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PROMOTION AND PROTECTION OF ALL HUMAN RIGHTS, CIVIL, POLITICAL, ECONOMIC, SOCIAL AND CULTURAL RIGHTS, INCLUDING THE RIGHT TO DEVELOPMENT

Report of the Representative of the Secretary-General on the human rights of internally displaced persons, Walter Kälin*

Summary

This report is submitted in accordance with Human Rights Council resolution 6/32 and covers the period May to December 2008. It first addresses three thematic issues: the status of the Guiding Principles on Internal Displacement (Guiding Principles) 10 years after their submission to the Commission on Human Rights; the protection of persons displaced by natural disaster; and the inclusion of the issue of internal displacement and the people it affects in peace processes. The second part of this report addresses the country mission to Georgia of the Representative of the Secretary-General on the human rights of internally displaced persons, his working visits to Bosnia and Herzegovina, Colombia, Honduras, Kenya, Madagascar, Mozambique, Sri Lanka and Timor-Leste, and other activities supporting constructive dialogue with Governments and intergovernmental and non-governmental organizations involved in the response to internal displacement.

* This report was submitted late to take into account information received during the working visit of the Representative of the Secretary-General on the human rights of internally displaced persons to Timor-Leste (5-12 December 2008).

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Introduction

1. This report focuses on three thematic issues: the status of the Guiding Principles on Internal Displacement (the Guiding Principles) 10 years following their submission to the Commission on Human Rights; the protection of persons displaced by natural disaster; and the inclusion of the issue of internal displacement and the people it affects in peace processes.
2. The second part of this report addresses the Representative's country missions and working visits, as well as other activities aimed at maintaining a constructive dialogue with Governments and intergovernmental and non-governmental organizations. The Representative thanks particularly those Governments which accepted and facilitated his visits, as well as international organizations, academics, and civil society groups working on the rights of internally displaced persons (IDPs), for their helpful cooperation. He equally expresses his appreciation to the Office of the United Nations High Commissioner for Human Rights (OHCHR), the Office for the Coordination of Humanitarian Affairs (OCHA) and the Office of the United Nations High Commissioner for Refugees (UNHCR) for their support for his mandate.

I. THEMATIC ISSUES

A. The Guiding Principles on Internal Displacement: the recognized international framework for the protection of internally displaced persons

3. Ten years ago Francis Deng, the then Representative of the Secretary-General on internally displaced persons, presented the Guiding Principles on Internal Displacement to the Commission on Human Rights.¹ Addressing all phases of displacement - protection from displacement, protection and assistance during displacement, and guarantees for return, settlement, or reintegration in safety and dignity - the Guiding Principles set out the basic tenets of a human rights-based approach to protecting and assisting IDPs. The Representative, in line with his mandate, has continued his "efforts to further the dissemination, promotion and application of the Guiding Principles".²
4. While the Guiding Principles themselves do not constitute a binding legal instrument, they "reflect and are consistent with international human rights law and international humanitarian law".³ The annotations to the Guiding Principles, which the Representative recently updated, trace the legal foundations of each Guiding Principle in international treaty law and customary international law emerging from general practice accepted as law.⁴ The annotations underscore

¹ E/CN.4/1998/53/Add.2.

² Human Rights Council resolution 6/32, para. 7 (c).

³ Guiding Principles, "Introduction: scope and purpose", para. 3.

⁴ W. Kälin, *Guiding Principles on Internal Displacement: Annotations* (Washington, D.C., The American Society of International Law, 2008), available at <http://www.asil.org/pdfs/stlp.pdf>.

the fact that almost every principle is underpinned by the content of and interrelationships between numerous treaty and customary legal provisions. In this regard, most principles do not exceed existing binding law; rather, they serve to restate these existing norms more precisely in the specific context of internal displacement.

5. The Guiding Principles have become widely accepted at the international, regional and State levels. At the global level, the Heads of State and Government assembled in New York for the 2005 World Summit unanimously recognized the Guiding Principles as an “important international framework for the protection of internally displaced persons”, a recognition subsequently echoed by the Human Rights Council and the General Assembly.⁵ In addition, the General Assembly has welcomed “the fact that an increasing number of States, United Nations agencies and regional and non-governmental organizations are applying them as a standard”, and has encouraged “all relevant actors to make use of the Guiding Principles when dealing with situations of internal displacement”.⁶

6. During a high-level conference entitled “Ten Years of Guiding Principles”, hosted by the Government of Norway in Oslo from 16-17 October 2008, participants from Governments, international humanitarian agencies, regional organizations and civil society stressed the authoritative character and operational utility of the Guiding Principles. In his own address to the conference, the Representative emphasized that they have become the normative reference point for all actors dealing with internal displacement. However, he also stressed that standing alone, they are not sufficient to resolve internal displacement: at the national level, they must be translated and incorporated into a strong normative and institutional framework. While many Governments have begun to do so, many as well have yet to develop the political will and capacity to implement the Guiding Principles in their national laws, policies and programmes.⁷

7. At the regional level, Africa has shown the most progress in transforming the Guiding Principles into binding international instruments. In June 2008, the Protocol on the Protection and Assistance to Internally Displaced Persons to the Declaration on Peace, Security, Democracy and Development in the Great Lakes Region (the Great Lakes Protocol on internal displacement) entered into force. The Protocol, which at the end of 2008 had been ratified by 8 out of the 11 States participating in the Great Lakes process, is the first and only binding multilateral treaty on IDPs now in force.⁸ Among other things, States parties to the Protocol undertake to adopt and

⁵ General Assembly resolution 60/1, para. 132; Human Rights Council resolution 6/32, para. 5; General Assembly resolution 62/153, para. 10.

⁶ General Assembly resolution 62/153, para. 10.

⁷ Full text of the Representative’s speech and the Chair’s summary of the conference and its outcomes are available at: <http://www.internal-displacement.org/gp10>. See also the addendum to this report, A/HRC/10/13/Add.3.

⁸ Burundi, Central African Republic, Republic of Congo, Democratic Republic of the Congo, Kenya, Rwanda, Tanzania, and Uganda are States parties to the Declaration and its Protocols. Angola, Sudan and Zambia have signed but not yet ratified the Declaration and its Protocols.

implement the Guiding Principles as a regional framework for providing protection and assistance to IDPs in the Great Lakes Region.⁹ States parties also assume the obligation to enact national legislation to domesticate the Guiding Principles and to provide a legal framework for their implementation.

8. More recently, the African Union has finalized the text of a convention for the protection and assistance of internally displaced persons in Africa, to be considered and hopefully adopted by the heads of State and Government in Kampala, at the African Union Special Summit on Refugees, Returnees and Internally Displaced Persons in Africa in April 2009. This would be a tremendous victory for the millions of displaced on the African continent and constitute an important example of leadership on human rights.

9. Having closely followed and supported the development of the African Union convention, the Representative notes with appreciation that - as the representative of the African Union Commission at the Oslo conference put it - the Guiding Principles were one of the documents that “greatly inspired the soon-to-be-adopted African Union convention”.¹⁰ The Representative strongly hopes that this will also be reflected in the final text.

10. In the Americas, resolution 2417 adopted by the Organization of American States on 3 June 2008 urges member States to consider using the Guiding Principles as a basis for their plans, policies, and programmes in support of IDPs and to continue to consider implementing them in their domestic law or policies.¹¹

11. Recommendation 2006 (6) of the Committee of Ministers of the Council of Europe, which builds on the work of the Parliamentary Assembly of the Council and which arguably remains the most authoritative statement on the protection of IDPs in Europe contains a similar recommendation.¹² The Organization for Security and Co-operation in Europe (OSCE) has recognized that the principles provide “a useful framework” for its work in dealing with internal displacement.¹³

⁹ Art. 6, para. 1.

¹⁰ See speech by Macrine Majanya, “The Guiding Principles and the challenge of forced displacement in Africa. The response of the African Union”, available at <http://www.internal-displacement.org/gp10>.

¹¹ Organization of American States General Assembly, AG/RES.2417 (XXXVIII-O/08): Internally Displaced Persons (2008), paras. 2 and 3.

¹² See recommendation Rec (2006) 6 of the Committee of Ministers to member States on internally displaced persons (adopted on 5 April 2006); recommendation 1631 of the Parliamentary Assembly of the Council of Europe: Internal Displacement in Europe (adopted on 25 November 2003).

¹³ OSCE Ministerial Council decision No. 4/03 on tolerance and non-discrimination (December 2003), para. 13.

12. At the domestic level, the Representative takes note of increasing efforts to incorporate the Guiding Principles into national legal and policy frameworks. Some 15 countries, including most recently Iraq, have already adopted policies or legislation specifically addressing internal displacement. Other countries, including Sudan, are currently in the process of doing so. At the request of both Governments and the United Nations, the Representative provided technical support in a number of cases and will continue to do so.

13. Today, some Governments explicitly recognize the legal character of the content of the Guiding Principles. Iraq's National Policy on Displacement, issued in July 2008, makes reference to the Guiding Principles and declares that they have become "part of international law".¹⁴ Similarly, the Government of Germany has taken the position that the Guiding Principles "can by now be considered to be international customary law".¹⁵

14. The Representative remains at the disposal of interested Governments to support the development of domestic legislation and policies consistent with the Guiding Principles. Shortly after his appointment and in cooperation with the Brookings-Bern Project on Internal Displacement, he initiated a process of research and consultation on how best to support Governments in their efforts to domesticate the Guiding Principles. Following a consultative meeting in Vienna in May 2008 which was hosted by the Government of Austria and attended by Government legal experts, humanitarian agencies and non-governmental organizations, this process culminated in the publication of a manual for law and policymakers on protecting IDPs.¹⁶ The central aim of the manual is to provide advice on shaping laws and policies to address protection and assistance needs of IDPs in a manner that ensures full protection of their rights in accordance with the Guiding Principles. The manual covers all phases of displacement (prevention; protection and assistance; and durable solutions). Importantly, it identifies common problems and challenges that States face - based on their shared experiences¹⁷ and the

¹⁴ Iraq National Policy on Displacement, section 5.3, available at http://www.usip.org/ruleoflaw/projects/iraq_property/other_docs/NationalPolicyOnDisplacement-En.pdf.

¹⁵ See *Achter Bericht der Bundesregierung über ihre Menschenrechtspolitik in den auswärtigen Beziehungen und in anderen Politikbereichen*, available at <http://www.auswaertiges-amt.de/diplo/de/Infoservice/Broschueren/MRB8.pdf>.

¹⁶ Brookings-Bern Project on Internal Displacement, *Protecting Internally Displaced Persons: A Manual for Law and Policy Makers*, the Brookings Institution, 2008, available at: http://www.brookings.edu/papers/2008/1016_internal_displacement.aspx.

¹⁷ The Representative particularly recognizes the important contributions by governmental experts, judges and staff of national human rights institutions from Afghanistan, Angola, Austria, Azerbaijan, Bosnia-Herzegovina, Colombia, Côte d'Ivoire, Denmark, Finland, Georgia, India, Kenya, Nigeria, Peru, Philippines, Poland, Sri Lanka, Switzerland, Tanzania, Turkey, Uganda, and the United States of America. He would also like to acknowledge the contributions by experts from Georgetown University, Habitat International Coalition, the International Committee of the Red Cross, Internal Displacement Monitoring Centre/Norwegian Refugee Council, International Labour Organization, International Organization for Migration, Ludwig Boltzmann Institute, Office for the Coordination of Humanitarian Affairs, Office of

Representative's observations from four years of missions - particularly because disregard for the rights of IDPs is most often neither intentional nor on the face of it discriminatory. Rather, it may result from the fact that IDPs have particular needs and vulnerabilities that are insufficiently recognized or accommodated in existing law or policy.

15. The manual is addressed to national policymakers, competent ministries, legislators and civil society groups. Legislators and legal experts from national Governments will be invited to participate in regional training seminars that will take place in the course of 2009.

16. In collaboration with the International Institute of Humanitarian Law in Sanremo, the Brookings-Bern Project, and interested donors, the Representative hopes to continue to offer his annual course on the law of internal displacement to train high-level military and civil government officials from different parts of the world. This year the course was conducted in French. Participants from sub-Saharan Africa, Algeria, Haiti and Lebanon appreciated the opportunity to study in one of their working languages.

17. In conclusion, the Representative notes substantial progress achieved in the last 10 years in strengthening the normative framework necessary to effectively protect the rights of IDPs and to provide them with assistance. Nevertheless, he remains concerned that many countries affected by internal displacement have not yet adopted laws and policies in line with the Guiding Principles; nor have they established institutional arrangements that are sufficient to fulfil their primary responsibility under international law to provide protection and humanitarian assistance to IDPs within their jurisdiction (Guiding Principle 3). Furthermore, even where they do exist, significant gaps often exist between the texts of laws and policies and their implementation in practice. The Representative remains committed to supporting all Governments seeking to meet these responsibilities.

B. Protecting the human rights of persons displaced by natural disaster

18. Faced with the disasters caused by the 2004 tsunami, the 2005 Kashmir earthquake, hurricane Katrina and the knowledge that ever more people will be displaced by disasters caused by climate change, the Representative has placed increased emphasis on the human rights protection of persons displaced in natural disasters. This has included both a review of existing normative frameworks and an examination of how operational response mechanisms address the human rights challenges arising in this context. He also carried out a series of working visits to countries particularly affected by hydro-meteorological disasters to review disaster management, responses and prevention in as far as they relate to the persons displaced by these disasters, and he conducted several national and regional training sessions.

19. An addendum to this report¹⁸ provides a comprehensive summary of the Representative's activities, findings and conclusions regarding the protection of persons displaced as a result of

the United Nations High Commissioner for Human Rights, UN-Habitat, the Office of the United Nations High Commissioner for Refugees and the World Health Organization, as well as the authors of the background studies that informed the manual.

¹⁸ A/HRC/10/13/Add.1.

natural disasters, concluding with concrete and detailed recommendations to national Governments, the Human Rights Council and international and national organizations in general to enhance the protection of the victims of natural hazards and global warming.

20. Victims of natural hazard events such as earthquakes, tsunamis, hurricanes or flooding, including displaced persons, are entitled to enjoy the full range of human rights guarantees. The question arises as to how a framework to ensure these rights can be established and put into practice. Insofar as affected persons are displaced within their own country, the Guiding Principles remain fully applicable. Context-specific guidance is now available in the Inter-Agency Standing Committee (IASC) Operational Guidelines on Human Rights and Natural Disasters,¹⁹ which were proposed by the Representative to support humanitarian organizations in implementing a human rights-based approach when responding to natural disasters. The Representative also developed a pilot field manual to the Operational Guidelines which was released in March 2008 and now is in the process of revision.

21. In the context of the current discussions on climate change, the Representative acknowledges that disasters such as flooding, hurricanes, desertification or even the “sinking” of stretches of land, are not new. Yet the most recent findings of the Intergovernmental Panel on Climate Change (IPCC)²⁰ indicate that their frequency and magnitude are likely to increase as a consequence of global warming. These findings are most relevant for the issue of displacement and population movements in general and imply that humanitarian and development actors will increasingly be expected to respond to situations arising from climate-related hazard events.

22. The Representative submitted a working paper to IASC in June 2008 examining the nexus between climate change and displacement and highlighting normative gaps in the current legal framework for protection of those displaced by the effects of global warming.²¹ He identified five relevant situations triggering displacement: (a) increased hydro-meteorological disasters such as hurricanes, flooding or mudslides; (b) gradual environmental degradation and slow onset disasters, such as desertification, sinking of coastal zones, or increased salinization of groundwater and soil; (c) the “sinking” of small island States; (d) forced relocation of people from high-risk zones; and (e) violence and armed conflict triggered by the increasing scarcity of necessary resources such as water or inhabitable land.

23. The Representative concluded that persons displaced by sudden-onset disasters due to climate change or by instances of violence or armed conflict over scarce resources should be considered as internally displaced persons within the existing international normative framework, in particular the Guiding Principles. What this framework lacks, however, is criteria

¹⁹ A/HRC/4/38/Add.1. The guidelines were endorsed by the IASC Working Group in June 2007.

²⁰ See Intergovernmental Panel on Climate Change Fourth Assessment Report: Climate Change 2007 available at: <http://www.ipcc.ch/ipccreports/assessments-reports.htm>.

²¹ Available at http://www2.ohchr.org/english/issues/climatechange/docs/submissions/DisplacementandCC_10102008.pdf.

to distinguish between forced displacement and voluntary movement in cases of gradual degradation of land and living conditions and slow-onset disasters. Clear normative gaps also exist regarding persons displaced across international borders.

24. In order to better understand the protection challenges arising in the context of natural hazard events, as well as to identify possible responses to such challenges, the Representative visited several tsunami-affected areas in South-East Asia in early 2005. He also visited the Gulf region of the United States of America in early 2008²² and conducted working visits to Honduras, Madagascar and Mozambique also in 2008. During these visits he convened workshops with international, national and governmental humanitarian actors on protection in natural disasters.

25. While an increasing number of persons are affected by and/or displaced as a consequence of a natural disaster, all too often insufficient attention is paid to the multiple human rights challenges they may face. The most vulnerable groups of society - including the poor, marginalized minorities, female- and child-headed households, chronically ill persons, persons with disabilities and older people without family support - suffer the most from the negative effects of natural hazards due to their weakened mitigation and adaptation capacities. Moreover, in the aftermath of natural disasters pre-existing patterns of discrimination are exacerbated, putting already marginalized groups at further risk of human rights abuses, such as a failure to protect against life-threatening natural hazards; unequal access to humanitarian assistance; discrimination in aid provision; sexual and gender-based violence, particularly in collective shelters or camps; infringements of the right to education, e.g. when schools are used as shelters for a prolonged period of time; non-replacement of lost documentation; unsafe or involuntary return or settlement elsewhere in the country; or difficulties with property restitution.

26. Disregard for the victims' human rights are not necessarily intended but often result from inappropriate policies, inadequate capacities, simple neglect or oversight. The Representative therefore promotes the integration of a rights-based approach in the design of national disaster mitigation and management policies, in humanitarian operations undertaken by national actors and international agencies and organizations, and their implementation, in order to prevent such violations from the outset. Moreover, the Representative encourages national Governments to intensify their prevention efforts by strengthening disaster risk reduction measures and addressing existing vulnerabilities so that concerned authorities and the communities exposed to the risk of recurrent natural hazard events will be adequately prepared.

27. The Representative commends the fact that during the last four years, the United Nations has initiated an important effort to strengthen the protection of IDPs, including those displaced by natural disasters and environmental degradation, through its humanitarian reform process. The Representative acknowledges the commitment of United Nations agencies with protection mandates - OHCHR, the United Nations Children's Fund (UNICEF) and UNHCR - to addressing protection challenges arising in situations of natural disasters. However, resources

²² See A/HRC/8/6, paras. 51-53.

(in terms of both funding and human capacity) provided for protection activities have often been inadequate, preventing the systematic development of protection programmes that could otherwise effectively prevent human rights violations in this context.

28. The Representative welcomes and supports the efforts of the International Law Commission (ILC), which at its fifty-ninth session in 2007 decided to include the “Protection of persons in the event of disasters” in its programme of work and appointed Eduardo Valencia-Ospina as the Special Rapporteur on the subject. Without prejudice to the future outcome of his work, the efforts of the ILC to progressively develop and restate provisions of international law²³ relevant to disaster prevention and relief assistance, as well as to the protection of persons in the event of disasters is most timely. The Representative stands ready to cooperate with the Rapporteur and the ILC in order to ensure the complementarity of their efforts and to build on recent progress in the field of human rights.

29. Through the provision and leadership of a natural disasters focal point for the cluster, the Representative will continue participation in the disaster-related activities of the IASC global Protection Cluster Working Group (PCWG), in order to mainstream human rights protection in the context of natural disaster and to strengthen existing response mechanisms. He will also continue close collaboration with OHCHR in its work on climate change and human rights, as well as other initiatives such as the secretariat of the International Strategy for Disaster Reduction.

C. Human rights and the relationship between internal displacement and peace processes, peace agreements and peacebuilding

30. Resolving internal displacement is inextricably and unavoidably linked with the achievement of lasting peace. So long as insecurity remains, lost property is not restored or compensated for, or basic conditions for sustainable solutions are not in place, durable solutions simply cannot be achieved. Similarly, displacement situations may become protracted despite the conclusion of a peace agreement, if it is ill-conceived or poorly implemented. Likewise, premature or inadequate return and reintegration programmes may destabilize whatever “peace” has been achieved, and therefore threaten other peacebuilding efforts.

31. Peacebuilding processes are multifaceted. They involve re-establishing law and order; reconstruction and economic rehabilitation; reconciliation; and political transition. The way in which IDPs are included in and benefit from these processes may ultimately affect the success of peacebuilding initiatives. If the situation in their communities of origin is not perceived as safe, IDPs will be reluctant to return. If reconstruction and economic rehabilitation are insufficient for the displaced to resume an appreciable livelihood and to restart a normal life, return even if desired will not be sustainable. The resulting tensions can foster intercommunal violence and place a strain on the peace process. If IDPs cannot exercise their political rights and are prevented from voting, new political realities could be “democratically” legitimized without their

²³ See Article 13, paragraph 1 (a), Charter of the United Nations, providing the basis for the mandate of the International Law Commission.

participation, thus increasing feelings of marginalization. Finally, reconciliation can only truly and meaningfully be achieved if restitution of property or compensation for losses is comprehensively addressed.

32. Throughout his various missions, the Representative has observed that four universal elements must be resolved to enable the internally displaced to restart a normal life and to contribute to the reconstruction of a country emerging from conflict:

- Return must be voluntary and based upon an informed decision, without coercion of any kind. Internally displaced persons enjoy the freedom of movement and right to choose their place of residence. This means that they are entitled to a meaningful choice of whether they want to return, integrate locally where they were displaced to, or resettle in another part of the country.
- The safety of returnees or relocated persons must be ensured. They must be protected from attacks, harassment, intimidation, persecution, or any other form of punitive action upon return to their home community or integration in a new community. They must also be protected from the danger of landmines and unexploded remnants of war.
- Property must be returned to the displaced and their houses reconstructed. At a minimum, IDPs should have access to mechanisms for property restitution and compensation, as well as to other transitional justice mechanisms.
- An environment must be created that can sustain return or local integration through access, without discrimination, to basic public services, to legal and personal documentation, and to livelihoods or income-generating opportunities.

33. The Representative notes that peace processes are not linear. Activities that address these four critical elements should, as much as possible, take place concurrently. Early recovery activities should commence as soon as the situation has stabilized. These activities should support IDPs in resuming a normal life either at the place of refuge, when they return or when they resettle in another part of the country. If they cannot return to a normal life, they are unlikely ever to achieve a sustainable and durable solution. Furthermore these activities must be tailored to the specific needs of returnees and the communities that receive them.

34. The larger policy issue of the relationship between the prevention and resolution of internal displacement and the process of creating a lasting peace is actively being discussed in various forums. Key insights have been provided through the United Nations Peacebuilding Commission,²⁴ and further developments will be presented next year in the report of the Secretary-General on peacebuilding and early recovery.

²⁴ Peacebuilding Commission, Working Group on Lessons Learned, concept note “Comparative lessons from addressing internal displacement in peacebuilding”, 13 March 2008.

35. Protection and perspectives aimed at generating durable solutions for IDPs should also constitute part of the peace agreement itself. An analysis of existing peace agreements, commissioned and endorsed by the Representative, shows that the issue of internal displacement is usually not systematically integrated.²⁵ It is often weakly addressed. There are several reasons for this: IDPs do not have a voice at the negotiating table; they may lack the resources, education, or political skill to have political influence, and often belong to either ethnic minorities or other marginalized groups; or they are dispersed, posing an obstacle to coherent unification of their interests.

36. To facilitate the inclusion of IDPs and their interests in peace processes, the Representative and the United Nations Mediation Support Unit are developing, in a comprehensive consultation process, a manual for mediators. This manual will provide mediators guidance on how to better consult with the internally displaced concerning their needs and interests, how to engage with them and facilitate their participation at various stages of the peace process, and how to reflect the human rights and interests of the internally displaced in the texts of peace agreements. The manual is expected to be published in spring 2009.

II. DIALOGUE WITH GOVERNMENTS, INTERGOVERNMENTAL AND NON-GOVERNMENTAL ORGANIZATIONS

37. Pursuant to his mandate, the Representative maintains a regular dialogue with Governments and intergovernmental and non-governmental organizations in order to promote and protect the rights of IDPs.

A. Official country visits

1. Mission to Georgia

38. At the invitation of the Government and in the aftermath of the South Ossetia conflict, the Representative undertook an official mission to Georgia from 1 to 4 October 2008. The mission built upon the Representative's mission of December 2005²⁶ and follow-up visit of December 2006. The Representative's report analyses the situation, conclusions, and his recommendations, and is available as an addendum to this report.²⁷ The Representative deeply regrets the current policies of the parties to the conflict on access to the Tskhinvali region/South Ossetia and conflict-affected areas, which prevented him from conducting the planned visit to the area by mid-December, when this report was finalized.

²⁵ *Addressing Internal Displacement in Peace Processes, Peace Agreements and Peace-building*, the Brookings Institution/University of Bern Project on Internal Displacement, Washington, D.C., 2007, available at <http://www.brookings.edu/reports/2007/09/peaceprocesses.aspx>.

²⁶ E/CN.4/2006/71/Add.7.

²⁷ A/HRC/10/13/Add.2.

39. As a result of the hostilities that escalated on 7-8 August 2008, some 133,000 persons became displaced within Georgia. The Representative welcomed the Government's prompt response to the crisis of displacement and their stated intentions to take measures integrating all IDPs who will not be returning to their homes in the foreseeable future, including those who have been in protracted displacement since the early 1990s.

40. An estimated 24,596 persons returned to the Shida Kartli region between 7 and 10 November 2008,²⁸ with an estimated 75,000 having returned to the areas adjacent to the administrative border with the Tskhinvali region/South Ossetia in August and September 2008. Their main needs relate to the challenge of recovery after return, including safety (such as humanitarian mine clearance) and the re-establishment of law and order. The reconstruction and repairs of destroyed or looted houses, humanitarian assistance, and the re-establishment of basic services such as education and health are important concerns, as is the resumption of economic activities. The Representative urged the Government to take all required steps to ensure that the conditions for sustainable return are created, allowing IDPs to return voluntarily, safely, and with dignity.

41. Government estimates of November 2008 indicate that 37,605 IDPs will not return in the foreseeable future. This figure includes 19,111 IDPs from the Tskhinvali region/South Ossetia, 1,821 IDPs from the upper Kodori Valley, as well as those IDPs who will spend the winter in displacement, namely 11,500 who cannot return to the area adjacent to the Tskhinvali region/South Ossetia for reasons such as security or destruction of property, and some 5,173 IDPs from Akhalkalaki.²⁹ The Government estimated that they would be able to accommodate some 21,000 IDPs in settlements by the end of 2008. The Representative commended the Government for its decision to provide housing for those IDPs who are unlikely to return home in the foreseeable future. However, he is concerned about the almost exclusive emphasis on the provision of infrastructure, and recommended that the Government develop a comprehensive integration policy with responses to the specific needs of IDPs based on the whole range of their civil, cultural, economic, political and social rights. Moreover, the full participation of all segments of the internally displaced population in the planning and management of the resettlement plan should be guaranteed. The Representative emphasizes that the decision for resettlement or return must be voluntary, and he reiterates that resettlement opportunities shall be offered in a non-discriminatory manner, with priority being given only on the basis of specific vulnerability or need. IDPs must be enabled to make a well-informed choice about options offered to them.

42. The biggest challenge is the integration of the approximately 220,000 IDPs who have been living in protracted displacement for more than a decade, as described in the Representative's previous report. The Representative welcomed the adoption, in late July 2008, of the Action Plan to implement Decree No. 47 of the Government of Georgia "On Approving of the State Strategy

²⁸ Office of the United Nations Resident/Humanitarian Coordinator, situation report No. 35 on the situation in Georgia, 6-3 November 2008.

²⁹ *Ibid.*

for Internally Displaced Persons - Persecuted”, which foresees measures aimed at integrating IDPs into mainstream society. While welcoming the policy shift away from considering local reintegration and return as mutually exclusive options, the Representative remained concerned about the continued lack of integration of the “old” IDPs. The rights of this group must be ensured, on a non-discriminatory basis, alongside the response in favour of the “new” IDPs. He recommended that the implementation of the Action Plan for IDPs - with amendments to account for the newly displaced population - be given absolute priority by the Government.

43. Impeded humanitarian access to conflict-affected areas remains a paramount concern because of continued disagreement by the parties to the conflict over access routes. The Representative re-emphasized his concerns about the recently enacted Georgian Law on the Occupied Territories, which raises questions about its compatibility with Georgia’s obligations under international human rights law and international humanitarian law as restated in Guiding Principle 25. He urged the Government of Georgia to take all possible measures, without discrimination, to ensure the protection of all human rights for the internally displaced population from, or living inside, territories under the control of de facto authorities.

2. Envisaged visits

44. Shortly before finalizing this report, the Representative requested the Government of Chad to extend an invitation for an official visit in February 2008. The Representative hopes to be able to present his preliminary conclusions and recommendations to the Human Rights Council when presenting this report.

45. Also shortly before finalizing this report, the Representative had requested a visit to the Democratic Republic of the Congo in his capacity as one of seven independent experts mandated by the Human Rights Council in resolutions 7/20 and S-8/1. A separate report by the group of experts³⁰ has been published for consideration during the tenth session of the Council.

46. Following requests in 2007, in 2008 the Representative reiterated his request to visit the Sudan. He regrets that the Government informed him on 4 November 2008 that his request for a visit would only be considered later in 2009. In response, the Representative confirmed his interest in visiting the Sudan as soon as possible.

47. Finally, the Representative had hoped to carry out a mission to Somalia in summer 2008, although it became clear that the security situation in Somalia would not allow travel to the country for the time being. He remains interested in conducting an official mission to Somalia as soon as the security situation permits. The Representative is extremely concerned about the estimated 1.3 million displaced persons in Somalia, many of whom are crammed into makeshift camps in one of the most insecure parts of the country. Poor rains and economic shocks have compounded the primary cause of displacement in 2007 and 2008 - the conflict between insurgent forces and the Transitional Federal Government, the latter supported by the Ethiopian National Defence Force. Violations of international human rights and humanitarian law by all parties to the conflict - from indiscriminate attacks in civilian areas to arbitrary arrest and

³⁰ A/HRC/10/59.

detention, and a campaign of assassinations of civilian officials - are the main factors that induced them to leave their homes. These abuses occur in an environment of total impunity and collapse of law and order. While some aid does reach IDPs, Somalia has this year witnessed the highest number of killings and kidnappings of aid workers in the world. To address the causes of displacement, improve humanitarian access, and provide the space for durable solutions, the international community must engage much more seriously in establishing mechanisms that could end the violence and hold the parties to this conflict accountable for their actions.

B. Working visits and follow-up activities

48. The Representative also conducted working visits to Bosnia and Herzegovina, Colombia, Kenya, Madagascar, Mozambique, Sri Lanka and Timor-Leste to follow up on previous official visits and/or advise on specific issues.

1. Bosnia and Herzegovina

49. The Representative undertook a working visit to Bosnia and Herzegovina from 16 to 20 June 2008 at the invitation of the Minister for Human Rights and Refugees, following up on his official mission in June 2005. The aim of the visit was to make recommendations in the context of the ongoing review of the strategy for implementation of annex VII to the General Framework Agreement for Peace in Bosnia and Herzegovina (Dayton Peace Agreement) regarding solutions to the problems faced by refugees and displaced persons, including their return.

50. The Representative notes with satisfaction the Bosnian Government's many recent efforts to assist the displaced population, particularly given the decline in the attention of the international community. However he was dismayed to see, 13 years after the war, that many people remained displaced or in impoverished conditions in "temporary" sites established for returnees. He is also concerned about the lack of sustainability of many returns.

51. The Representative recommends that the Bosnian Government take urgent action to resolve the 8,000 pending humanitarian cases. It should locally integrate the most vulnerable, who languish in community centres or other forms of temporary accommodation and remain unable to return, and help them to re-establish decent living conditions. The success of the return process should be measured by the real opportunities available to the returnees, especially those belonging to minority groups, to rebuild their lives and reintegrate into society in their places of origin in sustainable ways.

2. Colombia

52. At the Government's invitation, the Representative visited Colombia from 9 to 15 November 2008 to assess developments since his official mission in 2006.

53. The Representative observed that Colombia continues to experience a severe displacement crisis, despite positive action by State authorities. He noted with appreciation the important role of the Constitutional Court in promoting and protecting the human rights of IDPs. In particular, in a series of decisions over the past four years, the Constitutional Court has launched a process that draws together the Government, international actors and civil society to jointly strengthen

the overall response to the plight of IDPs. While policy development at the national level is very encouraging, the Representative notes an implementation gap at the local level. In order to ensure an effective IDP policy, the Representative considers that there is a need to strengthen the role of municipalities, which was the subject of a day-long workshop during his visit.

54. Notwithstanding these positive developments and the significant increase in budgetary allocations for implementation of the national IDP policy, as well as the strengthening of its operational capacities, the overall situation of internal displacement remains bleak. New displacement occurs at a high rate due to the ongoing conflict between the armed forces and irregular armed groups, as well as the emergence of new structures of organized crime and new illegal armed groups.

55. The Representative stresses the need for comprehensive strategies, focusing on prevention and protection as well as on socio-economic stabilization. Regarding prevention, he urges the Government to strengthen its unique early warning system by allocating the necessary resources for its effective implementation and by then heeding those warnings through systematic response. Regarding protection, the Representative expresses his concern that a considerable number of displaced persons may not be able to register, although registration is a precondition for humanitarian assistance. While fraudulent registration must be prevented, a registration system that does not cover all groups of displaced persons would most likely contribute to the further marginalization of those excluded. He also expresses his concern about threats and violence against IDP leaders and calls on the Government to strengthen its efforts to protect them.

56. IDPs have rights to property restitution or fair compensation and to reparations for other violations suffered. He expresses his concern about the current parliamentary discussions on a new law on reparations, stressing that such a law must equally respect the right to reparation of all victims of forced displacement, regardless of the cause or agent of displacement.

3. Honduras

57. From 6 to 10 May 2008, the Representative visited Honduras as part of a series of working visits on displacement of people by natural disaster. He welcomes the ongoing elaboration of a law on the national system for natural disaster risk management, which is certain to strengthen the normative framework in that area.

58. As Honduras is one of the countries most exposed to the risk of natural disasters, the Representative recommends the systematic incorporation of disaster risk-reduction measures into national development programmes; the provision of financial and technical risk management support to municipalities; and the taking of the necessary measures to systematically address the need to protect the human rights of persons affected by natural disasters, including displaced persons or indigenous communities affected by displacement.

4. Kenya

59. Following earlier consultations and support to the United Nations Country Team, including the provision of a legal memorandum to senior United Nations officials, the Representative conducted a working visit to Kenya from 19 to 25 May 2008 to consider the situation of those

displaced during the post-election violence in December 2007 and January 2008. More than 500,000 persons were displaced at that time, although the Representative also recalled that substantial numbers of Kenyans were displaced due to election-related violence in 1992 and 1997, and to a lesser extent in 2002. Acknowledging the strength of the national and international humanitarian response in the immediate emergency phase of the crisis, the Representative was, however, concerned by the speed with which return was being promoted by the Government, raising questions about the voluntariness of return and triggering substantial coordination challenges for humanitarian partners. This resulted in significant numbers of returnees not being able to return directly to their land, but rather clustering nearby in improvised transit sites, without adequate humanitarian assistance, clean water and sanitation, or access to health and education services, and awaiting provision of seeds and basic tools to resume farming in their nearby fields. The Representative underscores the need to support in addition solutions for those IDPs without land to return to - specifically agricultural workers, tenant farmers, squatters, and small business persons.

60. Given Kenya's history of intercommunal tension and displacement, the Representative observes that truly durable solutions will remain elusive without a resolution of the original dynamics which led to the displacement. He calls for more robust reconciliation efforts, including transitional justice measures, the involvement of community elders, and a clear and demonstrated commitment to reconciliation by local as well as national political leaders. During a short visit to Nairobi in August 2008, he reiterated these concerns and noted the need for renewed efforts to provide transitional shelter and livelihoods, with an appeal to donors to support critical early recovery activities. The Representative observes that Kenya should seize the opportunity to develop a comprehensive policy on internal displacement and adopt the necessary laws consistent with its obligations under the Great Lakes Protocol on internal displacement. He stands ready to support Kenya, and other Member States, in the national implementation of these obligations.

5. Madagascar

61. The Representative visited Madagascar from 2 to 7 July 2008 as a further part of his focus on displacement by natural disaster. The Representative welcomes the reform of the natural disaster emergency response agencies in Madagascar, which is regularly affected by cyclones, floods and droughts. He notes the important role that the United Nations system played in enhancing the response capacity and the coordination of humanitarian actors. While recalling that national authorities bear the primary responsibility for assisting populations affected by natural disasters, including displaced persons, the Representative emphasizes the importance of the efforts of the local authorities. Capacity must be built at the regional and local levels. There is also a need for measures to protect the most vulnerable people from discrimination and exploitation, particularly female heads of households, girls and elderly persons without family support.

62. In Madagascar, displacements caused by natural disasters often last only a few days or weeks. Nevertheless, the ability of returnees to recover presents a real challenge. In order to better meet the need during this phase to protect and assist the persons affected, who often live in very precarious conditions, the Representative calls on the international community and donors to support the Malagasy authorities in their efforts to support rehabilitation and income-generating activities.

6. Mozambique

63. The Representative's visit to Mozambique (26 June to 1 July) also considered responses to internal displacement from natural disasters. The Government and other local stakeholders have made impressive efforts, with the support of the United Nations system, to protect the human rights of persons affected and displaced by regular flooding. The Representative notes in particular the institutional arrangements established to respond to these disasters, which have helped considerably to reduce the loss of human life from the annual floods. Such arrangements could serve as a model for other countries.

64. Nevertheless, complex challenges remain in the early recovery phase, in particular regarding issues arising from the resettlement of populations to safe areas and the balancing of the Government's obligation to protect the lives of displaced persons, and the right of such persons to move freely and to choose their place of residence. While welcoming the positive aspects of the resettlement process, the Representative recommends that the authorities establish consultation processes with the populations concerned so that they can fully participate in decision-making affecting their lives. It is also important that the affected populations enjoy the rights to adequate housing, health and education, particularly in the resettlement areas, and have access to means of earning their livelihoods.

7. Sri Lanka

65. As a follow-up to his mission in December 2007, the Representative returned to Sri Lanka at the invitation of the Government from 22 to 25 September 2008 to participate in the National Consultation on the Status of Internally Displaced Persons within the Framework for Durable Solutions. In the report on his mission in 2007, the Representative had highlighted the need not only to provide protection and assistance to the recently displaced, but also to tackle the issue of finding durable solutions for those who have been living in displacement for up to 20 years.³¹ This National Consultation marked an important step in the efforts of the country to identify and facilitate the conditions necessary to do precisely that.

66. The participants recognized that displacement is not necessarily resolved when an IDP returns home or integrates at the site of displacement, nor when the conditions which originally caused displacement cease to exist. Among other things, the participants identified restitution of property, compensation, and access to livelihoods as fundamental to the achievement of durable solutions. They recommended further consultation with IDPs in order to better define existing obstacles before the articulation of a comprehensive national action plan. The elaboration and widespread communication of uniform standards and procedures for land dispute resolution, access to benefits, and compensation for damaged or looted property were also prioritized. At the end of the workshop, the Minister for Disaster Management and Human Rights announced his intention to develop an action plan on durable solutions.

³¹ A/HRC/8/6/Add.4.

67. The Representative had the opportunity to discuss the present situation of persons displaced inside the Vanni as a consequence of the ongoing military operations with a number of high-level interlocutors, including the Secretary of Defence and the Special Advisor to the President. He stressed the need to ensure humanitarian access and the provision of food, medicine and emergency shelter materials and expressed his concerns regarding the lack of freedom of movement for the displaced and the ensuing negative impact on and dangers for their security.

68. The Representative welcomed the opportunity to participate in these discussions and to continue his frank and constructive dialogue with the Government of Sri Lanka. He reiterates his commitment to work with all relevant actors seeking to improve protection and assistance to IDPs and to find durable solutions for them. This includes the immediate response to more than 100,000 new conflict-generated IDPs, and more than 200,000 total in the Vanni. In this regard, the Representative remains extremely concerned about the limited accessibility to the Vanni area granted to humanitarian actors. He urgently calls upon all parties to the conflict to scrupulously respect international humanitarian law in the course of ongoing military operations, including provisions on the conduct of hostilities, facilitation and unimpeded passage of humanitarian relief for civilians in need, respect for humanitarian personnel, and safe passage for civilians.

8. Timor-Leste

69. The Representative undertook a working visit to Timor-Leste from 6 to 12 December 2008. The Representative commends the Government for its commitment to and achievements in protecting and assisting IDPs - reflected in both the holistic approach to displacement embodied in the National Recovery Strategy and its success in voluntarily closing the majority of the camps established during the 2006 crisis. The Representative urges the Government to maintain displacement as a national priority in 2009, indicating that whether the returns are sufficiently supported to be sustainable, and whether solutions are found for those who are unable to return, will be important indicators of whether Timor-Leste will end the cycle of violence and displacement that have marked its history since 1975.

70. The Representative identified three primary challenges. First, to address the underlying causes of the violence and displacement, for which additional efforts are needed to support continuing dialogue and reconciliation; to redress prevailing impunity; and to resolve and prevent further land disputes by adoption of a land and property law. Second, the Representative encourages all actors now to expand their focus with activities to strengthen and stabilize communities of return. Finally, he notes that the approach to recovery packages - aimed at compensating those with damaged property to return to - has not addressed the needs of the most vulnerable, including those with no place of return.

C. Public statements and correspondence with Governments

71. During the period covered by this report (May to December 2008), the Representative conveyed relevant allegations or provided technical advice to various Governments. The Representative also issued several public statements and press releases related to his country visits.

1. Azerbaijan and Armenia

72. In a letter sent to the Governments of Azerbaijan and of Armenia in December 2008, the Representative welcomed the renewed efforts to reach a peace agreement. In this context, he reiterated that IDPs are entitled to make a free, informed and individual choice on whether to return home in safety and dignity, to integrate locally, or to settle elsewhere within the home country. For this right to become reality, mechanisms must be put in place to create conditions to allow for a return in dignity and safety. He called on both Governments to reflect these concerns in an eventual peace agreement and to involve IDPs in the peace process.

2. Democratic Republic of the Congo

73. On 28 November, the Representative published a joint statement with the Special Rapporteur on extrajudicial, summary or arbitrary executions, the Special Rapporteur on the situation of human rights defenders, and the Special Rapporteur on violence against women, its causes and consequences, expressing concern about serious violations of human rights and grave breaches of humanitarian law in the east of the Democratic Republic of Congo, where at least 250,000 people have been newly displaced.

3. Nepal

74. In a letter to Nepal dated 20 October 2008, the Representative noted with satisfaction the adoption of the National Policy on Internally Displaced Persons (endorsed in February 2007). He urged the Government to proceed with adoption of the procedural directives of the National Policy in order to ensure its implementation and avoid negatively impacting recovery efforts.

75. The Representative regrets that the procedural directives had not been adopted when this report was finalized in mid-December 2008 and fears that further delay could impede the dispersal of donor funds for recovery efforts.

4. Sudan

76. In a letter to Sudan dated 4 September 2008, the Representative and the Special Rapporteur on extrajudicial, summary or arbitrary executions jointly addressed reports about an attack on 25 August 2008 by roughly 2,000 Sudanese armed forces, national security, police, border guards, and armed militiamen (so-called Janjaweed) against the IDPs of Kalma Camp in South Darfur, resulting in civilian deaths and the destruction of dwellings.

77. The Representative regrets that the Government of Sudan had not responded to the mandate holders' request to clarify the accuracy of the allegations presented by the time this report was finalized.

78. The Representative calls on Sudan to strictly adhere to its obligations under international humanitarian law and human rights law, to prosecute perpetrators of grave violations, and to provide reparations to all victims. The Representative recalls the recommendations to the

Government of the Sudan compiled by the Group of Experts mandated by Human Rights Council resolution 4/8, which he helped to develop. In this regard, he strongly deplores the fact that the Government has yet to implement many of these recommendations.³²

5. Georgia

79. In a public statement issued on 14 August 2008, the Representative expressed his deep concern about the growing number of civilians displaced in Georgia due to the conflict in South Ossetia, the continuing dangers to which many of them are exposed, and the difficulties in providing them with shelter, medical care, and food.

D. Mainstreaming the human rights of internally displaced persons in the United Nations system

1. Inter-Agency Standing Committee (IASC)

80. During the reporting period, the Representative actively participated in the Inter-Agency Standing Committee at both the principals and working group levels. He also participated in the work of the global Protection Cluster Working Group and the Cluster Working Group on Early Recovery. The Representative regularly debriefed partners on missions and working visits at the IASC weekly meeting.

81. On the humanitarian implications of climate change, the Representative developed a typology of scenarios regarding its impact on migration/displacement of populations and analysed the legal gaps for those affected. His analysis built the basis for the discussions of the IASC and its contribution to the negotiations of the United Nations Climate Change Conference in Poznan in December 2008.

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

82. As requested by the Human Rights Council, OHCHR provides support to the Representative. In addition to specific OHCHR support to the mandate, the Representative and OHCHR co-organized several capacity-building initiatives, including a seminar on protracted displacement in Europe jointly organized with the Committee on Migration, Refugees and Population of the Parliamentary Assembly of the Council of Europe, and the Sanremo course on the law of internal displacement, mentioned in paragraph 16 above. In addition, the Representative participated in a workshop on the role of African national human rights institutions in protecting the human rights of internally displaced persons from 25 to 26 October in Nairobi, which was co-organized by OHCHR and the Brookings-Bern Project on Internal Displacement.

³² See the latest report prepared by the Special Rapporteur on the situation of human rights in the Sudan, on the status of implementation of the recommendations, A/HRC/9/13/Add.1.

83. The Representative also provided input to the OHCHR study on the relationship between climate change and human rights and made a written contribution to the OHCHR-led consultation on the draft guiding principles on extreme poverty and human rights: the rights of the poor.

3. Office for the Coordination of Humanitarian Affairs

84. The Representative continued to develop his close cooperative relationship with the Emergency Relief Coordinator and the Office for the Coordination of Humanitarian Affairs (OCHA) and has one support staff member in OCHA offices in New York. The Representative worked with OCHA and other partners on the development of a global advocacy campaign on internal displacement which was launched by the Emergency Relief Coordinator on 18 December 2008.

85. The Representative appreciated the opportunity to provide legal and policy advice at the request of OCHA field offices, including thorough guidance notes that he prepared on Kenya in early 2008 and on forced evacuation for Mozambique and Southern Africa in January 2008. He also provided inputs for OCHA on the inclusion of internal displacement issues in the Goma peace process in the Democratic Republic of the Congo.

4. Office of the United Nations High Commissioner for Refugees

86. The Representative maintains his memorandum of understanding with UNHCR, strengthening their collaboration and enabling him to place one externally-funded staff member within the agency. The Representative and UNHCR have always cooperated on his missions, and UNHCR has provided essential support particularly in the field. This relationship has grown increasingly productive and reflexive over the years. The Representative has supported the mainstreaming of IDP protection by UNHCR through, for example, participating in its Senior Management Learning Programme on IDPs. He continues to collaborate with country operations as follow-up to his missions, including return working visits to support strategy and planning for durable solutions. The Representative has also welcomed the opportunity to actively consult with and serve as a resource to UNHCR country operations upon request.

5. United Nations Development Programme

87. Exemplifying the inter-agency cooperation and mainstreaming of internal displacement intended by humanitarian reform, a group consisting of the UNDP Bureau of Crisis Prevention and Recovery, OCHA, UNHCR, and the Representative organized a workshop on durable solutions for IDPs in the context of early recovery from 28 to 30 May 2008 in Geneva. The workshop convened United Nations staff from 15 country offices, donor agencies, and the World Bank to explore opportunities and challenges. Participants at the workshop committed to exploring joint programming for early recovery and pursuing stronger cooperation with donors for greater flexibility in funding for early recovery. The Representative notes the importance of early recovery: the conditions for IDPs often decline in the transitional phase from standards they may have reached during the humanitarian phase. Early recovery - when well-planned, well-coordinated, and adequately funded - can reduce dependency and enable durable solutions. By stabilizing communities, it builds confidence and contributes to peacebuilding.

III. CONCLUSIONS AND RECOMMENDATIONS

88. On the occasion of the tenth anniversary of the adoption of the Guiding Principles on Internal Displacement, the Representative welcomes the progress made in the past 10 years towards greater recognition of the phenomenon of displacement caused by armed conflicts, situations of generalized violence, natural or human-made disasters and similar causes, and of the primary responsibility of national Governments to respond to such situations.

89. The Representative re-emphasizes that the Guiding Principles reflect international law and restate State obligations and responsibilities emerging from international humanitarian law and human rights law. He acknowledges the international recognition of the Guiding Principles as an important international framework for the protection of internally displaced persons and commends the efforts of States to promote the Guiding Principles and implement them through incorporation into their domestic laws and policies. He highlights the progress made on the African continent in shaping binding international treaties on internal displacement particularly the Protocol on the Protection and Assistance to Internally Displaced Persons to the Declaration on Peace, Security, Democracy and Development in the Great Lakes Region (the Great Lakes Protocol on internal displacement) and the draft African Union convention for the protection and assistance to internally displaced persons in Africa, which is expected to be adopted in 2009.

90. At the same time, the Representative regrets that over the past 10 years, the number of internally displaced persons - today estimated at 1 per cent of the world's population - has not declined. Rather, it continues to increase, primarily as a result of the growth in disaster-induced displacement related to climate change, but also because of protracted displacement in the context of unresolved armed conflicts.

91. It is estimated that more than 26 million people are currently internally displaced as a result of armed conflict or other violence in more than 50 countries, with the Sudan, Colombia, and Iraq having the highest numbers. Over the past year, some countries, such as Uganda, have made progress in facilitating the return and reintegration of IDPs. At the same time, massive new displacement as a result of armed conflict or generalized violence has occurred in the Democratic Republic of the Congo, Georgia, Kenya, Somalia, Sri Lanka, the Sudan, and the Philippines. Meanwhile, millions remain trapped in protracted displacement situations in countries and regions including Azerbaijan, the Balkans, Colombia, Georgia, Turkey, and Somalia, because the conflicts that gave rise to their displacement remain unresolved.

92. Many countries experience displacement caused by natural disasters. In light of the findings of the Intergovernmental Panel on Climate Change, it is expected that the frequency and magnitude of natural disasters will increase, resulting in more displacement.

93. The Representative continues to be concerned about:

(a) Ongoing displacements in many countries, often as a result of violence committed by State and non-State actors in violation of international human rights law and international humanitarian law;

(b) The large number of people who remain in situations of protracted displacement;

(c) The frequent difficulties in facilitating durable solutions for internally displaced persons, which leave them in situations of deprivation, marginalization and poverty, in violation of their civil, cultural, economic, political and social rights;

(d) The failure, in certain countries, of the political will or capacity to respond effectively to situations of displacement and to provide displaced persons with the necessary protection and assistance;

(e) The increasing obstacles humanitarian agencies and organizations face in gaining access to IDPs, owing to restrictions imposed by Governments, as well as insecurity and even targeted attacks against humanitarian personnel, their supplies and means of transport;

(f) The widespread impunity, in certain contexts, for acts of displacement amounting to crimes against humanity and war crimes, and the continued commission of such crimes against displaced persons;

(g) The difficulties that international and local stakeholders face, in certain countries, in effectively coordinating their activities and obtaining the funds necessary to be reasonably effective.

94. **Against this backdrop, the Representative recalls that in accordance with their obligations under international law, States have the primary duty and responsibility to prevent internal displacement, to protect and assist the displaced, and to provide them with durable solutions once the causes of displacement have ended. He calls on Member States to:**

(a) Reaffirm their commitment to the Guiding Principles, to create national and regional frameworks based on the Guiding Principles, and to develop the capacity and, perhaps most importantly, the political will to implement them in practice;

(b) Draft national legislation and policies consistent with the Guiding Principles or to revisit existing norms to ensure that the needs of displaced persons receive an appropriate response, that institutional responsibilities are specified at all levels, and that the necessary capacities and resources to implement these responsibilities are made available;

(c) Scrupulously respect their obligations under international human rights law, international humanitarian law and international criminal law, to refrain from any acts against internally displaced persons amounting to violations of these obligations, and to protect the displaced against violations of their rights by third parties;

(d) Investigate, prosecute and punish crimes against humanity and war crimes causing internal displacement or committed against those who have been displaced;

(e) **Strengthen peace processes, in particular for “frozen” conflicts causing situations of protracted displacement, allow the displaced a voice in peace processes, and comprehensively address their rights, needs and interests in peace agreements;**

(f) **Mainstream a human rights approach in national strategies for disaster preparedness, mitigation and adaptation to negative effects of natural hazards, to better protect the rights of affected persons, including those displaced;**

(g) **Advocate for the protection of persons displaced by the effects of climate change to be addressed by current efforts to strengthen the normative framework on climate change.**

95. **The Representative calls on de facto authorities and armed groups to scrupulously respect their obligation under international humanitarian and criminal law, to refrain from all acts causing displacement or violating the rights of the displaced and to grant safe humanitarian access to agencies and organizations.**

96. **The Representative calls on Governments, humanitarian and development agencies, and donors to:**

(a) **Ensure that return, or any other solution, is the result of an individual decision freely taken, without coercion, on the basis of adequate information;**

(b) **Take all measures to facilitate the main elements prerequisite for durable solutions, in particular: (a) the assurance of physical safety during and after return or resettlement; (b) the restitution of property and the (re)construction of adequate housing and necessary infrastructure; and (c) the creation of an economic and social environment conducive to sustainability, including access, without discrimination, to public services, livelihoods and income-generating activities, the restitution or replacement of identity documents lost or destroyed during displacement, and the reinstatement of voting rights and other political rights;**

(c) **Rigorously address these issues when drafting peace agreements and reconstruction plans following a conflict or natural disaster, in consultation with displaced persons;**

(d) **More resolutely pursue early recovery strategies while carrying out humanitarian, peacebuilding and development activities, taking into account the specific characteristics of each situation;**

(e) **Develop more appropriate funding mechanisms to bridge the gap between emergency phase funding and development phase funding, which now results in the systematic underfunding of early recovery activities. Funding mechanisms must be flexible enough to respond not only to the needs of IDPs themselves, but also to the needs of all displacement-affected communities - host communities as well as communities receiving returnees and resettling IDPs.**