

# INTERNALLY DISPLACED PERSONS

An overview of the rights of internally displaced persons and of the *Guiding Principles* adopted by the United Nations

Part of a series of the Human Rights Programme of the Europe - Third World Centre (CETIM)



**CETIM**

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Internally Displaced Persons

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# INTERNALLY DISPLACED PERSONS

*An overview of the rights of internally displaced persons and  
of the Guiding Principles adopted by the United Nations*

*Brochure prepared by*

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**Part of a series of the Human Rights Programme  
of the Europe - Third World Centre (CETIM)**



## Introduction

Although forbidden by international humanitarian law and defined by the Statute of Rome (the International Criminal Court)<sup>1</sup> as a “crime against humanity” (art 7.2.d), *forced displacements* are still largely practiced in our time during armed conflict and in various other circumstances (huge development projects, catastrophes etc).

The magnitude of this phenomenon has prompted the United Nations to react by creating, as the beginning of the 1990s, the post of Representative of the Secretary-General on Internally Displaced Persons, although some wanted to create a body comparable to that of the Office of the High Commissioner for Refugees (HCR).<sup>2</sup>

Today there are some 25 million internally displaced persons in 40 to 50 countries,<sup>3</sup> whereas the number of refugees has diminished, from 17 million in 1992 to 8.4 million in 2005.<sup>4</sup>

The peculiar context obtaining after the Cold War certainly favored “the explosion of the number of displaced persons and the evolution of international provisions”.<sup>5</sup>

Those mainly responsible for and/or complicit in population displacements on a large scale are often governments or para-governmental groups and, in certain cases, non-governmental elements such as transnational corporations or armed opposition groups.

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<sup>1</sup> Adopted 17 July 1998; entered in to force 1 July 2002.

<sup>2</sup> *Comprehensive study prepared by Mr. Francis M. Deng, Representative of the Secretary-General on the human rights issues related to internally displaced persons, pursuant to Commission on Human Rights resolution 1992/73, E/CN.4/1993/35:* <http://www.unhcr.ch/Huridocda/Huridoca.nsf/TestFrame/fb36ada4f4e26ce68025672f003ef984?Opendocument>.

<sup>3</sup> This figure does not include displacements due to development projects; it relates essentially to situations of armed conflicts and/or ethnic strife and human rights violations (v. the annual reports of the Representative presented to the Commission on Human Rights and the General Assembly: [http://ap.ohchr.org/documents/dpage\\_f.aspx?m=71](http://ap.ohchr.org/documents/dpage_f.aspx?m=71))

<sup>4</sup> V. the report of the HCR, *2005 Global Refugee Trends*, published 6 June 2006 [http://www.unhcr.se/Pdf/protect/Global\\_Refugee\\_Trends\\_2005.pdf](http://www.unhcr.se/Pdf/protect/Global_Refugee_Trends_2005.pdf). These figures are, however, to be taken with a grain of salt for they do not mean that all is well. This decrease can be deceptive unless one takes into account, on the one hand, the regressive – indeed hostile – policies of most governments in the world regarding refugees, who have ever greater difficulty finding a country of asylum and, on the other hand, the increase of migrants with no legal status who are falsely classified as being “without papers”. This is a subject that goes far beyond the scope of this brochure, but it must not be ignored.

<sup>5</sup> *MASS EXODUSES AND DISPLACED PERSONS: Report of the Representative of the Secretary-General on internally displaced persons, Francis M. Deng, submitted pursuant to Commission on Human Rights resolution 2002/56, annual report to the fifty-ninth session of the Commission, E/CN.4.72003/86, §8:* <http://193.194.138.190/Huridocda/Huridoca.nsf/TestFrame/c3ec8250081af226c1256cee003e1563?Opendocument>.

Besides domestic armed conflicts, international armed interventions can also trigger internal population displacements (Afghanistan, Iraq, Lebanon, Somalia...).

This brochure aims to explore the evolution of this concern and the measures taken at the international level, in particular within the United Nations, regarding displaced persons.

It presents the mandate and the activities of the Representative of the Secretary-General on Internally Displaced Persons and the *Guiding Principles* that govern this question.

One of the merits of the Representative is that he sets out the bases of the problem and acknowledges, without hesitation, that “internal displacement is not only a subject of preoccupation from the point of view of human rights. It is also a humanitarian, political and development problem”.<sup>6</sup>

Three related initiatives from the now defunct Commission on Human Rights and its subsidiary body, the Sub-Commission for the Promotion and Protection of Human Rights, deserved to be mentioned in the framework of this brochure. They have been briefly presented in the annex.

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<sup>6</sup> *MASS EXODUSES AND DISPLACED PERSONS: Report of the Representative of the Secretary-General on internally displaced persons, Francis M. Deng*, annual report to the sixtieth session of the Commission on Human Rights, E/CN.4/2004/77, §65:  
<http://daccessdds.un.org/doc/UNDOC/GEN/G04/115/38/PDF/G0411538.pdf?OpenElement> .

## I. THE OVERALL SITUATION

The growing magnitude of the phenomenon of internally displaced persons during the 1980s and the willingness of the international community to “institutionalize”<sup>7</sup> aid to these persons resulted in the organization of numerous consultations within the United Nations and the creation of the mandate of the Representative of the Secretary-General on Internally Displaced Persons at the beginning of the 1990s (v. Chapter V.3).

As the Representative emphasizes, “A crucial factor in understanding the problem of displacement is that most displaced persons are in and from developing countries with acute problems of nation-building: crises of national identity and unity, ineffective authority and control, limited capacity for economic productivity and resource distribution and, above all, tension between central political and economic forces and the demand for autonomy and equitable participation on the part of component constituencies.”<sup>8</sup>

The situation is similar in the countries of the former Soviet Union and eastern Europe. According to the Representative, “In the countries of the former Soviet Union and Eastern Europe, comparable conditions prevailed in that a superstructure of authority and control maintained a system of law and order that suppressed the aspirations of nationalities, ethnic groups, and other identities. Although the basic material needs of the population were provided by the State, a massive violation or denial of fundamental political and civil rights eventually generated the democratic movement that contributed to the collapse of the system.

“Once the control of these centralized institutions and sources of survival passed on to the nationalists, the inevitable outcome was conflict over power, wealth, and developmental opportunities. These conflicts often led to gross violations of human rights, denial of civil liberties and disruption of economic and social life, with consequential frustration of development and weakening of the national capacity to meet the basic needs of the masses of the population.”<sup>9</sup>

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<sup>7</sup> *Comprehensive study prepared by Mr. Francis M. Deng, Representative of the Secretary-General on the human rights issues related to internally displaced persons, pursuant to Commission on Human Rights resolution 1992/73, E/CN.4/1993/35:*

<http://www.unhcr.ch/Huridocda/Huridoca.nsf/TestFrame/fb36ada4f4e26ce68025672f003ef984?Opendocument> .

<sup>8</sup> *Ibid.* §132.

<sup>9</sup> *Ibid.* §137 and §138.

## II. CAUSES AND CONSEQUENCES OF DISPLACEMENT

### 1. Causes

In his Comprehensive Study presented to the 47<sup>th</sup> session of the Commission on Human Rights, the Representative identified six causes of displacement: 1. conflict and internal strife; 2. forced relocation; 3. communal violence; 4. natural disasters; 5. ecological disasters; and 6. the systematic violation of human rights.<sup>10</sup>

To this list one must add three other causes: 1. population transfers (for example settling people on land on which other populations had previously been living); 2. forced evictions; and 3. social and ecological consequences of huge development projects such as the construction of dams or pipelines or exploration and mining activities that trigger large-scale displacement of people (v. illustrations).

It is worth noting that the first Representative particularly concentrated his efforts during his mandate (1992-2004) on forced displacements following armed conflicts, which he considered at the time “by far the most pervasive cause of internal displacement”.<sup>11</sup> However, it is impossible to ignore the development projects that trigger even more internally displaced persons, as mentioned by the High Commissioner for Human Rights in her report presented to the 61<sup>st</sup> session of the Commission on Human Rights. The High Commissioner estimated that in 2000 between 40 and 80 million persons were internally displaced owing to “large scale development projects such as dams, mines, pipelines, roads and other infrastructure construction”.<sup>12</sup>

### 2. Consequences

Today, as at the time of the beginning of the Representative’s mandate in 1992, there are some 25 million internally displaced persons in 40 to 50 countries.<sup>13</sup>

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<sup>10</sup> Ibid. §25.

<sup>11</sup> Ibid. §26.

<sup>12</sup> The figures cited by the High Commissioner, are drawn from the World Commission on Dams, Dams and Development, *A New Framework for Decision-Making* (2000), p. 104. V. the High Commissioner’s report, E/CN.4/2005/80 §20: <http://daccessdds.un.org/doc/UNDOC/GEN/G05/104/91/PDF/G0510491.pdf?OpenElement> .

<sup>13</sup> As mentioned above, this figure does not include displacements due to development projects; it represents essentially armed and/or ethnic conflicts and human rights violations (v. the annual reports of the Representative presented to the Commission on Human Rights and the General Assembly).

Forced to leave their living environment, displaced persons are victims of all sorts of human rights violations and must deal with numerous difficulties, given that they often find themselves confronted with both a hostile environment and a hostile government. They are neither protected nor aided. Displaced persons are victims of violations of their right to life and to security, to food, to adequate housing, to health, to work, to education, to freedom of movement etc. Their property is expropriated and they are deprived of their possessions and subject to discrimination. They are subjected to torture, to arbitrary detention and to forced disappearances... (v. Illustrations).

#### Illustration 1

### **India**

#### **The dam projects on the Narmada River**

The construction of dams on the Narmada River by the Indian government constitutes a flagrant example of massive and forced displacement in the name of "economic development".

The Narmada River crosses three states of the Indian federation: Madhya Pradesh, Maharashtra and Gujarat. The central Indian government first proposed to construct dams on this river in 1969, arguing the necessity of the region's economic development and improved water distribution.

The populations living along the river are essentially indigenous (tribal) minorities and casts called untouchables. These populations are little – if at all – represented in the regional and central governments. Moreover, they were never consulted during the planning of the project.

The work that began at the beginning of the 1980s consisted constructing 30 major dams, 135 medium-sized dams and 30,000 small dams on the adjacent rivers. Besides the environmental catastrophe and the cultural disaster (rivers are considered sacred in India, and numerous temples and pilgrimage sites are located along their banks), the social effects are without precedent. The reservoirs from the dams have flooded vast swathes of arable land leading to the forced displacement of populations numbering from 100,000 – according to the government – to some one million – according to the NGOs.

The Indian government's claims regarding the legality of the projects are based on provisions dating from the British Empire allowing for the expropriation of property of the farmers and fishers who make up the majority of the populations affected. The law allows for expropriations when the higher interest of the Nation is at stake. The initial support of the World Bank made it possible to attract colossal investment sums for the project. The result has been that anti-social concerns such as personal enrichment, corruption, political prestige have rapidly gotten the upper hand to the detriment of the local populations.

Dam construction has not, however, proceeded without opposition. The inhabitants along the rivers have organized and created the organization Narmada Bachao Andolan (NBA) to defend their interests.

The struggle is two-fold: systematic opposition to all new dam construction and, where possible, the demand that the government properly compensate those

whose property is expropriated. The central government, up to now at least, has rarely kept its word. Since the beginning of the construction of the giant Sardar Sarovar Dam, less than ten percent of the displaced persons have obtained the promised compensation. Numerous testimonies gathered by NGOs accuse the government of not giving sufficient financial compensation and of removing populations to non-arable land where there are no vital resources such as clean water. The dispersion of communities that had existed for millennia has also been widely denounced.

Many lawyers involved with the NBA contest the legality of the Indian government's actions. Although the government justifies what it is doing by citing the law dating from the British Empire, it is in violation of an Indian Supreme Court ruling of 18 October 2000 that stipulates that persons to be displaced must be moved at least six months before the flooding of their land and compensated at least a year in advance. A decision of 15 March 2005 further stipulates that displaced persons must be compensated by being granted arable land.

The building of the Sardar Sarovar Dam, begun in December 2006, threatens to displace some 35,000 more people without the abovementioned conditions being fulfilled.

Forced displacements resulting from dam construction on the Narmada are in violation of article 21 of the Indian constitution, which affirms the principle of the indivisibility of all human rights and emphasizes the fundamental right to life, including the right to live in dignity.

Article 15 of the constitution enshrines the principle of the prohibition of all discrimination on the basis of race, caste, sex or birthplace and provides for special protection of specific castes and indigenous minorities. These are principles that the government has ignored in this particular case.

The dam project also violates numerous human rights such as the right to adequate housing, the right of everybody to be able to live in peace and in dignity in a safe place, the right to food and the right to health. Thus, the Indian government is in violation of five of the six human rights conventions that it has ratified, particularly the International Convention on Economic, Social and Cultural Rights.

Finally, ferocious police repression has been mobilized against the protest movements of the Narmada Valley leading to hundreds of arrests and injured even now. The Indian government, while in violation of its international commitments regarding human rights, has suspended the right to demonstrate in the valley. Massive police raids have been carried out to frighten the population and force the people to leave their villages.

Sources:

- [www.marmada.org](http://www.marmada.org);
- Urgent Appeal of Habitat International Coalition (IND\_FE 080406), April 2006;
- CETIM written statement submitted to the 50<sup>th</sup> session of the Commission on Human Rights: E/CN.4/1994/NGO/35.

## Illustration 2

### Colombia

With its three million displaced persons,<sup>14</sup> Colombia is one of the world's top countries for internally displaced persons. Although government figures claim 1,874,917 persons officially registered,<sup>15</sup> they do not take into account the displaced "considered needing aid",<sup>16</sup> and those who refuse to register for existing aid programs for fear of reprisals are numerous.

#### Causes of displacement

The problem goes back several decades, and the origins of the internal displacements are many: armed conflict, development projects (dam and road construction in particular), land-grabbing in mining and oil areas, development of industrial-level agriculture and livestock farming...

The Representative described the causes in these terms: "Economic interests underlying the violence and conflict also are factors inducing displacement. As part of a process of so-called 'counter-agrarian reform' (which at the time of the Representative's first mission in 1994 had resulted in an estimated 3 percent of landowners controlling more than 70 percent of the arable land in the country), displacement is often a tool for acquiring land for the benefit of large landowners, drug traffickers, as well as private enterprises planning large-scale projects for the exploitation of natural resources."<sup>17</sup>

The 1999 treaty called "Plan Colombia" between Colombia and the United States has also greatly contributed to forced displacements.<sup>18</sup>

#### Those responsible for the forced displacements

Since the end of the 1980s, population displacement has accelerated. This period coincides with the development, at the national level, of paramilitary militias called Autodefensas Unidas de Colombia (AUC).<sup>19</sup>

<sup>14</sup> V. CODHES /Consultoria para los derechos humanos), 18 July 2006: [www.codhes.org.co](http://www.codhes.org.co) .

<sup>15</sup> V. 2006 mission report of the Secretary-General's Representative: A/HRC/4/38/Add.3: <http://daccessdds.un.org/doc/UNDOC/GEN/G07/104/50/PDF/G0710450.pdf?OpenElement> .

<sup>16</sup> V. 1999 Report of the Secretary-General's Representative, *Profiles in displacement: follow-up mission to Colombia*: E/CN.4/2000/83/Add.1: <http://www.unhchr.ch/Huridocda/Huridocda.nsf/TestFrame/6d5358107a11e85a802568ac003ea6b6?Opendocument> .

<sup>17</sup> Ibid. §23.

<sup>18</sup> Presented as a fight against the illegal narcotics trade and officially entitled *Plan for peace, prosperity and the strengthening of the government*, the Plan Colombia is in reality a military operation whose real objectives are:

- reinforce, equip and train the Colombian army in order to fight the guerillas, in particular the Forces Armadas Revolucionarias (FARC) and take back control of the zones that they have occupied;
  - carry out chemical and biological destruction of cocoa fields;
  - punish the social movements (small farmers, native peoples, fishers, trade unions etc.);
  - anchor United States hegemony in the region;
  - assure United States control over Colombian petroleum in a broader context defined by Venezuela's and Ecuador's position;
  - allow United States transnational corporations untrammelled exploitation of the country's natural resources on a vast scale oblivious to social and environmental effects;
  - accelerate the process of land acquisition while confirming the privileges of the local oligarchies.
- [V. the CETIM's written statement to the fifty-seventh session of the Commission on Human Rights, E/CN.4/NGO/184]

<sup>19</sup> Between 1968 and 1989 the paramilitary structures were institutionalized, de facto, through the existence of "Special Private Security and Vigilante Services" (previously known as "Convivir"), legally

While the Representative apportioned blame – more or less – equally for these displacements, with 27% going to the armed forces and police, 21% going to the paramilitaries and 32% going to the guerilla between 1985 and 1994, this apportionment started to break down in 1994 with the paramilitaries' share of responsibility rising to 54% in 1997, while 6% was imputed to the armed forces and 29% to the guerilla.<sup>20</sup> The Representative explained this tendency by the obvious collaboration between the Colombian army and the paramilitaries.<sup>21</sup>

Thus, the paramilitaries have turned out to be the main expropriators of the small farmers and indigenous populations. The death threats, accompanied by forced disappearances, torture and summary executions, have sharply increased the number of displaced persons.

It is not surprising that the activities of the paramilitaries are concentrated in particular zones that have a high economic interest for the transnational companies, the major land owners and the drug traffickers, or areas that the Colombian government considers strategic.<sup>22</sup>

The willingness of the government to turn a blind eye to the exactions of the paramilitary militias (more than 70% of the human rights violations reported in the country) dissuades the populations from participating in governmental programs. They fear being denounced and being subjected to new exactions.

The official demobilization of part of the paramilitaries starting at the end of 2003 has changed little in the field, for they "continued to commit grave breaches such as murders, threats, attacks against the civilian population, hostage-taking, torture and degrading or humiliating treatment, forced displacements, the recruitment of children and acts of sexual violence".<sup>23</sup> Moreover, the laws voted to deal with this only favor the impunity of the paramilitaries that have committed serious crimes, and such legal provisions have been judged to be incompatible with Colombia's international obligations.<sup>24</sup>

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authorized to bear arms and perform functions of maintaining public order similar to those of the armed forces and the police. These armed groups have often operated without no real control or effective supervision on the part of the authorities, and their activities are difficult to distinguish from those of the paramilitaries for, "in many cases there are areas where they coincide, converge or supplement or replace each other". V. 1999 mission report of the Representative of the Secretary-General: E/CN.4/2000/83/Add.1, §20: <http://www.unhcr.ch/Huridocda/Huridoca.nsf/TestFrame/6d5358107a11e85a802568ac003ea6b6?OpenDocument> .

<sup>20</sup> Ibid. V. the table on p. 8.

<sup>21</sup> Ibid.

<sup>22</sup> Forced displacements would seem to be part of a strategy for expelling the farmers from their lands. This is the case in Urabá, a very rich region in the northwest of the country, where the forced displacements began after the government announced plans for economic development that would include mega-projects such as the Urra I and Urra II dams, the Interoceanic Canal (parallel to the Panama Canal, joining the Atlantic and Pacific Oceans), the biggest port in Colombia (Turbo) etc. The forced displacements have increased also in the gold and oil-rich zones, especially in the departments of Magdalena Medio, Meta, and Sud de Bolívar. V. inter alia the CETIM's written statement to the 59<sup>th</sup> session of the Commission on Human Rights: E/CN.4/NGO/273.

<sup>23</sup> *Report of the United Nations High Commissioner for Human Rights on the situation of human rights in Colombia*: E/CN.4/2006/9, §60: <http://www.ohchr.org/english/bodies/chr/docs/62chr/E.CN.4.2006.9new.pdf> .

<sup>24</sup> Especially Law N° 782 (2002) and its enabling decree (N° 128) and Law N° 975 (2005).

V. E/CN.4/2006/9: <http://www.ohchr.org/english/bodies/chr/docs/62chr/E.CN.4.2006.9new.pdf> .

## The displaced and their living/survival conditions

In his 1999 mission report the Representative of the Secretary-General pointed out that “the victims of displacement are predominantly peasants, or *campesinos* as they are known, living in areas of paramilitary or guerrilla influence. Particularly affected are members of the country’s indigenous and Afro-Colombian communities...”<sup>25</sup>

Not finding any refuge in the small towns, the displaced gather in or around the major cities. The 1999 mission report expands on this: “Patterns of flight continue to be predominantly from rural to urban areas. Moreover, in a phenomenon known as “intra-urban displacement”, displacement to urban areas tends to occur incrementally, as continued threats to their physical security and inadequate responses to their assistance needs compel the displaced to flee from smaller cities to increasingly larger centres. A large number ultimately make their way to Bogotá... Within the cities, the displaced tend to be concentrated in the slums and shanty towns, where they find themselves among the poorest of the urban poor.”<sup>26</sup>

The presence of numerous U.N. agencies<sup>27</sup> and international NGOs is not sufficient to attend to the basic needs (health, housing, work and education, in particular) of the displaced.<sup>28</sup> In fact, displaced persons live in “miserable conditions”.<sup>29</sup> The best off among the men are employed in the construction sector and among the women (who are often victims of sexual violence) in doing housework. For many displaced women and girls, there is no choice but prostitution.<sup>30</sup>

## Possible solutions

In July 1997, to deal with the matter of displaced persons, the Colombian government approved Law No 387 and gave it the evocative title: “Law by Which are Adopted Measures in View of the Prevention of Forced Displacements: Attention, Protection, Consolidation and Socio-economic Stabilization of Persons Internally Displaced by Violence in the Republic of Colombia”.<sup>31</sup>

Although this law is generally considered progressive, it has never been properly implemented. During his last mission in 2006, the Representative “...noted a significant gap between the law and its actual implementation, resulting in a widespread neglect of the specific protection needs of the displaced. Moreover,

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<sup>25</sup> 1999 mission Report of the Representative of the Secretary-General: E/CN.4/2000/83/Add.1, §31: <http://www.unhcr.ch/Huridocda/Huridoca.nsf/TestFrame/6d5358107a11e85a802568ac003ea6b6?Opendocument> .

<sup>26</sup> Ibid., §33.

<sup>27</sup> E.g. the HCR, the UNDP, UNICEF, the WHO, WFP and the Office of the High Commissioner for Human Rights.

<sup>28</sup> It should be noted that the Representative also deplored the “insufficiency” of coordination among these organizations: 1999 mission report of the Secretary-General's Representative: E/CN.4/2000/83/Add.1, §62: <http://www.unhcr.ch/Huridocda/Huridoca.nsf/TestFrame/6d5358107a11e85a802568ac003ea6b6?Opendocument> .

<sup>29</sup> Ibid., §90.

<sup>30</sup> Ibid., §94.

<sup>31</sup> Unofficial translation from the Spanish: *Ley por la Cual se Adoptan Medidas para la prevención del Desplazamiento Forzado: la Atención, Protección, Consolidación y Estabilización socioeconómica de los Desplazados internos por la Violencia en la Republica de Colombia.*

the scale of displacement demonstrates that the current legal mechanisms are not sufficient to adequately address the problems of IDPs.<sup>32</sup>

It is our opinion that, even if this law is scrupulously implemented, it will not resolve the problem, for it does not deal with the root causes. Further, the phenomenon has continually intensified since the Representative's 1999 second mission, at which time he suggested: "As displacement is now being used as a strategy of war, and end to the conflict is essential to halting the upward trend in the number of persons displaced in Colombia and to finding a durable solution to the hundreds of thousands already uprooted."<sup>33</sup>

### Illustration 3

## *Turkey*

### **Forced displacements of Kurds**

The origin of the forced displacement of the Kurds in Turkey is to be found in this people's century-old fight for autonomy against a repressive Turkish central power that has systematically refused to acknowledge the Kurds' basic rights. Numerous Kurdish revolts, led sporadically by princes and religious chiefs, have been crushed in bloodshed, and hundreds of thousands of Kurds have been displaced outside their country.

This question is still not resolved, and the conflict continues between the Kurds and the government of Ankara. Most of the recent displacements of Kurds in Turkey have taken place during the conflict between the Turkish army and the guerilla of Kurdistan Workers' Party (PKK) starting in the mid 1980s. The construction of many dams in Turkish Kurdistan, going back to the 1960s, has also triggered displacements of Kurds.

### **The armed conflict**

According to the Turkish authorities, 3,948 Kurdish villages and hamlets have been evacuated for "security" reasons between 1989 and 1998,<sup>34</sup> and 400,000 Kurdish small farmers have been displaced.<sup>35</sup> From independent sources comes the estimate that between three and four million persons have been displaced by the Turkish army. The army has destroyed villages, totally or in part, while mining the surrounding land to prevent the return of the farmers.

Although the Turkish authorities are still giving out these same figures,<sup>36</sup> a recent study ordered by the Turkish government places the number of Kurds

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<sup>32</sup> V. the annual report of the Representative, A/HRC/4/38, §8:  
<http://daccessdds.un.org/doc/UNDOC/GEN/G07/100/68/PDF/G0710068.pdf?OpenElement> , and its Addendum 3

<http://daccessdds.un.org/doc/UNDOC/GEN/G07/104/50/PDF/G0710450.pdf?OpenElement> .

<sup>33</sup> 1999 Mission Report of the Secretary-General's Representative: E/CN.4/2000/83, §51:

<http://daccessdds.un.org/doc/UNDOC/GEN/G00/104/03/PDF/G0010403.pdf?OpenElement> .

<sup>34</sup> Some 20 Kurdish provinces, situated in the east and southeast of today's Turkey, have been affected by these forced displacements.

<sup>35</sup> Turkish parliamentary committee report entitled, *A report by the parliamentary committee established for studying and determining necessary measures for the problems of villagers who emigrated because of village evacuations in the East and Southeast*, Ankara, 1998.

<sup>36</sup> V. the site of the Interior Ministry: [www.icisleri.gov.tr](http://www.icisleri.gov.tr) .

displaced between 1986 and 2005 at between 953,680 and 1,201,200.<sup>37</sup> And a project planned jointly by the Turkish interior ministry and the UNDP, launched in April 2007, provides for the return of more than a million displaced Kurdish peasants.<sup>38</sup>

Most of the displaced remain in a precarious situation. Settled on the fringes of the major cities of Turkish Kurdistan or in the Turkish cities, these persons are confronted with problems of food, health, housing, education, unemployment and security, and they must also face exactions from the police (arbitrary arrests and torture, among others). Some of them still live in tents. Epidemics have caused the infant mortality rate to rise dramatically,<sup>39</sup> not to mention the increase in child labour, in both the formal and informal economy.<sup>40</sup>

### Possible solutions

The Representative of the Secretary-General for displaced persons made the following recommendations, after his mission to Turkey in 2003 :<sup>41</sup>

- an end to the system of village guards and their disarmament:
- de-mining of the region;
- compensation for the persons affected by the violence in region;
- the return of the displaced to their villages, without any obstacles to this from the security forces.

Yet, some four years later, very little progress has been made. In fact, not only is the system of village guards<sup>42</sup> still in place, but their recruitment has never stopped and has reached the level of 70,000 militiamen today.<sup>43</sup> This system is, moreover, a serious problem. The guards are recruited from among the Kurdish peasants, who are obliged to give up their productive activities and become pillagers and criminals within their own society.<sup>44</sup>

As for the de-mining of the region, leaving aside the mines laid along the borders during the 1920s and 1930s,<sup>45</sup> the Turkish army, in pursuing its scorched earth policy, has mined both the villages and the fields surrounding them. According to the official figures, currently some one million mines have been laid in Turkish Kurdistan, and Turkey has in reserve a stock of three million more!<sup>46</sup> This is in direct violation of Turkey's 2004 commitment under the provisions of

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<sup>37</sup> V. *Türkiye göç ve yerinden olmuş nüfus araştırması*, Hacettepe Üniversitesi Nüfus Etüleri Enstitüsü, Ankara, June 2006.

<sup>38</sup> Dispatch of the Firat News Agency, 3 April 2007.

<sup>39</sup> V., *inter alia*, the report of Göç-Der (the Displaced Persons Solidarity and Cultural Activities Association), Istanbul, 2003.

<sup>40</sup> V. *Zorunlu göç ile yüzleşmek*, Tesev Publishers, Istanbul, 2006.

<sup>41</sup> E.CN.4/2003/86/Add.2:

<http://daccessdds.un.org/doc/UNDOC/GEN/G03/104/53/PDF/G0310453.pdf?OpenElement> .

<sup>42</sup> These are Kurdish militias, armed and paid by the Turkish government, that support the army in its war against the Kurdish guerilla.

<sup>43</sup> Official figures from the Turkish interior ministry, cited in *Zorunlu göç ile yüzleşmek*, Tesev Publishers, Istanbul, June 2006.

<sup>44</sup> Between March 1985 and April 2006, 5,139 village guards had committed a crime of some sort, but only 868 had been imprisoned (v. figures from the interior ministry cited in note 43).

<sup>45</sup> The purpose was to cut the ties between the Kurdish tribes that found themselves, from one day to the next, separated by international borders and under the control of newly created states, Iraq, Syria, but also Iran.

<sup>46</sup> *Zorunlu göç ile yüzleşmek*, Tesev Publications, June 2006.

the Ottawa Treaty.<sup>47</sup> Between 2002 and 2006, 227 persons, including a majority of children, were killed and 560 injured by the anti-personnel landmines.<sup>48</sup>

Regarding compensation for persons affected by the violence in the region, in July 2004, the Turkish government adopted Law 5233 entitled “Compensation for harm caused by terror and the fight against terrorism”.<sup>49</sup> It creates numerous problems of which only the main ones are: 1. it gives, in substance, full powers to the army and to the provincial governors, who are primarily responsible for the destruction of Kurdish villages, to “investigate” and “compensate” the injured Kurdish parties; 2. it excludes those who are convicted under the anti-terrorism law for having helped and sheltered “terrorists” (this is applied to virtually all the displaced, who are accused of this crime by the Turkish authorities when they refuse to register for the village guard system); 3. the amicable implementation of the agreement is left to the discretion of the governor of the province, who also retains a right of veto; 4. the law seems designed to prevent cases of displaced persons from being filed before the European Court of Human Rights;<sup>50</sup> 5. there is no right to appeal to the courts, thus perpetuating the impunity of those guilty of serious violations of human rights (assassinations, forced disappearances, rapes, torture, arbitrary detentions, burning of houses and crops, the slaughter of livestock, pillaging etc.) not to mention the moral injury that is never taken into consideration.<sup>51</sup>

Moreover, the figures given by the Interior Minister Abdulkadir Aksu to a parliamentary inquiry, on 5 April 2007, show that this law is far from solving the problems of the displaced: out of 268,790 claims, only 35,578 have been accepted, 18,512 having been refused by the provincial commissions entrusted with this matter.<sup>52</sup> Further, the Turkish government claims to be short of money, and only 233,988.84 Turkish pounds have been paid out to the injured parties until now, out of 374,655,585 pounds awarded in compensation.<sup>53</sup>

As for the return of the displaced persons to their villages, this remains fraught with problems. In spite of the unilateral proclamation of several cease-fires by the PKK and the pledge the party made in 2006 to respect the humanitarian standards concerning the anti-personnel mines stipulated by the Treaty of Ottawa, the Turkish army continues its operations in Kurdistan and often forbids the peasants access to their fields and pastures. Further, many village guards –

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<sup>47</sup> Adopted in 1997 and formally entitled the Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on their Destruction. The armed opposition groups can declare their willingness to respect the terms of this Convention by a pledge to the Geneva Call.

<sup>48</sup> V. the statement of the Human Rights Association of Turkey (IHD), 4 April 2007.

<sup>49</sup> *Terör ve terörle mücadelede doğan rarlara karşılama hakkında kanun*, which entered into force 27 July 2004.

<sup>50</sup> Since the passage of Law 5233, the European Court of Human Rights has systematically refused to hear cases from Kurdish peasants, whereas previously, it had several times denounced the actions of the Turkish authorities for the burning of villages, assassinations, rapes, tortures etc. that had occurred during forced displacements.

<sup>51</sup> In this regard, it should be noted that although the amount of compensation awarded for the assassinations, disappearances and property losses has been judged as insufficient by many observers, the main demand of the victims remains the acknowledgement by the government of the crimes committed by its agents (v. *Zorunlu göç ile yüzleşmek*, Tesev Publications, İstanbul, 2006).

<sup>52</sup> Figures in the interpellation of Sinan Yerlikaya, MP, of the People's Republican Party (CHP). V. the First News Agency dispatch of 8 April 2007.

<sup>53</sup> Ibid.

still on the job, as mentioned above – have confiscated, with the connivance of the Turkish authorities, the displaced peasants' possessions. In some regions, these guards do not hesitate to kill displaced persons who try to return to their land. Then there are the conditions laid down by some local authorities (both civilian and military) according to which those who wish to return to their villages must become village guards and/or must sign documents testifying that their villages were destroyed by terrorists.<sup>54</sup>

Under such conditions, the Turkish authorities' claim that 137,637 displaced persons have returned to their villages between 1998 and 2006 should be taken with great caution.<sup>55</sup> In point of fact, many careful observers have pointed out that in the absence of any reliable statistics in this area, these figures are likely to be exaggerated, most certainly including persons who returned to their villages for a brief period in the course of the year but now living in the cities.

As already mentioned, the roots of the problem of forced displacement are to be found in the refusal to recognize the fundamental rights of the Kurdish people of Turkey. As long as there is no political solution to this problem, the phenomenon of forced displacements risks being perpetuated with all its concomitant problems and suffering.

### **Dam building**

The building of many dams in Turkish Kurdistan has already caused the displacement of tens of thousands of persons. Yet public opinion has not been sensitized to this matter, and the Representative of the Secretary-General does not speak of it in his reports. Does this silence prevail in the name of "technical progress" and "economic development"?

Following the construction of the Keban dam (1965-75), the first mega-dam in Kurdistan,<sup>56</sup> in 1980, the Turkish authorities launched the GAP project,<sup>57</sup> which provides for the construction of 22 dams and 19 hydroelectric power stations on the Euphrates and the Tigris Rivers. They are intended furnish not only 27,000 GWh of electricity per year, but also irrigation for some 1.7 million hectares of arable land and employment for 3.8 million people.

Again, according to official figures, today, more than half of the dams planned (13) have been built, and half of the total budget (US\$ 32 billion) has been spent with the support of credit from Western countries.<sup>58</sup> The electric power generating plants already built produced 22,4000 GWh in 2004, to wit half of the electricity production of Turkey, and the dams have irrigated 233,300 hectares of land.

However, the ecological consequences (bio-diversity destabilization, salinization of the soil, the dangers arising from single-crop cultivation etc.), the public health consequences (epidemics and parasitical sicknesses in particular), the

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<sup>54</sup> V. Bulletins 26 and 27 of Göç-Der (the Displaced Persons Solidarity and Cultural Activities Association), Istanbul, 2003-2004.

<sup>55</sup> Figures cited in *Zorunlu göç ile yüzleşmek*, Tesev Publications, Istanbul, June 2006.

<sup>56</sup> With its 125-kilometer-long reservoir covering a surface of 675 km<sup>2</sup>, Keban produces 7,500 GWh of electric power per year.

<sup>57</sup> Güneydogu Anadolu Projesi (the Southeast Anatolia Project), extends over the territory of nine Kurdish provinces (75,193 km. 2).

<sup>58</sup> Besides the World Bank and several private sector banks (in Switzerland and the United States), the countries that have financially supported the endeavour are Austria, Canada, France, Germany, Italy, Switzerland and the United States.

cultural consequences (the region contains numerous unique sites from several civilizations such as Zeugma, Samosat, Hasankeyf, Burmarina) are ignored – not to mention the human consequences (displacement of populations and the all but programmed disappearance of share croppers and small farmers: tens of thousands of families own a mere five hectares whereas the big land owners – 1% of the population – own 61% of the land). Worse, neither the affected populations nor affected neighboring countries (Syria and Iraq, downstream) have been consulted.

It is perhaps not surprising that there are no exact figures on the number of displaced persons created by the dams, for the majority of them were displaced when the war between the Turkish army and the PKK guerilla was at its peak (1984-1989), a war that caused some 35,000 deaths and 3 to 4 million displaced persons (see below).

However, today, the population of Hasankayf (55,000 persons threatened with forced displacement) is mobilizing in opposition to the construction of the Llisu Dam on the Tigris, which will result in the flooding of the entire region.<sup>59</sup> Instead of the Llisu, the local population is proposing the construction of four small dams. The population wants to be consulted and demands that the project bring them some benefit rather than letting all profit accrue to Ankara and foreign investors.

Sources.

<http://gap.gov.tr/>

<http://www.dpt.gov.tr/bgyu/bkp/GAP2003.pdf>

*Vers un développement solidaire*, No 186, June 2006.

*L'Appel du Kurdistan*, No 16, June 1996.

#### Illustration 4

### **Sudan**

“Over the last decade, Sudan has suffered major displacement problems as a result of both natural disaster and armed conflict. The drought of 1983-1985 in the western and eastern Sudan and the famine which resulted cost the country considerable loss of lives and triggered massive dislocation of populations in those regions.”<sup>60</sup> At the same time, the south of Sudan revolted against the central government of Khartoum, which had rescinded its autonomy. In a decade, the war caused five million internally displaced persons and 500,000 refugees in neighboring countries, not to mention the hundreds of thousands of deaths from famine and from the armed conflict between the Sudanese army and the guerilla of the Sudanese People’s Liberation Movement.<sup>61</sup>

An agreement between the central government and the southern rebels in 2003 put an end to the conflict, but it was achieved at the expense of Darfur, which then revolted almost at the same time.

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<sup>59</sup> Its 120-kilometer-long reservoir will cover 312 km<sup>2</sup> and is expected to produce 3,833 GWh of electricity per year.

<sup>60</sup> *Comprehensive study prepared by Mr. Francis M. Deng, Representative of the Secretary-General on the human rights issues related to internally displaced persons, pursuant to Commission on Human Rights resolution 1992/73, E/CN.4/1993/35, §203: <http://www.unhcr.ch/Huridocda/Huridocda.nsf/TestFrame/fb36ada4f4e26ce68025672f003ef984?Opendocument>.*

<sup>61</sup> *Ibid.*, §204.

## Population displacements in Darfur

Darfur is a region situated in the west of Sudan, bordering Chad, Libya and the Central African Republic, extending over 256,000 km<sup>2</sup> and inhabited by some five million people. The region has been in the throes of a civil war since 2003.

The Darfur rebels, like those of the south, demand a fair sharing of the wealth between the central government and the regions. This demand follows the discovery of oil in their region and the fear that Khartoum, supported by foreign oil companies, will help itself to this new found wealth.

The stranglehold on the revenues from national resources by the Khartoum oligarchy is nothing new. Since 1978, it has pursued a policy of imposing intensive agriculture on the provinces of the south with the blessing of the Bretton Woods institutions and the Islamic banks.<sup>62</sup> The local populations do not benefit from this industrial-scale agriculture; rather this practice rapidly impoverishes the soil and negatively affects the cultivation of traditional crops.

The government has responded by severe repression, mobilizing the army and supplementary militias. Among these are the Jinjaweed, a semi-nomadic people frequently used by Khartoum<sup>63</sup> to spread terror throughout the countryside of Darfur, resulting in a catastrophic humanitarian situation.

The conflict has killed more than 200,000 persons since 2003 and has displaced more than two million. This does not include the more than 200,000 persons seeking refuge in neighboring Chad.<sup>64</sup> The forced displacement of civilian populations is the result of attacks by the Jinjaweed militias, the regular army or joint operations by the two. The operating mode is to burn villages, destroy crops, poison wells, massacre civilians and use rape as a weapon of war.<sup>65</sup> Some of the attacks, however, are the result of conflicts between rival rebel factions, particularly since May 2006.

The displaced persons are gathered in camps run primarily by NGOs.<sup>66</sup> The camps are often unsafe, the humanitarian workers must deal with serious food and medicine supply problems, convoys are often pillaged and the humanitarian personnel attacked, even killed. Numerous testimonies concur that women and girls are threatened, beaten and raped near the camps when they go out in search of firewood.

Since 2004, besides the sending of 7,000 soldiers (peace keepers) by the African Union,<sup>67</sup> U.N. missions and resolutions – both those of the Security Council and those of the Human Rights Commission/Council – have occurred in rapid succession.

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<sup>62</sup> Marc Lavergne: <http://www.marc-lavergne.com/>.

<sup>63</sup> Report of the Special Rapporteur on the situation of Human Rights in Sudan: E/CN.4/2006/111: <http://daccessdds.un.org/doc/UNDOC/GEN/G06/101/88/PDF/G0610188.pdf?OpenElement> .

<sup>64</sup> Figures of various U.N. agencies, cited in the high level mission report presented to the fourth session of the Human Rights Council: A/HRC/4/80: <http://daccessdds.un.org/doc/UNDOC/GEN/G07/116/20/PDF/G0711620.pdf?OpenElement> .

<sup>65</sup> V. note 63.

<sup>66</sup> The U.N. High Commissioner for Refugees is in charge of the protection and return of some 700,000 displaced persons in the western Darfur. V. "Darfur: the challenge of protecting the internally displaced" (box 7.2) in *The State of the World's Refugees 2006*, UNHCR: <http://www.unhcr.org/publ/PUBL/4444afce0.pdf> .

<sup>67</sup> At the time of writing (mid-April 2007), the Sudanese government had accepted the progressive deployment of 22,000 blue U.N. blue helmets.

The mission dispatched by the High Commissioner for Human Rights in April 2004, had already concluded that “the mission identified disturbing patterns of massive human rights violations in Darfur perpetrated by the government of the Sudan and its proxy militia, many of which constitute war crimes and/or crimes against humanity.”<sup>68</sup>

The mission sent by the Security Council at the end of 2004 came to practically the same conclusion, declaring that the Sudanese government and the Jinjaweed were responsible for serious violations of the international human rights and humanitarian law instruments, violations constituting crimes in international law, and that these crimes were so generalized and systematic that they could be considered crimes against humanity.<sup>69</sup>

The high level mission sent by the Human Rights Council, although prevented from going to Darfur, came to the same conclusion following its investigation among the refugees in Chad: “The situation is characterized by gross and systematic violations of human rights and grave breaches of international humanitarian law. War crimes and crimes against humanity continue across the region.”<sup>70</sup> Moreover, it warned the international community in these terms: “If the conflict in Darfur is not meaningfully and equitably resolved, bringing peace and security to its people, it could increasingly engulf the region.”<sup>71</sup>

The seizing of the International Criminal Court by the Security Council in March 2005<sup>72</sup> had no effect on the policies of the Sudanese government – which claims that the situation in Darfur has markedly improved since the Abouja agreement of May 2006.<sup>73</sup>

How does one explain the utter lack of results of such a significant mobilization on the international level in the interest of Darfur? Apparently, it is the hypocrisy – once again! – of the great powers which is at the root of it, if the words of the High Commissioner for Refugees is to be believed: “Arab and Islamic governments opposed pressure on the Sudanese government, while China, the main foreign investor in Sudan's oil industry, threatened to use its veto. Russia, a key supplier of arms, also opposed strong action. Even the United States and European Union did not wish to press the Sudanese government too far, fearing that doing so could jeopardize the signing and implementation of the peace agreement between north and south ending two decades of civil war.”<sup>74</sup>

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<sup>68</sup> E/CN.4/2005/3, § 9:  
<http://daccessdds.un.org/doc/UNDOC/GEN/G04/142/21/PDF/G0414221.pdf?OpenElement> .

<sup>69</sup> A/HRC/4/80, §58:  
<http://daccessdds.un.org/doc/UNDOC/GEN/G07/116/20/PDF/G0711620.pdf?OpenElement> .

<sup>70</sup> Ibid., §76.

<sup>71</sup> Ibid., §35.

<sup>72</sup> Resolution 1593, adopted by 11 in favor and 4 abstentions (Algeria, Brazil, China and the United States):  
<http://daccessdds.un.org/doc/UNDOC/GEN/N05/292/73/PDF/N0529273.pdf?OpenElement> .

<sup>73</sup> V., inter alia, the statement of Mohamed Ali Elmardi, Sudanese justice minister, made on 13 March 2007 at the fourth session of the Human Rights Council.

<sup>74</sup> “Darfur: the challenge of protecting the internally displaced” (inset 7.2) in *The State of the World's Refugees 2006*, UNHCR: <http://www.unhcr.org/publ/PUBL/4444afce0.pdf> .

### III. THE RIGHTS OF DISPLACED PERSONS

#### 1. Definition of displaced persons

At the beginning of the 1990s, the then Secretary-General of the United Nations carried out a series of consultations among governments, NGOs and U.N. agencies with a view to identifying displaced persons according to the following definition: “persons who have been forced to flee their homes suddenly or unexpectedly in large numbers, as a result of armed conflict, internal strife, systematic violations of human rights or natural or man-made disasters; and who are within the territory of their own country.”<sup>75</sup>

Certain NGOs have proposed the terms “interior refugees” for displaced persons.<sup>76</sup>

Among the U.N. agencies, the response given by the WHO brings into focus another dimension, which not been considered before: “the root causes of displacement are primarily socio-economic; that is, the failure of the global development process which has led to unequal distribution of wealth both between and within countries”.<sup>77</sup>

However, the proposal was dismissed with the following argument: “While WHO’s line of argument points to an important aspect of displacement, it would not be useful to include within the concept of internally displaced persons all populations who migrate because of underlying socio-economic issues. Reinvigorating the global development process is a responsibility of the United Nations system that by far exceeds the mandate of this study.”<sup>78</sup>

Finally, the following definition was given in the *Guiding Principles on Internal Displacement* presented in 1998 to the fifty-fourth session of the Commission on Human Rights and in 1999 to the General Assembly:

*“For the purposes of these Principles, internally displaced persons are persons or groups of persons who have been forced or obliged to flee or to leave their homes or places of habitual residence, in particular as a result of or in order to avoid the effects of armed conflict, situations of generalized violence, violations of human rights or natural or human-made disasters, and who have not crossed an internationally recognized State border.”*<sup>79</sup>

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<sup>75</sup> Cited in the Representative’s study: E/CN.4/1993/35, §35: <http://www.unhchr.ch/Huridocda/Huridoca.nsf/TestFrame/fb36ada4f4e26ce68025672f003ef984?Opendocument>

<sup>76</sup> *Ibid.*, §38.

<sup>77</sup> *Ibid.*, §42.

<sup>78</sup> *Ibid.*, §42.

<sup>79</sup> V. E/CN.4/1999/53/Add.2, §2, of the annex *Guiding Principles on Internal Displacement*: <http://www.unhchr.ch/Huridocda/Huridoca.nsf/0/d2e008c61b70263ec125661e0036f36e?Opendocument>

## 2. Applicable law

Theoretically, displaced persons enjoy the same rights as other residents of the country where they are. But, as there is the possibility that this country "... will be responsible for and actively involved in carrying out displacement policies",<sup>80</sup> international protection and assistance are necessary. Yet, in most cases, the countries in question evoke national sovereignty to avoid any foreign interference in their domestic affairs and to block international aid to the displaced. This results in a very delicate situation, to say the least.

In point of fact, the entire architecture of the U.N. Charter is based "on the principle of the sovereign equality of all its Members" (art. 2.1), and it prohibits any intervention "in the matters that are essentially within the domestic jurisdiction of any State" (art. 2.7). This principle is important to remember as the great powers that dominate the planet, and in particular the U.N. Security Council members, are masters of manipulation of "just causes" – with the world's media backing them – allowing them to achieve less than just political purposes (e.g. Iraq).

However, by ratifying the international human rights treaties, the governments voluntarily "renounce" a part of their sovereignty and accept the right of oversight of other governments regarding what happens within their borders. This does not exclude – on the contrary – international solidarity that they can solicit and have a right to expect from other governments, including aid in realizing the economic, social and cultural rights of all their citizens.

Further, international law obliges governments not only to respect human rights but to see to it that these rights are respected by others. This, obviously, does not open the door to unilateral interventions. The United Nations International Law Commission rightly affirms that the violation of basic human rights is an international crime that affects the entire international community. The verification of these violations and their possible sanctioning cannot be decided unilaterally but must be done by the pertinent bodies of the international community.<sup>81</sup> Moreover, in the current configuration of the Security Council,<sup>82</sup> it is highly desirable that the General Assembly deal with questions of intervention, as allowed by the U.N. Charter (art. 14), and pursue the practice established by this instance since the adoption of resolution 377 (V) in 1950.

Regarding this debate, the Representative states: "No Government can legitimately invoke sovereignty for the deliberate purpose of starving its

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<sup>80</sup> V. "Compilation and Analysis of Legal Norms, Part II: Legal Aspects Relating to the Protection against Arbitrary Displacement", submitted by the Representative to the fifty-fourth session of the Commission on Human Rights, E/CN.4/1998/53/Add.1, §5: <http://www.unhcr.ch/Huridocda/Huridocda.nsf/0/49dc663a776b2cc2c125661e002d5588?Opendocument>.

<sup>81</sup> The 1992 and 1994 reports of the International Law Commission and analyses of the 2391<sup>st</sup> and 2392<sup>nd</sup> sessions (30 and 31 May 1995).

<sup>82</sup> A non-democratic instance that accords the right of veto to five permanent members.

population to death or otherwise denying them access to protection and resources vital to their survival and well-being.”<sup>83</sup>

Thus, the Representative and the experts<sup>84</sup> who have supported him have asked what rights are applicable to internally displaced persons and what legal mechanism is required for their protection.

They have drawn on three branches of international law: international humanitarian law (the 1949 Geneva Conventions and their additional protocols), refugee law (the 1951 Geneva Convention on the status of refugees) and international human rights law.

The *Guiding Principles on Internally Displacement* were drafted on these bases (see below).

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<sup>83</sup> *Comprehensive study prepared by Mr. Francis M. Deng, Representative of the Secretary-General on the human rights issues related to internally displaced persons, pursuant to Commission on Human Rights resolution 1992/73, E/CN.4/1993/35, §151: <http://www.unhcr.ch/Huridocda/Huridoca.nsf/TestFrame/fb36ada4f4e26ce68025672f003ef984?Opendocument> .*

<sup>84</sup> Throughout his mandate, the Representative has benefited from the support of experts, has relied on studies and the results of seminars to develop a legal framework applicable to persons displaced in their own country. V. the annual reports of the Representative presented to the Commission on Human Rights and to the General Assembly.

## IV. GUIDING PRINCIPLES ON INTERNAL DISPLACEMENT

### 1. History

From the beginning of his mandate (v. Chapter V. 3.), the Representative was asked, in particular, to conduct “an examination of existing international human rights, humanitarian and refugee law and standards and their applicability to the protection of and relief assistance to internally displaced persons.”<sup>85</sup>

Noting with regard to the internally displaced that “there are important areas in which the law fails to provide them with sufficient protection, as where no explicit norms exist to address identifiable needs of the displaced”,<sup>86</sup> the Representative, while studying the above mentioned international norms, set about drafting a document entitled *Guiding Principles on Internal Displacement*<sup>87</sup> He also consulted numerous institutions, NGOs and the U.N. bodies.

Generally, the *Guiding Principles* should be read in parallel with the *Compilation and Analyses of Legal Norm*,<sup>88</sup> written by the Representative, and the *The Guiding Principles on Internal Displacement: Annotations* published in 2000 by his current successor.<sup>89</sup>

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<sup>85</sup> Resolution 1992/73 of the Commission on Human Rights, adopted without a vote 2 March 1992: available only on paper within the final report of the forty-eighth session of the Commission (27 January-6 March 1992), E/CN.4/19992/84, §2, p. 173.

<sup>86</sup> Annual report of the Representative to the fifty-second Commission on Human Rights, E/CN.4/1996/52, §9: <http://www1.umn.edu/humanrts/commission/thematic52/96-52idp.htm> .

<sup>87</sup> V. note 79.

<sup>88</sup> V. E/CN.4/1996/52/Add.2

<http://www.unhchr.ch/Huridocda/Huridoca.nsf/0/75550ee91a4fb1ff802566cc005c2c63?Opendocument> for the first part and E/CN.4/1998/53/Add.1

<http://www.unhchr.ch/Huridocda/Huridoca.nsf/0/49dc663a776b2cc2c125661e002d5588?Opendocument> for the second part. As the Representative has stated: “The Compilation and Analysis examines international human rights law, humanitarian law, and refugee law by analogy, and concludes that while existing law provides substantial coverage for the internally displaced, there are significant areas in which it fails to provide an adequate basis for their protection and assistance. Besides, the provisions of existing law are dispersed in a wide variety of international instruments which make them too diffused and unfocused to be effective in providing adequate protection and assistance for the internally displaced.” (*Guiding Principles on Internal Displacement*, E/CN.4/1998/53/Add.2, § 7: <http://www.unhchr.ch/Huridocda/Huridoca.nsf/0/d2e008c61b70263ec125661e0036f36e?Opendocument> .)

<sup>89</sup> Walter Kaelin, *The Guiding Principles on Internal Displacement: Annotations*, American Society of International Law and the Brooking Institution Project on Internal Displacements, 2000, NOT a UNHCR document but cited by the Representative in his annual report, E/CN.4/2001/5: <http://daccessdds.un.org/doc/UNDOC/GEN/G01/103/11/PDF/G0110311.pdf?OpenElement> .

As things stand now, even if these *Principles* have not been submitted for ratification,<sup>90</sup> they constitute the authoritative text on assistance and protection of internally displaced persons.

## 2. Introduction<sup>91</sup>

In his introduction to the *Guiding Principles*, the Representative draws attention to the basis of the Principles in international human rights law as well as in international humanitarian law, adding that they constitute a guide and a tool for himself and for all concerned.<sup>92</sup>

### ***Basis in international human rights law and international humanitarian law***

*“The purpose of the Guiding Principles is to address the specific needs of internally displaced persons worldwide by identifying rights and guarantees relevant to their protection. The Principles reflect and are consistent with international human rights law and international humanitarian law. They restate the relevant principles applicable to the internally displaced, which are now widely spread out in existing instruments, clarify any grey areas that might exist, and address the gaps identified in the Compilation and Analysis.<sup>93</sup> They apply to the different phases of displacement, providing protection against arbitrary displacement, access to protection and assistance during displacement and guarantees during return or alternative settlement and reintegration.” (§9)*

### ***A guide***

*“The Principles are intended to provide guidance to the Representative in carrying out his mandate; to States when faced with the phenomenon of displacement; to all other authorities, groups and persons in their relations with internally displaced persons; and to intergovernmental and non-governmental organizations when addressing internal displacement.” (§10)*

### ***A tool***

*“The Guiding Principles will enable the Representative to monitor more effectively situations of displacement and to dialogue with Governments and all pertinent actors on behalf of the internally displaced; to invite States to apply the*

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<sup>90</sup> Ratification has not been deemed necessary since the *Principles* cover norms already in force. However, the Commission on Human Rights and the General Assembly have always encouraged the Representative in his activities and have promoted the *Guiding Principles* (v. inter alia the Commission on Human Rights resolution, E/CN.4/2001/54 ([http://ap.ohchr.org/documents/E/CHR/resolutions/E-CN\\_4-RES-2001-54.doc](http://ap.ohchr.org/documents/E/CHR/resolutions/E-CN_4-RES-2001-54.doc)) and that of the General Assembly, A/RES/58/177 (<http://www.unhcr.org/home/RSDLEGAL/415c24844.pdf>).

<sup>91</sup> V. Annex 1 for the full text.

<sup>92</sup> V. E/CN.4/1998/53/Add.2, §§ 9-11:

<http://www.unhcr.ch/Huridocda/Huridocda.nsf/0/d2e008c61b70263ec125661e0036f36e?Opendocument>

<sup>93</sup> V. note 84.

*Principles in providing protection, assistance, reintegration and development support for them; and to mobilize response by international agencies, regional intergovernmental and non-governmental organizations on the basis of the Principles. The Guiding Principles are therefore intended to be a persuasive statement that should provide not only practical guidance, but also an instrument for public policy education and consciousness-raising. By the same token, they have the potential to perform a preventive function in the urgently needed response to the global crisis of internal displacement.” (§ 11)*

## ***Legal substance***

Regarding legal substance of the ***Guiding Principles***, they prohibit any arbitrary displacement, and, if, for legitimate reasons, a government must displace people (e.g. to assure the security of civilians in war time), it must strive to limit the negative effects of the operation and keep its duration to a minimum.

If the displacements have already taken place, the government, or the persons in charge of the displaced, are responsible for doing everything they can to protect the displaced from dangers such as murder, torture, rape etc.; for making sure that they are not victims of discrimination; and for supplying them, when necessary, with the essentials of life (water, food, lodging, education, in short the means of subsistence necessary for them to live in dignity). If the authorities are not able to do this themselves, they can ask the international community for help.

The ***Guiding Principles*** also allow for long-term solutions: they request governments to facilitate the return of the displaced to their homes or, if the displaced do not wish to return or cannot, to help them integrate themselves into the local community or to move to another region of their choice in the country in question. All solutions should be carried out in conditions of dignity and security, freely accepted by the displaced. Governments are also requested to see that the property of the displaced is returned to them and that the displaced are properly compensated. And it is imperative to pay particular attention to unaccompanied minor children, pregnant women and mothers with young children, the wives of heads of families as well as other vulnerable categories such as the aged and the handicapped.

## ***Several observations***

As we have already emphasized above, these ***Guiding Principles*** currently constitute the prevailing authority in the absence of specific international norms for internally displaced persons. Like other international instruments, the ***Guiding Principles*** deal generally with their subject. They may well serve as a “guide” or “tool”, but they must be adapted to each specific situation. Nonetheless, the following observations can be made:

- Displacements due to development projects are not sufficiently taken into account in the ***Guiding Principles***, in spite of the acknowledgement

of the importance of this cause of internal displacements. In this regard, the Representative perhaps set too much store by the *Guidelines* of the World Bank and the *Guidelines* of the OCDE in this area.<sup>94</sup>

- The same holds for displacements due to natural catastrophes, but this gap has been covered by the draft, in 2006, of the *Operational Directives on Human Rights* (v. Chapter VI.3).
- The detailed treatment of the question of the restitution of lodgings and property to displaced persons, within the framework of their return,<sup>95</sup> is left to other instances (v. Annex 3.b).

### 3. Outcomes

Officially, the *Guiding Principles* have received a favorable reception by the governments of member states of the former Commission on Human Rights and the General Assembly. National, regional and international instances (see below) refer to them in the course of their activities and this area.

In spite of the translation of the *Guiding Principles* into 26 national languages,<sup>96</sup> and although they are thoroughly incorporated into national legislations (Angola, Liberia, Uganda and Peru),<sup>97</sup> the fact of the matter is that the phenomenon of displaced persons is far from diminishing. If, in some countries, some success has been had in returning displaced persons to their homes (Angola and Mozambique), in the vast majority of cases, the problem remains in its entirety.

In some situations, the governments in question simply deny the existence of such a problem (Burma/Myanmar). In other cases, even when the country has adopted legislative measures, either they are inadequate or don't correspond to the real needs of the victims (Turkey) or they are simply not implemented (Colombia). This is primarily due to the lack of political will on the part of the governments concerned and their powerful allies.

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<sup>94</sup> V. particularly § 20 of the *Compilation and Analyses, Part II*, in the addendum of the annual report of the Representative to the fifty-fourth Commission on Human Rights, E/CN.4/1998/53/Add.1:

<http://www.unhchr.ch/Huridocda/Huridocda.nsf/0/49dc663a776b2cc2c125661e002d5588?Opendocument> .

<sup>95</sup> The matter of the right of the Palestinian refugees and displaced persons to return, given its complexity and its specific nature, is not treated in this brochure.

<sup>96</sup> Adding to this number the six official languages of the U.N. gives 32 languages into which the *Principles* have been translated (v. the annual report of the Representative to the forty-ninth session of the Commission on Human Rights, E/CN.4/2003/86: <http://193.194.138.190/Huridocda/Huridocda.nsf/TestFrame/c3ec8250081af226c1256cee003e1563?Opendocument> .

<sup>97</sup> V. inter alia, the report of the High Commissioner for Human Rights on human rights and mass migrations, to the sixty-first session of the Commission Rights Commission, E/CN.4/2005/80: <http://daccessdds.un.org/doc/UNDOC/GEN/G05/104/91/PDF/G0510491.pdf?OpenElement> .

## V. PROTECTION AND ASSISTANCE MECHANISMS FOR DISPLACED PERSONS

### 1. At the national level

Generally, there are no protection and assistance mechanisms for displaced persons as long as the country in question has not been confronted with this problem. On the other hand, there are structures in most countries to deal with natural catastrophes. These catastrophes are often dealt with by the national organizations of Red Cross and Red Crescent federation.<sup>98</sup> The means that these organizations have on hand vary greatly from one country to another, and such means as they may have are ordinarily under the control of the government in power. Thus, they can be immobilized, if a government is directly implicated in a development project or an armed conflict causing the displacements.

There are also in many countries national human rights institutions. However, as they are often emanations of the government (sometimes of the parliaments), their independence is not at all a foregone conclusion. Even when they are controlled by parliaments and/or run by persons apparently above any suspicion, they often have only a consultative status and lack the means (trained personnel and money) of carrying out their mission.

Thus, there are few examples of countries that take seriously this sort of problem. And when a government has adopted measures at the national level to aid internally displaced persons, more often than not these measures are not implemented and remain dead letters (v. Illustration 2).

### 2. At the regional level

Overall, the regional organizations<sup>99</sup> have been quite receptive to the contributions of the Representative of the Secretary-General and have even recommended that the *Guiding Principles* be adopted by their member states.

On the other hand, there are, unfortunately, no specific structures at the regional level for the protection of displaced persons, but some regional organizations have included this in mandates dealing with refugees and even migration.

Within the Council of Europe, the Commission on Migrations, Refugees and Populations of the Parliamentary Assembly is apparently solicited from time to time on matters of internally displaced persons, as is the European High Commissioner for Human Rights. Moreover, the Council of Europe often refers to the

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<sup>98</sup> In some cases, the armed forces of a country are mobilized to confront a sudden catastrophe affecting a large number of persons in an extended area.

<sup>99</sup> I.e. the Council of Europe, the Organization for African Unity (now the African Union) and the Organization of American States. The Asian continent has no regional human rights mechanism comparable to these others, and eastern Europe is included in the Council of Europe.

activities of the OCSE<sup>100</sup> in this regard. According to the Committee of Ministers of the Council of Europe,<sup>101</sup> this matter comes especially under the responsibility of the member states. It recommends that they integrate the *Guiding Principles* into the national legislation and requests that those countries with internally displaced persons pay particular attention to the basic rights of the displaced. Finally, it proposes that member states consider setting up of supplementary international instruments.

Although the Inter-American Commission on Human Rights decided, in February 1966, to name a special rapporteur on displaced persons, this decision was never implemented.<sup>102</sup> Currently, this question is being pursued by seven members of the Commission.

The African Commission on Human and Peoples' Rights in 2004 created the post of Special Rapporteur for Refugees, Asylum Seekers and Displaced Persons in Africa, with a relatively detailed mandate.<sup>103</sup>

On the legal level, it is always possible to file individual and collective complaints, such as those filed in the case of other human rights violations, with the European Courts of Human Rights, African Commission on Human and Peoples' Rights and the Inter-American Court of Human Rights.

### 3. At the international level

#### *The Representative of the Secretary-General on Internally Displaced Persons*

Before the appointment of the Representative of the Secretary-General on Internally Displaced Persons, there was no protection mechanism at the international level for the rights of the internally displaced.

Following the adoption of resolution 1992/73 by the Commission on Human Rights, the Secretary-General appointed Francis Deng (from Sudan) to this post with the following mandate: "... to seek again views and information from all Governments on the human rights issues related to internally displaced persons including an examination of existing international human rights, humanitarian

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<sup>100</sup> This organization, which includes also the United States and Canada, is especially active in the countries of eastern Europe.

<sup>101</sup> Recommendation adopted by the Committee of Ministers, 5 April 2006, Rec(2006)6.

<sup>102</sup> V. Robert Cohen, "The Response of Regional Organizations to Internal Displacements in the Americas" presented to the Conference on Regional Response to Forced Migration in Central America and the Caribbean of the Organization of American States, Washington, D.C., 30 September and 1 October 1997: <http://www.oas.org/juridico/English/cohene.html>.

<sup>103</sup> "a. seek, receive, examine and act upon information on the situation of refugees, asylum seekers and internally displaced persons in Africa; b. undertake studies, research and other related activities to examine appropriate ways to enhance the protection of refugees, asylum seekers and internally displaced persons in Africa; c. undertake fact-finding missions, investigations, visits and other appropriate activities to refugee camps and camps for internally displaced persons; ... f. develop and recommend effective strategies to better protect the rights of refugees, asylum seekers and internally displaced persons in Africa and to follow up on his recommendations; ... h. submit reports at every ordinary session of the African Commission on the situation of refugees, asylum seekers and internally displaced persons in Africa": [http://www.achpr.org/english/\\_info/index\\_rdp\\_en.html](http://www.achpr.org/english/_info/index_rdp_en.html).

and refugee law and standards and their applicability to the protection of and relief assistance to internally displaced persons”.<sup>104</sup>

During the first years of his mandate, the Representative limited himself mostly to displacements due to ethnic and religious conflicts and to the drafting of a legal framework for the protection of displaced persons (Chapter IV.B), all while conducting missions to various countries confronted with this problem<sup>105</sup> and acting within the U.N. instances for the creation of an “inter-agency” structure – failing the establishment of a specific body – to come to the help of the victims (v. below).

Fifteen years after the creation of this mandate, the Representative office remains the primary mechanism of human rights protection for displaced persons.<sup>106</sup> He collects information from the various sources (governmental, institutional and non-governmental), receives complaints from victims or from their “representatives”, continues to carry out missions to countries, intervenes with the governments in question as well as the appropriate regional and international organizations so that they assist and protect the internally displaced. Thus, as he likes to bill himself, he is a “catalyst”.

The Representative has promoted, and continues to promote, the rights of displaced persons within the U.N. system and presents an annual report to the Commission on Human Rights<sup>107</sup> and to the General Assembly regarding the problems of displaced persons and his activities in this area, while making recommendations to the appropriate instances.

Francis Deng (Sudan) was replaced by Walter Kaelin (Switzerland) in 2005. The successor continues the above mentioned activities, while carrying out legal studies on the aspects of this question that were not been dealt with by his predecessor, such as the drafting of the *Operational Directives on Human Rights and Natural Disasters*,<sup>108</sup> *Benchmarks on Durable Solutions*,<sup>109</sup> and a *Guide for the National Implementation of the Guiding Principles on Internal Displacement*.<sup>110</sup>

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<sup>104</sup> Resolution 1992/73 of the Commission on Human Rights, adopted without a vote 2 March 1992: available only on paper within the final report of the forty-eighth session of the Commission (27 January-6 March 1992), E/CN.4/1999/2/84, §2, p. 173.

<sup>105</sup> Between 1992 and 2002, Francis Deng conducted missions to 25 countries. His successor, Walter Kaelin, has already conducted missions to ten countries and initiated “working visits” in countries affected by this phenomenon. These “working visits”, unlike official visits to countries, do not result in a official report but in a summary in the annual reports of the Representative. For example, v. A/HRC/4/38:<http://daccessdds.un.org/doc/UNDOC/GEN/G07/100/68/PDF/G0710068.pdf?OpenElement>.

<sup>106</sup> Although the treaty bodies and the special procedures of the former Commission on Human Rights (now the Human Rights Council) deal with the problem of displaced persons within the framework of their respective mandates, their efforts remain partial and selective.

<sup>107</sup> Since 2006, the Commission has been replaced by the Human Rights Council.

<sup>108</sup> This initiative was taken after the tsunami that hit several Asian countries at the end of 2005. Designed for intergovernmental and non-governmental humanitarian organizations, these directives emphasize “what humanitarian actors should do in order to implement a rights based approach to humanitarian action in the context of natural disasters” and were adopted by the U.N. Inter-Agency Standing Committee. V. *Operational Guidelines on Human Rights and Natural Disasters*, A/HRC/4/38/Add.1: <http://daccessdds.un.org/doc/UNDOC/GEN/G07/105/12/PDF/G0710512.pdf?OpenElement>.

<sup>109</sup> V. Annex 2.

<sup>110</sup> Drafted for legislators and political authorities, the *Guide* is scheduled for the beginning of 2008, v. A/HRC/4/38: <http://daccessdds.un.org/doc/UNDOC/GEN/G07/100/68/PDF/G0710068.pdf?OpenElement>.

## *Inter-Agency arrangements*

The Representative has formulated three options for assisting and protecting the displaced: the creation of a specific structure; entrusting the task to an existing institution; establishing a collaborative structure among various U.N. instances. The U.N. has favored this last one by creating “coordination” structures among its humanitarian actions for displaced persons since the beginning of the 1990s: resident coordinators in charge of coordinating assistance to the displaced in the field (1990); an Emergency Relief Coordinator in charge of coordinating the response to emergency situations at the U.N. level (1991); the Inter-Agency Standing Committee (1992), which has set up its own working group on displaced persons;<sup>111</sup> and a Senior Inter-Agency Network (2000).<sup>112</sup>

Although the activism of the Representative has been such as to promote the dimension of protection in numerous “Directives” appertaining to these structures, the activities of these structures have been, at best, limited to humanitarian aid.<sup>113</sup> The setting up of a group within the Office of Humanitarian Affairs, in charge of coordinating the U.N. activities for displaced persons has changed very little.

Since the out set, the Representative has not been kind to these bodies in his criticism: “Agencies are known to resist coordination and are not always ready to assume responsibility in situations of internal displacement.”<sup>114</sup> His criticism has often been later borne out by various studies (carried out both within and without these bodies).<sup>115</sup>

Worse, it seems that certain bodies have tried to divest themselves as fast as possible of this vexatious matter of internally displaced persons, judging from the question put to the Representative in 2002 by the Emergency Relief Coordinator,<sup>116</sup> who wanted to know “when an IDP should no longer be considered as such”. This resulted in the undertaking of a study that the Representative published only in 2007 (v. Annex 2).

Regarding the existing institutions, the Office of the United Nations High Commissioner for Refugees (HCR) would seem, at first glance at least, the organization best equipped to deal with the displaced, given its experience in

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<sup>111</sup> E/CN.4/2003/86, §46 : <http://193.194.138.190/Huridocda/Huridoca.nsf/TestFrame/c3ec8250081af226c1256cee003e1563?OpenDocument> .

<sup>112</sup> E/CN.4/2002/95, §§ 62-80:  
<http://daccessdds.un.org/doc/UNDOC/GEN/G02/101/40/PDF/G0210140.pdf?OpenElement> .

<sup>113</sup> V. the successive annual reports of the Representative to the former Commission on Human Rights (now the Human Rights Council) and the General Assembly.

<sup>114</sup> E/CN.4/1996/52, §25: <http://www1.umn.edu/humanrts/commission/thematic52/96-52idp.htm> .

<sup>115</sup> E.g. §§ 25-29 of *MASS EXODUSES AND DISPLACED PERSONS: Report of the Representative of the Secretary-General on internally displaced persons, Francis M. Deng*, annual report to the 60<sup>th</sup> session of the Commission on Human Rights, E/CN.4/2004/77:  
<http://daccessdds.un.org/doc/UNDOC/GEN/G04/115/38/PDF/G0411538.pdf?OpenElement> .

<sup>116</sup> Kenzo Oshima (Japan), who held this post at the time (v. E/CN.5/2005/84, §29: <http://daccessdds.un.org/doc/UNDOC/GEN/G05/102/04/PDF/G0510204.pdf?OpenElement>), was succeeded by Jan Eglund (Norway) from June 2003 to December 2006, who has been followed by Sir John Holmes (United Kingdom) since January 2007.

dealing with refugees, a closely related area of endeavor. Moreover, in some situations the HCR has already been entrusted with looking after internally displaced persons (Bosnia, Tajikistan, Chechnya, among others). However, for the HCR to intervene – totally apart from the question of its effectiveness – two conditions must be met at the out set: it must receive an explicit mandate from the U.N., and it must have from the country in question an authorization to carry out this mandate on that country’s territory. According to Bill Clarence,<sup>117</sup> one cannot expect much from an U.N. agency that he characterizes as “bureaucratic, costly, self-satisfied and often indifferent to the need of protection” which it considers “as a secondary and not the main objective” of its efforts.<sup>118</sup>

The International Committee for the Red Cross (ICRC) has as mandate to assist civilian victims – displaced or not – during armed conflict and to attend to prisoner of war. Like the other international organizations, for the ICRC to intervene, it must be recognized and authorized to work in the field by those who are party to the conflict. In some instances, the ICRC has aided internally displaced persons (e.g. in Colombia).

The help of other U.N. organizations is sometimes solicited for displaced persons, according to their area of activity (the World Food Program, UNICEF, the United Nations Development Fund, among others).

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<sup>117</sup> Special Representative of the HCR to Sri Lanka from 1988 to 1991.

<sup>118</sup> V. “HCR : protection et besoins contemporains” in *Migration forcée*, No 26, October 2006.

## Conclusion

Like the Representative, we are tempted to argue in favor of a specific international organization that would be in charge of assisting and protecting internally displaced persons. This would be amply justified, given the magnitude of the problem.

However, what must be emphasized is the protection of displaced persons, their rights and their need of economic development, for, while humanitarian aid can surely attenuate their sufferings, it cannot substitute for long-term solutions, which are of a political, economic and social nature. As the Representative has stated: “Unless these structural defects [distribution of wealth; inequality of opportunity; racial, ethnic, religious and cultural discrimination and marginalization; undemocratic exercise of power; lack of respect of human rights; and the absence of government based on law] and the social cleavages they create are addressed, durable peace, security and stability are bound to be elusive and situations of displacement never truly resolved.”<sup>119</sup>

Finally, any action in favor of the displaced must take into account the autonomy of the concerned populations, and the international organizations cannot pretend to replace this for any appreciable length of time.

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<sup>119</sup> *MASS EXODUSES AND DISPLACED PERSONS: Report of the Representative of the Secretary-General on internally displaced persons, Francis M. Deng, submitted pursuant to Commission on Human Rights resolution 2002/56, annual report to the 59<sup>th</sup> session of the Commission, E/CN.4/2003/86, §8: <http://193.194.138.190/Huridocda/Huridoca.nsf/TestFrame/c3ec8250081af226c1256cee003e1563?Opendocument> .*

## VI) ANNEXES

Annex 1

UNITED  
NATIONS

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**Economic and Social  
Council**

Distr.  
GENERAL  
E/CN.4/1998/53/Add.2  
11 February 1998  
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**COMMISSION ON HUMAN RIGHTS**  
**Fifty-fourth session**  
**Item 9 (d) of the provisional agenda**

**FURTHER PROMOTION AND ENCOURAGEMENT OF HUMAN RIGHTS  
AND FUNDAMENTAL FREEDOMS, INCLUDING THE QUESTION  
OF THE PROGRAMME AND METHODS OF WORK OF THE  
COMMISSION HUMAN RIGHTS, MASS EXODUSES  
AND DISPLACED PERSONS**

**Report of the Representative of the Secretary-General, Mr. Francis M. Deng,  
submitted pursuant to Commission resolution 1997/39**

**Addendum**

**Guiding Principles on Internal Displacement**

# GUIDING PRINCIPLES ON INTERNAL DISPLACEMENT

## INTRODUCTION: SCOPE AND PURPOSE

1. These Guiding Principles address the specific needs of internally displaced persons worldwide. They identify rights and guarantees relevant to the protection of persons from forced displacement and to their protection and assistance during displacement as well as during return or resettlement and reintegration.

2. For the purposes of these Principles, internally displaced persons are persons or groups of persons who have been forced or obliged to flee or to leave their homes or places of habitual residence, in particular as a result of or in order to avoid the effects of armed conflict, situations of generalized violence, violations of human rights or natural or human-made disasters, and who have not crossed an internationally recognized State border.

3. These Principles reflect and are consistent with international human rights law and international humanitarian law. They provide guidance to:

- (a) The Representative of the Secretary-General on internally displaced persons in carrying out his mandate;
- (b) States when faced with the phenomenon of internal displacement;
- (c) All other authorities, groups and persons in their relations with internally displaced persons; and
- (d) Intergovernmental and non-governmental organizations when addressing internal displacement.

4. These Guiding Principles should be disseminated and applied as widely as possible.

## SECTION I - GENERAL PRINCIPLES

### Principle 1

1. Internally displaced persons shall enjoy, in full equality, the same rights and freedoms under international and domestic law as do other persons in their country. They shall not be discriminated against in the enjoyment of any rights and freedoms on the ground that they are internally displaced.

2. These Principles are without prejudice to individual criminal responsibility under international law, in particular relating to genocide, crimes against humanity and war crimes.

### Principle 2

1. These Principles shall be observed by all authorities, groups and persons irrespective of their legal status and applied without any adverse distinction. The observance of these Principles shall not affect the legal status of any authorities, groups or persons involved.

2. These Principles shall not be interpreted as restricting, modifying or impairing the provisions of any international human rights or international humanitarian law instrument or rights granted to persons under domestic law. In particular, these Principles are without prejudice to the right to seek and enjoy asylum in other countries.

### Principle 3

1. National authorities have the primary duty and responsibility to provide protection and humanitarian assistance to internally displaced persons within their jurisdiction.

2. Internally displaced persons have the right to request and to receive protection and humanitarian assistance from these authorities. They shall not be persecuted or punished for making such a request.

#### Principle 4

1. These Principles shall be applied without discrimination of any kind, such as race, colour, sex, language, religion or belief, political or other opinion, national, ethnic or social origin, legal or social status, age, disability, property, birth, or on any other similar criteria.

2. Certain internally displaced persons, such as children, especially unaccompanied minors, expectant mothers, mothers with young children, female heads of household, persons with disabilities and elderly persons, shall be entitled to protection and assistance required by their condition and to treatment which takes into account their special needs.

## SECTION II - PRINCIPLES RELATING TO PROTECTION FROM DISPLACEMENT

#### Principle 5

All authorities and international actors shall respect and ensure respect for their obligations under international law, including human rights and humanitarian law, in all circumstances, so as to prevent and avoid conditions that might lead to displacement of persons.

#### Principle 6

1. Every human being shall have the right to be protected against being arbitrarily displaced from his or her home or place of habitual residence.

2. The prohibition of arbitrary displacement includes displacement:

- (a) When it is based on policies of apartheid, "ethnic cleansing" or similar practices aimed at/or resulting in altering the ethnic, religious or racial composition of the affected population;
- (b) In situations of armed conflict, unless the security of the civilians involved or imperative military reasons so demand;
- (c) In cases of large-scale development projects, which are not justified by compelling and overriding public interests;
- (d) In cases of disasters, unless the safety and health of those affected requires their evacuation; and
- (e) When it is used as a collective punishment.

3. Displacement shall last no longer than required by the circumstances.

#### Principle 7

1. Prior to any decision requiring the displacement of persons, the authorities concerned shall ensure that all feasible alternatives are explored in order to avoid displacement altogether. Where no alternatives exist, all measures shall be taken to minimize displacement and its adverse effects.

2. The authorities undertaking such displacement shall ensure, to the greatest practicable extent, that proper accommodation is provided to the displaced persons, that such displacements are effected in satisfactory conditions of safety, nutrition, health and hygiene, and that members of the same family are not separated.

3. If displacement occurs in situations other than during the emergency stages of armed conflicts and disasters, the following guarantees shall be complied with:

- (a) A specific decision shall be taken by a State authority empowered by law to order such measures;
- (b) Adequate measures shall be taken to guarantee to those to be displaced full information on the reasons and procedures for their displacement and, where applicable, on compensation and relocation;
- (c) The free and informed consent of those to be displaced shall be sought;
- (d) The authorities concerned shall endeavour to involve those affected, particularly women, in the planning and management of their relocation;
- (e) Law enforcement measures, where required, shall be carried out by competent legal authorities; and
- (f) The right to an effective remedy, including the review of such decisions by appropriate judicial authorities, shall be respected.

#### Principle 8

Displacement shall not be carried out in a manner that violates the rights to life, dignity, liberty and security of those affected.

#### Principle 9

States are under a particular obligation to protect against the displacement of indigenous peoples, minorities, peasants, pastoralists and other groups with a special dependency on and attachment to their lands.

### SECTION III - PRINCIPLES RELATING TO PROTECTION DURING DISPLACEMENT

#### Principle 10

1. Every human being has the inherent right to life which shall be protected by law. No one shall be arbitrarily deprived of his or her life. Internally displaced persons shall be protected in particular against:

- (a) Genocide;
- (b) Murder;
- (c) Summary or arbitrary executions; and
- (d) Enforced disappearances, including abduction or unacknowledged detention, threatening or resulting in death.

Threats and incitement to commit any of the foregoing acts shall be prohibited.

2. Attacks or other acts of violence against internally displaced persons who do not or no longer participate in hostilities are prohibited in all circumstances. Internally displaced persons shall be protected, in particular, against:

- (a) Direct or indiscriminate attacks or other acts of violence, including the creation of areas wherein attacks on civilians are permitted;
- (b) Starvation as a method of combat;
- (c) Their use to shield military objectives from attack or to shield, favour or impede military operations;
- (d) Attacks against their camps or settlements; and
- (e) The use of anti-personnel landmines.

### Principle 11

1. Every human being has the right to dignity and physical, mental and moral integrity.

2. Internally **displaced** persons, whether or not their liberty has been restricted, shall be protected in particular against:

(a) Rape, mutilation, torture, cruel, inhuman or degrading treatment or punishment, and other outrages upon personal dignity, such as acts of gender-specific violence, forced prostitution and any form of indecent assault;

(b) Slavery or any contemporary form of slavery, such as sale into marriage, sexual exploitation, or forced labour of children; and

(c) Acts of violence intended to spread terror among internally displaced persons.

Threats and incitement to commit any of the foregoing acts shall be prohibited.

### Principle 12

1. Every human being has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention.

2. To give effect to this right for internally displaced persons, they shall not be interned in or confined to a camp. If in exceptional circumstances such internment or confinement is absolutely necessary, it shall not last longer than required by the circumstances.

3. Internally displaced persons shall be protected from discriminatory arrest and detention as a result of their displacement.

4. In no case shall internally displaced persons be taken hostage.

### Principle 13

1. In no circumstances shall displaced children be recruited nor be required or permitted to take part in hostilities.

2. Internally displaced persons shall be protected against discriminatory practices of recruitment into any armed forces or groups as a result of their displacement. In particular any cruel, inhuman or degrading practices that compel compliance or punish non-compliance with recruitment are prohibited in all circumstances.

### Principle 14

1. Every internally displaced person has the right to liberty of movement and freedom to choose his or her residence.

2. In particular, internally displaced persons have the right to move freely in and out of camps or other settlements.

### Principle 15

Internally displaced persons have:

(a) The right to seek safety in another part of the country;

(b) The right to leave their country;

(c) The right to seek asylum in another country; and

(d) The right to be protected against forcible return to or resettlement in any place where their life, safety, liberty and/or health would be at risk.

### Principle 16

1. All internally displaced persons have the right to know the fate and whereabouts of missing relatives.

2. The authorities concerned shall endeavour to establish the fate and whereabouts of internally displaced persons reported missing, and cooperate with relevant international organizations engaged in this task. They shall inform the next of kin on the progress of the investigation and notify them of any result.

3. The authorities concerned shall endeavour to collect and identify the mortal remains of those deceased, prevent their despoliation or mutilation, and facilitate the return of those remains to the next of kin or dispose of them respectfully.

4. Grave sites of internally displaced persons should be protected and respected in all circumstances. Internally displaced persons should have the right of access to the grave sites of their deceased relatives.

#### Principle 17

1. Every human being has the right to respect of his or her family life.

2. To give effect to this right for internally displaced persons, family members who wish to remain together shall be allowed to do so.

3. Families which are separated by displacement should be reunited as quickly as possible. All appropriate steps shall be taken to expedite the reunion of such families, particularly when children are involved. The responsible authorities shall facilitate inquiries made by family members and encourage and cooperate with the work of humanitarian organizations engaged in the task of family reunification.

4. Members of internally displaced families whose personal liberty has been restricted by internment or confinement in camps shall have the right to remain together.

#### Principle 18

1. All internally displaced persons have the right to an adequate standard of living.

2. At the minimum, regardless of the circumstances, and without discrimination, competent authorities shall provide internally displaced persons with and ensure safe access to:

- (a) Essential food and potable water;
- (b) Basic shelter and housing;
- (c) Appropriate clothing; and
- (d) Essential medical services and sanitation.

3. Special efforts should be made to ensure the full participation of women in the planning and distribution of these basic supplies.

#### Principle 19

1. All wounded and sick internally displaced persons as well as those with disabilities shall receive to the fullest extent practicable and with the least possible delay, the medical care and attention they require, without distinction on any grounds other than medical ones. When necessary, internally displaced persons shall have access to psychological and social services.

2. Special attention should be paid to the health needs of women, including access to female health care providers and services, such as reproductive health care, as well as appropriate counselling for victims of sexual and other abuses.

3. Special attention should also be given to the prevention of contagious and infectious diseases, including AIDS, among internally displaced persons.

### Principle 20

1. Every human being has the right to recognition everywhere as a person before the law.

2. To give effect to this right for internally displaced persons, the authorities concerned shall issue to them all documents necessary for the enjoyment and exercise of their legal rights, such as passports, personal identification documents, birth certificates and marriage certificates. In particular, the authorities shall facilitate the issuance of new documents or the replacement of documents lost in the course of displacement, without imposing unreasonable conditions, such as requiring the return to one's area of habitual residence in order to obtain these or other required documents.

3. Women and men shall have equal rights to obtain such necessary documents and shall have the right to have such documentation issued in their own names.

### Principle 21

1. No one shall be arbitrarily deprived of property and possessions.

2. The property and possessions of internally displaced persons shall in all circumstances be protected, in particular, against the following acts:

- (a) Pillage;
- (b) Direct or indiscriminate attacks or other acts of violence;
- (c) Being used to shield military operations or objectives;
- (d) Being made the object of reprisal; and
- (e) Being destroyed or appropriated as a form of collective punishment.

3. Property and possessions left behind by internally displaced persons should be protected against destruction and arbitrary and illegal appropriation, occupation or use.

### Principle 22

1. Internally displaced persons, whether or not they are living in camps, shall not be discriminated against as a result of their displacement in the enjoyment of the following rights:

- (a) The rights to freedom of thought, conscience, religion or belief, opinion and expression;
- (b) The right to seek freely opportunities for employment and to participate in economic activities;
- (c) The right to associate freely and participate equally in community affairs;
- (d) The right to vote and to participate in governmental and public affairs, including the right to have access to the means necessary to exercise this right; and
- (e) The right to communicate in a language they understand.

### Principle 23

1. Every human being has the right to education.

2. To give effect to this right for internally displaced persons, the authorities concerned shall ensure that such persons, in particular displaced children, receive education which shall be free and compulsory at the primary level. Education should respect their cultural identity, language and religion.

3. Special efforts should be made to ensure the full and equal participation of women and girls in educational programmes.

4. Education and training facilities shall be made available to internally displaced persons, in particular adolescents and women, whether or not living in camps, as soon as conditions permit.

## SECTION IV - PRINCIPLES RELATING TO HUMANITARIAN ASSISTANCE

### Principle 24

1. All humanitarian assistance shall be carried out in accordance with the principles of humanity and impartiality and without discrimination.

2. Humanitarian assistance to internally displaced persons shall not be diverted, in particular for political or military reasons.

### Principle 25

1. The primary duty and responsibility for providing humanitarian assistance to internally displaced persons lies with national authorities.

2. International humanitarian organizations and other appropriate actors have the right to offer their services in support of the internally displaced. Such an offer shall not be regarded as an unfriendly act or an interference in a State's internal affairs and shall be considered in good faith. Consent thereto shall not be arbitrarily withheld, particularly when authorities concerned are unable or unwilling to provide the required humanitarian assistance.

3. All authorities concerned shall grant and facilitate the free passage of humanitarian assistance and grant persons engaged in the provision of such assistance rapid and unimpeded access to the internally displaced.

### Principle 26

Persons engaged in humanitarian assistance, their transport and supplies shall be respected and protected. They shall not be the object of attack or other acts of violence.

### Principle 27

1. International humanitarian organizations and other appropriate actors when providing assistance should give due regard to the protection needs and human rights of internally displaced persons and take appropriate measures in this regard. In so doing, these organizations and actors should respect relevant international standards and codes of conduct.

2. The preceding paragraph is without prejudice to the protection responsibilities of international organizations mandated for this purpose, whose services may be offered or requested by States.

## SECTION V - PRINCIPLES RELATING TO RETURN, RESETTLEMENT AND REINTEGRATION

### Principle 28

1. Competent authorities have the primary duty and responsibility to establish conditions, as well as provide the means, which allow internally displaced persons to return voluntarily, in safety and with dignity, to their homes or places of habitual residence, or to resettle voluntarily in another part of the country. Such authorities shall endeavour to facilitate the reintegration of returned or resettled internally displaced persons.

2. Special efforts should be made to ensure the full participation of internally displaced persons in the planning and management of their return or resettlement and reintegration.

### Principle 29

1. Internally displaced persons who have returned to their homes or places of habitual residence or who have resettled in another part of the country shall not be discriminated against as a result of their having been displaced. They shall have the right to participate fully and equally in public affairs at all levels and have equal access to public services.

2. Competent authorities have the duty and responsibility to assist returned and/or resettled internally displaced persons to recover, to the extent possible, their property and possessions which they left behind or were dispossessed of upon their displacement. When recovery of such property and possessions is not possible, competent authorities shall provide or assist these persons in obtaining appropriate compensation or another form of just reparation.

### Principle 30

All authorities concerned shall grant and facilitate for international humanitarian organizations and other appropriate actors, in the exercise of their respective mandates, rapid and unimpeded access to internally displaced persons to assist in their return or resettlement and reintegration.

## Annex 2

*At the request of the United Nations Emergency Relief Coordinator, the Representative of the Secretary General on Internally Displaced Persons drafted the following criteria to determine when displacement ends.*

*After a broad range of consultations, these criteria were presented to the Inter-Agency Standing Committee in March 2007, and the Representative hopes that they will be extensively used by the international humanitarian community and will allow humanitarian organizations to make coherent decisions.*

### **Benchmarks on durable solutions<sup>120</sup>**

In this regard, the Representative presented the Under-Secretary-General for Humanitarian Affairs and Emergency Relief Coordinator, Jan Egeland, with a conceptual framework containing criteria benchmarks to help determine how and when IDPs are no longer to be considered as displaced in need of assistance or protection. This initially seemed a relatively straightforward task as the Guiding Principles on Internal Displacement had been finalized and included a framework for determining displacement and related needs.

However, in the course of an inclusive consultative process, it became clear that the ending of internal displacement is a complex process which usually does not end at a specific point in time in the same way that refugee status does through a cessation clause. Rather, ending displacement is a process through which the need for particular assistance and protection diminishes. Sometimes, for long periods after return, those who have been displaced may find themselves in markedly different circumstances and with different needs than those who never left their home communities. Even in the context of a durable peace agreement, insecurity may continue to pose problems for uprooted populations, particularly if there are resentments and conflicts between returnees or resettled populations and the already resident population. Sometimes, human rights problems faced by returnees that are linked to their having been displaced, such as lack of documentation, violation of property rights, lack of access to justice, or discrimination, may linger on, years after the humanitarian crisis that had made the presence of international humanitarian agencies necessary has ended. Thus, it may be necessary to distinguish between the time when assistance and protection by international humanitarian organizations is no longer needed and the issue of continuing protection and assistance needs of IDPs that must be met by the Government concerned. Indeed, persons no longer considered internally displaced by the international community may have protection and assistance needs requiring attention by their Government.

Therefore, it was decided that it would be appropriate to develop benchmarks to assist international agencies, NGOs and IDPs themselves to determine whether durable solutions to internal displacement have been found and, if not, to identify what is still required towards reaching that goal. Such benchmarks would also help humanitarian organizations with specific mandates for assisting and protecting IDPs to determine if an individual's displacement remains a reason for garnering special attention or whether

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<sup>120</sup> Published in the Representative's annual report presented to the fourth session of the Human Rights Council, 3 January 2007 (v. pp. 11 and 13) A/CH/4/38.

the needs they have should be addressed by other actors - for example, development agencies or national agencies in a more comprehensive community-based approach.

To determine whether and to what extent a durable solution has been achieved it is necessary to examine both the processes through which solutions are found and the actual conditions of the returnees/resettled persons. In general, it is important to consider whether (a) the national authorities have established the conditions conducive to safe and dignified return or resettlement; (b) formerly displaced persons are able to assert their rights on the same basis as other nationals; (c) international observers are able to provide assistance and to monitor the situation of the formerly displaced; and ultimately, (d) the durable solution is sustainable. The benchmarks are presented in two sections. First are the processes through which durable solutions are determined to have been achieved, and second are the conditions that mark a durable solution to displacement.

Examples of “indicators of the processes” leading to durable solutions include: (a) The participation of IDPs, which includes (i) the right of IDPs to make an informed decision to remain where they are, to return to their home communities or to (re)settle elsewhere in the country; (ii) the need to ensure that full and appropriate participation on the planning for return or resettlement also includes women, minorities and others who may not have representation; (iii) the need to ensure that IDP representatives can undertake visits to assess the conditions for return or resettlement; and (iv) the reminder that coercion may not be used to induce or to prevent return or resettlement; (b) The role of national authorities where they must be encouraged to take appropriate measures to (i) consult with IDPs and ensure their full participation in decisions regarding their future; (ii) establish conditions as well as provide the means to enable IDPs to return or resettle voluntarily in safety and dignity and to facilitate the (re)integration of the returned or resettled IDPs; and (iii) grant and facilitate safe, unimpeded and timely access of humanitarian organizations and other relevant actors to assist IDPs to return or resettle.

“Conditions” that must be met for the individual IDPs include: (a) Physical safety and security;

(b) Legal protection before the law, such as: (i) absence of discrimination of formerly displaced persons for reasons related to their displacement; (ii) full and non-discriminatory access to national and subnational protection mechanisms, including police and courts; (iii) access to personal documentation; (iv) access to property restitution or compensation mechanisms, regardless of whether they return or (re)settle; (c) Economic, social and cultural reintegration possibilities, such as the need to ensure (i) access to adequate standards of living, including shelter, food, water and other means of survival; (ii) family reunification; (d) Access to political rights by being able to exercise the right to participate fully and equally in public affairs.

## Related initiatives

It is appropriate to list here three important documents, drafted by the U.N. human rights instances, that are directly related to the subject treated in this brochure. These are: A. Human rights and population transfer; B. Housing and property restitution in the context of the return of refugees and internally displaced persons; C. Basic principles and guidelines 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.

### A. Human rights and population transfers

In 1997, Awn Al-Khawawneh (Jordan), an independent expert of the Sub-Commission on Prevention of Discrimination and Protection of Minorities,<sup>121</sup> presented to the Sub-Commission his final report<sup>122</sup> on *Human rights and population transfer*.<sup>123</sup> In 1992, he had been assigned the task of conducting a study on “population transfer, including the implantation of settlers and settlements”.<sup>124</sup>

Recurring to various expert papers and to positions taken by the International Law Commission, Mr Al-Khasawneh observed that population transfers give rise to “serious human rights violations” such as violations of “the right to self-determination; the right to privacy, family life and home; the prohibition on forced labor; the right to work; the prohibition of arbitrary detention, including internment prior to expulsion; the right to nationality as well as the right of a child to a nationality; the right to property or peaceful enjoyment of possessions; the right to social security; and protection from incitement to racial hatred or religious intolerance.” (§ 15)

Moreover, the International Law Commission “classifies the forcible transfer of populations as a crime against humanity”. (16)

Divided into eight chapters, the report also analyzes the consequences of territorial changes, state succession and transfers due to military necessity. With regard to this last point, the International Law Commission considers that “imperative military reasons do not justify transfers of population with the aim of altering the demographic composition of the territory concerned for political, racial or religious reasons or transfers involving the disguised intent to annex the territory”. (§ 40)

In its conclusions, the report notes that “international law prohibits the transfer of persons, including the implantation of settlers, as a general principle”. (§ 64) It also points out: “Acts such as ethnic cleansing, dispersal of minorities or ethnic populations from their homeland within or outside the State, and the implantation of settlers are unlawful, and engage State responsibility and the criminal responsibility of individuals.” (§ 65)

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<sup>121</sup> The subsidiary body of the former Commission on Human Rights. It adopted the name Sub-Commission on the Promotion and Protection of Human Rights in 1999. Its future status is under discussion within the Human Rights Council, which superseded the Commission in 2006.

<sup>122</sup> The final report of Mr Al-Khasawneh benefited from the contributions of numerous experts gathered at a multi-disciplinary seminar in February 1997 in Geneva. It relates the discussions and conclusions of this seminar.

<sup>123</sup> E/CN.4/Sub.2/1992/23: [http://www.unhchr.ch/Huridocda/Huridoca.nsf/\(Symbol\)/E.CN.4.Sub.2.1997.23.En?Opendocument](http://www.unhchr.ch/Huridocda/Huridoca.nsf/(Symbol)/E.CN.4.Sub.2.1997.23.En?Opendocument) .

<sup>124</sup> Sub-Commission Resolution 1992/28.

With regard to development projects, the Special Rapporteur considers that “population transfers are lawful if they are non-discriminatory and are based upon the will of the people, and do not deprive a “people” of their means of subsistence”. (§ 68)

Regarding “appropriate remedies”, he emphasizes the “*restitutio in integrum*, the right to return, compensation, and the rehabilitation of the survivors of population transfer”. (§ 69)

It is noteworthy that the final report contained (in its Annex II) a “Draft declaration on population transfer and the implantation of settlers”. Although the Sub-Commission adopted the report with enthusiasm and considered that the draft declaration was “a first step towards defining the standards and legal norms pertaining to population transfer and the freedom of movement”,<sup>125</sup> its supervisory body, the former Commission on Human Rights, limited itself to recommending that the ECOSOC publish [officially] and widely disseminate Mr Al-Khasawneh’s final report.<sup>126</sup> This, in fact, is what the ECOSOC did.<sup>127</sup>

## **B. Housing and property restitution in the context of the return of refugees and internally displaced persons**

Appointed in 2002 by the Sub-Commission to conduct a study on housing and property restitution in the context of the return of refugees and internally displaced persons,<sup>128</sup> Paulo Sérgio Pinheiro (Brazil), an independent expert of the Sub-Commission, presented his final report *Principles on housing and property restitution for refugees and displaced persons*<sup>129</sup> along with its explanatory notes.<sup>130</sup>

According to the expert, the *Principles* “are designed to assist all relevant actors, national and international, in addressing the legal and technical issues surrounding housing, land and property restitution in situations where displacement has led to persons being arbitrarily or unlawfully deprived of their former homes, lands, properties or places of habitual residence.” (art. 1.1)

After emphasizing the right of all refugees and displaced persons to the restitution of their housing and property as “a key element of restorative justice.” (art. 2.2), the expert lists a whole series of rights that states must respect, to wit: non-discrimination, equality between men and women, protection from arbitrary displacement, freedom of movement, privacy and respect for the home, peaceful enjoyment of possessions and adequate housing.

Regarding the right to return, the *Principles* specify: “Voluntary return in safety and dignity must be based on a free, informed, individual choice. Refugees and displaced persons should be provided with complete, objective, up-to-date, and accurate information, including on physical, material and legal safety issues in countries or places of origin.” (art. 10.1)

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<sup>125</sup> Sub-Commission resolution 1997/29:

<http://www.unhchr.ch/Huridocda/Huridoca.nsf/3d1134784d618e28c1256991004b7950/aa3dafa957c7cbe3c125663300351a1a?OpenDocument> .

<sup>126</sup> Commission on Human Rights decision 1998/106.

<sup>127</sup> ECOSOC decision 1998/292, adopted 31 July 1998.

<sup>128</sup> Sub-Commission resolution 2002/7, *Housing and property restitution in the context of the return of refugees and internally displaced persons*, adopted without a vote 14 August 2002: <http://www.unhchr.ch/Huridocda/Huridoca.nsf/TestFrame/58954b62c0d38c09c1256c1b0047d372?OpenDocument> .

<sup>129</sup> 2005, E/CN.4/Sub.2/2005/17: <http://domino.un.org/UNISPAL.NSF/eed216406b50bf6485256ce10072f637/577d69b243fd3c0485257075006698e6!OpenDocument> .

<sup>130</sup> *Explanatory notes on the Principles on housing and property restitution for refugees and displaced persons* (11 July 2005), E/CN.4/Sub.2/2005/17/Add.1: <http://daccessdds.un.org/doc/UNDOC/GEN/G05/148/73/PDF/G0514873.pdf?OpenElement> .

With regard to the question of “secondary occupants”,<sup>131</sup> the expert acknowledges that it “may present itself as an obstacle to restitution”.<sup>132</sup> It recommends at the same time that states “ensure that secondary occupants are protected against arbitrary or unlawful forced eviction” and that they further ensure “that secondary occupants are afforded safeguards of due process, including an opportunity for genuine consultation, adequate and reasonable notice, and the provision of legal remedies, including opportunities for legal redress”. (art. 17.1)

It goes without saying that this is a thorny problem. In many cases, the secondary occupants are being used to change the demographic composition of a given territory for political or other reasons (see below). In order to prevent that a situation created de facto by a settlement policy becomes permanent and to take into account other possibilities, all situations should be treated on a case by case basis.

It should be emphasized that the Sub-Commission approved the *Principles on housing and property restitution for refugees and displaced persons* and recommended that the Commission on Human Rights publish Mr Pinheiro’s study as an official U.N. document.<sup>133</sup> In the meantime, as the Commission has been superseded by the Council, the matter remains in abeyance for the time being.

### **C. Basic principles and guidelines 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**

In 1989, the Sub-Commission assigned Theo Van Boven (Netherlands), at the time an expert of the of Sub-Commission, the task of conducting a study concerning the right to restitution, compensation and rehabilitation for victims of gross violations of human rights and fundamental freedoms.<sup>134</sup> Mr Van Boven presented the final version of this study – containing the principles and directives on this question – to the Sub-Commission in 1993.<sup>135</sup> The Sub-Commission transmitted the study to its supervisory body, the Commission on Human Rights.

After several years with the matter “on hold”, the Commission, in 1998, decided to appoint an independent expert, Cherif Bassiouni (Egypt), to revise the principles and directives drafted by Mr Van Boven.<sup>136</sup> After the completion of the revision of this document by Mr Bassiouni in 2000,<sup>137</sup> the Commission requested the High Commissioner for Human Rights to organize consultation meetings on the principles and guidelines. After the third reading, they were adopted by the Commission in 2005 under the title, *Basic principles and guidelines 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*.<sup>138</sup>

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<sup>131</sup> Persons who have taken over the housing of refugees and displaced persons, either on their own initiative or through government intervention within the framework of a settlement policy.

<sup>132</sup> *Explanatory notes on the Principles on housing and property restitution for refugees and displaced persons* (11 July 2005), E/CN.4/Sub.2/2005/17/Add.1, § 63: <http://daccessdds.un.org/doc/UNDOC/GEN/G05/148/73/PDF/G0514873.pdf?OpenElement>.

<sup>133</sup> Sub-Commission resolution 2005/21: [http://ap.ohchr.org/documents/E/SUBCOM/resolutions/E-CN\\_4-SUB\\_2-RES-2005-21.doc](http://ap.ohchr.org/documents/E/SUBCOM/resolutions/E-CN_4-SUB_2-RES-2005-21.doc).

<sup>134</sup> Sub-Commission resolution 1989/13, 31 August 1989.

<sup>135</sup> E/CN.4/Sub.2/1993/8: <http://www.unhchr.ch/Huridocda/Huridoca.nsf/TestFrame/e1b5e2c6a294f7bec1256a5b00361173?Opendocument>.

<sup>136</sup> E/CN.4/RES/1998/43: [http://ap.ohchr.org/documents/E/CHR/resolutions/E-CN\\_4-RES-1998-43.doc](http://ap.ohchr.org/documents/E/CHR/resolutions/E-CN_4-RES-1998-43.doc).

<sup>137</sup> E/CN.4/200/62:

[http://www.unhchr.ch/Huridocda/Huridoca.nsf/\(Symbol\)/E.CN.4.2000.62.En?Opendocument](http://www.unhchr.ch/Huridocda/Huridoca.nsf/(Symbol)/E.CN.4.2000.62.En?Opendocument).

<sup>138</sup> E/CN.4/RES/2005/35: [http://ap.ohchr.org/documents/E/CHR/resolutions/E-CN\\_4-RES-2005-35.doc](http://ap.ohchr.org/documents/E/CHR/resolutions/E-CN_4-RES-2005-35.doc).

The General Assembly adopted the *Basic principles and guidelines* on 16 December 2005,<sup>139</sup> “Recognizing that, in honoring the victims’ right to benefit from remedies and reparation, the international community keeps faith with the plight of victims, survivors and future human generations, and reaffirms the international legal principles of accountability, justice and the rule of law”. Further, it recommended that member states “take the *Basic Principles and Guidelines* into account, promote respect thereof and bring them to the attention of members of the executive bodies of Government, in particular law enforcement officials and military and security forces, legislative bodies, the judiciary, victims and their representatives, human rights defenders and lawyers, the media and the public in general”.

Since then, this important document has become a reference text among the international human rights instruments.

Regarding its substance, as is emphasized in the preamble, the *Basic principles and guidelines* “are directed at gross violations of international human rights law and serious violations of international humanitarian law which, by their very grave nature, constitute an affront to human dignity” and “identify mechanisms, modalities, procedures and methods for the implementation of existing legal obligations under international human rights law and international humanitarian law which are complementary though different as to their norms”.

The *Basic principles and guidelines* emphasize the obligation of states to respect, to ensure respect for and implement international law relative to human rights and to serious violations of international humanitarian law, while specifying the concrete measures to be taken, including the extent of their obligation.

They state that “statutes of limitations shall not apply to gross violations of international human rights law and serious violations of international humanitarian law which constitute crimes under international law” (art. 6)

Victims are defined as “persons who individually or collectively suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights, through acts or omissions that constitute gross violations of international human rights law, or serious violations of international humanitarian law. Where appropriate, and in accordance with domestic law, the term ‘victim’ also includes the immediate family or dependants of the direct victim and persons who have suffered harm in intervening to assist victims in distress or to prevent victimization.” (art.8)

The text emphasizes the right of victims “to seek and obtain information on the causes leading to their victimization and on the causes and conditions pertaining to the gross violations of international human rights law and serious violations of international humanitarian law and to learn the truth in regard to these violations”. (art. 24)

The *Basic principles and guidelines* oblige states to take adequate measures to “ensure” victims’ safety and to “protect” them from “intimidation and retaliation”. (art. 12.b)

They require that states “endeavour to develop procedures to allow groups of victims to present claims for reparation and to receive reparation, as appropriate” (art. 13) and to provide that victims, “as appropriate and proportional to the gravity of the violation and the circumstances of each case, be provided with full and effective reparation, as laid out in principles 19 to 23, which include the following forms: restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition.” (art. 18)

The *Basic principles and guidelines* also require that states “enforce domestic judgements for reparation against individuals or entities liable for the harm suffered and endeavour to enforce valid foreign legal judgements for reparation in accordance with domestic law and international legal obligations.” (art. 17)

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<sup>139</sup> A/RES/60/147:

<http://www.ohchr.org/english/about/ngohandbook/BasicPrinciplesAndGuidelines.pdf> .

## Annex 4

### Main reference websites and instances to which one may recur

#### Websites

High Commissioner for Human Rights. [www.ohchr.org](http://www.ohchr.org)  
High Commissioner for refugees. [www.unhcr.org](http://www.unhcr.org)  
United Nations Office for the Coordination of Humanitarian Affairs (OCHA).  
<http://ochaonline.un.org>  
International Committee of the Red Cross. [www.icrc.org](http://www.icrc.org)  
United Nations Children's Fund. [www.unicef.org](http://www.unicef.org)  
United Nations Development Programme. [www.undp.org](http://www.undp.org)  
World Food Programme. [www.wfp.org](http://www.wfp.org)  
World Health Organisation. [www.who.int](http://www.who.int)  
Inter-American Commission on Human Rights. [www.cidh.oas.org](http://www.cidh.oas.org)  
Inter-American Court of Human Rights. [www.corteidh.or.cr/](http://www.corteidh.or.cr/)  
African Commission on Human and Peoples's Rights. [www.achpr.org](http://www.achpr.org)  
Council of Europe. [www.coe.int](http://www.coe.int)  
European Court of Human Rights. [www.echr.coe.int/ECHR/](http://www.echr.coe.int/ECHR/)  
Organisation for Security and cooperation in Europe (OSCE). [www.osce.org](http://www.osce.org)  
Médecins sans frontières. [www.msf.org](http://www.msf.org)  
Médecins du monde. [www.medecinsdumonde.org](http://www.medecinsdumonde.org)  
Déclaration de Berne/Berne Declaration. [www.ladb.ch](http://www.ladb.ch)

#### Instances

##### At the international level:

**Mr. Walter Kaelin**, Representative of the Secretary-General of the United Nations  
(communications et information).

Palais des Nations, 1211 Geneva 10, Switzerland. Fax: +41 22 9179006.

E-mail: [mduchatellier@ohchr.org](mailto:mduchatellier@ohchr.org)

**Human Rights Committee**, HRC (to file complaints and request information)

High Commissioner for Human Rights, Avenue de la Paix 8-14, 1211 Geneva 10,  
Switzerland. Fax: +41 22 9179022.

**Committee on Economic, Social and Cultural Rights**, CODESC (to request information)

High Commissioner for Human Rights, Ms. Wan Hea Lee, Secretary, Avenue de la  
Paix 8-14, 1211 Geneva 10, Switzerland. Fax: +41 22 9179022.

E-mail: [wlee@ohchr.org](mailto:wlee@ohchr.org)

**Committee on the Elimination of Discrimination Against Women**, CEDAW

(to file complaints and request information)

United Nations, 2 UN Plaza, DC2-12th Floor, New York, NY, 10017, USA.

Fax: +1212 9633463. E-mail: [daw@un.org](mailto:daw@un.org)

Site: <http://www.un.org/womenwatch/daw>

**Committee on the Rights of the Child**, CRC (to request information)

High Commissioner for Human Rights, Avenue de la Paix 8-14, 1211 Geneva 10,  
Switzerland. Fax: +41 22 9179022. E-mail: [pdavid@ohchr.org](mailto:pdavid@ohchr.org)

**Committee on the Elimination of Racial Discrimination, CERD** (to file complaints and request information)

High Commissioner for Human Rights, Avenue de la Paix 8-14, 1211 Geneva 10, Switzerland. Fax: +41 22 9179022. E-mail: [nprouvez@ohchr.org](mailto:nprouvez@ohchr.org)

**At the regional level:**

**African Commission on Human and Peoples's Rights** (to file complaints and request information)

Avenue Kairaba, P.O. Box 673, Banjul, Gambie. Phone: +220 4392962.

Fax: +220 4390764. E-mail: [achpr@achpr.org](mailto:achpr@achpr.org)

**Inter-American Court of Human Rights** (to file complaints)

Avenida 10, Calles 45 y 47 Los Yoses, San Pedro, Apartado Postal 6906-1000,

San José, Costa Rica. Phone: +506 234 0581. Fax: +506 234 0584.

E-mail: [corteidh@corteidh.or.cr](mailto:corteidh@corteidh.or.cr)

**European Court of Human Rights** (to file complaints)

Council of Europe, 67075 Strasbourg-Cedex, France. Phone: +33 388 412018. Fax: +33 388 412730.

### *Three relevant addresses*

#### **Norwegian Refugee Council (NRC)**

The NCR is a humanitarian NGO committed to the aid and protection of the world's refugees and displaced persons and to the search for long-term solutions for them. In 1998 it set up the Internal Displacement Monitoring Centre (IDMC) to monitor internal displacement throughout the world. It has become a reference point in this domain. The IDMC collaborates regularly with the U.N. and with the Representative of the Secretary-General. For example, at the request of the U.N., it created a data base for 50 countries.

For further information, see the internet site:

[www.flyktninghjelpen.no/?aid=9072606](http://www.flyktninghjelpen.no/?aid=9072606) (pour NRC)

[www.internal-displacement.org](http://www.internal-displacement.org) (pour IDMC)

#### **Brookings-Bern Project on Internal Displacement**

A joint creation of the Brookings Institution (Washington, D.C., U.S.A.) and the University of Bern (Switzerland) dating from the beginning of the 1990s, the Brookings-Bern Project on Internal Displacement conducts research on questions concerning internally displaced persons and promotes the principles and guidelines of the U.N. in this area. Since its creation, it has been directed by the Representative of the Secretary General on Internally Displaced Persons.

For further information, see:

[www.brookings.edu/fp/projects/idp/idp.htm](http://www.brookings.edu/fp/projects/idp/idp.htm)

#### **Representative of the Secretary-General of the United Nations on internally displaced persons**

See also the site of the Office of the High Commissioner for Human Rights for reports presented to the Human Rights Commission/Council and to the United Nations General Assembly by the Representative of the Secretary-General on Internally Displaced Persons.

[http://ap.ohchr.org/documents/dpage\\_f.aspx?m=71](http://ap.ohchr.org/documents/dpage_f.aspx?m=71)