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MASS EXODUSES AND DISPLACED PERSONS

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

Addendum

MISSION TO NEPAL*

* The summary of the report is being circulated in all languages. The report itself, which is annexed to the summary, is being circulated in the language of submission only.

Summary

The Representative of the Secretary-General on the human rights of internally displaced persons undertook a mission to Nepal from 13 to 22 April 2005. He concluded that Nepal faces a serious problem of conflict-induced displacement. While this situation does not amount to a humanitarian crisis in the usual sense, there are reasons for grave concerns about the humanitarian and human rights situation of many internally displaced persons that need to be urgently addressed.

The reasons leading to this displacement are complex. While Maoist violence may seem to be the principal cause for displacement in Nepal today, it is not the only one.

The main problems and needs faced by internally displaced persons in Nepal are security and protection; discrimination; food, shelter and health; access to education for children; documentation; sexual abuse and increased domestic violence; risk of increased female prostitution; risk of increasing child labour; lack of protection of property rights; and denial of voting and electoral rights.

Internally displaced persons in Nepal have been largely neglected in the past. Depending on where they came from, their possibilities to integrate in their host communities and to maintain their own coping mechanisms, IDPs do not always need humanitarian relief or aid. However, the Representative of the Secretary-General concludes that they have various protection needs. He calls on the Government of Nepal and the CPN-Maoists to respect and protect their rights and on the international community to help them do so.

Annex

**REPORT OF THE REPRESENTATIVE OF THE SECRETARY-GENERAL
ON THE HUMAN RIGHTS OF INTERNALLY DISPLACED PERSONS,
WALTER KÄLIN ON HIS MISSION TO NEPAL (13-22 APRIL 2005)**

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Introduction

1. Pursuant to an invitation by His Majesty's Government of Nepal, first issued orally by the Minister for Foreign Affairs, Hon. Ramesh Nath Pandey, during the sixty-first session of the Commission of Human Rights, and confirmed by letter by the Permanent Mission of Nepal to the United Nations Office at Geneva on 8 April 2005, the Representative of the Secretary-General on the human rights of internally displaced persons conducted a mission to Nepal from 13 to 22 April 2005. This visit took place in conformity with his mandate contained in Commission resolution 2004/55 in which the Commission requested him to engage in coordinated international advocacy and action for improving protection and respect of the human rights of internally displaced persons (IDPs) through dialogues with Governments, as well as non-governmental organizations (NGOs) and other relevant actors. The Representative's conclusions and recommendations are informed by the Guiding Principles on Internal Displacement (E/CN.4/1998/53/Add.2, annex).

2. Since the inception of his mandate, the Representative received several reports from various sources on the situation of IDPs in Nepal. The official numbers concerning IDPs were low, and successive Governments, including the present one, defended the opinion that conflict-induced displacement was minor in comparison to the general economic migration. Similarly, international agencies acknowledged that there was displacement, but felt that the displaced were coping well with their fate and that their need of protection or assistance was minimal. The Representative was also aware that the ongoing armed conflict between the Government and Communist Party of Nepal-Maoist (CPN-M) continued to bring about a deterioration in the situation of the population of Nepal and to have a negative impact on their fundamental rights and freedoms, as well as on their social and economic well-being.¹ He also received reports on a growing number of people leaving their homes because of the conflict.

3. In this context, the Representative felt that it was advisable to examine displacement issues in Nepal at an early enough stage in order to address the protection and assistance needs of the displaced before they evolved into a major humanitarian crisis. Furthermore, he learned that the Government was about to adopt a new IDP policy. He thus felt this was a both timely and useful moment for a mission.

4. The main objectives of the mission were to assess the situation of displacement in Nepal; to advise the national authorities on fulfilling their responsibility to protect and assist the displaced in accordance with their human rights obligations, and to advise United Nations agencies, donors, and other relevant actors on how best to address the protection needs of IDPs. The mission was carried out together with the Internal Displacement Division of the Office for the Coordination of Humanitarian Affairs (OCHA).²

5. During his stay in Kathmandu, the Representative met with senior government officials, including the First Vice-Chairman of the Council of Ministers, Dr. Tulsi Giri; the Minister of Home Affairs, Mr. Dan Bahadur Shahi; and the Chief of Staff of the Royal Nepal Army, General Thapa. He participated in a meeting organized by the National Planning Commission with representatives of all the ministries involved in responding to internal displacement in Nepal. He also held meetings with Nepalese non-governmental organizations, international and national aid organizations, United Nations agencies, donors and members of the diplomatic community. He travelled to Kapilvastu, Banke and Dailekh districts in Western Nepal and to

Morang district in Eastern Nepal where he met with regional commanders of the Royal Nepal Army (RNA), senior local and district level officials, members of the development aid community and civil society. Wherever he went, the Representative also visited internally displaced persons themselves in order to hear directly from them what their key concerns were, and to see in what conditions they were living.

6. The Representative would like to express his gratitude and recognition of the full cooperation of the Nepalese authorities in ensuring that all meetings requested were granted and that all discussions took place in an open and constructive manner. He furthermore expresses his appreciation for the flexibility demonstrated by the authorities in receiving him at short notice. The Representative would also like to thank the United Nations Resident Coordinator and the United Nations Development Programme (UNDP) office in Nepal as well as the United Nations Country Team (UNCT) for the excellent logistical and organizational support provided in connection with the mission, particularly during the trips outside of Kathmandu. He was also deeply impressed by the commitment exhibited by members of Nepalese civil society and the quality of their inputs, and expresses his thanks to the members of the aid community and the NGOs with whom he met. Finally, he would like to thank the many internally displaced persons who, in a climate of widespread fear, were ready to share their experiences with him.

I. CONTEXT OF INTERNAL DISPLACEMENT IN NEPAL

A. General observations

7. The Representative's mission took place after 1 February 2005, when His Majesty, King Gyanendra Bir Bikram Shah Dev, dissolved the Government and created a new Council of Ministers, chosen by him directly, in order ... to bring to an end the ongoing acts of terrorist violence and ... to fulfil the people's aspirations with the restoration of peace and security in the country ...³ During the time of the mission there was a state of emergency that suspended parts of the Constitution and gave the Royal Nepal Army sweeping powers. It also curbed the freedom of the press and generally put pressure on human rights defenders. The state of emergency was formally lifted on 30 April 2005 but arrests of political activists and other restrictive measures continued.

8. Internal displacement in Nepal is intimately linked to the CPN-M insurgency and the ensuing response by the State to acts of violence committed by the insurgents. The insurgency began in February 1996. In the beginning, the Government responded by deploying the police, but security operations were intensified in 1998. In November 2001, a state of emergency was declared and the RNA was subsequently deployed throughout the country. On 26 November 2001, the Government issued the Terrorist and Disruptive Activities Ordinance, which granted the RNA the powers to restrict the freedom of movement of people, to arrest people and detain them in military installations without judicial oversight. In November 2003, the Armed Police Force, the Nepal Police and the National Investigation Department were placed under the unified command of the RNA. The effects of the Maoist insurgency have reached all regions of the country. Apart from some sporadic attacks by large numbers of CPN-M fighters on army positions, the general pattern now seems to be smaller skirmishes, with civilians caught in the cross-fire.

9. The Representative would like to point out that at the time of writing, several terms were being used to characterize the conflict. When it had actively engaged the CPN-M in peace talks, the Government formally referred to the situation as an “armed conflict”. Currently, it refers to it as a “war on terrorism”. For the purposes of his mandate and mission, the Representative refers to the “parties to the conflict” in this case, to “the Royal Nepal Army (RNA)” and the Government and “the Communist Party of Nepal - Maoist (CPN-M)”. He refers to “terrorist acts” or “acts of terrorism” when appropriate, according to international humanitarian law.

B. Human rights situation

10. Nepal is party to six of the seven major international human rights instruments and to the Optional Protocols to the Convention on the Rights of the Child on the involvement of children in armed conflict and on the sale of children, child prostitution and child pornography. The four Geneva Conventions of 12 August 1949 have been ratified, but not the Additional Protocols. Nepal is not a party to the Rome Statute of the International Criminal Court. Under the Nepal Treaties Act 2047 (1990), in cases where there is a divergence between national law and international treaties to which Nepal is a party, the provisions of the treaty are to be applied. However, this rule does not apply to the Constitution.

11. Nepal has not issued a standing invitation to the special procedures of the Commission on Human Rights, but has invited several of them. The Working Group on Enforced or Involuntary Disappearances visited Nepal in December 2004, and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment in September 2005. In 2004 and 2005 other special procedures of the Commission have sent a large number of individual complaints letters to the Nepalese authorities concerning alleged executions, disappearances, torture, violations of the freedom of expression and freedom of assembly, and arbitrary detention.

12. According to the National Human Rights Commission, the conflict has claimed the lives of over 13,000 on both sides and among the civilian population.⁴ It has resulted in many human rights violations, including extrajudicial killings, abductions and extortions by CPN-M and enforced disappearances allegedly carried out by Nepalese security forces.⁵ The periodic introduction of states of emergency has been accompanied by restrictions on rights to liberty, freedom of movement, assembly and expression, as well as the lifting of safeguards, such as judicial oversight of arrests and detention.

II. CAUSES AND PATTERNS OF INTERNAL DISPLACEMENT IN NEPAL

A. General context

13. Although Nepal has been a home to refugees from Tibet and Bhutan, there has also been a history of economic migration in the recent years within Nepal and especially from Nepal into India. Movement within Nepal has mainly meant migration southwards, following the rivers and into the fertile and accessible Terai region in the search of land. By far the most common geographic pattern is the movement of people even further southwards into India in search of better economic prospects. A large proportion of Nepal’s annual GDP derives from remittant income. The Government’s policy has always been to support such economic circular migration, facilitated by the 1951 Open Border Treaty between India and its neighbouring countries. The

largest number of economic migrants to India come from landless groups, the highly indebted and members of the “low caste” groups and is especially high in the Far Western Region. Traditionally, they work in seasonal labour, on construction sites, as household help, as artisans or in factories.

14. Regarding IDPs, Nepal has a long history of displacement due to natural disasters. In addition, a widespread pattern of conflict-induced displacement has emerged today, next to and obscured by the traditional economic migration. It is difficult, in the present situation in Nepal, to make a precise distinction between economic migrants and conflict-induced displaced persons. The already difficult economic situation has worsened as a result of the conflict; infrastructure has not improved and administrative structures have retreated from remote areas back into district headquarters. This in itself brings about a gradual isolation of the villages in the mountain areas. In addition, restriction of movement by the CPN-M through the *bandhs* (strikes) and through the requirement for a permit to travel, combined with the taxation of goods, means that the rural economy is slowly grinding to a halt. In this context, economic migration and conflict-induced displacement are often closely interlinked.

B. Conflict-induced displacement

15. The present conflict is the cause of substantial displacement in Nepal. The reasons why individuals and families are displaced are complex. They encompass direct acts of violence or threats that have been made to them personally by members of the CPN-M; their refusal to let their children be forcibly recruited or to be forced to contribute to the insurgency with food and money; fear of being subject to reprisals by the RNA or caught in the crossfire; a general feeling of insecurity and uncertainty; the conflict-induced collapse of local infrastructures and coping mechanisms within villages; and economic reasons, since the economic decline in the traditionally poorer areas of Nepal has reportedly been hastened by the conflict. While Maoist violence may seem to be the principal cause for displacement in Nepal today, it is not the only one.

16. Two patterns of displacement can be distinguished. In most cases, displaced persons leave villages or small rural towns individually, with their families or in small groups. Some are direct victims of violence or have been threatened by Maoists. Many of these persons are party workers, village authorities, members of RNA families, rich farmers or otherwise influential persons in the village. Others, including many poor, feel that they can no longer cope with the generally prevailing climate of insecurity. Such families often sell their belongings, if possible, and following classic transportation routes go first to the district headquarters and then move on to urban or semi-urban areas in Terai, where they live with family members or rent their own accommodation. From there, they often go on to the Kathmandu valley or to India. This type of displacement is not very visible. The displaced merge into their new environment and are often too afraid or ashamed of being recognized as IDPs.

17. The Representative also encountered some cases where whole villages were displaced within days or even hours. Such mass displacements occurred in particular where vigilante or self-defence groups emerged in a specific location, threatening or even killing alleged Maoists. This was followed by retaliation from the CPN-M, causing mass displacement. These people fled to the next district headquarters or, in the case of areas in Terai, over the border to India. The Representative visited areas affected by such mass displacement in Kapilvastu and Dailekh

districts. Village mobs or vigilante groups reportedly killed over 20 alleged Maoists in Kapilvastu district between 17 and 23 February 2005. The houses and properties of alleged CPN-M supporters were burnt or looted by the rampaging villagers, provoking the displacement of over 300 families, partly across the border. It was reported to the Representative that some politicians from the capital had encouraged these acts. He also heard allegations of RNA detachments standing by the mobs but not interfering with these extrajudicial killings. At the time of the Representative's mission, no judicial investigation had been started to find or punish the culprits. In the villages of Namuli, Toli and Soleri, in the district of Dailekh, villagers formed local committees to parlay with the CPN-M to stop abducting children and teachers and to desist from the taxations. Reprisals by the CPN-M in November 2004 led over 400 families from the region to flee to the Dailekh district headquarters.

18. Since his mission to Nepal, the Representative has learned that the Government and the RNA have undertaken efforts to condemn acts of vigilantism and to distance themselves from such acts. He has received assurances from the Government that as a matter of policy, such incidents will no longer occur and notes that reportedly no new incidents have occurred in recent months.

19. Most of the interlocutors with whom the Representative spoke, including many government officials and army officers, agreed that there was a large but unknown number of people who had left their homes involuntarily and were unable to return for the reasons mentioned. Indications of this were, among others, the many empty houses in significant areas of the country, whereas with traditional economic migration, some family members are usually left behind; villages without younger generations; and a very significant increase in population in the urban and semi-urban parts of Terai. In Dailekh district, for example, the Representative was informed by members of the armed forces that the rural areas in the northern belt of the district were largely empty. A local administrator explained that in his village of origin in Ilam district about two thirds of the population had left in order to escape from the conflict. On the other hand, the local administrators in the Terai districts whom the Representative met, all confirmed that the population in urban and semi-urban areas under the control of the Government had significantly increased in the past few years, causing a sharp rise in rental costs and a huge pressure on schools faced with a large influx of children from rural areas.

20. The Representative concurs with various sources on the difficulty of accurate knowledge on the number of those who still remain displaced in Nepal. Many interlocutors agreed that there were fewer displaced persons inside Nepal than refugees who had crossed the border. Several studies on conflict-induced migration exist,⁶ but to date no comprehensive study has been undertaken. The last population census in Nepal dates back to 1981. The Representative was told by officials during his mission that there were 8,967 IDPs in Nepal who had been officially registered and verified by the administration. This figure obviously does not cover all or even a substantial part of the displaced. District administrators told the Representative that many displaced persons do not register and that the verification of these cases required by the Government is very difficult and slow. Thus, for example, out of 240 families who wanted to be registered as IDPs at the time of the Representative's visit in Banke district, only 10 per cent had been verified by the village authorities at the place of origin. At the local level Biratnagar

sub-metropolitan city, the United Nations team, Action Aid Nepal Biratnagar Coordination Unit and the Informal Sector Service Centre (INSEC) conducted jointly a rapid assessment on the IDPs situation before the Representative's visit. They interviewed 56 families and contacted another 200.

21. The total number of IDPs is unknown. In mid-2004 the Government then in power had estimated the total number of IDPs in Nepal at more than 100,000.⁷ The Finance Minister of the present Government, in a speech given to the Asian Development Bank meeting in May 2005 in Turkey spoke of 300,000 - 600,000 IDPs.⁸ The Norwegian Refugee Council - Global IDP Project places the number somewhere between 100,000 and 200,000. Other local NGOs cite figures of up to 2.5 million conflict-induced IDPs.

22. Actual quantification of internally displaced persons is generally difficult. In the case of Nepal, it is however clear that the number of registered IDPs represents only a very small part of those who have been displaced. There are several obstacles to identifying IDPs: the fear of being recognized or identified; the lack of benefits from registering with the State as an IDP, combined with the slow procedure of verification by local governments in places of origin; and the limited definition of IDPs that makes it difficult for State civil servants to register IDPs who are not victims of Maoist violence.

23. The Representative would like to point out that although it may be necessary for administrative purposes to determine who is an IDP and who is not, in particular to enable access to specific services such as shelter or financial compensation schemes, the actual registration of IDPs cannot be a precondition for the recognition of their rights, which exist independently of a formally recognized status.

24. While the Representative is not in a position to determine the number of internally displaced persons in Nepal, he concludes that a large number of persons, several hundred thousands, were forced to leave or to flee areas affected by the ongoing conflict. While many of them moved on to India, estimates that there are presently between 100,000 and a few hundred thousand internally displaced persons in Nepal seem realistic.

III. RESPONSES TO THE DISPLACEMENT SITUATION

A. National actors

25. The Government has established a system to register mainly those IDPs who are victims of Maoist violence. Since 1999, the Government has established several compensation and resettlement funds for victims of the conflict, but these were mostly under-resourced and dried up completely in July 2002. In early October 2004, the Government of Nepal issued a 15-point relief package for victims of the Maoist rebellion, which includes monthly allowances for displaced people.⁹ During the fiscal year 2004/2005 it also provided some limited resources to assist those registered as belonging to specific categories of victims. The payment plan foresees different cash payments depending on the classification of the victims. For instance, the family of a "security force member killed by terrorists" will receive 750,000 Nr, the "dependants of a

civilian killed by terrorists” are entitled to 150,000 Nr, whereas the “dependants of civilians killed by Security Forces in accident” receive 100,000 Nr. At the time of the Representative’s visit, a working group under the chairmanship of the National Planning Commission was preparing a new IDP policy.

26. The Representative welcomes the fact that the Government acknowledges the existence of IDPs in Nepal and that compensation is extended to them. This can help to mitigate the impact of displacement and address some aspects of the related human rights problems. Nevertheless, the Representative is concerned that this response to displacement has several major limitations: the compensation is only available to certain victims, while others despite their needs remain without support because other factors not considered by the law have forced them into displacement; many IDPs who have been victims of Maoist violence may be reluctant to identify themselves as such, fearing that it may single them out and lead to reprisals against them; to receive compensation IDPs are required to provide documentation which by virtue of their forced displacement they often do not have. The Representative met, for example, with one IDP who described how she had invested her life savings in the goods she had bought to sell in her shop. She was obliged to leave these goods behind when she was forced to leave her home. When she applied for compensation, she was asked to provide receipts for her goods, which she had not taken with her.

27. Furthermore, resources made available to IDPs have been inadequate. In fact, at the time of the Representative’s visit, all the money had been spent and there were no more resources available to assist the displaced. Finally, the Government, by focusing solely on financial compensation and support, has largely neglected other assistance and protection needs of IDPs.

28. Since his visit, the Representative has seen two drafts of a new IDP policy drawn up by the Government in collaboration with relevant international actors. He welcomes this important step that should contribute to providing better assistance and protection to IDPs but is waiting to see the final IDP policy before being reassured that his concerns have been addressed.

29. The National Human Rights Commission (NHRC) was established in 2000 as an independent human rights institution and has considerable potential to provide a response to human rights concerns in the context of displacement, including through prevention of displacement, protection during displacement and monitoring of return or resettlement after displacement. The Representative met with several of the NHRC commissioners in Kathmandu as well as with the staff of the NHRC regional office in Biratnagar. The NHRC confirmed to him that it has established a unit to focus on IDPs and disappearances, a step the Representative welcomes. He also notes that in a report submitted to him, NHRC indicated that in Kathmandu it received 10 cases involving 36 IDPs and in Biratnagar, 2 cases involving 2 IDPs. A number of human rights NGOs have questioned the Commission’s capacity in the present political context to fully implement its mandate. The Representative hopes that NHRC will in the future develop its capacities to fulfil its tasks as an independent human rights institution able to provide human rights support to IDPs.

30. As regards civil society organizations, the Representative met with a large number of national NGOs producing support to IDPs. He was impressed by their commitment, the strength of their analyses and understanding of the issues affecting IDPs, as well as by the activities they reported to him. The national NGO community is an essential actor in the protection of persons

during displacement, through their own efforts to identify IDPs, through the provision of material assistance, and through their monitoring and reporting on the human rights situation of IDPs. From this perspective, the Representative was particularly concerned to learn that many NGO staff members felt threatened by the arrest of human rights defenders by State security services and are afraid of possible acts of violence or threats by the CPN-M.

B. International actors

31. The United Nations, bilateral donors and international NGOs had to shift from a development focus in Nepal to a humanitarian one. This shift was not a rapid one, but it can now be said that it is taking place, as witnessed by the recruitment and deployment of personnel with human rights and humanitarian expertise, and changes in funding priorities. The recognition by the international community of the situation of IDPs appears to have been relatively slow, in part because of the low visibility of IDPs in the country, but also because of the slow change in focus from development activities to humanitarian ones.

32. In August 2004, OCHA deployed one staff member to serve as adviser to the Resident Coordinator on humanitarian coordination concerns, including IDPs. OCHA has already established field offices in Nepalgunj and Biratnagar with a mandate that includes a focus on IDPs. In June 2004, an OCHA/IDP mission recommended to expand community based assistance activities in order to address the humanitarian needs of those affected by the conflict.¹⁰ At the time of writing, OCHA is in the process of recruiting additional staff to Nepal. The Representative was impressed by the efforts of OCHA to raise the profile of IDP concerns in Nepal and is confident that the increased OCHA presence will contribute to greater United Nations support for IDPs, including in the implementation of the Guiding Principles on Internal Displacement.

33. The UNCT as well as bilateral donor agencies and international NGOs have in the past occasionally dealt with problems faced by IDPs but not addressed the displacement crisis in a comprehensive and systematic way. Thus, the response by the international community to the IDP situation in Nepal has so far been insufficient. Along with OCHA and OHCHR, other UNCT members have a responsibility to strengthen the implementation of the Guiding Principles, to support and contribute to the prevention of displacement and to the protection of those who are displaced and to the implementation of durable solutions. The Representative met with the full Country Team during his visit to Nepal and was very encouraged by the growing awareness and understanding of the IDP challenge in Nepal. He was also encouraged by the work done after his visit to prepare a Consolidated Appeal for Nepal for 2005-2006 with a strong IDP component. The Representative urges the Country Team, with coordination provided by OCHA, to make every effort to fully meet the challenge of addressing the protection and assistance needs of IDPs in Nepal.

34. The Representative welcomes the Government's signing, in April 2005, of an agreement with OHCHR, and the subsequent deployment of OHCHR staff to Nepal. Monitoring of human rights on the ground and action to end impunity will provide an essential basis for the prevention of further displacement as well as the eventual return of displaced persons to their homes. The field-based staff of OHCHR will have a particular role in identifying and monitoring human rights violations that lead to displacement.

IV. PROTECTION NEEDS OF THE INTERNALLY DISPLACED PERSONS

A. The protection framework

35. Internally displaced persons in Nepal, as citizens of their country, remain entitled to enjoy the protection of all guarantees of international human rights and humanitarian law ratified by Nepal or applicable on the basis of international customary law. They do not lose, as a consequence of their being displaced, the rights provided to the population at large. At the same time, they have specific needs that are distinct from those of the non-displaced population and that have to be addressed by specific protection and assistance activities. These rights of IDPs are reflected and specified in the Guiding Principles on Internal Displacement, which provide the basic international norms addressing issues of internal displacement. These guiding Principles approach displacement from the perspective of the needs of internally displaced persons and identify the rights and guarantees relevant for their protection. They focus on all three phases of displacement: protection from displacement, protection during displacement and protection after the reasons for displacement have ceased to exist. The Guiding Principles stress that the notion of “internally displaced person” includes all those who have left their homes and places of habitual residence involuntarily, in particular as a result of or in order to avoid the effects of armed conflict, situations of generalized violence or violations of human rights, and who have not crossed an internationally recognized border.

36. The national authorities have the primary duty and responsibility to provide protection of the human rights of IDPs and humanitarian assistance to them within their jurisdiction. Such persons have the right to request and receive such protection and assistance from the Government (Principle 3). In his previous report to the Commission on Human Rights (E/CN.4/2005/84), the Representative laid out his understanding of protection of the human rights of IDPs. He stressed that protection must not be limited to securing the survival and physical security of IDPs but relates to all relevant guarantees provided to them by international human rights and humanitarian law. For practical reasons, the rights addressing the specific needs of displaced persons that have to be fulfilled in order to guarantee the protection and assistance of the IDPs can be divided into four categories, namely (i) rights related to physical security and integrity (e.g. right to life, freedom from torture and cruel and inhuman treatment, assault, arbitrary detention, disappearances, and threats concerning the above); (ii) basic rights related to basic necessities of life (e.g. the right to food, potable water, shelter, adequate clothing, adequate health services and sanitation); (iii) rights related to other economic, social and cultural protection needs (e.g. the right to work, receive restitution or compensation for lost property, and to be provided with or have access to education); and (iv) rights related to other civil and political protection needs (e.g. freedom of speech, the rights to personal documentation, political participation, access to court and freedom from discrimination). The State has the obligation to prevent violations of these rights from occurring or from re-occurring, to stop them while they are happening and to ensure reparation and full rehabilitation if they have happened. Only the full respect of all these aspects of these needs and rights can ensure adequate protection of the human rights of IDPs.

37. The Representative notes that there are situations in which the State does not have the capacity to fulfil these obligations, either because it does not have the means, financial or other, or because it does not have the de facto authority or control over certain areas or spaces. In this case, the State has an obligation to allow others to fulfil this duty, in particular international

agencies and organizations. United Nations agencies, international NGOs and other international actors may, besides advocacy on behalf of the rights of the displaced, work through the Government in order to assist it in its efforts to protect the rights of IDPs, complement the Government's efforts, or, if need be, substitute for the Government in the absence of its willingness or ability to protect the rights of the displaced.

38. In the case of Nepal, there are large areas where the State has only a very limited presence or where civilian authorities are absent and which can be considered either no-man's land or under the control of the CPN-M. Where there is no direct State control, the de facto authorities are responsible for the well-being of the civilian population in general and of the displaced persons in particular. In accordance with the Guiding Principles, the CPN-M, without prejudice to their legal status is therefore, obliged to respect the rights of the people concerned (Principle 2). This means that the CPN-M is responsible for avoiding all actions that could lead the population to be displaced; for protecting the population that may have fled into the areas under their control; and for respecting the rights of the IDPs should these persons decide to return or to resettle in areas that are under their control. Although armed groups in general, and the CPN-M in particular, are not subjects of international law, they nevertheless may have obligations under international law. Common article 3 of the Geneva Conventions of 12 August 1949 provides basic obligations for all parties to a conflict irrespective of their status. In this, basic protection is given to the civilian population and to those who are hors combat. It outlines the obligations that all parties to the conflict have towards the non-combatant population; in particular the prohibition of torture and cruel and inhuman treatment, the prohibition of taking hostages, the obligation to care for the sick and the wounded, and to treat enemy combatants in their custody humanely. Other duties stem from international customary law. In the context of displacement in Nepal, the following rules of customary international humanitarian law, as identified in a recent study commissioned by the International Committee of the Red Cross (ICRC) are particularly relevant: parties to a non-international armed conflict may not order the displacement of the civilian population, in whole or in part, for reasons related to the conflict, unless the security of the civilians or imperative military reasons so demand¹¹ Furthermore, acts or threats of violence the primary purpose of which is to spread terror among the civilian population and collective punishments are strictly prohibited by virtue of customary international humanitarian law.¹²

B. Protection against displacement

39. From the information received during the mission to Nepal, and given the magnitude of the phenomenon of internal displacement, the Representative concludes that the parties to the conflict are not taking sufficient measures to avoid displacement and to protect people from being displaced.

40. People left their villages for different reasons: they were being directly threatened and targeted by the insurgency; they witnessed extrajudicial killings, lynching and seizure or destruction of property with no protection from the State; they felt that the taxation and other demands for support of the CPN-M were no longer bearable; they refused to relinquish a family member to the conflict; or they were afraid of being caught up in the crossfire. Some of these acts amount to creating arbitrary displacement (Guiding Principle 6) as prohibited, inter alia, by

customary humanitarian law. A rapid assessment of the situation of 56 displaced families in the Biratnagar area prepared shortly before the Representative's visit to Morang district revealed that 40 per cent had left because of threats made to them, 30 per cent because of confiscation of their property and the remaining 30 per cent for a variety of reasons including killing of a family member, spying, torture and ill-treatment, or extortion. The Representative also heard of cases where teachers and school children had been abducted for extended periods, only to be accused upon their return of being CPN-M supporters because they had survived.

41. The Representative was troubled about the emerging phenomenon of vigilantism as described above. In the past some of these self-defence groups have received the tacit or explicit support or acquiescence of politicians, ministers and other State actors, who visibly did not take into consideration the danger to which they were exposing the people. Experiences in other contexts have shown that such behaviour can spiral the conflict and turn it into a full-fledged civil war. The Representative welcomes the fact that no new incidents have been reported during recent months and urges the Government and the RNA to continue their stated efforts to condemn acts of vigilantism and to refrain from encouraging them.

42. Although the necessary legal framework exists, the Representative did not receive information that those responsible for transgressions of the law were being held accountable or that they were being sanctioned, and that some form of reparation was being offered to the victims. It would therefore seem that a climate of impunity still prevails in Nepal.

43. The Representative would like to remind all parties to the conflict that they are responsible for the well-being of the civilian population and for avoiding the creation of circumstances that would induce people to leave their homes involuntarily (Guiding Principles 5 and 6).

C. Protection during displacement

44. Although this does not seem to constitute a generalized pattern, threats to life, the corporal integrity and the physical security of people once they are in displacement were also mentioned. The Representative was informed that in Nepalgunj and in Dailekh district headquarters, some of the IDPs had been individually targeted and assassinated between December 2004 and April 2005, allegedly by the CPN-M. In Dailekh district headquarters, a bomb reportedly exploded close to the IDP camp, allegedly planted by the CPN-M. Such acts are in violation of the norms of international law reflected in Guiding Principles 10 (para. 2 (a)) and 11 (para. 2 (c)).

45. The widespread climate of fear among the IDPs was palpable. Many of the displaced persons interviewed by the Representative felt insecure at their places of refuge, fearing both reprisals by the CPN-M and suspicions, allegations and other measures by State authorities, and therefore preferred to hide their situation. Women reported that incidents of domestic violence and sexual abuse were increasing.

46. As regards the rights of IDPs related to the basic necessities of life (Principles 18 and 19), it should be noted that being a displaced person does not automatically mean that one is in need of humanitarian assistance such as food or shelter in camps. Depending on where IDPs in Nepal come from and on their possibilities to integrate in their host communities and maintain their

own coping mechanisms, they do not always need humanitarian relief or aid. For the time being, Nepal is not confronted with a humanitarian crisis in the traditional sense requiring wide distribution of food or setting up of huge tented camps. Nevertheless, there are reasons for grave concerns about the humanitarian needs and human rights situation of the displaced.

47. Situations requiring emergency aid do sporadically occur, especially in the context of mass flights of villages referred to above. The makeshift camps the Representative visited in Nepalgunj and in Dailekh were according to the IDPs themselves not usual and many IDPs did not sleep in them. However, for the few that did use the camps to sleep in, there was no protection of the camps' perimeter in the suburban areas. Furthermore, sleeping in the camps seemed to be the only solution for those who did not have the means to rent accommodation in safer places or stay with relatives. Most of the permanent camp dwellers were single-parent households, mainly headed by women, as well as elderly people without family support, living in makeshift shelters. While this is understandable in the first weeks of an emergency and with an unexpected influx of people, the Representative is of the opinion that half a year later, even if very few people still live there, it is not acceptable for them to continue to live in open-sided tents with a mere tarpaulin top as a roof.

48. In the camps visited by the Representative, the pervasive problem for the IDPs was the lack of a consistent response by the Government and the various aid agencies in the distribution of aid. This is understandable since massive displacement has not been the rule in Nepal and the international agencies have tended to focus on development projects and not on emergency aid. However, in the cases where several scores or hundreds of families left their villages to seek shelter in the nearest district headquarter, local resources have been overstretched. The coherent response that would help them face these needs has not been forthcoming. In Dailekh, the local Nepal Red Cross branch confirmed that they had only been able to distribute rice portions that were far below the Sphere Minimum Standards in Disaster Response.¹³ This was corroborated by returnees interviewed by the Representative, who stated that they had returned to their villages despite the prevalent insecurity in order to be able to plant crops and supply themselves to meet their basic needs, since the food in the temporary camps was insufficient.

49. On these and other occasions it became clear that although emergency aid had been provided, it was inadequate and distributed haphazardly. There was no coherent assistance and protection response in place, neither from the Government, nor from the national or international organizations.

50. Furthermore, no particular effort seems to have been made to include women in the planning and distribution of the basic supplies.

51. The Government and international agencies must develop capacities to address emergency situations, even if small in scale and short in duration, flexibly and efficiently, as well as monitoring systems which could help identify such situations without delay. While the creation of camps or slum-like settlements is not always avoidable, such facilities should be of a temporary nature, since they constitute among other risks, a health and increased security risk for IDPs. Integration into the local host communities should be facilitated. It is necessary to

conceive solutions that would strengthen the existing coping mechanisms. Helping IDPs integrate into their new places of settlement with relatives or on their own, in particular through job creation schemes, would enable the IDPs to cope for themselves as far as possible until more durable solutions can be found.

52. Regarding rights related to other economic, social and cultural protection needs, most of the IDPs interviewed by the Representative prioritized the following problems: lack of consistent aid, both food and non-food; difficulties of access to schooling for children; lack of work and access to subsistence opportunities; difficult access to health and care facilities.

53. Women were in particular worried about access to education for their children and the lack of work opportunities. They pointed out to the lack of medical care, mainly for children. When asked, many confessed being afraid of having to resort to prostitution or to send their children into indentured labour in order for their offspring to survive, because they themselves could no longer pay for their upkeep. They also stated that they had little or no access to reproductive health services since they had been displaced. Although they often came from regions with an already low medical coverage, health risks had increased as a result of displacement and therefore needed greater attention. The situation was particularly dire for women heads of households and for elderly people without families to care for them.

54. Regarding education (Guiding Principle 23), internally displaced children face several problems. In particular, they often lack the transfer papers issued by the school in the village or town of origin necessary to be enrolled in a new school. As the Representative noted with appreciation, in many places access to schools for displaced children is granted in a flexible and non-bureaucratic manner. But education officers in the districts visited by the Representative confirmed that the high increase of primary school enrolments without the corresponding increase in the State budget affects the quality of education. Finally, once families exhaust their savings or the support capacity of their relatives, sending children to school becomes too costly for many parents. The difficult education situation is exacerbated by the fact that many private, and a considerable number of public schools, have closed due to threats and acts of violence by the CPN-M.

55. Another problem relates to property rights (Guiding Principle 21). While some displaced persons were able to leave family members behind to look after their property, others had to leave it unattended or hand it over to the CPN-M. There are no mechanisms to protect the houses and land left behind. In cases where property had been given as collateral to a bank loan, owners now face the problem of having to honour their obligations vis-à-vis the bank.

56. Regarding other civil and political protection needs, many IDPs face problems due to lacking documentation (see Guiding Principle 20), both from their places of origin, but also in their new places of residence. Authorities have to date not taken any measures to facilitate the issuance of new documents to replace documents lost in the course of displacement. This is a major obstacle for IDPs to integrate into the towns and district headquarters they fled to. It becomes a human rights problem because it bars citizens from all access to public services and participation. The Representative is especially worried that no particular effort seems to have been made to help the IDPs register their newly born children.

57. Registration issues are also particularly important in an electoral context. Without appropriate documentation and legislation, IDPs cannot exercise their voting rights, which is contrary to Guiding Principle 22. The Representative is not convinced that all efforts were being undertaken to ensure that the IDPs will be able to participate in any electoral process.

58. The Representative also points out that according to the information received, neither the IDPs in the camps, nor the IDPs living on their own or with relatives have been informed of their rights or consulted in any form as to what their needs were, nor as to how their needs could be best met. It seems that women are in particular barred from any incipient consultation mechanisms (Guiding Principle 18, para. 3). The consultation of IDPs, especially women, in all stages of planning and distribution of assistance as to other forms of protection needs they may have is a cornerstone for the respect of their human rights.

59. The Representative notes that the Government respects the freedom of movement of internally displaced persons. In contrast, this freedom is often impeded by frequent general strikes (*bandh*) imposed by CPN-M and road-blockades (Guiding Principle 15).

60. Great care must be taken to avoid discrimination in assistance and protection of IDPs (Guiding Principles 1 and 4). While there is an inherent difficulty of ascertaining the needs of people who often may want to remain anonymous, reports about instances of discrimination among castes in the distribution of assistance are troubling. Furthermore, the inherent difficulties of the registration process described above and the narrow definition of categories of persons entitled to registration and financial support are obstacles to assistance or protection that must be addressed.

D. Protection after displacement

61. At present, few IDPs have returned to their homes or resettled on a long-term basis in new locations. However, the Representative did have the opportunity to speak to some returnees in Kapilvastu and Dailekh districts. In all these cases, the few people who had returned did not feel safe. They had returned knowingly but thought that returning to an insecure environment was a better option than remaining where they had fled to. Some confirmed that they returned to their places of origin because food in the camps had been insufficient. In other cases, the burden on the host families had grown too heavy, and these IDPs felt that they had no other option than to return and face insecurity.

62. With regard to possibilities for IDPs to return home, the Representative was informed by the Government that the army has made significant efforts to deploy its forces in an additional 150 locations across the country. The Government indicated its hope that the army's increased presence will strengthen security and allow the normal civilian administration and State services to resume. Furthermore, in Banke district, according to local authorities, there were plans for resettlement in an isolated wood area some 30 km outside of Nepalgunj.

63. As regards return, the Representative would like to draw the attention of both the Government and the CPN-M to two fundamental aspects. First, IDPs must be consulted and given a choice as to what they desire. Forced resettlement into camps and other places without prior consultation of IDPs regarding their establishment, or regarding whether they would like to be settled there, is contrary to Guiding Principle 28.

64. Secondly, safety and security are prerequisites for any return of IDPs (Guiding Principle 28). If people feel compelled to knowingly return to unsafe areas, their protection needs during their displacement have not been sufficiently met. The Representative agrees with the Government that improved security and delivery of social services would provide a minimum requirement for the eventual return of IDPs. The Representative notes, in addition, that respect for fundamental human rights in the countryside and places of origin of the population is an essential requirement before IDPs can choose to return. No matter where the IDPs live currently or will return to, the authorities in the area must be able and willing to guarantee the returnees or resettled persons safety and security, in order to avoid further displacement. Again, if they are unable or unwilling to do so, they have an obligation to allow others to do it instead. In this regard, the Representative notes that the field operation recently established by OHCHR should be a major support, as it will be able to monitor the safety and security of the returnees and resettled IDPs.

V. CONCLUSIONS AND RECOMMENDATIONS

65. **Regarding the situation of internal displacement in Nepal, the Representative draws the following main conclusions:**

(a) Nepal is facing a serious problem of conflict-induced displacement. While this situation does not amount to a humanitarian crisis in the usual sense, there are reasons for grave concerns about the humanitarian and human rights situation of many of the IDPs. They need to be addressed urgently;

(b) A large number of persons, several hundreds of thousands of persons or more were forced to leave or to flee their homes in areas affected by the ongoing conflict. While many, if not the majority of them, moved on to India, estimates seem realistic that there are presently between 100,000 and a few hundred thousand internally displaced persons in Nepal;

(c) The reasons leading to this displacement are complex and encompass direct acts of violence or threats against the victims personally; confiscation of property, refusal to let their children be forcibly recruited or to be forced to contribute with food and money to the insurgency; fear of being subject to reprisals by the RNA or being caught in the crossfire; a general feeling of insecurity and uncertainty; the conflict-induced collapse of local infrastructures and coping mechanisms within villages; and economic reasons, since the economic decline in the traditionally poorer areas of Nepal has been hastened by the conflict. While Maoist violence may seem to be the principal cause for displacement in Nepal today, it is not the only one;

(d) The main problems and needs faced by IDPs in Nepal are security and protection; discrimination; food, shelter and health; access to education for children; documentation; sexual abuse and increased domestic violence; risk of increased female prostitution; risk of increased child labour; lack of protection of property rights; and denial of voting and electoral rights;

(e) Depending on where they came from, their possibilities to integrate in their host communities and to maintain their own coping mechanisms, the IDPs do not always need humanitarian relief or aid. However, on the occasions when emergency aid has been provided, it has not always been adequate and systematic. There was no coherent assistance and protection response in place, neither from the Government, nor from the national or international organizations;

(f) Internally displaced persons in Nepal have been largely neglected in the past. While the Government has set up some assistance programmes on several occasions, resources made available for IDPs have been inadequate. Furthermore, by solely focusing on financial compensation and support, the Government has largely neglected other assistance and protection needs of IDPs. The United Nations as well as bilateral donor agencies and international NGOs have in the past dealt with problems faced by IDPs in an ad hoc manner and have not addressed the displacement crisis in a comprehensive and systematic way. So far, the response by the Government and the international community to the IDP situation in Nepal has been insufficient.

66. In order to take the necessary measures to prevent and to protect against conflict-induced displacement in Nepal,

(a) The Representative recommends to the Government:

- To continue to condemn the emergence of self-defence or vigilante groups and discourage them from taking the law into their hands;
- To immediately investigate all incidences of extrajudicial executions and punish the perpetrators;
- To ensure that both in law and in practice all people arrested by the RNA are immediately transferred and tried by civilian judicial authorities;
- To order the RNA to avoid collateral damages to the civilian population when planning their open and covert military operations, and especially to refrain from putting the civilian population in danger. In particular, this means refraining from methods that put the civilians, who wish to remain neutral, at risk of reprisals from the CPN-Maoists;
- To strive for the re-establishment of the administration in areas outside of the district centres;
- To ratify Protocol Additional II to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts and take all necessary measures to implement its article 17;
- To allow and enable the National Human Rights Commission to function in conformity with the Paris Principles.

(b) The Representative recommends to the CPN-M:

- **To respect and ensure respect for common article 3 to the Geneva Conventions of 1949 and relevant norms of customary international humanitarian law and publicly commit themselves to go beyond these minimal standards. This means concretely to distinguish between combatants and persons who do not or no longer participate in the combat; to abstain from killing civilians, spreading terror among them, extorting them, abducting teachers and school children for indoctrination and training purposes, restricting the movements of civilians and largely contributing to a general climate of fear and uncertainty;**
- **To make a public statement of commitment to the Guiding Principles on Internal Displacement and to implement them in practice.**

(c) The Representative recommends to the UNCT and other international actors:

- **To monitor and address, through the Office of the High Commissioner for Human Rights in Nepal, human rights situations that could lead to conflict-induced displacement and to support NGOs involved in such monitoring.**

67. Regarding protection during displacement,

(a) The Representative recommends to the Government:

- **To finalize, in cooperation with relevant United Nations agencies, and adopt as soon as possible a comprehensive national IDP policy based on a non-discriminatory and broad notion of “internally displaced persons”, as provided for by the Guiding Principles on Internal Displacement and in accordance with Nepal’s international human rights obligations as expressed in these Principles, covering all the protection and assistance needs of the displaced;**
- **To adopt necessary legislation and, if necessary, to bring existing legislation in line with such a policy, including in the areas of education or political rights, and to take the necessary institutional measures, with a view to its full implementation;**
- **To consult with the IDPs concerned the implementation of the national IDP policy, where appropriate;**
- **To provide in the budget and with support from the international community, where needed, the resources necessary to implement the new IDP policy;**
- **To train national and local authorities, both civil and military, on the Guiding Principles and on the rights of IDPs as reflected in them, and on the protection of the civilian population;**

- To assess through appropriate means, including surveys undertaken by international agencies or NGOs or through information and counselling centres run by such organizations, the number and situation of internally displaced persons;
 - To ensure that school admission, access to health care and other services is granted on a needs basis and does not depend on registration;
 - To make particular efforts to facilitate the enrolment of displaced children in schools even when they cannot produce the necessary documentation. Particular attention should be paid to the schooling of girl children. Furthermore, efforts should be made to ensure that the IDP children can remain in school and not be obliged to leave school to work for their own sustenance;
 - To support the coping mechanisms that the IDPs have developed and to help the IDPs to remain self-sufficient;
 - To support local communities receiving IDPs to cope with the additional burden;
 - To include and consult IDPs in the planning of new sites for temporary resettlement;
 - To ensure that any extrajudicial killing of an internally displaced person be appropriately investigated and the necessary protection measures taken in consultation with the IDPs concerned;
 - To ensure that IDP property left behind is adequately protected;
 - To facilitate support for IDPs by international agencies, donor agencies and NGOs by granting the necessary authorizations, facilitating access to the IDPs and by fully respecting the Basic Operating Guidelines of the United Nations agencies of 2003 and the donor agencies respectively.
- (b) The Representative recommends to the CPN-M:
- To fully respect the rights of persons displaced in the areas controlled by the CPN-M, in accordance with the Guiding Principles;
 - To protect and respect the property belonging to IDPs which has been left behind;
 - To allow free access of humanitarian aid and human rights monitors to these areas and to fully respect the Basic Operating Guidelines of the United Nations agencies and donor agencies.

- (c) **The Representative recommends to UNCT and other international actors:**
- **To draw up a comprehensive strategy and create a framework to respond to the human rights and humanitarian needs of IDPs in a coordinated and effective manner and to plan for a more consistent response in case of further displacement, in order to avoid protection and assistance gaps;**
 - **In doing so, to adopt an approach that integrates support for internally displaced persons with support for other civilians affected by the conflict without thereby neglecting the protection and assistance needs that are specific to those who are displaced;**
 - **To support, complement or substitute, as appropriate, the efforts undertaken by the Government to protect and assist the IDPs;**
 - **To provide the necessary financial means to effectively address the protection and assistance needs of internally displaced persons.**

68. **Regarding protection after displacement,**

(a) **The Representative recommends to the Government:**

- **To create conditions conducive to the return in safety and with dignity of the persons displaced from their homes;**
- **To recognize the right of displaced persons to choose freely between returning to their homes and resettling in another part of the country;**
- **To include in its IDP policy all necessary measures aimed at facilitating the return of displaced persons, including necessary measures to allow for the restitution of property, and to implement them.**

(b) **The Representative recommends to the CPN-M:**

- **To allow for the unimpeded return of displaced persons, in safety and with dignity, and to respect their human rights including rights related to the protection of property;**
- **To grant access to organizations providing assistance to returnees;**
- **To grant access to human rights monitors assessing the human rights situation of returnees.**

(c) **The Representative recommends to the UNCT and other international actors:**

- **To support measures aimed at finding and implementing durable solutions for internally displaced persons;**
- **To monitor, through the Office of the High Commissioner for Human Rights in Nepal and NGOs as the case may be, the human rights situation of returnees and to address violations when necessary.**

69. **The Representative recommends to the National Human Rights Commission, working in conformity with the Paris Principles, and to NGOs and other civil society actors to take measures within the framework of their mandates to contribute to the protection and assistance of internally displaced persons.**

Notes

¹ See Asian Developing Bank, Outlook 2005 Nepal <http://www.adb.org/Documents/Books/ADO/2005/nep.asp> consulted on 26 May 2005.

² See IDD's Report on the Mission, available online at <http://www.reliefweb.int/idp/docs/reports/2005/IDDRRepNepal11-22April05.pdf>.

³ Proclamation to the Nation from His Majesty King Gyanendra Bir Bikram Shah Dev, 1 February 2005 (<http://www.mofa.gov.np/proclamation.htm>).

⁴ Nepal Human Rights Commission, http://www.nhrnepal.org/publication/doc/reports/Annual_Report_English_2004.pdf; See also the Report of the Working Group on Enforced or Involuntary Disappearances, Mission to Nepal 6-14 December 2004, E/CN.4/2005/65/Add.1, paragraph 7-9, 25ff.

⁵ See Report of the Working Group on Enforced or Involuntary Disappearances Mission to Nepal 6-14 December 2004 (E/CN.4/2005/65/Add.1), paragraph 25ff. See also INSEC, Human Rights Yearbook 2005, <http://inseconline.org/hryb005.htm> for an executive summary.

⁶ See study undertaken by Action contre la Faim in October 2004; see also WFP report, February 2005.

⁷ Relief Program for Internally Displaced People Due to Conflict for FY 2004/2005, HMG, 13 August 2004, p. 4.

⁸ Rana appeals for support, Rising Nepal, 7 May 2005; Nepal minister promises restored democracy, commitment to aid accords, TurkiskPress.com, 5 May 2005.

⁹ Relief Program for Internally Displaced People Due to Conflict FY 2004/2005, *op. cit.*

¹⁰ Report of the OCHA/IDP Unit Mission to Nepal, 31 May-12 June 2004.

¹¹ Jean-Marie Henckaerts/Louise Doswald-Beck, *Customary International Humanitarian Law*, Volume I: Rules, ICRC/Cambridge University Press 2005, Rule 129, p. 45.

¹² *Id.*, Rules 2 and 103.

¹³ 200 grams per person per day instead of 500 grams.
