



**SECURITY
COUNCIL, INTERNAL
DISPLACEMENT AND
PROTECTION:**
RECOMMENDATIONS
FOR STRENGTHENING
ACTION THROUGH
RESOLUTIONS

The Brookings Institution –
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Project on Internal Displacement

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SECURITY COUNCIL, INTERNAL
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ACTION THROUGH RESOLUTIONS

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FOREWORD

For the past twelve years, the issue of the protection of civilians has been central to the work of the United Nations. From peacekeeping operations to General Assembly resolutions, the United Nations has made serious efforts to ensure that people caught up in conflicts are protected and that their rights are upheld.

And yet, around 40 million people have been forced to leave their homes and communities because of conflicts and human rights violations. Almost 30 million of those displaced remain within the borders of their own countries. They are known as internally displaced persons or IDPs. While the need to protect those who have crossed an international border as refugees has long been recognized by the international community, the protection needs of the far larger number of IDPs have only been acknowledged for the past decade. While there are many similarities between refugees and IDPs, this report focuses exclusively on those displaced within the borders of their own countries. Protecting IDPs is central to the protection of civilians.

Supporting durable solutions for IDPs is also a key issue for future peace and stability. Ensuring a safe environment in communities of origin is essential for the sustainable return of IDPs. When a peace agreement is reached which does not include provisions for IDPs to return to their communities or find other solutions, peace and stability become more difficult to sustain.

This report examines the way in which the Security Council has addressed internal displacement over the past twelve years. It is intended to provide guidance to Security Council members and those who support and advise them in drafting country-specific and thematic resolutions on ways to address internal displacement. As the report demonstrates, the Security Council has included references to internal displacement in many of its resolutions, but has done so inconsistently. We hope that this report will enable the Security Council to address issues of internal displacement more consistently, comprehensively and effectively.

This is a particularly opportune time for the Security Council to consider more effective ways of addressing internal displacement in its resolutions. The Security Council Expert Group on Protection of Civilians in Armed Conflict was established in 2009 to discuss protection concerns in country situations of particular concern to the Security Council. We hope that this report will be of use to the Expert Group in its deliberations, noting that the country situations that have been discussed to date are all countries with significant numbers of IDPs. We also hope that the report will be useful to the UN Office for the Coordination of Humanitarian Affairs (OCHA) as it continues in its secretariat role for the

Expert Group and as it provides briefings on the protection of civilians on the occasion of the renewal of UN peacekeeping mandates. As all current peacekeeping operations are taking place in countries with significant numbers of internally displaced persons, we hope that the guidance in this report is helpful in ensuring that the Security Council has access to relevant and timely information.

I am grateful to my colleagues at the Brookings-LSE Project on Internal Displacement for carrying out this research. I also want to express appreciation to OCHA staff for their comments on various drafts of this study. From the beginning of this initiative, we felt it was important to work closely with OCHA and particularly to ensure that this effort complements the *Aide Memoires* developed by OCHA over the years.

Most of all, we hope that this report contributes to more effective Security Council action in addressing the needs of the millions of displaced women, children and men in the world.

Chaloka Beyani

UN Special Rapporteur on the Human Rights of Internally Displaced Persons

EXECUTIVE SUMMARY

For the last decade, the UN Security Council has prioritized the issue of protection of civilians in armed conflict (PoC) in its work. Since the issue was first introduced to the Security Council in 1999, PoC has been the focus of biannual Security Council open debates, eight Secretary-General's reports to the Security Council, nine Security Council presidential statements and four Security Council thematic resolutions as well as a feature of numerous country-specific resolutions. Almost all of the peacekeeping operations authorized during the past 12 years have included protection of civilians in their mandates.

This study focuses on Security Council action with respect to one group of civilians in need of protection: internally displaced persons (IDPs). Displacement and armed conflict typically go hand in hand. As the Secretary-General stated in his November 2010 report to the Security Council, “[d]isplacement within and across borders remains a defining characteristic of conflict as civilians flee violence or are forced from their homes, often in violation of international law.”¹ At the end of 2010, more than 27 million people remained internally displaced by armed conflict, generalized violence or human rights violations.² In fact, since 1997, the global number of IDPs has increased by 10 million.³

The study begins by analyzing Security Council action on internal displacement in resolutions adopted between 1999 and 2010 (inclusive). This is done within the context of other forms of Council action such as presidential statements, and action by other actors, particularly the General Assembly and the Secretary-General. The *Aide Memoire* for the consideration of issues pertaining to the protection of civilians in armed conflict (*Aide Memoire*), which has long been recognized as an important tool for the Council's efforts to strengthen the PoC, also informs the study.⁴

During this 12-year period, the Security Council adopted 747 resolutions, of which at least 142 referenced internal displacement. Of these 142 resolutions, 11 pertain to thematic issues: four on Children and Armed Conflict, four on the Protection of Civilians in Armed Conflict and three on Women and Peace and Security. The remainder address security in

¹ UN Security Council, *Report of the Secretary-General on the Protection of Civilians in Armed Conflict*, S/2010/579, 11 November 2010, paragraph 13

² Internal Displacement Monitoring Centre (IDMC) and Norwegian Refugee Council (NRC), *Internal Displacement: Global Overview of Trends and Developments in 2010*, March 2011, page 9 [hereinafter, *Global Overview*]

³ *Id.*

⁴ UN Office for the Coordination of Humanitarian Affairs (OCHA), *Aide Memoire: For the Consideration of Issues Pertaining to the Protection of Civilians in Armed Conflict*, May 2009 [hereinafter, *Aide Memoire*]

more than 20 countries, including in some instances from a regional perspective. Georgia, the Democratic Republic of Congo, Sudan, Bosnia and Herzegovina and Côte d'Ivoire have received the greatest attention as regards internal displacement.

The study then turns to an analysis of the way in which the Security Council has considered issues of prevention of displacement, protection during displacement, humanitarian access and assistance, and durable solutions, with a particular focus on housing, land and property (HLP) rights. The study also analyzes the way the Security Council has dealt with internal displacement in the context of peacekeeping and other UN missions and in peacebuilding, peace processes and peace agreements. Each of these sections identifies key protection concerns pertaining to IDPs as they relate to PoC and the maintenance of international peace and security. Each describes the normative framework applicable to the protection of IDPs, explains in greater detail Council action on internal displacement relevant to the topic under discussion and highlights a non-exhaustive list of good examples in prior Council resolutions. Most importantly, each of these sections includes specific considerations relevant to future Security Council resolutions addressing internal displacement.

Taking action to ensure that IDPs are protected falls within the scope of the Security Council's responsibility for the maintenance of international peace and security. With over 27 million people internally displaced by conflict, by the Council's own acknowledgement, such large-scale human suffering has implications for both future stability and further conflict.

To address internal displacement effectively, Security Council action is required at all stages of displacement: action to prevent displacement, to protect IDPs during displacement and to engender durable solutions. The breadth of issues related to the protection of IDPs that are covered in Security Council resolutions demonstrates that the Council has addressed the protection needs of IDPs during each of these stages of displacement. In this regard, overall, the study finds that the Security Council has given significant attention to IDPs in the context of the mandates of peacekeeping operations, humanitarian access and assistance, and compliance with, and condemnation of violations of, international law, including international humanitarian and human rights law. Nonetheless, the Security Council has arguably failed to address internal displacement in its resolutions in a manner commensurate with the scale of problem and has yet to do so consistently across different displacement crises.

Despite the breadth of Security Council engagement with internal displacement, the manner in which issues related to internal displacement are addressed in the 142 resolutions varies and is not always consistent with the realities on the ground. Most resolutions mention IDPs in conjunction with refugees, while a few merely refer to displaced populations. Voluntary, safe and dignified return receives the most extensive attention with close to 100 references while the other two durable solutions for IDPs – local integration and settlement elsewhere in the country – are rarely acknowledged or even mentioned. There are circumstances when the Council emphasizes return even when the prospects of this may be

limited, as in Georgia. An emphasis on return – even in situations where return is unlikely in the foreseeable future – may be the ‘politically correct’ action by the Security Council, but it fails to recognize the human pain of living in limbo for large numbers of IDPs.

Issues around HLP are central to the search for durable solutions for IDPs as well as to the quest for peace and security of post-conflict societies. In this regard, it is interesting – and disquieting – to contrast the detailed Security Council resolutions on HLP in Georgia and Kosovo with other large-scale displacement situations. In all situations where people have lost property and been displaced from their land, they want their property returned, or if this is not possible, they want to be compensated for their loss.

Although the voluntary, safe and dignified return of IDPs, the mandates of peacekeeping and other UN missions, humanitarian access and assistance to IDPs and compliance with international law as they relate to IDPs have been addressed, there are other issues relevant to the protection of IDPs and pertinent to the Security Council’s *UN Charter* responsibilities that have received limited attention. First, given the scale of worldwide internal displacement, prevention of displacement has garnered inadequate attention. For example, the prohibition against forced displacement is referenced in a few resolutions, while the prohibition against arbitrary displacement as articulated in the *Guiding Principles on Internal Displacement* is not mentioned. Second, insufficient attention has been given to durable solutions as a specific concept as well as local integration and settlement in another part of the country as additional forms of durable solutions. HLP and participation rights of IDPs are other important issues that have received minimal attention from the Security Council.

The *Guiding Principles*, the normative framework tailored to address the protection needs of IDPs is mentioned only once in the 142 resolutions. Similarly, the *African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa (Kampala Convention)* has only been addressed in three resolutions notwithstanding the fact that since it was adopted in 2009, the Security Council has adopted at least 34 resolutions in connection with Africa. Both of these documents provide valuable guidance for actors protecting IDPs and should feature more regularly in Security Council action.

Within this context, and in addition to identifying key protection concerns pertaining to IDPs, the study provides suggestions for enhancing the Security Council’s ability to mainstream IDP protection into Council resolutions and to do so consistently and effectively. Broadly, the study suggests that the Security Council, when considering resolutions on countries where internal displacement has occurred or may occur or when considering resolutions on thematic issues related to internal displacement, pay deliberate attention to:

1. Preventing internal displacement by undertaking action on forced and arbitrary displacement.
2. Promoting durable solutions for IDPs through increased:

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- Recognition of local integration and settlement elsewhere in the country as viable durable solutions for internal displacement; and
 - Action on addressing HLP rights.
3. Mainstreaming durable solutions, HLP rights and participation of, and consultation with, IDPs, into peace processes and peacebuilding to enhance the effectiveness of peace agreements and facilitate longer-term peacebuilding.
 4. Utilizing and raising understanding of the *Guiding Principles* and the *Kampala Convention* as important legal frameworks for addressing internal displacement.
 5. Requesting the Secretary-General to report consistently on the protection of IDPs in country-specific and thematic reports.

Since 1999, Security Council debates, statements and resolutions addressing internal displacement have reflected the Security Council's ongoing recognition of the implications of internal displacement for its *UN Charter* responsibilities. The scale of global displacement, the human suffering of those forced to abandon their homes and communities and the implications of displacement for international peace and security all make a more concerted response to internal displacement by the Security Council a political and moral imperative.

I. THE SECURITY COUNCIL AND INTERNAL DISPLACEMENT

1. Background

For the last decade, protection of civilians in armed conflict (PoC) has become a central feature of the UN Security Council's work. In its second thematic resolution on PoC in 2000, the Council noted that "the deliberate targeting of civilian populations and other protected persons and the committing of systematic, flagrant and widespread violations of international humanitarian and human rights law in situations of armed conflict may constitute a threat to international peace and security, and, in this regard, *reaffirm[ed]* its readiness to consider such situations, and where necessary, to adopt appropriate steps."⁵

Armed conflict almost always forces people to flee their communities. People want to get away from the fighting; in this respect, displacement is a protection strategy for individuals, families and communities. But displacement is more than an unintended consequence of armed conflict. Increasingly it is a deliberate objective of armed groups. For example, in the mid-1990s, warring parties in the Balkans deliberately sought to force members of particular ethnic groups to abandon their communities. Displacement was the military objective. Finding solutions for the displaced was central to resolving the larger conflict. If left unaddressed, internal displacement can cause instability and can derail peace processes. Thus, addressing internal displacement is an important aspect of the Security Council's mandate to foster peace and security and should be central to its work on PoC.

In its first presidential statement on PoC, the Council acknowledged that large-scale human suffering resulting from, *inter alia*, displacement, "is a consequence and sometimes a contributing factor to instability and further conflict."⁶ Subsequently, in its first thematic resolution on PoC, the Council highlighted the "particular vulnerability" of internally displaced persons (IDPs) and recognized that hardships born by vulnerable groups of civilians during armed conflict have a consequent impact on "durable peace, reconciliation, and development."⁷

Notwithstanding more than a decade of Security Council action on PoC including the internally displaced, at the end of 2010, more than 27 million people remained internally displaced

⁵ S/RES/1296 (2000) on the Protection of Civilians in Armed Conflict, paragraph 5

⁶ S/PRST/1999/6 (1999) on the Protection of Civilians in Armed Conflict, page 1

⁷ S/RES/1265 (1999) on the Protection of Civilians in Armed Conflict, preamble

by armed conflict, generalized violence or human rights violations.⁸ In fact, since 1997, the global number of IDPs has increased by 10 million.⁹ In his November 2010 report to the Security Council, the Secretary-General stated that “[d]isplacement within and across borders remains a defining characteristic of conflict as civilians flee violence or are forced from their homes, often in violation of international law.”¹⁰ Moreover, according to the Secretary-General “the number of newly displaced continues to outnumber returns, and durable solutions are woefully absent.”¹¹ For example, in Colombia the continuing displacement of civilians from conflict zones makes resolution of the conflict more difficult. Finding solutions for the more than one million civilians displaced in Côte d’Ivoire as of April 2011 will undoubtedly take far longer than the consolidation of political power under President Ouattara.

Taking action to ensure that IDPs are protected falls within the scope of the Security Council’s responsibility for the maintenance of international peace and security. To address internal displacement effectively, Security Council action is required at all stages of displacement: action to prevent displacement, to protect IDPs during displacement and to support durable solutions. The breadth of issues related to the protection of IDPs that are covered in Security Council resolutions demonstrates that the Council has addressed the protection needs of IDPs during each of these stages of displacement. However, the Council has yet to address internal displacement in a manner commensurate with the scale of the problem, and has yet to do so consistently across different displacement crises.

2. Structure, Purpose and Limitations of this Report

This report analyzes Security Council action on internal displacement in resolutions adopted between 1999 and 2010 (inclusive) and provides recommendations to the Council on addressing this issue more comprehensively and effectively. The next section provides an overview of Council action on internal displacement since the issue of the protection of civilians came onto the Security Council’s agenda. The following three substantive sections: Protection of Civilians in Armed Conflict; the Role of Peacekeeping and Other UN Missions; and Peacebuilding, Peace Processes and Peace Agreements, delve deeper. They identify key protection concerns pertaining to IDPs as they relate to PoC and the maintenance of international peace and security. These sections describe the normative framework applicable to the protection of IDPs, explain in greater detail Council action on internal displacement

⁸ IDMC, *Global Overview*, *supra* note 2

⁹ *Id.*

¹⁰ UN Security Council, *Report of the Secretary-General on the Protection of Civilians in Armed Conflict*, S/2010/579, 11 November 2010, paragraph 13

¹¹ *Id.* This assessment is consistent with the latest figures released by IDMC and NRC, which indicate that in 2010, at least 2.9 million people were newly displaced as compared to at least 2.1 million returns. See IDMC, *Global Overview*, *supra* note 2

relevant to the topic under discussion and highlight a non-exhaustive list of good examples in prior Council resolutions. Most importantly, each of these sections includes specific considerations relevant to future Security Council resolutions addressing internal displacement.

In addition to Security Council resolutions, this report refers to other Council action such as presidential statements and action by other actors, such as the General Assembly and the Secretary-General. These sources are utilized to provide context, background or comparison. An exhaustive review of these materials has not been undertaken. Similarly, within the context of its work on PoC, Security Council action with regard to women and children has arguably been more vigorous than action on other vulnerable populations such as IDPs. The existence of specific Council resolutions, Council presidential statements and reports by the Secretary-General on women and children, respectively, substantiate this argument. Although this report maintains its focus on IDPs, a comprehensive assessment of Council action on IDP women and children would necessarily require a review of these additional materials and is therefore beyond the scope of this report.

The *Aide Memoire* for the consideration of issues pertaining to the protection of civilians in armed conflict (*Aide Memoire*) has long been recognized as an important tool for the Council's efforts to strengthen the PoC in armed conflict.¹² This report is intended to complement the *Aide Memoire* by focusing on one particular group: the internally displaced. The broad scope of the *Aide Memoire* means that some of the key considerations highlighted in this report are also identified in the *Aide Memoire*. However, by deepening the analysis of the internally displaced – a vulnerable population of civilians that have received comparatively less attention from the Council – this report is intended to encourage and to strengthen future Security Council action to protect civilians. Like the *Aide Memoire*, the key considerations identified in this report are not intended as a blueprint for Security Council action in all cases. Rather, the key considerations included here must be adapted to the specific conditions of each situation on a case-by-case basis. Conflicts have many causes and take many forms. Similarly, Security Council action on displacement must be tailored to specific contexts.

This report is intended to inform and guide Security Council action on internal displacement in country-specific and thematic resolutions. By highlighting the underlying protection concerns of IDPs, the normative framework applicable to addressing these concerns and current practice by the Security Council and by drawing on these to identify key considerations for Council action on internal displacement, this report attempts to enhance the Council's ability to address internal displacement in a systematic, consistent and effective manner. The scale of global displacement, the human suffering of those forced to abandon their homes and communities and the implications of displacement for international peace and security all make a more concerted response to internal displacement by the Security Council a political and moral imperative.

¹² OCHA, *Aide Memoire*, *supra* note 4

II. COUNCIL ACTION ON INTERNAL DISPLACEMENT IN RESOLUTIONS

Since 1999, protection of civilians in armed conflict (PoC) has been the focus of biannual Security Council open debates, eight Secretary-General's reports to the Security Council, nine Security Council presidential statements and four Security Council thematic resolutions as well as a feature of numerous country-specific resolutions. These debates, reports, statements and resolutions address internal displacement, reflecting the Security Council's ongoing recognition of the implications of internal displacement for its Charter responsibilities.

During the 12-year period from 1999 to 2010, the Security Council adopted 747 resolutions, of which at least 142 referenced internal displacement.¹³ Table 1 lists the number of resolutions referencing displacement by year and as a proportion of the total number of resolutions adopted by the Council during the applicable year. The analysis indicates that the Security Council has recognized the importance of displacement in a variety of situations, with an average of 19 percent of its resolutions referring to displacement over the twelve years.

TABLE 1: Number of Security Council resolutions referencing internal displacement (1999-2010)

Year	Total Number of Resolutions Referencing Internal Displacement (Column 2)	Total Security Council Resolutions During Year (Column 3)	Column 2 / Column 3 (%)
1999	14	65	21.54
2000	9	50	18
2001	11	52	21.15
2002	9	68	13.24
2003	11	67	16.42
2004	11	59	18.64
2005	5	71	7.04
2006	13	87	14.94
2007	14	56	25
2008	16	65	24.62
2009	16	48	33.33
2010	13	59	22.03
	142	747	

¹³ In order to identify the resolutions referencing internal displacement, a search was conducted for a number of terms including "displace". Only those resolutions containing a reference to the terms "displaced" or "displacement" were counted. Additionally, within each resolution, only those paragraphs containing the terms "displaced" or "displacement" were utilized for the analysis undertaken in this report. The authors would like to thank Faraz Haqqi for compiling a table of relevant resolutions and paragraphs.

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Of the 142 resolutions that reference internal displacement, 11 pertain to thematic issues: four on Children and Armed Conflict, four on the Protection of Civilians in Armed Conflict and three on Women and Peace and Security.¹⁴ The remainder address security in more than 20 countries, including in some instances from a regional perspective. Georgia, the Democratic Republic of Congo (DRC), Sudan, Bosnia and Herzegovina and Côte d'Ivoire have received the greatest attention as regards internal displacement. Table 2 lists the number of country- or region-specific resolutions referencing displacement by quantity and as a proportion of resolutions adopted by the Council on the applicable country or region from 1999 to 2010.

TABLE 2: Number of Security Council resolutions, by country/region, referencing internal displacement (1999-2010)

Country/Region	Number of Resolutions Referencing Displacement (Column 2)	Number of Resolutions on Relevant Country From 1999 – 2010 (Column 3)	Column 2 / Column 3 (%)
Georgia	20	22	90.91
DRC	19	57	33.33
Sudan	16	32	50.00
Bosnia and Herzegovina	13	20	65.00
Côte d'Ivoire	12	40	30.00
East Timor/Timor-Leste	7	23	30.43
Sierra Leone	7	34	20.59
Iraq	6	15	40.00
Afghanistan	5	29	17.24
Burundi	4	14	28.57
Chad, Central African Republic and subregion	4	6	66.67
Eritrea and Ethiopia	3	27	11.11
Haiti	3	15	20.00
Iraq and Kuwait	3	27	11.11
Kosovo	2	2	100.00
Angola	1	15	6.67
Great Lakes	1	2	50.00
Guinea-Bissau	1	4	25.00
Liberia	1	34	2.94
Macedonia	1	2	50.00
Middle East	1	65	1.54
Somalia	1	32	3.13

The analysis indicates some major discrepancies. While half of all resolutions on Sudan, for example, make reference to internal displacement, less than 3 percent of resolutions on Liberia refer to displacement although virtually all of Liberia's 2.8 million citizens are

¹⁴ Annex 2 sets out the language used in these thematic resolutions

estimated to have fled their homes at least once during the 14 years of intermittent war in that country. Similarly, only a fifth of Security Council resolutions on Sierra Leone refer to displacement although the 1991-2002 civil war uprooted nearly half of the country's 4.5 million from their homes, including an estimated 2 million who were internally displaced.¹⁵ The Security Council did not adopt any resolutions during this period on Colombia, although there are an estimated 3.6 to 5.2 million IDPs in that country. Less than half of the resolutions on Iraq make reference to displacement although the number of IDPs is close to 3 million. And Council resolutions on Somalia – which has one of the largest and most complex displacement situations in the world – only mentioned displacement once in 32 resolutions. It seems that the Council was most likely to consider displacement in European situations such as Georgia and Bosnia more consistently than in other regions. The exception is Turkey where there were no Security Council resolutions on the country in spite of the fact that over a million people, mainly Kurds, have been displaced for more than a decade.¹⁶

Beyond the numbers, it is apparent that the Council has sought to address a wide variety of issues associated with internal displacement in its resolutions. These include enhancing compliance by parties to conflict with applicable international law; combating violence; humanitarian access and assistance; the civilian character of camps and camp security; housing, land and property (HLP) rights; freedom of movement; livelihoods; participation and consultation; peacekeeping and other mission mandates; durable solutions; peace processes; and reporting by the Secretary-General.

Despite this breadth, the manner in which these issues are addressed in the 142 resolutions varies and is not always consistent with the realities on the ground. Most resolutions mention IDPs in conjunction with refugees, while a few merely refer to displaced populations. Voluntary, safe and dignified return receives the most extensive attention with close to 100 references. There are circumstances when the Council emphasizes return even when the prospects of this may be limited. While it is likely that most IDPs want to eventually return to their communities, in fact, return is fraught with difficulties, particularly in situations of protracted displacement. In some cases – such as Georgia – prospects of return to Abkhazia and South Ossetia are wrapped up in political differences between the Russian and Georgian governments. In such situations of “frozen” conflicts, Security Council action in support of other durable solutions for IDPs – either local integration or settlement elsewhere in the country – could be beneficial. In such situations, emphasizing return as the only solution seems to reflect political dynamics rather than the needs of civilians displaced by conflict. An emphasis on return – even in situations where return is unlikely in the foreseeable future – may be the ‘politically correct’ action by the Security Council, but it fails to recognize the human pain of living in limbo for large numbers of IDPs.

¹⁵ See IDMC, *Overview: Sierra Leone*, October 2004, available at: www.internal-displacement.org (last accessed, 18 April 2011)

¹⁶ For government, UN and other statistics on IDPs, see IDMC, www.internal-displacement.org

In contrast, while return is consistently emphasized in Security Council resolutions mentioning displacement, forced displacement is rarely condemned despite being a major factor in armed conflicts. It may be that the Council sees the return of IDPs as more linked to stability than preventing displacement in the first place. Certainly in countries such as Iraq, Afghanistan, Somalia and the DRC measures to prevent displacement would not only ease the plight of millions of people, but are also key in efforts to resolve the conflicts.

Significant attention is given to mandates of peacekeeping operations, humanitarian access and assistance, and compliance with, and condemnation of violations of, international law, including international humanitarian and human rights law. A little less than 20 resolutions reference the civilian character of, security in, and/or protection within and around, IDP camps. This is particularly interesting given the fact that most of the world's IDPs do not live in camps and that questions about the civilian character of the camps apply only to a minority of the camps that do exist. In countries such as Iraq and Côte d'Ivoire, for example, most IDPs live among communities and face very different security concerns. There are a few cases where there are serious concerns about the civilian nature of camps – for example, in Darfur – but in terms of the security concerns facing IDPs, community and domestic violence represent greater threats than the militarization of camps. It may be that the Security Council is basing its actions on the experience of the Great Lakes where militarized refugee camps posed a significant threat to peace and security in the region.

Another thematic issue deserves mention: HLP rights. These issues are central to the search for durable solutions for IDPs as well as to the quest for peace and security of post-conflict societies. There is a built-in conflict when IDPs return to their communities and find their homes occupied by others or discover that their rights to their land are not recognized. For IDPs who cannot return to their communities, difficulties in selling or being compensated for their land are real impediments to local integration.¹⁷ In this regard, it is interesting – and disquieting – to contrast the detailed Security Council resolutions on HLP in Georgia and Kosovo with other large-scale displacement situations. In all situations where people have lost property and been displaced from their land, they want their property returned, or if this is not possible, they want to be compensated for their loss. In many situations – such as Burundi and the DRC – most of the land is held under customary law and land disputes are even more complicated than in cases where statutory law and land titles are the norm. But in terms of scale of human need, addressing situations where large numbers of people have lost access to their land and property held under customary law seems at least as important.

The *African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa (Kampala Convention)*,¹⁸ which was adopted on 23 October 2009 at the Afri-

¹⁷ See further, Rhodri C. Williams, "Protracted Internal Displacement and Integration in Serbia," in Elizabeth Ferris, ed., *Resolving Internal Displacement: Prospects for Local Integration*, Brookings-LSE Project on Internal Displacement, June 2011, available at www.brookings.edu/idp

¹⁸ *African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa*, 23 Octo-

can Union Summit, is mentioned by the Security Council in only three resolutions: the most recent thematic resolution on PoC, a 2010 resolution on the situation in Chad, the Central African Republic and the subregion and a 2010 resolution on Sudan.¹⁹ This is despite the fact that the Council has adopted at least 34 resolutions pertaining to countries in Africa (or the region more generally) since the adoption of the *Kampala Convention*. This may be because the Convention has not yet entered into force, but as the first-ever legally binding instrument, this Convention is ground breaking. The Security Council should use every occasion to support both its ratification and its replication in other regions. Similarly in addressing internal displacement, the Council should seek opportunities to recognize efforts of governments to adopt laws and policies which protect and assist IDPs in their territories. Presently some 22 countries have adopted such laws and policies at the national level.²⁰ It is the responsibility of States to protect and assist IDPs and when States have made an effort to develop laws and policies to do this, such action warrants commendation by the Security Council.

Notwithstanding a recommendation from the Secretary-General to the Security Council to encourage States, in cases of massive displacement, to follow the guidance provided in the UN *Guiding Principles on Internal Displacement (Guiding Principles)*,²¹ these *Principles* are mentioned only once in the 142 Security Council resolutions which reference displacement.²² This reference relates to a resolution on Burundi and simply notes that various national and international actors are using the *Guiding Principles* in Africa. The resolution fails to explicitly refer to IDPs or displacement.²³ The Security Council, in its resolutions referring to displacement, has the opportunity to take a more proactive stand in supporting the *Guiding Principles*.

The *Guiding Principles* were developed by the Representative of the UN Secretary-General on Internally Displaced Persons (RSG) and presented to the UN Commission on Human Rights in 1998. The Principles consolidate into one document the legal standards applicable to the internally displaced and set out the normative framework for their protection and assistance during all phases of displacement. Reflecting common understanding, the

ber 2009 (yet to enter into force), available at: <http://au.int/en/content/african-union-convention-protection-and-assistance-internally-displaced-persons-africa> (last accessed, 16 April 2011) [hereinafter, *Kampala Convention*]

¹⁹ S/RES/1894 (2009) on Protection of Civilians in Armed Conflict, preamble; S/RES/1923 (2010) on the Situation in Chad, the Central African Republic and the Subregion, preamble; S/RES/1935 (2010) on Sudan, preamble.

²⁰ See database of Brookings-LSE Project on Internal Displacement: National and Regional Laws and Policies on Internal Displacement Index, available at: www.brookings.edu/projects/idp/Laws-and-Policies/idp_policies_index.aspx (last accessed, 18 April 2011)

²¹ UN Commission on Human Rights, *Guiding Principles on Internal Displacement*, E/CN.4/1998/53/Add.2, 1998, [hereinafter, *Guiding Principles*], www.brookings.edu/projects/idp/gp_page.aspx

²² UN Security Council, *Report of the Secretary-General to the Security Council on the Protection of Civilians in Armed Conflict*, S/1999/957, 8 September 1999, recommendation 7.

²³ S/RES/1286 (2000) on the Situation in Burundi, preamble. The resolution does, however, refer to regroupment camps and internees in camps.

Secretary-General has noted that the *Guiding Principles* “bring together existing provisions under international humanitarian law, human rights law, and refugee law by analogy.”²⁴ While the *Guiding Principles* do not constitute a binding instrument, the heads of state and government assembled in New York in September 2005 for the World Summit, recognized the Principles as an “important international framework for the protection of internally displaced persons.”²⁵ The UN General Assembly has reiterated this endorsement.²⁶

Indeed, the *Guiding Principles* and the work of the former RSG – and more recently, the Special Rapporteur on the Human Rights of Internally Displaced Persons (Special Rapporteur) – receive extensive attention in the six UN General Assembly resolutions on the protection of and assistance to IDPs that have been adopted in its Third Committee since 1999.²⁷ Generally, these resolutions recognize the *Guiding Principles* as an important international framework for the protection of IDPs. Within the context of its work in the Third Committee, the General Assembly encourages greater dissemination and use of the *Guiding Principles*.²⁸

The General Assembly’s more progressive approach to the *Guiding Principles* (and internal displacement more generally) is conceivably a product of its broader responsibility for human rights and social issues as well as its intimate connection and greater access to the work of the former RSG and the Special Rapporteur. Nevertheless, and notwithstanding the complex political dynamics and distinct spheres of responsibility, which inform and constrain General Assembly and Security Council action on internal displacement, there is a greater role for the Security Council in raising awareness of, and adherence to, the *Guiding Principles* as they relate to conflict situations. This position is equally applicable to Security Council action with regard to the *Kampala Convention*. This Convention will come into force once ratified by 15 member States. As the first binding international convention on internal displacement, the *Kampala Convention* deserves particular support. The Security Council could – and should – do much more to reinforce and support the emerging legal framework with respect to internal displacement.

²⁴ UN Security Council, Report of the Secretary-General to the Security Council on the Protection of Civilians in Armed Conflict, S/2004/431, 28 May 2004, paragraph 24.

²⁵ UN General Assembly, 2005 World Summit Outcome document, A/RES/60/1, 24 October 2005, paragraph 132.

²⁶ See e.g., A/RES/62/153 (2008) on Protection of and Assistance to Internally Displaced Persons, paragraph 10.

²⁷ A/RES/54/167 (2000) on Protection of and Assistance to Internally Displaced Persons; A/RES/56/164 (2002) on Protection of and Assistance to Internally Displaced Persons; A/RES/58/177 (2004) on Protection of and Assistance to Internally Displaced Persons; A/RES/60/168 (2006) on Protection of and Assistance to Internally Displaced Persons; A/RES/62/153 (2008) on Protection of and Assistance to Internally Displaced Persons; A/RES/64/162 (2010) on Protection of and Assistance to Internally Displaced Persons

²⁸ The UN General Assembly has also addressed the plight of IDPs regularly in annual plenary resolutions on humanitarian coordination and on cooperation in natural disasters. Since 1999, the General Assembly’s Third Committee has also adopted ten resolutions on assistance to refugees, returnees and displaced persons in Africa.

III. PROTECTION OF CIVILIANS IN ARMED CONFLICT

This section examines Security Council action to: (a) prevent displacement including war crimes and crimes against humanity, (b) protect IDPs during displacement against violence and other gross violations of international humanitarian law and human rights, (c) enhance humanitarian access and the provision of humanitarian assistance to IDPs, and (d) engender durable solutions to end displacement including through action on HLP rights.

A. PREVENTING INTERNAL DISPLACEMENT

Preventing displacement is important for both normative and practical reasons. As discussed below, forcing people to leave their homes is a violation of international law (except when carried out for a short time for certain specified reasons). But preventing displacement also has a practical dimension. Given the hardships experienced by displaced populations, the difficulties of finding solutions once people are displaced and the tendency for displacement to become protracted, it is incumbent upon the international community to do everything possible to prevent displacement in the first place.

1. Normative Framework and Current Practice

During armed conflict, involuntary transfer of civilian populations within their own countries is prohibited under international humanitarian law except when justified by considerations of their own security or imperative military reasons. Where these justifications are satisfied, evacuated persons must be permitted to return to their places of origin as soon as hostilities in the area have ceased.²⁹ Moreover, any such removals must be carried out in satisfactory conditions of hygiene, health, nutrition and accommodation.³⁰ The unlawful deportation or transfer of civilians in armed conflict or failure to allow their return once any justification ceases may constitute a grave breach of international humanitarian law.³¹

²⁹ Fourth Geneva Convention, Article 49 ; First Protocol to the Geneva Conventions, Article 85(4)(a) ; Second Protocol to the Geneva Conventions, Article 17. See also *Guiding Principles*, *supra* note 17, Principle 6.2(b); See also First Protocol to the Geneva Conventions, Article 87(1) and Second Protocol to the Geneva Conventions, Article 4(3)(e) for movement-related rights of children

³⁰ Fourth Geneva Convention, Article 49(3) ; Second Protocol to the Geneva Conventions, Article 17(1)

³¹ Fourth Geneva Convention, Article 147, and First Protocol to the Geneva Conventions, Article 85(4)(a) (defining transfer of populations within or outside occupied territories as a grave breach entailing individual criminal responsibility)

More generally, acts of forcible displacement can amount to crimes against humanity and war crimes. The *Rome Statute of the International Criminal Court (Rome Statute)*³² defines the deportation or transfer of populations outside the grounds permitted under international law as a crime against humanity if carried out as part of a widespread or systematic attack directed against a civilian population.³³ In international armed conflicts, the unlawful deportation or transfer of the civilian population of an occupied territory can amount to war crimes³⁴ as can, in non-international armed conflicts, ordering the displacement of the civilian population for reasons outside the grounds permitted under international law.³⁵

Principle 6 of the *Guiding Principles* articulates a right of all people to be free from arbitrary displacement. The term “arbitrary” implies that the acts in question contain “elements of injustice, unpredictability and unreasonableness” because they are not in conformity with domestic law, not based on objective and serious reasons, not necessary to achieve legitimate goals or pursue purposes that are not legitimate in light of the requirements of international human rights and humanitarian law.³⁶ This prohibition against arbitrary displacement in Principle 6 is based on humanitarian law³⁷ and law relating to indigenous peoples.³⁸ It is also inferred from general provisions contained in human rights treaties concerning freedom of movement, the right to choose one’s residence, freedom from arbitrary interference with one’s home and the right to housing.³⁹

From a practical perspective, the right to be free from arbitrary displacement requires that in all situations, all IDPs should enjoy the right to freedom of movement and choice of residence. This includes the right to remain in a particular place, unless involuntary movement is (1) undertaken in a manner provided for by law; (2) necessary to protect national security, public order, public health or morals, or the rights and freedoms of others; and (3)

³² Rome Statute of the International Criminal Court, 17 July 1998 (entered into force, 1 July 2002), available at: <http://untreaty.un.org/cod/icc/index.html> (last accessed, 16 April 2011) [hereinafter, Rome Statute]

³³ Id. Article 7(1)(d)

³⁴ Id. Article 8(2)(b)(viii)

³⁵ Id. Article 8(2)(e)(viii)

³⁶ Manfred Nowak, *UN Covenant on Civil and Political Rights: CCPR Commentary, Second Revised Edition* (Kehl am Rhein: Engel, 2005), Article 17, paragraph 12; See also Walter Kälin, *Guiding Principles on Internal Displacement: Annotations, Second Edition*, Studies in Transnational Legal Policy, No. 38 (Washington, DC: American Society of International Law and Brookings Institution, 2008), page 30, available at: www.brookings.edu/reports/2008/spring_guiding_principles.aspx (last accessed, 18 April 2011) [hereinafter, *Annotations*]. Further guidance is provided in Principle 6(2) of the *Guiding Principles*, which includes a non-exhaustive list of circumstances when displacement would be arbitrary; *Guiding Principles*, *supra* note 17,

³⁷ See *Fourth Geneva Convention*, Article 49; First Protocol to the Geneva Conventions, Article 85(4)(a); Second Protocol to the Geneva Conventions, Article 17. Articles 87(1) of the First Protocol to the *Geneva Conventions* and 4(3)(e) of the Second Protocol to the Geneva Conventions also impose limitations on the forced movement of children. See also, *Annotations*, *supra* note 32, page 26-43.

³⁸ See *ILO Convention No. 169, Article 16; Declaration on the Rights of Indigenous Peoples*, Article 10.

³⁹ See *Universal Declaration of Human Rights*, Article 12 and 13; *International Covenant on Civil and Political Rights*, Articles 12 and 17; *International Covenant on Economic, Social and Cultural Rights*, Article 11. See also, *Annotations*, *supra* note 32, page 26-43.

consistent with other recognized human rights. Where displacement does occur, authorities are required to minimize the scope and adverse effects of displacement and to ensure that any removals are carried out in satisfactory conditions of hygiene, health, nutrition and accommodation,⁴⁰ and that members of the same family are not separated.⁴¹ Additionally, displacement cannot be carried out in a manner that violates the right to life, dignity, liberty and security of those affected.⁴² In line with the concept of proportionality, which should be respected whenever human rights are limited, displacement cannot last longer than required by the circumstances.⁴³

The Security Council explicitly references the prohibition against forced displacement in only seven resolutions: three thematic resolutions (two on Children and Armed Conflict and one on the Protection of Civilians in Armed Conflict)⁴⁴ and four country-specific resolutions (three on the situation in the Democratic Republic of the Congo (DRC) and one on Sudan).⁴⁵ Four of these references relate to condemning violations of international law including the prohibition against forced displacement. Security Council Resolution 1698 (2006) on the DRC imposes sanctions against individuals violating international law involving children, including the prohibition against forced displacement. Security Council Resolutions 1807 (2008) and 1857 (2008) on the DRC extend this to women. As forced displacement has been central to many conflicts, such as Bosnia-Herzegovina, Liberia and Sierra Leone, the fact that only four of the Security Council's country-specific resolutions refer to forced displacement is striking.

In contrast, all six General Assembly resolutions on the protection of and assistance to IDPs, reference forced displacement and its negative consequences for the enjoyment of fundamental rights. The four most recent resolutions recall that forced displacement can constitute a crime against humanity or a war crime under the *Rome Statute*.⁴⁶ Interestingly, the most recent General Assembly resolution also reaffirms that "all persons, including those internally displaced, have the right to freedom of movement and residence and should be protected

⁴⁰ See *Fourth Geneva Convention*, Article 49(3), First Protocol to the *Geneva Conventions*, Article 17(1).

⁴¹ *Guiding Principles*, *supra* note 17, Principle 7(2).

⁴² *Guiding Principles*, *supra* note 17, Principle 8.

⁴³ *Guiding Principles*, *supra* note 17, Principle 6(3). For more details on the prohibition against arbitrary displacement see also, Brookings-Bern Project on Internal Displacement, *Protecting IDPs: Manual for Law and Policymakers*, October 2008, available at: www.brookings.edu/papers/2008/1016_internal_displacement.aspx (last accessed, 16 April 2011) [hereinafter, *Manual for Law and Policymakers*]

⁴⁴ S/RES/1261 (1999) on the Children and Armed Conflict, paragraph 2; S/RES/1539 (2004) on Children and Armed Conflict, paragraph 1; S/RES/1674 (2006) on Protection of Civilians in Armed Conflict, paragraph 5

⁴⁵ S/RES/1698 (2006) on the Situation Concerning the Democratic Republic of Congo, paragraph 13; S/RES/1807 (2008) the Situation Concerning the Democratic Republic of Congo, paragraph 13(e); S/RES 1857 (2008) the Situation Concerning the Democratic Republic of Congo, paragraph 4(e); S/RES/1556 (2004) on Sudan, preamble

⁴⁶ A/RES/58/177 (2004), A/RES/60/168 (2006), A/RES/62/153 (2008) and A/RES/64/162 (2010) on Protection of and Assistance to Internally Displaced Persons, preamble, respectively.

against being arbitrarily displaced⁴⁷ and, in this regard, cites Principle 6 of the *Guiding Principles*.⁴⁸ Security Council resolutions fail to expressly mention the prohibition against arbitrary displacement and are inconsistent in their references to forced displacement.

2. Key Considerations and Good Examples

Respecting the prohibitions against forced and arbitrary displacement may significantly reduce the risk of, or prevent, displacement, in situations of armed conflict. Accountability mechanisms for violations of the prohibition against forcible displacement, which amount to war crimes or crimes against humanity, could also assist in preventing displacement. The Security Council has inadequately addressed these issues in its resolutions and should more consistently refer to the need to prevent displacement in its resolutions. In this regard, the Security Council should, on a case-by-case basis, and as appropriate, consider systematically emphasizing the following issues in its resolutions. The considerations set out below are intended to complement the considerations on preventing displacement in the *Aide Memoire*.⁴⁹

- Reaffirm the prohibitions against forced and arbitrary displacement.
- Condemn violations of the prohibitions against forced and arbitrary displacement.
- Call for the immediate cessation of forced and arbitrary displacement in violation of applicable international law.
- Call for strict compliance by parties to armed conflict with:
 - ◆ The prohibitions against forced and arbitrary displacement as underscored by international law including humanitarian and human rights law;
 - ◆ The right to freedom of movement and residence of IDPs.
- Call on parties to armed conflict to take appropriate measures to respect and ensure respect for the prohibitions against forced and arbitrary displacement by enforcing appropriate military discipline measures, upholding command responsibility and training troops on applicable international humanitarian law and human rights law including the *Guiding Principles* and the *Kampala Convention* (as relevant).
- Urge States to establish legal measures and accountability mechanisms to prosecute forced and arbitrary displacement in violation of applicable international law.
- Impose sanctions on persons violating the prohibitions against forced and arbitrary displacement.
- Request peacekeeping and other UN missions to provide training to armed forces on international law relevant to forced and arbitrary displacement including the *Guiding Principles* and the *Kampala Convention* (as relevant).

⁴⁷ A/RES/64/162 (2010) on Protection of and Assistance to Internally Displaced Persons, preamble.

⁴⁸ *Id.* footnote 2.

⁴⁹ OCHA, *Aide Memoire*, *supra* note 4, pages 7-10.

- Request that reports of the Secretary-General on country-specific situations include information regarding the violation of the prohibitions against forced and arbitrary displacement.

A limited sample of resolutions in which the Security Council has addressed the prevention of displacement is set out below. These do not cover all the key considerations highlighted above. These resolutions offer guidance on ways the Security Council can include references to prevention of displacement in its resolutions.

S/RES/1674 (2006) [Protection of Civilians in Armed Conflict] (para.5): Reaffirms also its condemnation in the strongest terms of all acts of violence or abuses committed against civilians in situations of armed conflict in violation of applicable international obligations with respect in particular to ... (vi) forced displacement, ... and demands that all parties put an end to such practices...

S/RES/1674 (2006) [Protection of Civilians in Armed Conflict] (para.12): Recalls the prohibition of the forcible displacement of civilians in situations of armed conflict under circumstances that are in violation of parties' obligations under international humanitarian law...

S/RES/1807 (2008) [Democratic Republic of the Congo] (para.13 (e)): Decides that the provisions of paragraphs 9 and 11 above shall apply to the following individuals and, as appropriate, entities, as designated by the Committee:... Individuals operating in the Democratic Republic of the Congo and committing serious violations of international law involving the targeting of children or women in situations of armed conflict, including killing and maiming, sexual violence, abduction and forced displacement...

B. PROTECTION DURING DISPLACEMENT

Although prevention of displacement is the first responsibility of parties to the conflict, when internal displacement does occur, those displaced individuals have certain basic rights which must be respected under international law.

1. Normative Framework and Current Practice

In situations of armed conflict, a body of international humanitarian law, fundamental human rights norms and international criminal law provide a framework for the protection of civilians from violence as well as other violations of international law and human rights. IDPs are entitled to the protections afforded under this framework, which encompasses protection from all kinds of violence and abuse, including killing, maiming, rape and other forms of sexual violence, recruitment and use of child soldiers, abduction, trafficking, forced labor and all forms of slavery.

Consistent with the concept of sovereignty, as recognized in, *inter alia*, Article 2(7) of the *UN Charter*, national authorities bear the primary responsibility to respect and ensure the human rights of individuals within their territory. Guiding Principle 3(1) which is based on the principle of sovereignty, articulates this responsibility with respect to IDPs as follows: [n]ational authorities have the primary duty and responsibility to provide protection and humanitarian assistance to internally displaced persons within their jurisdiction.”⁵⁰

Within its sphere of responsibility and its work on protection of civilians in armed conflict (PoC), the Security Council has addressed violence against IDPs as part of a general condemnation and call for compliance related to violations of international humanitarian law and human rights law. Over 40 resolutions referencing displacement attempt to promote respect for international law, including international humanitarian and human rights law. By way of example, many resolutions call for compliance with obligations under, or condemn violations of, international law by parties to armed conflict including non-State armed groups. Some resolutions condemn violence and indiscriminate attacks against civilians. More than 10 resolutions request the Secretary-General to report on the protection of IDPs.

A little less than 20 resolutions address the protection of IDPs in camps (as well as IDP sites and settlements). The failure to separate armed elements from civilians in IDP camps has had a number of devastating consequences. In addition to its implications for stability, militarized IDP camps have specific security and humanitarian consequences for IDPs as well as neighboring populations. Militarized camps can be susceptible to cross-border attacks, especially where they are perceived as launch pads for renewed fighting as evidenced in Chad and Sudan. IDPs can be held hostage by military elements and prevented from exercising their right to freedom of movement including returning to their places of origin as in Somalia. Women and children are particularly vulnerable to serious human rights violations such as trafficking, forced recruitment, rape and other forms of physical and sexual abuse. Humanitarian aid and supplies can also be diverted to support armed groups as in Somalia.

The resolutions referencing IDP camps cover a range of issues. These include maintaining the civilian and humanitarian character of camps, preventing infiltration by armed elements, preventing attacks on the camps, preventing the recruitment of IDPs, including children, in and around camps, maintaining security and ensuring the protection of IDPs including by preventing serious violations of human rights. Some of these protection aspects are mentioned in conjunction with mandates of peacekeeping and other UN missions. Some resolutions also mention mission mandates in association with demilitarization of camps and combatants, the maintenance of law and order in camps as well as facilitating humanitarian access to IDP camps. As States have the primary responsibility to maintain the civilian character of camps, some resolutions specifically call for States to comply with this obligation.

⁵⁰ *Guiding Principles*, *supra* note 17.

2. Key Considerations and Good Examples

Addressing the protection of IDPs against violence and other violations of international law and human rights falls within the scope of action that the Security Council should ordinarily take in its resolutions to protect all civilians. The *Aide Memoire* elucidates many of these actions and it is not the purpose of this report to reiterate them.⁵¹ Nonetheless, a number of key considerations, which are particularly relevant to the protection of IDPs against violence and other violations of international law and human rights, are identified below. The Security Council should, on a case-by-case basis, and as appropriate, consider systematically emphasizing the following issues in its resolutions:

- Consistent with the Guiding Principles, recall the primary responsibility of national authorities to provide protection and assistance to IDPs.
- Underline the primary responsibility of States to respect and maintain the security and civilian character of IDP camps (and sites and settlements), including by disarming armed elements, separating combatants, preventing the recruitment by armed groups in and around camps and protecting vulnerable populations.
- Request States to implement measures to respect and maintain the security and civilian character of IDP camps (and sites and settlements) including by addressing the factors listed above.
- Condemn and call for the immediate cessation of all acts of violence or abuses committed against IDPs by parties to armed conflict in violation of applicable international humanitarian law and human rights law.
- Request that reports of the Secretary-General on country-specific situations include the protection of IDPs as a specific aspect of the report.

A limited sample of resolutions in which the Security Council addressed violence against IDPs and violations of applicable international law is set out below. These do not cover all the key considerations highlighted above.

⁵¹ *Aide Memoire*, *supra* note 8, pages 7-10.

S/RES/1296 (2000) [Protection of Civilians in Armed Conflict] (para.3): Notes that the overwhelming majority of internally displaced persons and other vulnerable groups in situations of armed conflict are civilians and, as such, are entitled to the protection afforded to civilians under existing international humanitarian law...

S/RES/1296 (2000) [Protection of Civilians in Armed Conflict] (para.14): Invites the Secretary-General to bring to its attention situations where refugees and internally displaced persons are vulnerable to the threat of harassment or where their camps are vulnerable to infiltration by armed elements and where such situations may constitute a threat to international peace and security, expresses, in this regard, its willingness to consider such situations and, where necessary, adopt appropriate steps to help create a secure environment for civilians endangered by conflicts, including by providing support to States concerned in this regard...

S/RES/1556 (2004) [Sudan]: Condemning all acts of violence and violations of human rights and international humanitarian law by all parties to the crisis, in particular by the Janjaweed, including indiscriminate attacks on civilians, rapes, forced displacements, and acts of violence especially those with an ethnic dimension, and expressing its utmost concern at the consequences of the conflict in Darfur on the civilian population, including women, children, internally displaced persons, and refugees...

S/RES/1674 (2006) [Protection of Civilians in Armed Conflict] (para.5): Reaffirms also its condemnation in the strongest terms of all acts of violence or abuses committed against civilians in situations of armed conflict in violation of applicable international obligations with respect in particular to (i) torture and other prohibited treatment, (ii) gender-based and sexual violence, (iii) violence against children, (iv) the recruitment and use of child soldiers, (v) trafficking in humans, (vi) forced displacement, and (vii) the intentional denial of humanitarian assistance, and demands that all parties put an end to such practices...

S/RES/1674 (2006) [Protection of Civilians in Armed Conflict] (para.14): Reaffirms the need to maintain the security and civilian character of refugee and internally displaced person camps, stresses the primary responsibility of States in this regard...

C. HUMANITARIAN ACCESS AND ASSISTANCE

During displacement, national authorities have the primary duty and responsibility to provide protection and humanitarian assistance to IDPs within their jurisdiction. This duty and responsibility extend to the provision of humanitarian assistance.

1. Normative Framework and Current Practice

Principle 3(1) of the *Guiding Principles* articulates this primary duty and responsibility. It is also articulated in Principle 25(1), which specifically pertains to humanitarian assistance. Humanitarian assistance encompasses material and services that are essential for the survival of IDPs such as food, water, medical care, shelter and clothing.

In situations of international armed conflict, civilians in occupied territories have the right to directly solicit and receive humanitarian assistance from international humanitarian organizations.⁵² Beyond this situation, international law does not explicitly provide for a right of IDPs to humanitarian assistance. Nonetheless, as assistance is often necessary for the meaningful exercise of rights to adequate food, water, housing, essential medical services, clothing and other necessities, and ultimately, life, certain entitlements to humanitarian assistance are implicit in the provisions of international human rights and humanitarian law guaranteeing a minimum level of subsistence.⁵³ In this regard, Principle 3(2) of the *Guiding Principles* articulates a corollary right of IDPs to receive humanitarian assistance.

While national authorities have the primary responsibility for the provision of humanitarian assistance, international humanitarian law ascribes a complementary role to international actors, including humanitarian organizations. During armed conflict, humanitarian organizations have an explicitly recognized right to offer humanitarian assistance.⁵⁴ This right is also articulated in Principle 25(2) of the *Guiding Principles*.

Safe, timely and unhindered access is fundamental to efforts to protect civilians including IDPs. In all situations of armed conflict, parties to the conflict are entitled to carry out controls of humanitarian relief, but must allow and facilitate rapid and unimpeded passage of humanitarian relief for civilians in need, which is impartial in character and provided without adverse distinction.⁵⁵ Principle 25(2) specifically notes that the relevant authorities cannot arbitrarily withhold consent to the provision of humanitarian assistance, particularly where they are unable or unwilling to provide assistance. Under international humanitarian law, parties to the conflict also have obligations with regard to the freedom of movement of humanitarian personnel and obligations to protect personnel and their goods and objects from attack.⁵⁶

⁵² *Fourth Geneva Convention*, Article 30.

⁵³ See *International Covenant on Economic, Social and Cultural Rights*, Articles 11 and 12; *Fourth Geneva Convention*, Articles 49(3) and 55; *First Additional Protocol to the Geneva Conventions*, Articles 54(2) and 69; *Second Additional Protocol to the Geneva Conventions*, Articles 14 and 17(1).

⁵⁴ See *Geneva Conventions*, common Article 3(2); *Second Additional Protocol to the Geneva Conventions*, Article 18(1).

⁵⁵ *Fourth Geneva Convention*, Articles 23 and 59; *First Additional Protocol to the Geneva Conventions*, Article 70; *Second Additional Protocol to the Geneva Conventions*, Article 18; See also Jean Louis Henckaerts and Louise Doswald-Beck, *Customary International Humanitarian Law*, Volume 1: Rules, (Cambridge: ICRC and Cambridge University Press, 2005), Rule 55 [hereinafter, *ICRC Study*].

⁵⁶ Parties to the conflicts must also ensure the freedom of movement of authorized humanitarian relief personnel essential to the exercise of their functions, subject only to temporary restrictions on the basis of military necessity, and must protect humanitarian personnel, goods and equipment from attacks and diversion from their intended beneficiaries; See e.g., *First Protocol to the Geneva Conventions*, Articles 70 and 71; *ICRC Study*, *supra* note 51, Rule 56. Willfully impeding relief supplies amounts to a war crime if it is carried out as part of the use of starvation of civilians as a method of war; *Rome Statute*, *supra* note 26, Article 8(b)(xxv.). Parties to conflicts must ensure that humanitarian relief personnel and their goods and objects are protected against attacks; *First Protocol to the Geneva Conventions*, Article 71(2); See also *ICRC Study*, *supra* note 51, Rule 31 and 32. They must also ensure that attackers are punished; *Rome Statute*, *supra* note 26, Articles 8(2)(b)(iii) and 8(2)(e)(iii).

In the displacement setting, these obligations mean that competent authorities must use all possible means at their disposal including requesting, accepting and facilitating international humanitarian aid to provide IDPs with the minimum essential levels of food, water, shelter and medical care from the moment displacement occurs. In practice, humanitarian access is often impeded by armed groups as in Afghanistan and Somalia or by governmental restrictions on the activities of humanitarian actors as in Sri Lanka and Sudan.

Denial, obstruction or other constraints on access to civilians including IDPs, diversion or destruction of humanitarian relief, and security threats to, and deliberate attacks against, humanitarian personnel and effects, feature extensively in the Secretary-General's reports on PoC. In his last two reports in 2009, and 2010, the Secretary-General stated that enhancing humanitarian access is one of five core challenges associated with better protecting civilians in armed conflict.⁵⁷ Since 1999, in each of its six resolutions on protection of and assistance to IDPs, the General Assembly has called on governments to provide protection and assistance to IDPs, and to facilitate the efforts of UN and other humanitarian organizations in these respects, including by further improving access to IDPs.⁵⁸

In over 40 of the 142 resolutions referencing displacement, the Security Council has addressed humanitarian access concerns and/or the provision of humanitarian assistance to affected populations, often explicitly referring to IDPs. Resolutions have called on all parties to ensure, in accordance with relevant provisions of international law, the full, safe and unhindered access of relief personnel to those in need and the delivery of humanitarian assistance including to IDPs. The Council has condemned violations of applicable international obligations associated with the intentional denial of humanitarian assistance, or the failure to ensure full, safe and unhindered access of relief personnel as well as the delivery of humanitarian assistance to IDPs, and demanded that all parties put an end to such practices. The Council has expressed concern for the security and killing of humanitarian workers and the hindering of their access to populations in need including IDPs.

⁵⁷ UN Security Council, *Report of the Secretary-General on the Protection of Civilians in Armed Conflict*, S/2009/277, 29 May 2009, paragraph 5; UN Security Council, *Report of the Secretary-General on the Protection of Civilians in Armed Conflict*, UN Security Council, S/2010/579, 11 November 2010, paragraph 43. These two reports include annexes detailing specific constraints on humanitarian access. In paragraph 73 of the 2010 report, the Secretary-General further stated that “[b]ureaucratic constraints, active hostilities, deliberate attacks against humanitarian workers, the economically motivated theft of humanitarian supplies and equipment, or a combination of all of the above continue to undermine efforts to protect and assist those in need.”

⁵⁸ See also the Security Council's presidential statement of 12 February 1999 on protection of civilians in armed conflict (S/PRST/1999/6), which noted that “large-scale human suffering is a consequence and sometimes a contributing factor to instability and further conflict. Bearing in mind its primary responsibility for the maintenance of international peace and security, the Council affirm[ed] the need for the international community to assist and protect civilian populations affected by armed conflict.” The Council called on all parties concerned to guarantee the unimpeded and safe access of UN and other humanitarian personnel to those in need. Moreover, the Council expressed its willingness to respond, in accordance with the *Charter* of the UN, to situations in which humanitarian assistance to civilians has been deliberately obstructed. Since 1999, Security Council presidential statements have continued to underline the importance of safe and unhindered access of humanitarian personnel and assistance to civilians in armed conflict in accordance with international law. The Council has also called on parties to armed conflict, including non-State actors to take all necessary measure to ensure security of humanitarian personnel.

Some resolutions have addressed humanitarian access and assistance as they relate to the mandates of peacekeeping and other UN missions. These are discussed in more detail in the next section but generally relate to facilitating or coordinating delivery of humanitarian assistance, creating or improving the security conditions in which humanitarian assistance is provided to IDPs and facilitating the security conditions necessary for humanitarian organizations to access populations in need of assistance. Rarely though have resolutions identified the specific constraints on humanitarian access in a given context, nor have they called for measures to ensure accountability for those parties that have been denied access.

2. Key Considerations and Good Examples

Concerns associated with humanitarian access and assistance to IDPs in armed conflict are often encompassed within concerns associated with humanitarian access and assistance to civilians generally. The *Aide Memoire* identifies considerations for the Security Council as it seeks to address complications associated with humanitarian access and assistance to civilians in armed conflict in its resolutions.⁵⁹ Accordingly, this section draws out a number of key considerations regarding humanitarian access and assistance applicable to IDPs. The Security Council should, on a case-by-case basis, and as appropriate, consider systematically emphasizing the following issues in its resolutions:

- Recall the primary responsibility of national authorities to provide humanitarian assistance to IDPs.
- Underline the importance of safe and unhindered access of humanitarian personnel to civilians in armed conflict, including IDPs, and the provision of humanitarian assistance to them.
- Call for strict compliance by parties to armed conflict and third States with obligations under applicable international law to allow and facilitate the rapid and unimpeded passage of humanitarian assistance to civilians including IDPs.
- Condemn and call for the immediate removal of impediments to humanitarian access to IDPs that violate international humanitarian law.
- Condemn parties to the conflict who have failed to ensure the full, safe and unhindered access of relief personnel as well as the delivery of humanitarian assistance to IDPs in violation of international law and demand that parties put an end to such practices.

A limited sample of resolutions in which the Security Council has addressed humanitarian access and assistance is set out below. These do not cover all the key considerations highlighted above.

⁵⁹ *Aide Memoire*, *supra* note 8, pages 12-13

S/RES/1265 (1999) [Protection of Civilians in Armed Conflict] (para.7): Underlines the importance of safe and unhindered access of humanitarian personnel to civilians in armed conflict, including refugees and internally displaced persons, and the protection of humanitarian assistance to them...

S/RES/1509 (2003) [Liberia] (para.8): Calls upon all parties to ensure, in accordance with relevant provisions of international law, the full, safe and unhindered access of relief personnel to all those in need and delivery of humanitarian assistance, in particular to internally displaced persons and refugees...

S/RES/1769 (2007) [Sudan]: Reiterating its deep concern for the security of humanitarian aid workers and their access to populations in need, condemning those parties to the conflict who have failed to ensure the full, safe and unhindered access of relief personnel to all those in need in Darfur as well as the delivery of humanitarian assistance, in particular to internally displaced persons and refugees, and recognising that, with many citizens in Darfur having been displaced, humanitarian efforts remain a priority until a sustained cease-fire and inclusive political process are achieved...

S/RES/1769 (2007) [Sudan] (para.19): Welcomes the signature of a Joint Communiqué between the Government of Sudan and the United Nations on Facilitation of Humanitarian Activities in Darfur, and calls for it to be fully implemented and on all parties to ensure, in accordance with relevant provisions of international law, the full, safe and unhindered access of relief personnel to all those in need and delivery of humanitarian assistance, in particular to internally displaced persons and refugees...

S/RES/1866 (2009) [Georgia] (para.4): Calls for facilitating, and refraining from placing any impediment to, humanitarian assistance to persons affected by the conflict, including refugees and internally displaced persons...

D. DURABLE SOLUTIONS AND HOUSING, LAND AND PROPERTY RIGHTS

In addition to preventing displacement and ensuring that IDPs are protected and assisted when they are displaced, the question of finding solutions for IDPs is a key area which the Security Council should systematically address. As discussed below, questions of housing, land and property (HLP) rights are often obstacles to securing durable solutions.

1. Normative Framework and Current Practice

a. Durable Solutions

According to customary international law applicable in both international and non-international armed conflict, IDPs “have a right to voluntarily return in safety to their homes or plac-

es of habitual residence as soon as the reasons for their displacement cease to exist.”⁶⁰ The failure to allow civilians to return once any justification ceases may constitute a grave breach of international humanitarian law.⁶¹ Under human rights law, norms guaranteeing the liberty of movement and the freedom to choose one’s residence allow for restrictions only if the measures meet the criteria of necessity and proportionality.

In recent years, attention has focused on how to determine when displacement ends and ensure durable solutions for IDPs. There have been developments in guidance at both the practical and policy levels for national authorities and practitioners.⁶² Principle 28 of the *Guiding Principles* addresses solutions for IDPs during the post-displacement phase. A durable solution for IDPs is only achieved when they no longer have specific assistance and protection needs that are linked to their displacement and can enjoy their human rights without discrimination on account of their displacement.⁶³ A durable solution does not necessarily require the return of IDPs to their former homes and can be achieved in one of the following three ways:

- Sustainable reintegration at the place of origin (referred to as “return”);
- Sustainable local integration in areas where IDPs take refuge (referred to as “local integration”);
- Sustainable integration in another part of the country (settlement elsewhere in the country).

Securing a durable solution is often a gradual, long-term process of diminishing displacement specific needs progressively, while ensuring that IDPs enjoy their human rights without discrimination related to their displacement. While competent authorities have the primary duty and responsibility to establish conditions and provide the means for IDPs to find a durable solution and to facilitate their reintegration, international humanitarian and development actors also have complementary roles.⁶⁴ Generally, IDPs who have achieved a durable solution will enjoy, without discrimination on the basis of their displacement rights recognized under international human rights law:⁶⁵

⁶⁰ *ICRC Study*, *supra* note 51, Rule 132. Even where involuntary transfer of civilians is permitted under international humanitarian law, Article 49(2) of *Geneva Convention IV* stipulates that “[p]ersons... evacuated shall be transferred back to their homes as soon as hostilities in the area in question have ceased.”

⁶¹ See *Fourth Geneva Convention*, Article 147; First Protocol to the *Geneva Conventions*, Article 85(4)(a)

⁶² See e.g., Brookings-Bern Project on Internal Displacement, *Inter-Agency Standing Committee Framework on Durable Solutions for IDPs*, March 2010, available at: www.brookings.edu/reports/2010/0305_internal_displacement.aspx (last accessed; 19 April 2011) [hereinafter, Framework on Durable Solutions for IDPs], adopted by UN in: UN Human Rights Council, *Report of the Representative of the Secretary-General on the human rights of internally displaced persons, Walter Kälin – Addendum – Framework on Durable Solutions for Internally Displaced Persons*, A/HRC/13/21/Add.4, 9 February 2010.; See also *Manual for Law and Policymakers*, *supra* note 39.

⁶³ See e.g., *Framework on Durable Solutions for IDPs*, *supra* note 58.

⁶⁴ See *Guiding Principles*, *supra* note 17, Principles 28(1) and 30.

⁶⁵ See e.g., *Framework on Durable Solutions for IDPs*, *supra* note 56.

SECURITY COUNCIL, INTERNAL DISPLACEMENT AND PROTECTION:
RECOMMENDATIONS FOR STRENGTHENING ACTION THROUGH RESOLUTIONS

- Long-term safety, security and freedom of movement;
- An adequate standard of living, including at a minimum, access to adequate food, water, housing, health care and basic education;
- Access to employment and livelihoods;
- Access to effective mechanisms that restore HLP or provide compensation, where appropriate;
- Access to, and replacement of, personal and other documentation;
- Voluntary reunification with family members separated during displacement;
- Participation in public affairs at all levels on an equal basis with the resident population; and
- Effective remedies for displacement-related violations, including access to justice, reparations and information about the causes of violations.

The process through which durable solutions are reached should ensure that IDPs are in a position to make informed and voluntary decisions on the durable solution that they would like to pursue. Additionally, IDPs' choice of local integration or settlement elsewhere in the country, in the absence of the option to return, should not be regarded as a renunciation of the right to return should that choice later become feasible. Moreover, IDPs should not be encouraged or compelled to return or relocate to areas where their life, safety, liberty or health would be at risk.

Over 100 of the 142 resolutions mentioning displacement refer implicitly to some facet of durable solutions. The Security Council has recognized the importance of, and extensively addressed various aspects of, IDPs' right to return in its resolutions. In many resolutions, the Council reaffirmed respect for the "unconditional" or "inalienable" right of IDPs to return to their homes or places of origin in an unimpeded, voluntary and secure manner and called on parties to conflict to respect this right. In others, the Council discussed facilitating IDPs' return in the context of peacekeeping mandates.

The first thematic PoC resolution or presidential statement to mention "durable solutions" as a distinct concept was the Council's 2010 presidential statement. This arguably provides an example of the way in which the Council has addressed new and emerging protection issues. In this statement, the Council stressed "the importance of achieving durable solutions for... IDPs, in particular their voluntary, safe and dignified return, or local integration or resettlement."⁶⁶ Only three resolutions explicitly mention the term "durable solutions."⁶⁷ Only one resolution, relating to the situation in the DRC, and adopted in 2010, mentions all three forms of durable solutions together; it does so in the context of a peacekeeping

⁶⁶ S/PRST/210/25 on Protection of Civilians in Armed Conflict, page 2.

⁶⁷ S/RES/1479 (2003) on the Situation in Côte d'Ivoire, paragraph 10; S/RES/1923 (2010) on the Situation in Chad, the Central African Republic and the subregion, preamble; and S/RES/1935 (2010) on Sudan, paragraph 15.

mandate.⁶⁸ Outside this resolution, only one other resolution, on Sudan, and again adopted in 2010, explicitly mentions “local integration.”⁶⁹ This resolution included clear language on durable solutions. Roughly six resolutions mention “resettlement” while close to 20 resolutions mention reintegration of IDPs.

While most IDPs want to return to their communities of origin when circumstances allow, the reality is that in many conflict situations, circumstances are not conducive to return. For example, although the 1995 Dayton agreement brought an end to hostilities in Bosnia-Herzegovina, many IDPs were reluctant to return to their communities because of their changed ethnic composition. In fact, 16 years after the peace agreement, some 340,000 are still displaced in the Balkans. Similarly, in Iraq, many people were displaced because of sectarian violence and are reluctant to return to communities in which their sect is now a minority. In these and many other situations, the Security Council should emphasize the importance of finding durable solutions other than return to ensure that the rights of IDPs are respected. The Council should also take into consideration the fact that conditions on the ground often change and that displacement situations vary from country to country. In situations where displacement drags on for years or even decades, IDPs may become open to local integration. Thus in Burundi, most IDPs have indicated their preference to integrate locally rather than to return to their communities of origin, while in Uganda (a country which has not been addressed in Security Council resolutions), the vast majority of IDPs have indicated that they wish to return to their communities even though they have been displaced for more than a decade.

b. Housing, Land and Property (HLP)

HLP disputes and problems are an inevitable cause and consequence of conflict. Homes and lands that are left behind by IDPs are often their most valuable assets and are usually crucial to their livelihoods and identities. Such assets are likely to play a central role in facilitating the resumption of normal lives after displacement. In contrast to non-displaced populations, who are generally in possession of these key assets even when they have been affected by conflicts, IDPs face acute vulnerabilities as a consequence of losing their homes and lands. Specific problems include unauthorized occupation and use of homes and lands, contestation of property rights, fraudulent property transfer contracts (including under duress), official reallocation of properties under color of law, unlawful looting, destruction of homes and damage to cultivated lands, and permanent confiscation of abandoned lands as well as loss and destruction of title documents and national property registries.

Unresolved HLP disputes and problems can perpetuate insecurity, especially in circumstances of large-scale displacement. Restoration of HLP can often be critical to attaining durable solutions, and in turn for engendering stability. The availability of tailored restitu-

⁶⁸ S/RES/1925 (2010) on the Situation Concerning the Democratic Republic of Congo, paragraph 12.

⁶⁹ S/RES/1935 (2010) on Sudan, paragraph 15

tion and compensation mechanisms to address HLP rights of IDPs can create incentives for return, provide the means to re-establish lives elsewhere, limit reliance on external assistance and accelerate the resumption of activities aimed at regaining livelihoods. In addition to addressing the economic insecurity that may result from displacement, restitution mechanisms also advance accountability, reparation and justice, and contribute to the development of the rule of law and the legitimacy of post conflict institutions.

In contrast, failing to address HLP rights adequately may inhibit returns, limit the means available to IDPs to rebuild lives and livelihoods, prolong reliance on external assistance and engender disenfranchisement. Together, these factors create significant impediments to achieving sustainable durable solutions and have the potential to fuel instability and frustrate peace processes. Addressing HLP issues is not only a prerequisite for the maintenance of the rule of law and for the creation of conditions conducive to achieving sustainable durable solutions, but it also contributes to social, legal and economic stability in post-conflict settings. In this context, attempts should be made to prevent potential HLP rights complications from the onset of displacement.

Competent authorities have the duty and responsibility to assist IDPs to recover property and possessions which they left behind or of which they were dispossessed upon displacement.⁷⁰ Where recovery is not possible, competent authorities are required to provide or assist IDPs to obtain appropriate compensation or another form of just reparation.⁷¹ Addressing HLP issues requires a comprehensive approach. In principle, restitution is the preferred remedy for violations of HLP rights. However, in some circumstances, it may be more equitable to compensate the displaced owner. Irrespective of the approach, the right to restitution or compensation extends to all displaced persons, including men, women and children, who have lost ownership, tenancy rights or other access entitlements to their HLP.⁷²

A legal and policy framework aimed at protecting HLP rights should prohibit destruction, unlawful use, occupation and arbitrary appropriation of IDPs' HLP, establish measures to safeguard IDPs' property throughout the period of displacement and provide a clear articulation of the property rights of IDPs, including the right to restitution, compensation and other forms of reparations. Such a framework should also establish efficient mechanisms to mediate and resolve disputes, restore the property rights of IDPs, and provide remedies when these rights have been violated.⁷³

⁷⁰ See *Guiding Principles*, *supra* note 17, Principle 29(2). See also Centre on Housing Rights and Evictions, *The Pinheiro Principles: United Nations Principles on Housing and Property Restitution for Refugees and Displaced Persons*, Principle 2 [hereinafter, *Pinheiro Principles*]

⁷¹ *Id.*

⁷² The right also extends to persons who stand to inherit property from deceased family members, and persons with a special attachment to their land. See *Guiding Principles*, *supra* note 17; *Pinheiro Principles*, *supra* note 64

⁷³ See *Guiding Principles*, *supra* note 17, Principle 21; See also *Pinheiro Principles*, *supra* note 64; *Framework on Durable Solutions for IDPs*, *supra* note 56; *Manual for Law and Policymakers*, *supra* note 37

In the Secretary-General's 2007 report, he stated that HLP issues "are often the origins of, or result from, conflict... and therefore [are] inextricably linked to the achievement and consolidation of lasting peace and the prevention of future violence."⁷⁴ Discussing this issue at considerable length, the Secretary-General noted that the "majority of conflicts in recent memory have involved underlying disputes over housing, land or property."⁷⁵ Identifying the critical need to address HLP issues as one of four challenges of particular importance,⁷⁶ the Secretary-General provided a number of recommendations to the Security Council and called for consistent, systematic and comprehensive treatment of HLP issues.⁷⁷ In his 2009 report, the Secretary-General reiterated this call to action, and urged the Council to revisit the recommendations in his 2007 report.

Given the importance of HLP to finding durable solutions to internal displacement, it is unfortunate that in the past twelve years, the Security Council has addressed HLP issues explicitly in only nine resolutions referring to displacement: five on Georgia, two on Côte d'Ivoire, one on Sudan and one on Burundi. Of the five resolutions on Georgia, the penultimate two reiterate and reaffirm the fundamental importance of the right of return of all IDPs and "reaffirms the importance of their return to their homes and property and that individual property rights have not been affected by the fact that owners had to flee during the conflict and that the residency rights and identity of those owners will be respected..."⁷⁸ In contrast, the first two resolutions on Georgia urge the relevant leadership to "address seriously the need for dignified return of IDPs..., including their security and human rights concerns [and] publicly reassure the local population,... that their residency rights and identity will be respected."⁷⁹ The last resolution on Georgia underlines the importance of ensuring, without distinction, the protection of the property of IDPs.⁸⁰

The resolutions on Burundi, Côte d'Ivoire and Sudan relate to the importance of addressing HLP rights in peacebuilding, peace processes and peace agreements. As such, they are examined in more detail in section V of this report. Similarly, measures that can be undertaken by peacekeeping and other UN missions to address HLP issues are discussed in section IV on the Role of Peacekeeping and Other UN Missions.

⁷⁴ UN Security Council, *Report of the Secretary-General on the Protection of Civilians in Armed Conflict*, S/2007/643, 28 October 2007, paragraph 52

⁷⁵ *Id.* paragraph 53; See generally, paragraphs 52 – 59

⁷⁶ *Id.* paragraph 2

⁷⁷ *Id.* paragraph 59

⁷⁸ S/RES/1781 (2007) on the Situation in Georgia, paragraph 15; S/RES/1808 (2008) on the Situation in Georgia, paragraph 9

⁷⁹ S/RES/1666 (2006) on the Situation in Georgia, paragraph 7; S/RES/1716 (2006) on the Situation in Georgia, paragraph 9

⁸⁰ S/RES/1866 (2009) on the Situation in Georgia, paragraph 3

2. Key Considerations and Good Examples

This section identifies key considerations regarding durable solutions and HLP rights that should be addressed in Security Council resolutions. A number of considerations, which relate to peace processes, peacebuilding and peace agreements, are discussed in section V. The Security Council should, on a case-by-case basis, and as appropriate, consider systematically emphasizing the following issues in its resolutions:

- Stress the importance of achieving dignified durable solutions for IDPs.
- Reaffirm the right of IDPs to securing one of the three forms of durable solutions in the form of voluntary, safe and dignified: return; local integration in areas of refuge; and settlement elsewhere in the country.
- Reaffirm the right of IDPs to make an informed and voluntary choice regarding each of the three durable solutions and not to be compelled to return or relocate to areas where their life, safety, liberty or health would be at risk.
- Call on parties concerned to create the conditions conducive to achieving sustainable durable solutions in the form of voluntary, safe and dignified: return; local integration; or settlement elsewhere in the country.
- Call for strict compliance by parties to armed conflict with respect to the fundamental right of IDPs to voluntarily return in safety and dignity to their homes.
- Call on parties concerned to ensure non-discriminatory treatment of IDPs who return, locally integrate or settle in another part of the country.
- Call on national authorities to ensure that laws and regulations inconsistent with international legal standards, in particular the right to return, restitution of property rights, and the right to housing, are repealed and that effective impartial mechanisms are put in place for the return and restoration of property.
- Reaffirm its support for the established principles that all declarations and actions made under duress, particularly those regarding land and ownership, are null and void.
- Call on national authorities to ensure the early identification and registration of HLP abandoned by IDPs.
- Call on national authorities to protect HLP left behind by IDPs against destruction, arbitrary and illegal appropriation, occupation and use.
- Condemn illegal appropriation and destruction of HLP belonging to IDPs and call on national authorities to identify and prosecute persons criminally responsible for illegal appropriation or destruction of HLP.
- Call on national authorities to establish mechanisms for addressing HLP rights of IDPs including through the establishment of non-discriminatory restitution and compensation mechanisms and call for non-discriminatory access of all IDPs (including women, children and other marginalized populations) to these mechanism.
- Call for non-discriminatory enforcement of HLP judgments and orders.

A limited sample of resolutions in which the Security Council has addressed durable solutions and HLP rights is set out below. These do not cover all the key considerations highlighted above.

S/RES/1615 (2005) [Georgia] (para.18): Reaffirms the unacceptability of the demographic changes resulting from conflict, reaffirms also the inalienable rights of all refugees and internally displaced persons affected by the conflict, and stresses that they have the right to return to their homes in secure and dignified conditions, in accordance with international law...

S/RES/1808 (2008) [Georgia] (para.9): Reiterates and reaffirms as fundamentally important the right of return for all the refugees and the internally displaced persons to Abkhazia, Georgia, reaffirms the importance of such people's return to their homes and property and that individual property rights have not been affected by the fact that owners had to flee during the conflict and that the residency rights and the identity of those owners will be respected...

S/RES/1866 (2009) [Georgia] (para.3): Underlines the need to refrain from the use of force or from any act of ethnic discrimination against persons, groups of persons or institutions, and to ensure, without distinction, the security of persons, the right of persons to freedom of movement and the protection of the property of refugees and displaced persons...

S/RES/1923 (2010) [Chad, the Central African Republic and the subregion]: Stressing also the importance of achieving dignified durable solutions for refugees and internally displaced persons...

S/RES/1935 (2010) [Sudan] (para.15): Stresses the importance of achieving dignified and durable solutions for refugees and internally displaced persons, and of ensuring their full participation in the planning and management of these solutions, demands that all parties to the conflict in the Darfur create the conditions conducive to allowing the voluntary, safe, dignified and sustainable return of refugees and internally displaced persons or their local integration...

IV. ROLE OF PEACEKEEPING AND OTHER UN MISSIONS

1. Normative Framework and Current Practice

The ability of peacekeeping and other missions to address the protection needs of IDPs during armed conflict ultimately depends on timely action by the Security Council, the mandate given to the mission and the resources available to the mission to implement its mandate. The timely deployment of missions to areas where civilians are at risk of forced and arbitrary displacement can prevent displacement. The presence of humanitarian personnel can ensure that where displacement does occur, it takes place in accordance with international law, including under satisfactory conditions of hygiene, health, safety and nutrition and in a manner that respects the rights to life, dignity, liberty and security.

Deployment of peacekeeping missions soon after displacement begins can create the environment necessary to protect IDPs during displacement. An effective peacekeeping presence with a clear mandate and adequate resources can, *inter alia*, protect IDPs against violence and other gross violations of international humanitarian law and human rights, ensure security in IDP camps including if necessary through the disarmament and separation of combatants, provide the necessary security environment to facilitate humanitarian access and the delivery of humanitarian assistance to IDPs, and facilitate the freedom of movement of IDPs. The presence of such missions can also minimize HLP disputes and complications and eventually help facilitate the conditions necessary for IDPs to achieve durable solutions.

Peacekeeping and other UN missions have been a major tool in Security Council action to protect civilians. Since the first thematic resolution on protection of civilians in armed conflict (PoC) in 1999, the Council has consistently included PoC tasks in the mandates of peacekeeping and other UN missions.⁸¹ In resolution 1674, its third thematic resolution on the PoC, the Security Council stated its intention to ensure that peacekeeping mandates include clear guidelines as to what missions can and should do to protect civilians.⁸²

Over 48 of the 142 Security Council resolutions discussing displacement reference the mandates of peacekeeping and other UN missions. When addressing such mandates, the

⁸¹ For more information see Department of Peacekeeping Operations and OCHA, *Protecting Civilians in the Context of UN Peacekeeping Operations—Successes, Setbacks and Remaining Challenges*, January 2010. The study traces the formulation of protection mandates by the Security Council, and their implementation by UN peacekeeping missions on the ground

⁸² S/RES/1674 (2006) on Protection of Civilians in Armed Conflict, paragraph 16

Security Council has covered a range of issues relevant to addressing internal displacement. Most commonly, the Security Council has mandated missions to facilitate and support the return of IDPs, notably through the creation of secure environments, conditions conducive to return and restoration of the rule of law. This is followed closely by mandates relevant to creating the conditions necessary for the provision of humanitarian assistance, facilitating or coordinating the delivery of humanitarian assistance, and/or ensuring the access and security of humanitarian personnel and effects.

Some mandates address the protection of IDPs in camps (and sites and settlements) including the maintenance of the civilian character of, or law and order, in IDP camps. A more limited number of resolutions discuss raising awareness within IDP populations of peacekeeping mission mandates, and more recently, benchmarks associated with mission mandates. None of the resolutions discuss HLP rights in conjunction with mission mandates.

2. Key Considerations and Good Examples

The Security Council should, on a case-by-case basis, and as appropriate, and in conjunction with its utilization of the *Aide Memoire*, consider systematically emphasizing the matters identified below when addressing the mandates of peacekeeping and other UN missions. The issues identified below are relevant to conflict-, transitional- and post-conflict environments and address protection prior to displacement, during displacement and during peacebuilding and peace processes.

- Mandate peacekeeping missions to prevent forced displacement and arbitrary displacement in violation of applicable international law and where displacement occurs, ensure it is carried out in accordance with obligations under international law including international humanitarian and human rights law.
- Strategically deploy peacekeeping and other UN missions to prevent evictions.
- Mandate peacekeeping and other UN missions to protect or support the protection of HLP belonging to IDPs and official records of property ownership, and prevent the damage, destruction, unlawful use, tampering, illegal appropriation and confiscation of such HLP and official records.
- Mandate peacekeeping and other UN missions to support domestic mechanisms for addressing HLP issues (including property restitution and compensation mechanisms) or their establishment by national authorities.
- Establish a peacekeeping presence soon after the movement of IDPs in order to ensure that they are able to settle in camps free from the threat of harassment or infiltration by armed elements.
- Mandate peacekeeping and other UN missions to take all feasible measures (or support national efforts) to ensure security in and around IDP camps including, where necessary, by maintaining the civilian and humanitarian character of IDP camps, preventing the infiltration of armed elements and combatants, ensuring the disarmament,

IV. ROLE OF PEACEKEEPING AND OTHER UN MISSIONS

- demobilization and separation of combatants and armed elements, and paying particular attention to the needs of vulnerable populations of IDPs.
- Mandate peacekeeping and other UN missions to facilitate the safe, timely and unimpeded provision of humanitarian assistance by creating or contributing to the creation of necessary security conditions and the protection and freedom of movement of humanitarian personnel and effects.
 - Mandate peacekeeping and other UN missions to ensure the freedom of movement (including in camps) of IDPs including the protection of IDPs who exercise their unconditional right to return to their homes or places of origin.
 - Mandate peacekeeping and other UN missions to create or support the conditions necessary to facilitate durable solutions for IDPs including voluntary, safe, dignified and sustainable return, local integration or settlement in another part of the country.
 - Mandate peacekeeping and other UN missions to monitor and regularly report on:
 - ◆ Violations of the prohibition against forced displacement and arbitrary displacement;
 - ◆ Protection needs of IDPs including vulnerable IDP populations such as women and children;
 - ◆ Violence against IDPs, violations of international humanitarian law and human rights as they relate to IDPs and measures to ensure accountability for such violations.
 - Request that peacekeeping and other UN missions develop benchmarks and indicators of progress regarding the protection of IDPs to measure specific developments in the implementation of their protection mandates.
 - Call on the Secretary-General to provide training to peacekeeping and other UN missions on international law including humanitarian, human rights, criminal and refugee law as they relate to the protection of IDPs in armed conflict as well as training on the *Kampala Convention* (as applicable), and the *Guiding Principles*.
 - Request troop- and police-contributing countries to ensure the provision of appropriate training on IDP protection issues, including the *Kampala Convention* (as applicable) and the *Guiding Principles*, to heighten the awareness and responsiveness to IDP protection concerns of their personnel participating in UN peacekeeping and other relevant missions.

A limited sample of resolutions in which the Council has addressed the mandates of peacekeeping and other UN missions is set out below. These do not cover all the key considerations highlighted above.

S/RES/1542 (2004) [Haiti] (para.7): Acting under Chapter VII of the Charter of the United Nations with regard to Section I below, decides that MINUSTAH [UN Stabilization Mission in Haiti] shall have the following mandate:...III. Human Rights:... (b) to monitor and report on the human rights situation, in cooperation with the Office of the United Nations High Commissioner for Human Rights, including on the situation of returned refugees and displaced persons...

S/RES/1674 (2006) [Protection of Civilians in Armed Conflict] (para.16): Reaffirms its practice of ensuring that the mandates of United Nations peacekeeping, political and peace building missions include, where appropriate and on a case-by-case basis, provisions regarding (i) the protection of civilians, particularly those under imminent threat of physical danger within their zones of operation, (ii) the facilitation of the provision of humanitarian assistance, and (iii) the creation of conditions conducive to the voluntary, safe, dignified and sustainable return of refugees and internally displaced persons, and expresses its intention of ensuring that (i) such mandates include clear guidelines as to what missions can and should do to achieve those goals, (ii) the protection of civilians is given priority in decisions about the use of available capacity and resources, including information and intelligence resources, in the implementation of the mandates, and (iii) that protection mandates are implemented...

S/RES/1861 (2009) [Chad, the Central African Republic and the subregion] (para.6): Decides that MINURCAT shall have the following mandate in eastern Chad and the north-eastern Central African Republic, in liaison with the United Nations country team and, as appropriate, in liaison with the United Nations Peacebuilding Support Office in the Central African Republic (BONUCA) and without prejudice to the mandate of BONUCA: Security and protection of civilians (e) To support the initiatives of national and local authorities in Chad to resolve local tensions and promote local reconciliation efforts, in order to enhance the environment for the return of internally displaced persons...

S/RES/1861 (2009) [Chad, the Central African Republic and the subregion] (para.25): Endorses the benchmarks presented in paragraph 70 of the report of the Secretary-General towards the exit strategy of MINURCAT [UN Mission in the Central African Republic and Chad], and stresses in particular the following: (a) Voluntary return and resettlement in secure and sustainable conditions of a critical mass of internally displaced persons; (b) Demilitarization of refugee and internally displaced person camps as evidenced by a decrease in arms, violence and human rights abuses; (c) Improvement in the capacity of Chadian authorities in eastern Chad, including national law enforcement agencies, the judiciary and the prison system to provide the necessary security for refugees, internally displaced persons, civilians and humanitarian workers with respect for international human rights standards...

S/RES/1925 (2010) [Democratic Republic of the Congo] (para.12): Decides that MONUSCO [UN Organization Stabilization Mission in the Democratic Republic of the Congo] shall have the following mandate in this order of priority: Protection of Civilians... (g) Support the Government's efforts, along with international partners and neighbouring countries, to create an environment conducive to the voluntary, safe and dignified return of internally displaced persons and refugees, or voluntary local integration or resettlement...

S/RES/1927 (2010) [Haiti] (para.4): Recognizes the need for MINUSTAH to assist the Government of Haiti in providing adequate protection of the population, with particular attention to the

Continues

needs of internally displaced persons and other vulnerable groups, especially women and children, including through additional joint community policing in the camps along with strengthened mechanisms to address sexual and gender-based violence; and to tackle the risk of a resurgence in gang violence, organized crime and trafficking of children...

S/RES/1933 (2010) [Côte d'Ivoire] (para.16): Decides that, in order to support the parties to implement the Ouagadougou Political Agreement more effectively, UNOCI [UN Operation in Côte d'Ivoire] shall have the following mandate from the date of adoption of this resolution until 31 December 2010: ...(f) Support for humanitarian assistance – To facilitate the free flow of people, goods and humanitarian assistance, inter alia, by contributing to enhance security and taking into account the special needs of vulnerable groups, especially women, children, elderly people, persons with disabilities and displaced persons...

V. PEACEBUILDING, PEACE PROCESSES AND PEACE AGREEMENTS

As displacement is a consequence of conflict, processes intended to bring an end to conflicts should specifically address the needs and uphold the rights of IDPs. Durable solutions for IDPs depend on peace processes and peacebuilding.

1. Normative Framework and Current Practice

The General Assembly's resolutions on protection for and assistance to IDPs strike at the main issues pertaining to IDPs that should be addressed by the Security Council when discussing peacebuilding, peace processes and peace agreements in its resolutions. In four resolutions, the General Assembly notes the "importance of taking the human rights and the specific protection and assistance needs of IDPs into consideration, when appropriate, in peace processes."⁸³ In 2007 and 2009, the General Assembly adds that "durable solutions for internally displaced persons, including through voluntary return, sustainable reintegration and rehabilitation processes and their active participation, as appropriate, in the peace process, are necessary elements of effective peacebuilding."⁸⁴ Moreover, the General Assembly, in welcoming the role of the Peacebuilding Commission in this regard, urges it to "incorporate the rights and the specific needs of IDPs, including their voluntary return..., reintegration and rehabilitation, as well as related land and property issues, when advising on or proposing country-specific peacebuilding strategies for post-conflict situations."⁸⁵ In the 2009 resolution, the Assembly also explicitly refers to all three forms of durable solutions.

⁸³ A/RES/58/177 (2004) on Protection of and Assistance to Internally Displaced Persons, paragraph 6; A/RES/60/168 (2006) on Protection of and Assistance to Internally Displaced Persons, paragraph 7, A/RES/62/153 (2008) on Protection of and Assistance to Internally Displaced Persons, paragraph 8; A/RES/64/162 (2010) on Protection of and Assistance to Internally Displaced Persons, paragraph 8

⁸⁴ A/RES/62/153 (2008) on Protection of and Assistance to Internally Displaced Persons, paragraph 8; A/RES/64/162 (2010) on Protection of and Assistance to Internally Displaced Persons, paragraph 8. Note also that in its 2010 resolution, the General Assembly refers to all three forms of durable solutions. The General Assembly noted "the international community's growing awareness of the issues of IDPs worldwide and the urgency of addressing the root causes of their displacement and finding durable solutions, including voluntary return in safety and dignity, as well as voluntary local integration in the areas to which persons have been displaced or voluntary settlement in another part of the country."

⁸⁵ A/RES/62/153 (2008) on Protection of and Assistance to Internally Displaced Persons, paragraph 9; A/RES/64/162 (2010) on Protection of and Assistance to Internally Displaced Persons, paragraph 9. Note that paragraph 9 specifically states the following: "Welcomes the role of the Peacebuilding Commission in this regard, and continues to urge the Commission to intensify its efforts, within its mandate, in cooperation with national and transitional Governments and in consultation with the relevant United Nations entities, to incorporate the rights and the specific needs of internally displaced persons, including their voluntary return in safety and with dignity, reintegration and rehabilitation, as well as related land and property issues, when advising on or proposing country-specific peacebuilding strategies for post-conflict situations in cases under consideration;"

Unresolved problems of displacement may cause instability, engender new, or renew, conflicts, and thus threaten peace processes and peacebuilding efforts.⁸⁶ As discussed at length in section III subsection D on Durable Solutions and Housing, Land and Property Rights, leaving IDPs in a continual state of marginalization without the prospect of durable solutions can become an obstacle to long-term peace, stability, recovery and reconstruction in post-conflict countries. As such, durable solutions are a central concern for the Security Council.

In some resolutions, the Security Council identifies the return of IDPs as an issue that is key to advancing the peace process. For example, in resolutions 1590 (2005) and 1591 (2005) on Sudan, the Security Council stated that “the voluntary and sustainable return of refugees and IDPs will be a critical factor for the consolidation of the peace process.”⁸⁷ In a resolution on Timor-Leste, the Council encouraged the government “to strengthen peacebuilding perspectives in such areas as integration of IDPs.”⁸⁸ In resolution 1674, the Council called on all parties to ensure that all peace processes, peace agreements and post-conflict recovery and reconstruction planning include specific measures for the protection of civilians including the creation of conditions conducive to the voluntary, safe, dignified and sustainable return of IDPs. In addition to return, however, peacebuilding strategies, peace processes and peace agreements should also address the two other forms of durable solutions. Moreover, peace agreements should explicitly address the right of IDPs to choose between return, local integration and settlement elsewhere in the country.

Section III subsection D also highlights the critical importance of addressing HLP issues of IDPs for achieving sustainable durable solutions. As the Secretary-General has stated, “the majority of internal conflicts in recent memory have involved underlying disputes over housing, land and property.”⁸⁹ In his 2009 report, the Secretary-General emphasized the need for greater efforts by the Security Council and the international community to address HLP issues on a consistent basis in peace agreements and operational programs.⁹⁰ Accordingly, finding durable solutions for the internally displaced, including by addressing their HLP rights, is necessary for effective peacebuilding and must be an integral part of peace processes and peace agreements.

⁸⁶ See generally, Brookings-Bern Project on Internal Displacement, *Addressing Internal Displacement in Peace Processes, Peace Agreements and Peace-Building*, September 2007, available at: www.brookings.edu/reports/2007/09/peaceprocesses.aspx (last accessed, 19 April 2011) [hereinafter, *Addressing Internal Displacement in Peace Processes, Peace Agreements and Peace-Building*]

⁸⁷ See also S/RES/1494 (2003) on the situation in Georgia, paragraph 9; S/RES/1545 (2004) on the Situation in Burundi, preamble

⁸⁸ S/RES/1867 (2009) on the Situation in Timor-Leste, paragraph 14

⁸⁹ UN Security Council, *Report of the Secretary-General on the Protection of Civilians in Armed Conflict*, S/2007/643, 28 October 2007, paragraph 53

⁹⁰ UN Security Council, *Report of the Secretary-General on the Protection of Civilians in Armed Conflict*, S/2009/277, 29 May 2009, paragraph 17

As early as 2004, in a resolution on Burundi, the Security Council stated, “the voluntary and sustainable return of refugees and internally displaced persons will be a critical factor for the consolidation of the peace process, and will require a just solution of the issue of land ownership.”⁹¹ Despite this early reference, the Council only mentions HLP issues in eight other resolutions. Five of these resolutions relate to Georgia and were discussed earlier in section III subsection D. Of the other three, two relate to the situation in Côte d’Ivoire. These urge the signatories of the *Ouagadougou Political Agreement* to take steps to guarantee (or work towards a sustainable solution for) the return, reinstallation, reintegration and security of displaced persons including by addressing land tenure issues with the support of the UN system.⁹² A 2007 resolution on Sudan emphasizes the need to focus on initiatives that will bring peace dividends and mentions “compensation” in the context of return of IDPs to their villages.

Ensuring the involvement of IDPs in peacebuilding efforts and peace processes is also necessary for securing sustainable peace and is consistent with the right of IDPs (including all groups within the IDP population such as women, children and persons with special needs) to participate in decisions which affect their lives.⁹³ For example, securing effective durable solutions requires consultation with, and participation of, IDPs. Their involvement can contribute to an effective response to their needs and facilitate reintegration, thereby enhancing the prospects of creating sustainable durable solutions.⁹⁴ The involvement and participation of IDPs also has the potential to ensure that their needs and rights are considered and addressed in re-establishing security and law and order, and in reconstruction, economic rehabilitation, reconciliation, social rehabilitation and political transition. In contrast, reconciliation can become difficult when IDPs feel they face injustice or that their needs are accommodated inadequately. Similarly, the exclusion of IDPs from political participation can reinforce feelings of marginalization and make it more difficult for a new government to claim legitimacy.

The Security Council’s 2009 thematic resolution on Women and Peace and Security, recognized that an understanding of the impact of situations of armed conflict on women and girls including IDPs, and effective institutional arrangements to guarantee their protection and full participation in the peace process, particularly at earlier stages of post-conflict peacebuilding, can significantly contribute to the maintenance and promotion of international peace and security.⁹⁵ Similarly, resolution 1935 (2010) on Sudan stressed the “import-

⁹¹ S/RES/1545 (2004) on the Situation in Burundi, preamble

⁹² S/RES/1880 (2009) on the Situation in Côte d’Ivoire, paragraph 17; S/RES/1933 (2010) the Situation in Côte d’Ivoire, paragraph 14

⁹³ See e.g., *Guiding Principles*, *supra* note 17, Principles 7, 18, 22 and 29

⁹⁴ See generally, Brookings-Bern Project on Internal Displacement, *Moving Beyond Rhetoric: Consultation and Participation with Populations Displaced by Conflict or Natural Disasters*, October 2008, available at: www.brookings.edu/reports/2008/10_internal_displacement.aspx (last accessed, 19 April 2011)

⁹⁵ S/RES/1889 (2009) on Women and Peace and Security, preamble

tance of achieving dignified and durable solutions for refugees and IDPs, and of ensuring their full participation in the planning and management of these solutions” – this may or may not refer to participation in peace processes.⁹⁶ Beyond these and a few other resolutions, however, the participation of IDPs in peace processes and peacebuilding is not addressed extensively in Security Council resolutions.

2. Key Considerations and Good Examples

Durable solutions, HLP rights and the involvement and participation of IDPs need to be mainstreamed into peacebuilding and peace processes. Peace agreements may also need to address durable solutions for IDPs, mechanisms for addressing HLP issues as well as other relevant needs of IDPs gleaned through their participation in peacebuilding and peace processes. The Security Council should, on a case-by-case basis, and as appropriate, consider systematically emphasizing the following issues in its resolutions. These considerations should be addressed in conjunction with those in section III subsection D.

- Stress the importance, for durable peace, of achieving one of the three forms of durable solutions for IDPs and of ensuring their full participation in the planning and management of these solutions.
- Stress the importance, for durable peace, of addressing HLP rights of IDPs.
- Call on parties concerned to ensure that sustainable durable solutions for IDPs are integrated into peacebuilding strategies, peace processes, peace agreements and post-conflict recovery and reconstruction planning and programs.
- Call on parties concerned to ensure that mechanisms for addressing HLP issues of IDPs are integrated into peacebuilding strategies, peace processes, peace agreements and post-conflict recovery and reconstruction planning and programs.
- Call on parties concerned to ensure the participation of, and consultation with, IDPs (including women, and as appropriate, children) and the inclusion of their relevant needs in peacebuilding strategies, peace processes, peace agreements and post-conflict recovery and reconstruction planning and programs.
- Request national authorities to provide necessary support for communities hosting IDPs.

⁹⁶ S/RES/1935 (2010), paragraph 15. As discussed in *Addressing Internal Displacement in Peace Processes, Peace Agreements and Peace-Building* (*supra* note 80), IDPs have not been formally included in peace processes, although there are ways to ensure that their concerns are included through track-two processes. Guidance has also been developed for mediators to advise them on ways to incorporate IDP concerns in negotiations around peace agreements.

A limited sample of resolutions in which the Security Council has addressed durable solutions, HLP rights and the involvement of IDPs in the context of peacebuilding, peace processes and peace agreements is set out below. These do not cover all the key considerations highlighted above.

S/RES/1545 (2004) [Burundi]: Considering that the voluntary and sustainable return of refugees and internally displaced persons will be a critical factor for the consolidation of the peace process, and will require a just solution of the issue of land ownership...

S/RES/1674 (2006) [Protection of Civilians in Armed Conflict] (para.11): Calls upon all parties concerned to ensure that all peace processes, peace agreements and post-conflict recovery and reconstruction planning have regard for the special needs of women and children and include specific measures for the protection of civilians including ... (iii) the creation of conditions conducive to the voluntary, safe, dignified and sustainable return of refugees and internally displaced persons (v) the re-establishment of the rule of law, and (vi) the ending of impunity...

S/RES/1889 (2009) [Women and Peace and Security]: Recognizing that an understanding of the impact of situations of armed conflict on women and girls, including as refugees and internally displaced persons, adequate and rapid response to their particular needs, and effective institutional arrangements to guarantee their protection and full participation in the peace process, particularly at early stages of post-conflict peacebuilding, can significantly contribute to the maintenance and promotion of international peace and security...

S/RES/1935 (2010) [Sudan] (para.15): Stresses the importance of achieving dignified and durable solutions for refugees and internally displaced persons, and of ensuring their full participation in the planning and management of these solutions...

VI. CONCLUSION

By addressing internal displacement in 142 out of 747 resolutions adopted between 1999 and 2010, the UN Security Council acknowledged the serious implications of internal displacement for its Charter responsibilities related to the maintenance of international peace and security. Internal displacement has been a common feature of the Secretary-General's reports on the protection of civilians in armed conflict (PoC) and the Council's thematic debates, and the issue has permeated into the Council's actions and deliberations. As the normative framework on internal displacement has evolved since the development of the *Guiding Principles on Internal Displacement*, so too has this been reflected in the work of the Council.

Nonetheless, the Security Council has arguably failed to address internal displacement in its resolutions in a manner commensurate with the scale of problem: there are over 27 million people internally displaced by conflict, generalized violence or human rights violations worldwide—representing an increase of 10 million since 1997. By the Council's own acknowledgement, such large-scale human suffering has implications for both future stability and further conflict.

Although the voluntary, safe and dignified return of IDPs, the mandates of peacekeeping and other UN missions, humanitarian access and assistance to IDPs and compliance with international law as they relate to IDPs have been addressed, there are other issues relevant to the protection of IDPs and pertinent to the Security Council's *UN Charter* responsibilities that have received limited attention. First, given the scale of worldwide internal displacement, prevention of displacement has garnered inadequate attention. For example, the prohibition against forced displacement is referenced in a few resolutions, while the prohibition against arbitrary displacement as articulated in the *Guiding Principles* is not mentioned. Second, insufficient attention has been given to durable solutions as a specific concept as well as local integration and settlement in another part of the country as additional forms of durable solutions. HLP and participation rights of IDPs are other important issues that have received minimal attention from the Security Council.

The *Guiding Principles*, the normative framework tailored to address the protection needs of IDPs is mentioned only once. Similarly, the *African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa* has been addressed in three resolutions notwithstanding the fact that since it was adopted in 2009, the Security Council has adopted at least 34 resolutions in connection with Africa. Both of these documents provide valuable guidance for actors protecting IDPs and should feature more regularly in Security Council action.

In this context, this report has identified key protection concerns pertaining to IDPs, which are relevant to the Security Council's work on PoC. The key considerations included in the substantive sections are intended to enhance the Security Council's ability to mainstream IDP protection applicable to the maintenance of international peace and security into Council resolutions and to do so consistently and effectively.

In particular, when considering resolutions on countries where internal displacement has occurred or may occur or when considering resolutions on thematic issues related to internal displacement, the Security Council should pay deliberate attention to:

1. Preventing internal displacement by undertaking action on forced and arbitrary displacement.
2. Promoting durable solutions for IDPs through increased:
 - ◆ Recognition of local integration and settlement elsewhere in the country as viable durable solutions for internal displacement; and
 - ◆ Action on addressing HLP rights.
3. Mainstreaming durable solutions, HLP rights and participation of, and consultation with, IDPs, into peace processes and peacebuilding to enhance the effectiveness of peace agreements and facilitate longer-term peacebuilding.
4. Utilizing and raising understanding of the Guiding Principles and the Kampala Convention as important legal frameworks for addressing internal displacement.
5. Requesting the Secretary-General to report consistently on the protection of IDPs in country-specific and thematic reports.

VII. ANNEXES

1. Resolutions by Country/Thematic Issue and Year

Resolutions By Country/Thematic Issue (Alphabetical)	Ordered By Year	Resolution No. S/RES/
Afghanistan (5)	2001	1378
	2002	1419
	2008	1806
	2009	1868
	2010	1917
Angola (1)	2002	1433
	1999	1247
	2000	1305
	2001	1357
	2002	1423
	2003	1491
Bosnia and Herzegovina (13)	2004 (2)	1551
		1575
	2005	1639
	2006	1722
	2007	1785
	2008	1845
	2009	1895
	2010	1948
	2000	1268
	2004	1545
Burundi (4)	2008	1858
	2009	1902
	2007	1778
Chad, Central African Republic and the subregion (4)	2008	1834
	2009	1861
	2010	1923
	1999	1261
Children and Armed Conflict (4)	2000	1314
	2001	1379
	2004	1539
	2003	1479
Côte d'Ivoire (12)		1721
	2006 (3)	1726
		1727
		1739
	2007 (2)	1765
		1795
	2008 (2)	1826
		1865
	2009 (2)	1880
		1933
2010 (2)	1962	

Continues

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1. Resolutions by Country/Thematic Issue and Year (cont.)

Resolutions By County/Thematic Issue (Alphabetical)	Ordered By Year	Resolution No. S/RES/
Democratic Republic of Congo (19)	1999 (2)	1258
		1279
	2000 (2)	1291
		1332
	2001 (2)	1341
		1355
	2003 (2)	1484
		1493
	2004	1565
	2006	1698
	2007 (2)	1756
		1794
		1807
	2008 (3)	1856
		1857
	2009 (2)	1896
		1906
	2010 (2)	1925
		1952
East Timor/Timor-Leste (7)	1999 (2)	1264
		1272
	2006	1704
	2007	1745
	2008	1802
	2009	1867
	2010	1912
Eritrea and Ethiopia (3)	2001	1369
	2002 (2)	1398
		1430
Georgia (20)	1999 (2)	1225
		1255
	2000 (2)	1287
		1311
	2001 (2)	1339
		1364
	2002 (2)	1393
		1427
	2003 (2)	1462
		1494
	2004 (2)	1524
		1554
	2005 (2)	1582
		1615
	2006 (2)	1666
		1716
	2007 (2)	1752
	1781	
	1808	
	1866	
Great Lakes (1)	2006	1653

Continues

1. Resolutions by Country/Thematic Issue and Year (cont.)

Resolutions By County/Thematic Issue (Alphabetical)	Ordered By Year	Resolution No. S/RES/
Guinea-Bissau (1)	1999	1233
	2004	1542
Haiti (3)	2010 (2)	1927
		1944
	2007 (2)	1770
		1790
Iraq (6)	2008 (2)	1830
		1859
	2009	1883
	2010	1936
	1999	1284
Iraq and Kuwait (3)	2003 (2)	1472
		1483
Kosovo (2)	1999 (2)	1239
		1244
Liberia (1)	2003	1509
Macedonia (1)	2001	1345
Middle East (1)	2006	1701
	1999	1265
Protection of Civilians in Armed Conflict (4)	2000	1296
	2006	1674
	2009	1894
	1999	1270
	2001 (2)	1346
Sierra-Leone (7)		1370
	2002 (2)	1400
		1436
	2003 (2)	1470
Somalia (1)		1508
	2009	1863
Sudan (16)		1547
	2004 (3)	1556
		1564
	2005 (2)	1590
		1591
	2006 (2)	1663
		1706
		1755
	2007 (3)	1769
		1784
	1812	
2008 (2)	1828	
	1870	
2009 (2)	1881	
	1919	
	1935	
Women and Peace and Security (3)	2000	1325
	2008	1820
	2009	1889

2. Thematic Resolutions and Displacement Language

Year	Resolution Number	Language on Displacement
Children and Armed Conflict		
1999	S/RES/1261	<p>2. <i>Strongly condemns</i> the targeting of children in situations of armed conflict, including killing and maiming, sexual violence, abduction and forced displacement, recruitment and use of children in armed conflict in violation of international law, and attacks on objects protected under international law, including places that usually have a significant presence of children such as schools and hospitals, and calls on all parties concerned to put an end to such practices;</p> <p>17. <i>Reaffirms</i> its readiness when dealing with situations of armed conflict: (b) to continue to support the protection of displaced children including their resettlement by UNHCR and others as appropriate;</p>
2000	S/RES/1314	6. <i>Urges</i> Member States and parties to armed conflict to provide protection and assistance to refugees and internally displaced persons, as appropriate, the vast majority of whom are women and children;
2001	S/RES/1379	<p>8. <i>Calls upon</i> all parties to armed conflict to: (b) Provide protection and assistance to refugees and internally displaced persons, the majority of whom are women and children, in accordance with applicable international norms and standards;</p> <p>13. <i>Urges</i> regional and subregional organizations and arrangements to: (c) Take steps leading to the elimination of cross-border activities deleterious to children in times of armed conflict, such as the cross-border recruitment and abduction of children, the sale of or traffic in children, attacks on camps and settlements of refugees and internally displaced persons, the illicit trade in precious minerals, the illicit trafficking in small arms and light weapons, and other criminal activities;</p>
2003	S/RES/1460	None
2004	S/RES/1539	1. <i>Strongly condemns</i> the recruitment and use of child soldiers by parties to armed conflict in violation of international obligations applicable to them, killing and maiming of children, rape and other sexual violence mostly committed against girls, abduction and forced displacement, denial of humanitarian access to children, attacks against schools and hospitals as well as trafficking, forced labour and all forms of slavery and all other violations and abuses committed against children affected by armed conflict;
2005	S/RES/1612	None
2009	S/RES/1882	None

Continues

2. Thematic Resolutions and Displacement Language (cont.)

Year	Resolution Number	Language on Displacement
Protection of Civilians in Armed Conflict		
1999	S/RES/1265	<p><i>Noting</i> that civilians account for the vast majority of casualties in armed conflicts and are increasingly targeted by combatants and armed elements, gravely concerned by the hardships borne by civilians during armed conflict, in particular as a result of acts of violence directed against them, especially women, children and other vulnerable groups, including refugees and internally displaced persons, and recognizing the consequent impact this will have on durable peace, reconciliation and development,</p> <p><i>Mindful</i> of the particular vulnerability of refugees and internally displaced persons, and reaffirming the primary responsibility of States to ensure their protection, in particular by maintaining the security and civilian character of refugee and internally displaced person camps,</p> <p>7. <i>Underlines</i> the importance of safe and unhindered access of humanitarian personnel to civilians in armed conflict, including refugees and internally displaced persons, and the protection of humanitarian assistance to them, and recalls in this regard the statements of its President of 19 June 1997 (S/PRST/1997/34) and 29 September 1998 (S/PRST/1998/30);</p>
2000	S/RES/1296	<p><i>Expressing further</i> its regret that civilians account for the vast majority of casualties in armed conflicts and increasingly are targeted by combatants and armed elements, <i>reaffirming</i> its concern at the hardships borne by civilians during armed conflict, in particular as a result of acts of violence directed against them, especially women, children and other vulnerable groups, including refugees and internally displaced persons, and <i>recognizing</i> the consequent impact this has on durable peace, reconciliation and development,</p> <p>3. <i>Notes</i> that the overwhelming majority of internally displaced persons and other vulnerable groups in situations of armed conflict are civilians and, as such, are entitled to the protection afforded to civilians under existing international humanitarian law;</p> <p>14. <i>Invites</i> the Secretary-General to bring to its attention situations where refugees and internally displaced persons are vulnerable to the threat of harassment or where their camps are vulnerable to infiltration by armed elements and where such situations may constitute a threat to international peace and security, <i>expresses</i>, in this regard, its willingness to consider such situations and, where necessary, adopt appropriate steps to help create a secure environment for civilians endangered by conflicts, including by providing support to States concerned in this regard, and <i>recalls</i>, in this regard, its resolution 1208 (1998) of 19 November 1998;</p>

Continues

2. Thematic Resolutions and Displacement Language (cont.)

Year	Resolution Number	Language on Displacement
2006	S/RES/1674	<p><i>Recalling</i> the particular impact which armed conflict has on women and children, including as refugees and internally displaced persons, as well as on other civilians who may have specific vulnerabilities, and stressing the protection and assistance needs of all affected civilian populations,</p> <p>5. <i>Reaffirms</i> also its condemnation in the strongest terms of all acts of violence or abuses committed against civilians in situations of armed conflict in violation of applicable international obligations with respect in particular to (i) torture and other prohibited treatment, (ii) gender-based and sexual violence, (iii) violence against children, (iv) the recruitment and use of child soldiers, (v) trafficking in humans, (vi) forced displacement, and (vii) the intentional denial of humanitarian assistance, and demands that all parties put an end to such practices;</p> <p>11. <i>Calls upon</i> all parties concerned to ensure that all peace processes, peace agreements and post-conflict recovery and reconstruction planning have regard for the special needs of women and children and include specific measures for the protection of civilians including (i) the cessation of attacks on civilians, (ii) the facilitation of the provision of humanitarian assistance, (iii) the creation of conditions conducive to the voluntary, safe, dignified and sustainable return of refugees and internally displaced persons, (iv) the facilitation of early access to education and training, (v) the re-establishment of the rule of law, and (vi) the ending of impunity;</p> <p>12. <i>Recalls</i> the prohibition of the forcible displacement of civilians in situations of armed conflict under circumstances that are in violation of parties' obligations under international humanitarian law;</p> <p>14. <i>Reaffirms</i> the need to maintain the security and civilian character of refugee and internally displaced person camps, stresses the primary responsibility of States in this regard, and encourages the Secretary-General where necessary and in the context of existing peacekeeping operations and their respective mandates, to take all feasible measures to ensure security in and around such camps and of their inhabitants;</p> <p>16. <i>Reaffirms</i> its practice of ensuring that the mandates of United Nations peacekeeping, political and peacebuilding missions include, where appropriate and on a case-by-case basis, provisions regarding (i) the protection of civilians, particularly those under imminent threat of physical danger within their zones of operation, (ii) the facilitation of the provision of humanitarian assistance, and (iii) the creation of conditions conducive to the voluntary, safe, dignified and sustainable return of refugees and internally displaced persons, and <i>expresses its intention</i> of ensuring that (i) such mandates include clear guidelines as to what missions can and should do to achieve those goals, (ii) the protection of civilians is given priority in decisions about the use of available capacity and resources, including information and intelligence resources, in the implementation of the mandates, and (iii) that protection mandates are implemented;</p>
1738	None	

2. Thematic Resolutions and Displacement Language (cont.)

Year	Resolution Number	Language on Displacement
2009	1894	<p><i>Stressing</i> the particular impact that armed conflict has on women and children, including as refugees and internally displaced persons, as well as on other civilians who may have specific vulnerabilities including persons with disabilities and older persons, and stressing the protection and assistance needs of all affected civilian populations,</p> <p><i>Noting</i> the adoption of the African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa (2009),</p> <p>32. <i>Requests</i> the Secretary-General to include in his reports to the Council on country-specific situations more comprehensive and detailed information relating to the protection of civilians in armed conflict, including on protection-related incidents and actions taken by parties to armed conflict to implement their obligations to respect and protect the civilian population, including information specific to the protection needs of refugees, internally displaced persons, women, children and other vulnerable groups;</p>
Women and Peace and Security		
2000	S/RES/1325	<i>Expressing</i> concern that civilians, particularly women and children, account for the vast majority of those adversely affected by armed conflict, including as refugees and internally displaced persons, and increasingly are targeted by combatants and armed elements, and <i>recognizing</i> the consequent impact this has on durable peace and reconciliation,
2008	S/RES/1820	10. <i>Requests</i> the Secretary-General and relevant United Nations agencies, inter alia, through consultation with women and women-led organizations as appropriate, to develop effective mechanisms for providing protection from violence, including in particular sexual violence, to women and girls in and around UN managed refugee and internally displaced persons camps, as well as in all disarmament, demobilization, and reintegration processes, and in justice and security sector reform efforts assisted by the United Nations;
2009	S/RES/1888	None
	S/RES/1889	<i>Recognizing</i> that an understanding of the impact of situations of armed conflict on women and girls, including as refugees and internally displaced persons, adequate and rapid response to their particular needs, and effective institutional arrangements to guarantee their protection and full participation in the peace process, particularly at early stages of post-conflict peacebuilding, can significantly contribute to the maintenance and promotion of international peace and security,
2010	S/RES/1960	None

3. Selected Resources

Guiding Principles on Internal Displacement, E/CN.4/1998/53/Add.2, 1998, www.brookings.edu/projects/idp/gp_page.aspx⁹⁷

Walter Kälin, *Guiding Principles on Internal Displacement: Annotations, Second Edition, Studies in Transnational Legal Policy*, No. 38 (Washington, DC: American Society of International Law and Brookings Institution, 2008), www.brookings.edu/reports/2008/spring_guiding_principles.aspx

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

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Walter Kälin, "The Guiding Principles on Internal Displacement as International Minimum Standard and Protection Tool," *Refugee Survey Quarterly* (2005) 24(3): 27-36.

⁹⁷ Translations available: Abkhaz, Albanian, Arabic, Armenian, Assamese, Azeri/Azerbaijan, Bahasa Indonesia, Bengali, Bodo, Burmese, Cebuano, Dari, Dhivehi, Dinka, French, Georgian, Hausa, Hindi, Ibo, Japanese, Karbi, Kirundi, Kurmanji Kurdish, Luo, Macedonian, Magui, Mandarin, Meitei, Nepali, Nuer, Pashtu, Portuguese, Russian, Rutoro, Serbo-Croatian (Latin & Cyrillic), Sgaw Karen, Sinhala, Somali, Spanish, Swahili, Swahili DRC, Tagalog, Tamil, Tetum, Thai, Turkish, Urdu and Yoruba

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