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SPECIFIC GROUPS AND INDIVIDUALS

MASS EXODUSES AND DISPLACED PERSONS

**Report of the Representative of the Secretary-General on the human rights
of internally displaced persons, Walter Kälin, submitted pursuant to
Commission on Human Rights resolution 2004/55**

Summary

At its sixtieth session, the Commission on Human Rights requested the Secretary-General to create a new mechanism on internally displaced persons (IDPs) to build on the work of the Representative on internally displaced persons, Mr. Francis Deng, whose term ended in July 2004, and to bring a further focus on the human rights of IDPs. In September 2004, the Secretary-General appointed Professor Walter Kälin as his Representative on the human rights of internally displaced persons.

In this first report to the Commission, the Representative describes activities taken since the last session, including those that he has been able to undertake himself in the brief time since his appointment, as well as those completed by Mr. Deng prior to the end of his term. The greater part of this report, however, is devoted to a reflection on the meaning and challenges of “protection” for IDPs within the framework of his mandate.

The Representative notes that important progress has been made at the international level in conceptualizing protection for IDPs, including through the growing acceptance of the Guiding Principles on Internal Displacement and the adoption of a new IDP policy by the United Nations Inter-Agency Standing Committee (IASC) in September 2004. However, a lack of appreciation of the particular protection needs of IDPs and the role of United Nations agencies and human rights mechanisms in addressing them remains, as shown by a recently published study on the international community’s efforts to protect IDPs. Moreover, little attention has been devoted to whether and how the international community’s conceptual framework for protection could be applied by Governments in developing their own responses. Yet, States bear the primary responsibility for protecting IDPs.

The Representative reviews the particular protection needs of IDPs that national and international efforts should anticipate and address. He then analyses the definition of protection adopted by the IASC IDP Policy) and its three categories of protection activity: “responsive action”, “environment building”, and “remedial action”. He proposes a complementary categorization of protection activities that takes into account the primary role and responsibility of States: (1) actions to prevent violations of rights of IDPs under human rights and humanitarian law, (2) actions to stop existing or ongoing violations of rights of IDPs under human rights and humanitarian law, (3) actions to prevent the recurrence of human rights and humanitarian law violations, and (4) actions to ensure remedies (including rehabilitation, restitution, compensation and satisfaction) for those whose rights have been violated.

He concludes with a programme of protection-related activities that he plans to undertake in the four proposed categories of protection of the human rights of the IDPs.

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Introduction

1. In 1992, the Commission on Human Rights adopted resolution 1992/73, calling on the Secretary-General to appoint a representative on the issue of internal displacement. In response, the Secretary-General appointed Mr. Francis Deng as his Representative on internally displaced persons. In the course of the 12 years he has held this mandate, Mr. Deng made important progress in raising awareness of the problem of internal displacement: developing and promoting a normative framework for addressing it; promoting measures that have strengthened the institutional response; engaging regional organizations and local civil society groups as partners in addressing the challenge of internal displacement; and opening dialogue with Governments and other actors.
2. In 2004, the Commission adopted resolution 2004/55, calling on the Secretary-General to create a new mechanism on internal displacement that would effectively build on the work of Mr. Deng and also bring a further focus on the protection of human rights of internally displaced persons (IDPs). Accordingly, in September 2004, the Secretary-General appointed Mr. Walter Kälin as his Representative on the human rights of internally displaced persons.
3. Resolution 2004/55 called for the Secretary-General's new mechanism to undertake the following tasks: (1) engage in coordinated advocacy in favour of the protection and respect of the human rights of IDPs, (2) continue and enhance dialogues with Governments as well as non-governmental organizations and other actors, (3) strengthen the international response to internal displacement, and (4) mainstream the human rights of IDPs into all relevant parts of the United Nations system.
4. As noted above, the resolution also requested that the mechanism build upon the work of Mr. Deng, whose activities in raising awareness, developing a normative framework for the protection of IDPs based on the Guiding Principles on Internal Displacement (E/CN.4/1998/53/Add.2, annex), disseminating them and promoting their use at the national, regional and international levels, engaging in dialogue with Governments and other relevant actors, undertaking country missions, convening national and regional seminars, providing support for capacity-building of non-governmental organizations and other relevant institutions, and conducting policy-oriented research were specifically recognized.
5. In light of the Commission's call for continuity of Mr. Deng's work, this report begins with a description of activities since the Commission's sixtieth session, including the Representative's own activities, activities undertaken by Mr. Deng prior to the end of his mandate in July 2004, and ongoing projects that the Representative will continue to pursue. It then reflects upon the challenges and meaning of protection for IDPs for Governments and the international community, in particular with regard to the protection needs of IDPs and the types of activities needed to address them. It concludes with the Representative's own programme of protection-related activities that he will undertake pursuant to his newly formulated mandate.

I. REPORT OF ACTIVITIES

A. Advocacy, dialogue and support at the national level

1. Advocacy on Darfur

6. One of the greatest displacement crises of the last year has been in the Darfur region of the Sudan, where over 1.6 million have been internally displaced and 200,000 displaced across the border to Chad. Reports indicate that the security situation in Darfur has continued to deteriorate in recent months as both the Government and rebel forces violated ceasefire agreements and the Janjaweed militia continued their attacks on civilians, including widespread sexual assaults, even as some of them were being ushered into the regular police and military forces. This insecurity has limited humanitarian access in a number of areas, further weakening the means of survival of an already desperate population. Moreover, it is reported that the authorities have in some cases sought to evict IDPs from areas of refuge in order to forcibly send them to areas that are unsafe and unsustainable.

7. In July 2004, Mr. Deng undertook his final country mission to the Sudan as Representative of the Secretary-General on internally displaced persons, focusing on the situation of IDPs in Darfur (see E/CN.4/2005/8).

8. Mr. Deng found that the Government had failed to disarm the Janjaweed militia and to prevent ongoing attacks by them on civilians. He reported that this was largely because of the perceived political difficulty of the Government in being seen to punish its allies in the war against the rebels. Contrary to Government assertions that the security situation for IDPs had considerably improved and that it was now safe for IDPs to return to their villages, Mr. Deng found evidence of persistent insecurity, including ongoing killings, rape and armed robbery, among other abuses.

9. Mr. Deng reported that Sudanese authorities had assured him that IDPs would not be forced to return home against their will. He considered the deployment of the African Union (AU) peacekeeping force, which he identified as a key to bringing a sense of security and trust back to the area, very important and called for enhanced international support for the effort of the AU. He welcomed the agreement between the Government and the Office of the United Nations High Commissioner for Human Rights (OHCHR), allowing for the deployment of a team of human rights monitors, though he noted that a much larger international protection presence was urgently needed.

10. On 11 November 2004, the Representative released a statement publicly calling on the Government to immediately halt forced relocations and other serious violations of the rights of displaced persons by its own officials and act to prevent such actions perpetrated by Janjaweed militia and others, in accordance with its primary responsibility for the security and well-being of its own people, a call he reiterates in the present report. In that statement, he also called on the AU and the international community to increase their capacity for the protection of civilians on the ground as quickly as possible, albeit without reducing resources needed to address other pressing emergencies arising from situations such as those in northern Uganda, Côte d'Ivoire and Somalia.

2. Building national human rights capacity

11. The Representative believes that a crucial means to prevent crises like the one in Darfur is to build the human rights capacity of Governments and civil society at the national level. Of course, this must be primarily undertaken and motivated by national actors themselves, but international actors play an important supplementary role. Ambitious programmes to this end are being carried out by agencies such as OHCHR and the United Nations Development Programme (UNDP), and more generally through the United Nations system in connection with the Secretary-General's action 2 initiative (see A/57/387 and Corr.1). For his part, the Representative seeks to propose some specific projects with regard to norms relevant to IDPs.

12. One important indication of whether Governments are fulfilling their national responsibilities toward IDPs is the existence and implementation of appropriate national policies and laws. During his mandate, Mr. Deng provided technical assistance to a number of Governments in the development of new policies and laws, and the Representative intends to continue this important activity, including the development of a legislative and policy guidebook (see section IV below).

13. National human rights institutions (NHRIs) have a great potential to enhance policy and laws with regard to IDP protection and to effectively monitor their implementation. In 2004, the Brookings Institution-Johns Hopkins SAIS Project on Internal Displacement embarked on a multi-year capacity-building programme on the issue of internal displacement for national human rights institutions in the Asia-Pacific region in partnership with the Asia-Pacific Forum of National Human Rights Institutions. Having conducted initial needs assessment visits to six institutions (in India, Indonesia, the Philippines, Nepal, Sri Lanka and Thailand), the programme will now turn to specific areas of cooperation and technical assistance, including the convening of a regional meeting of NHRIs to share experiences in working with IDPs in 2005.

14. The Representative will also seek to continue and expand upon the support provided by the Brookings Institution-SAIS Project to local civil society organizations, including collaboration in projects to translate and disseminate the Guiding Principles and integrate them into national discourses on internal displacement. To encourage IDP advocates to make greater use of the international and regional human rights machinery, the Representative is supervising the development of a guidebook on this topic, scheduled for publication in 2005.

15. To expand the knowledge base of senior levels of Government, the Representative plans to develop a course on the international law of internal displacement, to be provided to senior government and military officials and civil society representatives at the International Institute of Humanitarian Law in San Remo, Italy, in order to profit from the Institute's past successes, both in instructing participants and in opening dialogue among them and with experts on the practical application of norms on refugees and armed conflict. This could be very valuable in the area of IDP protection as well.

3. Country mission requests

16. Country missions will be an important means for the Representative to pursue dialogues with Governments, NHRIs, civil society and other actors at the country level. The Representative has requested to undertake missions to Bosnia and Herzegovina, Croatia, Nepal, Nigeria, and Serbia and Montenegro in 2005, and at least one additional request is contemplated.

B. Strengthening the international response and mainstreaming the human rights of IDPs

1. Collaborative arrangements

17. Pursuant to his mandate, the Representative will serve as an independent voice for the protection of the human rights of internally displaced persons. At the same time, he considers that it is crucial to his own success to coordinate and collaborate with others who have a role to play in protecting and assisting IDPs.

18. Thus, the Representative will continue to receive support from OHCHR, which services his mandate, and the United Nations Office for the Coordination of Humanitarian Affairs (OCHA). He will also continue the collaboration begun by Mr. Deng with the Brookings Institution-SAIS Project on Internal Displacement, an independent research project that was created in 1994 to support the work of the mandate, which offers staff support and a reservoir of experience that can enhance the Representative's capacity. As of 1 January 2005, the Representative will serve as co-director of the Project, which will become the Brookings Institution-University of Bern Project on Internal Displacement.

19. Moreover, in November 2004, the Representative signed a memorandum of understanding with the OCHA Inter-Agency Internal Displacement Division and the Global IDP Project of the Norwegian Refugee Council to build upon common strengths and avoid any duplication of efforts with these important partners.

20. The Representative will also continue to participate in the Inter-Agency Standing Committee (IASC), a senior policy-making forum made up of human rights, humanitarian and development components of the United Nations, other international organizations and NGO consortiums, where he intends to raise issues relevant to his mandate to mainstream the human rights of IDPs throughout the United Nations system, as well as to call for a response to ongoing protection needs.

2. Regional outreach

21. The Representative believes that regional organizations have an important role to play in fostering cooperation among their members to effectively address issues of internal displacement, as well as in enhancing their cooperation with the United Nations. He will seek to work with them to develop this potential, including through organizing and participating in regional seminars.

22. In this regard, the Representative wishes to draw attention to the Regional Seminar on Internal Displacement in the Americas, organized by Mr. Deng and the Brookings Institution-SAIS Project on Internal Displacement, in partnership with the Government of

Mexico in Mexico City in February 2004 (see E/CN.4/2005/124). The Seminar brought together representatives of Governments, non-governmental organizations, United Nations agencies, the World Bank and regional bodies, leaders of internally displaced communities and other interested partners, to discuss current trends in internal displacement in the region as well as the national, regional and international response.

23. The Seminar produced a framework for action, which set forth the importance of national responsibility and steps that Governments should take to protect, assist and find solutions for IDPs. Civil society organizations are already starting to make use of this framework, which, with its comprehensive scope and practical focus, should be a valuable tool for national action and regional cooperation in other parts of the world as well. In its resolution AG/RES. 2055 (XXXIV-O/04), the General Assembly of the Organization of American States (OAS) acknowledged the achievements of the Seminar and called on member States to consider the Guiding Principles on Internal Displacement in designing IDP policies.

24. Another important regional initiative was the Supplementary Human Dimension Meeting on Internally Displaced Persons convened by the Organization for Security and Cooperation in Europe (OSCE) in Vienna on 4 and 5 November 2004. This meeting, following up on a series of OSCE initiatives on IDPs over the past several years, highlighted the needs of the over 3 million IDPs in the OSCE region. The Representative gave the keynote address to the meeting, in which he highlighted the many protracted situations of displacement in the region due to “frozen” or ongoing conflicts. He noted that in most of the affected countries in the OSCE region, IDPs are not subject to physical danger in their places of refuge but suffer from violations of economic and social rights, such as sub-standard housing, above-average levels of unemployment and poverty, and lack of access to education and health services. He further highlighted troubling incidents of coerced return to situations of insecurity, and called for OSCE to address them as a matter of priority. The Representative also participated in a panel on State responsibility in which he discussed how the Guiding Principles could be employed most usefully in this context.

25. Participants at the meeting called for the greater integration of internal displacement into the work of the organizations and developed a series of actions as a follow-up to decision No. 4/03 of the OSCE Eleventh Ministerial Council in 2003, which also pointed to the “United Nations Guiding Principles on Internal Displacement as a useful framework for the work of the OSCE and the endeavours of participating States in dealing with internal displacement”.

3. Survey of international protection of IDPs

26. It has long been asserted that protection remains the greatest gap in the international response to internal displacement. This conclusion was affirmed by a study¹ based on nine country situations, prepared jointly by the Brookings-SAIS Project on Internal Displacement and the OCHA Inter-Agency Internal Displacement Division, which was launched at a press conference in Geneva by the Representative and the director of the Division, Dennis McNamara, on 26 November 2004, and in New York at a round table sponsored by the Government of Canada on 9 December 2004. This study found that the approach of the United Nations to IDPs is “still largely ad hoc and driven more by the personalities and convictions of individuals on the ground than by an institutional system-wide agenda” and that it also “suffers from a lack of political and financial support from United Nations headquarters and United Nations Member States”.² In their foreword to the study, the Representative and Mr. McNamara highlighted the

formidable challenge these findings presented, but affirmed that the United Nations “must assume a leadership role in advocating for the protection of the displaced and in working with Governments and others in the international community to safeguard the human rights of people caught up in rampages of violence and destruction in their own countries”.³

27. The Representative also plans to base himself on this in his dialogues within the United Nations and with other partners to encourage greater protection of IDPs. As one example, the Representative and Mr. McNamara raised issues discussed in the study, including its call for a greater role for OHCHR in the field, with the heads of the field presences of OHCHR at a special meeting on the role of OHCHR in IDP protection at the annual field presence meeting in Geneva in November 2004.

28. In his last report to the Commission (E/CN.4/2004/77), Mr. Deng noted that a preliminary draft of the study had been presented at the IASC meeting in November 2003 for urgent action. One result of the ensuing discussions was a new policy paper entitled “Implementing the Collaborative Response to Situations of Internal Displacement: Guidance for United Nations Humanitarian and/or Resident Coordinators and Country Teams”, adopted by the IASC in September 2004.⁴ It is widely hoped that this new policy will clarify and streamline procedures to implement collaborative planning and action by United Nations country teams in favour of more effective protection of IDPs.

4. Exploring when displacement ends

29. In 2002, the then Emergency Relief Coordinator, Kenzo Oshima, requested Mr. Deng to advise the United Nations humanitarian system on when an IDP should no longer be considered as such. The Representative commissioned the Brookings Institution-SAIS Project to undertake research and draft criteria on this issue, a task it undertook in partnership with the Institute for the Study of International Migration and the Norwegian Refugee Council’s Global IDP Project.⁵ In parallel, a series of consultative meetings were convened on this issue.

30. The last of these meetings was a round table hosted in Geneva by the Governments of Canada and Switzerland on 27 September 2004 that brought together Governments affected by internal displacement, civil society representatives, donor countries, representatives of humanitarian agencies and other experts. Participants affirmed the need to ensure that these criteria should not provoke an arbitrary or overly legalistic end-point to national or international attention and efforts to protect and assist IDPs. In keeping with the emphasis on the particular needs of displaced persons that had inspired the identification of the category of IDP in the first instance, the participants emphasized the importance of ensuring that criteria on when displacement ends take into account the need to transform a situation of crisis into full rehabilitation and sustainability, and that the displaced have the right to return to their areas of origin, locally integrate or resettle in another location, in accordance with the Guiding Principles.

31. Taking into account the results of this and prior meetings on this subject, benchmarks on what constitutes durable solutions for IDPs will be published by the Project and presented by the Representative to the Emergency Relief Coordinator, Jan Egeland, in early 2005.

5. The role of peacekeepers in protecting IDPs

32. Increasingly, peacekeeping missions around the world are being given the responsibility to ensure the protection of internally displaced persons. However, the Representative feels that more can be done to integrate the human rights of IDPs into the activities of peacekeeping missions.

33. This issue was examined in an occasional paper published by the Brookings-SAIS Project in April 2004.⁶ It also identified some of the obstacles to the effective use of peacekeepers as a protection mechanism, including mixed messages from United Nations management level, the complex and dangerous nature of current conflicts, delay and disparities in the process of deploying troops, and a lack of adequate resources to match the increasingly complex mandates. This paper was discussed in a number of meetings in Washington and New York, including at a meeting organized by the Department of Peacekeeping Operations (DPKO) in October 2004. The Representative intends to continue this dialogue with DPKO and other interested parties in the future.

II. CHALLENGES OF PROTECTION FOR IDPs

34. As the Commission noted in resolution 2004/55, “the human rights needs of internally displaced persons, in particular for protection, are a matter of concern and require greater attention”. Accordingly, the Representative feels it appropriate to use the opportunity presented by this first report to the Commission to reflect on the particular protection needs of IDPs and the kinds of protection activities required to address them. Although the present report focuses on the protection needs of those already displaced, prevention of displacement in the first instance is, of course, far more preferable to attempting to mitigate damages after the fact. The means of achieving prevention are complex, and must take into account the root causes behind conflicts leading to displacement and the general human rights situation in a given country. This complexity is no excuse for neglect of the issue, however, and the Representative fully intends to promote efforts to prevent displacement in the first instance in the various activities under his mandate and to address the issue more directly in future reports.

35. There has been a great deal of discussion about protection issues within the international humanitarian community in recent years, resulting, inter alia, in a broadly agreed definition and a conceptual framework of protection, as well as in a consensus that humanitarian and other international actors can and should act within their mandates to promote protection of civilians in general and IDPs in particular. This is reflected in the recently adopted IASC policy. However, the joint study *Protect or Neglect* showed that despite longstanding commitments to these definitions and concepts at headquarters level a lack of appreciation about the particular protection needs of IDPs and the role of United Nations agencies in addressing them persisted in many areas.⁷

36. More importantly, little attention has been devoted to whether and how this conceptual framework could be applied by Governments in developing their own responses. Yet, as important as international protection is in many situations, Governments must assume the

primary responsibility for protection over the long term, not only because States bear this responsibility under international law, but also because they should have the capacity and authority to manage a society-wide response addressing the full gamut of the types of protection needed by IDPs.

37. The following discussion will therefore reflect on the reasons why particular attention must continue to be paid to IDP protection and how Governments may make use of the conceptual framework developed at the international level. It will propose categorizations both for the protection needs of IDPs and for activities that should be taken to respond to them. It will focus mainly on conflict-induced displacement, although many of the concepts also apply to persons displaced by other causes, including natural disasters.

A. IDPs as a category with special needs

38. At the outset, it is useful to recall that the notion of “internally displaced person” is descriptive of a particular circumstance, namely that of fleeing or of being driven from one’s home. Thus, it refers to the consequences of that forced movement on the lives of the affected persons. In this sense, some of the needs involved are very similar to those of refugees.

39. Unlike refugees, IDPs do not cross international frontiers and, therefore, are not entitled to international protection as a substitute to the diplomatic protection that aliens usually enjoy but that is not available to persons fleeing persecution by their own Government. Because IDPs remain within the borders of the State in which they are displaced, they are considered, as a matter of international law, to be entitled to request protection from that State. Therefore, the legal argument that justified the creation of the status of refugee, the inherent absence of (diplomatic) protection by one’s own Government, does not apply. However, the humanitarian concern about the experience of persons forced from their homes does apply with equal force to IDPs.

40. IDPs are distinguished from other persons by the common types of vulnerability that displacement exposes them to as well by their need for a durable solution to that displacement. Studies on IDPs in recent years have shown that losing one’s home means more than a simple loss of property or shelter. It frequently entails consequences such as increased vulnerability to physical violence, in particular sexual and gender-based violence; lack of the basic necessities of life (e.g., food, water, shelter, clothing, sanitation); disease and impoverishment; and other difficulties.

41. Thus, it is the recognition of and concern about a certain set of vulnerabilities, or “protection needs”, that justifies a special focus on IDPs. Experience in one country after another shows that such specific needs exist and that they are often inadequately taken into account or simply disregarded.

B. Protection needs of IDPs

42. Human rights concepts, while indivisible, provide the best organizing framework for the categorization of the protection needs of IDPs. The Representative would like to highlight four main categories:

(a) Rights related to physical security and integrity (protection of the right to life and to be free of torture and cruel and inhuman treatment, assault, rape, arbitrary detention, disappearances, kidnapping, and threats of such);

(b) Basic rights related to basic necessities of life (e.g., the right to food, drinking water, shelter, adequate clothing, adequate health services and sanitation);

(c) Rights related to other economic, social and cultural protection needs (e.g., the rights to work, receive restitution or compensation for lost property, and have access to education); and

(d) Rights related to other civil and political protection needs (e.g., the right to religious freedom and freedom of speech, personal documentation, political participation, access to courts, and freedom from discrimination).

43. The first and second categories respond to the needs for physical survival and bodily integrity, as guaranteed, *inter alia*, by the right to life. The third and fourth respond to the need to recognize the inherent dignity of human beings. All are equally important, as mere survival without dignity is utterly intolerable, whereas dignity cannot be enjoyed without survival. Accordingly, this categorization is not an attempt to impose a hierarchy of needs (and corresponding rights). While the assistance afforded by humanitarian organizations and agencies contributes to the protection of rights ensuring the basic necessities of life (second category), humanitarian assistance and human rights protection in this area are not identical. Human rights protection goes beyond the mere provision of assistance insofar as it aims at ensuring that violations cease, do not reoccur and that victims of violations are provided with effective remedies including reparation.⁸ Along the same lines, it is necessary to identify the particular protection needs of certain categories of people within IDP populations, such as women, children, the elderly, indigenous peoples and minorities.

44. For Governments and other actors seeking to anticipate IDPs' protection needs, it is helpful to draw upon the experiences of IDPs in different parts of the world. The following sections therefore summarize the experiences of IDPs around the globe, drawing on the reports of Mr. Deng and others who have studied the issue.

1. Physical security and integrity

45. The very nature of coerced movement contained in the notion of "internally displaced person" exposes displaced persons to particular risks of physical harm, especially in situations of armed conflict. In addition to the increased danger of being caught in the crossfire between combatants or being exposed to the perils of landmines, IDPs are vulnerable to physical attacks

by criminals and armed groups seeking to rob them of their scarce resources as they venture into unfamiliar terrain. Boys face higher risks of military recruitment, and women and girls confront the additional risks of sexual assault and exploitation.

46. Of course, many IDPs leave their homes in the first instance because they are fleeing persecution or personal harm from their own Government military forces, paramilitary groups, or insurgent groups that frequently pursue them in their flight. A frequent motive for this persecution is an effort to punish or neutralize the perceived civilian support for political or military opponents.

47. Many IDPs find themselves in camps for at least a portion of their period of displacement. These camps offer important advantages in facilitating the distribution of humanitarian assistance and can also enhance security through sheer numbers. However, they can also pose a number of security challenges. For example, the camps in northern Uganda have become an easy target of pillage by the Lord's Resistance Army (LRA) forces, providing resources such as food and other items, as well as a ready supply of children to be abducted and pressed into service as fighters or as servants, including sexual servants (see E/CN.4/2004/77/Add.1, para. 42). Likewise, in other countries, IDPs in camps have been harassed or attacked by paramilitary groups.⁹

48. Insurgent forces sometimes use camps as "rest and rehabilitation" centres. This leads to an increased presence of weapons and potential for violence inside the camps. Furthermore, the presence of armed groups turns the camps into a military target, thus heightening the potential for attacks and directly affecting the IDPs. One common response by Governments to the risk of militarized camps is to restrict movement in and out of them. However, such action can easily amount to arbitrary detention of thousands of innocent persons, and can greatly hamper their access to food, fuel, water and other necessities outside of the camps, thus threatening their survival.

49. For those IDPs who do not gather in camps, particular security concerns arise as well. For example, many face hostility and physical danger from their host communities, either because of ethnic tension, perceived association of the displaced with one side of the conflict, or simply because of the burden placed on local resources.

50. In many countries, IDPs face forcible return to situations of insecurity. As noted above, the Representative and others have spoken out about reports of such forcible return by the authorities in Darfur, but similar examples can be found around the globe.¹⁰ Yet, the right of IDPs to *safe*, dignified and voluntary return (or local integration or resettlement in another area of the country) as provided by Guiding Principle 28, has been frequently reaffirmed by States in the Security Council,¹¹ the General Assembly,¹² the Commission on Human Rights¹³ and other international forums.¹⁴ Even when return is voluntary, it can be fraught with dangers, for example, from landmines, ongoing harassment by military or paramilitary forces, and even attacks from other civilians. Moreover, the failure to quickly re-establish the rule of law in many post-conflict situations exacerbates the relatively exposed status of many returning IDPs and can leave them particularly prone to harm from criminal activity, sometimes fuelled by the increase of circulation of small arms and the demobilization of soldiers without adequate provision for alternative means for them to make a living.

2. Basic necessities of life

51. Having left behind most of their possessions, their lands and their means of work, many IDPs require immediate and sustained food aid to survive. In this connection, the World Food Programme has noted that, while many persons in conflict situations need food aid, IDPs are particularly vulnerable at the initial stages of their displacement, when they are confined to camps, and during the initial stages of return.¹⁵

52. To their credit, several Governments have taken their responsibility to provide such aid very seriously.¹⁶ Others, however, have failed to do so, often because they have simply failed to prioritize such assistance in their national budgets in favour of military or other needs.

53. In this respect, the Representative notes that even though the right to food as provided by article 11, paragraph 1, of the International Covenant on Economic, Social and Cultural Rights is subject to progressive realization (article 2 of the Covenant), the Committee on Economic, Social and Cultural Rights in its general comment No. 3 (1990), has nevertheless made clear that “a State party in which any significant number of individuals is deprived of essential foodstuffs ... is, *prima facie*, failing to discharge its obligations under the Covenant” (para. 10). Therefore, as stressed in its general comment No. 12 (1999), “[e]very State is obliged to ensure for everyone under its jurisdiction access to the minimum essential food which is sufficient, nutritionally adequate and safe, to ensure their freedom from hunger” (para. 14). Moreover, parallel rights in other human rights instruments and in humanitarian instruments provide for no “budgetary” exception to providing the minimum essential food for survival.¹⁷

54. In order to fulfil the right to food, it is frequently necessary to provide more than the foodstuffs themselves. Cooking implements, storage containers, fuel, and other “non-food items” are minimally required. Other items that IDPs frequently lack but require for survival and are entitled to receive as a matter of right include water, sanitation aids (soap, buckets, sanitary cloths, etc.) and adequate clothing.

55. Where Governments are truly unable to provide these types of aid, they must at least facilitate offers of such assistance from humanitarian organizations. Under humanitarian law, moreover, insurgent groups have a parallel obligation to facilitate and not to interfere with humanitarian assistance. Yet blockages of humanitarian access remain frequent and IDPs are common victims.

56. Another universal need of IDPs is for adequate housing. They frequently suffer the most extreme violations of this fundamental human right, in conditions that are much worse than those of the non-displaced population. Displaced persons have been found in every imaginable living situation, ranging from overcrowded public buildings to mud huts, tents made of torn bits of fabric, railway wagons, iron containers, cardboard boxes, barns and stables, and even no shelter at all. Inasmuch as many of such spaces were never meant for human habitation, conditions can be unbearable, including lack of heat and ventilation, poor sanitation, lack of access to water and transportation and lack of privacy. Moreover, while such arrangements are usually initially conceived as temporary, in many situations of protracted displacement, IDPs find themselves inhabiting utterly inadequate types of shelter for years on end.

57. In part because of overcrowded and overtaxed conditions, IDPs are particularly vulnerable to diseases such as diarrhoea, dysentery, tuberculosis and afflictions of the skin. Given their frequently uneven access to food, IDPs, especially children and the elderly, frequently suffer from chronic malnutrition and anaemia. Moreover, the trauma from events leading to their displacement, as well as the many horrors that accompany it, frequently contribute to mental health issues as well as disability due to physical injuries. Yet access to health services is frequently reduced for IDPs, particularly in areas of return.

3. Other economic, social and cultural protection needs

58. Essentials of survival aside, one of the most serious and frequent concerns of IDPs - both during their displacement and upon return - is lack of access to, and/or means to cultivate arable land. Without land, many IDPs lack food security during their displacement and the means to provide for themselves in the dignified manner that is an essential element of the right to food. In some cases, they lack access because adequate land is not available or has not been provided to them in their area of refuge. In others, IDPs are officially discouraged from obtaining land.¹⁸ Even where land is made available, it often has low agricultural value, or cannot be accessed due to prevailing insecurity, existence of landmines, or other dangers.

59. Moreover, cultivation may be hampered by lack of resources such as seeds, tools, animals and/or machinery. For example, the OCHA Inter-Agency Division reported in October 2004 that IDPs preparing to return to their homelands in Liberia had indicated as their primary request for assistance from international humanitarian agencies, seeds and tools to enable them to begin to plant - but that seeds and tools were not included in the "resettlement packages" that were being prepared for them.

60. More broadly, the issue of property rights is crucial to solutions to internal displacement. In many cases, particularly where displacement is prolonged, returning IDPs find others living on and using their lands. In some cases, these "secondary occupiers" have themselves been displaced from their original homes. In others, those occupying the lands have been aided to do so by the authorities or forces that drove the original owners or occupants away. Antiquated or inequitable titling systems and the loss of documentation can render a just resolution of resulting disputes over ownership of particular lands difficult to achieve, particularly where previous customary norms and communal ownership are not adequately reflected in statutory law. Moreover, even where the laws or judicial institutions are adequate to address the task, authorities sometimes resist their implementation.

61. A related and equally pressing problem for IDPs is lack of employment. In many States experiencing conflict or post-conflict conditions, massive unemployment is endemic and not limited to IDPs. However, IDPs *can* be particularly affected, having left workplaces behind and seeking new types of employment in unfamiliar circumstances, living in sometimes inaccessible locations, and often operating in a discriminatory environment. Where IDPs do find work, it is frequently of a menial and temporary nature.

62. Generally speaking, as a result of losing their property and possessions and subsequent lack of access to land and employment, IDPs frequently face a greater risk of impoverishment, even within generally poor societies. They therefore become "the poorest of the poor" (E/CN.4/1996/52/Add.1, para. 75).

4. Other civil and political protection needs

63. One of the often-neglected human rights is the “right to recognition everywhere as a person before the law”, spelt out in both the Universal Declaration of Human Rights (art. 6) and the International Covenant on Civil and Political Rights (art. 16). In practice, however, this right is crucial for many IDPs, particularly insofar as it applies to personal identification documentation, such as certificates of birth, marriage, or death as well as identity cards, as described by Guiding Principle 20 (2). In many countries, such documents are issued at the local level and those who have fled their home areas frequently encounter a multitude of legal barriers to obtaining or replacing them. As a result of the lack of such documentation, IDPs face many problems, from lack of access to social services, formal employment, banks and schools, to the inability to register to vote, essentially rendering them aliens in their own countries.

64. Just as fundamentally, many IDPs encounter obstacles to their right to freedom of movement, particularly with regard to solutions other than return. In many States across the world, Governments deem return the only solution for internal displacement. Yet circumstances such as ongoing insecurity, “frozen” conflicts, destruction of housing and infrastructure and the accumulation of years of living in a new location may lead IDPs to prefer other solutions such as local integration where they can escape the status of displacement and begin afresh. Conversely, many IDPs are fervently attached to the hope of returning to their homes but are prevented from doing so for the same reasons. Inasmuch as IDPs have the right to choose their own residence, i.e. the solution that is best for them, as noted in Guiding Principle 28, they must be consulted on this issue before programmes are designed and implemented.

5. Protection needs of particular categories of IDPs

65. The majority of IDPs in most situations of mass displacement are women and children. Thus, the protection needs described above are, more often than not, the needs of women and children. In addition, these groups have particular vulnerabilities that must be addressed.

66. Women face a disproportionate burden from displacement. Among their major concerns are sexual and gender-based violence. Massive rape, particularly as a weapon of war, has become an increasingly familiar element of armed conflict. Women and girls who have left behind their homes and community structures of protection tend to be extremely vulnerable to attack. It is not uncommon for the very forces charged with enforcing law and order to abuse their power and rape displaced women. Moreover, women and girls face high threats of rape from other civilians, particularly in camp settings. Likewise, domestic violence and other types of gender-based violence are also reported to increase for displaced women.

67. Women also suffer particular violations of their economic, cultural and social rights. In many countries, displaced women face even greater difficulties finding work or other means to sustain themselves than displaced men. This burden is even greater for women who are heads of households and must also care for children. Some have to turn to prostitution for lack of other means of support. Likewise, women face particular problems in reclaiming their homes upon return, particularly when their husbands have been killed, because of the lack of death certificates or restrictive laws of inheritance that forbid women from inheriting their husbands' property.

68. Displaced women also face particular discrimination in seeking to exercise their other civil and political rights, such as obtaining personal documentation. Women are frequently excluded from participation in decision-making about programming involving IDPs as called for by Guiding Principle 28 (2), even though they make up the majority of those affected.

69. Children are among the most vulnerable to malnutrition, disease, mental trauma and other dire consequences of displacement, inhibiting their growth and personal development. In many countries, displaced children and in particular adolescents, are specifically targeted as easy prey for sexual assault and recruitment into military forces.

70. In addition to exposing them to immediate dangers to their health and safety, protracted situations of displacement can deny children their right to education, essentially robbing them of their future. Even where schools and teachers are available, other factors, such as poor roads, lack of school supplies and lack of adequate clothing can hamper children's attendance and success at school.

71. Other vulnerable groups frequently overlooked in situations of displacement are the elderly and disabled. As noted at the Ministerial Conference on Internal Displacement in the IGAD subregion in September 2003, the elderly and disabled frequently cannot physically escape dangers and are sometimes discriminated against in the distribution of essential assistance, which is reserved for the able-bodied.¹⁹

72. Ethnic minorities and indigenous peoples make up the majority of IDPs in many countries, and face particular dangers upon displacement due to ethnic differences which can lead to discrimination and hostile acts. Despite particular international norms in their favour, indigenous peoples frequently also face special difficulties in reclaiming their lands after displacement, not least because of the failure of formal legal systems to account for traditional methods of communal ownership of land.

C. Frameworks for protection activity

73. What does protection mean in the context of the human rights of IDPs and what kind of activities does it entail? This question arises because the responsibilities and roles of States and international actors are not very clearly laid out in international instruments. The Guiding Principles on Internal Displacement are one important step toward remedying this lack of clarity, but as a compilation of rights and duties they do not address the details of implementation.

74. In a series of workshops convened by the International Committee of the Red Cross (ICRC) between 1996 and 1999, representatives of human rights and humanitarian organizations defined protection as "all activities aimed at ensuring full respect for the rights of the individual in accordance with the letter and the spirit of the relevant bodies of law, i.e. human rights law, international humanitarian law and refugee law".²⁰ This definition has proven quite influential within the international community, and was adopted by the Inter-Agency Standing Committee in its 1999 policy paper on the protection of IDPs, as well as in its most recent policy paper discussed in paragraph 28 above.

75. The ICRC workshop definition is a valuable starting point, not only for describing international protection, but also the protection due by national authorities, who "have the

primary duty and responsibility to provide protection and humanitarian assistance to internally displaced persons within their jurisdiction”, as noted in Principle 3 of the Guiding Principles on Internal Displacement.²¹ By referring to all rights of the relevant bodies of law, the ICRC workshop definition recognizes that civil, political, economic, social and cultural rights are indivisible parts of the whole of human rights and that these elements are also combined in humanitarian and refugee law. It also provides a valuable conceptual link between the activities of humanitarian and human rights actors.

76. To operationalize the definition, the ICRC workshops and the IASC policy paper identified three categories of protection activities: “*responsive action*”, (“any activity undertaken in connection with an emerging or established pattern of violation and aimed at preventing its recurrence, putting a stop to it, and/or alleviating its immediate effects”); “*remedial action*” (“any activity aimed at restoring people’s dignity and ensuring adequate living conditions subsequent to a pattern of violation, through rehabilitation, restitution, compensation and repair”); and “*environment building*” (“any activity aimed at creating and/or consolidating an environment - political, social, cultural, institutional, economic and legal - conducive to full respect for the rights of the individual”).

77. This categorization is helpful for conceptualizing the humanitarian response for which it was primarily designed. However, it does not adequately describe the protection duties of States, nor does it provide a framework for the international community to avoid the protection gaps. For example, inasmuch as States have the primary duty to protect and assist persons within their jurisdiction, it is not enough for them simply to create an environment conducive to full respect of rights. Rather, they must ensure that violations are prevented.²² Likewise, as evidenced by ongoing consultations on the right to a remedy for victims of gross human rights violations in recent years, the remedies that States owe to victims of human rights violations are not limited to “rehabilitation, restitution, compensation and repair”, but also include “satisfaction” (which includes an element of justice, such as full disclosure, apology, and, particularly, imposition of judicial and administrative sanctions on those responsible).²³

78. In light of the primary responsibility of States in this area, protection should be conceived in a manner that includes Governments as protectors in their own right, and not just as objects against whom protection activities are carried out by outside parties.²⁴ Therefore, the Representative proposes the following, as a complementary categorization to the ICRC workshop definition of protection:

- (a) Actions to prevent violations of IDPs’ rights under human rights and humanitarian law;
- (b) Actions to stop existing or ongoing violations of IDPs’ rights under human rights and humanitarian law;
- (c) Actions to prevent recurrence of human rights and humanitarian law violations; and
- (d) Actions to ensure remedies (including rehabilitation, restitution, compensation and satisfaction) for those whose rights have been violated.²⁵

79. For purposes of this categorization, a “violation” of a human right would include not only the failure to respect it, but also failure to ensure and fulfil it. For example, it is not only a violation if soldiers or police sexually assault displaced women but also if private parties do so, in the absence of bona fide efforts by the Government to prevent, investigate and punish such crimes.

80. Pursuant to the first of these categories, Governments should act to prevent displacement in the first instance and to anticipate and seek to mitigate common protection needs for persons who are nonetheless displaced. The summary of protection needs discussed in paragraphs 42 to 72 above should be helpful for this purpose.²⁶ Where efforts to prevent rights violations are unsuccessful, Governments should undertake the necessary actions to halt violations, prevent any recurrence, and provide appropriate remedies. Thus, for example, Governments learning of incidents of sexual assaults against displaced women should not only act immediately to stop such violations, but take appropriate measures to ensure that they do not recur in the future, and ensure that those affected have access to appropriate remedies, including redress against their abusers.

III. THE REPRESENTATIVE’S PROTECTION-RELATED ACTIVITIES

81. For his part, the Representative will undertake activities related to each of the four categories he proposes above to address IDP protection needs. As a human rights “mechanism”, he has three main modes of action for doing so in each of the categories: (1) advocating and engaging in dialogue with national authorities, (2) fostering appropriate norms and policies at the international and national level, and (3) triggering action by international and regional actors. The following is a representative list of activities he plans to undertake.

1. Preventing violations of rights of IDPs under human rights and humanitarian law

82. Acceptance and implementation of human rights and humanitarian norms are the best means to prevent displacement in the first instance and violations of IDP rights after displacement. Accordingly, the Representative will promote the dissemination and acceptance of the norms underlying the Guiding Principles on Internal Displacement in his dialogues with national, regional and international actors.

83. In particular, he will advocate with national authorities to develop and implement national laws and policies on IDPs incorporating these norms. Since the Guiding Principles were developed five years ago, several States have begun to use them in developing laws and policies on internal displacement. As encouraging as this development is, some of the resulting laws have not made very clear how the rather abstract general principles of international law articulated by the Guiding Principles should translate into concrete action on the ground.

84. To address this gap, the Representative plans to convene a series of consultative meetings in 2005 with experts, lawmakers and IDP advocates, with the goal of clarifying the detail of how domestic law should contribute to the protection of IDPs, in particular with respect to the

protection needs described above. Based on these consultations, the Representative will develop a guidebook for legislation and executive rule and policy-making at the domestic level with regard to IDPs.

85. As noted above, the Representative will also develop a course dedicated to IDP norms for senior government and military leaders as well as civil society representatives at the Institute of International Humanitarian Law. In addition, he will continue to work to strengthen the capacity of national human rights institutions and local civil society to advocate for the rights of IDPs on the basis of these international norms and to act to prevent displacement in the first instance. Moreover, he will work with regional organizations and United Nations agencies to promote their use of the Guiding Principles and to develop systems and guidelines to prevent violations of IDPs' rights.

2. Stopping existing or ongoing violations of the rights of IDPs under human rights and humanitarian law

86. When the Representative is alerted to developing patterns of violations of IDP rights, he will intervene with national authorities through personal meetings with diplomatic representatives (or other officials, in the context of a country mission), letters, and as appropriate, public statements. Where a broader dialogue would appear helpful, he intends to convene meetings of interested national and international actors on IDP protection issues in a particular State.

87. The Representative will further seek to promote action by other international actors, including human rights mechanisms such as treaty bodies and special rapporteurs, to encourage their active engagement in particular instances of abuse of IDP rights. Through his participation at the IASC, he will seek to alert humanitarian and development partners to situations where IDP protection needs are not being adequately addressed.

3. Preventing recurrence of human rights and humanitarian law violations

88. The Representative will seek to identify patterns of recurring violations of the rights of IDPs in particular States and engage in dialogues with national authorities about means to ensure that such patterns do not continue. Appropriate law and policy will also be of great use here and the Representative will offer technical assistance to interested Governments in designing appropriate solutions. Moreover, to ensure that IDPs know of their rights, the Representative will work to enhance the capacities of civil society organizations and national human rights institutions on international norms related to internal displacement.

4. Ensuring remedies for those whose rights have been violated

89. In his dialogues with national and international actors, the Representative will stress the need to act to avoid prolonged displacement without permanent solutions and to ensure that any return, resettlement or integration schemes are voluntary, safe and respectful of the human dignity of those involved. He will also advocate for measures recognizing that forcible

displacement is itself a gross violation of human rights and that IDPs suffer many other violations upon displacement. Accordingly, rehabilitation programmes should include elements of “satisfaction” or a measure of justice for those who have suffered such violations, including sanctions against responsible individuals.

IV. CONCLUSION

90. In calling for a new mechanism on IDPs, resolution 2004/55 sought both a high degree of continuity with the work of the previous Representative of the Secretary-General on internally displaced persons, as well as an increased focus on the human rights of IDPs. In his new capacity as the Representative of the Secretary-General on the human rights of internally displaced persons, the Representative will implement these two objectives in each aspect of his activities. While acting as an independent voice for the human rights of IDPs, the Representative will also seek to collaborate as much as possible with other interested actors as part of his personal contribution to the “collaborative approach” to IDPs.

91. Thanks to the work of Mr. Deng and many others in the humanitarian and human rights community, an important reservoir of knowledge exists about the common protection needs of IDPs as well as a valuable framework for conceptualizing protection activities pursuant to the Guiding Principles on Internal Displacement. Governments can and should make use of this knowledge to anticipate the protection needs of their own internally displaced. Moreover, with some adjustment, the international community’s conceptual framework can also be useful to Governments in planning their own protection activities, particularly in designing appropriate law and policy, which is the key to a comprehensive response.

92. Work remains to be done at the international level as well. Although officially accepted by most of the relevant international institutions, the basic notion that protection needs of IDPs should be given specific attention is still not universally accepted or practiced on the ground. The Representative will contribute to efforts to address this pursuant to his mandate to strengthen international protection and mainstream the human rights of IDPs throughout the United Nations system and in collaboration with key actors, including the OCHA Inter-Agency Division.

Notes

¹ *Protect or Neglect: Toward a More Effective United Nations Approach to the Protection of Internally Displaced Persons*, S. Bagshaw and D. Paul, Brookings-SAIS Project on Internal Displacement and OCHA Inter-Agency Internal Displacement Division (November 2004) (www.brookings.edu/fp/projects/idp/protection_survey.htm).

² Ibid., p. 3.

³ Ibid., p. vii.

⁴ www.reliefweb.int/idp/docs/references/PolicyPack31104.pdf.

⁵ Some of the findings of this research and a variety of perspectives on the issue were published in a special issue of *Forced Migration Review*, issue 17 (May 2003).

⁶ “A New Challenge for Peacekeepers: The Internally Displaced”, prepared by W. O’Neill www.brookings.edu/fp/projects/idp/20040422oneill.htm.

⁷ See note 1 above.

⁸ See general comment No. 31 (200), paras. 6, 7 and 15.

⁹ See, for example E/CN.4/2000/83/Add.1, para. 25; E/CN.4/2003/86/Add.3, paras. 27 and 39 and E/CN.4/2005/8, para. 21.

¹⁰ See, for example, E/CN.4/2004/77/Add.2, para. 48; A/51/483/Add.1, para. 33; E/CN.4/1995/50/Add.4, para. 14; E/CN.4/1994/44/Add.1, para. 90; and E/CN.4/2003/86/Add.3, para. 38.

¹¹ See, for example, Security Council resolutions S/RES/1239 (1999) on Kosovo, para. 4; S/RES/1462 (2003) on Georgia, para. 14; and S/RES/1483 (2003) on the situation between Iraq and Kuwait, para. 8 (b).

¹² See, for example, General Assembly resolution 58/177.

¹³ See, for example, Commission resolution 2004/55.

¹⁴ See, for example, 2001 World Conference Against Racism, Racial Discrimination, Xenophobia and Related Intolerance, Declaration, agenda item 9, adopted on September 8, 2001 in Durban South Africa, para. 54.

¹⁵ In 2001, the World Food Programme adopted a framework for action entitled “Reaching People in Situations of Displacement” (WFP/EB.A/2001/4-C); see paras. 7-10.

¹⁶ Mr. Deng was particularly impressed with the attitude and efforts made by the Government of Sri Lanka to provide food aid to civilians, even in areas controlled by rebel forces; see E/CN.4/1994/44, para. 55.

¹⁷ See E/CN.4/1996/52/Add.2, paras. 180-194.

¹⁸ For example, Mr. Deng reported in 2000 that, in Colombia, IDPs were prohibited to own land without losing their “status” as IDPs and (potentially) the entitlement to assistance that it conferred on them (E/CN.4/2000/83/Add.1, para. 36).

¹⁹ The Conference was convened by the Inter-Governmental Authority on Development (IGAD) in collaboration with the Brookings-SAIS Project on Internal Displacement. See also Erin Mooney, “New Commitments for Older Displaced Persons”, *Forced Migration Review*, issue 14 (July 2002), p. 11.

²⁰ See Sylvie Caverzasio, *Strengthening Protection in War - A Search for Professional Standards*, Geneva: ICRC (2001).

²¹ Human rights law imposes an obligation on States to “respect”, “protect” (or “ensure”) and “fulfil” the rights it articulates. See general comment No. 12 and article 2 of the International Covenant on Civil and Political Rights requiring States to “respect”, and “ensure” the rights it articulates, as well as to “take necessary steps”, including legislation or other measures, to give effect to the rights. “Respecting” a right entails not acting to prevent its exercise, “protecting” it involves ensuring that third parties do not interfere with the exercise of the right, and “fulfilling” it involves taking the necessary steps to ensure the realization of the right. Thus “protecting” here, as in the ICRC conference definition, refers to influence on third parties to ensure that they respect human rights.

²² See general comment No. 31 (2004) of the Human Rights Committee, para. 8.

²³ See the Draft Basic Principles and Guideline on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law (revised 5 August 2004), para. 24, available at www.ohchr.org; and E/CN.4/2004/57.

²⁴ Similarly, in its policy paper, the IASC describes five modes of protection activity, “denunciation”, “persuasion”, “mobilization”, “substitution” and “support” (p. 43), which, are all actions that outsiders do with respect to governmental authorities and is therefore of limited use for Governments in organizing their own responses.

²⁵ For comparable categorizations, see general comment No. 31 (2004) of the Human Rights Committee general comment No. 3 (1990) of the Committee on Economic, Cultural and Social Rights.

²⁶ The IASC policy paper also includes a “Strategy Checklist” that could be helpful to Governments in developing plans to anticipate IDP protection needs (pp. 14-23).
