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**SPECIFIC GROUPS AND INDIVIDUALS: MASS EXODUSES
AND DISPLACED PERSONS**

**Report of the High Commissioner for Human Rights
on human rights and mass exoduses**

Summary

At its fifty-ninth session, the Commission on Human Rights adopted resolution 2003/52 entitled "Human rights and mass exoduses" calling on States to accede to relevant international instruments and on States, United Nations agencies and other international actors to work together to prevent mass exoduses and displacement, provide assistance and protection to persons who are displaced, and promote voluntary, safe and dignified solutions to displacement. It requested the High Commissioner for Human Rights to prepare and submit an analytical report at its sixty-first session on the measures taken to implement its provisions as well as obstacles to their implementation.

In response, this report notes that States continue to accede to the relevant international instruments. Yet gaps of ratification and restrictive reservations and declarations remain. Important steps at the national and international levels have been taken to prevent displacement, but ongoing outflows indicate that more can and should be done. States around the world have hosted millions of refugees and millions of IDPs have found some degree of safety and support in their own countries, but the fear of terrorism, resource constraints, institutional problems and issues of access and safety of humanitarian personnel continued to hamper needed assistance and protection. Large-scale returns continued throughout the period in many areas thanks to important efforts by States and international actors, notably the United Nations High Commissioner for Refugees, but problems of forcible return, lack of resources, and insufficient attention to other potential solutions were obstacles in others.

In its resolution 2003/52 the Commission further requested that the High Commissioner prepare a thematic compilation of relevant reports and resolutions of the Commission and the Sub-Commission on the Promotion and Protection of Human Rights. This compilation is included as an addendum to this report (E/CN.4/2005/80/Add.1).

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Introduction

1. At its fifty-ninth session, the Commission on Human Rights adopted resolution 2003/52 entitled "Human rights and mass exoduses", reaffirming the links between gross violations of human rights and mass displacement. The resolution also recognized the complementarity of human rights and humanitarian mechanisms for addressing these issues. It called on States, intergovernmental bodies and international organizations to undertake a number of steps to address the causes of displacement, ensure appropriate care and protection of persons once they have been displaced, and find sustainable and voluntary solutions to the plight of refugees and internally displaced persons (IDPs), which also guarantee their safety and affirm their dignity.
2. In its resolution 2003/52 the Commission further requested the High Commissioner for Human Rights to prepare and submit to the Commission at its sixty-first session an analytical report on the measures taken to implement its provisions as well as obstacles to their implementation, including measures taken by the Office of the High Commissioner for Human Rights (OHCHR), and other relevant United Nations bodies, taking into account information and comments provided by Governments, intergovernmental organizations, specialized agencies and non-governmental organizations.
3. The present report is submitted pursuant to that request. It is divided into a brief background section and four main parts, each of them highlighting measures taken by the various parties addressed by the resolution to implement the mandates of the Commission and the obstacles they have encountered. Section I provides a brief background on developments for refugees and IDPs. Section II discusses issues of accession to relevant international instruments. Section III focuses on the prevention of mass exoduses and displacement. Section IV discusses issues related to the assistance and protection of persons once they have been displaced from their homes. Section V addresses the question of durable solutions, including return. Inasmuch as the resolution seeks information about compliance with its own provisions, this report focuses on developments since its adoption on 24 April 2003.
4. In preparing the present report, the High Commissioner sought information from Governments by means of a comprehensive note verbale issued on 3 August 2004. One Government, that of Azerbaijan, replied to the note. The High Commissioner also sought input from United Nations entities, intergovernmental and non-governmental organizations, and received oral or written contributions from the Office of the United Nations High Commissioner for Refugees (UNHCR), the Inter-Agency Internal Displacement Division of the Office for the Coordination of Humanitarian Affairs (OCHA), the United Nations Population Fund (UNFPA), Amnesty International, Human Rights Watch, the International Catholic Migration Commission, the Quakers United Nations Office, and the United States Committee for Refugees. Information from all of the above sources has been incorporated into the High Commissioner's analysis.
5. In its resolution 2003/52, the Commission also requested that the High Commissioner include, as an annex to the report, a thematic compilation of relevant reports and resolutions of the Commission and the Sub-Commission on the Promotion and Protection of Human Rights. An addendum to the present report (E/CN.4/2005/80/Add.1) responds to that request.

I. BACKGROUND

6. Many refugees and IDPs have found solutions to their plight since the adoption of resolution 2003/52. Over the course of 2003, the number of refugees worldwide dropped sharply for the second year in a row, to 9.7 million, due in large part to significant levels of voluntary repatriation in several parts of the world.¹ The numbers of persons internally displaced by conflict remained stable at nearly 25 million in 2003, with large numbers of newly displaced in some areas being offset in the global figure by large-scale returns in others.²

7. For many others, however, circumstances remained dire. While in some areas, old conflicts were calmed, in others, new fighting broke out causing new outflows of desperate people. The 26 December 2004 tsunami itself displaced over 1 million persons in South Asia. Violence against civilians, as practised by individual criminals, organized groups, insurgent armies, and even national military forces continued to spark massive dislocations in other areas. The fear of terrorism continued to prompt some States to undertake strong measures to control the danger of infiltration, with significant effects on the right to non-refoulement and to seek and enjoy asylum. Meanwhile, millions remained trapped in situations of protracted displacement, significantly reducing their ability to exercise the full range of their human rights.

II. ACCESSION TO INTERNATIONAL INSTRUMENTS

8. Resolution 2003/52 called upon States that had not done so to accede, as far as possible without reservations, to the 1951 Convention relating to the Status of Refugees and its 1967 Protocol, regional refugee instruments, as well as to other relevant human rights and humanitarian instruments.

9. A number of States have taken up this call since passage of the resolution. In 2003, Timor-Leste acceded to the 1951 Convention and its 1967 Protocol and Saint Vincent and the Grenadines acceded to the Protocol, bringing the total number of States that have acceded to at least one of these instruments to 145. In 2003-2004, Albania, the Czech Republic and Uruguay acceded to the 1954 Convention relating to the Status of Stateless Persons, and Albania, Lesotho and Liberia acceded to the 1961 Convention on the Reduction of Statelessness. Comoros acceded to the Convention Governing the Specific Aspects of Refugee Problems in Africa in 2004. It is worth noting, moreover, that 2004 marked the twentieth anniversary of the Cartagena Declaration on Refugees, a highly influential instrument in Latin America and around the world.

10. A number of States have also acceded since April 2003 to the core human rights instruments of relevance to displaced persons and refugees, including 5 new parties to the International Covenant on Economic, Social and Cultural Rights (ESCR),³ 4 new parties to the International Covenant on Civil and Political Rights (CCPR),⁴ 5 new parties to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT),⁵ 2 new parties to the Convention on the Prevention and Punishment of the Crime of Genocide,⁶ 7 new parties to the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW),⁷ 2 new parties to the International Convention on the Elimination of All Forms of Racial Discrimination (CERD),⁸ 1 new party to the Convention on the Rights of the

Child (CRC),⁹ and 29 new parties to the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict.¹⁰ While, by its terms, it does not directly apply to refugees, the entry into force of the Convention on the Protection of All Migrant Workers and Members of Their Families on 1 July 2003 is significant as well, inasmuch as “mixed migration” is very common and issues of asylum-seekers and other migrants are often intertwined, although, of course, special considerations apply to the former group.

11. Moreover, several new members acceded to the primary instruments of humanitarian and international criminal law in this period, including two new parties to the Geneva Conventions of 12 August 1949,¹¹ one new party to the Protocol I, Additional to the Geneva Conventions relating to the Protection of Victims of International Armed Conflicts,¹² and four new parties to the Protocol II, Additional relating to the Protection of Victims of Non-International Armed Conflicts.¹³ Eight States newly acceded to the Rome Statute of the International Criminal Court.¹⁴

12. Accession to the relevant instruments is thus widespread and still growing. Yet important gaps still remain. For example, of the 20 States experiencing internal conflicts in 2003, only 10 were parties to the second Additional Protocol to the Geneva Conventions, which greatly extends the protections afforded in internal conflict by common article 3 of the Geneva Conventions.¹⁵ Likewise, over one quarter of the refugees assisted by UNHCR worldwide were not accorded legal status under the Convention on the Status of Refugees, its 1967 Protocol, or a separate UNHCR mandate as of 2003.¹⁶

13. Even those instruments that have been ratified are sometimes weakened in their application to displaced persons by restrictive reservations and declarations. For example, the Convention on the Rights of the Child provides a host of crucial protections for children - including displaced children - and accession to it is nearly universal. However, a number of States have made and retained reservations or declarations excluding important protections to refugee and asylum-seeking children, such as the right to family unity (art. 9), freedom from arbitrary detention (art. 37 (d)), and to protection and humanitarian assistance for asylum-seekers (art. 22). The Committee on the Rights of the Child has repeatedly expressed concern about such reservations or declarations, including twice since the fifty-ninth session of the Commission (CRC/C/15/Add.231, paras. 8-9 (Japan), CRC/C/15/Add.226, para. 54 (Germany)).

14. Also, although internally displaced persons greatly outnumber refugees worldwide, there is no treaty specifically devoted to their rights. On the other hand, the Guiding Principles on Internal Displacement (E/CN.4/1998/53/Add.2), “a soft law” document compiling and clarifying existing humanitarian and human rights norms relevant to the rights of IDPs, has gained increasing recognition as a useful framework and a standard, as most recently recognized by the Commission in resolution 2004/55. Since the fifty-ninth session of the Commission, the Guiding Principles have served as the basis for new IDP laws or policies in Liberia, Peru and Uganda, and have been highlighted at the ministerial level at the Intergovernmental Authority on Development (IGAD) and the Organization for Security and Cooperation in Europe (OSCE) as well as by the Organization of American States (OAS) and Parliamentary Assembly of the Council of Europe.¹⁷

III. PREVENTION OF MASS EXODUSES AND DISPLACEMENT

15. In its resolution 2003/52 the Commission called upon States to address the human rights situations that lead to mass exoduses and displacement and reaffirmed the need for Governments, intergovernmental bodies and concerned international organizations to intensify their cooperation to this end. Progress in this area was mixed.

Displacement induced by conflict and persecution

16. The number of armed conflicts worldwide (sometimes including more than one in a single State) continued to decrease, from 35 in 2001, to 31 in 2002 and 29 in 2003, after a peak shortly after the Cold War in the early 1990s of 54.¹⁸ As noted in the Secretary-General's interim report to the General Assembly in 2003 on the prevention of armed conflict (A/58/365-S/2003/888), States in some areas of the world made effective recourse to regional organizations to resolve disputes, and United Nations humanitarian and development agencies integrated new conflict-prevention strategies into their programmes and formed new linkages between these programmes and the United Nations political efforts. Yet massive population outflows from conflict continued. In 2003, over 3 million persons were newly internally displaced by conflict and over 300,000 "prima facie" refugees fled their homes en masse.¹⁹ The emergency in Darfur, Sudan, constituted the largest and most serious new crisis in 2003-2004, with over 1.5 million internally displaced and 200,000 refugees fleeing to neighbouring Chad.

17. Obstacles to preventing such conflicts related to the deep-seated human rights issues often at their root, particularly for internal conflicts. As former Representative of the Secretary-General on internally displaced persons, Francis Deng, noted, these include "gross disparities of wealth and opportunity among different groups of people and geographic areas, marginalization and discrimination on the basis of race, ethnicity, religion, culture and gender, failures of democratic governance, and a lack of respect for human rights and the rule of law" (E/CN.4/2003/86, para. 79).

18. In addition to those fleeing the general effects of conflict, many continued to seek refuge from individualized persecution and violations of their human rights, as evidenced by the 807,000 asylum applications filed worldwide in 2003.²⁰

Disaster- and development-induced displacement

19. As recognized by the Commission in its resolution 2003/52, conflict and persecution are only two among a number of causes for mass exodus and displacement. For example, approximately 2.6 million persons were reportedly at least temporarily displaced from their homes by natural disasters in 2003-2004.²¹ This total does not include the over 1 million persons displaced by the catastrophic tsunami that struck numerous countries in South Asia on 26 December 2004. Although not as intuitively obvious, human rights have a role to play in prevention of these types of displacements as well. For example, the Special Rapporteur on adequate housing as an element of the right to an adequate standard of living, Miloon Kothari, emphasized in a statement following the devastating earthquake in Bam, Islamic Republic of Iran, in December 2003 that the right to "habitable" housing includes durability of

homes to withstand earthquakes and called on Governments and the international community to elaborate standards to mitigate displacement from future disasters.²² Likewise, in his 28 December 2004 statement about the 26 December tsunami, the Representative of the Secretary-General on the human rights of internally displaced persons, Walter Kälin, highlighted the need for international, regional and national cooperation to prevent displacement from such disasters, noting the absence of a tsunami alert system in the region.²³

20. Furthermore, while annual statistics are not regularly compiled, it is widely acknowledged that the consistently largest cause of displacement worldwide is large-scale development projects, such as dams, mines, pipelines, roads and other infrastructure construction. In 2000, the World Commission on Dams estimated the global total of persons displaced by dams alone to be between 40 and 80 million.²⁴ Assessments sponsored by the World Bank have estimated that 10 million were displaced by development projects every year in the 1990s.²⁵ The Special Rapporteur on adequate housing (E/CN.4/2004/48) and the Special Rapporteur on the human rights and fundamental freedoms of indigenous people, Rodolfo Stavenhagen, (E/CN.4/2003/90) have both recently reported to the Commission about the far-reaching effects of displacement from such projects (particularly on minorities and indigenous peoples), which, they note, are frequently not adequately anticipated or understood by the national and/or international authorities promoting them.

Action 2

21. To address the human rights issues causing these types of mass displacement, States require strong national systems of human rights protection. The Secretary-General identified establishing and strengthening such systems as a primary goal of the United Nations in “Action 2” of his 2002 report, “Strengthening of the United Nations: an agenda for further change” (A/57/387). The Office of the High Commissioner for Human Rights (OHCHR) was asked to take the lead, in partnership with other agencies, to implement this goal.

22. In September 2003, an inter-agency plan of action was developed. It identified the elements of a national system of human rights promotion as: (a) a constitutional and/or legislative human rights framework which reflects international human rights standards; (b) institutions to promote and protect human rights; and (c) procedures ensuring effective implementation, including avenues of redress for human rights holders. The primary “entry point” for the United Nations in strengthening these elements will be its humanitarian and development operations at the country level, whose capacity to understand and integrate human rights norms and concepts into their various activities and interventions with host States will be developed over a period of three years.

23. Pursuant to the plan, which was publicly “launched” on 27 October 2004, guidance materials are currently being drafted and planning for integrating broad-based human rights programming into funding appeals (including Common Country Assessment and United Nations Development Framework (CCA/UNDAF) and Consolidated Appeal Process (CAP)) at the agency and country levels has begun. Twenty-five United Nations country teams have formed inter-agency human rights theme groups to facilitate joint planning and OHCHR has deployed

human rights advisers for resident or humanitarian coordinators in Haiti, Guyana, Nepal, Sri Lanka and Uganda. Systematic efforts will also be made to establish linkages between United Nations country teams and the human rights mechanisms of the Commission on Human Rights and the treaty bodies.

National human rights institutions

24. One of the major partners for United Nations country teams in pursuing these “Action 2” objectives in many States will be national human rights institutions (NHRIs), which are independent governmental entities “vested with competence to promote and protect human rights”.²⁶ The final declarations of two recent round tables of NHRIs concerning migration (Mexico, 2004) and race relations (New Zealand, 2004), as well as of the 2004 annual meeting of the members of the International Coordinating Committee of National Human Rights Institutions, held in Seoul, highlighted the role these institutions can play in addressing the human rights issues at the root of mass exodus and displacement.

Impunity

25. A crucial factor in the prevention of mass exoduses is addressing impunity for human rights violations, particularly for violent crimes such as sexual assault and gender-based violence. NHRIs and other national governmental institutions have a primary role in this regard. At the international level, there were a number of important supporting developments since the fifty-ninth session of the Commission. OHCHR integrated efforts to combat impunity into country-level technical assistance programmes in many countries, for example through training and institution-building support to judicial and penal systems, armed forces and police. It also provided support for high-level commissions of inquiry into such violations in 2004 in Côte d’Ivoire and, at the request of the Security Council, in Darfur, Sudan. The International Criminal Court commenced investigations into alleged crimes in the Democratic Republic of the Congo and Uganda and the Special Court for Sierra Leone commenced trials for war crimes, crimes against humanity, and other serious violations of international humanitarian law. Truth commissions in Peru and Sierra Leone produced final reports.

26. Moreover, after receiving an independent study of the issue of impunity by Diane Orentlicher at its fifty-ninth session,²⁷ the Commission adopted resolution 2004/72, calling on States to strengthen their domestic capacity to combat impunity and to consider the recommendations and best practices identified in the study. Also pursuant to resolution 2004/72, the Secretary-General appointed Ms. Orentlicher as independent expert to update the Set of Principles for the protection and promotion of human rights through action to combat impunity.

Early warning and early action

27. As called for by resolution 2003/52, humanitarian and human rights partners within the United Nations system also continued to develop their early-warning and “early action” systems to react better to budding crises. An inter-agency format combining the data of various early-warning mechanisms developed by individual agencies is being piloted within the Inter-Agency Standing Committee (IASC) with the hope of translating the wealth of information being gathered into timely and coordinated action between the various agencies and organizations.

28. Yet great obstacles still remain to “early action”, as illustrated by the crisis in Darfur, where United Nations and other international actors have encountered numerous difficulties in speedy deployment, despite the sustained and high-level attention the situation has garnered. To identify systemic barriers, the Office for the Coordination of Humanitarian Affairs has commissioned a system-wide study, to be completed in 2005, which will examine international humanitarian response capacity.

IV. ASSISTANCE AND PROTECTION DURING DISPLACEMENT

Protection of asylum-seekers

29. Resolution 2003/52 called on States to ensure effective protection of refugees by, *inter alia*, respecting the principles of non-refoulement and other human rights and fundamental freedoms of refugees and asylum-seekers.

30. A serious obstacle for many States in fully responding to the Commission’s call was the heightened fear of terrorist infiltration following the attacks on 11 September 2001, leading both to dangers of refoulement as well as arbitrary and frequently lengthy detention.

31. The Special Rapporteur on the rights of migrants, Gabriela Rodríguez Pizarro, has noted that, in a number of States, including Japan, South Africa, Spain, the United Kingdom of Great Britain and Northern Ireland, and the United States of America, migrants, including asylum-seekers, were frequently stopped at borders and airports and returned to their countries without adequate access to asylum procedures (E/CN.4/2003/85, paras. 22-25). In her report on her September 2003 visit to Spain, the Special Rapporteur pointed out that Spanish law required airline companies to verify documentation of arriving passengers prior to passage, with an important chilling effect on the right to request asylum (E/CN.4/2004/76/Add.2, para. 33).

32. The Special Rapporteur (E/CN.4/2003/85, para. 25), as well as the Working Group on Arbitrary Detention (E/CN.4/2004/3, para. 72) and Sub-Commission on the Promotion and Protection of Human Rights Special Rapporteur on the rights of non-citizens, David Weissbrodt (E/CN.4/Sub.2/2003/23, paras. 26-27 and E/CN.4/Sub.2/2003/23/Add.3, paras. 13-16), have noted a general trend toward arbitrary and prolonged detention of asylum-seekers, with highly restricted or non-existent access to judicial review and legal assistance.²⁸ The Committee against Torture also highlighted this issue in its concluding observations on the third periodic report of New Zealand (CAT/C/CR/32/4).

33. Of course, some States’ asylum procedures retained inadequacies unrelated to new terrorism concerns which served as an obstacle to full implementation of the rights of refugees and asylum-seekers. Thus, for example, the Committee on the Elimination of Racial Discrimination expressed its concern in concluding observations on the periodic report of the Bahamas that inadequate guarantees, such as legal assistance, interpreters and judicial remedies, existed to guard against refoulement of refugees (CERD/C/64/CO/1). Similarly, the Working Group on Arbitrary Detention noted a “conspicuous absence of law to regulate refugee status” in Argentina, accompanied by mixed detention of those under administrative expulsion

orders and common criminals (E/CN.4/2004/3/Add.3, para. 58). UNHCR has noted increasing violations of the principle of non-refoulement worldwide, and reports that its staff has increasingly been denied access to asylum-seekers.

34. Another obstacle was the widespread misconception that most human rights guarantees (including those concerning detention, judicial access, workers' rights, and other economic, social and cultural rights) do not apply to non-citizens. On the contrary, the Special Rapporteur of the Sub-Commission on the rights of non-citizens pointed out in his report that exceptions to the principle of non-discrimination in international human rights law are actually quite narrow (E/CN.4/Sub.2/2003/23, para. 6). This view was confirmed by general comment No. 31 on the "Nature of the general legal obligation imposed on States parties to the Covenant" of the Committee on Human Rights (CCPR/C/21/Rev.1/Add.13, para. 10), and general recommendation XXX on "Discrimination against non-citizens" of the Committee on the Elimination of Racial Discrimination (CERD/C/64/Misc.11/Rev.3).

State protection of refugees and IDPs and international cooperation

35. Resolution 2003/52 additionally called upon States to ensure effective protection of, and assistance to, refugees and IDPs within their borders. Many States have reportedly failed to do so. For example, the Human Rights Committee (CCPR/CO/80/UGA, para. 12), and the former Representative of the Secretary-General on internally displaced persons (E/CN.4/2004/77/Add.1), have indicated that displaced civilians in northern Uganda have not been provided with adequate assistance and especially with adequate protection from attacks, abductions of children, and looting and harassment by rebel forces.

36. A major obstacle cited by many Governments of affected States is lack of resources. For example, Azerbaijan stated in its contribution to this report that although the Government has dedicated significant portions of its national oil revenue as well as other resources to assistance of IDPs and refugees, the expenditures needed are many times what the Government can provide. Yet it reports that the amount of assistance provided to refugees and IDPs by donor countries and international humanitarian organizations has decreased dramatically in recent years.

37. In this regard, the Commission, in its resolution 2003/52, emphasized the responsibility of States and international organizations to cooperate with countries hosting large numbers of refugees and IDPs to ensure that the assistance and protection needs are met. It also underscored the importance of addressing "forgotten crises". Unfortunately, the phenomenon of forgotten crises persists, as evidenced, for example, by the disparity in funding of the 2004 Consolidated Appeals between Zimbabwe (9.3 per cent of requirements met) and Chad (85.7 per cent of requirements met).²⁹

38. An important measure that has been taken to address this problem is the Good Humanitarian Donorship initiative, which was initiated at a meeting of donor States in Stockholm in June 2003. At that meeting, a set of "Principles and Good Practice of Humanitarian Donorship" was endorsed,³⁰ emphasizing, inter alia, that donor assistance

should be allocated equitably according to need and provided in a timely and coordinated manner. Efforts to put these principles into practice have begun with the development of a donor peer review programme, changes in the funding policies of some donors, and pilot coordination projects implemented in Burundi and the Democratic Republic of the Congo.

Humanitarian access and security

39. For international humanitarian organizations, an ongoing obstacle to ensuring assistance and protection to displaced populations was lack of access. Although the obligation to facilitate humanitarian access is well entrenched in humanitarian and human rights law, and was strongly asserted in resolution 2003/52, among many other resolutions of the Commission and Sub-Commission on the Promotion and Protection of Human Rights, the Economic and Social Council, the General Assembly and the Security Council, parties to many conflicts have failed, or have been unable, to ensure it. In his 14 December 2004 briefing to the Security Council, the Under-Secretary-General for Humanitarian Affairs and Emergency Relief Coordinator, Jan Egeland, noted progress in achieving access to displaced persons in northern Uganda, but increasing difficulties in reaching displaced and other civilians in eastern Democratic Republic of the Congo, Côte d'Ivoire, and Afghanistan. He further noted that many parts of Darfur presented the "worst obstacles to humanitarian access", with multiple ceasefire violations by both sides and escalating fighting, including rebel attacks and aerial bombardment by the Government.

40. Closely related to the issue of access is the problem of insecurity of humanitarian personnel. Not long after the passage of resolution 2003/52, on 19 August 2003, a car bomb exploded at the United Nations headquarters in Baghdad, killing 22 persons, including the Special Representative of the Secretary-General and High Commissioner for Human Rights, Sergio Vieira de Mello. Since that attack, security precautions have been increased, yet attacks have continued on humanitarian personnel of the United Nations and other organizations. As a result, operations to assist refugees and internally displaced persons and other civilians in most of Iraq, many parts of Afghanistan, Côte d'Ivoire, Darfur, Sudan, Uganda and other crisis areas have been sharply curtailed.

41. The infiltration of armed elements into camps was another security issue recognized in resolution 2003/52, affecting camp residents, host communities, and humanitarian actors attempting to assist them. UNHCR has noted a rise of such infiltration in refugee camps, in particular in some African and Asian countries. Where there is a high risk of infiltration, UNHCR has advocated a "ladder of options" identifying appropriate measures proportionate to the threat observed.³¹ It recently reviewed practical approaches to maintain the civilian and humanitarian character of asylum in a round table held in June 2004. As a result and in order to further address the issue, a set of operational guidelines for the separation of combatants from civilians is being prepared.

Mandate gaps and IDPs

42. A further obstacle for international actors in ensuring assistance and particularly protection to IDPs in this period was the ongoing complications arising from mandate gaps concerning this population. Unlike refugees, no single agency is primarily responsible for IDPs.

Instead, the United Nations and its partners have opted for a “collaborative response” to internal displacement, under which each organization collaborates to ensure that the protection and assistance needs of IDPs are met, with coordination by the humanitarian or resident coordinator at the country level and by the Emergency Relief Coordinator at the global level. In 2001, a dedicated IDP Unit was created within OCHA to support the Emergency Relief Coordinator. In 2004, the Unit was expanded and transformed into the “Inter-Agency Internal Displacement Division” (OCHA IDD), with the primary task of providing humanitarian coordinators and country teams with the guidance and tools required to implement the collaborative response in a more effective, transparent and comprehensive manner.

43. Despite this institutional structure, problems remain. In his 2004 report to the Commission, the former Representative of the Secretary-General on internally displaced persons reported on four high-level United Nations studies carried out in the prior year, each of which highlighted failures of awareness and application of inter-agency policy on IDPs and exposed resulting gaps in protection and assistance in the field by humanitarian, development, and peacekeeping actors (E/CN.4/2004/77, paras. 25-29). One of these studies, a survey of nine countries focused on protection of IDPs carried out by the OCHA IDP Unit and the Brookings-SAIS Project on Internal Displacement, called urgently for greatly increased advocacy for the human rights of IDPs by United Nations country teams, United Nations headquarters and agencies and donor States.³²

44. In response to the findings of these studies, the Inter-Agency Standing Committee (IASC), a senior United Nations policy-making body, adopted a new “policy package” on internal displacement in September 2004 clarifying procedures for assigning responsibility among United Nations country teams, including with regard to advocacy, and providing thorough guidance on developing strategies for IDP assistance and protection.³³ The package has been distributed throughout the United Nations system and OCHA IDD is planning a series of regional workshops for OCHA heads of field offices on the package with a view to supporting humanitarian coordinators in implementation.

45. The mandate of the former Representative of the Secretary-General on internally displaced persons expired in 2004. In its sixtieth session, the Commission called on the Secretary-General to create a new mechanism to build on the work of the former Representative and to bring an additional focus on their human rights. Accordingly, in September 2004, the Secretary-General appointed Walter Kälin as his Representative on the human rights of internally displaced persons.

46. For its part, OHCHR continued to explore its role as a protection actor in the field for IDPs, in line with resolution 2003/52’s request for its “particular attention” to human rights issues causing and resulting from mass exoduses. A particularly important step in this regard was taken in 2004 in Darfur, Sudan, where OHCHR has deployed a team of human rights monitors (expected soon to number 32). While still a very small team compared to the size of the geographic area and enormity of the crisis, the deployment of OHCHR monitors in a displacement crisis is a significant milestone and might serve as a model for comparable situations in the future.

47. OHCHR's field offices and the human rights components of peacekeeping missions in a number of other countries, including Afghanistan, Burundi, Colombia and Liberia, also devoted substantial attention to IDP issues. These efforts, as well as the future of OHCHR's role with regard to IDPs, were discussed at a dedicated session of its annual heads of field presences meeting in November 2004.

Protection of women and children

48. In its resolution 2003/52 the Commission recognized the particular vulnerabilities of displaced women and children and called for specific efforts to promote and respect their rights. In particular, the resolution called for efforts to address sexual exploitation and violence by all actors and sought effective implementation of the IASC's Plan of Action on "Protection from Sexual Exploitation and Abuse in Humanitarian Crises".

49. Large-scale gender- and age-specific violence and persecution continued to be the norm in many displacement crises around the world. For example, in Darfur, Sudan, OHCHR missions³⁴ and human rights monitors³⁵ have reported on evidence of widespread rape and sexual violence against displaced women. The Human Rights Committee has highlighted elevated levels of domestic violence and sexual assault against internally displaced women and the lack of prosecutions for such crimes in Colombia (CCPR/CO/80/COL). In northern Uganda, an estimated 10,000 to 12,000 children, the majority of them previously displaced from their homes, have been abducted by the Lord's Resistance Army since June 2002 to be used as porters, soldiers, and sexual slaves.³⁶ Tens of thousands more have become "night commuters", travelling nightly by foot from IDP camps to urban centres to avoid abduction.³⁷

50. A traditional obstacle to addressing such problems was a lack of appreciation of the seriousness of the issue. However, as noted by the High Commissioner for Human Rights in her 28 October 2004 briefing to the Security Council, this has been changing in recent years, as the international community has grown more committed to ensuring the protection of women and children.³⁸ She called on the Security Council to use its influence to generate additional political will and financial support to ensure women's access to justice in conflict and post-conflict situations.

51. UNHCR has sought to encourage gender and age-sensitive asylum procedures and treatment in refugee-receiving States. For example, it has urged that issues such as sexual exploitation, gender-based violence, and under age recruitment and abduction be taken into account in refugee status determinations. As a result, gender-related refugee claims are now increasingly being recognized. It also developed a new *Handbook for Registration*, which allows for gender-sensitive registration and documentation and a *Gender Training Kit on Refugee Protection and Resource Handbook*. Moreover, UNHCR's Executive Committee addressed this issue in a 2003 Conclusion on Protection from Sexual Abuse and Exploitation (Executive Committee Conclusion No. 98 (LIV), 10 October 2003). Similarly, the Inter-Agency Standing Committee (IASC) Taskforce on Gender and Humanitarian Assistance continued work on the development of a system-wide tool kit on gender-based violence aimed at providing practical guidance to humanitarian actors on addressing the issue.

52. In spring 2002, allegations of sexual exploitation and abuse of refugee and internally displaced women and children by humanitarian workers and peacekeepers in West Africa highlighted the need to ensure that the conduct of some United Nations staff does not contribute to already-dangerous environments for these groups. After investigation of these incidents revealed the need for system-wide action, IASC established a task force on the issue, which developed an IASC Plan of Action on protection from sexual exploitation and abuse in humanitarian crises, including core principles of staff conduct.

53. The Plan was widely distributed among United Nations staff by senior leadership, including in a message to all OHCHR staff sent by High Commissioner Mary Robinson in April 2002. In October 2003, the Secretary-General codified the Plan's core principles in a "Bulletin on Special Measures for Protection from Sexual Exploitation and Sexual Abuse" (ST/SGB/2003/13) laying out a zero-tolerance policy for sexual exploitation and abuse by all United Nations staff, telling all staff members to report any suspected violations, and calling on senior managers to take appropriate measures to prevent and punish any violations, including through the appointment of focal points in every country team on this issue. In 2004, UNHCR developed its own Code of Conduct on sexual abuse and exploitation. Each staff member is required to agree to and sign the Code and its provisions are also being integrated into agreements with implementing partners.

54. Violence and exploitation are not the only problems faced by displaced women and children. In many areas, women, particularly female heads of households, face additional burdens in obtaining appropriate health care, employment, and other necessities. Children, too, faced particular burdens, especially with regard to the right to education. UNICEF continued to play a central role in addressing such needs for displaced and other war-affected children around the world. Its efforts included, for example, job training and health-care assistance for former child abductees in Uganda, educational facilities for displaced children in Afghanistan and Georgia, and child empowerment activities, such as programmes training displaced children to advocate for the Convention on the Rights of the Child in Georgia and to reach out to child combatants in Liberia.³⁹ The Human Rights Committee (see CCPR/CO/81/SEMO) and the Committee on the Elimination of Racial Discrimination (see CERD/C/62/CO/7) have also both raised issues of education of displaced children since the fifty-ninth session of the Commission. With support from UNHCR among other partners, the Committee on the Rights of the Child is currently drafting a general comment on the treatment of unaccompanied and separated children outside of the country of origin.

V. DURABLE SOLUTIONS

55. In its resolution 2003/52 the Commission underscored the importance of addressing protracted situations of displacement, calling upon States to promote conditions conducive to voluntary return in safety and dignity and to support the other two durable solutions of local integration or resettlement where appropriate. It further called on OHCHR, UNHCR and other international actors to cooperate, within their mandates and in accordance with international law, in the creation of an environment for a viable and sustained return of refugees and IDPs in post-conflict societies.

56. The period since then has been one of large-scale return for refugees and internally displaced persons in many parts of the world. In Africa, large-scale repatriation of refugees has been ongoing in Sierra Leone, Angola, Burundi, Eritrea and Liberia. Huge numbers of IDPs were able to return to their homes in Angola (1.9 million), Indonesia (500,000) and elsewhere. In Afghanistan alone, nearly 800,000 internally displaced persons and 1 million refugees from Pakistan and the Islamic Republic of Iran have returned since 2003, bringing the total number of returnees since 2002 to 3.5 million. A large-scale return programme for IDPs recently began in Liberia after the development of comprehensive national and United Nations country team strategies for return.

57. In other areas, return programmes have suffered setbacks. The October 2002 ceasefire and progress towards a permanent peace agreement between the Government and the Sudan Peoples' Liberation Movement/Army in Sudan led to hundreds of thousands of spontaneous returns of IDPs to the South of the country and plans for an assisted-return operation for many more as well as over a half million refugees. However, the crisis in Darfur has thrown these plans into doubt. Similarly, although UNHCR had facilitated the return of 15,000 people from Lebanon, Saudi Arabia and Iran (where an estimated additional 100,000 refugees returned spontaneously), hopes for a larger-scale repatriation to Iraq have not materialized in view of the prevailing instability and deteriorating security situation which, indeed, is causing some new displacement. Consequently, UNHCR has maintained its "advice to all States not to forcibly return any Iraqis to their homeland until the situation stabilizes".⁴⁰

58. Protracted displacement with little hope of solutions in sight remains the situation of millions of displaced persons worldwide. At the beginning of 2004, 38 protracted refugee situations accounted for 6.2 million refugees who had been in exile for five or more years. Protracted displacement also characterized a great number of IDP situations, particularly those in south-eastern Europe, the Caucasus, and the Middle East. Among these, many live in situations of legal, economic and social limbo as well as extreme impoverishment greatly impeding their human development and the exercise of countless human rights.

59. Again, issues of resources have been raised as an obstacle to States' ability to facilitate return and other solutions. In Afghanistan, for example, the Government adopted a national IDP strategy in April 2004 calling for a total of US\$ 58 million to be used over the next three years to promote return and other solutions. However, only 1 per cent of the plan's requirements had been funded as of four months after its launch.

60. Ensuring the voluntariness, safety and sustainability of return has also been a challenge in a number of displacement settings since the fifty-ninth session of the Commission. For example, the former Representative of the Secretary-General on internally displaced persons (E/CN.4/2004/77/Add.2), the Human Rights Committee (CCPR/CO/79/RUS) and the Committee on the Elimination of Racial Discrimination (CERD/C/62/CO/7) raised allegations of instances of forcible return of Chechen IDPs into conditions of insecurity in the Russian Federation. In Liberia, the United Nations Mission in Liberia (UNMIL) Human Rights and Protection Section has raised concerns about the designation of "safe" areas for return without adequate investigation and without adequate coverage by national or international police forces.

61. Property restitution issues are an additional common obstacle to successful return of refugees and IDPs. To address these issues, Sub-Commission on the Promotion and Protection of Human Rights Special Rapporteur on housing and property restitution in the context of the return of refugees and internally displaced persons, Paulo Sérgio Pinheiro, proposed a set of draft principles on housing and property restitution for refugees and displaced persons in his 2004 interim report (E/CN.4/Sub.2/2004/22). In its resolution 2004/2, the Sub-Commission welcomed the draft principles and called on OHCHR to circulate them widely for comment in anticipation of the Special Rapporteur's final report to its fifty-seventh session.

62. Another crucial element of providing sustainable return is ensuring adequate rule of law. In addition to its cooperative efforts with other agencies to strengthen national human rights protection systems through the "Action 2" programme discussed above, OHCHR has led discussions on transitional justice in post-conflict societies. In 2004, OHCHR commenced a two-year project on "Rights-sensitive transitional justice in post-conflict and post-crisis countries" to gather best practices, explore principles and rules applicable in such situations, and provide technical support. The primary output from the project will be an "operational manual" for practical use by field missions and transitional administrations in post-conflict States. A workshop on preliminary papers was held in September 2004 and publication of the manual is foreseen in 2005. This manual will supplement ongoing efforts by the United States Institute of Peace and the Irish Centre for Human Rights, to which OHCHR has contributed, to develop model transitional codes for post-conflict justice.

63. As emphasized by the Commission in resolution 2003/52, however, return is not and should not be perceived to be the only solution to forcible displacement. As UNHCR's Executive Committee recently reaffirmed, while voluntary repatriation "remains the preferred solution in the majority of refugee situations", all solutions, including resettlement and local integration should be considered and "a combination of solutions, taking into account the specific circumstances of each refugee situation, can help achieve lasting solutions" (Conclusion No. 101 LV, preambular para. 5). This has not always been implemented by responsible authorities.⁴¹

64. On the other hand, nearly 26,000 refugees resettled to third countries with UNHCR's assistance in 2003, in addition to the many thousands resettled by bilateral agreements between States.⁴² To encourage greater use of this option, UNHCR has helped to organize a Core Group on the Strategic Use of Resettlement, made up of UNHCR, States and other partners, which agreed to a "Multilateral framework of understandings on resettlement" in June 2004. Moreover, in many countries, refugees were locally integrated with access to land and employment and some States, notably Indonesia, Armenia, the Russian Federation, Kyrgyzstan and Mexico, allowed large-scale naturalization of refugees.⁴³

65. In light of the right to freedom of movement, Principle 28 of the Guiding Principles on Internal Displacement also makes clear that alternative solutions, including local integration and resettlement to a new area of the country, should also be made available to IDPs. Global data on alternative solutions for IDPs are not available, but many States have provided assistance to IDPs to establish new roots either in their places of refuge or different areas of the country.

VI. CONCLUSION

66. After over 20 years of consideration by the Commission on Human Rights and the General Assembly, there can no longer be any question about the linkages between human rights and mass exoduses. While, in their early days, human rights and refugee law and mechanisms developed somewhat separately, their overlapping recognition of the inherent dignity of displaced women, men and children and the imperative to ensure their safety and well-being in the face of danger and the loss of their homes and communities have brought both the law and mechanisms together in fruitful ways.

67. In line with this convergence, resolution 2003/52 reaffirmed the Commission's commitment to a comprehensive approach to the rights of displaced persons and of the responsibilities of States and the international community to protect and assist them. As outlined in this report, many steps have been taken to implement that vision, benefiting millions of persons in distress. Yet all actors addressed by the resolution also encountered obstacles to its implementation, ranging from rising national security concerns and funding constraints to normative gaps and misconceptions and problems of humanitarian access and personnel safety. Further cooperation among States, the United Nations and other international partners will be required to overcome these obstacles and to ensure that the rights of persons in situations of mass exodus are respected, protected and fulfilled.

Notes

¹ United Nations High Commissioner for Refugees, "2003 Global Refugee Trends", p. 2 (15 June 2004).

² IDP figures used in this report are derived from the Global IDP Database (www.idpproject.org), operated by the Norwegian Refugee Council (NRC). The NRC was mandated by the United Nations Inter-Agency Standing Committee in 1998 to develop a central clearinghouse on IDP data for the international community.

³ Kazakhstan (2 December 2003); Liberia (22 December 2004); Swaziland (26 June 2004); Timor-Leste (16 July 2003); Turkey (23 December 2003).

⁴ Liberia (22 December 2004); Swaziland (26 June 2004); Timor-Leste (18 December 2003); Turkey (23 December 2003).

⁵ Congo (29 August 2003); Liberia (22 October 2004); Maldives (20 May 2004); Swaziland (25 April 2004); Timor-Leste (16 May 2003).

⁶ Comoros (27 September 2003); Sudan (13 October 2003).

⁷ Kiribati (16 April 2004); Federated States of Micronesia (1 October 2004); San Marino (9 January 2004); Sao Tome and Principe (3 July 2003); Swaziland (25 April 2004); Syrian Arab Republic (27 April 2003); Timor-Leste (16 May 2003).

⁸ Paraguay (17 September 2003); Timor-Leste (16 May 2003).

⁹ Timor-Leste (16 May 2003).

¹⁰ Afghanistan (24 October 2003); Bahrain (21 October 2004); Belize (1 January 2004); Bosnia and Herzegovina (10 November 2003); Brazil (27 February 2004); Cambodia (16 August 2004); Chad (28 September 2003); Chile (31 August 2003); Ecuador (7 July 2004); Greece (22 November 2003); Japan (2 September 2004); Kazakhstan (10 May 2003); Kuwait (26 September 2004); Kyrgyzstan (13 September 2003); Lesotho (24 October 2003); Luxembourg (4 September 2004); Madagascar (22 October 2004); Philippines (26 September 2003); Portugal (19 September 2003); Republic of Korea (24 October 2004); Republic of Moldova (7 May 2004); Senegal (3 April 2004); Slovenia (23 October 2004); Syrian Arab Republic (17 November 2003); Timor-Leste (22 September 2004); Turkey (4 June 2004); United Kingdom of Great Britain and Northern Ireland (24 July 2003); Uruguay (9 October 2003); Venezuela (23 October 2003).

¹¹ Marshall Islands (1 June 2004); Timor-Leste (8 May 2003).

¹² Japan (31 August 2004).

¹³ Bulgaria (24 May 2004); Japan (31 August 2004); Republic of Korea (16 April 2004); Mali (9 May 2003).

¹⁴ Burkina Faso (16 April 2004); Burundi (21 September 2004); Congo (3 May 2004); Georgia (5 September 2003); Guinea (14 July 2003); Guyana (24 September 2004); Liberia (22 September 2004); Lithuania (12 May 2003).

¹⁵ See Mikael Eriksson and Peter Wallensteen, "Armed conflict, 1989-2003", in *Journal of Peace Research*, vol. 41, No. 5, 2004, pp. 625-636, for a list of States with active conflicts in 2003.

¹⁶ "2003 Global Refugee Trends", p. 5.

¹⁷ See generally the reports of the Representative of the Secretary-General on internally displaced persons (E/CN.4/2004/77), and his successor, the Representative of the Secretary-General on the human rights of internally displaced persons (E/CN.4/2005/84).

¹⁸ See Eriksson and Wallensteen, p. 625. These included conflicts in which battle deaths for the year exceeded 25.

¹⁹ See Norwegian Refugee Council, Global IDP Project, "Internal Displacement: A Global Overview of Trends and Developments in 2003", p. 4, and "2003 Global Refugee Trends", p. 4.

²⁰ "2003 Global Refugee Trends", p. 5.

²¹ See "EM-DAT: The OFDA/CRED International Disaster Database" (www.em-dat.net).

²² Press statement, "Bam tragedy must drive resolve towards development of safe housing standards" (7 January 2004), available at www.ohchr.org.

²³ Press statement, “Displacement by tsunami points to the need for cooperation in disaster preparedness, UN Human Rights Expert Says” (28 December 2004), available at www.ohchr.org.

²⁴ World Commission on Dams, *Dams and Development, A New Framework for Decision-Making* (2000), p. 104.

²⁵ See W. Courtland Robinson, *Risks and Rights; The Causes, Consequences and Challenges of Development-Induced Displacement* (Brookings-SAIS Project on Internal Displacement, 2003), p. 3.

²⁶ “Principles related to the status of national institutions”, (“Paris Principles”) available at www.nrhi.net/pdf/GAres.1993.pdf.

²⁷ See E/CN.4/2004/88, “Independent study on best practices, including recommendations, to assist States in strengthening their domestic capacity to combat all aspects of impunity, by Diane Orentlicher.

²⁸ Significantly, the Working Group on Arbitrary Detention advised that “even where illegal immigrants and asylum-seekers are concerned, any decision to place them in detention must be reviewed by a court or a competent, independent and impartial body in order to ensure that it is necessary and in conformity with the norms of international law and that, where people have been detained, expelled or returned without being provided with legal guarantees, their continued detention and subsequent expulsion are to be considered as arbitrary” (E/CN.4/2004/3, para. 86).

²⁹ See OCHA Financial Tracking Service, summary of requirements and contributions by affected country/region as of 19 December 2004, available at www.reliefweb.int/fts.

³⁰ The Principles and other materials describing the Good Humanitarian Donorship initiative are available at www.reliefweb.int/ghd.

³¹ According to UNHCR, this “ladder” includes: (a) enhancing existing national law enforcement mechanisms (e.g. provision of equipment, vehicles, fuel, financial incentives and special training); (b) international support for national security forces (police/military) (e.g. secondment of international police/military officers for training and supervision of local forces); (c) deployment of international fact-finding missions and observers; (d) deployment of international/regional police forces; and (e) deployment of international/regional military forces under Chapter VI (peace-keeping) or Chapter VII (peace-enforcing) of the Charter of the United Nations.

³² A public version of this study has recently been published by the Brookings-SAIS Project on Internal Displacement and is available at www.brookings.edu/fp/projects/idp/protection_survey.htm.

³³ “Implementing the collaborative response to situations of internal displacement” (IASC, September 2004), see www.reliefweb.int/idp/docs/references/PolicyPack31104.pdf.

³⁴ See E/CN.4/2005/3, p. 65.

³⁵ See, e.g., OHCHR, Update on the 180-Day Action Plan and beyond: promotion and protection of human rights in Darfur (14 November 2004), available at http://www.ohchr.org/english/countries/field/docs/darfur_15nov2004.doc.

³⁶ UNICEF, *State of the World's Children 2005*, p. 48.

³⁷ Ibid.

³⁸ The text of the High Commissioner's speech is available at www.ohchr.org.

³⁹ UNICEF, *Annual Report 2003*, p. 22.

⁴⁰ "Iraq: updated UNHCR advisory strongly discourages forcibly return", UNHCR press release, 22 October 2004.

⁴¹ The former Representative of the Secretary-General on internally displaced persons raised such concerns, for example, in his report on his mission to the Russian Federation (E/CN.4/2004/77/Add.2, p. 32).

⁴² 2003 *Global Refugee Trends*, p. 4.

⁴³ Ibid., p. 5.
