



# General Assembly

Distr.: General  
11 August 2010

Original: English

---

## Sixty-fifth session

Item 69 (b) of the provisional agenda\*

**Promotion and protection of human rights:  
human rights questions, including alternative  
approaches for improving the effective enjoyment  
of human rights and fundamental freedoms**

## **Protection of and assistance to internally displaced persons**

### **Note by Secretary-General**

The Secretary-General has the honour to transmit to the members of the General Assembly the report of the Representative of the Secretary-General on the human rights of internally displaced persons, Walter Kälin, in accordance with General Assembly resolution 62/153 and Human Rights Council resolutions 6/32 and 14/6.

---

\* A/65/150.



## Report of the Representative of the Secretary-General on the human rights of internally displaced persons

### *Summary*

The present report outlines the major activities undertaken by the Representative during the period from August 2009 to July 2010. It also provides a thematic review of the responsibility of States to provide humanitarian assistance and of the rights of internally displaced persons to such assistance, an issue closely linked to that of humanitarian access.

### Contents

	<i>Page</i>
I. Introduction .....	3
II. Mandate and activities .....	3
A. Mandate .....	3
B. Country engagement .....	3
C. Cooperation with regional and international organizations .....	9
D. Capacity-building and other activities .....	10
E. Mainstreaming the human rights of internally displaced persons in the United Nations system .....	12
III. Thematic section: the primary duty of the State to provide humanitarian assistance and the corresponding rights of internally displaced persons .....	13
A. Factors impeding humanitarian assistance .....	14
B. The obligation to ensure the provision of humanitarian assistance .....	16
C. The obligation not to arbitrarily withhold consent .....	19
D. The obligation to coordinate and not to impede or divert humanitarian assistance .....	21
E. The obligation to protect persons engaged in humanitarian assistance, their transport and supplies .....	22
IV. Conclusions and recommendations .....	23

## **I. Introduction**

1. The present report is the last by the current Representative of the Secretary-General on the human rights of internally displaced persons, whose mandate ends in October 2010. It is presented in accordance with General Assembly resolution 62/153, Human Rights Council resolution 6/32, and the most recent Council resolution 14/6, adopted June 2010, extending the mandate for another three-year period.

2. The report provides an overview of the main activities of the Representative during the period from August 2009 to July 2010. It also contains a thematic section on the responsibility of States to provide humanitarian assistance and the corresponding rights of internally displaced persons, an issue closely linked to that of humanitarian access.

## **II. Mandate and activities**

### **A. Mandate**

3. Human Rights Council resolutions 6/32 and 14/6 mandate the Representative with the task of addressing the complex problem of internal displacement, in particular by mainstreaming the human rights of internally displaced persons into all relevant parts of the United Nations system and working towards strengthening the international response through coordinated international advocacy and action for improving the protection of and respect for the human rights of internally displaced persons (see paras. 6 and 11 of resolutions 6/32 and 14/6, respectively).

4. In accordance with his mandate, the Representative has endeavoured to promote a rights-based approach to internal displacement through a constructive dialogue with Governments and extensive mainstreaming activities within the United Nations and regional organizations. In order to effectively address the human rights of internally displaced persons, it is essential to focus on different fronts, namely human rights promotion and protection, humanitarian action, recovery and development and peacebuilding.

5. Throughout his mandate, the Representative was supported by the Office of the United Nations High Commissioner for Human Rights (OHCHR) and benefited from close cooperation with the Office for the Coordination of Humanitarian Affairs and the Office of the United Nations High Commissioner for Refugees (UNHCR). He also received support from the Brookings-Bern Project on Internal Displacement, in particular in the areas of research, capacity-building and advocacy.

### **B. Country engagement**

6. During the period from August 2009 to July 2010, the Representative engaged with a number of countries. He wishes to express his appreciation to the Governments that issued invitations to him or otherwise engaged with the mandate during the current period and throughout the last six years.

## 1. Azerbaijan

7. The Representative undertook a follow-up mission to Azerbaijan from 19 to 24 May 2010.<sup>1</sup> He last visited the country in 2007. While noting important progress, such as the closing of tented camps, the Representative emphasized that the protracted nature of the displacement, which has persisted for nearly two decades, continues to affect the human rights of close to 600,000 internally displaced persons, many of whom continue to live under difficult circumstances.

8. The Government has committed significant resources to improving housing conditions by building a large number of houses and apartments for internally displaced persons. However, the majority of internally displaced persons are still without homes, and access to adequate housing remains one of their most serious problems. Efforts to improve and secure housing rights should be continued, in particular for those still living in Finnish-type settlements in rural areas, or in urban collective centres such as dormitories, and for those potentially at risk of eviction in urban centres.

9. More concerted action is required to improve employment and livelihood opportunities for internally displaced persons, whose unemployment and poverty rates are still significantly higher than those of the rest of the population. Persons living in urban areas or new settlements in more remote areas are in need of specific programmes that will end or reduce the pattern of dependency.

10. With regard to health, the Representative commends the mental health assessment of internally displaced persons conducted by the World Health Organization (WHO), as well as the resulting action plan and new incentives programme put in place by the Government to improve the provision of qualified medical staff in rural areas.

11. In the field of education, despite the official abolition of segregation policies for children from displaced communities and the construction of new school buildings, there are persistent concerns about the quality of education provided to internally displaced children and youth. The Representative recommends undertaking an assessment of the quality and educational needs of internally displaced persons, and encourages measures to promote mixed schooling and increased opportunities for interaction between local children and children from internally displaced communities.

12. The Representative also highlighted a number of other issues requiring Government attention, including the need to conduct a needs assessment to determine how many internally displaced persons continue to require assistance and to develop a comprehensive return plan that addresses the many complex issues associated with a possible return to their areas of origin. He further stressed the need to strengthen efforts to engage internally displaced persons in consultative and participatory processes on issues that affect them. Lastly, he stressed the importance of concluding a peace agreement to end their plight, and emphasized that such an agreement must address the rights of the displaced.

---

<sup>1</sup> A mission report will be submitted to the sixteenth session of the Human Rights Council.

## **2. Bosnia and Herzegovina**

13. From 11 to 13 November 2009, the Representative visited Bosnia and Herzegovina to discuss the impasse over the revised strategy for the implementation of annex 7 to the Dayton Peace Agreement. In June 2010, the national Parliament finally adopted the revised strategy. The Representative welcomes this major step towards finding durable solutions for internally displaced persons in Bosnia and Herzegovina and calls on all stakeholders to implement it without further delay.

## **3. Central African Republic**

14. The Representative undertook a follow-up mission to the Central African Republic from 9 to 17 July 2010,<sup>1</sup> his third visit to that country since 2007. He noted that, while the situation had stabilized in the north-western part of the country and many had returned since his last visit, those who remained displaced continued to face a humanitarian crisis as well as insecurity caused, notably, by banditry. Their children had not had access to education for years. Those who had returned to their villages were in need of support to rebuild their lives.

15. The Representative was concerned about the situation around Ndélé (Bamingui-Bangoran prefecture), where many people had fled into the bush as a result of recent armed clashes. At the time of his visit, they remained without any humanitarian assistance and were suffering from a shortage of food, drinking water and a total absence of health services. In addition, acts of grave violence committed against the civilian population had been reported.

16. The situation in the south-east of the country (Mbomou and Haut-Mbomou prefectures), where several thousands of people have been displaced as a result of brutal attacks against the civilian population by the Lord's Resistance Army, was equally alarming. The Representative called on the Government to ensure the protection of the civilian population, with the support of the international community, including by reinforcing the presence of security forces in the region.

17. The Representative was also deeply concerned that humanitarian access to several regions in the country was severely restricted owing to security reasons. However, he was encouraged by the lifting of military restrictions on humanitarian access to areas outside and around Ndélé at the end of his visit.

18. The Representative emphasized that efforts to build sustainable peace must take into consideration the rights of the 200,000 remaining internally displaced persons, and welcomed the fact that internal displacement is addressed in the strategic framework for peacebuilding in the Central African Republic 2009-2011 (see PBC/3/CAF/7). The return and reintegration of the displaced, as well as their participation in the forthcoming elections, are crucial factors for sustainable peace, as is the process of disarmament, demobilization and the reintegration of combatants.

19. The Representative had the opportunity to participate in a workshop in July, at which the Government and other stakeholders worked on the development of a national legal and institutional framework to address situations of internal displacement. He encourages the swift elaboration and implementation of that framework.

#### **4. Chad**

20. As a follow-up to a mission to Chad in February 2009, the Representative attended a workshop on durable solutions for internally displaced persons in eastern Chad in March 2010. The workshop, jointly organized by the Ministry of Economy and Planning, the United Nations Development Programme (UNDP), the Office for the Coordination of Humanitarian Affairs, UNHCR and the Representative, brought together key stakeholders from the Government, the international community and civil society to discuss strategies for addressing challenges related to durable solutions. On 30 April, the Representative sent a follow-up letter to the Government providing suggestions on promoting durable solutions in areas of return and local integration. The Representative further highlighted that the achievement of durable solutions for displaced populations is a key element towards the consolidation of peace in eastern Chad. A joint strategy is currently being developed to support durable solutions, which is based on the recommendations resulting from the workshop, the recommendations of the Representative and the findings of the inter-agency missions covering the different regions affected by displacement.

#### **5. Democratic Republic of the Congo**

21. At the request of the Human Rights Council, the Representative and six other special procedures mandate-holders submitted a joint report to the Council on the human rights situation in the Democratic Republic of the Congo. The experts found that the human rights situation had not improved and remained of serious concern. They noted, in particular, that the Government had neglected its responsibilities to protect and assist internally displaced persons and returnees (see A/HRC/13/63, paras. 106 and 111).

#### **6. Iraq**

22. In April 2010, the Representative held a series of meetings in Amman with United Nations and other humanitarian agencies as well as the diplomatic and donor communities, to discuss their current involvement and efforts in addressing the situation of internally displaced persons in Iraq. Discussions focused on the need to systematically integrate efforts to achieve durable solutions for internally displaced persons in development initiatives, without neglecting their humanitarian needs.

#### **7. Kenya**

23. From January to March 2010, the Representative supported the development of a draft national policy on internal displacement in Kenya by providing technical support to the Government-led Protection Working Group on Internal Displacement, under whose auspices the policy was developed. The Representative was impressed by the variety of different actors actively participating in the process, including representatives from the community of internally displaced persons, and commends the Government of Kenya for its efforts to incorporate the Guiding Principles on Internal Displacement (Guiding Principles) (see E/CN.4/1998/53/Add.2) into its domestic legislation and for striving to meet its obligations under the 2006 Protocol on the Protection and Assistance to Internally Displaced Persons (Great Lakes Protocol) adopted by the States members of the International Conference on the Great Lakes Region.

24. The efforts of the Government of Kenya are in line with a growing trend that has been strongly reinforced by the Great Lakes Protocol, which requires States members to incorporate the Guiding Principles into domestic legislation. With the adoption of the African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa (Kampala Convention), the demand for the elaboration of national policies and legislation relating to internal displacement is expected to increase. The Representative strongly supports these national initiatives and encourages the international community, in particular actors directly involved in legal issues pertaining to internal displacement, to support national authorities in these endeavours. In this regard, *Protecting Internally Displaced Persons: A Manual for Law and Policy Makers*<sup>2</sup> provides a useful tool for national and international actors.

## 8. Somalia

25. The Representative visited Somalia from 14 to 21 October 2009 (see A/HRC/13/21/Add.2). He was appalled at the degree of violence against the civilian population and, in particular the internally displaced persons in south and central Somalia, where serious violations of international humanitarian and human rights law are committed in an environment of impunity. Over 1.5 million internally displaced persons, the vast majority of whom are women and children, remain highly vulnerable to serious human rights violations, in particular sexual violence, during flight and in settlements where they seek refuge. Many try to find safety in urban centres in Puntland or Somaliland, placing enormous strain on the already limited local resources and basic services. The perception by many locals, especially in Puntland, that internally displaced persons from south and central Somalia represent a security risk, also remains a major concern.

26. The Representative followed up on this visit by participating in meetings regarding United Nations operations in Somalia, held in Nairobi in March 2010. At that time, the humanitarian space in south and central Somalia had shrunk to such an extent that the World Food Programme had to suspend its operations. Severe constraints on humanitarian access and security risks for humanitarian workers remain a major challenge for operations in Somalia. The Representative urges the international community to focus its efforts and attention on this very serious long-standing humanitarian crisis.

## 9. Sri Lanka

27. The Representative's second visit to Sri Lanka in 2009<sup>3</sup> came at a time when over 250,000 internally displaced persons were still being held in closed camps, despite vast improvements in the security situation. In view of the Government's commitments under international law, the restoration of freedom of movement to those persons had become a matter of urgency. During the visit, the Representative discussed strategies for decongesting the camps with the Government and urged it to restore freedom of movement as a priority. Since that visit, over 200,000 displaced persons have been released from camps or resettled, which is a significant achievement. However, finding durable solutions for these displaced persons, as

---

<sup>2</sup> See *Protecting Internally Displaced Persons: A Manual for Law and Policymakers*, Brookings Institution-University of Bern Project on Internal Displacement, 2008.

<sup>3</sup> See A/64/214, paras. 58 to 64, for details of his initial visit.

well as the 300,000 persons who had been in long-term displacement, remains a pressing challenge which the Government of Sri Lanka is urged to address, in line with recognized international legal standards.

#### **10. Tskhinvali Region/South Ossetia**

28. On 5 and 6 November 2009, the Representative visited the Tskhinvali Region/South Ossetia (A/HRC/13/21/Add.3) to follow up on his mission to Georgia in October 2008. The Representative noted serious violations of international humanitarian law during the conflict, including the systematic destruction of property, looting and indiscriminate attacks on civilians, as well as challenges concerning humanitarian access and freedom of movement.

#### **11. Yemen**

29. The Representative's visit to Yemen from 4 to 10 April 2010 came at a time of transition from armed hostilities to a fragile ceasefire agreement. Limitations on humanitarian access to parts of Sa'ada, Amran and Al-Jawf governorates continued to hinder the efforts of the United Nations and other humanitarian organizations to reach internally displaced persons in those areas and to monitor return movements. The displacement situation warranted continued humanitarian assistance to all displaced persons, both in and outside camps, but such assistance was jeopardized by a lack of humanitarian funding. The Representative commended the approach of the humanitarian community, which sought to address the needs not only of the displaced living in camp settings, but also of those living in scattered settlements and rented apartments, and host communities. He recommended that humanitarian assistance be complemented by small-scale livelihood projects in displacement areas, in order to limit dependency on assistance.

30. Return perspectives for internally displaced persons in Yemen will vary, depending on their circumstances. Return may be an option for those who do not fear reprisals or have to contend with the destruction of their homes. For others, in particular those from areas that are mined or have suffered severe destruction, sustainable returns will be dependent on substantial recovery and reconstruction efforts as well as the re-establishment of a State presence. Still others may not be in a position to return at all, and will need support and genuine options for local integration where they currently live.

31. Obstacles to return are therefore manifold and, unless adequately addressed, may result in a protracted displacement situation for a substantial number of persons who will not be in a position to return in the foreseeable future or whose return may prove unsustainable, leading to renewed displacement. The Representative welcomed the Government's readiness to develop, together with the United Nations and the technical support of the Representative's mandate, a comprehensive national strategy on internal displacement that seeks to improve the lives of displaced persons and promote the creation of durable solutions.



## **C. Cooperation with regional and international organizations**

### **1. European Union**

32. In April 2010, the Representative held a series of meetings in Brussels with key counterparts in the European Union. Discussions on both country-specific situations (in particular, Yemen) and thematic issues related to internal displacement were held with counterparts in the Directorate-General for External Relations of the European Commission, the General Secretariat of the Council of the European Union, the Yemen desk of the European Commission and the European Commission's Directorate-General for Enlargement. The Representative also held discussions with the Chair of the Committee on Development of the European Parliament and the Director-General of the European Commission's Humanitarian Aid department, and made a presentation to the European Parliament's Subcommittee on Human Rights.

### **2. World Bank**

33. The World Bank launched a programme on internal displacement in 2009 that aims to strengthen the capacity of its national offices to contribute to durable solutions for internally displaced persons. The Representative was closely involved in the design of this programme and participated in a review of its activities in June 2010. The Representative is encouraged by the fact that the World Bank has placed the issue of internal displacement on its agenda and that it has engaged the United Nations in the development and implementation of its programme.

### **3. International Committee of the Red Cross**

34. The Representative has maintained cooperation with the International Committee of the Red Cross, both at headquarters and in the field. On the invitation of the Vice-President of the Committee, the Representative met with several of its representatives in Geneva in June 2009 for an open dialogue session on issues of mutual concern, including recent challenges in the protection of internally displaced persons, relevant normative developments, and the Committee's operational approach to the protection of internally displaced persons. The Representative expressed appreciation for the fruitful dialogue and welcomed the Committee's new internal displacement policy.

### **4. Civil society**

35. During the reporting period, the Representative maintained ongoing contact with civil society organizations in both Geneva and New York, and in the countries visited. In addition to regular exchanges of information and meetings with civil society actors during country missions, the Representative also cooperated with civil society in the implementation of capacity-building and training activities. The Representative is particularly grateful for the close cooperation with the Internal Displacement Monitoring Centre, which provided information on country missions, coordinated workshops and promoted discussion on a number of future projects and issues related to internal displacement.

## D. Capacity-building and other activities

### 1. Development of tools and manuals

#### **Integrating internal displacement in peace processes and agreements: a guide for mediators**

36. Finding durable solutions for internally displaced persons represents a major challenge in post-conflict societies. While the return of internally displaced persons is often used as a benchmark for a successful peace process, it is also true that the failure to achieve durable solutions for displaced populations can undermine a peace process. This is particularly true in situations of large-scale displacement or when internally displaced communities have an influence on the political process.

37. Experience has shown that addressing internal displacement in peace agreements is key to achieving durable solutions for the displaced as well as strengthening ownership of the peace process. However, internal displacement is often a marginal or ad hoc add-on to peace agreements, if it is addressed at all. In a climate where negotiating parties are often reluctant to engage with internally displaced communities, the task may fall to mediators to introduce internal displacement in peace negotiations.

38. With this in mind, a guide for mediators containing suggestions on how to integrate internal displacement into peace processes and peace agreements<sup>4</sup> was developed by the Representative, in close cooperation with the Mediation Support Unit of the Department for Political Affairs and mediation experts. The publication provides guidance to mediators on how to create the necessary space in mediation processes to enable discussions on internal displacement issues, details different models of engagement with affected populations, and identifies the displacement-specific human rights that should be addressed in peace agreements.

39. The publication was presented to different audiences at a number of book launches in Bern, Brussels, Geneva, Nairobi and New York.

#### **Revised Operational Guidelines on Protection in Natural Disasters**

40. In 2010, the Representative undertook the revision of the Operational Guidelines on Human Rights and Natural Disasters as requested by the Protection Cluster Working Group and the Task Force on Protection in Natural Disaster Situations of the Global Protection Cluster. The revised guidelines merge and improve on the original Guidelines developed by the Representative in 2006,<sup>5</sup> and the accompanying manual developed in 2008, which provided practical advice on protecting the human rights of those affected by a natural disaster during the emergency response phase.

41. Based on these earlier documents and in cooperation with different Inter-Agency Standing Committee members, the Representative and the Brookings-

<sup>4</sup> Brookings-Bern Project on Internal Displacement, *Integrating Internal Displacement in Peace Processes and Agreements* (Washington, D.C., 2010). Available from [www.id.cdint.org](http://www.id.cdint.org).

<sup>5</sup> Brookings-Bern Project on Internal Displacement, *Protecting Persons Affected by Natural Disasters: IASC Operational Guidelines on Human Rights and Natural Disasters* (Washington, D.C., 2006). Available from [www.brookings.edu/reports/2006/11\\_natural\\_disasters.aspx](http://www.brookings.edu/reports/2006/11_natural_disasters.aspx) and [www.humanitarianinfo.org/iasc](http://www.humanitarianinfo.org/iasc).

Bern Project on Internal Displacement, conducted a series of workshops in the past two years. Some 300 Government officials, humanitarian and development actors, members of security forces and fire brigades participated in eight workshops in Central America, Southern Africa and South/South-East Asia. The revised Guidelines draw on and reflect the feedback gathered at these workshops and from various organizations. They were presented to the Inter-Agency Standing Committee Working Group in July 2010, and endorsement is expected in early September 2010.

### **IASC Framework on Durable Solutions for Internally Displaced Persons**

42. In 2009, the Representative revised the 2006 IASC Framework on Durable Solutions for Internally Displaced Persons, in close cooperation with the Global Protection and Early Recovery Clusters. This revision took into account the results from a major workshop conducted in May 2008 and feedback from the field. The new Framework<sup>6</sup> was endorsed by the Inter-Agency Standing Committee Working Group in December 2009 and presented to the Human Rights Council in March 2010.

43. The Framework stresses that durable solutions are reached when internally displaced persons no longer have any specific assistance and protection needs related to their displacement and can enjoy their human rights without discrimination. The Achievement of durable solutions must be viewed as a gradual process that could include return and sustainable reintegration in the place of origin; sustainable local integration in areas of displacement or settlement; or sustainable integration in another part of the country. The Framework defines key principles to be taken into account; central elements to consider for achieving durable solutions; and benchmarks for determining the extent to which a durable solution has been achieved.

## **2. Training courses and workshops**

### **Annual course on internal displacement law**

44. The Representative, the Brookings-Bern Project on Internal Displacement, the International Institute of Humanitarian Law and OHCHR co-organized the sixth annual course on internal displacement law, which provides training to high-level officials from different parts of the world who work in the field of internal displacement. The course was held in San Remo, Italy, from 7 to 12 June 2010, and included 22 participants from 13 displacement-affected countries.

### **Regional workshop: protecting and promoting rights in natural disasters in South-East Asia**

45. On 14 and 15 May 2010, the Representative participated in a regional workshop on protecting human rights in natural disasters in South-East Asia, in Yogyakarta, Indonesia. The workshop was organized by the Brookings-Bern Project on Internal Displacement, the All India Disaster Migration Institute, the Center for Security and Peace Studies and Gadjah Mada University. It brought together 35 representatives from Government, the United Nations, the International Red Cross and Red Crescent Movement and international and national non-governmental

<sup>6</sup> See A/HRC/13/21/Add.4. The Framework is also available from [www.brookings.edu/reports/2010/04\\_durable\\_solutions.aspx](http://www.brookings.edu/reports/2010/04_durable_solutions.aspx) and [www.humanitarianinfo.org/iasc](http://www.humanitarianinfo.org/iasc).

organizations, and enabled them to share good practices and become familiarized with the Operational Guidelines on Human Rights and Natural Disasters.

## **E. Mainstreaming the human rights of internally displaced persons in the United Nations system**

### **Inter-Agency Standing Committee**

46. The Inter-Agency Standing Committee is the key platform for the Representative to mainstream the human rights of internally displaced persons within the United Nations system and the wider humanitarian community, as requested by his mandate. The Representative and his staff participate at all levels of the Committee (the principals, the Working Group and the task forces).

47. The Representative led two major consultation processes on key policy documents, namely the IASC Framework on Durable Solutions for Internally Displaced Persons, endorsed in December 2009, and the Operational Guidelines on Human Rights and Natural Disasters, to be endorsed in September 2010. Further details on these policy documents are provided in section D of the present report. He was closely involved in the Committee's advocacy efforts on the humanitarian implications of climate change and, together with other Committee principals, he participated in a high-level panel discussion at the United Nations Climate Change Conference in Copenhagen in December 2009.

48. The Representative also co-authored a working paper on the protection of internally displaced persons outside camps, which was discussed by the Inter-Agency Standing Committee Working Group in July 2010. In view of the fact that the majority of internally displaced persons live outside camps, he hopes that this discussion paper will trigger reflection and encourage practical changes among humanitarian actors, to ensure a more equitable response to situations of internally displaced persons living outside camp settings.

### **Office for the Coordination of Humanitarian Affairs**

49. A staff member of the Office for the Coordination of Humanitarian Affairs worked with the Representative throughout his mandate, which facilitated better outreach to the different actors at Headquarters and to the Office for the Coordination of Humanitarian Affairs in particular. It also enabled the Representative to maintain a regular dialogue and to coordinate his activities with the Under-Secretary-General for Humanitarian Affairs and Emergency Relief Coordinator. In addition, the Office provided regular support to his missions and valuable contributions to policy documents. Together with the Office and OHCHR, the Representative also organized a side event on human rights and durable solutions in Haiti, in the margins of the Human Rights Council session in March 2010.

### **Office of the United Nations High Commissioner for Human Rights**

50. In accordance with the request of the Human Rights Council, OHCHR provides overall substantive and logistical support to the activities of the Representative, including on thematic reports and other working papers on a variety of subjects, and in the form of field support during the preparation and conduct of

country missions. In addition, OHCHR helps to ensure communication and complementarity between the Representative's work and that of other special procedures mandates (for example, joint report on the Democratic Republic of the Congo and joint communications), and contributes to or co-organizes joint events, such as ad hoc meetings on topical issues, training events and panel discussions.

#### **Office of the United Nations High Commissioner for Refugees**

51. The Representative maintained his memorandum of understanding with UNHCR, thereby strengthening their collaboration and enabling him to place one externally funded staff member in the office. In this context, UNHCR provided support to the Representative's activities both at Headquarters and in the field, including by assisting in the preparation, implementation and follow-up to his country visits. In particular, it conducted a number of working visits to support national strategy and planning processes, such as with regard to durable solutions or legislative and policy initiatives related to internal displacement.

52. Within this collaborative arrangement, the Representative welcomed the opportunity to actively consult with and serve as a resource person to UNHCR on matters related to his mandate. In addition, he supported the mainstreaming of internal displacement issues within UNHCR by participating in its internal Learning Programme for Senior Managers on Internally Displaced Persons, in thematic or country-specific round-table discussions, and in dialogue sessions on current issues of concern related to internal displacement.

#### **Special Representative of the Secretary-General for Children and Armed Conflict**

53. The Representative engaged in a regular dialogue with the Special Representative of the Secretary-General for Children and Armed Conflict, and welcomed the fact that the Office had made the rights of displaced children in armed conflicts an advocacy priority. He contributed to its working paper on this subject, which is to be published in 2010 and will provide an excellent advocacy and protection tool for humanitarian and human rights workers.

#### **Peacebuilding Commission**

54. The Representative enjoyed regular interaction with the Peacebuilding Commission, in particular with regard to country-specific situations, such as that of the Central African Republic. With respect to the latter, he endeavoured to coordinate his activities with the Commission's and contributed to the midterm review of its country strategy scheduled for December 2010. He also provided comments to the Chair of the country-specific configuration on Burundi on a proposed new return policy and addressed the members of the configuration at a meeting in July 2010.

### **III. Thematic section: the primary duty of the State to provide humanitarian assistance and the corresponding rights of internally displaced persons**

55. In his last report to the Human Rights Council, the Representative identified eight current key challenges in the area of internal displacement for States, the

international community and internally displaced persons (see A/HRC/13/21, paras. 39 to 79). This section highlights one of these challenges, namely that of ensuring humanitarian assistance to internally displaced persons.

56. According to the Guiding Principles on Internal Displacement, States have the primary duty and responsibility to provide humanitarian assistance to internally displaced persons within their jurisdiction (see para. of Guiding Principles 3 and 25). The Guiding Principles are based upon and reflect international human rights and humanitarian law, and are recognized as an “important international framework for the protection of internally displaced persons”.<sup>7</sup>

57. The provision of humanitarian assistance<sup>8</sup> is not merely a discretionary act of humane compassion. Internally displaced persons and other people affected by conflict or natural disaster remain entitled to fully enjoy their human rights, including their right to life, food, water and sanitation, clothing, housing, health care and education, rights which, taken together, may be interpreted as the right to receive humanitarian assistance. Moreover, these rights must be discharged by national authorities in good faith, either directly or by facilitating the provision of humanitarian assistance by third parties.

58. However, the reality on the ground reveals a different picture. Too frequently, internally displaced persons remain unable to receive or access the goods and services essential for their well-being or even their survival, most often as a result of abuse or neglect. At the same time, humanitarian access by international and non-governmental actors is shrinking, making it increasingly difficult for the international community to assess and provide for the humanitarian needs of displaced populations.

59. In this context, it is particularly relevant to identify the rights of internally displaced persons and the corresponding duties of States. This section aims to outline the responsibility of States<sup>9</sup> with regard to the provision of humanitarian assistance, examine the factors that most often impede humanitarian access, and provide recommendations on the way forward.

## **A. Factors impeding humanitarian assistance**

60. Situations where internally displaced persons do not have access to the necessary humanitarian assistance or where access by humanitarian organizations is problematic are caused by multiple and complex factors.

61. At times, domestic authorities and other actors may wish to ensure assistance to their own constituencies, while “punishing” or neglecting others, such as populations perceived as being associated with political or military opponents or

---

<sup>7</sup> See the 2005 World Summit Outcome, General Assembly resolutions 60/1, para. 132; 62/153, para. 10; and 64/162, para. 11; and Human Rights Council resolutions 6/32, para. 5; and 14/6, para. 9.

<sup>8</sup> Humanitarian assistance comprises all goods and services necessary to the survival and basic welfare of persons. It also extends to goods and services provided by humanitarian actors to ensure early recovery, such as the construction of transitional school buildings, the rehabilitation of water sources or the provision of livestock, seeds and tools.

<sup>9</sup> The issue of the responsibility of the international community and international actors requires a separate discussion that is not possible in the present report, owing to space constraints.

religious or ethnic minorities. In Nepal, only those displaced by the Maoists could register as internally displaced persons during the internal armed conflict (see E/CN.4/2006/71/Add.2, para. 22). In Colombia, the Representative received allegations that internally displaced persons registering for State assistance were often expected to attribute their displacement to insurgents (see A/HRC/4/38/Add.3, para. 31). In other contexts, humanitarian assistance is subject to conditions that are equally motivated by political aims but are not related to the characteristics of the populations in need. This was the case when, following the August 2008 conflict in the Tskhinvali Region/South Ossetia, no United Nations humanitarian actors had access to the area because the parties to the conflict sought to underline their respective claims to the territory by blocking the humanitarian access routes allowed by the respective opposing side.<sup>10</sup>

62. In situations of armed conflict, humanitarian access is often denied by authorities for other reasons as well. They may be unable to provide security to humanitarian organizations in territories that are not under their full control or may fear that humanitarian goods will be diverted by non-State armed groups for military purposes. Even where access exists, the independence of humanitarian actors may be jeopardized as a result of integrated strategies that combine military, political, development and humanitarian interventions in order to win the “hearts and minds” of the population.

63. A third and related trend is the increased violence against humanitarian workers and operations. One study found that the number of kidnappings of humanitarian personnel more than tripled between 2006 and 2009 alone.<sup>11</sup> Few of the perpetrators are ever brought to justice. Moreover, while violence against humanitarians may, in part, be simply a consequence of the general insecurity in weak or failed States, where most conflicts and some of the largest disaster-related humanitarian crises occur, politically motivated attacks are also on the rise.<sup>12</sup>

64. In theatres of asymmetric conflict such as Afghanistan, Iraq and Somalia, humanitarians have become targets of armed non-State groups that perceive them as contributing to military and political efforts to strengthen the respective Governments. As a result, they sometimes become a strategic target in the eyes of anyone intent on destabilizing the country. This deliberate targeting also affects ordinary crime, since humanitarians are no longer perceived as persons enjoying special protection but rather lucrative targets. In Somalia, for example, the Representative learned that kidnappings of humanitarian workers were often perpetrated by gangs of ordinary criminals who then demanded ransom or, failing payment, sold their victims through intermediaries to armed groups with a political agenda. In Chad, lawlessness in certain areas of the country has become the main obstacle to humanitarian access. In other situations, politically motivated public

<sup>10</sup> See A/HRC/13/21/Add.3, paras. 33 to 36. It remains to be seen whether the amendments to the Georgian “Law on the Occupied Territories” will resolve these concerns in practice. See A/64/819, para. 26.

<sup>11</sup> Abby Stoddard, Adele Harmer and Victoria DiDomenico. “Providing Aid in Insecure Environments: 2009 update. Trends in violence against aid workers and the operational response”, Humanitarian Policy Group Policy Brief No. 34 (London, Overseas Development Institute, 2009). See also S/2009/277, annex, para. 31.

<sup>12</sup> Ibid. The same Overseas Development Institute study found that the percentage of politically motivated attacks rose from 29 per cent in 2003 to 49 per cent in 2008.

statements by political leaders that vilify humanitarian actors make them more vulnerable.

65. General situations of insecurity create yet another serious dilemma for humanitarian actors. They may have to rely on international military actors such as peacekeeping missions to secure humanitarian corridors or guard convoys and installations. However, if such troops have a non-neutral mandate or are perceived as supporting a particular side in the conflict, the humanitarian organizations they protect may be viewed as being too closely associated with them, thus undermining the neutral and impartial profile that forms the basis of their work and traditionally protected them from violence. The dilemma is exacerbated when no military forces under international command are available, and humanitarian actors must rely on Government forces or private security companies, which typically are not detached from local political dynamics, to physically protect them. This is currently the case in virtually all of Somalia, and may become the case in Chad and the Democratic Republic of the Congo, should the blue helmet troops eventually be withdrawn.

66. In the most difficult security environments, international humanitarian actors are increasingly forced to move to a form of remote management from outside the crisis area. This type of remote assistance places greater responsibility on national staff and local implementing partners and puts them at greater risk.<sup>13</sup> While this approach may work for short periods, it presents concerns in the long term with regard to quality, effectiveness and accountability issues (see S/2009/277, annex, para. 39).

## **B. The obligation to ensure the provision of humanitarian assistance**

67. These worrying developments must be seen against the backdrop of obligations to ensure the provision of humanitarian assistance to internally displaced persons. The point of departure for any discussion on these obligations should be the recognition that human rights place a duty on States to take positive measures to fulfil these rights.<sup>14</sup> Economic and social rights and, in particular, the right to an adequate standard of living, which includes adequate food, clothing, housing and the right to health and education, entail minimum core obligations that States must ensure.

68. The Committee on Economic and Social Rights has taken the view “that a minimum core obligation to ensure the satisfaction of, at the very least, minimum essential levels of each of the rights is incumbent upon every State party. Thus, for example, a State party in which any significant number of individuals is deprived of essential foodstuffs, of essential primary health care, of basic shelter and housing, or of the most basic forms of education is, *prima facie*, failing to discharge its obligations under the [International] Covenant [on Economic, Social and Cultural

---

<sup>13</sup> According to information received by the Office for the Coordination of Humanitarian Affairs, in 2009, approximately 65 per cent of victims of the most serious attacks on humanitarian workers were national staff; in 2008, it was 80 per cent.

<sup>14</sup> Human Rights Committee General Comment No. 31: The nature of the general legal obligation imposed on States parties to the Covenant, paras. 6 to 8. For a specific example, see Human Rights Committee General Comment No. 6: The right to life, para. 5 (obligation to adopt such positive measures as eliminating malnutrition and epidemics).



Rights]”.<sup>15</sup> In other words, the core minimum requirements extend to the very goods and services that are the subject of humanitarian assistance.

69. In order to fulfil these obligations, the State must take the necessary measures “individually and through international assistance and cooperation [...] to the maximum of its available resources”.<sup>16</sup> A State is deemed to have violated the right to an adequate standard of living, to health and to education, if authorities knew or should have known about the humanitarian needs but failed to take measures to satisfy, at the very least, the most basic standards imposed by these rights. State obligations thus include the responsibility to follow up on these situations of concern and assess relevant needs in good faith, and ensure that humanitarian needs are being met, by the State itself or through available assistance by national or international humanitarian agencies and organizations,<sup>17</sup> to the fullest extent possible under the circumstances and with the least possible delay. The Representative considers that, in situations of internal displacement, requests for humanitarian assistance create a prima facie case that such assistance is needed, which is to be followed by impartial and participatory assessments to determine the nature and extent of the needs.

70. Moreover, humanitarian assistance must be adequate. According to the Committee on Economic, Social and Cultural Rights, “adequacy” in this context means that humanitarian goods and services are available to the affected population in sufficient quantity and quality; they are accessible, meaning that they are granted to all in need without discrimination and are within safe and easy reach of everyone, including vulnerable and marginalized groups; they are acceptable, in that they are culturally appropriate and sensitive to gender and age; and they are adaptable, namely, they are provided in ways that are flexible enough to adapt to the changing needs of beneficiaries.<sup>18</sup>

71. A number of States have recognized and specified their responsibilities in national laws, policies, administrative instructions and military manuals. The Law of the Republic of Indonesia No. 24 of 2007 Concerning Disaster Management, for example, provides that “Every person affected by a disaster is entitled to assistance fulfilling basic needs”.<sup>19</sup> Similarly, the Japanese Disaster Relief Act sets out in great detail what humanitarian assistance prefectural governors must provide.<sup>20</sup>

72. The duty to ensure humanitarian assistance to internally displaced persons is also recognized in the Kampala Convention, which requires States to provide them “to the fullest extent practicable and with the least possible delay, with adequate humanitarian assistance, which shall include food, water, shelter, medical care and

<sup>15</sup> Committee on Economic, Social and Cultural Rights General Comment No. 3: The nature of States parties’ obligations, para. 10.

<sup>16</sup> Article 2, para. 1, of the International Covenant on Economic, Social and Cultural Rights.

<sup>17</sup> See Guiding Principles 3 and 25, para. 1. For an analysis of the legal foundations, see Walter Kälin, *Guiding Principles on Internal Displacement: Annotations* (revised edition) (Washington, D.C., The American Society of International Law, 2008).

<sup>18</sup> See Committee on Economic, Social and Cultural Rights General Comment No. 4: The right to adequate housing (art. 11 (1) of the Covenant), para. 8, and General Comment No. 12: The right to adequate food (art. 11), paras. 7 to 13.

<sup>19</sup> Law of the Republic of Indonesia No. 24 of 2007 Concerning Disaster Management, articles 1, para. 1, and 26, para. 2.

<sup>20</sup> Disaster Relief Act of 1947 (Law No. 108), as amended on 25 December 1984, article 23.

other health services, sanitation, education, and any other necessary social services, and where appropriate, extend such assistance to local and host communities".<sup>21</sup>

73. In the context of natural disasters, this obligation has been recognized by the General Assembly, which unanimously resolved that "Each State has the responsibility first and foremost to take care of the victims of natural disasters and other emergencies occurring on its territory. Hence the affected State has the primary role in the initiation, organization, coordination and implementation of humanitarian assistance within its territory."<sup>22</sup>

74. States must plan for the necessary resources to provide humanitarian assistance.<sup>23</sup> A number of countries, such as Costa Rica and Madagascar, require all national authorities to earmark budget lines for disaster preparedness and response activities. Ethiopia established the National Disaster Prevention and Preparedness Fund, as well as the Emergency Food Security Reserve.<sup>2</sup> In order to fulfil their responsibilities to ensure the survival and basic welfare of their population, Governments can, and should, also draw on the complementary capacities of such local actors as the national Red Cross or Red Crescent societies and of international humanitarian actors.

75. In conflict situations, international humanitarian law sets out additional obligations to provide humanitarian assistance. Parties causing displacement in international or non-international conflict (for example, by clearing an area for military operations) must take all possible measures to ensure that evacuated civilians are provided with satisfactory conditions of shelter, hygiene, health, safety and nutrition.<sup>24</sup> People living in occupied territories, wounded and sick persons, and children, also benefit from specific guarantees of humanitarian assistance.<sup>25</sup> These international humanitarian norms do not eclipse, but rather complement human rights law, which continues to apply in situations of armed conflict and occupation.<sup>26</sup> Both bodies of law are to be interpreted as reinforcing each other so as to provide the greatest possible scope of protection for the individual.

<sup>21</sup> Article 9, para. 2 (b). See also article 23 of the African Charter on the Rights and Welfare of the Child.

<sup>22</sup> See General Assembly resolutions 46/182, annex, para. 4, and 43/131.

<sup>23</sup> See General Assembly resolution 62/153, para. 12; the Kampala Convention, article 3, para. 2 (d); and the ASEAN Agreement on Disaster Management and Emergency Response, article 10, para. 1.

<sup>24</sup> International Committee of the Red Cross, *Customary International Humanitarian Law. Vol. I: Rules* (Cambridge, Cambridge University Press, 2005), rule 131. See also the Convention relative to the Protection of Civilian Persons in Time of War (Fourth Geneva Convention), article 49.

<sup>25</sup> See the Fourth Geneva Convention, articles 55 and 56; the Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflict (Additional Protocol I), article 69; the Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-international Armed Conflict (Additional Protocol II), articles 4, para. 3, and 7, para. 2.

<sup>26</sup> See International Court of Justice, *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory* (Advisory Opinion of 9 July 2004), para. 106.

### C. The obligation not to arbitrarily withhold consent

76. In a number of contexts, especially in large-scale or protracted crises, locally available resources may be insufficient and the authorities and local actors may be overwhelmed in meeting humanitarian assistance and protection needs. In such cases, States need to rely on complementary external resources to fulfil their duty to ensure the provision of all necessary humanitarian assistance.

77. While the General Assembly has noted that humanitarian assistance “should be provided with the consent of the affected country”,<sup>27</sup> this does not imply that States are entitled to withhold their consent in all circumstances. As seen above, article 2, paragraph 1, of the International Covenant on Economic, Social and Cultural Rights specifically requires States parties to take steps towards realizing human rights also “through international assistance and cooperation”. There is growing acceptance that the obligation to respect, protect and fulfil human rights includes an obligation to invite, accept and facilitate international humanitarian assistance, in particular if the State is unable or unwilling to effectively address all humanitarian needs.<sup>28</sup>

78. The Kampala Convention, for example, requires national authorities to request international assistance when available resources are inadequate to protect and assist internally displaced persons.<sup>29</sup> The Great Lakes Protocol obliges States to “facilitate rapid and unimpeded humanitarian access and assistance to internally displaced persons” (article 3, para. 6). Colombia’s law on internally displaced persons specifically recognizes the rights of the displaced to assistance and a corresponding right of the international community to provide humanitarian assistance.<sup>30</sup>

79. Guiding Principle 25, paragraph 2, stipulates that:

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

80. According to this Principle, which reflects the position of the Security Council, the General Assembly and regional organizations,<sup>31</sup> States must exercise their sovereign rights in good faith and in line with the responsibilities sovereignty entails, including the human rights obligation to ensure the provision of necessary

<sup>27</sup> See General Assembly resolution 46/182, annex, Guiding Principle 3.

<sup>28</sup> See the Report of the Secretary-General A/64/819, para. 24; and Committee on Economic, Social and Cultural Rights General Comment No. 12: The right to adequate food (art. 11), para. 6.

<sup>29</sup> See the Kampala Convention, article 5, para. 6; the Great Lakes Protocol, article 3, para. 10; and Republic of Peru, Law No. 28232 concerning internal displacements (2005), article 4, para. 2.

<sup>30</sup> Republic of Colombia, Law No. 387 (1997), article 2, para. 1.

<sup>31</sup> See Security Council resolution 1894 (2009), which notes with concern “the severity of constraints on humanitarian access” and stresses “the importance for all parties to armed conflict to cooperate with humanitarian personnel in order to allow and facilitate access” to affected civilian populations. See also Security Council resolutions 688 (1991), 706 (1991), 822 (1993), 853 (1993) and 874 (1993), and others calling for unimpeded humanitarian access in specific conflict situations, and General Assembly resolutions A/60/L.1, para. 169, and 62/153, para. 15. For further analysis see Walter Kälin, *Guiding Principles on Internal Displacement: Annotations* (revised edition) (Washington, D.C., The American Society of International Law, 2008).

humanitarian assistance. Similarly, according to customary international humanitarian law applicable in situations of international as well as non-international armed conflicts, parties to a conflict “must allow and facilitate rapid and unimpeded passage of humanitarian relief for civilians in need, which is impartial in character and conducted without any adverse distinction, subject to their right of control”.<sup>32</sup>

81. States can exclude assistance offered by actors who refuse or grossly fail to respect the humanitarian principles of humanity, impartiality and neutrality,<sup>33</sup> as well as operational independence,<sup>34</sup> when carrying out humanitarian assistance.<sup>35</sup> Furthermore, in situations of armed conflict, States are allowed to temporarily restrict the freedom of movement of authorized humanitarian relief personnel in case of imperative military necessity.<sup>36</sup>

82. However, States fail to respect their obligations if they reject assistance offered without providing any reasons or if the reasons are based on errors in fact (for example, a denial of humanitarian needs without a proper assessment). States also act arbitrarily if they deny access for reasons that are not in line with their international obligations, for example, if a State rejects assistance offered in line with the humanitarian principles of humanity, impartiality, neutrality and independence despite being unable to ensure the necessary assistance through other resources.<sup>37</sup>

83. States must refrain from selectively denying consent to offers of humanitarian assistance with the intent or effect of discriminating against a particular group or section of the population. In the case of internally displaced persons in need, the Guiding Principles stipulate against such discrimination on the basis, inter alia, of race, sex, legal status, religious belief, political or other opinion, or ethnic or social origin (see Guiding Principle 4, para. 1). An example would be a Government that systematically rejects offers of humanitarian assistance to crisis-affected regions populated by ethnic groups perceived as favouring the political opposition.

84. In some circumstances, international humanitarian law stipulates further-reaching obligations to grant humanitarian access. Occupying powers must agree to relief schemes and do not have the right to block genuine humanitarian assistance if the occupied territory or a part thereof is inadequately supplied.<sup>38</sup>

85. Similarly, insurgents, de facto authorities and other non-State actors controlling a part of the territory may not withhold consent to the provision of

<sup>32</sup> International Committee of the Red Cross, *Customary International Humanitarian Law. Vol. I: Rules* (Cambridge, Cambridge University Press, 2005), rule 55.

<sup>33</sup> See the definition of these humanitarian principles in General Assembly resolution 46/182.

<sup>34</sup> See General Assembly resolution 58/114, fifth preambular paragraph.

<sup>35</sup> See Guiding Principle 24, para. 1. In order to preserve the perception of their impartiality, many humanitarian actors also insist on their neutrality and independence from any State or other potentially non-neutral actor.

<sup>36</sup> *Customary International Humanitarian Law. Vol. I: Rules*, rule 56.

<sup>37</sup> For this reason, the Representative expressed concern regarding the expulsion of 13 major international humanitarian organizations operating in the Darfur region of the Sudan. See the Representative’s press release of 13 March 2009, entitled “World is neglecting major internal displacement crises”, available from <http://www.ohchr.org/EN/NewsEvents/Pages/Media.aspx?NewsID=8508&LangID=E>.

<sup>38</sup> Fourth Geneva Convention, article 59, fourth paragraph.

humanitarian assistance on the basis that they do not have sovereign rights regarding the territory to which the assistance is destined.<sup>39</sup> Article 7, paragraph 5 (g) of the Kampala Convention therefore specifically prohibits armed groups from “impeding humanitarian assistance and passage of all relief consignments, equipment and personnel to internally displaced persons”.

#### **D. The obligation to coordinate and not to impede or divert humanitarian assistance**

86. The right of internally displaced persons to request and receive assistance, together with the responsibilities emerging from sovereignty, places a duty on States to coordinate humanitarian assistance, both within State structures and between the State and the providers of complementary local or external humanitarian assistance.<sup>40</sup> Many countries have set up special offices for this purpose, the most effective being those located in a central position, such as the Prime Minister’s Office.<sup>41</sup>

87. At the same time, national authorities and, within the ambit of international humanitarian law, non-State parties to conflict, must grant and facilitate the free passage of humanitarian assistance and grant persons providing such assistance rapid and unimpeded access to the internally displaced.<sup>42</sup> This is related to the obligation not to divert humanitarian assistance for political or military reasons (Guiding Principle 24, para. 2). The duty not to impede access is relevant to external assistance accepted by the State, local authorities and humanitarian assistance provided by the State itself (for example, where there are disagreements between State humanitarian and security agencies).

88. There is a strain between the need to coordinate humanitarian assistance and unnecessarily impeding such assistance or inadvertently aggravating the crisis. Disputes may erupt over the extent of humanitarian needs and the nature, quantity and quality of humanitarian assistance required to address them. Joint needs assessments involving recipients, donors and the authorities will provide relevant data on what is appropriate and necessary. The consultation and involvement of recipient rights-holders in the provision of assistance should be broad and inclusive to prevent discrimination and ensure that certain individuals do not set themselves up as “gatekeepers” for humanitarian assistance.

89. Flexibility, multi-stakeholder dialogue and willingness to come to pragmatic compromises can significantly help to address tensions. For example, some months after the earthquake of 12 January 2010, the Government of Haiti asked to phase out

<sup>39</sup> Article 18, para. 2, of Additional Protocol II refers only to the consent of the “High Contracting Party”, namely State consent.

<sup>40</sup> See the Kampala Convention, article 2 (d); the Great Lakes Protocol, article 3, para. 2; and the Inter-American Convention to Facilitate Disaster Relief, article IV.

<sup>41</sup> For examples, see *Protecting Internally Displaced Persons: A Manual for Law and Policymakers*, note 2 above.

<sup>42</sup> Guiding Principle 25, para. 3. See also the Kampala Convention, articles 3, para. 1 (g), and 7, para. 5 (g); Additional Protocol I to the 1949 Geneva Conventions, article 70, para. 2; and *Customary International Humanitarian Law. Vol. I: Rules* (see note 32 above), rule 55. This obligation has also formed the basis for numerous binding Security Council resolutions such as resolution 1910 (2010), para. 17.

the blanket distribution of free food aid, fearing that it might exacerbate recipient dependency and undermine local markets. Accordingly, the United Nations and other major providers of humanitarian assistance agreed to adapt their approach, including by providing recipient rights-holders with cash or food in exchange for community work (for example, rubble removal), while still maintaining targeted free food aid programmes for the most vulnerable.

90. In other instances, States fail to adapt regulatory regimes designed for normal times to crisis situations. People suffer as humanitarian goods remain stuck in port, awaiting customs or technical clearance. The arrival of essential personnel may be unduly delayed, owing to rigid visa requirements. Legislative foresight and written agreements between national authorities and humanitarian actors can enable the coordination of humanitarian assistance, without unnecessarily impeding assistance. Guatemalan law, for example, provides for the establishment of ad hoc disaster mobile teams composed of representatives from various ministries and Government departments, who are accorded authority over the entry of persons, goods and equipment, to ensure the speedy processing of international humanitarian assistance.<sup>2</sup> Joint communiqués between the United Nations and the Government of the Sudan, agreed in 2004 and 2007, also sought to establish fast-track procedures, although inexplicable delays and obstacles in the implementation of these agreements have occurred.<sup>43</sup>

91. The Representative is concerned about instances of States imposing taxes and customs duties on international humanitarian assistance. He underlines that this assistance in fact saves the State considerable funds, as it contributes to fulfilling the State's own obligation to ensure humanitarian assistance. Moreover, given that global humanitarian resources are limited and are never sufficient to match all needs, taxes and duties levied on humanitarian assistance by one State effectively deplete the resources required to provide life-saving assistance to persons in need in other States. Humanitarian assistance should be exempt from taxes or duties directly associated with relief and assistance towards initial recovery, including value-added tax and customs duties.<sup>44</sup>

#### **E. The obligation to protect persons engaged in humanitarian assistance, their transport and supplies**

92. National authorities and, within the ambit of international humanitarian law, armed groups, have a duty to respect and protect humanitarian assistance and actors.<sup>45</sup> This includes the obligation to take all necessary and reasonable measures against attacks and other acts of violence, including by diligently investigating and prosecuting perpetrators.

<sup>43</sup> See S/2009/277, annex, para. 10, and S/2010/213, para. 71.

<sup>44</sup> See "Guidelines for the domestic facilitation and regulation of international disaster relief and initial recovery assistance" (IFRC document No. 301C/07/R4 annex), adopted 30 November 2007, at the thirtieth International Conference of the Red Cross and Red Crescent Movement (see IFRC document No. 301C/07/R4), Guidelines 17 and 21.

<sup>45</sup> See Guiding Principle 26; the Convention on the Safety of United Nations and Associated Personnel, article 7, para 1; *Customary International Humanitarian Law. Vol. I: Rules* (see note 32 above), rules 31 and 32; and the Great Lakes Protocol, article 3, para. 7.

93. The line between reasonable measures to protect humanitarian operations and unreasonable impediments to humanitarian action can sometimes be thin. Moreover, some States deliberately impose access restrictions in order to manipulate assistance flows and keep out inconvenient humanitarian presence. The Representative considers that security restrictions must have a rational basis and be subject to review. Moreover, national authorities and other actors imposing restrictions should engage in dialogue with humanitarian actors to determine which measures would be the least disruptive to humanitarian operations, while still providing an acceptable degree of security. The Representative also reiterates the continued importance of the humanitarian principles of humanity, impartiality, neutrality and independence, in order to gain the acceptance of all parties to a conflict, as well as their consent and assurances of safe passage.

#### IV. Conclusions and recommendations

94. **Internally displaced persons and others affected by armed conflict and disasters have a right to request<sup>46</sup> and receive humanitarian assistance. The State has a corresponding obligation to ensure all necessary humanitarian assistance. This entails specific duties, including the duty to plan, coordinate, protect and not impede humanitarian assistance, as well as a duty not to arbitrarily withhold consent to offered humanitarian assistance.**

95. **Increasing constraints on humanitarian access have the effect of excluding internally displaced persons and others affected by conflict and disasters from their entitlements to assistance. Administrative and technical barriers regularly impede the provision of humanitarian action. Humanitarian actors find it increasingly difficult to defend the impartiality, neutrality and independence that form the basis of their work, as individual States and State coalitions seek to align humanitarian action with their own political and military agendas, a trend considered responsible, in part, for the increasing violence against humanitarian workers. This increase in politically motivated attacks on humanitarian personnel and other patterns of insecurity that interrupt humanitarian operations have a profound impact on both the extent and methods for providing humanitarian assistance, with recipient rights-holders as the ultimate victims.**

96. **The Representative calls on all Member States to shape a rule-based framework to international humanitarian assistance, taking into account the Guiding Principles on Internal Displacement as well as the Guidelines for the Domestic Facilitation and Regulation of International Disaster Relief and Initial Recovery Assistance<sup>47</sup> and, in particular to:**

(a) **Explicitly recognize in relevant national laws, policies and administrative and military instructions, the right of internally displaced persons and others affected by conflict or disaster to request and receive humanitarian assistance, in an equal and non-discriminatory manner; and the corresponding obligation of the State to ensure assistance, including by**

<sup>46</sup> In the absence of a “request”, State obligations also apply when State authorities knew or should have known that such humanitarian needs existed.

<sup>47</sup> These Guidelines were adopted at the thirtieth International Conference of the Red Cross and Red Crescent Movement, held in Geneva from 26 to 30 November 2007.

facilitating international assistance, especially where locally available resources are insufficient;

(b) Not arbitrarily withhold consent to offered humanitarian assistance; and to grant rapid and unimpeded access to all accepted humanitarian assistance;

(c) Inform the public about the valuable role of humanitarian actors in alleviating human suffering, and resolve disputes through pragmatic dialogue;

(d) Set up dedicated national humanitarian coordination structures, preferably in a central position of government. Coordination structures should be subject to auditing and non-executive civilian oversight and, at least in conflict situations, should be institutionally separate from the military and security apparatus. Clear powers and responsibilities to provide humanitarian assistance, as well as the necessary resources, should be provided to relevant authorities at the national and local levels;

(e) Establish clear procedures and criteria for assessing humanitarian needs and determining the required international assistance. Assessments should be based on international standards such as the Sphere standards and use a participatory methodology involving the authorities, donors, affected persons and communities, and vulnerable groups in particular;

(f) Set out effective monitoring, quality control and complaint mechanisms to verify and guide the provision of humanitarian assistance, and allow independent monitoring;

(g) Establish facilitated procedures for emergency situations, including with regard to domestic registration and legal personality for international actors; visa and entry procedures for international personnel and customs; and technical clearance procedures for humanitarian aid and equipment. Abolish remaining fees and taxes on humanitarian assistance;

(h) End impunity for attacks on humanitarian workers and operations by diligently investigating and prosecuting the perpetrators in national courts and, where relevant, cooperating with the International Criminal Court. Take appropriate disciplinary and criminal measures against officials who obstruct or divert humanitarian assistance;

(i) Respect humanitarian principles in the pursuance of their security and foreign policies; ensure a robust, principled and coordinated diplomatic response in situations where States arbitrarily deny or impede humanitarian access; and fund humanitarian assistance based on need and in line with the Principles and Good Practice of Humanitarian Donorship;

(j) Foster efforts to develop a rule- and rights-based international framework on humanitarian assistance.

97. The Representative calls on humanitarian organizations and agencies to regularly review their own compliance with humanitarian principles; resist accepting conditions that would compromise, or be perceived as compromising, the principles of humanity, neutrality, impartiality and the independence of their operations; and reinforce their efforts to ensure that recipient rights-holders are fully involved in the planning, implementation and evaluation of humanitarian assistance.