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

**Report of the Representative of the Secretary-General on the  
Human Rights of Internally Displaced Persons, Walter Kälin\***

**Addendum**

**PROTECTION OF INTERNALLY DISPLACED PERSONS  
IN SITUATIONS OF NATURAL DISASTERS**

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\* This report was submitted late to include final revisions made by the mandate holder.

## Summary

This addendum is submitted in accordance with Human Rights Council resolution 6/32 requesting the Representative of the Secretary-General on the Human Rights of Internally Displaced Persons (the Representative) to “continue, through continuous dialogue with Governments and intergovernmental and non-governmental organizations concerned, his [...] efforts to promote the protection of human rights of internally displaced persons in the context of natural disasters”.<sup>1</sup> The report first sets out the relevant legal framework and then reviews typical human rights protection challenges which would seem to be symptomatic of disaster-induced displacement, particularly in the context of sudden-onset disasters, such as flooding, earthquakes or cyclones, which provoke a sudden displacement of persons. The report further examines how the protection of persons displaced by such disasters can be strengthened and concludes with recommendations of the Representative to Governments and the international community in general.

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<sup>1</sup> Mandate of the Representative of the Secretary-General on the human rights of internally displaced persons, HRC Res. 6/32, para. 7 (g).

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## Introduction

1. This report is submitted in accordance with Human Rights Council resolution 6/32 requesting the Representative of the Secretary-General on the Human Rights of Internally Displaced Persons (the Representative) to “continue, through continuous dialogue with Governments and intergovernmental and non-governmental organizations concerned, his [...] efforts to promote the protection of human rights of internally displaced persons in the context of natural disasters”.<sup>2</sup> The Representative has paid close attention to the human rights protection of displaced persons in situations of natural disasters since assuming his mandate in 2004. The Guiding Principles on Internal Displacement (hereinafter the Guiding Principles) cover, inter alia, persons displaced within their country “as a result of or in order to avoid the effects of [...] natural or human-made disasters, and who have not crossed an internationally recognized State border”.<sup>3</sup>

2. Disastrous events not only displace an increasing number of persons, but all too often insufficient attention is paid to the multiple human rights challenges they may face in these situations. In his examination of situations of persons displaced by natural disasters, the Representative found that their human rights often suffered in the aftermath of the disaster and displacement not only because of weaknesses in the disaster response but also because disaster preparedness and disaster mitigation measures were not or inadequately implemented before disaster struck as would have been required by due diligence obligations under international human rights law. It is likely that predictable effects of climate change will exacerbate disasters and related displacement challenges in the future.<sup>4</sup>

3. Women and children, especially if they are heads of households, older persons, persons with disabilities, persons who are seriously ill or injured, the poor and persons belonging to socially marginalized groups (including in many cases migrants, persons belonging to indigenous groups or minorities) often suffer the most coping capacities are limited and the response often does not take into account their specific situation and needs. Furthermore, in the aftermath of natural disasters, pre-existing vulnerabilities and patterns of discrimination and human rights violations are often exacerbated, putting already marginalized and vulnerable groups at an increased risk of human rights abuses.

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<sup>2</sup> Mandate of the Representative of the Secretary-General on the human rights of internally displaced persons, HRC Res. 6/32, para. 7 (g).

<sup>3</sup> E/CN.4/1998/53/Add.2, Annex, para. 2.

<sup>4</sup> See Walter Kälin “Displacement Caused by the Effects of Climate Change”, Paper presented to the United Nations Inter-Agency Standing Committee Group on Climate Change (10 October 2008). Available from: [http://www.brookings.edu/papers/2008/1016\\_climate\\_change\\_kalin.aspx](http://www.brookings.edu/papers/2008/1016_climate_change_kalin.aspx).

4. The result can be insufficient or inappropriate protection from continuing threats caused by the effects of the disaster; unequal access to humanitarian assistance, in particular for displaced women; discrimination in the provision of assistance; sexual and gender based violence, particularly in collective shelters or camps; infringements of the right to education, e.g. when schools are used as shelters for a prolonged period of time; non-replacement of lost, confiscated or destroyed documentation; economic and sexual exploitation of children in the absence of sufficient assistance, in particular during the early recovery phase; unsafe or involuntary returns or settlements elsewhere in the country; failure to reconstitute property and reconstruct houses or ensure compensation; or lack of access to legal remedies.

5. This disregard for the human rights of the victims is not necessarily intentional, but often results from inappropriate policies, a lack of capacity or simple neglect or oversight. Disaster prevention, mitigation and preparedness guided by a human rights-based contextual analysis is therefore fundamental. Human rights considerations based on an analysis of specific vulnerabilities of affected persons, should, therefore, be included in the design of national disaster management policies of both national authorities and humanitarian organizations at the earliest opportunity, and particularly at the contingency planning phase. This will enhance preparedness of all concerned actors to address relevant human rights concerns and, therefore, help to prevent violations. The integration of a rights-based approach in the design of national disaster management policies and in humanitarian operations by international agencies and organizations, and the implementation of this approach would be necessary in order to prevent violations from occurring.

6. The activities of the Representative in the past four years in the area of disaster-induced displacement form the basis for this report. In particular, the report reflects findings of a series of working visits the Representative carried out in the course of the past year in order to seek a better understanding of the challenges with regard to the protection of persons affected and displaced by natural disasters and to learn from experience gained by governments confronted with serious natural disasters. From 14 to 18 January 2008, the Representative visited Houston and the Gulf region of the United States for a working visit to study the impact of Hurricane Katrina on the persons still displaced as a result of this disaster, which had devastated the south-eastern coast of the country between 29 August and 1 September 2005.<sup>5</sup> From 6 to 10 May of the same year, the Representative was in Honduras to identify lessons learned during the response to Hurricane Mitch in late 1998 which destroyed 33,000 houses and damaged 50,000 others as well as from disaster response operations conducted during subsequent hurricane seasons.<sup>6</sup> In June and July 2008, the Representative undertook successive visits to Mozambique, where recurring floods displace each year tens of thousands of persons, and to Madagascar, which is exposed to cyclones nearly every year.<sup>7</sup>

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<sup>5</sup> A/HRC/8/6, paras. 51-53 and A/63/286, paras. 47-50.

<sup>6</sup> A/63/286, paras. 51-54.

<sup>7</sup> A/63/286, paras. 55-62.

7. The report is also based on the outcomes of a series of regional and national workshops conducted by the Representative. On the occasion of his visit to New Orleans, he specifically focused on the Framework for Durable Solutions for Internally Displaced Persons in the context of natural disasters in two workshops with city officials and with affected persons. In Panama City, a two-day workshop (12-13 May 2008) convened disaster risk reduction and response specialists from Honduras, Guatemala, El Salvador, Costa Rica and Panamá, as well as from the United Nations and the International Organisation for Migration (IOM) and donors. Similar workshops were held in July 2008 for national actors in Antananarivo, Madagascar and for authorities from the Southern African region in Johannesburg. The main purpose of these workshops was to emphasize the importance of a rights-based approach to disaster response. Another national workshop in Maputo, Mozambique (29-30 June 2008) focused on the human rights challenges around forced evacuations and resettlements.

8. The present report sets out the relevant legal framework and reviews typical human rights protection challenges which would seem to be symptomatic of disaster-induced displacement, particularly in the context of sudden-onset disasters, such as flooding, earthquakes or cyclones, which provoke an equally sudden displacement of persons. The report further examines how the protection of persons displaced by such disasters can be strengthened and concludes with recommendations. While the Representative, in line with his mandate, focuses on the displaced among the victims of natural disasters, many of the findings presented here would also apply to non-displaced populations affected by such events.

## **I. THE RELEVANT NORMATIVE FRAMEWORK**

9. The State has the primary responsibility not only to respect, but also to protect and fulfil the human rights of all the people living in its territory or jurisdiction, including the displaced.<sup>8</sup> Therefore, international human rights law obliges States, to the extent possible, to prevent or at least mitigate the negative effects of natural hazards and, in particular, protect persons displaced by natural disasters from abuses and violations of human rights in the emergency, recovery and reconstruction phases.

### **A. Interpretation of human rights treaties**

10. The major international human rights conventions do not contain any specific provisions regarding the protection of persons displaced by natural disasters. Nevertheless, these treaties apply to internally displaced persons regardless of the cause of their displacement. The United Nations treaty bodies have started, on occasion, to address human rights problems faced by persons displaced by natural disasters and emphasized the need to ensure that natural disaster management policies are brought into line with human rights standards. Thus, the Human Rights

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<sup>8</sup> See Guiding Principle 3, stressing that “National authorities have the primary duty and responsibility to provide protection and humanitarian assistance to internally displaced persons within their jurisdiction.”

Committee stressed the need to review relevant “practices and policies to ensure the full implementation of [the] obligation to protect life and of the prohibition of discrimination, whether direct or indirect, as well as of the United Nations Guiding Principles on Internal Displacement, in matters related to disaster prevention and preparedness, emergency assistance and relief measures”.<sup>9</sup> In the particular case of Hurricane Katrina, the Committee has also highlighted the importance of ensuring “that the rights of the poor, and in particular African-Americans, are fully taken into consideration in the reconstruction plans with regard to access to housing, education and healthcare”.<sup>10</sup> Similarly, the Committee on the Elimination of Racial Discrimination recommended to increase “efforts in order to facilitate the return of persons displaced by Hurricane Katrina to their homes, if feasible, or to guarantee access to adequate and affordable housing, where possible in their place of habitual residence”; it furthermore suggested “that every effort is made to ensure genuine consultation and participation of persons displaced [...] in the design and implementation of all decisions affecting them”.<sup>11</sup> The Committee on the Elimination of Discrimination against Women recommended to “ensure that the promotion of gender equality and sensitization to gender equality issues is an explicit component of, and is fully implemented in, [...] national development plans and policies” including those aimed at “natural disaster management” and “to take appropriate measures to eliminate all forms of discrimination against women with respect to access to housing and food aid in emergency and natural disaster situations and to ensure that women in these situations are adequately protected from violence”.<sup>12</sup> These statements can be generalized, indicating that States have specific human rights obligations with regard to all phases of disaster response including disaster prevention and preparedness, evacuation, emergency assistance and relief measures, as well as return and reintegration of those displaced.

11. At the regional level, the European Court of Human Rights had an opportunity to spell out the duties of states regarding the protection of victims of natural disasters, in particular regarding preventive measures, alert systems and evacuations. It stressed that the duty to protect entails the obligations to take positive measures to protect people against the dangers of imminent natural disasters and to provide them with redress in cases where persons are killed as a consequence of negligence on the part of the authorities.<sup>13</sup>

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<sup>9</sup> Human Rights Committee, United States of America, CCPR/C/USA/CO/3, para. 26.

<sup>10</sup> Ibid.

<sup>11</sup> Committee on the Elimination of Racial Discrimination, Concluding Observations, CERD/C/USA/CO/6, para. 31.

<sup>12</sup> Concluding comments of the Committee on the Elimination of Discrimination against Women: Indonesia, CEDAW/C/IDN/CO/5 (2007), para. 39.

<sup>13</sup> See, in particular, European Court of Human Rights, *Budayeva and others v. Russia*, Applications nos. 15339/02, 21166/02, 20058/02, 11673/02 and 15343/02, judgment of 20 March 2008. For more details, see below para. 39.

**B. Specific provisions on the protection of persons displaced by natural disasters**

12. Specific provisions on the protection of persons displaced by natural disasters within their countries are set out in the Guiding Principles on Internal Displacement which are based upon and reflect present international human rights law and have been recognized by States as “an important international framework for the protection of internally displaced persons”.<sup>14</sup>

13. In Africa, the Protocol on the Protection and Assistance to Internally Displaced Persons to the Declaration on Peace, Security, Democracy and Development in the Great Lakes Region of 14 and 15 December 2006 is particularly relevant. Its Article 1 follows the definition of IDPs contained in the Guiding Principles and thus covers those displaced by disasters too. Article 3 on the “Responsibility for Protecting Internally Displaced Persons” states in its paragraph 2 that “Member States shall, to the extent possible, mitigate the consequences of displacement caused by natural disasters and natural causes.” Paragraph 5 of same article obliges Member States to “establish and designate organs of Government responsible for disaster emergency preparedness, coordinating protection and assistance to internally displaced persons”. Furthermore, States have to “enact national legislation to domesticate the Guiding Principles fully and to provide a legal framework for their implementation within national legal systems” (Article 6, para. 3) and, in this context, must ensure that such legislation specifies the governmental organs responsible not only “for providing protection and assistance to internally displaced persons” but also “disaster preparedness” (Article 6, paragraph 4 (c)).

14. The draft African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa to be hopefully adopted later this year is likely to contain provisions specifically addressing disaster-induced displacement.

15. In the Americas, paragraph 7 of OAS resolution AG/RES. 2417 (XXXVIII-O/08) of 3 June 2008 on Internally Displaced Persons calls “upon states, in the care they provide to internally displaced persons in natural and man-made disasters, to protect their human rights through a comprehensive approach to disaster relief and reconstruction, consistent with international human rights law and domestic law, taking into account the Guiding Principles on Internal Displacement”.

16. In Europe, Recommendation Rec(2006)6, of the Committee of Ministers to member states on internally displaced persons explicitly recognizes that the “United Nations guiding principles and other relevant international instruments of human rights or humanitarian law apply to all internally displaced persons, including persons displaced from their homes or places of habitual residence due to natural or man-made disasters” (paragraph 1) and stresses that “adequate and effective measures to ensure equal treatment among internally displaced persons and between them and other citizens [...] may entail the obligation to consider specific treatment tailored to meet internally displaced persons’ needs” (paragraph 2).

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<sup>14</sup> 2005 World Summit Outcome, U.N. Doc. A/60/L.1, para. 132; Human Rights Council Resolution 6/32 (2007), para. 5; General Assembly Resolution 62/153, U.N. Doc. A/RES/62/153 (2008), para. 10.



### C. Other relevant instruments and initiatives

17. Initiatives related to issues of climate change are of particular importance for the protection of persons displaced by natural disasters. The 2005 Hyogo Framework for Action<sup>15</sup> stresses that “each State has the primary responsibility [...] for taking effective measures to reduce disaster risk, including for the protection of people on its territory [...] from the impact of disasters”<sup>16</sup> and sets out five priorities for action, namely to (1) make disaster risk reduction “a national and a local priority with a strong institutional basis for implementation”; (2) “enhance early warning” on the basis of identifying, assessing and monitoring disaster risks, (3) “build a culture of safety and resilience at all levels”; (4) “reduce the underlying risk factors”; and (5) “Strengthen disaster preparedness for effective response at all levels”.<sup>17</sup> Effective disaster risk reduction is essential for protecting lives and preventing or at least reducing displacement caused by the effects of natural disasters.

18. In order to enhance the protection capacities of humanitarian actors, the Inter-Agency Standing Committee (IASC) adopted in June 2006 Operational Guidelines on Human Rights and Natural Disasters that were initially developed by the Representative and submitted to the Human Rights Council in March 2007.<sup>18</sup> A Pilot Manual explaining the underpinnings of the Operational Guidelines and containing suggested operational steps for their implementation was published by the Brookings-Bern Project on Internal Displacement and disseminated in March 2008.<sup>19</sup> After being tested in the field, the Manual is currently being revised.

19. In 2002, the International Federation of the Red Cross and Red Crescent Societies initiated the International Disaster Response Law initiative, a consultation process that culminated in the adoption of Guidelines for the Domestic Facilitation and Regulation of International Disaster Relief and Initial Recovery Assistance by the 30th Red Cross and Red Crescent Conference on 26-30 November 2007. These guidelines aim at contributing “to national legal preparedness by providing guidance to States interested in improving their domestic legal, policy and institutional frameworks concerning international disaster relief and initial recovery assistance”.<sup>20</sup>

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<sup>15</sup> Hyogo Framework for Action 2005-2015: Building the Resilience of Nations and Communities to Disasters, in: Final report of the World Conference on Disaster Reduction, A/CONF.206/6 (2005).

<sup>16</sup> Ibid., para. 13.

<sup>17</sup> Ibid., para. 14.

<sup>18</sup> A/HRC/4/38/Add.1.

<sup>19</sup> See A/HRC/4/38, paras. 62-64.

<sup>20</sup> Guidelines for the Domestic Facilitation and Regulation of International Disaster Relief and Initial Recovery, Assistance, Introduction, 1. Purpose and Scope, paragraph 3 (30IC/07/R4 annex, p. 1).

20. In 2007, the United Nations International Law Commission (ILC) decided at its fifty-ninth session to include the “Protection of persons in the event of disasters” in its programme of work.<sup>21</sup> This project has to be welcomed as an important step forward in developing and strengthening an appropriate legal framework.

## II. ESTABLISHING A CYCLE OF PROTECTION

21. The State is responsible for protecting the rights of its population in the context of all phases of a natural disaster. State responsibility covers not only the immediate response phase after a disaster has struck, but begins with preparedness before disaster strikes and extends to recovery, reconstruction and reinforced preparedness measures on the basis of lessons learned. The challenge lies in forming a cycle of protection that constantly adapts to the challenges posed by natural hazards and optimizes protection to those affected in order to mitigate the impact of disasters, prevent displacement and other negative consequences, and find durable solutions for the displaced.

22. State responsibility is engaged long before disaster strikes. Some have argued that the State cannot be held responsible for the occurrence of natural disasters. The Representative agrees with them in as far as it is not possible to stop typhoons or hurricanes from occurring, volcanoes from erupting, or the earth from trembling. Yet, states can mitigate the impact of these natural hazards on human life, including through efforts to protect the environment that sustains human life and protects from natural hazards. Even beyond the climate change debate, there is an emerging understanding how natural hazards and environmental destruction combine to man-made disasters. Heavy rains hitting deforested areas, for instance, may result in disastrous mud slides, massive destruction and hundreds of deaths in one country, whereas a neighbouring country that managed to preserve much its forest cover is hardly affected.

23. In addition, it needs to be borne in mind that most types of natural disasters are recurring phenomena, which allows and indeed requires states to put in place disaster preparedness schemes. The Representative recalls in this context the Hyogo Framework for Action which places an obligation on States to take steps to mitigate and reduce the risks of disasters, including for instance disaster risk mapping, early warning systems, and predetermination of evacuation routes.

24. Disaster preparedness strategies also need to include and address the prevention of violations or abuses including those committed against the displaced. It is necessary to carry out a contextual analysis of who is at risk of a human rights violation or abuse, at what moment and under what circumstances and by whom; and what can be done to prevent the abuse. Crisis

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<sup>21</sup> *Official Records of the General Assembly, Sixty-second Session, Supplement No. 10* (A/62/10), para. 375. See also Preliminary report on the protection of persons in the event of disasters, by Mr. Eduardo Valencia-Ospina, Special Rapporteur, A/CN.4/598 (2008).

situations following natural disasters tend to exacerbate prior patterns of discrimination and marginalization, which requires protection actors to carry out a profound contextual analysis to understand where the real risks and challenges lie. For instance, the marginalization of women in reconstruction and recovery efforts, which makes women vulnerable to further abuses, has been identified as a human rights concern in many disaster settings.<sup>22</sup>

25. Although international human rights law knows specific norms for certain categories of persons with specific needs, such as women, children, indigenous people or persons with disabilities, not all of them are at risk all the time. Conversely, others, such as older persons or persons with chronic illnesses, may be exposed to risk in disaster settings even though international conventions typically do not explicitly grant them special protection.<sup>23</sup> A contextual analysis allows States and humanitarian actors to take these risk factors into account when preparing the laws and policies that will guide the disaster response including its displacement specific aspects.

26. Careful analysis also has to guide the recovery and reconstruction phase. As regards the necessity to find durable solutions for the displaced, the Framework for Durable Solutions for Internally Displaced Persons that was adopted by the Inter-Agency Standing Committee provides guidance on the process and conditions to achieve durable solutions.<sup>24</sup> States and humanitarian actors can take stock of their lessons learned, integrate them in their contingency and emergency planning and implement further disaster risk reduction and mitigation measures. Aspiring to the status quo ante, that is the state that existed before disaster struck, is very often not enough, especially if disaster preparedness and mitigation measures in place proved to be inadequate.

27. If human rights violations were committed against the displaced, whether deliberately or due to negligence, the responsible actors have to be held accountable and remedies provided to those whose rights were violated.

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<sup>22</sup> See e.g. Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination, Miloon Kothari, Women and Adequate Housing, U.N. Doc. E/CN.4/2006/118, paras. 58-65.

<sup>23</sup> Older people are referred to in Articles 25 and 28 of the Convention on the Human Rights of Persons with Disabilities.

<sup>24</sup> IASC Framework for Durable Solutions for Internally Displaced Persons available at [www.humanitarianinfo.org/iasc/downloadaddoc.aspx?docID=4030&type=pdf](http://www.humanitarianinfo.org/iasc/downloadaddoc.aspx?docID=4030&type=pdf). See also A/HRC/4/38 paragraphs 38-42. The Representative intends to review the Framework in order to integrate the specificities of displacement induced by disasters and will report to the Council in the next reporting cycle.

### III. SPECIFIC PROTECTION NEEDS OF PERSONS DISPLACED BY NATURAL DISASTERS

28. In his reports to the Human Rights Commission in 2005 and 2006, the Representative proposed a conceptual framework for the protection of the human rights of internally displaced persons.<sup>25</sup> In line with the notion of protection as used by the Inter-Agency Standing Committee (IASC),<sup>26</sup> protection in the context of natural disasters can be understood as encompassing all activities aimed at ensuring full respect for the rights of all persons affected by such disasters, including those internally displaced, in accordance with the letter and the spirit of the relevant bodies of law, in particular, human rights law.

29. Furthermore, the Representative stressed that protection must not be limited to securing the survival and physical security of internally displaced persons but relates to all relevant guarantees they enjoy under international human rights law. For practical purposes, these rights can be divided into four categories, namely (a) rights related to physical security and integrity (including protection of the right to life and violence against women); (b) fundamental rights related to basic necessities of life (e.g. the rights to food, potable water, adequate shelter, health services and sanitation); (c) rights related to other economic, social and cultural protection needs (for instance, the rights to work, receive restitution or compensation for lost property and to be provided with or have access to education); and (d) rights related to other civil and political protection needs (e.g. the rights to personal documentation, political participation, access to courts and freedom from discrimination). The first two categories are not exclusive to the emergency phase of displacement but tend to be more relevant then, whereas the third and fourth category gain importance during later stages, including in the return and recovery phase.

30. In the course of his working visits, the Representative identified a series of typical human rights challenges described below that may exist in disaster situations and cause displacement or affect internally displaced persons. Systematically integrating a human rights approach into disaster response programs and activities would substantially prevent and reduce instances of human rights violations.

#### A. Cross-cutting protection challenges

31. **Non-discrimination:** According to Guiding Principle 4, the rights of internally displaced persons must be applied without discrimination of any kind, such as race, colour, sex, language, religion or belief, political or other opinion, national, ethnic or social origin, legal or social status, age, disability, property, birth, or any other similar criteria. At the same time, especially vulnerable persons among the displaced such as children, expectant mothers, mothers with

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<sup>25</sup> See E/CN.4/2005/84 paragraphs 33-80 and E/CN.4/2006/71, paras. 4-12.

<sup>26</sup> Inter-Agency Standing Committee, Implementing the Collaborative Response to Situations of Internal Displacement: Guidance for United Nations Humanitarian and/or Resident Coordinators and Country Teams (September 2004).

young children, female heads of household, persons with disabilities, persons who are seriously ill or injured and older persons are entitled to protection and assistance required by their condition and to treatment which takes into account their special needs.

32. As in conflict settings, non-discrimination in access to and distribution of assistance continues to be a major challenge. Sometimes, affected persons belonging to a specific ethnic or religious minority may be deliberately disadvantaged by authorities. In most instances, however, discrimination results from not responding to the specific needs of particularly vulnerable categories of persons among the displaced by disaster responders. The Representative found, e.g., that specific needs of older persons or persons with disabilities were insufficiently catered for in most countries he visited. The problem is illustrated by the case of a village in Madagascar where single mothers with access to land were not included in the needs assessment lists of an international organization for seed distribution based on the assumption that those using the seeds would be male farmers only; complaints received in Mozambique that aid destined for particularly vulnerable families was diverted by local community leaders; or the lack of any measures in Honduras addressing the special needs of displaced indigenous communities, e.g. regarding food, clothing, and housing.

33. Poverty is another factor increasing the risk of being left out. In Honduras, the Representative learnt that those who 10 years after Hurricane Mitch still had not managed to fully resume their previous lives were from among the urban poor. In New Orleans,<sup>27</sup> evacuation plans were based on the assumption that people would use their private vehicles, thus disadvantaging poor people not owning a car. In the aftermath of Hurricane Katrina, the reconstruction efforts had centred on economically viable parameters rather than on criteria based on need and vulnerability. The overwhelming majority of the persons who several years later were still displaced from Hurricane Katrina were from socio-economically disadvantaged areas, whereas according to city officials the Representative met, the vast majority of the middle class income earners had returned to New Orleans within 6 to 8 months of the disaster. Furthermore, while the Representative was impressed with the overall reconstruction efforts, he witnessed the very slow rate of reconstruction in the lower 9<sup>th</sup> Ward of New Orleans, the poorest part of the city. The Representative took also note of reports from countries hit by the 2004 Tsunami indicating that zoning laws were implemented in order to avoid persons rebuilding in potentially dangerous areas close to the sea, while exceptions were made for the tourist industry.

34. The Representative also notes the gender dimension of the consequences of natural disasters. Both after the Tsunami, but also after Cyclone Nargis, it became clear that women had been disproportionately affected by the floods. Not only would it seem that their death toll was significantly higher, but in the aftermath, they were more exposed to gender-based violence and

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<sup>27</sup> See also Human Rights Committee, Concluding Observations United States of America, CCPR/C/USA/CO/3, para. 26 raising concerns about information that the poor, and in particular African-Americans, were disadvantaged by the rescue and evacuation plans implemented when Hurricane Katrina hit the United States, and continue to be disadvantaged under the reconstruction plans.

abuse.<sup>28</sup> This suggests that measures aimed at both preparedness and response need to specifically take into account the specific vulnerabilities women experience in natural disaster situations.

35. **Information, consultation and participation:** According to the Guiding Principles, internally displaced persons have a right to be informed and consulted regarding decisions affecting them, and thus participate in the process of decision-making (see, in particular, Principles 7(3)(c) and (d), 18(3) and 28(2)). While consultation and participation of affected persons may be difficult or depending on the circumstances even impossible during the emergency phase of a disaster, it is particularly important, as spelled out in Guiding Principle 28(2), with regard to return or relocation and recovery. This has also been recognized by United Nations treaty bodies.<sup>29</sup>

36. The Representative found that one of the consistent challenges for persons affected by disasters was the lack of inclusion in the decision-making processes on preparedness, relief and recovery measures, and even on the prevention of future displacement. In a few instances, the Representative learned about efforts that had been made to consult with the affected persons, such as the initiative by the then Mayor of Houston to use community organizers to create consultation mechanisms as soon as persons displaced by the flooding in New Orleans were brought to the Astrodome in his city. However, in most situations the Representative visited or examined there was still too little evidence of concerted efforts to include the displaced and other persons affected in the very decisions that affect their lives directly in terms of disaster preparedness, response or reconstruction, a failure that adds to the feeling of helplessness, confusion and insecurity experienced by disaster survivors.

37. In certain contexts, the Representative also observed, that governments were content to let civil society organizations consult with the affected population and channel their concerns to the authorities in whatever way was deemed most appropriate by the organizations. Yet, in most of the observed cases these organizations themselves did not form part of the disaster response coordinating body. Under such circumstances, their input cannot reach the appropriate instances and the opinions and wishes of the affected persons are not integrated into the disaster response.

38. **Humanitarian access:** Humanitarian access in disaster situations can often be limited as a result of infrastructural constraints such as destroyed roads and bridges, safety concerns for the rescuers, linked to the terrain, the remoteness of the disaster setting and possible secondary hazards (such as aftershocks of an earthquake; crumbling of compromised buildings). However, political will can be an obstacle to access as well, as was initially experienced in the aftermath

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<sup>28</sup> See Tripartite Core Group, "Post-Nargis Joint Assessment" (July 2008), at p. 26. Available at: [http://www.reliefweb.int/rw/RWFiles2008.nsf/FilesByRWDocUnidFilename/ASAZ-7GRH55-full\\_report.pdf/\\$File/full\\_report.pdf](http://www.reliefweb.int/rw/RWFiles2008.nsf/FilesByRWDocUnidFilename/ASAZ-7GRH55-full_report.pdf/$File/full_report.pdf); Oxfam International "Rethinking disasters" (2008), available at: [http://www.oxfam.org.uk/resources/policy/conflict\\_disasters/downloads/oxfam\\_india\\_rethinking\\_disasters.pdf](http://www.oxfam.org.uk/resources/policy/conflict_disasters/downloads/oxfam_india_rethinking_disasters.pdf).

<sup>29</sup> See references above, para. 10.

of Cyclone Nargis in Myanmar. As the Representative already underlined in the wake of the Tsunami,<sup>30</sup> States may be more willing to respond quickly to provide humanitarian assistance to populations affected by natural disasters and to do so in collaboration with the international community than, for instance, in cases of internal armed conflict. In other cases, Governments of affected states may prefer, for a variety of reasons, to provide all necessary assistance themselves; and this is a legitimate exercise of national sovereignty and responsibility. However, when Governments refuse outside offers of humanitarian assistance, but at the same time are themselves unable or unwilling to provide adequate assistance to their own populations, they fail to discharge their responsibilities under international law as restated in Guiding Principle 25.

## **B. Protection of life, security of the person, and physical and mental integrity**

39. **The duty to protect the life and security of persons:** The right to life as embodied in many human rights conventions and specifically highlighted in Guiding Principle 10 entails not only a duty to respect life but also to protect it. Recently, the European Court of Human Rights had an opportunity to clarify the content of this obligation in a case of persons killed by a mudslide. The Court recalled that in the context of natural disasters the right to life “lays down a positive obligation on States to take appropriate steps to safeguard the lives of those within their jurisdiction” and stressed that “[t]his positive obligation entails above all a primary duty on the State to put in place a legislative and administrative framework designed to provide effective deterrence against threats to the right to life”.<sup>31</sup> The judgment makes clear that with regard to natural disasters authorities have an obligation to (1) enact and implement laws dealing with all relevant aspects of disaster risk mitigation and set up the necessary mechanisms and procedures; take the necessary administrative measures, including supervising potentially dangerous situations; (2) inform the population about possible dangers and risks, including by setting up effective alert systems; (3) evacuate potentially affected populations; (4) conduct criminal investigations and prosecute those responsible for having neglected these duties in case of deaths caused by a disaster; and (5) compensate surviving relatives of victims killed as a consequence of neglecting such duties. Thus, the Court made it clear that a state becomes liable for deaths if they have occurred because the authorities neglected their duty to take preventive measures against an identifiable impending natural hazard although effective means to mitigate the risk would have been available to the authorities. These findings are in line with the practice of the Human Rights Committee which, in once case, has recalled “the State party’s obligation, under article 6 of the Covenant, to protect the life of its citizens” and expressed in this regard its

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<sup>30</sup> See “Protection of Internally Displaced Persons in Situations of Natural Disaster” - A working visit to Asia by the Representative of the United Nations Secretary-General on the Human Rights of Internally Displaced Persons Walter Kälin, 27 February to 5 March 2005. Available from: [http://www.brookings.edu/~media/Files/rc/reports/2005/04\\_tsunami/200504\\_tsunami.pdf](http://www.brookings.edu/~media/Files/rc/reports/2005/04_tsunami/200504_tsunami.pdf).

<sup>31</sup> European Court of Human Rights, *Budayeva and others v. Russia*, Applications nos. 15339/02, 21166/02, 20058/02, 11673/02 and 15343/02, judgment of 20 March 2008, paras. 128-129.

concerns about “and the lack of measures to address, in cooperation with the international community, the causes and consequences of the drought and other natural disasters which seriously affected the country’s population [...]”.<sup>32</sup>

40. **Preparedness, early warning and alerts:** Positive steps to be taken by competent authorities in fulfilling their obligation to protect life and the security of persons include setting up efficient systems allowing for activities such as regular contingency planning; establishment of early warning and alert systems to warn populations at risk of predictable imminent dangers such as rising river waters likely to create flooding or approaching wind storms; and the pre-positioning of food and non-food items. This requires a high level of cooperation between all relevant stakeholders at all levels of the government and its national and international partner as well as local communities. As evidenced, *inter alia*, by the commendable success Mozambique had in decreasing the average number of lives lost in the annual floods,<sup>33</sup> such institutional, policy and operational measures have a direct life-saving impact, whereas neglect of such measures may directly contribute to the high levels of casualties in disaster situations in many countries.

41. An important aspect of protecting the life and safety of people affected by natural disasters is the need to implement and strengthen disaster risk reduction measures. During his visits, the Representative saw in several instances that houses had been destroyed and people’s lives endangered by inadequate building standards and, in certain cases, a lack of due diligence on the part of the State to ensure that public works were regularly maintained and reinforced. In some cases this contributed to the displacement in the aftermath of a natural hazard, in other cases it was a cause of unnecessary deaths and injuries, some of which led to permanent disabilities. In the context of Hurricane Katrina, many people claimed that the real disaster had been the breaking of levees on Lake Pontchartrain in need of upgrade and not the hurricane per se. In Madagascar, there would seem to be a direct link between the lack of maintenance of the canals around Antananarivo and the recurrent flooding in the lower-lying areas around it. Settlements, often of an irregular character, in disaster prone areas are another risk factor. In Honduras, migration from rural areas to urban centres and the disaster prone topography, in particular of the capital Tegucigalpa, resulted in population concentrations in settlements in zones of high exposure to natural disaster risks. The same was true on low-lying parts of in Madagascar’s capital Antananarivo. In such situations, appropriate city planning becomes an important disaster risk reduction measure. More generally, disaster risk reduction should be considered as a priority in accordance with the priority for action number 5 of the Hyogo Framework for Action<sup>34</sup> and therefore made a regular part of development projects.

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<sup>32</sup> Concluding observations of the Human Rights Committee, Democratic People’s Republic of Korea. CCPR/CO/72/PRK (2001), para. 12.

<sup>33</sup> In 2000 and the years after, the death toll regularly crossed the threshold of 100 whereas in recent years it dropped below 20.

<sup>34</sup> See paragraph 23 above.



42. **Evacuations:** The duty to protect the life and security of persons entails, in particular, an obligation to evacuate persons from zones where they face imminent dangers for life and limb caused by a disaster. A failure to assist persons who cannot leave such zones on their own may amount to a human rights violation if competent authorities knew or should have known the danger and would have had the capacity to act. While the Representative acknowledges that authorities in an emergency situation may face difficulties to handle evacuations properly, he would like to stress the necessity of anticipating the specific needs of particularly vulnerable persons, such as persons with disabilities and older persons, the poor or migrants not speaking the official languages of the country concerned, when developing evacuation plans. Evacuation measures that are adequate for the majority of the population may not allow such persons to escape from dangers in time.

43. During his country visits, the Representative was informed of cases where affected populations refused to evacuate, either out of fear to loose cattle and other property or because they did not take warnings seriously, and authorities therefore felt compelled to order evacuations. Such cases raise particular problems. The Guiding Principles recognize the tension between governments' obligation to protect lives by evacuating affected persons against their will and the right to freedom of movement of citizens which includes the right not to move and to remain at the place of habitual residence. Guiding Principle 6(2) (d) indicates that forced evacuations in cases of disasters do not amount to arbitrary displacement prohibited by international law if such evacuations are necessary to protect the safety and health of those affected.

44. The Representative notes that forced evacuations can only be a measure of last resort that must be foreseen by law and only carried out when and as long as absolutely necessary in order to protect life and limb of those at risk. Evacuations must be carried out without discrimination; distinctions made are only permissible to take into account special protection needs. Affected persons have to be informed about why, how and whereto they are being evacuated. Evacuation plans should incorporate the protection needs of the affected persons; communities at risk of evacuation should be consulted to the extent possible. In situations of recurring natural hazards, this may call for advance identification of evacuation sites in consultation with affected communities (e.g. through go and see visits), including, where relevant, sites that can also receive livestock. Measures should be implemented to ensure that the particular needs of particularly vulnerable persons such as individuals with disabilities or older persons without family support will be addressed in the evacuation process. Protection of property left behind and security of land tenure are among the issues that need to be considered in evacuation planning.<sup>35</sup>

45. All evacuations, whether with or without the consent of those affected must be carried out in a manner that respects the rights to life, dignity, liberty and security of those affected (Guiding Principle 8).

46. **Protecting against violence, particularly in shelters:** In natural disaster situations, public buildings such as schools, community centres or churches are often converted into shelters for

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<sup>35</sup> See below, paras. 52-54.

displaced persons. With the increased concentration of people in a confined space come also security risks in and around shelters. For instance, the Representative was informed of criminal attacks committed against shelters in Haiti, with little to no protection provided by the security forces or by the MINUSTAH. He also heard allegations of gang infiltration in urban shelters in Honduras after Hurricane Mitch ten years ago resulting in robberies, rapes and even killings due to a lack of law and order in these places. The lack of security may also entail increased violence among the inhabitants of a shelter.

47. This risk is heightened by overcrowding in shelters and further increases if there is a lack of separation in such places between men and women. During his working visits, the Representative heard several allegations of rape and other forms of gender-based violence, and violence against children. It is therefore necessary that authorities adopt and implement policies for the prevention of gender-based violence in shelters as was done, for instance, by the Government of Haiti after hurricanes Fay, Gustav, Hanna and Ike struck between 18 August and 8 September 2008.

48. Finally, the Representative was made aware in several situations that due to the lack of livelihoods for parents after the disasters, there was an increase of domestic violence against children and of child exploitation. He was also told about increases in child marriages and gender-based violence in the cases where natural disasters had claimed the lives of far more women than men.

### **C. Protection of rights related to basic necessities of life**

49. The Representative found overall that impressive efforts are made by governments and civil society to ensure access to very basic emergency services, even when there is a sudden overwhelming and major disaster. He commends the efforts for better disaster emergency responses made inter alia in Honduras, Mozambique and Madagascar. At the same time, he observed that often problems appear after the emergency phase ends in relationship to issues that require more than the most basic response, such as adequate water and sanitation measures, adapted shelters for longer stays and essential non-food items.

50. As already mentioned,<sup>36</sup> the main challenge in the delivery of humanitarian assistance is to avoid discrimination and to provide basic goods and services that respond to the needs of persons with specific needs such as pregnant women, infants, older persons, persons with disabilities, or indigenous peoples who have specific cultural traditions.

### **D. Protection of other economic, social and cultural rights**

51. **Education:** Particular problems in natural disaster situations arise with regard to the right to education. With the exception of the shelters used in the Gulf region after Hurricane Katrina, the Representative observed everywhere he visited that schools were turned into shelters. Whereas this could be a solution for a very short period (a few days or weeks), in reality these

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<sup>36</sup> See supra, para. 32.

situations tended to last for prolonged periods. There is a real need to provide displaced persons with shelter, but having them stay for prolonged periods of time in schools is not an adequate solution. It impedes children in affected areas from returning to school and thus from resuming a normal and protected rhythm of life. Furthermore, the Representative was informed that in some situations the school buildings were not rehabilitated after having been used to shelter displaced persons for prolonged periods, because the necessary budget provisions were not made.

**52. Protection of property and housing rights:** The Representative observed that the post-disaster restitution of property and possessions brings additional challenges. The destruction of houses and other private possessions is typical for sudden-onset disasters. Many internally displaced persons met by the Representative during his working visits had still not been able to restart their lives because of an insufficient legal and budgetary framework to help them either access new property or return to their former properties and rebuild. In all cases little or insufficient attention had been paid to the fact that the most affected were people whose title deeds were destroyed or who had no formal property titles but possessed land and houses on the basis of customary law or uncontested long-term use. Lack of evidence of property or possession may become an obstacle when trying to access compensation or financial support for the reconstruction of houses.

**53.** Displacement, whether on the basis of an evacuation order or not, does not extinguish property and other land-related rights even if where it becomes protracted. Displaced shall not be discriminated against in the enjoyment of their rights and freedoms on the ground that they are internally displaced (Guiding Principle 1.1). Unless they have found a durable solution elsewhere, displaced persons who possessed land or houses on the basis of uncontested long-term use must therefore be regarded as retaining the right to re-establish possession once the post-disaster situation permits it.

**54.** The Representative observed that in several natural disasters situations a considerable proportion of people still had not been able to return to some form of permanent housing several years after the disaster despite considerable reconstruction efforts. In addition, when assistance was provided for reconstruction purposes (with regard to both public and private buildings) it was not always guaranteed that the funds would cover the additional costs of rebuilding in such a way that they would withstand future disasters. In Madagascar, for instance, both the authorities and the humanitarian actors pointed out that an envisaged 20% budget increase for rebuilding schools, which also serve as shelters in the cyclone season, in a manner to make them cyclone-proof, could not gain any donor support.

**55. Access to work and livelihoods:** The Representative observed the biggest gaps in implementing the rights to access work and livelihoods after disaster. According to reports from several countries affected by the Tsunami, fishing families, including also female headed households, were resettled from the coastal areas and ended up destitute since no adequate livelihood alternatives were available or made available in the resettlement areas. In Honduras, the Representative noted that although the reconstruction and resettlement itself had been undertaken in a commendable manner, the affected persons on still did not have adequate livelihood options and continued to be dependant on hand-outs several years after the disaster. Prior to Hurricane Mitch, they had been able to sustain themselves independently from state aid

as day labourers, small business people or subsistence farmers. On the other hand, city authorities in Houston, United States of America took active measures to integrate persons displaced from New Orleans into the local labour market by providing them with the necessary information and individual counselling.

56. With regard to access to housing, property and possession, as well as to livelihoods and work, the Representative felt that in most cases problems resulted from an inadequate legal and budgetary framework, and were also rooted in the fact that the affected often came from traditionally or newly marginalized sectors of society which mainstream society felt it could safely ignore.

### **E. Protection of other civil and political rights**

57. **Documentation:** The Representative observed that in natural disaster situations similar documentation challenges exist with regard to persons who are displaced due to an armed conflict. A lack of legal provisions to quickly and smoothly replace personal documents such as birth certificates or other identification documents has an impact on how people can access existing services and rebuild their lives. For instance at the time of his visit to New Orleans, the Representative was told by city officials that there was a backlog of several tens of thousands of birth certificate applications due to the destruction of the records in the flooding after Hurricane Katrina. An example of how such challenges can be appropriately dealt with comes from Sri Lanka, where shortly after the Tsunami regional offices of the Sri Lanka Human Rights Commission have worked with local administrative officials to develop mobile teams to process IDPs' requests for replacement documentation.

58. **Freedom of movement and relocations:** The Representative observed several challenges, mainly in the context of either forced relocations or in situations where no durable return options existed because areas of return no longer seemed suitable for human habitation. In Mozambique, for instance, the Representative found that authorities had taken up the initiative to permanently relocate persons living in flood-prone areas of the Zambezi river basin. However, permanent relocation sites in some cases were too far from the fertile low lands of the river basin, which deprived affected families of their livelihoods. In the absence of any alternative income generating activity, they eventually returned to the fertile low-lands once the flooding season was over, even though education and basic health care were provided at the relocation sites. During earlier country visits, the Representative noted that in certain countries affected by the Tsunami, serious consideration was given to introducing so-called buffer-zones in coastal areas where construction would be prohibited, so as to limit destruction and devastation by future disasters of a similar nature. However, in some countries, there were reports that these high risk zones were established sometimes in a discriminatory manner without proper scientific or other justification, excluding, for instance, the return of traditional communities but at the same time allowing construction of tourism facilities.

59. Generally, the Representative notes that the creation of permanent relocation sites away from high-risk zones constitutes a restriction of the right of internally displaced persons to freely decide about whether to return or relocate embodied in Guiding Principle 28(1), which emanates from the right to freedom of movement and choice of residence. Where permanent relocation is coupled with an outright prohibition to return, the standards set out by Article 6 (2) (d) of the Guiding Principles apply, i.e. the prohibition of return must be required by the safety and health

of those affected (see above).<sup>37</sup> Similar standards apply, where the State de facto prevents return by permanently moving institutions that fulfil basic economic, social and cultural rights (water and sanitation, schools, health centres) away from affected areas.

60. Relocations, whether voluntary or forced, must be implemented in a fair and non-discriminatory manner, balancing all relevant aspects, including geographical features, concerns for environmental protection, and the impact on the livelihoods of socially marginalized groups.

61. Furthermore, relocations have to be carried out in accordance with Guiding Principle 7. In particular, authorities concerned shall ensure that all feasible alternatives have been explored in order to avoid forced relocation altogether, and they shall duly consult affected communities, seek their free consent, and respect their right to an effective remedy against decisions on forced relocations. They shall endeavour to involve those affected, particularly women, in the planning and management of their relocation in order to achieve a durable solution for these communities. Persons relocated to new places of residence must have access to livelihoods and income-generating opportunities, water and sanitation, and basic public services (education and health), and must be protected against discrimination by local communities. Experience indicates that while there is investment in building houses or apartments, there is often not sufficient focus on the creation of livelihood opportunities and the provision of basic services at the relocation sites, which would be necessary to make permanent relocations away from high risk zones sustainable.

#### **F. Groups with specific needs**

62. The Representative concludes that a nuanced analysis of the situation of the affected population is extremely important, both in terms of disaster preparedness and in terms of actual response and reconstruction, in order to be able to ensure that the human rights of all affected are respected. Although there is awareness, to an extent, of how disasters affect **women and children** and the exercise of their rights specifically, much still needs to be done to ensure that this is also translated into the actual response.

63. As concerns **older persons**, the Representative notes that they were often overlooked: as persons with specific needs but also in their actual or potential active roles; as former active members of society having “paid their dues”, as members of a senior citizens home in Houston put it to the Representative during his visit, or as care-givers for young children as was the case in Honduras and Mozambique.

64. Regarding **persons with disabilities**, the Representative found that their specific needs seemed to be fairly systematically overlooked. According to the World Health Organisation’ 650 million persons around the world live with a disability,<sup>38</sup> which would amount to roughly

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<sup>37</sup> See *supra*, para. 44, for a discussion of the specific conditions that need to be fulfilled.

<sup>38</sup> See <http://www.who.int/disabilities/en/>.

10% of the world's population. Yet, the Representative saw few provisions or programmes that took into account that a 10% of the population had specific needs in disaster preparedness, during the disaster response or after in the reconstruction phase. There seemed to be a lack of awareness that (a) persons with disabilities prior to the disaster need to be integrated into the disaster preparedness measures in an adequate manner correspondent to their needs; (b) a substantial number of persons may acquire disabilities during the disaster, for instance in cases where earthquakes have caused buildings to collapse and many persons lose a limb as a result. The Representative notes that although the Convention on the Rights of Persons with Disabilities has only recently entered into force, it has a significant number of signatories. Article 11 of the Convention specifically obliges States Parties to take "all necessary measures to ensure the protection and safety of persons with disabilities in situations of risk, including situations of [...] humanitarian emergencies and the occurrence of natural disasters".

65. Indigenous peoples are particularly affected by natural disasters linked to climate change, including slow onset disasters such as thawing of permafrost, changes in the flora and fauna essential for the traditional lifestyle of the peoples concerned, or desertification. Indigenous peoples face specific protection needs in displacement since they typically experience also discrimination on the basis of their indigenous identity and are sometimes ill-prepared for the radical shift in living circumstances that many displacement scenarios entail, especially rural to urban transitions. Furthermore, indigenous people are often not integrated into preparedness schemes due to geographic, linguistic or cultural barriers and valuable indigenous knowledge on natural disasters may at times also be disregarded. Furthermore, persons with a pastoralist or nomadic lifestyle are often not even identified as displaced, even though they may have forced to shift their regular migration routes to flee or avoid the effects of droughts, flooding or other natural disasters.

#### IV. CONCLUSIONS AND RECOMMENDATIONS

66. **Contrary to the inclusive definition set out by the Guiding Principles, there is still a tendency among governments as well as human rights actors to equate internal displacement with conflict. Yet, natural disasters probably displace an equivalent or even higher number of people. Moreover, against the backdrop of climate change, there is a likelihood of an increased frequency of natural disasters, both sudden and slow-onset. Reliable estimates on disaster-induced displacement have yet to be established and the Representative encourages humanitarian actors to close the research gap. As in the case of armed conflict, the Representative remains concerned by the lack of attention and data on the persons who seek refuge with host families during or after a disaster. He therefore strongly encourages States and humanitarian actors to develop tools that would allow for a better outreach and monitoring of the needs of both these displaced and of their host families.**

67. **Second, there is a tendency to conclude that displacement and its effects are "inevitable" as it is created by disasters that are "natural". Yet, much can be done by states and humanitarian actors to prevent or mitigate the effects of natural hazards, limit displacement and improve the protection of the affected population. States have a responsibility to protect the rights of all persons living in their territory or their jurisdiction, including the displaced, because of (rather than despite of) the State's**

sovereignty. This responsibility translates into concrete human rights obligations that can be breached due to negligence or indifference - which are indeed the typical cases of human rights violations related to natural disasters.

68. State action is therefore required. The most important measures states can use to prevent displacement have to be taken before disasters strikes. The Representative recommends that states invest more resources and thought into improving early warning systems, disaster contingency planning as well as disaster mitigation measures as part of their development activities, especially also in efforts to protect the environment in light of the natural protection it may provide against natural hazards. States should recognize that the protection process has to be cyclical. Natural hazards are very often recurring phenomena, which allows for the constant adaptation and optimization of preparedness and mitigation measures in place. For states and donors this may very often require not only to rebuild what is lost but to invest in infrastructure and institutions that provide a higher degree of protection than the status quo ante. Early recovery and reconstruction measures that help facilitate returns or settlement elsewhere, in particular also livelihood programmes, must also be strengthened with a view to enhancing the coping capacity of communities.

69. Third, in disaster setting an approach that treats internally displaced persons as objects of state care, rather than autonomous actors and rights holders is still prevalent. In this context, the Representative recommends enhancing efforts to consult with disaster affected populations or those at risk of becoming affected at all stages. Disaster preparedness, as a tool to prevent displacement and to protect lives, should be implemented on a more participatory basis with the full inclusion of the potentially affected population in evacuation planning, the determination of evacuation sites and the created of shelters and warning systems adapted to the needs of the population, taking into account the diversity represented within the population and the protection needs of vulnerable or socially marginalized groups. Governments should also encourage the establishment of independent monitoring and transparency mechanisms around humanitarian assistance by involving their national human rights mechanisms, civil society groups and representatives of affected communities in disaster response coordination mechanisms.

70. The right of displaced to choose whether to return to their home in a disaster affected area or settle elsewhere is paramount. Evacuation or permanent relocation to safer areas, carried out in close consultation with affected communities and marginalized groups within these communities, can and should be encouraged and facilitated provided that access to basic infrastructure and livelihood opportunities is ensured. However, compulsory evacuation or relocation measures are only permissible under narrow circumstances and as a last resort when and as long as they are required to protect the physical safety and health of those affected.

71. Fourth, the Representative underscores that natural disasters do not affect everyone in the same way. A contextual analysis is necessary to establish who has what special protection needs under which circumstances. In general, natural disasters and displacement tend to aggravate pre-existing patterns of discrimination and power imbalances within a society. Women and children, especially if they are heads of

households, older persons, persons with disabilities, persons who are seriously ill or injured, the poor and persons belonging to socially marginalized groups (including in many cases migrants and persons belonging to indigenous groups or minorities) will therefore be disproportionately affected by natural disasters. These groups are also at risk of facing additional abuses in displacement, especially if displaced to a setting radically different from their home such as a shelter or a poor urban area. The Representative therefore urges states and humanitarian actors to take into account, on the basis of consultation and participation, the specific needs of these groups in disaster response planning. Where rehabilitation and early recovery programs are being implemented to mitigate the negative impacts of a natural disaster, rights-based criteria for the distribution of new houses, construction material, tools, seeds, food and non-food items should be applied. Distribution processes should be monitored in order to ensure that those targeted, in particular groups at risk of being discriminated against, are reached and not further marginalized.

72. Finally, the Representative reemphasizes that the requirement to protect persons displaced by natural disasters emerges from a wide set of human rights norms, including in particular the right to life and physical integrity. This precludes states from simply pleading lack of available means to justify neglect of their obligations. During his visits, it has become apparent to the Representative that some states are better prepared to protect their population against natural disasters, without the degree of protection achieved being necessarily reflective of their relative wealth or poverty. The Representative encourages all countries, in particular those most at risk of experiencing disasters, to ensure that the current legal and budgetary frameworks allow for a response to the specific needs of the internally displaced, including groups with special needs among the displaced, in order to guarantee their human rights.

73. At the same time, the Representative recognizes the nexus between poverty and natural disaster, the negative impact of which will be reinforced as climate change is largely expected to affect those states the most that have least contributed to it. Developed countries have therefore a responsibility and, one may add, also considerable self-interest in investing resources and thought in assisting the least developed countries in their efforts to prepare for and respond to natural disasters and protect persons displaced or otherwise affected. Moreover, to the extent that those displaced as a result of environmental factors will increasingly cross international borders, there may also be a need to create additional internationally agreed protection regimes that close existing gaps.

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