



DEFENDING THE HOUSING RIGHTS
OF DISPLACED PERSONS IN

COLOMBIA



REPORT

MISSION

COHRE AMERICAS PROGRAMME
COHRE HOUSING AND PROPERTY RESTITUTION PROGRAMME
FACT-FINDING MISSION REPORT

DEFENDING THE HOUSING RIGHTS
OF DISPLACED PERSONS IN



COLOMBIA

COHRE Fact-Finding Mission Report, 2005

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In this report, the identities of many individuals have been withheld for reasons of security.

- 1 For more information, see <http://www.ilsa.org.co/>
- 2 For more information, see <http://www.codhes.org.co/>
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Executive summary

The Centre on Housing Rights and Evictions (COHRE) is an independent, international non-governmental human rights organisation whose mission is to promote and protect the housing rights of everyone, everywhere.

In 2002, the Government of Colombia received the COHRE Housing Rights Violator Award due to its failure to alleviate the widespread housing rights crisis in the country. From 16 to 22 October 2003, COHRE conducted an intensive fact-finding mission to Colombia, during which COHRE representatives met with a range of non-governmental, governmental and intergovernmental organisations and agencies working on human rights and displacement issues throughout Colombia. Shortly before the drafting of this report, COHRE also participated in a two-day national conference in Bogotá, Colombia, on restitution of housing and property to Colombia's internally displaced people (IDPs). The conference, held on 6 and 7 November 2004, was jointly coordinated by COHRE, ILSA (Latin American Institute of Alternative Legal Services) and CND (National Coordination for the Displaced). This report is one outcome of COHRE's longstanding interest in the housing rights situation in Colombia, and presents our research findings.

Over forty years of continual conflict between the Colombian armed forces, leftist guerrilla groups and right-wing paramilitary organisations has generated what has been referred to as “the largest humanitarian crisis in the Western Hemisphere”.⁷ Colombia's civil war claims the lives of an estimated 3 500 people each year.⁸ In the past ten years, some 35 000 people have been killed in the conflict. Each year there are thousands of kidnappings.⁹

In 2002, the much-anticipated peace talks that had begun in 1999 collapsed; no longer would the warring parties adhere to the country's fragile ceasefire agreement. Colombia was once again thrown into violent conflict, leading to further turmoil and devastation in the country. This conflict has resulted in a massive human migration. In scale and scope, Colombia's internal displacement crisis is currently surpassed only by those in Sudan and the Democratic Republic of the Congo.

In 2004, official Government figures indicated that there were some 1.5 million internally displaced people in Colombia.¹⁰ However, Colombian NGOs estimate that their true number may be much higher, perhaps as many as three million; the United Nations High Commissioner for

7 Quote from UN Assistant High Commissioner for Refugees, Kamel Morjane (4 Feb. 2004).

8 UN Wire, *UN Rights Report Chastises Colombia; Uribe Fires Back* (11 Mar. 2004).

9 Lisa Trei, 'Experts say conflict in Colombia threatens all of northern Latin America', *Stanford Report* (Stanford, CA: Stanford University News Services, 7 Mar. 2001).

10 For official Government of Colombia data on the displacement, see: Red de Solidaridad Social, *Registro Único de Población Desplazada por la Violencia Acumulado Hogares y personas Incluidos por Departamentos como Receptor y Expulsor hasta el 15 de Diciembre del 2003 Desplazamientos Masivos e Individuales* (15 Dec. 2003), <http://www.red.gov.co>

Refugees (UNHCR) puts the number at between two to three million.¹¹ Even by the most conservative estimates, at least one in every 40 Colombians has been forcibly displaced.¹² This massive involuntary human migration has been precipitated, at least in part, by systematic forced evictions and the destruction of civilian housing.

Forced displacement is now widely seen as a premeditated war strategy rather than a mere by-product of the armed conflict.¹³ Indeed, all parties to the conflict have used forced displacement to depopulate land and ensure control over strategic zones. Families and even entire neighbourhoods are often threatened with torture and killing should they stay in their communities, and are often given only a few hours to flee. Terrified, and taking little more than the clothes on their backs, young and old alike are forced to abandon their homes and lands as paramilitary and guerrilla forces fight for control of key transportation corridors and Colombia's rich natural resources.

Approximately two-thirds of Colombia's internally displaced persons are women and children, who encounter unique situations of violence and discrimination at all stages of the displacement cycle. The numbers of internally displaced Afro-Colombians and indigenous persons are also disproportionately high.¹⁴ According to the UNHCR, displaced women in Colombia – especially women from rural areas – face greater difficulties than other members of the population in obtaining land titles, loans, a home, and healthcare and education services.

From 1997 to 2002, an estimated one million children became displaced in Colombia.¹⁵ Since 1985, a staggering 1 750 000 children have been displaced.¹⁶ For many displaced children, their rights to the highest attainable standard of health, to education, and to adequate housing are among the first things the war destroys.

In addition, displacement in Colombia has overtly discriminatory overtones along racial and ethnic lines. For example, although Afro-Colombians and indigenous peoples constitute less than 11 percent of the total population, they make up about one-quarter of the displaced communities. Furthermore, they often face racial discrimination in housing and employment after having been forced to flee to the major cities.¹⁷

11 In addition to the internally displaced population, Colombians have also crossed borders to flee violence. As many as 250 000 Colombians are currently living in Ecuador and another 15 000 in Venezuela. Panama hosts another 2 000 refugees from Colombia. UN Wire, *Crisis Of Colombia's Displaced Called Worst In Hemisphere* (5 Feb. 2004).

12 US Committee for Refugees, *Voices for Colombians* (2002).

13 "Forced displacement of the population by paramilitary threats or activities has been a recurring strategy"; *Report of the United Nations High Commissioner for Human Rights on the human rights situation in Colombia*, in UN Doc. E/CN.4/2004/13 (17 Feb. 2004). "Enforced displacements increased substantially, affecting much of the country, the reason being that they are increasingly used as a war strategy"; *ibid.*, in UN Doc. E/CN.4/2003/13 (24 Feb. 2003).

14 Global IDP Database, *40% of all registered IDP families are headed by a woman according to the government* (2003), <http://www.db.idpproject.org>

15 Defensoría del Pueblo, *Informe sobre el Estado de la niñez en Colombia 2001* (Mar. 2002).

16 Global IDP Database (2003) (n. 14 above).

17 Global IDP Database, *Indigenous people and Afro-Colombians are the groups most affected by displacement* (2003), <http://www.db.idpproject.org>

Reports show that nearly 70 percent of those displaced have lost their homes and their lands.¹⁸ Whereas a small percentage of displaced Colombians have returned to their original places of residence (at times under precarious conditions that fall far short of international standards), the vast majority of the country's displaced persons remain estranged from their former homes and lands. A significant proportion of Colombia's internally displaced have languished in a state of perpetual exile, albeit within their country's own borders, for well over two decades.

Colombia's internally displaced persons are currently in a dire predicament. There has been no improvement of their situation in recent years; all too often they live in poverty, with uncertain prospects of being able to return to their original homes and lands in security and peace. They suffer not only from the initial violation of being forcibly evicted from their homes and lands, but also from grave violations of their rights to security of the person, to non-discrimination, to adequate housing, to the highest attainable standard of health, to water, to culture, to education, to work, to an adequate standard of living, to reparation, and the right to return, among others. In fact, displacement is too often the entry point to a future of uncertainty and poverty that compromises or otherwise precludes the realisation of multiple human rights for years to come.

Despite progressive legislation and other positive domestic policies regarding the rights of the displaced, the Government of Colombia has largely failed to meet its responsibility to protect civilian communities from abuses perpetrated by all parties to the conflict.¹⁹ Under international human rights law, the Government of Colombia is obligated to take adequate measures to protect its population from human rights abuses perpetrated by third parties, in this case by both right-wing paramilitary units and leftist guerrilla forces. Under international humanitarian law, the Government of Colombia is also obligated to protect civilians from violence and to provide adequate assistance to the victims of the armed conflict.

This report specifically analyses the housing situation of Colombia's IDPs in terms of their rights to adequate housing, to be protected from forced eviction, and to restitution of housing and property. One of our main conclusions is that the Government of Colombia must urgently take a series of concrete steps to rectify the current situation. In this regard, the report makes concrete policy recommendations to the Government and other authorities.

Although the legally defined categories of persons who fall victim to forced eviction and those who fall victim to internal displacement do not entirely coincide, there is often considerable overlap between them. In other words, while displacement is very often precipitated by forced eviction, the latter may not be the sole cause of the former in every situation. For the victims

18 World Food Programme, *Protracted Relief and Recovery Operation in Colombia: Assistance to Persons Displaced by Violence in Colombia*, WFP/EB.3/99/7-B/3 (8 Sept. 1999).

19 Colombia is a State Party to the following international human rights and humanitarian legal instruments: the American Convention on Human Rights; the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights 'Protocol of San Salvador'; the International Covenant on Civil and Political Rights along with its First and Second Optional Protocols; the International Covenant on Economic, Social and Cultural Rights; the International Convention on the Elimination of All Forms of Racial Discrimination; the Convention on the Elimination of All Forms of Discrimination Against Women; the Convention on the Rights of the Child; and the Geneva Conventions of 1949.

of eviction and displacement, there are several bodies of international law that provide protections against, and remedies for, the various and interrelated human rights violations that they have suffered. These protections and remedies include those provided by the right to adequate housing, the right to be protected from forced eviction and the UN Guiding Principles on Internal Displacement, as well as the increasingly well-defined right to housing and property restitution for refugees and other displaced persons.

COHRE is convinced that respect for human rights must be the focus of all efforts to resolve the current armed conflict in Colombia. In particular, COHRE urges the Government of Colombia to fully implement the *UN Guiding Principles on Internal Displacement*, including prevention of forced eviction and forced displacement, protection of the internally displaced, provision of adequate humanitarian aid, and facilitation of a return process that is voluntary and complies with international standards of security.

COHRE urges the Government of Colombia to comply fully with its housing rights obligations under international human rights law. The housing conditions of the vast majority of Colombia's internally displaced persons are grossly inadequate. Under the International Covenant on Economic, Social and Cultural Rights, the Government is obligated to "give due priority to those social groups living in unfavourable conditions", as well as to protect persons within its jurisdiction from forced eviction, whether by State or non-State actors.

COHRE reiterates that competent authorities in Colombia have the duty and responsibility to help returned and/or resettled internally displaced persons to recover, to the maximum extent possible, the property and possessions that they left behind or were dispossessed of when they were displaced. If recovery of such property and possessions is not possible, the competent authorities should provide these persons with, or assist them in obtaining, appropriate compensation or another form of just reparation.



Department	Area (km ²)	Population	Department	Area (km ²)	Population
Amazonas	109 665	80 360	La Guajira	20 848	524 619
Antioquia	63 612	5 750 478	Magdalena	23 188	1 403 318
Arauca	23 818	282 302	Meta	85 635	771 089
Atlántico	3 388	2 365 663	Nariño	33 268	1 775 139
Bolívar	25 978	2 229 967	Norte de Santander	21 658	1 493 932
Boyacá	23 189	1 411 239	Putumayo	24 885	378 483
Caldas	7 888	1 170 187	Quindío	1 845	613 375
Caquetá	88 965	463 333	Risaralda	4 140	1 024 362
Casanare	44 640	325 713	San Andres y Providencia	52	83 491
Cauca	29 308	1 363 054	Santander	30 537	2 085 084
Cesar	22 905	1 050 303	Sucre	10 917	868 648
Chocó	46 530	413 173	Tolima	23 562	1 312 972
Córdoba	25 020	1 392 905	Valle del Cauca	22 140	4 524 678
Cundinamarca	24 210	9 467 562	Vaupés	54 135	33 152
Guainía	72 238	43 314	Vichada	100 242	97 276
Guaviare	53 460	133 236	District		
Huila	19 890	994 218	Bogotá Distrito Capital	1 587	7 117 984

P r e f a c e

Today, approximately three million Colombians are internally displaced. As this report illustrates, at the international level the crisis of internal displacement in Colombia has become one of the severest humanitarian situations in the world and has profoundly discriminatory overtones. Afro-Colombian and indigenous peoples, children and women – indeed, the poorest people in the country – are all disproportionately affected by violence and displacement. Many displaced families have fled their homes due to violence and resettled elsewhere within the country, only to face an insecure future of poverty and social isolation.

As United Nations Special Rapporteur on Housing and Property Restitution for Refugees and Internally Displaced People, I recently attended a national conference in Bogotá, Colombia, on the issue of Housing and Property Restitution for Colombia's internally displaced population. This conference was held on 6-7 November 2004, and was coordinated jointly by COHRE (Centre on Housing Rights and Evictions), ILSA (Latin American Institute of Alternative Legal Services), and CND (National Coordination for the Displaced).

It was clear to me that the displaced communities represented at that conference had been victims of a range of human rights violations. Threats and harassment characterised life in the countryside for many, as Colombia's civil war continued to rage. Forced eviction, too, was an all-too-common reality, and often sparked displacement. Scarcity, exclusion and a crumbling standard of living characterised life in the informal settlements, where displaced families were trying to re-establish their lives and eek out enough of a living to provide the basic necessities of life for their children.

The question is: What is the long-term solution for Colombia's three million internally displaced people, who have endured such trauma and who continue to struggle daily for survival? What will it take for them to finally realise their human rights, and to live a life of human dignity? Certainly, peace is a prerequisite to security, but justice is also a foundation for a long-standing peace.

Human rights organisations in Colombia work for justice and understand that it is central to any sustainable resolution of the conflict. Restitution and justice are inextricably linked in this vision of peace. Under international human rights law, restitution refers to an equitable remedy, or a form of restorative justice, by which persons who suffer loss or injury are returned as far as possible to their original pre-loss or pre-injury position. The remedy includes, for example, the return of arbitrarily or illegally confiscated housing or property. Housing and property restitution is increasingly viewed as a right of displaced persons and refugees under international human rights law, and as the key means of restoring situations involving displacement to their original state. When restitution is not possible, for example due to the destruction of housing, victims are entitled to adequate compensation for their loss.

While Colombia's displacement situation arises from a unique national history, sadly Colombia's internally displaced persons suffer many of the same human rights abuses as do millions more displaced persons throughout the world. In fact, for many refugees and other displaced persons, dispossession of their homes lies at the root of their displacement, and therefore the resolution of property and housing issues is essential to successful return programmes. Also, return must always take place under conditions of security and human dignity, and any decision to return by the displaced must be voluntary.

In recent years, housing and property restitution programmes have become increasingly implemented. They are often developed in the wake of widespread forced evictions and other violations of human rights, when masses of people are forced to abandon their homes and communities. Such programmes have been put in place in Guatemala, Bosnia and Herzegovina, East Timor, Rwanda, Kosovo and South Africa, among others.

Yet it is important to mention that while housing and property restitution is best seen as a remedy, or a particular kind of reparation, for past human rights abuses, there is much to be said for the prevention of these violations. Under international human rights law, governments are obligated to protect their populations from forced eviction and other violations of human rights, whether at the hands of the State or third-party actors.

The international community's role is also critical in the effort to stop these violations — by preventing the spread of conflict and abuse and by holding governments accountable for their actions. In crisis situations, like the one we see today in Colombia, governments must seek to provide adequate humanitarian aid to ensure that displaced persons are able to realise their right to an adequate standard of living.

I believe that this COHRE report is an important contribution to the international movement that seeks justice for the innocent victims of the civil war in Colombia, and accountability for those whose actions have resulted in the denial of human rights. It is my sincere hope that justice and peace will one day — soon — become a reality for all Colombians.

Paulo Sérgio Pinheiro
Special Rapporteur on Housing and Property Restitution
UN Sub-Commission on the Promotion and Protection of Human Rights

São Paulo, Brazil, 1 March 2005

1

Introduction

“More than two million people have been forced into displacement as a consequence of the violence imposed by illegal armed groups seeking political support by force, in vast areas of the territory. Some other communities are kept under siege, as another manifestation of the humanitarian crisis. In both cases, the civilian population endures the consequences of official neglect or negligence or of partial, delayed and insufficient responses.”

– Inter-American Commission on Human Rights,
Annual Report (2002)

A relentless civil war has been raging in Colombia for the past four decades. It is a war which has the strategic control of territory as its central theme, and which has resulted in an ongoing humanitarian crisis of enormous proportions. At least three major armed factions are active throughout the country: the Government of Colombia, right-wing paramilitary groups,²⁰ and leftist guerrilla fighters.²¹ The official armed forces of Colombia have been accused of aligning themselves with paramilitary forces in order to fight jointly against the guerrillas.²² On all sides of the conflict, drug cultivation and narcotics trafficking have served to fund the violence, and have further intensified the conflict over land acquisition.

As is usually the case, it is civilians who are caught in the merciless crossfire. As a direct result of the fighting, which today looks no closer to a definite end, between two and three million Colombians have had to take whatever meagre belongings they could carry, and flee to other parts of the country for safety. Young children, the elderly and the sick — all have been indiscriminately subjected to this hardship and become part of Colombia’s ‘internally displaced’ population.²³

Today, the majority of Colombia’s internally displaced people (IDPs) are women and children, and they face particular obstacles at each stage of the displacement cycle. For example, women and girls who become displaced are particularly vulnerable to gender-based discrimi-

20 Colombia’s largest paramilitary group is the United Self-Defence Forces of Colombia (AUC: *Autodefensas Unidas de Colombia*).

21 The two largest guerrilla groups in Colombia are the Revolutionary Armed Forces of Colombia (FARC: *Fuerzas Armadas Revolucionarias de Colombia*) and the National Liberation Army (ELN: *Ejército de Liberación Nacional*).

22 Amnesty International, *Colombia: ‘Just what do we have to do to Stay Alive?’ Colombia’s Internally Displaced: Dispossessed and Exiled in Their Own Land (1997)*.

23 According to the UN Guiding Principles on Internal Displacement, ‘internally displaced persons’ are those persons who have been forced to leave or flee their homes suddenly or unexpectedly in large numbers, as a result of armed conflict, internal strife, systematic violations of human rights or natural or man-made disasters, and who are within the territory of their own country (see Appendix 1).

nation and violence. Children and young persons suffer violations of their rights to the highest attainable standard of health, to education, and to personal security. Afro-Colombians and indigenous persons, who are disproportionately represented among Colombia's internally displaced population, risk losing their culture and are particularly susceptible to racial discrimination as they attempt to resettle in new communities.

For IDPs in Colombia, whatever their gender, age or race, life is an ongoing struggle. Forced to flee their homes and lands, they find that they are the pawns in a political and military conflict whose protagonists and minor actors too often ignore humanitarian concerns and violate internationally recognised human rights — and do this with impunity. As with most displaced communities around the world, Colombia's IDPs undergo multiple human rights violations at each stage of the displacement cycle; their experiences are characterised by violence, insecurity, discrimination and poverty.

Generally, Colombia's internally displaced flee to the informal slums and shantytowns which have developed around all of the country's major cities, especially Bogotá, Medellín, Cali and Cartagena.²⁴ Informal settlements on the outskirts of each of these cities now house several thousands, even several tens of thousands, of IDPs and are growing daily as newly displaced families move in and set up their own makeshift homes. As a rule, housing conditions in these informal communities are grossly inadequate: overcrowding and a lack of basic services are the day-to-day reality. In many such communities, the problems are compounded by a lack of personal security and privacy, and inadequate or even no access to employment, schools and healthcare facilities.

All Colombians have a right to be protected from forced eviction and displacement. Under international human rights law and standards, the Government of Colombia has the primary duty and responsibility to provide protection and humanitarian assistance to its internally displaced population. The Government also has a duty to establish conditions, as well as provide the means, which allow internally displaced persons to return voluntarily, in safety and with dignity, to their homes or places of habitual residence, or to resettle voluntarily in another part of the country.

This fact-finding mission report highlights the housing rights dimensions of the ongoing crisis in Colombia. COHRE has worked closely with Colombian human rights organisations to raise the international profile of housing rights issues relating to displacement, including the rights to adequate housing, to be protected from forced eviction, to voluntarily return in safety and dignity, and to housing and property restitution. We hope that this report will represent a significant contribution in this direction.

This report makes a series of recommendations to the Government of Colombia. These recommendations, based on widely recognised principles of international human rights and humanitarian law, are meant to alleviate the current housing rights crisis for Colombia's internally displaced population. In this regard, COHRE believes that the Government must take a three-pronged approach in order to comply with its housing rights obligations under such law:

24 Some 480 000 internally displaced persons have fled to Bogotá since 1985, giving it the highest concentration (approx. 23%) of the country's total displaced population.

1) Protect against forced eviction and forced displacement

The Government of Colombia should take immediate and effective steps, in full compliance with all other aspects of international human rights and humanitarian law, to protect all persons within its jurisdiction from being forcibly evicted from their home or place of habitual residence. At the same time, the Government should recognise that displaced persons have the right to freedom of movement, and as such are entitled to seek safety in another part of the country, or even to leave their country if they so choose.

2) Ensure the right to adequate housing for those already displaced

The Government of Colombia should take immediate and effective steps, in full compliance with all other aspects of international human rights and humanitarian law, to provide adequate humanitarian aid and other forms of assistance to displaced persons. This should include housing subsidies and other housing-related programmes designed to ensure that all displaced persons are able to realise and enjoy their right to adequate housing. The provision of adequate housing should encompass affordable access to basic services, including electricity, water and sanitation.

Similarly, the Government should take immediate and effective steps to ensure that displaced persons in Colombia enjoy an adequate standard of living, and have access to adequate educational and healthcare facilities. Additionally, displaced persons should be actively involved in the development of all Government programmes designed to ensure their housing rights. In this regard, special efforts should be made to ensure the full participation of women and ethnic minorities.

3) Ensure the right to return, including the right to housing and property restitution

The Government of Colombia should take immediate and effective steps, in full compliance with all other aspects of international human rights and humanitarian law, to establish conditions, as well as provide the means, which allow internally displaced persons to return voluntarily, in safety and dignity, to their former homes or places of habitual residence. The Government of Colombia should facilitate the reintegration of returned internally displaced persons. Special efforts should be made to ensure the full participation of internally displaced persons, and in particular women and ethnic minorities, in the planning and management of their return and reintegration.

Displaced persons also have the right to be protected against forcible return and to have their right of freedom of movement respected. The Government of Colombia should immediately put a halt to the forcible return of persons to any place where those persons feel that their life, safety, liberty and/or health would be at risk.

2

The right to be protected from forced eviction

“Displaced populations [in Colombia] continue to live in fear as they face discrimination and stigmatization. Their living conditions are sub-standard and many continue to have limited access to essential services of food and medicine, adequate shelter, income-generating activities, employment and education. Afro-Colombian and indigenous persons make up a disproportionate number of the displaced, and as already marginalized groups, face additional obstacles once displaced.”

– Francis Deng, Representative of the UN Secretary-General on Internally Displaced Persons, 4 September 2002

2.1 Scale and scope of internal displacement

Over three million people have been displaced by violence since 1985, according to the leading Colombian human rights organisation that monitors displacement, CODHES (Consultoría para los Derechos Humanos y el Desplazamiento).²⁵ This means that approximately seven percent of the current total population of Colombia is displaced. Today, Colombia has the dubious distinction of having the third-largest internally displaced population in the world, surpassed only by Sudan and the Democratic Republic of the Congo.

In many – if not most – cases, this displacement is precipitated by forced eviction. The prohibition of forced eviction is well-established under international human rights law. ‘Forced eviction’ is the permanent or temporary removal against their will of individuals, families and/or communities from the homes and/or land which they occupy, without the provision of, and access to, appropriate forms of legal or other protection (*see Appendix 4*). The right to be free from forced eviction is implicit in the right to adequate housing, as well as in the right to privacy and respect for the home.²⁶

25 Consultoría para los Derechos Humanos y el Desplazamiento (CODHES), *Desplazados sin salida?*, Boletín número 46 (10 Dec. 2003), <http://www.codhes.org.co/Documentos/20/boletin46.pdf>. All estimates of the total number of IDPs in Colombia are cumulative and take no account of returns, resettlements, multiple displacements and demographic changes in the displaced population.

26 See Art. 17 of the International Covenant on Civil and Political Rights (ICCPR) as elaborated upon in General Recommendation 16 of the UN Human Rights Committee on ‘The right to respect of privacy, family, home and correspondence, and protection of honour and reputation’.

Colombia is a State Party to the International Covenant on Economic, Social and Cultural Rights (ICESCR).²⁷ The UN Committee on Economic, Social and Cultural Rights, which oversees the implementation of that Covenant, has stated in its General Comment No. 7 that “forced evictions are *prima facie* incompatible with the requirements of the [ICESCR] and can only be justified in the most exceptional circumstances, and in accordance with the relevant principles of international law”.²⁸

The UN Commission on Human Rights has similarly affirmed “that the practice of forced eviction constitutes a gross violation of human rights, in particular the right to adequate housing”.²⁹ The UN Sub-Commission on the Promotion and Protection of Human Rights has also reaffirmed that “every woman, man and child has the right to a secure place to live in peace and dignity, which includes the right not to be evicted arbitrarily or on a discriminatory basis from one’s home, land or community”.³⁰ The Sub-Commission has also reaffirmed that “the practice of forced eviction constitutes a gross violation of a broad range of human rights, in particular the right to adequate housing, the right to remain, the right to freedom of movement, the right to privacy, the right to property, the right to an adequate standard of living, the right to security of the home, the right to security of the person, the right to security of tenure and the right to equality of treatment”.³¹

Colombia is also a State Party to the Geneva Conventions of 1949 and their Additional Protocols. Article 17 of the Second Additional Protocol to the Geneva Conventions Relating to the Protection of Victims of Non-International Armed Conflicts states that:

- 1) The displacement of the civilian population shall not be ordered for reasons related to the conflict unless the security of the civilians involved or imperative military reasons so demand. Should such displacements have to be carried out, all possible measures shall be taken in order that the civilian population may be received under satisfactory conditions of shelter, hygiene, health, safety and nutrition; and
- 2) Civilians shall not be compelled to leave their own territory for reasons connected with the conflict.³²

Nearly all of Colombia’s displaced communities have fled because of violence. In some cases, deliberate massacres precede migration; in other cases, communities are simply caught in the crossfire of opposing armed groups battling to control the territory on which they live.

27 International Covenant on Economic, Social and Cultural Rights (16 Dec. 1966), adopted and opened for signature, ratification and accession by UN General Assembly resolution 2200A (XXI). *Entered into force* 3 Jan. 1976.

28 See further the UN Committee on Economic, Social and Cultural Rights, General Comment No. 7 on the right to adequate housing (1997): forced eviction, and UN Fact Sheet No. 25: Forced Evictions and Human Rights.

29 UN Commission on Human Rights, *Forced evictions*, Commission on Human Rights resolution 1993/77, UN Doc. E/CN.4/RES/1993/77 (10 Mar. 1993). See also UN Commission on Human Rights, *Prohibition of forced evictions*, Commission on Human Rights resolution 2004/28, UN Doc. E/CN.4/RES/2004/28 (16 Apr. 2004).

30 UN Sub-Commission on the Promotion and Protection of Human Rights (formerly the Sub-Commission on the Prevention of Discrimination and Protection of Minorities), *Forced evictions*, Sub-Commission on the Promotion and Protection of Human Rights resolution 1998/9, UN Doc. E/CN.4/Sub.2/RES/1998/9 (20 Aug. 1998).

31 Ibid.

32 *Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II)*, 1125 UNTS 609. *Entered into force* 7 Dec. 1978.

In still other cases, families and communities are *threatened* with violence, leaving them with no alternative but to evacuate the area immediately, abandoning their homes and lands, in order to preserve their own lives and the lives of loved ones.

Sometimes, displaced persons genuinely do not know whether the armed groups that attacked or threatened them were paramilitaries or guerrillas. Often, however, displaced persons do know the parties, but were warned that they must keep quiet about what was happening to them and their communities. Many of the IDPs interviewed by COHRE were hesitant to say who was responsible for their displacement, and rather spoke in general terms about the conditions of violence that forced them to flee. Amnesty International has reported that:

Displaced communities frequently suffer serious human rights violations at the hands of the security forces and their paramilitary allies, who try to silence them and prevent them from bringing their plight to international attention.³³

Some sources report that rates of internal displacement have been declining in recent years. According to the Government of Colombia, between January and September 2003 the rate of displacement per 100 000 persons was 394 persons, as compared to 807 during the corresponding period of 2002. CODHES, however, has noted that the apparent reduction in the number of displaced persons in recent years is not due to increased security, but to a purposeful strategy of intimidation aimed at curtailing migration and making sure that communities stay where they are.³⁴ CODHES warns that whereas the levels of displacement have been falling in recent years, there is reason to believe that communities are being forcibly barred from relocating and that their freedom of movement is being deliberately restricted, apparently as a new tactic of the paramilitaries.

Other human rights organisations corroborate this claim. In 2004, the UN Office of the High Commissioner for Human Rights reported that:

Forced displacements and illegitimate impediments to internal transit continue to be the gravest violations of this right [the right to freedom of movement and residence]. The office in Colombia was able to observe that, during the first months of 2004, the civilian population of the Middle Atrato suffered from the imposition by the Military Forces of limitations and restrictions on freedom of movement as well as other impediments to the entry and exit of foodstuffs, pharmaceuticals, fuel and construction materials.³⁵

The whole of Colombia has been affected by displacement, but the parts that are currently the worst affected by violence are the departments of Antioquia, Bolívar, César, Chocó, Cundinamarca, Norte de Santander and Putumayo and the region of Sierra Nevada de Santa Marta.

33 Forcibly displaced people are also often labelled as guerrilla sympathisers or collaborators, thereby providing the security forces and their paramilitary allies with an excuse for targeting them. Organisations working with the displaced communities have also been targeted. Amnesty International, *Colombia: Fear for Safety* (2 Feb. 2001).

34 CODHES (n. 25 above).

35 UN High Commission on Human Rights, *Report of the United Nations High Commissioner for Human Rights on the human rights situation in Colombia*, in UN Doc. E/CN.4/2004/13 (17 Feb. 2004).



Children living in a displaced community, 18 October 2003

2.2 Affected groups

2.2.1 Children

Colombia's children are perhaps the most seriously affected by the internal armed conflict and comprise the largest segment of the internally displaced population — about 45 percent of Colombia's displaced are under the age of 14.³⁶ According to the United Nations Children's Fund (UNICEF), over one million children have been displaced from their homes in Colombia over the past 15 years.³⁷ Other estimates put the number at closer to two million.³⁸

In Colombia, 24 percent of the population living below the poverty line is under 10 years old and almost 14 percent of children less than five years of age suffer from chronic malnutrition.³⁹ These problems become even more acute during displacement. In addition to enduring chronic poverty, displaced children often suffer psychological traumas due to violence and displacement. Displaced children often witness horrific acts of violence — the same violence that leads to the displacement of their families and communities. All too often, children themselves become the victims of violence; displaced children are particularly vulnerable to mistreatment, sexual exploitation and forced recruitment by armed groups.

36 US Committee for Refugees, *Colombia Violence Leaves 2.1 Million Internally Displaced; For Many, Refuge is Elusive* (19 June 2001).

37 UN Children's Fund (UNICEF), *Colombia: At a Glance*.

38 Global IDP Database (n. 14 above).

39 UN Commission on Human Rights, *Report of the United Nations High Commissioner for Human Rights on the human rights situation in Colombia*, UN Doc. E/CN.4/2003/13 (24 Feb. 2003).

Additionally, displaced children lose the stability of a home in which to live, and the loss of their home often entails other losses, including the loss of education,⁴⁰ of medical care⁴¹ and of adequate food.⁴² Indeed, according to the Women's Commission for Refugee Women and Children, many displaced children in Colombia suffer from malnutrition.⁴³ Human Rights Watch has reported that many displaced children suffer serious health effects, including chronic diarrhoea, dehydration and hepatitis, because only minimal and irregular healthcare is available to them.⁴⁴ Médecins Sans Frontières surveyed the health consequences of displacement in Barrio Nelson Mandela, an informal settlement outside of Cartagena (which COHRE also visited, in October 2003). Research findings showed that only seven percent of the children had been healthy during the two weeks prior to that survey, and that 57 percent of childhood deaths which occurred in that community between August and November 2000 could have been prevented if only the children had had access to appropriate medical care.⁴⁵

With respect to education, the office of Colombia's Human Rights Ombudsperson estimates that only 15 percent of displaced children attend school.⁴⁶ About 95 percent of displaced children are rejected from secondary schools because they and their family-members lack money for fees, books and uniforms.⁴⁷ In the vast slums surrounding Bogotá, displaced children often cannot obtain a primary education at a regular public school. Instead, they must rely on informal 'community schools' organised by the communities themselves, sometimes with the assistance of charities and other non-governmental organisations. In other areas, displaced children lack access even to these informal institutions and are growing up without any schooling at all.⁴⁸

40 The right to education is enshrined in, *inter alia*, Art. 26 of the Universal Declaration of Human Rights, Arts. 13 and 14 of the International Covenant on Economic, Social and Cultural Rights, and Art. 28 of the Convention on the Rights of the Child.

41 The right to the highest attainable standard of health is enshrined in, *inter alia*, Art. 25 of the Universal Declaration of Human Rights, Art. 12 of the International Covenant on Economic, Social and Cultural Rights, and Art. 24 of the Convention on the Rights of the Child.

42 The right to adequate food and nutrition is enshrined in, *inter alia*, Art. 25 of the Universal Declaration of Human Rights, Art. 11 of the International Covenant on Economic, Social and Cultural Rights, and Art. 24(c) of the Convention on the Rights of the Child.

43 Women's Commission for Refugee Women and Children, *Unseen Millions: The Catastrophe of Internal Displacement in Colombia – Children and Adolescents at Risk* (31 Mar. 2002).

44 Human Rights Watch, *War Without Quarter: Colombia and International Humanitarian Law* (1998).

45 Mabel González Bustelo, 'Desterrados. Forced Displacement in Colombia', *Cuadernos para el debate: 12*, Médecins Sans Frontières-Spain (Dec. 2001).

46 US Committee for Refugees, 'Colombia', *World Refugee Survey 2003 Country Reports* (2003).

47 Colombian Commission of Jurists, *Informe sobre el disfrute del derecho a la educación en Colombia* (Oct. 2003).

48 *Ibid.* Principle 23 of the UN Guiding Principles on Internal Displacement also recognises that every human being has the right to education. To give effect to this right for internally displaced persons, the Colombian authorities are obligated to ensure that displaced children receive education that is free and compulsory at the primary level. Another requirement is that education should respect cultural identity, language and religion.

2.2.2 Afro-Colombian and indigenous peoples

“The armed conflict contributed to worsen[ing] the situation of indigenous and Afro-Colombian communities. An increase in selective violence against traditional authorities and leaders has been reported, with homicides, death threats and forced displacements, as well as greater confinement of the communities on the part of the illegal armed groups.”

– UN Office of the High Commissioner for Human Rights
*Report of the UN High Commissioner for Human Rights
on the human rights situation in Colombia
(17 February 2004)*

Afro-Colombians⁴⁹ and indigenous persons represent about a quarter of all the internally displaced in Colombia, even though they make up only 11 percent of the total national population.⁵⁰ According to Government reports, the groups most seriously affected by displacement include Afro-Colombian and indigenous communities in Cauca department, in the mountainous regions of Sierra Nevada de Santa Marta and Serranía del Perijá, and in vast areas of the departments of Antioquia, Tolima, Nariño, Putumayo, Córdoba and Chocó.

Ironically, while the lands of Afro-Colombian and indigenous peoples are under attack, they are also protected under national law (see Boxes 1 and 2 below).

The UN Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, Mr Doudou Diène, recently visited Colombia and noted that:

The political and military violence, and its corollary, the priority accorded by all parties concerned to a military solution, as well as the marginalisation of respect for human rights, and the systematic violation of the basic rights of the population, have led to a dramatic increase in the precariousness and economic and social distress of these communities [Afro-Colombians, indigenous peoples and other minorities], as well as discrimination – particularly racial and ethnic discrimination – against them.⁵¹

49 The Government of Colombia acknowledges: that 82% of Afro-Colombians continue to live in conditions where their basic needs are not met; that the illiteracy rate among the Afro-Colombian population is three times higher than that of the rest of the population; that only 2% of Afro-Colombian young people go on to higher education; that the infant mortality rate among Afro-Colombians is 151 per thousand, while the national average is 39 per thousand; that 76% of Afro-Colombians live in conditions of extreme poverty; and that 42% of Afro-Colombians are unemployed. Report by Mr Doudou Diène, Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance on his mission to Colombia, UN Doc. E/CN.4/2004/18/Add.3, para. 34 (24 Feb. 2004).

50 CODHES (n. 25 above).

51 Addendum to the report of Mr Doudou Diène, Special Rapporteur (n. 49 above).

Mr Diène recommended, *inter alia*, the adoption of:

“...urgent and priority measures, supported by appropriate budgetary resources, to alleviate and put an end to the precarious economic and social situation of the communities most vulnerable to political violence, particularly in the areas of housing, health, education and work”.⁵²

Box 1: Afro-Colombian land rights under Colombia’s national law

Article 63 of the Colombian Constitution establishes special protection for the communal lands of ethnic groups within the country.⁽¹⁾ The collective territories of Afro-Colombian communities are further regulated by Law 70/1993⁽²⁾ and by Decrees 1371/1994,⁽³⁾ 1745/1995⁽⁴⁾ and 1320/1998.⁽⁵⁾ These regulations recognise that Afro-Colombian communities have collective property rights to the lands they occupy; in particular, vacant land in rural areas along the riverbanks in the Pacific Basin. These regulations also protect the cultural identity and the rights of Afro-Colombian communities as a single ethnic group, with the aim of enhancing their economic and social development. These communities are considered as “a set of families of Afro-Colombian descent, having their own culture, sharing a history and with their own traditions and customs within the rural-urban relationship, which reveal and preserve identity awareness, distinguishing them from other ethnic groups.”⁽⁶⁾

In order to be granted collective ownership titles, each Afro-Colombian community may establish a community council to be responsible for allocating specific lands, conserving and protecting natural resources, and acting as friendly arbitrators in internal conflicts subject to conciliation. The aforementioned regulations also enshrine wide protection of natural resources and the environment in the region, emphasising the social and ecological role of property. These protections also provide for the creation of a High-Level Government Consultative Commission (*Comisión Consultiva de Alto Nivel*) to formulate plans for the development of Afro-Colombian communities, to be financed by State investment funds, as well as the participation of affected communities in Land Planning Councils.⁽⁷⁾

Sources:

(1) Constitution of Colombia, Art. 63.

(2) Ley 70 de 1993, Congreso de Colombia.

(3) Decreto Numero 1371 de 1994, Diario Oficial, Año CXXX. N.41417. 1 Julio 1994, p. 1.

(4) Decreto Numero 1745 de 1995, Diario Oficial, Año CXXXI. N.42049. 13 Octubre 1995, p. 1.

(5) Decreto Numero 1320 de 1998, Diario Oficial, Año CXXXIV. N.43340. 15 Julio 1998, p. 2.

(6) Ley 70 de 1993, Congreso de Colombia.

(7) Decreto Numero 1371 de 1994, Diario Oficial, Año CXXX. N.41417. 1 Julio 1994, p. 2.

52 Ibid. para. 51(b).

In 1999, the UN Committee on the Elimination of Racial Discrimination (CERD) also emphasised that the widespread violence which plagues Colombia has created one of the world's largest internally displaced populations, and that both the Afro-Colombian and indigenous communities have been particularly seriously affected. The Committee expressed concern:

... at reports indicating that violence in Colombia has been largely concentrated in areas where indigenous and Afro-Colombian communities live; that increasingly these communities have been targeted by armed groups; and that the Government's tactics in fighting the drug trade have led to a further militarization of these regions, creating an atmosphere that is conducive to human rights violations and the destruction of cultural autonomy and identity.⁵³

The department of Chocó, which borders Panama and has a long Pacific shoreline, has a predominantly Afro-Colombian population. It is the country's poorest department, with almost 80 percent of the population living in extreme poverty and an illiteracy rate that is three times the national average. Throughout the armed conflict, Chocó has been fiercely contested for strategic purposes; indeed, this department has seen some of the country's worst political violence, with paramilitaries and guerrillas struggling for control of its key transportation corridors. The *Asociación de Afrocolombianos Desplazados* (AFRODES), a Colombian non-governmental organisation that works with Afro-Colombian communities displaced by the armed conflict, told COHRE that large numbers of such communities originate in Chocó.

The *Organización Nacional Indígena de Colombia* (ONIC), a prominent national organisation of indigenous Colombians, focuses on the affects of the conflict and the internal displacement on the country's indigenous communities.⁵⁴ Indigenous leaders have been especially targeted by violence; in recent years, scores of them have been murdered for political motives. Indeed, COHRE's October 2003 fact-finding mission to Colombia coincided with a new wave of violence against indigenous leaders in the northern Sierra Nevada mountains.

This renewed violence came only a few years after some of the most pervasive displacements affecting indigenous communities. ONIC reports that in the period from 1997 to 2001 about 6 200 indigenous persons were forced to flee their homes and lands in the departments of Antioquia, Córdoba, Chocó and Cauca, as well as in the mountainous regions of Sierra Nevada de Santa Marta and Serranía del Perijá. The main causes were related to intense conflicts with the FARC and the murders of prominent indigenous leaders, including Juan Castillo and José Elias Suárez from El Volao and Varasanta Indigenous Reserves, and Governor Mario Domicó from the Embera Katío de la Serranía de Abibe community, among other targeted killings committed by the paramilitaries.⁵⁵

53 UN Committee on the Elimination of Racial Discrimination, Concluding Observations on Colombia, UN Doc. CERD/C/304/Add.76 (20 Aug. 1999).

54 Colombia has 81 indigenous ethnic groups, who speak 75 different languages and occupy 25% of the national territory.

55 Organización Nacional Indígena de Colombia (ONIC), *El Desplazamiento Indígena en Colombia: caracterización y estrategias para su atención y prevención en áreas críticas* (Bogotá: ONIC, 2003).

In such situations, traditional leadership structures and communal ties are profoundly affected. Displacement often contributes to the breakdown of indigenous tribal governments, especially when community leaders and others who speak out against human rights violations committed by warring factions in the area are themselves targeted by violence and assassinations.

Box 2: Indigenous land rights under Colombia's national law

In terms of domestic legal protection, there are existing Government regulations that govern the titling of indigenous lands in Colombia. Taken together, Law 160/1994⁽¹⁾ and Decrees 2164/1995⁽²⁾ and 1396/1996⁽³⁾ provide for special legal recognition of the land rights of one or more indigenous communities that, under a collective property title, may enjoy private property warranties. The management and administration of these lands may be placed solely in the hands of the indigenous communities' own tribal councils and authorities, in accordance with their uses and customs. The Government regards formally recognised indigenous lands as inalienable — at least, within the letter of the law. Furthermore, these indigenous communities have full access to land resources, including water sources.

The Colombian Institute for Rural Development (INCODER – *El Instituto Colombiano de Desarrollo Rural*) is the Government agency responsible for surveying lands to be provided to those indigenous communities that have insufficient land or are living in unsuitable areas, in order to facilitate adequate settlement, development and the regularisation of traditional territories. Decree 1397/1996 also created the National Commission on Indigenous Territories (*Comisión Nacional de Territorios Indígenas*)⁽⁴⁾ under the Ministry of Agriculture and Rural Development. The Commission is meant to facilitate consensus-building between indigenous representatives and the Government, specifically with regard to programmes related to land management, distribution, regularisation and titling.

Sources:

(1) Ley 160 de 1994, Congreso de Colombia.

(2) Decreto Numero 2164 de 1995, Diario Oficial, Año CXXXI. N.42140. 7 Diciembre 1995, p. 1.

(3) Decreto Numero 3696 de 1996, Diario Oficial, Año CXXXII. N.42853. 7 Agosto 1996, p. 3.

(4) Decreto Numero 3697 de 1996, Diario Oficial, Año CXXXII. N.42853. 7 Agosto 1996, p. 3.

ONIC has also emphasised the impact that the displacement has had on indigenous cultures and the realisation of their cultural and communal rights, as well as the economic difficulties faced by indigenous peoples when they are forced to relocate from rural areas to urban centres. For indigenous communities, loss of land is fundamentally tied into their loss of communal and traditional ways of life. For example, ONIC notes that the inability of indigenous peoples to control their lands and grow medicinal plants in their traditionally sacred and fertile territories affects the cultural life of communities in profound ways.

Forced displacement of indigenous communities has often been seen a strategy to prevent them from receiving or claiming ownership of the territories they have traditionally occupied. The Constitution of Colombia provides that “the exploitation of natural resources in the indigenous territories shall be without detriment to the cultural, social, and economic integrity of the indigenous communities.”⁵⁶ Nevertheless, experience shows that conflicts have arisen in areas occupied by indigenous communities, especially when contested lands are being leased or sold to logging, mining, oil and other resource-extraction companies that wish to operate in those areas.⁵⁷ In several cases, indigenous and tribal peoples are in fact prohibited from owning their lands because they do not hold land titles or are not familiar with the legal implications of formal land ownership.

Furthermore, recognition of collective property rights, as exercised within traditionally indigenous territories, is of essential importance to these communities. Article 13 of International Labour Organisation (ILO) Convention 169 concerning Indigenous and Tribal Peoples in Independent Countries⁵⁸ requires Governments to respect the cultures of indigenous peoples, and in particular their relationship to their lands and the collective aspects of this relationship.

Recognition of the land rights of indigenous peoples is fundamental to ensuring the realisation of all their economic, social and cultural rights. Article 14 of ILO Convention 169 also requires governments to take steps to identify and demarcate indigenous lands and to guarantee effective protection of the occupants’ ownership rights. Similarly, according to Principle 9 of the UN Guiding Principles on Internal Displacement (see Appendix 1), States are under a particular obligation to protect against the displacement of indigenous peoples, minorities, peasants, pastoralists and other groups with a special dependency on and attachment to their lands.

56 Constitution of Colombia, Art. 330.

57 See, for example, Amnesty International, *Colombia, A Laboratory of War: Repression and Violence in Arauca* (20 Apr. 2004). According to the Inter-American Commission on Human Rights (IACHR), of the 30 million hectares of indigenous lands, approximately six million hectares are rich in mineral and oil deposits, as well as timber forests, many of these resources being in fragile jungle and marshland ecosystems. See IACHR, *Third Report on the Human Rights Situation in Colombia*, OEA/Ser.L/V/II.102, Doc. 9 rev. 1, (26 Feb. 1999).

58 Colombia ratified ILO Convention 169 in 1991. Law 21 of 1991 regulates the rights of the Colombian indigenous peoples and incorporates ILO Convention 169 into domestic law.

2.2.3 Women

“Forced displacement in Colombia is clearly a ‘women’s issue’. ... 58 percent of the people forced to leave their homes are female and 39 percent of displaced households are headed by women. For hundreds of thousands of Colombian women, mostly from rural areas, the trauma and upheaval often forces them from an established, stable existence into circumstances of outright desperation.”

– Women’s Commission for Refugee Women and Children,
A Charade of Concern: The Abandonment of Colombia’s Forcibly Displaced (1999)

Displaced women and girls face unique problems at all stages of the displacement cycle, largely due to the prevalence of gender-based violence and gender-based discrimination. This violence is perpetrated not only by the warring parties, but also by fellow community- and family-members. Displaced women interviewed by COHRE spoke openly of the violence that had played a role in their being forced to flee their homes. Many spoke of long, arduous journeys through the Colombian countryside, enduring dangerous and desperate situations, often with young children in their care. After arriving in a city environment, these women continued to face great difficulties. They spoke of being unable to obtain the most basic social services, such as adequate housing, water and electricity, and of continuing violence and intimidation in their communities.

According to records kept by the Government’s Social Solidarity Network (*Red de Solidaridad Social*), 21 394 households headed by single women were displaced in 2000, and another 28 744 in 2001. By 15 December 2002, 30 203 such households had been displaced during that year alone, which represents 35.7 percent of all households displaced in the period from 2000 to 2002. Of all the families headed by single women which were displaced in Colombia since 1995, 94.9 percent fled their homes between 2000 and 2002. This illustrates the dramatically deteriorating situation faced by Colombian women in the past few years. As a result of the armed conflict, a third of all displaced families are headed by single women, many of them widows.⁵⁹ Often, women widowed by the violence flee to other parts of the country, seeking refuge for themselves and their children.

The World Organisation Against Torture (OMCT) has noted that:

Overall, the Government [of Colombia] has failed to protect women from violence whether at the hands of private individuals or state officials.⁶⁰

59 Addendum to the Report of the Special Rapporteur on violence against women, its causes and consequences, UN Doc. E/CN.4/2002/83/Add. 3 (11 Mar. 2002).

60 World Organisation Against Torture (OMCT), *Violence Against Women in Colombia* (2003).



COHRE meeting with a group of displaced women, 18 October 2003

The UN High Commissioner for Human Rights, CODHES and the office of Colombia's Human Rights Ombudsman have all noted that internally displaced women and girls are particularly vulnerable to domestic violence, sexual abuse and sexual exploitation.⁶¹ In August 2001, the Colombian Pro-Family Institute published a study of sexual health and reproduction in displaced women and adolescents which found that 20 percent of displaced women had been raped, and that 30 percent of displaced teenage girls had children or were pregnant.⁶²

Women also face particular challenges in the area of economic, social and cultural rights, and are often discriminated against when it comes to getting housing and social services. Ms Radhika Coomaraswamy, former UN Special Rapporteur on violence against women, in her 2002 report on her mission to Colombia, observed that:

Women, especially women from rural areas, cannot access personal documents or registration very easily. These women consequently face greater difficulties in obtaining land titles, loans, a home and health and education services. This problem is worse for indigenous women and those of African descent because of cultural barriers that deepen inequalities.⁶³

Similarly, in 1999 the UN Committee on the Elimination of Discrimination Against Women (CEDAW) noted with concern the persistence of widespread violence in the context of Colombia's armed conflict, and stated that:

61 US Department of State, 'Colombia', *Country Reports on Human Rights Practices* (2002).

62 Colombian Pro-Family Institute, *A Study of Sexual Health and Reproduction in Displaced Women and Adolescents* (2001).

63 Addendum to the Report of the Special Rapporteur (n. 59 above).

[W]omen are the principal victims and there are tens of thousands of displaced women and female heads of household who lack the resources needed for their survival in a situation in which they are called upon to assume greater responsibilities, both reproductive and productive, towards their families and communities.⁶⁴

In particular, Afro-Colombian and indigenous women are discriminated against and suffer violence. These women are at great risk of losing their traditional support networks and livelihoods, either when forced to live under the control of armed groups, or when forcibly displaced to cities that are alien to their traditional way of life. In 2002, the UN High Commissioner for Human Rights noted that:

Displacement has a greater impact on women, in ... psychological and social, economic and cultural terms. Furthermore, they are discriminated against not only because they are displaced, but also because they are women, or indigenous or Afro-Colombian. Poverty has more serious effects on displaced women who are heads of household and resettled in marginal areas. The Office has also received information on the overcrowded living conditions for displaced persons and the frequent cases of sexual abuse of women⁶⁵

In 2004, the UN High Commissioner for Human Rights reiterated these concerns, noting in particular that:

The Office in Colombia received information about the diverse forms of violence, particularly sexual, with which the illegal armed groups afflict women in different areas of the country, such as Córdoba and Tolima, on the part of the paramilitary forces, as well as in Putumayo, where cases of sexual slavery by the guerrillas were denounced.⁶⁶

Unfortunately, new national legislation protecting women's access to, and control over, land and housing (in particular, Law 812/2003⁶⁷ and Decree 519/2003⁶⁸) does not take account of the situation of internally displaced women, although it is generally recognised that preference should be given to low-income women heads-of-household in the provision of housing and other social assets. Similarly, Law 731/2002⁶⁹ aims to improve the quality of life of rural women and, in the allocation of housing subsidies and projects, prioritises rural women heads-of-household. Sadly, these regulations hardly touch on the needs of internally displaced women.

64 UN Committee on the Elimination of Discrimination Against Women, Concluding Observations on Colombia, UN Doc. A/54/38, paras. 337-401 (4 Feb. 1999).

65 UN Commission on Human Rights, *Report of the United Nations High Commissioner for Human Rights on the human rights situation in Colombia*, in UN Doc. E/CN.4/2002/17 (28 Feb. 2002).

66 UN Commission on Human Rights (n. 35 above).

67 Ley 812 de 2003, Congreso de Colombia.

68 Decreto Numero 519 de 2003 (5 Mar 2003).

69 Ley 731 de 2002, Congreso de Colombia.

2.3 Loss of housing and land

Research on internal displacement in Colombia has found that:

When peasants flee from violence, they generally lose most if not all of their property. In several regions, abandoned land is occupied or bought very cheaply by drug traffickers in an effort to increase territorial control and political power The displaced have little or no access to legal services and do not know how to protect their properties. In the cities they become squatters or must pay rent while constantly under the threat of eviction.⁷⁰

Indeed, the loss of land, property and housing is an all too common reality in situations of internal displacement all over the world. Protecting the rights of internally displaced persons (IDPs) to land, property and housing is a critical human rights concern. This is true in terms not only of protecting individuals from displacement, but also of protecting individuals once displacement has already occurred. For many IDPs, the loss of their housing and property is a major obstacle to return. Indeed, the right of IDPs to return, resettlement and reintegration cannot be ensured without first protecting their right to land, property and housing, including restitution of housing and property (see Section 4, below, on the right to return).

According to Mr Francis M. Deng, Representative of the UN Secretary-General on the human rights issues related to IDPs:

Internally displaced persons regularly lose much of their property when displaced. Because of their vulnerability, such persons need protection for the property left to them or acquired during displacement. The destruction or theft of crops and livestock, the bombing or burning of shelters and confiscation or forcible occupation of private homes by military or paramilitary forces are among the experiences faced by internally displaced persons, especially in situations of armed conflict. When internally displaced persons return to their homes, they may find their properties occupied by other people; therefore they need restitution for their property and compensation for its loss.⁷¹

Reports show that nearly 70 percent of those displaced in Colombia have lost their homes and their lands.⁷² In particular, a significant proportion of those who have suffered loss of land are from communities that depend on their relationship to the land for their physical and cultural survival. Many of these are traditional indigenous or Afro-Colombian communities.

Under the UN Guiding Principles on Internal Displacement, the Government of Colombia is obligated to protect the property of internally displaced persons. In particular, Principle 21 states that: “(1) no one shall be arbitrarily deprived of property and possessions; (2) the property and possessions of internally displaced persons shall in all circumstances be protected ... and (3) property and possessions left behind by internally displaced persons should be protected against destruction and arbitrary and illegal appropriation, occupation or use.” (See Appendix 1).

70 Liliana Obregón and Maria Stavropoulou, ‘In Search of Hope: The Plight of Displaced Colombians’, in Roberta Cohen and Francis Deng (eds.), *The Forsaken People – Case Studies of the Internally Displaced* (Washington, DC: Brookings Institution Press, 1998).

71 See UN Office of the High Commissioner for Human Rights, *Study Series 9: Internally Displaced Persons Compilation and Analysis of Legal Norms* (Geneva: United Nations, 1998).

72 World Food Programme (n. 18 above).

2.4 Government policies related to the prevention of displacement

The Inter-American Commission on Human Rights has concluded that:

The fact that the Government [of Colombia] has opted for a policy of assistance rather than one of prevention and adequate protection may be warranted in Colombia's current environment, but in no case can it provide an admissible excuse. Indeed, eradicating the causes of and preventing displacement are primarily duties of the State.⁷³

To its credit, in recent years the Government of Colombia has adopted several measures aimed at preventing forced internal displacement within the country. On the one hand, the United Nations High Commissioner for Refugees (UNHCR) has noted that the consolidation of a legal framework recognising the rights of IDPs has been one of the main achievements of the Government in recent years.⁷⁴ On the other hand, the UNHCR has also noted that the prevention of displacement continues to have a low priority in the formulation and implementation of policy.⁷⁵

The UN High Commissioner for Human Rights has similarly found that:

The prevention of displacements continues to be the weakest component of the displacement policy ... scattered responsibilities, uncoordinated information systems and inadequate decentralization of human rights policy have left gaps in preventive mechanisms and been unable to influence the course of the armed conflict. ... As a result, comprehensive and effective mechanisms have yet to be adopted.⁷⁶

Typical of these problems is the fact that an 'early-warning system', created by the Government of Colombia and coordinated by the Human Rights Ombudsman's Office, is still far from functional. All too often, the early warning system has not led to the necessary response on the part of the relevant authorities. In addition, the Ombudsperson's Office, which plays a key role in monitoring human rights violations but which receives little funding, has not been able to maintain a presence in many of the key areas affected by forced eviction and displacement.⁷⁷

Another report by the UN High Commissioner is even more pointed when speaking of the Government's prevention mechanisms:

There is no discernible State policy or comprehensive strategy for translating the regulations into concrete programmes. At times, the State seems to act more as an observer than as a genuine protector of the civilian population. There is little commitment to prioritising the matter.⁷⁸

73 Inter-American Commission on Human Rights (IACHR), *Third Report on the Situation of Human Rights in Colombia*, OEA/Ser.L/V/II.102, Doc. 9 rev. 1 (26 Feb. 1999).

74 UN High Commissioner for Refugees (UNHCR), *Balance de la política de atención al desplazamiento interno forzado en Colombia 1999-2002* (Oct. 2002).

75 Ibid.

76 UN Commission on Human Rights (n. 39 above).

77 Ibid.

78 UN Commission on Human Rights (n. 65 above).

There is little reason to believe that the situation will improve in the near future. As the Global IDP Project recently noted:

The protection of displaced people has not improved since 2002 when President Uribe's government launched a new effort under its so-called 'democratic security' policy to end the conflict by military means.⁷⁹

Under the UN Guiding Principles on Internal Displacement, governments are obligated, in all circumstances, to respect and ensure respect for their obligations under international law, including human rights and humanitarian law, in order to prevent and avoid conditions that might lead to displacement of persons. Every human being is entitled to be protected against being arbitrarily displaced from his or her home or place of habitual residence (see Appendix 1, in particular Section II: Principles Relating to Protection From Displacement).

Box 3: The UNHCR's concerns for the situation of the displaced in Colombia

Regarding internally displaced persons in Colombia, the Global IDP Database has summarised the concerns of the United Nations High Commissioner for Refugee (UNHCR) as follows:

"The UN refugee agency (UNHCR) recently evaluated the Colombian government's current policy of displacement prevention, as well as protection and assistance provided to internally displaced persons. In spite of new security measures introduced by President Alvaro Uribe in August 2002, the prevention of forced displacement and the protection of IDPs have remained the weakest aspects of the national response. The report notes that although emergency assistance to IDPs has generally been adequate, IDPs have been left to fend for themselves in the post-emergency phase.

"While the government aimed to facilitate the return of at least 30 000 displaced families to their areas of origin between 2003 and 2006, it has in fact ensured the return of about 15 000 families in the past 18 months alone. UNHCR criticised these returns for not meeting the basic conditions of voluntariness, security and dignity, and concluded that return in these circumstances did not constitute a durable solution. It also pointed out that other options such as local resettlement were not considered by the state. In a positive development, the Colombian government recently implemented a constitutional court ruling to considerably increase state revenue on IDP response in 2005, particularly in the areas of nutrition, health and shelter."

Source:

Global IDP Database, 'Colombia: criticism of government response to IDP crisis' (19 January 2005).

79 Global IDP Project, *Colombia: 'Democratic security' policy fails to improve protection of IDPs* (4 Feb. 2004).



The right to adequate housing during displacement

“In its observations, the State acknowledges that given its magnitude and characteristics, forced displacement is the main humanitarian problem resulting from the armed conflict. Forced displacement, the State notes, has increased poverty and vulnerability of the affected population that is impeded from carrying on with their lives. The State indicates that 31 out of 100 displaced households suffer from extreme poverty and 54 are on the brink of indigence. Official statistics indicate a total of 890 000 displaced persons between 1995 and 2002, with a sustained increase of a 45% per semester.”

– Inter-American Commission on Human Rights
Annual Report (2002)

3.1 The right to adequate housing

The right to adequate housing is enshrined in several international human rights instruments to which Colombia is a State Party. Indeed, Colombia is a State Party to most major international human rights treaties, including: the International Covenant on Civil and Political Rights along with its First and Second Optional Protocols; the International Covenant on Economic, Social and Cultural Rights; the International Convention on the Elimination of All Forms of Racial Discrimination; the Convention on the Elimination of All Forms of Discrimination Against Women; the Convention on the Rights of the Child; and The Geneva Conventions and their Additional Protocols.

The Universal Declaration of Human Right, arguably the most important statement of international human rights principles, stipulates in Article 25 that:

Everyone has the right to a standard of living adequate for the health and well-being of himself [herself] and of his [her] family, including food, clothing, *housing* and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his [her] control.⁸⁰ [Emphasis added.]

⁸⁰ Universal Declaration of Human Rights, G.A. res. 217A (III), UN Doc. A/810 (1948), p. 71. Art. 12 of the Universal Declaration of Human Rights also states that: “No one shall be subjected to arbitrary interference with his [her] privacy, family, home or correspondence, nor to attacks upon his [her] honour and reputation. Everyone has the right to the protection of the law against such interference or attacks”.

The foremost statement of international law relating to housing rights is found in the International Covenant on Economic, Social and Cultural Rights, which states in Article 11(1) that:

The State parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself [herself] and for his [her] family, including adequate food, clothing and *housing*, and to the continuous improvement of living conditions. The States Parties will take appropriate steps to ensure the realisation of this right, recognizing to this effect the essential importance of international co-operation based on free consent. [Emphasis added.]⁸¹

Housing rights are also enshrined and protected within other international human rights instruments, including the International Covenant on Civil and Political Rights (1966),⁸² the International Convention on the Elimination of All Forms of Racial Discrimination (1965),⁸³ the Convention on the Elimination of All Forms of Discrimination Against Women (1979),⁸⁴ the Convention on the Rights of the Child (1989),⁸⁵ and the Convention Relating to the Status of Refugees (1959).⁸⁶

The right to non-discrimination is a cornerstone of international human rights law and is an overarching principle guiding the realisation of all human rights. Article 2(2) of the International Covenant on Economic, Social and Cultural Rights states that: “The States Parties to the present Covenant undertake to guarantee that the rights enunciated in the

81 International Covenant on Economic, Social and Cultural Rights, G.A. res. 2200A (XXI), 21 UN GAOR Supp. (No. 16), p. 49, UN Doc. A/6316 (1966), 993 UNTS 3. *Entered into force* 3 Jan. 1976.

82 International Covenant on Civil and Political Rights (ICCPR), G.A. res. 2200A (XXI), 21 UN GAOR Supp. (No. 16), p. 52, UN Doc. A/6316 (1966), 999 UNTS 171. *Entered into force* 23 Mar. 1976. The ICCPR guarantees several rights relevant to ensuring the right to adequate housing, including: (Art. 1) “Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status”; (Art. 3) “The States Parties to the present Covenant undertake to ensure the equal right of men and women to the enjoyment of all civil and political rights set forth in the present Covenant”; (Art. 6) “Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his [or her] life”; (Art. 7) “No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment”; (Art. 17) “No one shall be subjected to arbitrary or unlawful interference with his [her] privacy, family, home or correspondence, nor to unlawful attacks on his [her] honour and reputation”, and “Everyone has the right to the protection of the law against such interference or attacks”.

83 International Convention on the Elimination of All Forms of Racial Discrimination, 660 UNTS 195. *Entered into force* 4 Jan. 1969. Art. 5(e)(iii) of the International Convention on the Elimination of All Forms of Racial Discrimination states: “In compliance with the fundamental obligations laid down in Article 2 of this Convention, State Parties undertake to prohibit and eliminate racial discrimination in all of its forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin to equality before the law, notably in the enjoyment of the following rights: ... (e) in particular ... (iii) the right to housing”.

84 Convention on the Elimination of All Forms of Discrimination against Women, G.A. res. 34/180, 34 UN GAOR Supp. (No. 46), p. 193, UN Doc. A/34/46. *Entered into force* 3 Sept. 1981. Art. 14(2)(h) of the Convention on the Elimination of All Forms of Discrimination Against Women stipulates that: “State Parties shall take all appropriate measures to eliminate discrimination against women in rural areas in order to ensure, on a basis of equality of men and women, that they participate in and benefit from rural development and, in particular, shall ensure to such women the right ... (h) to enjoy adequate living conditions, particularly in relation to housing, sanitation, electricity and water supply, transport and communications”.

85 Convention on the Rights of the Child (CRC), G.A. res. 44/25, annex, 44 UN GAOR Supp. (No. 49), p. 167, UN Doc. A/44/49 (1989). *Entered into force* 2 Sept. 1990. Art. 27(3) of the CRC states that: “State Parties in accordance with national conditions and within their means shall take appropriate measure to assist parents and others responsible for the child to implement this right and shall in the case of need provide material assistance and support programmes, particularly with regards to nutrition, clothing and housing”.

86 Convention relating to the Status of Refugees, 189 UNTS 150. *Entered into force* 22 Apr. 1954. Art. 21 of the Convention Relating to the Status of Refugees specifically addresses the issue of housing and states that: “As regards housing, the Contracting States, in so far as the matter is regulated by laws or regulations or is subject to the control of public authorities, shall accord to refugees lawfully staying in their territory treatment as favourable as possible and, in any event, not less favourable than that accorded to aliens generally in the same circumstances”.

present Covenant will be exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status”.⁸⁷ In addition, Article 3 of the Covenant specifically obliges States Parties to ensure equality between women and men, stating: “The States Parties to the present Covenant undertake to ensure the equal right of men and women to the enjoyment of all economic, social and cultural rights set forth in the present Covenant”.⁸⁸

Box 4: Key elements of the right to adequate housing

Legal security of tenure

All persons should possess a degree of security of tenure that guarantees legal protection against forced eviction, harassment and other threats.

Availability of services

An adequate house must contain certain facilities essential for health, security and comfort of residents; for example, access to essential services such as safe drinking water, sanitation, electricity, food storage, emergency services, etc.

Affordability

Housing costs shall not be so high as to preclude or jeopardise the full enjoyment of other human rights; for example, health, education, food, water, etc.

Habitability

Adequate housing must guarantee the physical safety of occupants; for example, in terms of providing the residents with adequate space and protecting them from the elements or other threats to health, including structural hazards and disease vectors.

Accessibility

Adequate housing must be physically accessible, in particular to disadvantaged groups such as the elderly, children, the physically and mentally disabled, the terminally ill, etc.

Location

Adequate housing must be in a location that allows access to employment options, healthcare services, schools, childcare and other social facilities. Similarly, housing should be built neither on polluted sites nor in immediate proximity to pollution sources that would threaten the health of residents.

Cultural adequacy

The way housing is constructed, as well as the building materials used, must appropriately enable the expression of cultural identity.

87 International Covenant on Economic, Social and Cultural Rights, 16 Dec. 1966, adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI). *Entered into force* 3 Jan. 1976.

88 Ibid.

The principles of non-discrimination and equality are themselves implicit in every element of housing rights. The rights to non-discrimination and equality are protected in virtually every major international human rights instrument to which Colombia is party, including Article 2 of the Universal Declaration of Human Rights; Articles 2 and 3 of the International Covenant on Economic, Social and Cultural Rights; and Articles 2 and 3 of the International Covenant on Civil and Political Rights. Discrimination is also prohibited under the International Convention on the Elimination of All Forms of Racial Discrimination and the Convention on the Elimination of All Forms of Discrimination against Women, as well as under Article 2 of the Convention on the Rights of the Child. Discrimination is similarly prohibited under Article II of the American Declaration on the Rights and Duties of Man, and Article 1 of the American Convention on Human Rights. The right to equality between men and women is guaranteed in Article 3 of the International Covenant on Civil and Political Rights, Article 3 of the International Covenant on Economic, Social and Cultural Rights and also within the Convention on the Elimination of All Forms of Discrimination Against Women (most notably in Articles 1, 3 & 4).

Colombia is also a State Party to the American Convention on Human Rights and the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights ('Protocol of San Salvador'). The American Convention on Human Rights enshrines a number of rights relevant to the right to adequate housing, the right to protection from forced displacement and the right to housing and property restitution.⁸⁹

Pursuant to the latter convention, States Parties agree to “undertake to adopt measures, both internally and through international cooperation, especially those of an economic and technical nature, with a view to achieving progressively, by legislation or other appropriate means, the full realization of the rights implicit in the economic, social, educational, scientific, and cultural standards set forth in the Charter of the Organization of American States as amended by the Protocol of Buenos Aires”. (Chapter III, Article 26.)⁹⁰

The Charter of the Organization of American States, in Article 34, states that: “The Member States agree that equality of opportunity, the elimination of extreme poverty, equitable distribution of wealth and income and the full participation of their peoples in decisions relating to their own development are, among others, basic objectives of integral development. To achieve them, they likewise agree to devote their utmost efforts to accomplishing the following basic goals: ... k) Adequate housing for all sectors of the population”.⁹¹

The Charter has been interpreted as not containing specific *rights* in and of itself, but rather, as Article 26 of the American Convention recognises, as articulating standards.⁹² Article 26 of the Convention, however, legally establishes the *rights* implicit in those standards. Clearly, a *right* implicit in the standard of ‘adequate housing’ is the right to adequate housing. As such,

89 These rights include, *inter alia*: the right to non-discrimination (Art. 1); the right to life (Art. 4); the right to humane treatment (Art. 5); the right to personal liberty (Art. 7); the right to privacy (Art. 11); and the right to property (Art. 21). See American Convention on Human Rights, OAS Treaty Series No. 36, 1144 UNTS 123. Entered into force 18 July 1978, reprinted in Basic Documents Pertaining to Human Rights in the Inter-American System, OEA/Ser.L.V/II.82 doc.6 rev.1 (1992), p. 25.

90 Ibid.

91 The Charter of the Organization of American States was signed in Bogotá in 1948 and amended by the Protocol of Buenos Aires in 1967, by the Protocol of Cartagena de Indias in 1985, by the Protocol of Washington in 1992, and by the Protocol of Managua in 1993.

92 See Inter-American Court of Human Rights, Advisory Opinion OC-10/90 (14 July 1989).

Article 26 of the Convention, when properly read in concert with Article 34(k) of the Charter, should be effectively read to state:

The States Parties undertake to adopt measures ... with a view of achieving progressively ... the full realization of the *right* ... [to] adequate housing for all sectors of the population.

Article 26 of the Convention thereby recognises the right to adequate housing in the Inter-American system for the protection of human rights. Furthermore, the right to adequate housing is reinforced by and implicit in several other American Convention rights, including the right to life (Article 4), the right to humane treatment (Article 5), the right to a fair trial (Article 8), the right to be free from arbitrary or abusive interference with the home (Article 11), the rights of the family (Article 17), the rights of the child (Article 19), the right to property (Article 21), and the right to judicial protection (Article 25).

3.2 Housing poverty during displacement

“Colombia’s internal armed conflict requires the Government to use funds for defense and weapons that should be earmarked to address the population’s unmet basic needs. The Commission feels compelled to note how social indicators have declined in recent years, just as defense spending has been on the rise. Defense spending as a percentage of gross domestic product rose from 1.6% in 1985 to 2.6% in 1995. In the same years, the percentage of Government spending dedicated to defense spending rose from 10.3% to 16.3%. ... The [Colombian] State should give priority to efforts that seek to relieve the extremely difficult economic, social and cultural situation of internally displaced persons.”

– Inter-American Commission on Human Rights
Third Report on the Situation of Human Rights in Colombia (1999)

Under international human rights law, the right to adequate housing itself comprises the following seven key elements: legal security of tenure; availability of services, materials, facilities and infrastructure; affordability; habitability; accessibility; location; and cultural adequacy. In every displaced community that COHRE visited in Colombia, at least one, if not several, of these seven elements were violated.

During their fact-finding mission to Colombia, COHRE researchers visited several displaced communities to assess current living and housing conditions. COHRE spoke at length with representatives and residents of these communities. The majority of the displaced persons interviewed by COHRE had been forced to flee the countryside because of violence and, with their families, had attempted to integrate into the overcrowded slums around Colombia’s major cities. Many had seen close family members killed in the violence of the civil war.



Home of a displaced family,
18 October 2003

While many of the individuals with whom COHRE spoke had been living in their resettlement community for well over a decade, others had moved in only a few weeks before being interviewed. It was evident that displacement was a constant, chronic reality for these communities. Community members spoke with COHRE about the circumstances that led to their being internally displaced, and many shared their concerns about the current living situation for themselves and their families.

The situation of internally displaced persons was summarised in a landmark ruling handed down in 2004 by Colombia's own Constitutional Court.⁹³ The reality is grim: 92 percent of displaced people live with their basic needs unsatisfied; 80 percent are indigent; 63.5 percent live in inadequate housing; 49 percent lack adequate public services; 23 percent of displaced children under six are malnourished; 25 percent of boys and girls aged 10 to 25 do not attend school.⁹⁴ According to the World Food Programme, 63.5 percent of Colombia's internally displaced live in inadequate housing and lack access to basic sanitation facilities, as compared to 7.1 percent among the urban poor.⁹⁵ Morbidity rates among Colombia's displaced population are *six times* the national average.⁹⁶ The World Food Programme has also reported that 80 percent of Colombia's internally displaced persons live in extreme poverty and have insufficient access to nutritional foods.⁹⁷ Furthermore, because of their often-insecure tenure status, displaced communities also commonly face the threat of forced eviction.

The vast majority of families visited by the COHRE team were living in inadequate housing conditions characterised by cramped, overcrowded structures in varying states of disrepair. In some cases, their small shacks were constructed only from the most basic materials: plastic sheets, cardboard, pieces of scrap wood or metal. Some of these structures appeared to be on the verge of collapse, although whole families were still living in them. Such homes offered lit-

93 Sentencia T-025 de la Corte Constitucional de Colombia (2004). See, for the full text (in Spanish) of this ruling, <http://www.acnur.org/biblioteca/pdf/2501.pdf>

94 Ibid.

95 World Food Programme, *Vulnerabilidad a la Inseguridad Alimentaria de la Población Desplazada por la Violencia en Colombia* (16 June 2003).

96 Ibid.

97 Ibid.

tle shelter from the elements and it was easy to see how these inadequate housing conditions translated into a lack of personal security, and even essential personal privacy. Many communities lacked adequate sanitation and proper drainage, making the disposal of human and solid waste a significant problem. The communities themselves were densely populated, with little space between houses. People going about their daily business crowded the maze of bumpy, narrow dirt roads and alleys connecting the various parts of community.

Housing poverty during displacement has far-reaching implications for Colombia's internally displaced population. Not only do inadequate housing conditions themselves represent a violation of international human rights law, they almost inevitably entail other human rights violations as well.

Box 5: Colombia's duties to respect, protect and fulfil

The *duty to respect* the right to adequate housing entails that the Government of Colombia should refrain from any action which prevents people from satisfying this right themselves when they are able to do so. For example, the Government is prohibited from carrying out 'forced evictions', and from arbitrarily and unlawfully destroying people's homes. Under international human rights law, the *duty to respect* is an immediate obligation and is not subject to progressive realisation over time.

The *duty to protect* requires the Government to ensure that any possible violations of housing rights by 'third parties' or non-state actors, such as landlords, corporations, or other private actors, are prevented. Like the *duty to respect*, the *duty to protect* is an immediate obligation, and not subject to progressive realisation over time.

The *duty to fulfil* the right to adequate housing is a positive obligation in that it does require public expenditure, government regulation, provision of public services, provision of housing or housing programs, etc. The Government must *undertake immediate steps* in this regard, using the *maximum of available resources*, to progressively realise the right to adequate housing for everyone without discrimination.

1) The right to security of the person

Housing poverty threatens the security of the person by subjecting individuals to increased threats, including crime and threats to physical health due to inadequate housing conditions. Displaced women, in particular, face increased threats to personal security due to gender-based violence, both within their homes and within the community.⁹⁸

⁹⁸ According to the Pan American Health Organization, domestic violence in Colombia is "a high-priority problem". 41% of women who ever lived with a partner declared that they had been physically abused by their partner (and an additional 20% by another relative). An additional 34% had been threatened by their partner. Pan American Health Organization, *Colombia: Core Health Data Selected Indicators* (data updated to 2002).

2) The right to work

Housing poverty for Colombia's displaced is related to violations of the right to work. Displaced communities are often constructed on the outskirts of urban population centres, and as such are not in close proximity to job opportunities. One result of this social isolation is the high unemployment rates found in many displaced communities. This situation is only compounded by outright discrimination against the displaced, and particularly against women, Afro-Colombians and indigenous peoples (see Subsection 3.3, below, on privatisation of services).

3) The right to education

For Colombia's displaced children, displacement, housing poverty and the denial of the right to education are too often intertwined. Children and adults living in displaced communities often have no access to a school or adult learning centre within their community. Even if a school is located at a reasonable distance, families often cannot afford to pay for basic school supplies for their children, including books, materials, uniforms and other educational necessities. Displaced children, especially Afro-Colombian or indigenous ones, may also face discrimination in schools.

4) The right to water

Because of the privatisation of services (see Subsection 3.3 below), residents living within displaced communities often do not have adequate access to water, because it has become an unaffordable resource. This is a serious problem within many displaced communities. In one community that COHRE visited, residents complained that the water company would bill the community as a whole, rather than individual households. If the community was short of money at the end of the billing period and was unable to pay the bill in full, as often happened, the company would cut off the water supply *to the entire community* until the bill was paid.

In some cases, this denial of water forces families to collect water from unsafe sources, contributing to illness and even death, especially among young children.

5) The right to the highest attainable standard of health

Inadequate housing conditions – characterised by structural hazards and lack of access to safe water, healthcare facilities, sanitation, and garbage disposal – have a profound impact on the health of communities. Not only the physical but also the mental and emotional health of residents is compromised, which is hardly surprising when one considers the horrifying traumas that so many of them have endured. According to the Inter-American Commission on Human Rights, NGOs in Colombia report that only about 20 percent of displaced persons in Colombia have access to healthcare, a statistic that has been confirmed by the Pan American Health Organization.⁹⁹

Vulnerable groups, including children and the elderly, are especially at risk of falling ill due to preventable disease, malnutrition, or other health complications.

99 IAHCR (n. 73 above). See also Pan American Health Organization, *Country Health Profile: Colombia* (Dec. 2001).

6) The right to culture

Because Colombia's displaced population includes a disproportionately large number of Afro-Colombians and indigenous peoples, displacement and housing poverty have important implications with regard to the right to culture. Inadequate housing conditions often contribute to the breakdown of traditions and customs, in particular by hampering cultural expression in areas such as traditional accommodation and community life.

3.3 Privatisation of services and related concerns

“The exodus of [Colombia’s] displaced people toward cities is ongoing. In the urban areas, [in] so-called ‘invasion slums’ – where the displaced settle – they are again confronted with violence and lack basic services such as health care, clean drinking water and sanitation facilities.”

– Médecins Sans Frontières (MSF)
The Ten Most Underreported Humanitarian Crises of 2001 (4 February 2002)

One of the chief complaints from residents interviewed by COHRE was that due to the privatisation of services such as water and electricity these services have become economically inaccessible to most people living within the displaced communities. In 1994, Colombia drafted the Public Services Law, making it possible for private corporations to buy and run public utilities.¹⁰⁰ In Bogotá, the poor have seen their water costs rise *422 percent* in the last few years.¹⁰¹

The privatisation of services must be seen against the backdrop of Colombia's widespread unemployment, which has disproportionately affected the displaced population. Indeed, in recent years unemployment among city-dwelling IDPs has increased from 9 to 21 percent – the highest such figure in Latin America.¹⁰² In some urban areas, unemployment is as high as 75 percent.¹⁰³

Many displaced persons, having come from Colombia's rural areas, once lived in traditional communities that worked the land and lived off its produce. For them, the cost of water and sanitation used to be minimal, or non-existent. Once uprooted and forced to move to the city, however, these people have no alternative but to participate in the urban cash economy and pay for essential services. Yet, all too often, jobs are not to be found or do not pay enough to cover the bills. Ill-equipped to purchase essential services such as water, sanitation and electricity, many families are compelled to go without them or to find unsafe alternatives.

100 María Teresa Ronderos, *A Tale of Two Cities* (11 Feb. 2003).

101 Ibid.

102 MADRE, *Colombia's Conflict: The Basics* (Mar. 2002).

103 Ibid.



COHRE Americas Programme
Coordinator, Leticia Osorio,
speaking with a representative
of a displaced community,
18 October 2003

As noted in Subsection 3.2, above, lack of access to services – including lack of economic access to services – is a violation of the right to adequate housing. With respect to the human right to water, under international human rights law the Government of Colombia is obligated to ensure that water is affordable.¹⁰⁴ In particular, the Government must take the necessary measures, *inter alia*: a) applying a range of appropriate low-cost techniques and technologies; b) adopting appropriate pricing policies such as free or low-cost water; and c) providing income supplements.¹⁰⁵ Furthermore, any payment for water services must be based on the principle of equity, ensuring that these services, whether privately or publicly provided, are affordable to all, including socially disadvantaged groups.¹⁰⁶ Equity demands that poorer households should not be disproportionately burdened with water expenses as compared to richer households.¹⁰⁷

Because the informal settlements that house IDPs in Colombia are constantly swelling as newly displaced families move in, the public health aspects of overcrowding and poverty are becoming ever more pressing. The related problems of uncontrolled sewage, garbage and vermin lead to illnesses and other complications in the community. There is particularly grave concern for the well-being of children and elderly family members. In most of the communities visited by the COHRE fact-finding team, there were significant health and sanitation problems. In some of these communities, raw sewage ran through the muddy, narrow streets where children walked barefoot, and garbage was piled up alongside homes.

In a recent study, the International Organisation for Migration (IOM) reported that only about 25 percent of IDP households in Colombia are connected to the public sewage system (compared to a national rate of 70 percent) and that less than 50 percent have access to waste disposal systems.¹⁰⁸ As in the case of lack of access to water, lack of access to sanitation and garbage disposal systems represents a violation of the right to adequate housing.

104 See UN Committee on Economic, Social and Cultural Rights, *General Comment No. 15: The Right to Water*, UN Doc. E/C.12/2002/11 (20 Jan. 2003).

105 *Ibid.*

106 *Ibid.*

107 *Ibid.*

108 International Organisation for Migration (IOM), *Diagnóstico sobre la población desplazada en seis departamentos de Colombia: 2001* (6 June 2002).

3.4 Government policies related to the provision of emergency aid

“Less than one in four (22 percent of) IDPs are registered and receive government assistance, according to Colombian NGOs. Three successive UN missions have recommended that the Government modify registration procedures for IDPs, but on the whole, the Colombian Government’s response to IDPs has suffered from chronic under-financing.”

– Marie Stopes International,
Women’s Commission for Refugee Women and Children,
February 2003.

In 1995, the Government of Colombia established a ‘System of Comprehensive Assistance to the Population Displaced by Violence’, which was the first official recognition of forced displacement as “a public policy issue”.¹⁰⁹ Since then, several other efforts have been enacted, the most notable of which is Law 387 of 1997,¹¹⁰ which provides for the protection and assistance needs of the displaced during the various stages of displacement. Law 387 outlines the Government’s policy on emergency aid, and its definition of displacement is similar to the one found in the UN Guiding Principles on Internal Displacement.¹¹¹

Law 387, which also takes the position that violence is the main cause of displacement, protects the rights to receive international aid, to enjoy internationally recognised civil rights, not to be discriminated against because one is displaced, to be reunited with family members, to find durable solutions to displacement, to return to the place of origin, and not to be displaced. In addition, this law emphasises that the State is obligated to promote the conditions that will facilitate coexistence, equality and social justice among all Colombians.¹¹²

A year later, in 1998, Presidential Decree No. 173 implemented the provisions of Law 387, creating a National Plan on Integral Attention for Colombia’s internally displaced population.¹¹³ In 2000, the Government of Colombia formally criminalised forced displacement through Law 589 of 2000.¹¹⁴

109 Grupo Temático de Desplazamiento, *Humanitarian Action Plan, 2002-2003: Colombia*, (Bogotá: United Nations, 29 Nov. 2002).

110 See also the full text (in Spanish) of Decree No. 1225 of 1997, <http://www.red.gov.co/LaInstitucion/Normatividad/Decreto1225-97/index.htm>, which seeks to implement Law 387 of 1997. See, for the full text (in Spanish) of Law 387 of 1997, www.red.gov.co/Download/Files/Ley387-1997.pdf

111 Global IDP Survey of the Norwegian Refugee Council, *Workshop on the UN Guiding Principles on Internal Displacement and the National IDP Legislation in Colombia*, Santa Fe de Antioquia, Colombia 15-17 May 2001 (31 May 2001).

112 Obregón and Stavropoulou (n. 70 above).

113 See the full texts (in Spanish) of: Decree 173 of 1998, <http://www.minjusticia.gov.co:9090/ows-do/43225/432251.htm#1>; Decree No. 2569 of 2000, <http://www.red.gov.co/LaInstitucion/Normatividad/Decreto2569-00/decreto2569-00.html>; Decree No. 951 of 2001, <http://www.red.gov.co/LaInstitucion/Normatividad/Decreto915-01/decreto915-01.html>

114 Ley 589 de 2000, Congreso de Colombia. See also Inter-American Commission on Human Rights (IACHR), ‘Chapter IV: Colombia’, Annual Report 2000 (2000).

Despite such positive steps at the level of legislation and policy, these provisions have been criticised by human rights organisations both inside and outside the country. Lack of political will is perhaps the most pressing concern, as it causes a considerable gap between the protections that exist in law and the insecurity that exists in practice.

Human Rights Watch, for example, has noted that: “Law 387 outlines the Government’s policy on emergency aid, but fails to address issues of justice or the causes of the displacement. Advocates for the displaced and human rights groups point out that government measures have so far fallen prey to lack of funding, insufficient coordination between government agencies, and poor information”.¹¹⁵

The National System for Integrated Information on the Population Displaced by Violence (SNAIPD) provides integrated assistance to the displaced population. The SNAIPD, originally created under Law 387 of 1997, is managed by the Social Solidarity Network (*Red de Solidaridad Social*), a Government agency. Displaced families are asked to register with the Social Solidarity Network in order to receive emergency benefits. The Government of Colombia limits its emergency assistance to displaced families to three months, effective upon the date of their registration with the State. Emergency aid, however, can be extended for another three months if the person meets criteria of vulnerability, solidarity, proportion and equality.¹¹⁶ According to Decree 2007 of 2001,¹¹⁷ the Colombian Institute for Rural Development can allocate transit lots and temporary settlements to assist displaced populations registered in aid programmes. The Decree allows displaced households to remain at these settlements only for a short time; they must soon look elsewhere for a place to live.

According to the United Nations High Commissioner for Refugees (UNHCR), this limited aid covered only one-third of emergency needs in 2002.¹¹⁸ In 2002, the majority of new IDPs (57 percent) received no assistance.¹¹⁹ Given the insufficiency of Government aid, most of Colombia’s displaced people must survive through their own ingenuity and perseverance and with the limited assistance of church and humanitarian groups. The World Food Programme has noted that after the emergency aid has been exhausted, the nutritional status of displaced persons deteriorates markedly.¹²⁰

The Inter-American Commission on Human Rights has also observed that assistance to the displaced appears to be focused mainly on emergency humanitarian aid that, in great measure, continues to remain in the hands of the international community, particularly the International Committee of the Red Cross. The Commission notes that “... there is still no adequate programme to protect the displaced and no effective measures have been taken to prevent discrimination and stigmatization against them”.¹²¹ The UN High Commissioner for

115 Human Rights Watch, (n. 44 above).

116 Colombia Journal, *Forced displacement and women as heads of displaced households in Colombia* (23 June 2003).

117 Decreto Numero 2007 de 2001 (24 Sept. 2001).

118 UN High Commissioner for Refugees (UNHCR), *Evaluation of UNHCR’s programme for internally displaced people in Colombia* (3 May 2003).

119 Ibid.

120 World Food Programme, (n. 95 above).

121 Inter-American Commission on Human Rights (IACHR), *Annual Report* (2002).

Human Rights has echoed these concerns, noting that “... the Government [of Colombia] is not sufficiently investing in areas where there are human rights concerns in order to effectively improve their situation”.¹²² Left without adequate assistance, most displaced persons in Colombia can only manage a precarious existence lacking in adequate housing, food, water and medical care.¹²³

According to Principle 18 of the UN Guiding Principles on Internal Displacement (see Appendix 1), all internally displaced persons have the right to an adequate standard of living. At the minimum, regardless of the circumstances, and without discrimination, competent authorities should provide IDPs with, and ensure they have safe access to:

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

The Guiding Principles also provide that special efforts should be made to ensure the full participation of women in the planning and distribution of these basic supplies.

The primary duty and responsibility for providing humanitarian assistance to IDPs lies with national authorities.¹²⁴ Furthermore, under international human rights principles, certain groups of internally displaced persons, including children – especially unaccompanied minors – expectant mothers, mothers with young children, households headed by single women, persons with disabilities and elderly persons, shall be entitled to the protection and assistance that their condition demands, and to treatment that takes account of their special needs.

Much to its credit, the Colombian Constitutional Court has issued several landmark rulings upholding the rights of the displaced and has been a strong advocate for these rights. In 2000, the Court noted that the UN Guiding Principles on Internal Displacement should serve as the “parameter for any new legislation on displacement as well as for the interpretation of the existing IDP legislation, and the assistance to displaced persons”.¹²⁵ Indeed, in subsequent rulings, the Court itself has referenced the Guiding Principles to inform its own judgements.

In 2004, the Constitutional Court issued a widely celebrated judgment on behalf of 1 150 displaced families, which recognised the State’s obligation to assure the promotion, protection and fulfilment of their human rights, and to protect from, repair and remedy damages caused to citizens as a result of its failure to guarantee these rights.¹²⁶ The Court recommended urgency in State actions, especially concerning its obligations of prevention, assistance and affirmative action on behalf of displaced people.¹²⁷

122 UN Commission on Human Rights, (n. 35 above).

123 Human Rights Watch, (n. 44 above).

124 Principle 25 (1) of the UN Guiding Principles on Internal Displacement (see Appendix 1).

125 Sentencia SU-1150/2000 de la Corte Constitucional de Colombia (2000).

126 Sentencia T-025 de la Corte Constitucional de Colombia (2004). See, for the full text (in Spanish) of this ruling,

<http://www.acnur.org/biblioteca/pdf/2501.pdf>

127 Ibid.

For this purpose, according to the Constitutional Court, the measures to be adopted by the Government must ensure the resolution of displaced persons' claims within 30 days and, if such a person's life may be at risk, within 48 hours. According to the Court's finding, the expected results of Law 387 have not been achieved and there has been a high degree of dissatisfaction with the implementation of the Law. The Court found a significant gap between public policy goals, as articulated in law, and the means adopted by the Government to implement them. The Court also noted insufficient budgetary allocations on the part of the Government.¹²⁸

The Constitutional Court determined a range of measures to be undertaken by the Government, including securing the necessary budget allocations to address problems affecting displaced people. The Court thereby granted the Government three months to ensure that the actions of relevant Government agencies be brought into compliance with the ruling.¹²⁹ As of early 2005, it appeared that the Government would indeed take steps to comply with the Court's judgement.

128 Ibid.

129 Ibid.



The right to return

“The Commission is aware that the plight of internally displaced persons is particularly tragic and cruel. Their ranks in Colombia and elsewhere tend to disproportionately include those requiring special assistance and services, such as children, the elderly and expectant mothers. Although the displaced are frequently forced to flee their homes for the same reasons as refugees, the fact that they remain within national territory means that they cannot qualify as refugees or benefit from the special regime accorded to refugees under international law. Their presence within national territory also means that their government must assume primary responsibility for guaranteeing their security and well-being.”

– Inter-American Commission on Human Rights
Third Report on the Human Rights Situation in Colombia (1999)

4.1 The right to return

The right to return is guaranteed in Article 13(2) of the Universal Declaration of Human Rights and Article 12(4) of the International Covenant on Civil and Political Rights. This right is further guaranteed under the UN Guiding Principles on Internal Displacement (see Appendix 1).

The right to return is now understood to encompass not merely returning to one’s country, but to one’s original home as well.¹³⁰ For example, in 1999 the UN Committee on the Elimination of Racial Discrimination (CERD), which monitors the implementation of the International Convention on the Elimination of All forms of Racial Discrimination, emphasised that:

- a) All such refugees and displaced persons have the right freely to return to their homes of origin under conditions of safety;
- b) States parties are obliged to ensure that the return of such refugees and displaced persons is voluntary and to observe the principle of non-refoulement [no forced return] and non-expulsion of refugees;

¹³⁰ Scott Leckie (ed.), *Returning Home: Housing and Property Restitution Rights of Refugees and Displaced Persons* (Ardsley, New York: Transnational Publishers, Inc., 2003).

- c) All such refugees and displaced persons have, after their return to their homes of origin, the right to have restored to them property of which they were deprived in the course of the conflict and to be compensated appropriately for any such property that cannot be restored to them. Any commitments or statements relating to such property made under duress are null and void; and,
- d) All such refugees and displaced persons have, after their return to their homes of origin, the right to participate fully and equally in public affairs at all levels and to have equal access to public services and to receive rehabilitation assistance.¹³¹

Similarly, Section V of the UN Guiding Principles on Internal Displacement sets forth principles relating to return, resettlement and reintegration (see Appendix 1). Principle 28 provides that:

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

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

The UN Sub-Commission on the Promotion and Protection of Human Rights has also reaffirmed the right to return, recognising that:

The right of refugees and internally displaced persons to return freely to their original homes or places of habitual residence in safety and dignity coupled with their right to adequate housing and property restitution or, should this not be possible, just compensation or another form of just reparation, form indispensable elements of national reintegration, reconstruction and reconciliation, and that the recognition of such rights, as well as judicial or other mechanisms to ensure the implementation of such rights, should be included in peace agreements ending armed conflicts.¹³²

4.2 The right to housing and property restitution

The right to housing and property restitution is increasingly recognised as an essential element of the right to return for refugees and internally displaced persons. This understanding is important if the right to return is to effectively protect all displaced persons (regardless of whether or not they cross international borders) and if situations leading to instability and displacement are to be effectively ameliorated. In that sense, the right to return to one's country of origin and the right to return to one's original home are core components of restorative justice.

131 UN Committee on the Elimination of Racial Discrimination (CERD), General Recommendation XXII: Art. 5 on refugees and displaced persons (24 Aug. 1996).

132 UN Sub-Commission on the Promotion and Protection of Human Rights, *The right to return of refugees and internally displaced persons*, UN Doc. E/CN.4/SUB.2/RES/2002/30 (15 Aug. 2002).

In 2002, the UN Sub-Commission on the Promotion and Protection of Human Rights adopted a resolution on housing and property restitution in the context of refugees and other displaced persons. This resolution urged all States to “ensure the free and fair exercise of the right to return to one’s home and place of habitual residence by all refugees and internally displaced persons”.¹³³ The Sub-Commission also appointed a Special Rapporteur, Mr Paulo Sergio Pinheiro, on the issue of housing and property restitution for refugees and internally displaced persons. In his 2004 progress report, the Special Rapporteur notes that: “For those who have been forcibly uprooted from their homes and lands, returning home in safety and dignity is often seen as the most desired, sustainable, and dignified solution to displacement”.¹³⁴

The Special Rapporteur has prepared Principles on Housing and Property Restitution for Refugees and Displaced Persons (see Appendix 5). Principle 2.1 notes that: “All refugees and displaced persons have the right to have restored to them any housing, land and/or property of which they were arbitrarily or unlawfully deprived, or to be compensated for any housing, land and/or property that is factually impossible to restore as determined by an independent, impartial tribunal.”¹³⁵

In addition, the draft ‘Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Violations of International Human Rights and Humanitarian Law’ (see Appendix 2) note that victims of violations of international human rights and humanitarian law, including victims of forced eviction, have a right to a remedy.¹³⁶ The right to a remedy includes, *inter alia*, reparation for harm suffered. Restitution is a particular form of reparation. The term ‘restitution’ refers to an equitable remedy, or a form of restorative justice, whereby persons who suffer loss or injury are returned as far as possible to their original pre-loss or pre-injury situation. Restitution includes: restoration of liberty, legal rights, social status, family life and citizenship; return to one’s place of residence; restoration of employment; and return of property.

Compensation is a specific form of reparation. The term ‘compensation’ refers to a legal remedy whereby a person receives monetary payment for harm suffered. When appropriate, compensation may be given in lieu of restitution; for example, when it is in reality either impossible or impracticable to restore the person’s property or house, or when a person knowingly and voluntarily accepts compensation in lieu of restitution. Monetary compensation should, however, be seen as a last resort, and when used as a measure of restorative justice must be adequate, fair and just.

Principle 21 of the UN Guiding Principles on Internal Displacement states that: “No one shall be arbitrarily deprived of property and possessions”. Furthermore, “the property and possessions of internally displaced persons shall in all circumstances be protected”, and “property and possessions left behind by internally displaced persons shall be protected against destruction and arbitrary and illegal appropriation, occupation or use”.

133 UN Sub-Commission on the Promotion and Protection of Human Rights, *Housing and property restitution in the context of refugees and other displaced persons*, UN Doc. E/CN.4/SUB.2/RES/2002/7 (14 Aug. 2002).

134 Final Report of the UN Special Rapporteur on housing and property restitution in the context of the return of refugees and internally displaced persons.

135 *Ibid.*

136 Conclusions and recommendations of the independent expert on the right to reparation, compensation and rehabilitation for victims of gross violations of human rights and fundamental freedoms, UN Doc. E/CN.4/2000/62, annex (18 Jan. 2000).

Similarly to the UN Principles on Housing and Property Restitution for Refugees and Displaced Persons (above), Principle 29(2) of the UN Guiding Principles on Internal Displacement provides that:

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

There can be no dispute that, under international human rights law, displaced persons and refugees are entitled to housing and property restitution — which is essential to the realisation of the right to return. Such restitution must also be recognised as being integral to the larger goals of peace-building and post-conflict resolution, which are essential for the creation of durable remedies to situations of displacement and conflict.¹³⁷

The Government of Colombia’s Social Solidarity Network (*Red de Solidaridad Social*) has confirmed that the absence of a national cadastre for the registration of property titles makes it difficult to implement an adequate restitution process. Currently, the Network is trying to devise a strategy, but notes that this has been difficult in the midst of the armed conflict. One possible strategy, supported by many NGOs in Colombia, is the establishment of a national ‘Truth Commission on Displacement’, which would facilitate the creation of a cadastre of lost properties.

4.3 Government policies related to return

As we have noted, even though Colombia has some of the most advanced IDP legislation in the world, many components of that law remain poorly implemented. Unfortunately, this also holds true for the right to return. Often, the Government has failed in its responsibility to ensure the safe, voluntary and dignified return of displaced persons.

In its 1999 Third Report on the Situation of Human Rights in Colombia, the Inter-American Commission on Human Rights observed that:

Encouraging or providing incentives for return to zones where conflict persists, or where the State cannot guarantee the safety of its citizens, exposes displaced people to the danger of being taken hostage or becoming the target of violence by one of the warring parties.

137 Specific standards also exist for the restitution of indigenous peoples’ homes and lands. The UN Committee on the Elimination of Racial Discrimination (CERD), in its General Recommendation XXIII on indigenous peoples, calls upon States parties: “[T]o recognize and protect the rights of indigenous peoples to own, develop, control and use their communal lands, territories and resources and, where they have been deprived of their lands and territories traditionally owned or otherwise inhabited or used without their free and informed consent, to take steps to return those lands and territories. Only when this is for factual reasons not possible, the right to restitution should be substituted by the rights to just, fair and prompt compensation”; CERD, General Recommendation XXIII on the rights of indigenous peoples (fifty-first session), A/52/18, annex V, para. 5 (1997).

It also banishes any possibility of consolidating resettlement areas, thus, effectively ruling out titling of lands awarded to displaced persons. On this subject, the Commission recalls that Principle 21 of the Guiding Principles on Internal Displacement insists on due respect and guarantees for the right to property of these persons. The Guiding Principles also provide that return must take place in conditions of safety and with dignity. By the same token, the Committee on the Elimination of Racial Discrimination adopted on August 16, 1996, General Recommendation XXII with regard to refugees and displaced persons on the basis of ethnic criteria. The recommendation stresses that “all such refugees and displaced persons have the right freely to return to their homes of origin under conditions of safety, that State parties are obliged to ensure that their return is voluntary, and that the displaced have, upon return, the right to restoration of property or adequate compensation when this is not possible”.¹³⁸

In some cases, the Government of Colombia has reportedly compelled displaced persons to return to their communities despite its inability to guarantee their security. This is a violation of the Geneva Conventions, which forbids the forced movement of civilians except for reasons of their security or military imperative.¹³⁹ According to the Office of the UN High Commissioner for Human Rights, return “has been promoted even though minimum conditions of security could not be guaranteed and the causes which gave rise to the displacement had not been eliminated”.¹⁴⁰

The Government’s stated objective is to facilitate the return of some 300 000 displaced persons by 2006.¹⁴¹ According to Government statistics, some 11 143 displaced families have already been assisted in returning.¹⁴² Again, however, in many cases conditions in areas of return are neither stable nor safe. In a recent report on forced displacement in Colombia, the Office of the UN High Commissioner for Human Rights in Bogotá expressed concern that return programmes, as currently implemented in Colombia, are typically “fast”; namely, that they occur in most cases within the three months following displacement. According to that agency, this means that the return processes have been implemented without addressing the structural causes, including violence, which originally generated the displacement.¹⁴³

The Office of the UN High Commissioner for Human Rights in Bogotá has also observed that while the Government’s return policy envisages the provision of housing subsidies, income-generation projects, vocational training and land titling, such measures are rarely implemented. For example, the IDPs who were encouraged to return to Bellavista a year after they had fled the massacre in the town church in May 2002 have still not received adequate

138 IACHR, (n. 73 above).

139 Human Rights Watch (n. 44 above). See also Art. 17 of the *Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II)* (8 June 1977).

140 UN Commission on Human Rights, *Report by the United Nations High Commissioner for Human Rights*, UN Doc. E/CN.4/1998/16 (9 Mar. 1998).

141 Red de Solidaridad Social, *Construir a partir de lo bueno y lo malo* (12 September 2003). See also: Colombian Commission of Jurists (CCJ), *Informe a la Comisión Interamericana de Derechos Humanos, La situación del desplazamiento forzado en Colombia* (8 Oct. 2003); UNHCR, *Balance de la política pública de prevención, protección y atención al desplazamiento interno forzado en Colombia, agosto 2002 - agosto 2004* (2004).

142 Global IDP Database, *Colombia: 11,143 displaced families returned since August 2002* (Dec. 2003).

143 UNHCR, (n. 141 above).

assistance.¹⁴⁴ It is also evident that the principle of voluntariness is often not respected under the current return policy. In some cases, Government institutions are reported to have threatened to cut off assistance to displaced persons if they do not return.¹⁴⁵

The Coordinación Nacional de Desplazados (CND), a Colombian NGO working on displacement issues, has also noted that, too often, returns fall far short of internationally recognised standards. All return zones are currently under the control of the paramilitaries, which endangers a safe and dignified return process. Assisted returns have taken place amid ongoing conflict and with the continued presence of actors who prompted displacement in the first place. Because of such inadequate conditions, people have often been forced to flee again. The prevailing impunity of the groups that caused displacement also undermines the reintegration of returnees and the restitution of their housing and other property.

The forced return of refugees and internally displaced persons is, *prima facie*, incompatible with international human rights standards, as forced repatriation violates the principle of non-refoulement [no forced return]. Article 33(1) of the UN Convention relating to the Status of Refugees provides that: “No Contracting State shall expel or return (‘refouler’) a refugee in any manner whatsoever to the frontiers of territories where his [or her] life or freedom would be threatened on account of his [or her] race, religion, nationality, membership of a particular social group or political opinion”. Indeed, this principle has been found to apply to internally displaced persons. For instance, Principle 15 of the UN Guiding Principles on Internal Displacement provides that: “Internally displaced persons have ... [t]he right to be protected against forcible return to or resettlement in any place where their life, safety, liberty and/or health would be at risk”.

144 Office of the UN High Commissioner for Human Rights in Bogotá, *Informe de Seguimiento a la Situación del Medio Atrato*, (30 June 2003).

145 Project Counselling Service, *Going home – returning internally displaced people to the Catatumbo war zone?* (17 Mar. 2003).

5

Conclusions

All Colombians have a right to be protected from forced eviction and displacement. Under international human rights law, the Government of Colombia must take adequate measures to protect its population from human rights abuses perpetrated by third parties, in this case by right-wing paramilitary units and leftist guerrilla forces. The Government is also obligated to protect civilians from violence and to provide adequate assistance to the victims of the armed conflict.

Similarly, all Colombians have the right to adequate housing, and especially vulnerable groups such as the internally displaced should be given special attention when it comes to the realisation of this right. Under international human rights law and standards, the Government has the primary duty and responsibility to provide protection and humanitarian assistance to its internally displaced population.

Internally displaced persons within Colombia also have the right to return to their original homes and places of habitual residence, and the Government is duty-bound to help them to do so. Displaced persons also have the right to be protected against forcible return, and to have their right of freedom of movement respected.

As this report has shown, despite progressive legislation and other positive domestic policies regarding the rights of the displaced, the Government has largely failed to meet its responsibility to protect civilian communities from abuses perpetrated by all parties to the conflict. Weak implementation of existing legal protections, coupled with insufficient resource allocation for the displaced, continue to leave communities, in particular Afro-Colombian and indigenous communities, vulnerable to forced displacement and forced eviction. Once displaced, members of these communities become even more vulnerable to violations of other human rights, including violations of their right to adequate housing.

In this regard, COHRE believes that the Government of Colombia must take a three-pronged approach in order to comply with its housing rights obligations under international human rights and humanitarian law.

Firstly, the Government must protect against forced eviction and forced displacement by taking immediate and effective steps, in full compliance with all other aspects of international human rights and humanitarian law, to protect all persons within its jurisdiction from being forcibly evicted from their home or place of habitual residence. At the same time, the Government should recognise that displaced persons have the right to freedom of movement, and as such have a right to seek safety in another part of the country, or to leave their country should they choose.

Secondly, the Government should ensure the right to adequate housing for those already displaced, by taking immediate and effective steps, in full compliance with all other aspects of international human rights and humanitarian law, to provide adequate humanitarian aid and other forms of assistance to displaced persons. This should include housing subsidies and other housing-related programmes designed to ensure that all displaced persons are able to realise and enjoy their right to adequate housing. The provision of adequate housing should encompass affordable access to basic services, including electricity, water and sanitation.

Likewise, the Government should take immediate and effective steps to ensure that displaced persons in Colombia enjoy an adequate standard of living, and have access to adequate educational and healthcare facilities. Additionally, displaced persons should be involved in the development of all Government programmes designed to ensure their housing rights. In this regard, special efforts should be made to ensure the full participation of women and ethnic minorities.

Finally, the Government should ensure the right to return, including the right to housing and property restitution, by taking immediate and effective steps, in full compliance with all other aspects of international human rights and humanitarian law, to establish conditions, as well as provide the means, which allow internally displaced persons to return voluntarily, in safety and dignity, to their former homes or places of habitual residence.

The Government should facilitate the reintegration of returned internally displaced persons. Special efforts should be made to ensure the full participation of internally displaced persons, and in particular women and ethnic minorities, in the planning and management of their return and reintegration. As previously stated, however, the Government should immediately halt the return of persons to any place where these persons feel that their life, safety, liberty and/or health would be at risk.

6

Recommendations

COHRE calls upon the Government of Colombia to recognise that respect for human rights must be at the centre of any effort to resolve the current conflict in the country, and accordingly makes the following recommendations:

1. COHRE calls upon the Government to fully comply with its human rights obligations under the International Covenant on Economic, Social and Cultural Rights, in particular the prohibition against forced evictions as articulated in General Comment No. 7 of the United Nations Committee on Economic, Social and Cultural Rights. COHRE urges the Government to fully implement the recommendations of the Committee as articulated in its 2001 Concluding Observations on Colombia (UN Doc. E/C.12/1/Add.74).
2. COHRE calls upon the Colombian authorities to act immediately to protect civilians from violence perpetrated by all sides to the conflict, and in particular to protect communities against forced displacement and forced eviction. In view of the long-standing links between some military units and paramilitary forces, COHRE calls upon the Government to take effective and decisive action to combat and dismantle paramilitary groups and sever the links between the security forces and the paramilitaries, so as to best ensure respect for international humanitarian and human rights law.
3. COHRE calls upon the Colombian authorities to act immediately to protect civilians from being forcibly barred from relocating and from having their right to freedom of movement restricted.
4. COHRE calls upon the Government of Colombia to ensure that all measures taken to strengthen the country's security be grounded in full respect of international human rights treaties to which Colombia is a party. These treaties include: the American Convention on Human Rights; the International Covenant on Economic, Social and Cultural Rights; the International Convention on the Elimination of All Forms of Racial Discrimination; and the Geneva Conventions of 1949.
5. COHRE calls upon the Government to adopt effective judicial and administrative procedures, as well as other appropriate measures, to protect vulnerable and marginalised groups, including women, children, Afro-Colombians and indigenous peoples, from violence and discrimination at all stages of the displacement cycle.
6. COHRE calls upon the Government to strengthen its efforts to prevent forced displacement and to protect persons against forced eviction. In particular, the Government should ensure the effective implementation of the 'early-warning system', coordinated by the Human Rights Ombudsman's Office, in order to guarantee adequate preventative response on the part of relevant authorities.

7. In this regard, COHRE calls upon the Government to adequately fund the Human Rights Ombudsperson's Office. This agency plays a key role in monitoring human rights violations and should receive adequate financial support in order to be able to carry out its mandate and to maintain a presence in many of the key areas affected by forced eviction and displacement.
8. COHRE calls upon the Government to fully implement the 1999 recommendations made by the Representative of the United Nations Secretary-General on the human rights of internally displaced persons; in particular, to appoint a high-level official to act as a focal point on internal displacement within the Government. The work of this focal point should be, *inter alia*, to ensure that the Government is taking adequate steps to prevent internal displacement in accordance with the relevant principles of international human rights law. The formulation of these preventative measures should involve the collaboration of the Office of the United Nations High Commissioner for Human Rights in Bogotá, the Office of the United Nations High Commissioner for Refugees in Bogotá, human rights organisations in Colombia, and displaced communities themselves.
9. COHRE calls upon the Government to fully implement Constitutional Court decisions SU-1150/2000 and T-025/2004, along with all other rulings relevant to the protection of the rights of displaced persons. In particular, COHRE urges the Government to comply with the Constitutional Court's ruling that the UN Guiding Principles on Internal Displacement should serve as the "parameter for any new legislation on displacement as well as for the interpretation of the existing IDP legislation, and the assistance to displaced persons".
10. COHRE calls upon the Government to comply fully with its housing rights obligations under international human rights law. The Government is obligated under the International Covenant on Economic, Social and Cultural Rights to "give due priority to those social groups living in unfavourable conditions". As such, the Government should give special attention to the current situation of internally displaced communities living in inadequate housing conditions.
11. COHRE calls upon the Government to assist displaced communities to realise their right to adequate housing by ensuring legal security of tenure; availability of services, materials, facilities and infrastructure; affordability; habitability; accessibility; adequate location; and the cultural adequacy of housing.
12. In this regard, COHRE calls upon the Government to create durable solutions to the problem of inadequate housing for the internally displaced and to establish alternative assistance schemes that provide internally displaced persons with, and ensure them safe access to, adequate housing. In order to ensure that fears about security do not pose a barrier to receiving Government assistance, these schemes should include extension of the three-month period for the provision of humanitarian aid to, as well as reformulation of the national registration process for, internally displaced persons. These alternative assistance schemes should be developed in close consultation with the affected

communities themselves. The Government should also invite the relevant human rights and humanitarian agencies and organisations within the country to critically review these alternative assistance schemes in order to best ensure their effectiveness.

13. COHRE calls upon the Government to adopt judicial and administrative procedures, and other appropriate measures, that recognise the land and housing rights of internally displaced women, and to provide priority assistance to displaced households headed by single women.
14. COHRE calls upon the Government to assist returned and/or resettled internally displaced persons to recover, to the extent possible, their property and possessions that they left behind or were dispossessed of upon their displacement. When recovery of such property and possessions is not possible, competent authorities should provide or assist these persons in obtaining appropriate compensation or another form of just reparation.
15. COHRE calls upon the Government to immediately halt the return of persons to any place where these persons feel that their life, safety, liberty and/or health would be at risk.
16. COHRE calls upon the Government to adopt appropriate and effective judicial and administrative procedures and other appropriate measures that provide fair, effective and prompt access to justice for internally displaced persons, including the provision of free or low-cost legal assistance.
17. In order to facilitate the restitution of land and housing, COHRE calls upon the Government to establish a national ‘Truth Commission on Displacement’, which would facilitate the creation of a national cadastre of lost properties. Any legal transfer or waiver of displaced persons’ property-ownership rights made under duress should be considered null and void.
18. COHRE calls upon the Government to ensure that all restitution policies and strategies, as well as institutions, mechanisms, procedures and programmes related to the right to restitution be fully consistent and compatible with international human rights and humanitarian law and standards, as well as with regional instruments.
19. Finally, COHRE calls upon the Government of Colombia to establish and support equitable, timely, transparent and non-discriminatory institutions, procedures and mechanisms to assess and enforce housing and property restitution claims. All relevant agencies should be provided with adequate financial and human resources to successfully complete their work.

Appendices

Appendix 1

United Nations Guiding Principles on Internal Displacement*

Introduction: scope and purpose

1. These Guiding Principles address the specific needs of internally displaced persons worldwide. They identify rights and guarantees relevant to the protection of persons from forced displacement and to their protection and assistance during displacement as well as during return or resettlement and reintegration.
2. For the purposes of these Principles, internally displaced persons are persons or groups of persons who have been forced or obliged to flee or to leave their homes or places of habitual residence, in particular as a result of or in order to avoid the effects of armed conflict, situations of generalized violence, violations of human rights or natural or human-made disasters, and who have not crossed an internationally recognized State border.
3. These Principles reflect and are consistent with international human rights law and international humanitarian law. They provide guidance to:
 - (a) The Representative of the Secretary-General on internally displaced persons in carrying out his mandate;
 - (b) States when faced with the phenomenon of internal displacement;
 - (c) All other authorities, groups and persons in their relations with internally displaced persons; and
 - (d) Intergovernmental and non-governmental organizations when addressing internal displacement.
4. These Guiding Principles should be disseminated and applied as widely as possible.

SECTION I – GENERAL PRINCIPLES

Principle 1

1. Internally displaced persons shall enjoy, in full equality, the same rights and freedoms under international and domestic law as do other persons in their country. They shall not

* Extract from the United Nations document E/CN.4/1998/53/Add.2, dated 11 February 1998

be discriminated against in the enjoyment of any rights and freedoms on the ground that they are internally displaced.

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

Principle 2

1. These Principles shall be observed by all authorities, groups and persons irrespective of their legal status and applied without any adverse distinction. The observance of these Principles shall not affect the legal status of any authorities, groups or persons involved.
2. These Principles shall not be interpreted as restricting, modifying or impairing the provisions of any international human rights or international humanitarian law instrument or rights granted to persons under domestic law. In particular, these Principles are without prejudice to the right to seek and enjoy asylum in other countries.

Principle 3

1. National authorities have the primary duty and responsibility to provide protection and humanitarian assistance to internally displaced persons within their jurisdiction.
2. Internally displaced persons have the right to request and to receive protection and humanitarian assistance from these authorities. They shall not be persecuted or punished for making such a request.

Principle 4

1. These Principles shall be applied without discrimination of any kind, such as race, colour, sex, language, religion or belief, political or other opinion, national, ethnic or social origin, legal or social status, age, disability, property, birth, or on any other similar criteria.
2. Certain internally displaced persons, such as children, especially unaccompanied minors, expectant mothers, mothers with young children, female heads of household, persons with disabilities and elderly persons, shall be entitled to protection and assistance required by their condition and to treatment which takes into account their special needs.

SECTION II – PRINCIPLES RELATING TO PROTECTION FROM DISPLACEMENT

Principle 5

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

Principle 6

1. Every human being shall have the right to be protected against being arbitrarily displaced from his or her home or place of habitual residence.
2. The prohibition of arbitrary displacement includes displacement:
 - (a) When it is based on policies of apartheid, “ethnic cleansing” or similar practices aimed at/or resulting in altering the ethnic, religious or racial composition of the affected population;
 - (b) In situations of armed conflict, unless the security of the civilians involved or imperative military reasons so demand;
 - (c) In cases of large-scale development projects, which are not justified by compelling and overriding public interests;
 - (d) In cases of disasters, unless the safety and health of those affected requires their evacuation; and
 - (e) When it is used as a collective punishment.
3. Displacement shall last no longer than required by the circumstances.

Principle 7

1. Prior to any decision requiring the displacement of persons, the authorities concerned shall ensure that all feasible alternatives are explored in order to avoid displacement altogether. Where no alternatives exist, all measures shall be taken to minimize displacement and its adverse effects.
2. The authorities undertaking such displacement shall ensure, to the greatest practicable extent, that proper accommodation is provided to the displaced persons, that such displacements are effected in satisfactory conditions of safety, nutrition, health and hygiene, and that members of the same family are not separated.
3. If displacement occurs in situations other than during the emergency stages of armed conflicts and disasters, the following guarantees shall be complied with:
 - (a) A specific decision shall be taken by a State authority empowered by law to order such measures;
 - (b) Adequate measures shall be taken to guarantee to those to be displaced full information on the reasons and procedures for their displacement and, where applicable, on compensation and relocation;
 - (c) The free and informed consent of those to be displaced shall be sought;
 - (d) The authorities concerned shall endeavour to involve those affected, particularly women, in the planning and management of their relocation;
 - (e) Law enforcement measures, where required, shall be carried out by competent legal authorities; and
 - (f) The right to an effective remedy, including the review of such decisions by appropriate judicial authorities, shall be respected.

Principle 8

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

Principle 9

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

SECTION III – PRINCIPLES RELATING TO PROTECTION DURING DISPLACEMENT

Principle 10

1. Every human being has the inherent right to life which shall be protected by law. No one shall be arbitrarily deprived of his or her life. Internally displaced persons shall be protected in particular against:
 - (a) Genocide;
 - (b) Murder;
 - (c) Summary or arbitrary executions; and
 - (d) Enforced disappearances, including abduction or unacknowledged detention, threatening or resulting in death.

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

2. Attacks or other acts of violence against internally displaced persons who do not or no longer participate in hostilities are prohibited in all circumstances. Internally displaced persons shall be protected, in particular, against:
 - (a) Direct or indiscriminate attacks or other acts of violence, including the creation of areas wherein attacks on civilians are permitted;
 - (b) Starvation as a method of combat;
 - (c) Their use to shield military objectives from attack or to shield, favour or impede military operations;
 - (d) Attacks against their camps or settlements; and
 - (e) The use of anti-personnel landmines.

Principle 11

1. Every human being has the right to dignity and physical, mental and moral integrity.
2. Internally displaced persons, whether or not their liberty has been restricted, shall be protected in particular against:
 - (a) Rape, mutilation, torture, cruel, inhuman or degrading treatment or punishment, and other outrages upon personal dignity, such as acts of gender-specific violence, forced prostitution and any form of indecent assault;
 - (b) Slavery or any contemporary form of slavery, such as sale into marriage, sexual exploitation, or forced labour of children; and
 - (c) Acts of violence intended to spread terror among internally displaced persons.

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

Principle 12

1. Every human being has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention.
2. To give effect to this right for internally displaced persons, they shall not be interned in or confined to a camp. If in exceptional circumstances such internment or confinement is absolutely necessary, it shall not last longer than required by the circumstances.
3. Internally displaced persons shall be protected from discriminatory arrest and detention as a result of their displacement.
4. In no case shall internally displaced persons be taken hostage.

Principle 13

1. In no circumstances shall displaced children be recruited nor be required or permitted to take part in hostilities.
2. Internally displaced persons shall be protected against discriminatory practices of recruitment into any armed forces or groups as a result of their displacement. In particular any cruel, inhuman or degrading practices that compel compliance or punish non-compliance with recruitment are prohibited in all circumstances.

Principle 14

1. Every internally displaced person has the right to liberty of movement and freedom to choose his or her residence.
2. In particular, internally displaced persons have the right to move freely in and out of camps or other settlements.

Principle 15

Internally displaced persons have:

- (a) The right to seek safety in another part of the country;
- (b) The right to leave their country;
- (c) The right to seek asylum in another country; and
- (d) The right to be protected against forcible return to or resettlement in any place where their life, safety, liberty and/or health would be at risk.

Principle 16

1. All internally displaced persons have the right to know the fate and whereabouts of missing relatives.
2. The authorities concerned shall endeavour to establish the fate and whereabouts of internally displaced persons reported missing, and cooperate with relevant international organizations engaged in this task. They shall inform the next of kin on the progress of the investigation and notify them of any result.
3. The authorities concerned shall endeavour to collect and identify the mortal remains of those deceased, prevent their despoliation or mutilation, and facilitate the return of those remains to the next of kin or dispose of them respectfully.
4. Grave sites of internally displaced persons should be protected and respected in all circumstances. Internally displaced persons should have the right of access to the grave sites of their deceased relatives.

Principle 17

1. Every human being has the right to respect of his or her family life.
2. To give effect to this right for internally displaced persons, family members who wish to remain together shall be allowed to do so.
3. Families which are separated by displacement should be reunited as quickly as possible. All appropriate steps shall be taken to expedite the reunion of such families, particularly when children are involved. The responsible authorities shall facilitate inquiries made by family members and encourage and cooperate with the work of humanitarian organizations engaged in the task of family reunification.
4. Members of internally displaced families whose personal liberty has been restricted by internment or confinement in camps shall have the right to remain together.

Principle 18

1. All internally displaced persons have the right to an adequate standard of living.
2. At the minimum, regardless of the circumstances, and without discrimination, competent authorities shall provide internally displaced persons with and ensure safe access to:
 - (a) Essential food and potable water;
 - (b) Basic shelter and housing;
 - (c) Appropriate clothing; and
 - (d) Essential medical services and sanitation.
3. Special efforts should be made to ensure the full participation of women in the planning and distribution of these basic supplies.

Principle 19

1. All wounded and sick internally displaced persons as well as those with disabilities shall receive to the fullest extent practicable and with the least possible delay, the medical care and attention they require, without distinction on any grounds other than medical ones. When necessary, internally displaced persons shall have access to psychological and social services.
2. Special attention should be paid to the health needs of women, including access to female health care providers and services, such as reproductive health care, as well as appropriate counselling for victims of sexual and other abuses.
3. Special attention should also be given to the prevention of contagious and infectious diseases, including AIDS, among internally displaced persons.

Principle 20

1. Every human being has the right to recognition everywhere as a person before the law.
2. To give effect to this right for internally displaced persons, the authorities concerned shall issue to them all documents necessary for the enjoyment and exercise of their legal rights, such as passports, personal identification documents, birth certificates and marriage certificates. In particular, the authorities shall facilitate the issuance of new documents or the replacement of documents lost in the course of displacement, without imposing unreasonable conditions, such as requiring the return to one's area of habitual residence in order to obtain these or other required documents.
3. Women and men shall have equal rights to obtain such necessary documents and shall have the right to have such documentation issued in their own names.

Principle 21

1. No one shall be arbitrarily deprived of property and possessions.
2. The property and possessions of internally displaced persons shall in all circumstances be protected, in particular, against the following acts:
 - (a) Pillage;
 - (b) Direct or indiscriminate attacks or other acts of violence;
 - (c) Being used to shield military operations or objectives;
 - (d) Being made the object of reprisal; and
 - (e) Being destroyed or appropriated as a form of collective punishment.
3. Property and possessions left behind by internally displaced persons should be protected against destruction and arbitrary and illegal appropriation, occupation or use.

Principle 22

1. Internally displaced persons, whether or not they are living in camps, shall not be discriminated against as a result of their displacement in the enjoyment of the following rights:
 - (a) The rights to freedom of thought, conscience, religion or belief, opinion and expression;
 - (b) The right to seek freely opportunities for employment and to participate in economic activities;
 - (c) The right to associate freely and participate equally in community affairs;
 - (d) The right to vote and to participate in governmental and public affairs, including the right to have access to the means necessary to exercise this right; and
 - (e) The right to communicate in a language they understand.

Principle 23

1. Every human being has the right to education.
2. To give effect to this right for internally displaced persons, the authorities concerned shall ensure that such persons, in particular displaced children, receive education which shall be free and compulsory at the primary level. Education should respect their cultural identity, language and religion.
3. Special efforts should be made to ensure the full and equal participation of women and girls in educational programmes.
4. Education and training facilities shall be made available to internally displaced persons, in particular adolescents and women, whether or not living in camps, as soon as conditions permit.

SECTION IV – PRINCIPLES RELATING TO HUMANITARIAN ASSISTANCE

Principle 24

1. All humanitarian assistance shall be carried out in accordance with the principles of humanity and impartiality and without discrimination.
2. Humanitarian assistance to internally displaced persons shall not be diverted, in particular for political or military reasons.

Principle 25

1. The primary duty and responsibility for providing humanitarian assistance to internally displaced persons lies with national authorities.
2. International humanitarian organizations and other appropriate actors have the right to offer their services in support of the internally displaced. Such an offer shall not be regarded as an unfriendly act or an interference in a State's internal affairs and shall be considered in good faith. Consent thereto shall not be arbitrarily withheld, particularly when authorities concerned are unable or unwilling to provide the required humanitarian assistance.
3. All authorities concerned shall grant and facilitate the free passage of humanitarian assistance and grant persons engaged in the provision of such assistance rapid and unimpeded access to the internally displaced.

Principle 26

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

Principle 27

1. International humanitarian organizations and other appropriate actors when providing assistance should give due regard to the protection needs and human rights of internally displaced persons and take appropriate measures in this regard. In so doing, these organizations and actors should respect relevant international standards and codes of conduct.
2. The preceding paragraph is without prejudice to the protection responsibilities of international organizations mandated for this purpose, whose services may be offered or requested by States.

SECTION V – PRINCIPLES RELATING TO RETURN, RESETTLEMENT AND REINTEGRATION

Principle 28

1. Competent authorities have the primary duty and responsibility to establish conditions, as well as provide the means, which allow internally displaced persons to return voluntarily, in safety and with dignity, to their homes or places of habitual residence, or to resettle voluntarily in another part of the country. Such authorities shall endeavour to facilitate the reintegration of returned or resettled internally displaced persons.
2. Special efforts should be made to ensure the full participation of internally displaced persons in the planning and management of their return or resettlement and reintegration.

Principle 29

1. Internally displaced persons who have returned to their homes or places of habitual residence or who have resettled in another part of the country shall not be discriminated against as a result of their having been displaced. They shall have the right to participate fully and equally in public affairs at all levels and have equal access to public services.
2. Competent authorities have the duty and responsibility to assist returned and/or resettled internally displaced persons to recover, to the extent possible, their property and possessions which they left behind or were dispossessed of upon their displacement. When recovery of such property and possessions is not possible, competent authorities shall provide or assist these persons in obtaining appropriate compensation or another form of just reparation.

Principle 30

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

Appendix 2

Draft United Nations Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Violations of International Human Rights and Humanitarian Law*

The Commission on Human Rights,

Pursuant to Commission on Human Rights resolution 1999/33 of 26 April 1999, entitled “The right to restitution, compensation and rehabilitation for victims of grave violations of human rights and fundamental freedoms”, in which the Commission took note with appreciation of the note of the Secretary-General (E/CN.4/1999/53) submitted in compliance with resolution 1998/43 of 17 April 1998 and the report of the independent expert (E/CN.4/1999/65),

Recalling resolution 1989/13 of 31 August 1989 of the Sub-Commission on Prevention of Discrimination and Protection of Minorities in which the Sub-Commission decided to entrust Mr. Theo van Boven with the task of undertaking a study concerning the right to restitution, compensation and rehabilitation for victims of gross violations of human rights and fundamental freedoms, which was contained in Mr. Van Boven’s final report (E/CN.4/Sub.2/1993/8) and which resulted in draft basic principles and guidelines (E/CN.4/1997/104, annex), and resolution 1994/35 of 4 March 1994 of the Commission on Human Rights in which the Commission regarded the proposed basic principles and guidelines contained in the study of the Special Rapporteur as a useful basis for giving priority to the question of restitution, compensation and rehabilitation,

Recalling the provisions providing a right to a remedy for victims of violations of international human rights and humanitarian law found in numerous international instruments, in particular the Universal Declaration of Human Rights at article 8, the International Covenant on Civil and Political Rights at article 2, the International Convention on the Elimination of All Forms of Racial Discrimination at article 6, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment at article 11, and the Convention on the Rights of the Child at article 39,

Recalling the provisions providing a right to a remedy for victims of violations of international human rights found in regional conventions, in particular the African Charter on Human and Peoples’ Rights at article 7, the American Convention on Human Rights at article 25, and the European Convention for the Protection of Human Rights and Fundamental Freedoms at article 13,

Recalling the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power emanating from the deliberations of the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders, and resolution 40/34 of 29 November 1985 by which the General Assembly adopted the text recommended by the Congress,

* Extract from the United Nations document E/CN.4/2000/62, dated 18 January 2000

Reaffirming the principles enunciated in the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, including that victims should be treated with compassion and respect for their dignity, have their right to access to justice and redress mechanisms fully respected, and that the establishment, strengthening and expansion of national funds for compensation to victims should be encouraged, together with the expeditious development of appropriate rights and remedies for victims,

Recalling resolution 1989/57 of 24 May 1989 of the Economic and Social Council, entitled “Implementation of the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power”, as well as Council resolution 1990/22 of 24 May 1990, entitled “Victims of crime and abuse of power”,

Noting that in resolution 827 (1993) of 25 May 1993 in which it adopted the Statute of the International Criminal Tribunal for the Former Yugoslavia, the Security Council decided that “the work of the International Tribunal shall be carried out without prejudice to the right of the victims to seek, through appropriate means, compensation for damages incurred as a result of violations of international humanitarian law”,

Noting with satisfaction the adoption of the Rome Statute of the International Criminal Court on 17 July 1998 which obliges the Court to “establish principles relating to reparation to, or in respect of, victims, including restitution, compensation and rehabilitation” and obliges the Assembly of States Parties to establish a trust fund for the benefit of victims of crimes within the jurisdiction of the Court and of the families of such victims, and mandates the Court “to protect the safety, physical and psychological well-being, dignity and privacy of victims” and to permit the participation of victims at all “stages of the proceedings determined to be appropriate by the Court”,

Recognizing that, in honouring the victims’ right to benefit from remedies and reparation, the international community keeps faith and human solidarity with victims, survivors and future human generations, and reaffirms the international legal principles of accountability, justice and the rule of law,

Convinced that, in adopting a victim-oriented point of departure, the community, at local, national and international levels, affirms its human solidarity and compassion with victims of violations of international human rights and humanitarian law as well as with humanity at large,

Decides to adopt the Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Violations of International Human Rights and Humanitarian Law as follows:

I. OBLIGATION TO RESPECT, ENSURE RESPECT FOR AND ENFORCE INTERNATIONAL HUMAN RIGHTS AND HUMANITARIAN LAW

1. Every State has the obligation to respect, ensure respect for and enforce international human rights and humanitarian law norms that are, *inter alia*:
 - (a) Contained in treaties to which it is a State party;
 - (b) Found in customary international law; or
 - (c) Incorporated in its domestic law.
2. To that end, if they have not already done so, States shall ensure that domestic law is consistent with international legal obligations by:
 - (a) Incorporating norms of international human rights and humanitarian law into their domestic law, or otherwise implementing them in their domestic legal system;
 - (b) Adopting appropriate and effective judicial and administrative procedures and other appropriate measures that provide fair, effective and prompt access to justice;
 - (c) Making available adequate, effective and prompt reparation as defined below; and
 - (d) Ensuring, in the case that there is a difference between national and international norms, that the norm that provides the greatest degree of protection is applied.

II. SCOPE OF THE OBLIGATION

3. The obligation to respect, ensure respect for and enforce international human rights and humanitarian law includes, *inter alia*, a State's duty to:
 - (a) Take appropriate legal and administrative measures to prevent violations;
 - (b) Investigate violations and, where appropriate, take action against the violator in accordance with domestic and international law;
 - (c) Provide victims with equal and effective access to justice irrespective of who may be the ultimate bearer of responsibility for the violation;
 - (d) Afford appropriate remedies to victims; and
 - (e) Provide for or facilitate reparation to victims.

III. VIOLATIONS OF INTERNATIONAL HUMAN RIGHTS AND HUMANITARIAN LAW THAT CONSTITUTE CRIMES UNDER INTERNATIONAL LAW

4. Violations of international human rights and humanitarian law norms that constitute crimes under international law carry the duty to prosecute persons alleged to have committed these violations, to punish perpetrators adjudged to have committed these violations, and to cooperate with and assist States and appropriate international judicial organs in the investigation and prosecution of these violations.
5. To that end, States shall incorporate within their domestic law appropriate provisions providing for universal jurisdiction over crimes under international law and appropriate legislation to facilitate extradition or surrender of offenders to other States and to

international judicial bodies and to provide judicial assistance and other forms of cooperation in the pursuit of international justice, including assistance to and protection of victims and witnesses.

IV. STATUTES OF LIMITATIONS

6. Statutes of limitations shall not apply for prosecuting violations of international human rights and humanitarian law norms that constitute crimes under international law.
7. Statutes of limitations for prosecuting other violations or pursuing civil claims should not unduly restrict the ability of a victim to pursue a claim against the perpetrator, and should not apply with respect to periods during which no effective remedies exist for violations of human rights and international humanitarian law norms.

V. VICTIMS OF VIOLATIONS OF INTERNATIONAL HUMAN RIGHTS AND HUMANITARIAN LAW

8. A person is “a victim” where, as a result of acts or omissions that constitute a violation of international human rights or humanitarian law norms, that person, individually or collectively, suffered harm, including physical or mental injury, emotional suffering, economic loss, or impairment of that person’s fundamental legal rights. A “victim” may also be a dependant or a member of the immediate family or household of the direct victim as well as a person who, in intervening to assist a victim or prevent the occurrence of further violations, has suffered physical, mental, or economic harm.
9. A person’s status as “a victim” should not depend on any relationship that may exist or may have existed between the victim and the perpetrator, or whether the perpetrator of the violation has been identified, apprehended, prosecuted, or convicted.

VI. TREATMENT OF VICTIMS

10. Victims should be treated by the State and, where applicable, by intergovernmental and non-governmental organizations and private enterprises with compassion and respect for their dignity and human rights, and appropriate measures should be taken to ensure their safety and privacy as well as that of their families. The State should ensure that its domestic laws, as much as possible, provide that a victim who has suffered violence or trauma should benefit from special consideration and care to avoid his or her retraumatization in the course of legal and administrative procedures designed to provide justice and reparation.

VII. VICTIMS’ RIGHT TO A REMEDY

11. Remedies for violations of international human rights and humanitarian law include the victim’s right to:
 - (a) Access justice;
 - (b) Reparation for harm suffered; and
 - (c) Access the factual information concerning the violations.

VIII. VICTIMS' RIGHT TO ACCESS JUSTICE

12. A victim's right of access to justice includes all available judicial, administrative, or other public processes under existing domestic laws as well as under international law. Obligations arising under international law to secure the individual or collective right to access justice and fair and impartial proceedings should be made available under domestic laws. To that end, States should:
 - (a) Make known, through public and private mechanisms, all available remedies for violations of international human rights and humanitarian law;
 - (b) Take measures to minimize the inconvenience to victims, protect their privacy as appropriate and ensure their safety from intimidation and retaliation, as well as that of their families and witnesses, before, during, and after judicial, administrative, or other proceedings that affect the interests of victims;
 - (c) Make available all appropriate diplomatic and legal means to ensure that victims can exercise their rights to a remedy and reparation for violations of international human rights or humanitarian law.
13. In addition to individual access to justice, adequate provisions should also be made to allow groups of victims to present collective claims for reparation and to receive reparation collectively.
14. The right to an adequate, effective and prompt remedy against a violation of international human rights or humanitarian law includes all available international processes in which an individual may have legal standing and should be without prejudice to any other domestic remedies.

IX. VICTIMS' RIGHT TO REPARATION

15. Adequate, effective and prompt reparation shall be intended to promote justice by redressing violations of international human rights or humanitarian law. Reparation should be proportional to the gravity of the violations and the harm suffered.
16. In accordance with its domestic laws and international legal obligations, a State shall provide reparation to victims for its acts or omissions constituting violations of international human rights and humanitarian law norms.
17. In cases where the violation is not attributable to the State, the party responsible for the violation should provide reparation to the victim or to the State if the State has already provided reparation to the victim.
18. In the event that the party responsible for the violation is unable or unwilling to meet these obligations, the State should endeavour to provide reparation to victims who have sustained bodily injury or impairment of physical or mental health as a result of these violations and to the families, in particular dependants of persons who have died or become physically or mentally incapacitated as a result of the violation. To that end, States should endeavour to establish national funds for reparation to victims and seek other sources of funds wherever necessary to supplement these.

19. A State shall enforce its domestic judgements for reparation against private individuals or entities responsible for the violations. States shall endeavour to enforce valid foreign judgements for reparation against private individuals or entities responsible for the violations.
20. In cases where the State or Government under whose authority the violation occurred is no longer in existence, the State or Government successor in title should provide reparation to the victims.

X. FORMS OF REPARATION

21. In accordance with their domestic law and international obligations, and taking account of individual circumstances, States should provide victims of violations of international human rights and humanitarian law the following forms of reparation: restitution, compensation, rehabilitation, and satisfaction and guarantees of non-repetition.
22. Restitution should, whenever possible, restore the victim to the original situation before the violations of international human rights or humanitarian law occurred. Restitution includes: restoration of liberty, legal rights, social status, family life and citizenship; return to one's place of residence; and restoration of employment and return of property.
23. Compensation should be provided for any economically assessable damage resulting from violations of international human rights and humanitarian law, such as:
 - (a) Physical or mental harm, including pain, suffering and emotional distress;
 - (b) Lost opportunities, including education;
 - (c) Material damages and loss of earnings, including loss of earning potential;
 - (d) Harm to reputation or dignity; and
 - (e) Costs required for legal or expert assistance, medicines and medical services, and psychological and social services.
24. Rehabilitation should include medical and psychological care as well as legal and social services.
25. Satisfaction and guarantees of non-repetition should include, where applicable, any or all of the following:
 - (a) Cessation of continuing violations;
 - (b) Verification of the facts and full and public disclosure of the truth to the extent that such disclosure does not cause further unnecessary harm or threaten the safety of the victim, witnesses, or others;
 - (c) The search for the bodies of those killed or disappeared and assistance in the identification and reburial of the bodies in accordance with the cultural practices of the families and communities;

- (d) An official declaration or a judicial decision restoring the dignity, reputation and legal and social rights of the victim and of persons closely connected with the victim;
- (e) Apology, including public acknowledgement of the facts and acceptance of responsibility;
- (f) Judicial or administrative sanctions against persons responsible for the violations;
- (g) Commemorations and tributes to the victims;
- (h) Inclusion of an accurate account of the violations that occurred in international human rights and humanitarian law training and in educational material at all levels;
- (i) Preventing the recurrence of violations by such means as:
 - (i) Ensuring effective civilian control of military and security forces;
 - (ii) Restricting the jurisdiction of military tribunals only to specifically military offences committed by members of the armed forces;
 - (iii) Strengthening the independence of the judiciary;
 - (iv) Protecting persons in the legal, media and other related professions and human rights defenders;
 - (v) Conducting and strengthening, on a priority and continued basis, human rights training to all sectors of society, in particular to military and security forces and to law enforcement officials;
 - (vi) Promoting the observance of codes of conduct and ethical norms, in particular international standards, by public servants, including law enforcement, correctional, media, medical, psychological, social service and military personnel, as well as the staff of economic enterprises;
 - (vii) Creating mechanisms for monitoring conflict resolution and preventive intervention.

XI. PUBLIC ACCESS TO INFORMATION

26. States should develop means of informing the general public and in particular victims of violations of international human rights and humanitarian law of the rights and remedies contained within these principles and guidelines and of all available legal, medical, psychological, social, administrative and all other services to which victims may have a right of access.

XII. NON-DISCRIMINATION AMONG VICTIMS

27. The application and interpretation of these principles and guidelines must be consistent with internationally recognized human rights law and be without any adverse distinction founded on grounds such as race, colour, gender, sexual orientation, age, language, religion, political or religious belief, national, ethnic or social origin, wealth, birth, family or other status, or disability.

Appendix 3

UN Committee on Economic, Social and Cultural Rights: General Comment No. 4 on the Right to Adequate Housing

GENERAL COMMENT 4

The right to adequate housing (Art. 11 (1) of the Covenant)

(Sixth session, 1991)*

1. Pursuant to article 11 (1) of the Covenant, States parties “recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions”. The human right to adequate housing, which is thus derived from the right to an adequate standard of living, is of central importance for the enjoyment of all economic, social and cultural rights.

2. The Committee has been able to accumulate a large amount of information pertaining to this right. Since 1979, the Committee and its predecessors have examined 75 reports dealing with the right to adequate housing. The Committee has also devoted a day of general discussion to the issue at each of its third (see E/1989/22, para. 312) and fourth sessions (E/1990/23, paras. 281-285). In addition, the Committee has taken careful note of information generated by the International Year of Shelter for the Homeless (1987) including the Global Strategy for Shelter to the Year 2000 adopted by the General Assembly in its resolution 42/191 of 11 December 1987^{1/}. The Committee has also reviewed relevant reports and other documentation of the Commission on Human Rights and the Sub-Commission on Prevention of Discrimination and Protection of Minorities^{2/}.

3. Although a wide variety of international instruments address the different dimensions of the right to adequate housing^{3/} article 11 (1) of the Covenant is the most comprehensive and perhaps the most important of the relevant provisions.

4. Despite the fact that the international community has frequently reaffirmed the importance of full respect for the right to adequate housing, there remains a disturbingly large gap between the standards set in article 11 (1) of the Covenant and the situation prevailing in

* Contained in document E/1992/23.

1/ Official Records of the General Assembly, Forty-third Session, Supplement No. 8, addendum (A/43/8/Add.1).

2/ Commission on Human Rights resolutions 1986/36 and 1987/22; reports by Mr. Danilo Türk, Special Rapporteur of the Sub-Commission (E/CN.4/Sub.2/1990/19, paras. 108-120; E/CN.4/Sub.2/1991/17, paras. 137-139); see also Sub-Commission resolution 1991/26.

3/ See, for example, article 25 (1) of the Universal Declaration on Human Rights, article 5 (e) (iii) of the International Convention on the Elimination of All Forms of Racial Discrimination, article 14 (2) of the Convention on the Elimination of All Forms of Discrimination against Women, article 27 (3) of the Convention on the Rights of the Child, article 10 of the Declaration on Social Progress and Development, section III (8) of the Vancouver Declaration on Human Settlements, 1976 (Report of Habitat: United Nations Conference on Human Settlements (United Nations publication, Sales No. E.76.IV.7 and corrigendum), chap. I), article 8 (1) of the Declaration on the Right to Development and the ILO Recommendation Concerning Workers' Housing, 1961 (No. 115).

many parts of the world. While the problems are often particularly acute in some developing countries which confront major resource and other constraints, the Committee observes that significant problems of homelessness and inadequate housing also exist in some of the most economically developed societies. The United Nations estimates that there are over 100 million persons homeless worldwide and over 1 billion inadequately housed^{4/}. There is no indication that this number is decreasing. It seems clear that no State party is free of significant problems of one kind or another in relation to the right to housing.

5. In some instances, the reports of States parties examined by the Committee have acknowledged and described difficulties in ensuring the right to adequate housing. For the most part, however, the information provided has been insufficient to enable the Committee to obtain an adequate picture of the situation prevailing in the State concerned. This General Comment thus aims to identify some of the principal issues which the Committee considers to be important in relation to this right.

6. The right to adequate housing applies to everyone. While the reference to “himself and his family” reflects assumptions as to gender roles and economic activity patterns commonly accepted in 1966 when the Covenant was adopted, the phrase cannot be read today as implying any limitations upon the applicability of the right to individuals or to female-headed households or other such groups. Thus, the concept of “family” must be understood in a wide sense. Further, individuals, as well as families, are entitled to adequate housing regardless of age, economic status, group or other affiliation or status and other such factors. In particular, enjoyment of this right must, in accordance with article 2 (2) of the Covenant, not be subject to any form of discrimination.

7. In the Committee’s view, the right to housing should not be interpreted in a narrow or restrictive sense which equates it with, for example, the shelter provided by merely having a roof over one’s head or views shelter exclusively as a commodity. Rather it should be seen as the right to live somewhere in security, peace and dignity. This is appropriate for at least two reasons. In the first place, the right to housing is integrally linked to other human rights and to the fundamental principles upon which the Covenant is premised. This “the inherent dignity of the human person” from which the rights in the Covenant are said to derive requires that the term “housing” be interpreted so as to take account of a variety of other considerations, most importantly that the right to housing should be ensured to all persons irrespective of income or access to economic resources. Secondly, the reference in article 11 (1) must be read as referring not just to housing but to adequate housing. As both the Commission on Human Settlements and the Global Strategy for Shelter to the Year 2000 have stated: “Adequate shelter means ... adequate privacy, adequate space, adequate security, adequate lighting and ventilation, adequate basic infrastructure and adequate location with regard to work and basic facilities — all at a reasonable cost”.

8. Thus the concept of adequacy is particularly significant in relation to the right to housing since it serves to underline a number of factors which must be taken into account in determining whether particular forms of shelter can be considered to constitute “adequate housing” for the purposes of the Covenant. While adequacy is determined in part by social, eco-

4/ See footnote 1/.

nomic, cultural, climatic, ecological and other factors, the Committee believes that it is nevertheless possible to identify certain aspects of the right that must be taken into account for this purpose in any particular context. They include the following:

(a) *Legal security of tenure.* Tenure takes a variety of forms, including rental (public and private) accommodation, cooperative housing, lease, owner-occupation, emergency housing and informal settlements, including occupation of land or property. Notwithstanding the type of tenure, all persons should possess a degree of security of tenure which guarantees legal protection against forced eviction, harassment and other threats. States parties should consequently take immediate measures aimed at conferring legal security of tenure upon those persons and households currently lacking such protection, in genuine consultation with affected persons and groups;

(b) *Availability of services, materials, facilities and infrastructure.* An adequate house must contain certain facilities essential for health, security, comfort and nutrition. All beneficiaries of the right to adequate housing should have sustainable access to natural and common resources, safe drinking water, energy for cooking, heating and lighting, sanitation and washing facilities, means of food storage, refuse disposal, site drainage and emergency services;

(c) *Affordability.* Personal or household financial costs associated with housing should be at such a level that the attainment and satisfaction of other basic needs are not threatened or compromised. Steps should be taken by States parties to ensure that the percentage of housing-related costs is, in general, commensurate with income levels. States parties should establish housing subsidies for those unable to obtain affordable housing, as well as forms and levels of housing finance which adequately reflect housing needs. In accordance with the principle of affordability, tenants should be protected by appropriate means against unreasonable rent levels or rent increases. In societies where natural materials constitute the chief sources of building materials for housing, steps should be taken by States parties to ensure the availability of such materials;

(d) *Habitability.* Adequate housing must be habitable, in terms of providing the inhabitants with adequate space and protecting them from cold, damp, heat, rain, wind or other threats to health, structural hazards, and disease vectors. The physical safety of occupants must be guaranteed as well. The Committee encourages States parties to comprehensively apply the Health Principles of Housing ^{5/} prepared by WHO which view housing as the environmental factor most frequently associated with conditions for disease in epidemiological analyses; i.e. inadequate and deficient housing and living conditions are invariably associated with higher mortality and morbidity rates;

(e) *Accessibility.* Adequate housing must be accessible to those entitled to it. Disadvantaged groups must be accorded full and sustainable access to adequate housing resources. Thus, such disadvantaged groups as the elderly, children, the physically disabled, the terminally ill, HIV-positive individuals, persons with persistent medical problems, the mentally ill, victims of natural disasters, people living in disaster-prone areas and other groups should be ensured some degree of priority consideration in the housing sphere. Both housing law and

5/ Geneva, World Health Organization, 1990.

policy should take fully into account the special housing needs of these groups. Within many States parties increasing access to land by landless or impoverished segments of the society should constitute a central policy goal. Discernible governmental obligations need to be developed aiming to substantiate the right of all to a secure place to live in peace and dignity, including access to land as an entitlement;

(f) *Location.* Adequate housing must be in a location which allows access to employment options, health-care services, schools, child-care centres and other social facilities. This is true both in large cities and in rural areas where the temporal and financial costs of getting to and from the place of work can place excessive demands upon the budgets of poor households. Similarly, housing should not be built on polluted sites nor in immediate proximity to pollution sources that threaten the right to health of the inhabitants;

(g) *Cultural adequacy.* The way housing is constructed, the building materials used and the policies supporting these must appropriately enable the expression of cultural identity and diversity of housing. Activities geared towards development or modernization in the housing sphere should ensure that the cultural dimensions of housing are not sacrificed, and that, inter alia, modern technological facilities, as appropriate are also ensured.

9. As noted above, the right to adequate housing cannot be viewed in isolation from other human rights contained in the two International Covenants and other applicable international instruments. Reference has already been made in this regard to the concept of human dignity and the principle of non-discrimination. In addition, the full enjoyment of other rights – such as the right to freedom of expression, the right to freedom of association (such as for tenants and other community-based groups), the right to freedom of residence and the right to participate in public decision-making – is indispensable if the right to adequate housing is to be realized and maintained by all groups in society. Similarly, the right not to be subjected to arbitrary or unlawful interference with one’s privacy, family, home or correspondence constitutes a very important dimension in defining the right to adequate housing.

10. Regardless of the state of development of any country, there are certain steps which must be taken immediately. As recognized in the Global Strategy for Shelter and in other international analyses, many of the measures required to promote the right to housing would only require the abstention by the Government from certain practices and a commitment to facilitating “self-help” by affected groups. To the extent that any such steps are considered to be beyond the maximum resources available to a State party, it is appropriate that a request be made as soon as possible for international cooperation in accordance with articles 11 (1), 22 and 23 of the Covenant, and that the Committee be informed thereof.

11. States parties must give due priority to those social groups living in unfavourable conditions by giving them particular consideration. Policies and legislation should correspondingly not be designed to benefit already advantaged social groups at the expense of others. The Committee is aware that external factors can affect the right to a continuous improvement of living conditions, and that in many States parties overall living conditions declined during the 1980s. However, as noted by the Committee in its General Comment 2 (1990) (E/1990/23, annex III), despite externally caused problems, the obligations under the Covenant continue to apply and are perhaps even more pertinent during times of economic contraction. It would

thus appear to the Committee that a general decline in living and housing conditions, directly attributable to policy and legislative decisions by States parties, and in the absence of accompanying compensatory measures, would be inconsistent with the obligations under the Covenant.

12. While the most appropriate means of achieving the full realization of the right to adequate housing will inevitably vary significantly from one State party to another, the Covenant clearly requires that each State party take whatever steps are necessary for that purpose. This will almost invariably require the adoption of a national housing strategy which, as stated in paragraph 32 of the Global Strategy for Shelter, “defines the objectives for the development of shelter conditions, identifies the resources available to meet these goals and the most cost-effective way of using them and sets out the responsibilities and time-frame for the implementation of the necessary measures”. Both for reasons of relevance and effectiveness, as well as in order to ensure respect for other human rights, such a strategy should reflect extensive genuine consultation with, and participation by, all of those affected, including the homeless, the inadequately housed and their representatives. Furthermore, steps should be taken to ensure coordination between ministries and regional and local authorities in order to reconcile related policies (economics, agriculture, environment, energy, etc.) with the obligations under article 11 of the Covenant.

13. Effective monitoring of the situation with respect to housing is another obligation of immediate effect. For a State party to satisfy its obligations under article 11 (1) it must demonstrate, inter alia, that it has taken whatever steps are necessary, either alone or on the basis of international cooperation, to ascertain the full extent of homelessness and inadequate housing within its jurisdiction. In this regard, the revised general guidelines regarding the form and contents of reports adopted by the Committee (E/C.12/1991/1) emphasize the need to “provide detailed information about those groups within ... society that are vulnerable and disadvantaged with regard to housing”. They include, in particular, homeless persons and families, those inadequately housed and without ready access to basic amenities, those living in “illegal” settlements, those subject to forced evictions and low-income groups.

14. Measures designed to satisfy a State party’s obligations in respect of the right to adequate housing may reflect whatever mix of public and private sector measures considered appropriate. While in some States public financing of housing might most usefully be spent on direct construction of new housing, in most cases, experience has shown the inability of Governments to fully satisfy housing deficits with publicly built housing. The promotion by States parties of “enabling strategies”, combined with a full commitment to obligations under the right to adequate housing, should thus be encouraged. In essence, the obligation is to demonstrate that, in aggregate, the measures being taken are sufficient to realize the right for every individual in the shortest possible time in accordance with the maximum of available resources.

15. Many of the measures that will be required will involve resource allocations and policy initiatives of a general kind. Nevertheless, the role of formal legislative and administrative measures should not be underestimated in this context. The Global Strategy for Shelter (paras. 66-67) has drawn attention to the types of measures that might be taken in this regard and to their importance.

16. In some States, the right to adequate housing is constitutionally entrenched. In such cases the Committee is particularly interested in learning of the legal and practical significance of such an approach. Details of specific cases and of other ways in which entrenchment has proved helpful should thus be provided.

17. The Committee views many component elements of the right to adequate housing as being at least consistent with the provision of domestic legal remedies. Depending on the legal system, such areas might include, but are not limited to: (a) legal appeals aimed at preventing planned evictions or demolitions through the issuance of court-ordered injunctions; (b) legal procedures seeking compensation following an illegal eviction; (c) complaints against illegal actions carried out or supported by landlords (whether public or private) in relation to rent levels, dwelling maintenance, and racial or other forms of discrimination; (d) allegations of any form of discrimination in the allocation and availability of access to housing; and (e) complaints against landlords concerning unhealthy or inadequate housing conditions. In some legal systems it would also be appropriate to explore the possibility of facilitating class action suits in situations involving significantly increased levels of homelessness.

18. In this regard, the Committee considers that instances of forced eviction are prima facie incompatible with the requirements of the Covenant and can only be justified in the most exceptional circumstances, and in accordance with the relevant principles of international law.

19. Finally, article 11 (1) concludes with the obligation of States parties to recognize “the essential importance of international cooperation based on free consent”. Traditionally, less than 5 percent of all international assistance has been directed towards housing or human settlements, and often the manner by which such funding is provided does little to address the housing needs of disadvantaged groups. States parties, both recipients and providers, should ensure that a substantial proportion of financing is devoted to creating conditions leading to a higher number of persons being adequately housed. International financial institutions promoting measures of structural adjustment should ensure that such measures do not compromise the enjoyment of the right to adequate housing. States parties should, when contemplating international financial cooperation, seek to indicate areas relevant to the right to adequate housing where external financing would have the most effect. Such requests should take full account of the needs and views of the affected groups.

Appendix 4

UN Committee on Economic, Social and Cultural Rights: General Comment No. 7 on Forced Evictions

GENERAL COMMENT 7

The right to adequate housing (art. 11.1 of the Covenant):
forced evictions

(Sixteenth session, 1997)*

1. In its General Comment No. 4 (1991), the Committee observed that all persons should possess a degree of security of tenure which guarantees legal protection against forced eviction, harassment and other threats. It concluded that forced evictions are *prima facie* incompatible with the requirements of the Covenant. Having considered a significant number of reports of forced evictions in recent years, including instances in which it has determined that the obligations of States parties were being violated, the Committee is now in a position to seek to provide further clarification as to the implications of such practices in terms of the obligations contained in the Covenant.

2. The international community has long recognized that the issue of forced evictions is a serious one. In 1976, the United Nations Conference on Human Settlements noted that special attention should be paid to “undertaking major clearance operations should take place only when conservation and rehabilitation are not feasible and relocation measures are made”.^{1/} In 1988, in the Global Strategy for Shelter to the Year 2000, adopted by the General Assembly in its resolution 43/181, the “fundamental obligation [of Governments] to protect and improve houses and neighbourhoods, rather than damage or destroy them” was recognized.^{2/} Agenda 21 stated that “people should be protected by law against unfair eviction from their homes or land”.^{3/} In the Habitat Agenda Governments committed themselves to “protecting all people from, and providing legal protection and redress for, forced evictions that are contrary to the law, taking human rights into consideration; [and] when evictions are unavoidable, ensuring, as appropriate, that alternative suitable solutions are provided”.^{4/} The Commission on Human Rights has also indicated that “forced evictions are a gross violation of human rights”.^{5/} However, although these statements are important, they leave open one of the most critical issues, namely that of determining the circumstances under which forced evictions are permissible and of spelling out the types of protection required to ensure respect for the relevant provisions of the Covenant.

* Contained in document E/1998/22, annex IV.

1/ Report of Habitat: United Nations Conference on Human Settlements, Vancouver, 31 May - 11 June 1976 (A/CONF.70/15), chap. II, recommendation B.8, para. C (ii).

2/ Report of the Commission on Human Settlements on the work of its eleventh session, Addendum (A/43/8/Add.1), para. 13.

3/ Report of the United Nations Conference on Environment and Development, Rio de Janeiro, 3-14 June 1992, Vol. I (A/CONF.151/26/Rev.1(vol.I)), annex II, Agenda 21, chap. 7.9 (b).

4/ Report of the United Nations Conference on Settlements (Habitat II) (A/CONF.165/14), annex II, The Habitat Agenda, para. 40 (n).

5/ Commission on Human Rights resolution 1993/77, para. 1.

3. The use of the term “forced evictions” is, in some respects, problematic. This expression seeks to convey a sense of arbitrariness and of illegality. To many observers, however, the reference to “forced evictions” is a tautology, while others have criticized the expression “illegal evictions” on the ground that it assumes that the relevant law provides adequate protection of the right to housing and conforms with the Covenant, which is by no means always the case. Similarly, it has been suggested that the term “unfair evictions” is even more subjective by virtue of its failure to refer to any legal framework at all. The international community, especially in the context of the Commission on Human Rights, has opted to refer to “forced evictions”, primarily since all suggested alternatives also suffer from many such defects. The term “forced evictions” as used throughout this general comment is defined as the permanent or temporary removal against their will of individuals, families and/or communities from the homes and/or land which they occupy, without the provision of, and access to, appropriate forms of legal or other protection. The prohibition on forced evictions does not, however, apply to evictions carried out by force in accordance with the law and in conformity with the provisions of the International Covenants on Human Rights.

4. The practice of forced evictions is widespread and affects persons in both developed and developing countries. Owing to the interrelationship and interdependency which exist among all human rights, forced evictions frequently violate other human rights. Thus, while manifestly breaching the rights enshrined in the Covenant, the practice of forced evictions may also result in violations of civil and political rights, such as the right to life, the right to security of the person, the right to non-interference with privacy, family and home and the right to the peaceful enjoyment of possessions.

5. Although the practice of forced evictions might appear to occur primarily in heavily populated urban areas, it also takes place in connection with forced population transfers, internal displacement, forced relocations in the context of armed conflict, mass exoduses and refugee movements. In all of these contexts, the right to adequate housing and not to be subjected to forced eviction may be violated through a wide range of acts or omissions attributable to States parties. Even in situations where it may be necessary to impose limitations on such a right, full compliance with article 4 of the Covenant is required so that any limitations imposed must be “determined by law only insofar as this may be compatible with the nature of these [i.e. economic, social and cultural] rights and solely for the purpose of promoting the general welfare in a democratic society”.

6. Many instances of forced eviction are associated with violence, such as evictions resulting from international armed conflicts, internal strife and communal or ethnic violence.

7. Other instances of forced eviction occur in the name of development. Evictions may be carried out in connection with conflict over land rights, development and infrastructure projects, such as the construction of dams or other large-scale energy projects, with land acquisition measures associated with urban renewal, housing renovation, city beautification programmes, the clearing of land for agricultural purposes, unbridled speculation in land, or the holding of major sporting events like the Olympic Games.

8. In essence, the obligations of States parties to the Covenant in relation to forced evictions are based on article 11.1, read in conjunction with other relevant provisions. In particular, article 2.1 obliges States to use “all appropriate means” to promote the right to adequate housing. However, in view of the nature of the practice of forced evictions, the reference in article 2.1 to progressive achievement based on the availability of resources will rarely be relevant. The State itself must refrain from forced evictions and ensure that the law is enforced against its agents or third parties who carry out forced evictions (as defined in paragraph 3 above). Moreover, this approach is reinforced by article 17.1 of the International Covenant on Civil and Political Rights which complements the right not to be forcefully evicted without adequate protection. That provision recognizes, *inter alia*, the right to be protected against “arbitrary or unlawful interference” with one’s home. It is to be noted that the State’s obligation to ensure respect for that right is not qualified by considerations relating to its available resources.

9. Article 2.1 of the Covenant requires States parties to use “all appropriate means”, including the adoption of legislative measures, to promote all the rights protected under the Covenant. Although the Committee has indicated in its General Comment No. 3 (1990) that such measures may not be indispensable in relation to all rights, it is clear that legislation against forced evictions is an essential basis upon which to build a system of effective protection. Such legislation should include measures which (a) provide the greatest possible security of tenure to occupiers of houses and land, (b) conform to the Covenant and (c) are designed to control strictly the circumstances under which evictions may be carried out. The legislation must also apply to all agents acting under the authority of the State or who are accountable to it. Moreover, in view of the increasing trend in some States towards the Government greatly reducing its responsibilities in the housing sector, States parties must ensure that legislative and other measures are adequate to prevent and, if appropriate, punish forced evictions carried out, without appropriate safeguards, by private persons or bodies. States parties should therefore review relevant legislation and policies to ensure that they are compatible with the obligations arising from the right to adequate housing and repeal or amend any legislation or policies that are inconsistent with the requirements of the Covenant.

10. Women, children, youth, older persons, indigenous people, ethnic and other minorities, and other vulnerable individuals and groups all suffer disproportionately from the practice of forced eviction. Women in all groups are especially vulnerable given the extent of statutory and other forms of discrimination which often apply in relation to property rights (including home ownership) or rights of access to property or accommodation, and their particular vulnerability to acts of violence and sexual abuse when they are rendered homeless. The non-discrimination provisions of articles 2.2 and 3 of the Covenant impose an additional obligation upon Governments to ensure that, where evictions do occur, appropriate measures are taken to ensure that no form of discrimination is involved.

11. Whereas some evictions may be justifiable, such as in the case of persistent non-payment of rent or of damage to rented property without any reasonable cause, it is incumbent upon the relevant authorities to ensure that they are carried out in a manner warranted by a law which is compatible with the Covenant and that all the legal recourses and remedies are available to those affected.

12. Forced eviction and house demolition as a punitive measure are also inconsistent with the norms of the Covenant. Likewise, the Committee takes note of the obligations enshrined in the Geneva Conventions of 1949 and Protocols thereto of 1977 concerning prohibitions on the displacement of the civilian population and the destruction of private property as these relate to the practice of forced eviction.

13. States parties shall ensure, prior to carrying out any evictions, and particularly those involving large groups, that all feasible alternatives are explored in consultation with the affected persons, with a view to avoiding, or at least minimizing, the need to use force. Legal remedies or procedures should be provided to those who are affected by eviction orders. States parties shall also see to it that all the individuals concerned have a right to adequate compensation for any property, both personal and real, which is affected. In this respect, it is pertinent to recall article 2.3 of the International Covenant on Civil and Political Rights, which requires States parties to ensure “an effective remedy” for persons whose rights have been violated and the obligation upon the “competent authorities (to) enforce such remedies when granted”.

14. In cases where eviction is considered to be justified, it should be carried out in strict compliance with the relevant provisions of international human rights law and in accordance with general principles of reasonableness and proportionality. In this regard it is especially pertinent to recall General Comment 16 of the Human Rights Committee, relating to article 17 of the International Covenant on Civil and Political Rights, which states that interference with a person’s home can only take place “in cases envisaged by the law”. The Committee observed that the law “should be in accordance with the provisions, aims and objectives of the Covenant and should be, in any event, reasonable in the particular circumstances”. The Committee also indicated that “relevant legislation must specify in detail the precise circumstances in which such interferences may be permitted”.

15. Appropriate procedural protection and due process are essential aspects of all human rights but are especially pertinent in relation to a matter such as forced evictions which directly invokes a large number of the rights recognized in both the International Covenants on Human Rights. The Committee considers that the procedural protections which should be applied in relation to forced evictions include: (a) an opportunity for genuine consultation with those affected; (b) adequate and reasonable notice for all affected persons prior to the scheduled date of eviction; (c) information on the proposed evictions, and, where applicable, on the alternative purpose for which the land or housing is to be used, to be made available in reasonable time to all those affected; (d) especially where groups of people are involved, government officials or their representatives to be present during an eviction; (e) all persons carrying out the eviction to be properly identified; (f) evictions not to take place in particularly bad weather or at night unless the affected persons consent otherwise; (g) provision of legal remedies; and (h) provision, where possible, of legal aid to persons who are in need of it to seek redress from the courts.

16. Evictions should not result in individuals being rendered homeless or vulnerable to the violation of other human rights. Where those affected are unable to provide for themselves, the State party must take all appropriate measures, to the maximum of its available resources, to ensure that adequate alternative housing, resettlement or access to productive land, as the case may be, is available.

17. The Committee is aware that various development projects financed by international agencies within the territories of State parties have resulted in forced evictions. In this regard, the Committee recalls its General Comment No. 2 (1990) which states, *inter alia*, that “international agencies should scrupulously avoid involvement in projects which, for example ... promote or reinforce discrimination against individuals or groups contrary to the provisions of the Covenant, or involve large-scale evictions or displacement of persons without the provision of all appropriate protection and compensation. Every effort should be made, at each phase of a development project, to ensure that the rights contained in the Covenant are duly taken into account”.^{6/}

18. Some institutions, such as the World Bank and the Organisation for Economic Cooperation and Development (OECD) have adopted guidelines on relocation and/or resettlement with a view to limiting the scale of and human suffering associated with forced evictions. Such practices often accompany large-scale development projects, such as dam-building and other major energy projects. Full respect for such guidelines, insofar as they reflect the obligations contained in the Covenant, is essential on the part of both the agencies themselves and States parties to the Covenant. The Committee recalls in this respect the statement in the Vienna Declaration and Programme of Action to the effect that “while development facilitates the enjoyment of all human rights, the lack of development may not be invoked to justify the abridgement of internationally recognized human rights” (Part I, para. 10).

19. In accordance with the guidelines for reporting adopted by the Committee, State parties are requested to provide various types of information pertaining directly to the practice of forced evictions. This includes information relating to (a) the “number of persons evicted within the last five years and the number of persons currently lacking legal protection against arbitrary eviction or any other kind of eviction”, (b) “legislation concerning the rights of tenants to security of tenure, to protection from eviction” and (c) “legislation prohibiting any form of eviction”.^{7/}

20. Information is also sought as to “measures taken during, *inter alia*, urban renewal programmes, redevelopment projects, site upgrading, preparation for international events (Olympics and other sporting competitions, exhibitions, conferences, etc.) ‘beautiful city’ campaigns, etc. which guarantee protection from eviction or guarantee rehousing based on mutual consent, by any persons living on or near to affected sites”.^{8/} However, few States parties have included the requisite information in their reports to the Committee. The Committee therefore wishes to emphasize the importance it attaches to the receipt of such information.

21. Some States parties have indicated that information of this nature is not available. The Committee recalls that effective monitoring of the right to adequate housing, either by the Government concerned or by the Committee, is not possible in the absence of the collection of appropriate data and would request all States parties to ensure that the necessary data is collected and is reflected in the reports submitted by them under the Covenant.

6/ E/1990/23, annex III, paras. 6 and 8 (d).

7/ E/C.12/1999/8, annex IV.

8/ *Ibid.*

Appendix 5

UN Principles on Housing and Property Restitution for Refugees and Displaced Persons*

Preamble

Recognizing that millions of refugees and displaced persons worldwide continue to live in precarious and uncertain situations, and that all refugees and displaced persons have a right to voluntary return, in safety and dignity, to their original or former habitual homes and lands;

Underscoring that voluntary return in safety and dignity must be based on a free, informed, individual choice and that refugees and displaced persons should be provided with complete, objective, up to date, and accurate information, including on physical, material and legal safety issues in countries or places of origin;

Reaffirming the rights of refugee and displaced women and girls, and recognizing the need to undertake positive measures to ensure that their rights to housing, land and property restitution are guaranteed;

Welcoming the many national and international institutions that have been established in recent years to ensure the restitution rights of refugees and displaced persons, as well as the many national and international laws, standards, policy statements, agreements and guidelines that have recognized and reaffirmed the right to housing, land and property restitution;

Convinced that the right to housing, land and property restitution is essential to the resolution of conflict and to post-conflict peace-building, safe and sustainable return and the establishment of the rule of law, and that careful monitoring of restitution programs, on the part of international organizations and affected states, is indispensable to ensuring their effective implementation;

Convinced also that the implementation of successful housing, land and property restitution programs, as a key element of restorative justice, contributes to effectively deterring future situations of displacement and building sustainable peace;

* At the time of going to press, this text had not yet been given a UN document number.

SECTION I – SCOPE AND APPLICATION

1 Scope and Application

1.1 The *Principles on Housing and Property Restitution for Refugees and Displaced Persons* articulated herein are designed to assist all relevant actors, national and international, in addressing the legal and technical issues surrounding housing, land and property restitution in situations where displacement has led to persons being arbitrarily or unlawfully deprived of their former homes, lands, properties or places of habitual residence.

1.2 The *Principles on Housing and Property Restitution for Refugees and Displaced Persons* apply equally to all refugees, internally displaced persons and to other similarly situated displaced persons who fled across national borders but who may not meet the legal definition of refugee, (hereinafter ‘refugees and displaced persons’) who were arbitrarily or unlawfully deprived of their former homes, lands, properties or places of habitual residence, regardless of the nature or circumstances by which displacement originally occurred.

SECTION II – THE RIGHT TO HOUSING AND PROPERTY RESTITUTION

2 The Right to Housing and Property Restitution

2.1 All refugees and displaced persons have the right to have restored to them any housing, land and/or property of which they were arbitrarily or unlawfully deprived, or to be compensated for any housing, land and/or property that is factually impossible to restore as determined by an independent, impartial tribunal.

2.2 States shall demonstrably prioritize the right to restitution as the preferred remedy to displacement and as a key element of restorative justice. The right to restitution exists as a distinct right, and is prejudiced neither by the actual return nor non-return of refugees and displaced persons entitled to housing, land and property restitution.

SECTION III – OVERARCHING PRINCIPLES

3 The Right to Non-Discrimination

3.1 Everyone has the right to non-discrimination on the basis of race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

3.2 States shall ensure that *de facto* and *de jure* discrimination on the above grounds is prohibited and that all persons, including refugees and displaced persons, are considered equal before the law.

4 The Right to Equality Between Men and Women

4.1 States shall ensure the equal right of men and women, and the equal right of boys and girls, to the enjoyment of housing, land and property restitution. In particular, States shall ensure the equal right of men and women, and the equal right of boys and girls, to *inter alia* voluntary return in safety and dignity; legal security of tenure; property ownership; equal access to inheritance; as well as the use, control of and access to housing, land and property.

4.2 States should ensure that housing, land and property restitution programs, policies and practices recognize the joint ownership rights of both the male and female heads of the household as an explicit component of the restitution process, and that restitution programs, policies and practices reflect a gender sensitive approach.

4.3 States shall ensure that housing, land and property restitution programs, policies and practices do not disadvantage women and girls. States should adopt positive measures to ensure gender equality in this regard.

5 The Right to be Protected from Displacement

5.1 Everyone has the right to be protected against being arbitrarily displaced from his or her home, land or place of habitual residence.

5.2 States should incorporate protections against displacement into domestic legislation, consistent with international human rights and humanitarian law and related standards, and should extend these protections to everyone within their legal jurisdiction or effective control.

5.3 States shall prohibit forced eviction, demolition of houses and destruction of agricultural areas and the arbitrary confiscation or expropriation of land as a punitive measure or as a means or method of war.

5.4 States shall take steps to ensure that no one is subjected to displacement by either State or non-State actors. States shall also ensure that individuals, corporations, and other entities within their legal jurisdiction or effective control refrain from carrying out or otherwise participating in displacement.

6 The Right to Privacy and Respect for the Home

6.1 Everyone has the right to be protected against arbitrary or unlawful interference with his or her privacy and his or her home.

6.2 States shall ensure that everyone is provided with safeguards of due process against such arbitrary or unlawful interference with his or her privacy and his or her home.

7 The Right to Peaceful Enjoyment of Possessions

7.1 Everyone has the right to the peaceful enjoyment of his or her possessions.

7.2 States shall only subordinate the use and enjoyment of possessions in the public interest and subject to the conditions provided for by law and by the general principles of international law. Whenever possible, the ‘interest of society’ should be read restrictively, so as to mean only a temporary interference with the right to peaceful enjoyment of possessions.

8 The Right to Adequate Housing

8.1 Everyone has the right to adequate housing.

8.2 States should adopt positive measures aimed at alleviating the situation of refugees and displaced persons living in inadequate housing.

9 The Right to Freedom of Movement

9.1 Everyone has the right to freedom of movement and the right to choose his or her residence. No one shall be arbitrarily or unlawfully forced to remain within a certain territory, area or region. Similarly, no one shall be arbitrarily or unlawfully forced to leave a certain territory, area or region.

9.2 States shall ensure that freedom of movement and the right to choose one’s residence are not subject to any restrictions except those which are provided by law, are necessary to protect national security, public order, public health or morals or the rights and freedoms of others, and are consistent with international human rights, refugee and humanitarian law and related standards.

SECTION IV – THE RIGHT TO VOLUNTARY RETURN IN SAFETY AND DIGNITY

10 The Right to Voluntary Return in Safety and Dignity

10.1 All refugees and displaced persons have the right to voluntarily return to their former homes, lands or places of habitual residence, in safety and dignity. Voluntary return in safety and dignity must be based on a free, informed, individual choice. Refugees and displaced persons should be provided with complete, objective, up to date, and accurate information, including on physical, material and legal safety issues in countries or places of origin.

10.2 States shall allow refugees and displaced persons who wish to return voluntarily to their former homes, lands or places of habitual residence to do so. This right cannot be abridged under conditions of state succession, nor can it be subject to arbitrary or unlawful time limitations.

10.3 Refugees and displaced persons shall not be forced, or otherwise coerced, either directly or indirectly, to return to their former homes, lands or places of habitual residence. Refugees and displaced persons should be able to effectively pursue durable solutions to displacement other than return, if they so wish, without prejudicing their right to the restitution of their housing, land and property.

10.4 States should, when necessary, request from other States or international organizations the financial and/or technical assistance required to facilitate the effective voluntary return, in safety and dignity, of refugees and displaced persons.

SECTION V – LEGAL, POLICY, PROCEDURAL AND INSTITUTIONAL IMPLEMENTATION MECHANISMS

11 Compatibility with International Human Rights, Refugee and Humanitarian law and Related Standards

11.1 States should ensure that all housing, land and property restitution procedures, institutions, mechanisms and legal frameworks are fully compatible with international human rights, refugee and humanitarian law and related standards, and that the right to voluntary return in safety and dignity is recognized therein.

12 National Procedures, Institutions and Mechanisms

12.1 States should establish and support equitable, timely, independent, transparent and non-discriminatory procedures, institutions and mechanisms to assess and enforce housing, land and property restitution claims. In cases where existing procedures, institutions and mechanisms can effectively address these issues, adequate financial, human and other resources should be made available to facilitate restitution in a just and timely manner.

12.2 States should ensure that housing, land and property restitution procedures, institutions and mechanisms are age and gender sensitive, and recognize the equal rights of men and women, as well as the equal rights of boys and girls, and reflect the overarching principle of the “best interests” of the child.

12.3 States should take all appropriate administrative, legislative and judicial measures to support and facilitate the housing, land and property restitution process. States should provide all relevant agencies with adequate financial, human and other resources to successfully complete their work in a just and timely manner.

12.4 States should establish guidelines which ensure the effectiveness of all relevant housing, land and property restitution procedures, institutions and mechanisms, including guidelines pertaining to institutional organization, staff training and caseloads, investigation and complaints procedures, verification of property ownership or other possessory rights, as well as decision-making, enforcement and appeals mechanisms. States may integrate alternative or informal dispute resolution mechanisms into these processes, insofar as all such mecha-

nisms act in accordance with international human rights, refugee and humanitarian law and related standards, including the right to non-discrimination.

12.5 States should, where there has been a general breakdown in the rule of law, or where States are unable to implement the procedures, institutions and mechanisms necessary to facilitate the housing, land and property restitution process in a just and timely manner, request the technical assistance and cooperation of relevant international agencies in order to establish provisional regimes responsible for providing refugees and displaced persons with the procedures, institutions and mechanisms necessary to ensure effective restitution remedies.

12.6 States should include housing, land and property restitution procedures, institutions and mechanisms in peace agreements and voluntary repatriation agreements. Peace agreements should include specific undertakings by the parties to appropriately address any housing, land and property issues that require remedies under international law or threaten to undermine the peace process if left unaddressed, while demonstrably prioritizing the right to restitution as the preferred remedy in this regard.

13 Accessibility of Restitution Claims Procedures

13.1 Everyone who has been arbitrarily or unlawfully deprived of housing, land and/or property should be able to submit a claim for restitution and/or compensation to an independent and impartial body, and to receive a determination on their claim. States should not establish any pre-conditions for filing a restitution claim.

13.2 States should ensure that all aspects of the restitution claims process, including appeals procedures, are just, timely, accessible, free of charge, and are age and gender sensitive. States should adopt positive measures to ensure that women are able to participate on a fully equal basis in this process.

13.3 States should ensure that separated and unaccompanied children are able to participate and are fully represented in the restitution claims process, and that any decision in relation to the restitution claim of separated and unaccompanied children is in compliance with the overarching principle of the “best interests” of the child.

13.4 States should ensure that the restitution claims process is accessible for refugees and other displaced persons regardless of their place of residence during the period of displacement, including in countries of origin, countries of asylum or countries to which they have fled. States should ensure that all affected persons are made aware of the restitution claims process, and that information about this process is made readily available, including in countries of origin, countries of asylum or countries to which they have fled.

13.5 States should seek to establish restitution claims processing centers and offices throughout affected areas where potential claimants currently reside. In order to facilitate the greatest access to those affected, it should be possible to submit restitution claims by post or by proxy, as well as in person. States should also consider establishing mobile units in order to ensure accessibility to all potential claimants.

13.6 States should ensure that users of housing, land and/or property, including tenants, have the right to participate in the restitution claims process, including through the filing of collective restitution claims.

13.7 States should develop restitution claims forms that are simple, easy to understand and use and make them available in the first language or languages of the groups affected. Competent assistance should be made available to help persons in completing and filing any necessary restitution claims forms, and such assistance should be provided in a manner which is age and gender sensitive.

13.8 Where restitution claims forms cannot be sufficiently simplified due to the complexities inherent in the claims process, States should engage qualified persons to interview potential claimants in confidence, and in a manner which is age and gender sensitive, in order to solicit the necessary information and complete the restitution claims forms on their behalf.

13.9 States should establish a clear time period for filing restitution claims. The time period should be widely disseminated and should be sufficiently long to ensure that all those affected have an adequate opportunity to file a restitution claim, bearing in mind the number of potential claimants, potential difficulties of information and access, the spread of displacement, the accessibility of the process for potentially disadvantaged groups and vulnerable individuals, and the political situation in the country or region of origin.

13.10 States should ensure that persons needing special assistance, including illiterate and disabled persons, are provided with such assistance in order to ensure that they are not denied access to the restitution claims process.

13.11 States should ensure that adequate legal aid is provided, if possible free of charge, to those seeking to make a restitution claim. While legal aid may be provided by either governmental or non-governmental sources (be they national or international), such legal aid should meet adequate standards of quality, non-discrimination, fairness and impartiality so as not to prejudice the restitution claims process.

13.12 States should ensure that no one is persecuted or punished for making a restitution claim.

14 Adequate Consultation and Participation in Decision-Making

14.1 States and other involved international and national actors should ensure that voluntary repatriation and housing, land and property restitution programs are carried out with adequate consultation and participation with the affected persons, groups and communities.

14.2 States and other involved international and national actors should, in particular, ensure that women, indigenous peoples, racial and ethnic minorities, the elderly, the disabled and children are adequately represented and included in restitution decision-making processes, and have the appropriate means and information to participate effectively. The needs of vulnerable individuals including the elderly, single female heads of households, separated and unaccompanied children, and the disabled should be given particular attention.

15 Housing, Land and Property Records and Documentation

15.1 States should establish or re-establish national multi-purpose cadastre or other appropriate systems for the registration of housing, land and property rights as an integral component of any restitution program, respecting the rights of refugees and displaced persons when doing so.

15.2 States should ensure that any judicial, quasi-judicial, administrative or customary pronouncement regarding the rightful ownership of, or rights to, housing, land and/or property is accompanied by measures to ensure registration or demarcation of that housing, land and/or property right as is necessary to ensure legal security of tenure. These determinations shall comply with international human rights, refugee and humanitarian law and related standards, including the right to non-discrimination.

15.3 States should ensure, where appropriate, that registration systems record and/or recognize the possessory rights of traditional and indigenous communities to collective lands.

15.4 States and other responsible authorities or institutions should ensure that existing registration systems are not destroyed in times of conflict or post-conflict. Measures to prevent the destruction of housing, land and property records could include protection in situ or, if necessary, short-term removal to a safe location or custody. If removed, the records should be returned as soon as possible after the end of hostilities. States and other responsible authorities may also consider establishing procedures for copying records (including in digital format) transferring them securely, and recognizing the authenticity of said copies.

15.5 States and other responsible authorities or institutions should provide, at the request of a claimant or his or her proxy, copies of any documentary evidence in their possession required to make and/or support a restitution claim. Such documentary evidence should be provided free of charge, or for a minimal fee.

15.6 States and other responsible authorities or institutions conducting the registration of refugees or displaced persons should endeavor to collect information relevant to facilitating the restitution process, for example by including in the registration form questions regarding the location and status of the individual refugee's or displaced person's former home, land, property or place of habitual residence. Such information should be sought whenever information is gathered from refugees and displaced persons, including at the time of flight.

15.7 States may, in situations of mass displacement where little documentary evidence exists as to ownership or possessory rights, adopt the conclusive presumption that persons fleeing their homes during a given period marked by violence or disaster have done so for reasons related to violence or disaster and are therefore entitled to housing, land and property restitution. In such cases, administrative and judicial authorities may independently establish the facts related to undocumented restitution claims.

15.8 States shall not recognize as valid any housing, land and/or property transaction, including any transfer that was made under duress, or which was otherwise coerced or forced, either directly or indirectly, or which was carried out contrary to international human rights standards.

16 The Rights of Tenants and other Non-Owners

16.1 States should ensure that the rights of tenants, social occupancy rights holders and other legitimate occupants or users of housing, land and property are recognized within restitution programs. To the maximum extent possible, States should ensure that such persons are able to return to and re-possess and use their housing, land and property in a similar manner to those possessing formal ownership rights.

17 Secondary Occupants

17.1 States should ensure that secondary occupants are protected against arbitrary or unlawful forced eviction. States shall ensure, in cases where evictions of such occupants are deemed justifiable and unavoidable for the purposes of housing, land and property restitution, that evictions are carried out in a manner which is compatible with international human rights law and standards, such that secondary occupants are afforded safeguards of due process, including, *inter alia*, an opportunity for genuine consultation, adequate and reasonable notice, and the provision of legal remedies, including opportunities for legal redress.

17.2 States should ensure that the safeguards of due process extended to secondary occupants do not prejudice the rights of legitimate owners, tenants and other rights holders to repossess the housing, land and property in question in a just and timely manner.

17.3 States should, in cases where evictions of secondary occupants are justifiable and unavoidable, take positive measures to protect those who do not have the means to access any other adequate housing other than that which they are currently occupying from homelessness and other violations of their right to adequate housing. States should undertake to identify and provide alternative housing and/or land for such occupants, including on a temporary basis, as a means to facilitate the timely restitution of refugee and displaced persons housing, land and property. Lack of such alternatives, however, should not unnecessarily delay the implementation and enforcement of decisions by relevant bodies regarding housing, land and property restitution.

17.4 States may consider, in cases where housing, land and property has been sold by secondary occupants to third parties acting in good faith, establishing mechanisms to provide compensation to injured third parties. The egregiousness of the underlying displacement, however, may arguably give rise to constructive notice of the illegality of purchasing abandoned property, pre-empting the formation of *bona fide* property interests in such cases.

18 Legislative Measures

18.1 States should ensure the right of refugees and displaced persons to housing, land and property restitution is recognized as an essential component of the rule of law. States should ensure the right to housing, land and property restitution through all necessary legislative means, including through the adoption, amendment, reform, or repeal of relevant laws, regulations and/or practices. States should develop a legal framework for protecting the right to housing, land and property restitution which is clear, consistent and, where necessary, consolidated in a single law.

18.2 States should ensure that all relevant laws clearly delineate every person and/or affected group that is legally entitled to the restitution of their housing, land and property, most notably refugees and displaced persons. Subsidiary claimants should similarly be recognized, including resident family members at the time of displacement, spouses, domestic partners, dependents, legal heirs and others who should be entitled to claim on the same basis as primary claimants.

18.3 States should ensure that national legislation related to housing, land and property restitution is internally consistent, as well as compatible with pre-existing relevant agreements, such as peace agreements and voluntary repatriation agreements, so long as these agreements are themselves compatible with international human rights, refugee and humanitarian law and related standards.

19 Prohibition of Arbitrary and Discriminatory Laws

19.1 States should neither adopt nor apply laws which prejudice the restitution process, in particular through arbitrary, discriminatory, or otherwise unjust abandonment laws or statutes of limitations.

19.2 States should take immediate steps to repeal unjust or arbitrary laws, and laws which otherwise have a discriminatory effect on the enjoyment of the right to housing, land and property restitution, and should ensure remedies for those wrongfully harmed by the prior application of such laws.

19.3 States should ensure that all national policies related to the right to housing, land and property restitution fully guarantee the rights of women and girls to non-discrimination and to equality in both law and practice.

20 Enforcement of Restitution Decisions and Judgments

20.1 States should designate specific public agencies to be entrusted with enforcing housing, land and property restitution decisions and judgments.

20.2 States should ensure, through law and other appropriate means, that local and national authorities are legally obligated to respect, implement and enforce decisions and judgments made by relevant bodies regarding housing, land and property restitution.

20.3 States should adopt specific measures to prevent the public obstruction of enforcement of housing, land and property restitution decisions and judgments. Threats or attacks against officials and agencies carrying out restitution programs should be fully investigated and prosecuted.

20.4 States should adopt specific measures to prevent the destruction or looting of contested or abandoned housing, land and property. In order to minimize destruction and looting, States should develop procedures to inventory the contents of claimed housing, land and property within the context of housing, land and property restitution programs.

20.5 States should implement public information campaigns aimed at informing secondary occupants and other relevant parties of their rights and of the legal consequences of non-compliance with housing, land and property restitution decisions and judgments, including failing to vacate occupied housing, land and property voluntarily and damaging and/or looting of occupied housing, land and property.

21 Compensation

21.1 All refugees and displaced persons have the right to full and effective compensation as an integral component of the restitution process. Compensation may be monetary or in kind. States shall, in order to comply with the principle of restorative justice, ensure that the remedy of compensation is only be used when the remedy of restitution is not factually possible or when the injured party knowingly and voluntarily accepts compensation in lieu of restitution, or when the terms of a negotiated peace settlement provide for a combination of restitution and compensation.

21.2 States should ensure, as a rule, that restitution is only deemed factually impossible in exceptional circumstances, namely when housing, land and/or property is destroyed or when it no longer exists, as determined by an independent, impartial tribunal. Even under such circumstances the holder of the housing, land and/or property right should have the option to repair or rebuild whenever possible. In some situations, a combination of compensation and restitution may be the most appropriate remedy and form of restorative justice.

SECTION VI – THE ROLE OF THE INTERNATIONAL COMMUNITY, INCLUDING INTERNATIONAL ORGANIZATIONS

22 Responsibility of the International Community

22.1 The international community should promote and protect the right to housing, land and property restitution, as well as the right to voluntary return in safety and dignity.

22.2 International financial, trade, development and other related institutions and agencies, including member or donor States that have voting rights within such bodies, should take fully into account the prohibition against unlawful or arbitrary displacement and, in particular, the prohibition under international human rights law and related standards on the practice of forced evictions.

22.3 International organizations should work with national governments and share expertise on the development of national housing, land and property restitution policies and programs and help ensure their compatibility with international human rights, refugee and humanitarian law and related standards. International organizations should also support the monitoring of their implementation.

22.4 International organizations, including the United Nations, should strive to ensure that peace agreements and voluntary repatriation agreements contain provisions related to housing, land and property restitution, including through *inter alia* the establishment of national procedures, institutions, mechanisms and legal frameworks.

22.5 International peace operations, in pursuing their overall mandate, should help to maintain a secure and stable environment wherein appropriate housing, land and property restitution policies and programs may be successfully implemented and enforced.

22.6 International peace operations, depending on the mission context, should be requested to support the protection of the right to housing, land and property restitution, including through the enforcement of restitution decisions and judgments. Member States in the Security Council should consider including this role in the mandate of peace operations.

22.7 International organizations and peace operations should avoid occupying, renting or purchasing housing, land and property over which the rights holder does not currently have access or control, and should require that their staff do the same. Similarly, international organizations and peace operations should ensure that bodies or processes under their control or supervision do not obstruct, directly or indirectly, the restitution of housing, land and property.

SECTION VII – INTERPRETATION

23 Interpretation

23.1 The *Principles on Housing and Property Restitution for Refugees and Displaced Persons* shall not be interpreted as limiting, altering or otherwise prejudicing the rights recognized under international human rights, refugee and humanitarian law and related standards, or rights consistent with these laws and standards as recognized under national law.

Colombia's internally displaced persons (IDPs) – estimated by the United Nations High Commissioner for Refugees (UNHCR) to number between two and three million – are currently in a dire predicament. There has been no improvement of their situation in recent years; all too often they live in poverty, with uncertain prospects of being able to return to their original homes and lands in security and peace. Colombia's IDPs suffer not only from the initial violation of being forcibly evicted from their homes and lands, but also from grave violations of their rights to security of the person, to non-discrimination, to adequate housing, to the highest attainable standard of health, to water, to culture, to education, to work, to an adequate standard of living, to reparation, and the right to return, among others.

This report specifically analyses the housing situation of Colombia's IDPs in terms of their rights to adequate housing, to be protected from forced eviction, and to restitution of housing and property. The Government of Colombia must urgently take a series of concrete steps to rectify the current situation. In this regard, the report makes concrete policy recommendations to the Government and other authorities.

The Centre on Housing Rights and Evictions (COHRE) is an independent, international, non-governmental human rights organisation with its International Secretariat in Geneva, Switzerland. COHRE undertakes a wide variety of activities supporting the full realisation of housing rights for everyone, everywhere. In this regard, COHRE campaigns against and opposes forced evictions wherever they occur or are planned, and works in all regions of the world towards the realisation of the right to adequate housing.

For more information, visit www.cohre.org

The COHRE Americas Programme (CAP) is based in Porto Alegre, Brazil, and actively works to promote and protect housing rights throughout the Americas, by means including fact-finding missions, housing rights training seminars, and litigation before national, regional and international forums.



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