1606 (2005). Upon the recommendation of the OHCHR mission, and pending the development of a framework document for United Nations negotiations with the Government of Burundi, ONUB has created a transitional justice working group that will serve as a forum for information exchange and analysis as well as the facilitation of transitional justice support, including the development and implementation of national consultations.

18. OHCHR has also developed partnerships with various actors involved in transitional justice policy development. The International Centre for Transitional Justice (ICTJ) provided expert advice, including technical assistance, with respect to issues pertaining to transitional justice, including substantial input to the rule of law tools on Vetting, Prosecution Initiatives and Truth Commissions. The Foreign and Commonwealth Office of the United Kingdom has provided funds for the OHCHR project on legacy and hybrid tribunals.

C. Transitional justice activities of United Nations field presences

19. The transitional justice activities of United Nations field presences have become considerable over the past few years. The array of activities ranges from technical advice and assistance, including the application of the relevant international human rights standards to such mechanisms, training relevant legal actors including the judiciary, law enforcement, corrections officials, public prosecutors, legal aid programmes, law societies and bar associations, university law faculties, paralegal programmes, and relevant NGOs. Field presences also assist Governments and civil society in designing and implementing consultative processes and outreach programmes. The following is a comprehensive overview of transitional justice activities of United Nations field presences.

1. Africa

20. The human rights component of the United Nations Organization Mission in the Democratic Republic of the Congo (MONUC), in accordance with its mandate, has made combating impunity one of its primary activities. A truth and reconciliation commission (TRC) has been functioning for over one year, but despite the efforts of MONUC and civil society, it has never had the credibility, independence or competence to properly conduct its work. It has limited itself to mediation and has not undertaken any investigation into serious human rights violations. MONUC is working with local and international civil society partners to reflect on the need for a more nationally owned and respected TRC to be created after the forthcoming elections. Given the various weaknesses of TRC, no serious reparations programme for victims of serious violations has been initiated. Pending the creation of a new TRC, MONUC is working with local civil society groups to help victims introduce reparations claims in criminal trials, by constituting themselves as *partie civile*. With regard to judicial accountability, although in 2005 several militia leaders and some soldiers responsible for serious abuses have been arrested or sentenced, impunity remains endemic. In the short term, MONUC plans to intensify the logistical and technical assistance being offered to military and civilian prosecutors, in order to assist them in conducting more effective investigations. MONUC also plans to help military prosecutors establish and train a small cell of specialized investigators, who could be deployed throughout the country to conduct complex investigations into serious violations of human rights and humanitarian law. With regard to vetting, MONUC is intending to assist the authorities in implementing serious vetting programmes following the forthcoming elections.

21. In July 2002, the President of the Transitional Government of Burundi requested the United Nations to establish an international judicial commission of inquiry as provided for in the Arusha Peace and Reconciliation Agreement (also known as the Arusha Agreement). In May 2004, the Secretary-General sent an assessment mission to Burundi to evaluate the feasibility of creating such a commission. In the report of the Secretary-General transmitted to the Security Council in March 2005 (S/2005/158), the assessment mission recommended the establishment of a mixed international-national truth commission and a mixed special chamber in the court system of Burundi. The Special Chamber proposed would have the competence to prosecute those bearing the greatest responsibility for the crime of genocide, crimes against humanity and war crimes. Its temporal jurisdiction would be limited to specific phases of the conflict and would include, as a minimum, the events between 1972 and 1993, inclusive. In June 2005, the Transitional Government indicated its acceptance of the United Nations recommendations and its intention to negotiate the modalities of United Nations support for the establishment of the two mechanisms.

22. On 20 June 2005, the Security Council adopted a resolution requesting the Secretary-General to undertake consultations with the Government and Burundian stakeholders concerning the implementation of the recommendations contained in the report, and to report back to the Security Council by 30 September on the structure, costs and implementation calendar of the two mechanisms. Burundi's post-transition Government assumed office in August and indicated its intention to support the United Nations recommendations. On 26 October, the new Government nominated a technical team to work with the United Nations on the establishment of a TRC. Following a recommendation by an OHCHR assessment mission, all United Nations transitional justice assistance will be coordinated by a Transitional

Justice Working Group which will include human rights and rule of law experts from ONUB as well as representatives of OHCHR-Burundi under the guidance of the United Nations Office of Legal Affairs and OHCHR. The Working Group will prepare an integrated United Nations support strategy outlining proposed United Nations support, describing methodologies, modalities of cooperation and budget and resource implications following negotiations with the Government of Burundi. Once the negotiations are completed and the transitional justice-related tasks clearly defined, a Transitional Justice Unit will be established within the ONUB's Human Rights Section as part of the integrated human rights presence in Burundi.

23. On 10 June 2005, the transitional assembly in Liberia established a TRC. The human rights component in the United Nations Mission in Liberia (UNMIL) and OHCHR played a significant role in the consultation process leading up to the promulgation of the law, which superseded a previous statute that had created a TRC. In 2004, the human rights component launched a project, in cooperation with civil society and the National Transitional Government, to prepare the draft legislation, which included a five-county consultation process to talk to community leaders about content and process. This was followed by a national workshop, attended by civil society and international consultants. A follow-up 12-day drafting workshop with largely the same composition, resulted in a draft statute that was officially endorsed by the National Transitional Government. The human rights component was actively engaged in the lobbying and public awareness around the draft statute, including public meetings that were held in 10 of the 15 counties and the use of UNMIL radio.

24. The new law provided for a new selection procedure for truth commissioners and the appointment of an international technical advisory committee consisting of three persons to support the work of the commissioners. The selection panel was composed of two representatives appointed by the Economic Community of West African States (ECOWAS) and the United Nations, and five representatives appointed by civil society. On 10 August, a nationwide public call was launched for candidate nominations. This was supported by UNMIL, which publicized the process and distributed nomination forms in all counties. The selection panel, coordinated by ECOWAS, was tasked with screening nominees and preparing a shortlist of candidates for the consideration of the chairman of the National Transitional Government. On 20 October 2005, the Government appointed nine commissioners. The women and men who will make up TRC come from a variety of backgrounds, including the church, legal and NGO sectors. UNMIL will support the capacity-building of commissioners and staff through training on human rights, international humanitarian law, case management and investigations.

25. With regard to vetting in Liberia, in October 2004 United Nations police and the National Transitional Government agreed on basic eligibility requirements for application for employment for the new Liberia National Police and security agencies. According to these basic eligibility requirements, United Nations police registered and vetted all candidates for the Liberia National Police. One of the requirements included that the "applicant must be without criminal record and must not be facing any criminal charges; and must not be subject of any investigation of war crimes, crimes against humanity or any crime that violates international human rights conventions". The human rights component provided its database of past human rights abuses and contacts in civil society to vet candidates during this process. The human rights component has offered to provide support similar to the vetting of the armed forces.

26. The recently established OHCHR Office in Uganda, through its Gulu sub-office, is planning to engage in research and dialogue with legal professionals, human rights NGOs and civil society organizations based in conflict-affected areas in order to explore the possibilities of developing relevant transitional justice mechanisms and processes, including truth and reconciliation processes. One of the priorities will be to cooperate with the Amnesty Commission and other relevant stakeholders, in ensuring that the existing legal framework, including the current amnesty law which has been in effect in Uganda since 2000, adequately represents the interests of all people affected by the war in the North, particularly the victims and their families. OHCHR Uganda will establish a dedicated working group of persons who are interested in, and already working on, issues of transitional justice.

27. In Sierra Leone, OHCHR continued its support to the operations of the TRC. TRC completed the hearings phase in July 2003, and, with the assistance of OHCHR, completed its report and recommendations in 2004, delivering the report to the President on 5 October 2004. Through its programme of assistance to Sierra Leone, OHCHR continues to support the dissemination of the TRC report and the sensitization of the people of Sierra Leone on the findings and recommendations, through the human rights component as its implementing partner. In response to the need for the widest dissemination of the TRC report, the United Nations Assistance Mission in Sierra Leone (UNAMSIL) has created dissemination committees in each district, with the District Human Rights Committees serving as implementing partners for their respective districts. Each implementing partner is supported by a network of chiefdom focal points. Through this structure, the TRC reports will reach every political sub-division of the country. In addition, UNAMSIL has embarked on the summarization of the TRC report from the current 2,000 pages into a booklet of less than 100 pages; public distribution of the summarized version; the training of trainers who will then conduct sensitization seminars in all 12 districts; broadcast of radio programmes; staging of concerts; printing and dissemination of posters, and the staging of debates.

28. In response to publication of the recommendations, UNAMSIL is advocating and providing advice to the Government through the Ministry of Justice to establish a coordinating body for the implementation of the recommendations and to establish the follow-up committee as mandated by the TRC Act. The Government has announced that the National Human Rights Commission, which is not yet in operation, will serve as the follow-up mechanism.

29. UNAMSIL has also supported the work of the Special Court for Sierra Leone through a programme of sensitization on the mandate of the Court. In addition, UNAMSIL continues to monitor and report on the proceedings of the Court.

2. Asia

30. In January 2005, a report entitled, "A call for justice" was presented to President Karzai by the Afghanistan Independent Human Rights Commission (AIHRC). This report was in fulfilment of the mandate given to AIHRC by Presidential decree to undertake national consultations and propose a national strategy for transitional justice and for addressing the abuses of the past. A focal point on transitional justice was then appointed within the President's Office and a task force set up to look into the implementation of the recommendations of the report. The task force, led by the President's Office, and included a senior representative from the United Nations Assistance Mission in Afghanistan (UNAMA) and one from AIHRC.

With the support of OHCHR, the task force formulated an action plan which identified five key areas for action. These five areas are public symbols, institutional reform, truth-seeking and documentation, reconciliation and accountability. In relation to truth-seeking and reconciliation, the action plan proposed a national conference on truth-seeking and reconciliation. After consultation with members of the international community and within Government, the Cabinet approved the Action Plan on Peace, Reconciliation and Justice on 12 December 2005.

31. In preparation for the national conference, in November 2005, OHCHR, with the assistance of UNAMA, and AIHRC, and in cooperation with ICTJ and Global Rights, initiated a countrywide consultation on the "Call for justice" report, with a particular focus on the concept of truth and reconciliation concepts and frameworks. The consultations included approximately 1,500 government officials, tribal and religious leaders, women's groups, victims and academics. The fruits of these consultations were presented to the national conference, organized by OHCHR, in cooperation with UNAMA, and AIHRC, which took place from 13 to 15 December 2005, in Kabul. Participants included representatives from Afghan civil society as well as United Nations and other international experts. Key among the conclusions was emphatic support for a comprehensive approach to transitional justice in Afghanistan with the highest priority given to the immediate removal of human rights abusers from positions of power. There is a strong desire for prosecutions, but there is also awareness that this will not be feasible in Afghanistan for some time. There is also strong support for a process of truth-seeking, but one that is primarily focused on fact-finding and documentation that could be used in vetting and criminal justice processes. Support for reconciliation is more qualified and there is particular concern that it should not result in impunity. Participants were firmly of the opinion that effective transitional justice processes are necessary for durable peace and security. The conference was followed by a technical meeting that identified some of the key, practical steps that would be required for the establishment of truth-seeking and reconciliation mechanisms.

32. With regard to the issue of vetting, in 2005 UNAMA commissioned an international consultant from ICTJ to develop a proposal for reviewing political appointments/appointments made by the President. It is expected that the proposal will be submitted to the President in early 2006. A Transitional Justice Focal Point was also created within the human rights component of UNAMA.

33. In February 2005, the Secretary-General established a Commission of Experts to Review the Prosecution of Serious Violations of Human Rights in Timor-Leste (then East Timor) in 1999. The Commission of Experts sought to review the results of the accountability mechanisms established in Jakarta and Dili. His decision was outlined in his letter to the Security Council dated 11 January 2005 (S/2005/96). The Commission of Experts presented its report to the Secretary-General in May 2005 (S/2005/458, annex II). The report was submitted to the Security Council on 27 June 2005. The report of the Commission of Experts stated that the prosecutions before the Ad Hoc Human Rights Court established by Indonesia as "manifestly inadequate" (paras. 17 and 375) and accuses it of "scant respect for or conformity to relevant international standards". The Commission found that the work of the prosecutors was inadequate, verdicts were inconsistent and perpetrators were not held accountable. With regard to Timor-Leste, the report acknowledged that the United Nations-backed serious crimes process - halted in May 2005 as part of the downsizing of the United Nations Mission of Support in East Timor (UNMISSET) - had attained a "notable degree of accountability" (para. 8),

but observed that it had been hampered by poor planning, inadequate resources, insufficient support from the Government of Timor-Leste, and a lack of cooperation by Indonesia. The Commission recommended that the Serious Crimes Unit and Special Panels for Serious Crimes be revived at least until July 2007, with a clear strategy for the handover of their functions to local institutions. By Security Council resolution 1599 (2005), the United Nations Office in Timor-Leste retains a small presence in these functions.

34. In March 2005, the Governments of Indonesia and Timor-Leste issued a joint declaration establishing a Commission of Truth and Friendship “aimed at dealing with matters pertaining to the events of 1999”. The joint declaration stated that the two Governments “have opted to seek truth and promote friendship as a new and unique approach rather than the prosecutorial strategy”. The Commission of Experts expressed serious reservations about the joint commission concluding that the terms of reference contradict international and domestic law, and offer no mechanisms for addressing serious crimes. The report recommends that the Governments revise the terms of reference as a precondition to receiving international support for this initiative. While the Secretary-General has welcomed the establishment of the joint commission he has indicated to the Governments that because the terms of reference contemplate amnesty for acts of genocide, war crimes and crimes against humanity, the United Nations is not in a position to offer assistance.

35. On 31 October 2005, the chairman of the Timor-Leste Commission for Reception, Truth and Reconciliation (CAVR) presented its report to the President of Timor-Leste. It was presented to Parliament in November. CAVR was established to investigate human rights violations committed in Timor-Leste between April 1974 and October 1999, and to facilitate community integration and accountability for those who committed less serious offences. The report has not been made public. From 2002 to 2005, the human rights unit of UNMISSET placed two international human rights officers in CAVR to provide support to the institution. OHCHR provided various forms of assistance to CAVR, including preparation of a submission concerning human rights violations during 1999, provision of specialist legal advice, assistance with development of the CAVR database, and support for editorial work on the final report.

3. Europe

36. The OHCHR in Bosnia and Herzegovina has been providing assistance with regard to truth and reconciliation-related issues, with a particular focus on utilizing international human rights law to address discrimination as a means of promoting reconciliation. Following delay to the implementation of a draft law on TRC, in 2005 UNDP has been engaged in trying to further develop the concept of a truth-seeking process, by conducting a survey on people’s opinions on retributive and restorative justice. OHCHR has organized a series of round tables with local groups to identify their priority needs and opinions regarding the UNDP proposals. OHCHR has also been actively engaged in trying to ensure human rights standards were upheld in the process of police vetting. In March 2005, the Special War Crimes Chamber of the State Court and the Special War Crimes Department of the Prosecutors Office of Bosnia and Herzegovina started its work, staffed with international and national staff, paving the way for the transfer of cases from the International Criminal Tribunal for the former Yugoslavia (ICTY) to the domestic courts. OHCHR has assisted ICTY and the war crimes court and prosecutors office to develop a strategy for assistance to, and protection of, victims and witnesses.

4. Latin America

37. In 2003, a National Reparation Programme was established in Guatemala to compensate victims of the internal armed conflict ending in 1996. The programme will be executed by a national reparation commission, established in mid-2004 for a period of 10 years. The commission has initiated the creation of a national register for victims. OHCHR Guatemala is offering advice and technical assistance to the commission and to relevant victims' organizations in order to facilitate the implementation of the programme.

38. In June 2005, Law 975, known as the Justice and Peace Law of Colombia was approved by the Colombian Congress and promulgated by the Government of Colombia in July. The stated purpose of the law is to "facilitate the processes of peace and individual or collective reincorporation into civilian life of the members of illegal armed groups, guaranteeing the victims' rights to truth, justice and reparation". It provides judicial benefits, such as reduced prison sentences, to members of illegal armed groups who are implicated in human rights abuses and who have agreed to demobilize. The law placed an obligation on the State "to undertake an effective criminal investigation that leads to the identification, capture and punishment of persons responsible for crimes committed by the members of illegal armed groups", and a duty of the judicial organs and the Procurator-General's Office to adopt measures to organize, systematize and to preserve archives, as well as to guarantee public access to them. In addition, the members of the armed illegal groups who receive judicial benefits in the context of demobilization have a duty to provide reparation to the victims of the crimes for which they have responsibility.

39. In relation to the law's implementation, the OHCHR in Colombia has been providing advice to the Government. This has included a list of questions proposed to help the authorities to take advantage of investigations and interrogations in order to obtain as much information as possible from demobilized persons. In order to improve their investigation efforts, the Office has also promoted better coordination between different units of the Prosecutor-General's Office, in particular those specialized in money-laundering and in the freezing or confiscation of proceeds of crimes and properties. OHCHR has also provided information and advice to victims and NGOs that support the victims' claims for the re-establishment of their rights under the new law.

40. The Office is following closely the developments in the implementation of the Justice and Peace law, and continues to point out areas of concern and possible difficulties and shortcomings in the concrete application of the provisions. Among its weaknesses, the Office has highlighted that the National Committee for Reparation and Reconciliation is not a truth commission and may not have enough independence since all its members are appointed by the Government. Furthermore, the possibilities for the establishment of the truth are seriously impaired by the fact that the law does not establish penalties in case of insufficient disclosure of the facts by an alleged perpetrator. The law does not require the confession of committed crimes as a condition to have access to judicial benefits. Only if a perpetrator omits information intentionally, might the punishment be increased. Another concern is the fact that the law does not address the possible responsibility of the State and its public servants in relation to crimes committed by illegal armed groups. Other difficulties are related to the protection of victims and witnesses. The lack of resources and effectiveness of the existent protection programmes have traditionally discouraged victims and witnesses from giving information and contributing to the

justice system. Finally, the National Committee for Reparation and Reconciliation is not a truth commission as such, since it does not have a direct mandate regarding the establishment of truth concerning violations to human rights and breaches to international humanitarian law.

IV. CONCLUSION

41. As identified in the present report, the Office of the United Nations High Commissioner for Human Rights headquarters, field presences and human rights components of peacekeeping missions are increasingly being called upon to provide a broad range of assistance in the area of transitional justice. Such assistance has included policy tools, assessment missions, advisory services to transitional Governments and national assemblies, design of legal frameworks, monitoring of judicial accountability mechanisms, lobbying and public awareness-raising, and working with civil society actors to design and implement consultation processes.

42. Future reports will include a compilation of lessons learned and best practices as well as conclusions and recommendations regarding specific transitional justice mechanisms, with a particular focus on human rights components' engagement with truth commissions.
