



Asamblea General

Distr. general
23 de diciembre de 2010
Español
Original: inglés

Consejo de Derechos Humanos

16º período de sesiones

Tema 3 de la agenda

**Promoción y protección de todos los derechos humanos,
civiles, políticos, económicos, sociales y culturales,
incluido el derecho al desarrollo**

Informe presentado por el Representante del Secretario General sobre los derechos humanos de los desplazados internos, Walter Kälin

Adición

Misión de seguimiento a Georgia*

Resumen

Por invitación del Gobierno de Georgia, el Representante del Secretario General sobre los derechos humanos de los desplazados internos, Walter Kälin, realizó una misión de seguimiento a Georgia del 13 al 16 de septiembre de 2010. El objetivo principal de la visita era evaluar en qué medida se habían aplicado las recomendaciones hechas por el Representante tras sus misiones anteriores y qué quedaba por hacer. En particular, deseaba evaluar los progresos realizados en la puesta en práctica del Plan de Acción para la aplicación de la Estrategia nacional sobre desplazados internos y determinar los retos pendientes en la búsqueda de soluciones duraderas para los más de 350.000 desplazados internos. Además, el Representante quería evaluar la situación en el distrito de Gali de Abjasia (Georgia) y las perspectivas de regreso y reintegración de los desplazados de esa región.

El Representante observó que el Gobierno había hecho progresos positivos en la aplicación del Plan de Acción. En particular, con apoyo de varios donantes internacionales se han invertido importantes recursos financieros en la rehabilitación de centros colectivos y la construcción de nuevas viviendas para los desplazados internos desde 2008. Gracias a ello, han mejorado las condiciones de vida de muchos desplazados internos. Debe elogiarse por ello al Gobierno y animársele a proseguir sus esfuerzos en esta esfera. Por más que el cierre de los centros colectivos sea positivo, las autoridades deben establecer procedimientos claros para garantizar que los desalojos se lleven a cabo de conformidad

* El resumen del presente informe se distribuye en todos los idiomas oficiales. El informe propiamente dicho figura en el anexo del resumen y se distribuye únicamente en el idioma en que se presentó.

con las normas internacionales y, al mismo tiempo, que no se efectúen sin ofrecer a los interesados alternativas viables en materia de vivienda, medios de subsistencia y acceso a servicios básicos como la salud y la enseñanza.

En todos los casos, es imprescindible que las medidas destinadas a mejorar las condiciones de vivienda vayan acompañadas de proyectos de subsistencia. Si bien la mejora de las condiciones socioeconómicas de los desplazados internos se incluye como uno de los objetivos declarados del Plan de Acción, este aspecto del Plan de Acción aún necesita reforzarse. Además, debe haber más participación de la sociedad civil y los desplazados internos en la aplicación y la revisión/actualización del Plan de Acción.

Los principales obstáculos para que regresen más desplazados internos a Abjasia (Georgia) siguen siendo de carácter político, puesto que las autoridades que controlan Abjasia siguen siendo muy reacias a permitir cualquier retorno a Abjasia más allá del distrito de Gali. Las posibilidades de retorno de las personas que tuvieron que desplazarse desde el distrito de Gali y otras partes de Abjasia hace casi veinte años siguen siendo escasas por varias razones, en particular la inquietud por su seguridad, y la falta de viviendas adecuadas, de suficientes oportunidades de empleo y de otros medios de subsistencia. Asimismo, los desplazados internos no deben encontrarse con dificultades para mantener sus tradiciones culturales.

La restitución de las viviendas, las tierras y los bienes dejados atrás por los desplazados internos o el pago de las indemnizaciones correspondientes en lugar de la restitución, sigue siendo un grave problema que necesita resolverse. Como primer paso, el Representante exhorta a las autoridades que controlan Abjasia a que realicen o encarguen un estudio detallado sobre los distintos tipos de derechos análogos al de la propiedad prevalecientes en el momento en que los desplazados internos dejaron sus hogares.

Al representante le sigue preocupando la repercusión de la Ley relativa a los territorios ocupados en el acceso humanitario a la región de Tskhinvali/Osetia del Sur (Georgia) y Abjasia (Georgia). Dado que aún se están debatiendo las modalidades de participación de las organizaciones internacionales y sus asociados en la ejecución en la región de Tskhinvali/Osetia del Sur y en Abjasia, sigue siendo motivo de preocupación la posible repercusión de los cambios previstos actualmente en la aplicación de la Ley relativa a los territorios ocupados. Sin embargo, es imperativo que estos cambios no repercutan negativamente en el acceso humanitario a la región de Tskhinvali/Osetia del Sur y Abjasia ni obstaculicen el regreso de los desplazados.

Anexo

Report of the Representative of the Secretary-General on the human rights of internally displaced persons on his follow-up mission to Georgia (13 to 16 September 2010)

Contents

	<i>Paragraphs</i>	<i>Page</i>
I. Introduction.....	1–5	4
II. Assistance and protection of internally displaced persons.....	6–18	5
A. Status of implementation of the Action Plan for the Implementation of the State Strategy on Internally Displaced Persons.....	6–10	5
B. Remaining challenges.....	11–18	6
III. Return of internally displaced persons to Abkhazia, Georgia.....	19–26	8
A. Returns affected and returns envisaged.....	19–21	8
B. Obstacles to sustainable returns.....	22–26	9
IV. Resolution of housing, land and property issues.....	27–29	10
V. Humanitarian access.....	30–32	11
VI. Conclusions and recommendations.....	33–40	12

I. Introduction

1. In the present report, the Representative of the Secretary-General on the human rights of internally displaced persons details the findings of a visit (13 to 16 September 2010) he undertook, pursuant to his mandate contained in Human Rights Council resolution 6/32, to follow up on the missions he conducted in 2005 and 2008 to Georgia.¹ The Representative started his follow-up visit in Tbilisi, then visited Sokhumi and the Gali district in Abkhazia, Georgia, before coming back to Tbilisi via Potskho-Etseri and Gori. The main objective of the visit was to assess to what extent the recommendations the Representative made pursuant to his previous missions have been implemented and what remains to be done. In particular, he wanted to assess the progress made in the implementation of the Action Plan for the Implementation of the State Strategy on Internally Displaced Persons and identify the remaining challenges in the search for durable solutions for more than 350,000 internally displaced persons (IDPs). In addition, the Representative wanted to assess the situation in the Gali district in Abkhazia, Georgia and the return prospects of those displaced from that region.

2. In this context, the Representative would like to recall that according to the Guiding Principles on Internal Displacement, which have been recognized by the General Assembly and the Human Rights Council as an “important international framework for the protection of internally displaced persons”,² the notion of IDPs applies to “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” (para. 2 of the introduction).

3. The Representative would also like to reiterate (see A/HRC/10/13/Add.2, paras. 7–8) that the primary duty and responsibility to provide protection to IDPs lies with the national authorities, and IDPs have the right to request and receive such protection and assistance from the Government (guiding principle 3). There may be times when a State does not have the capacity to fulfil these obligations, because it either lacks the means to do so, or does not have de facto control over parts of its territory. In such cases, the State has an obligation to allow others to contribute to the fulfilment of this duty, in particular international agencies and organizations. Such support shall be considered in good faith and not as interference in the internal affairs of a State, and 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 (guiding principle 25). At the same time, the Guiding Principles also apply, without prejudice to their legal status, to any actors who are effectively exercising control over a territory to the extent that the rights of IDPs and returnees are affected (guiding principle 2, para. 1). Those who hold de facto control are obliged to respect the rights of IDPs and secure their protection.

4. In Tbilisi, the Representative had the opportunity to meet with the Minister of Foreign Affairs; the Minister of Internally Displaced Persons from the Occupied Territories, Accommodation and Refugees; and the State Minister and the Deputy State Minister for Reintegration. He also met with the Public Defender’s Office, representatives

¹ See the reports of the Representative of the Secretary-General on the human rights of internally displaced persons contained in E/CN.4/2006/71/Add.7 and A/HRC/10/13/Add.2.

² General Assembly resolutions 60/1, para. 132; 62/153, para. 10; and 64/162, para. 10; and Human Rights Council resolutions 6/32, para. 5; and 14/6, para.9.

of the international community, non-governmental organizations, and internally displaced communities living in Tbilisi, Potskho-Etseri and Gori. No official meetings took place in Abkhazia, Georgia. Nevertheless, the Representative had an informal discussion with Maxim Gundjia, the de facto Minister of Foreign Affairs and met with non-governmental organisations in Sokhumi and with members of the war-affected communities in the Gali district, including persons who have returned or are in the process of returning.

5. The Representative would like to express his gratitude for the full cooperation of the Government of Georgia during this visit and the several previous visits and its invitation to come back to the country once again. He is indebted to the United Nations country team, in particular the office of the Human Rights Adviser for the South Caucasus of the Office of the United Nations High Commissioner for Human Rights (OHCHR) and the Office of the United Nations High Commissioner for Refugees (UNHCR) for facilitating once more the visit, for their briefings and for the logistical support to his mission. He would also like to thank all his interlocutors including in particular the Ministry of Internally Displaced Persons from the Occupied Territories, Accommodation and Refugees and the internally displaced persons and their associations he met for having taken the time to share their perspectives with the Representative.

II. Assistance and protection of internally displaced persons

A. Status of implementation of the Action Plan for the Implementation of the State Strategy on Internally Displaced Persons

6. In 2007, the Government of Georgia adopted decree No. 47 of the Government of Georgia “On approving of the State Strategy for Internally Displaced Persons - Persecuted” acknowledging the right of displaced persons to return while allowing them to live normal lives pending the time when return in safety and dignity would become possible. An Action Plan to implement the strategy was adopted in July 2008, shortly before the outbreak of armed hostilities in August 2008. Following his visit in October 2008, the Representative recommended that the Action Plan be revised to take into account the newly displaced population and that it be implemented (A/HRC/10/13/Add.2, para. 65). Positively, the Action Plan on Implementation of the State Strategy on Internally Displaced Persons during 2009-2012 was updated by Government Decree No. 403 of 28 May 2009 and amended by Government Decree No. 575 of 11 May 2010. This Action Plan seeks mainly to “promote IDPs’ socio-economic integration and improve their living conditions”.³

7. During his previous visits, the Representative witnessed the very difficult living conditions of IDPs accommodated in collective centres in Tbilisi, in which some of them had been living since the early 1990s (A/HRC/10/13/Add.2, paras. 32-33). Since then, the Government has made good progress in the implementation of this aspect of the Action Plan. According to the Government, about 42 per cent of IDPs lived in about 1,540 collective centres as of June 2009. In order to find durable housing solutions for these IDPs, the Government is seeking to close down these collective centres. Its strategy has been two-pronged. On the one hand, it has sought to rehabilitate collective centres and/or transfer ownership to the IDPs living in them. The process of transfer of ownership is often referred to as a “privatization” process. On the other hand, the Government has also built new houses and flats outside Tbilisi as alternative housing for IDPs. The new accommodation is mainly targeted at those recently displaced, presumably in order not to disrupt any social

³ See para. 1.3 of the amended Action Plan.

networks which the “old” IDPs had managed to create where they had been living for almost twenty years.

8. There are two types of collective centres which can be privatized: those which already belong to the State, and those which must first be bought by the State from the private owners and can then be offered to the IDPs living in them. Under Presidential Decree No. 62 of 2 February 2009, the transfer of the ownership of living units to IDPs currently living in them can take place for the symbolic price of one Georgian Lari. According to the Government, the privatization process is well under way. During the mission, the Representative was informed that accommodation spaces had been privatized or are in the process of privatization to 9,782 IDP families (28,028 persons) from Abkhazia in 278 buildings in Tbilisi and to 6,707 IDP families (19,182 persons) in 286 premises in the regions. In addition, 7,902 IDP families (22,915 individuals) from Samachablo (Tskhinvali region/South Ossetia), had been given possession of individual houses or flats, or received monetary compensation.⁴

9. The Representative visited a collective centre in Tbilisi which was the first one to be privatized in 2009. The collective centre Chiaurely #3, Vake-Saburtalo, consisted of two buildings, each hosting about 20 families. Using their personal funds, these families have undertaken major renovation works in their flats. In addition, individual electric meters have been installed, which has contributed to reduce tensions between the residents. Despite some remaining problems, including with the sewage system and the roofing, the Representative noted a significant improvement in the living conditions of the IDPs. Moreover, accession to property has contributed to confidence-building among the IDPs. After living for often almost twenty years in a situation of institutionalized dependency, these IDPs were finally able to take care of their own lives again.

10. There is no doubt that the Government has invested important financial resources in rehabilitating collective centres and building new housing for IDPs since 2008. As a result, the living conditions of many IDPs have improved. The Government should be commended for this and encouraged to pursue its efforts in this area as many IDPs continue to live in difficult circumstances. In this regard, better information on envisaged measures should be provided to IDPs living in collective centres that may be privatized in the near future.

B. Remaining challenges

11. While the closing of collective centres is to be welcomed, the Representative was already concerned about the danger of forced evictions back in 2008 (A/HRC/10/13/Add.2, para. 21). Partly under the pressure of the private owners of the collective centres who want to regain possession of their property, around 5,000 IDPs were forcibly evicted in Tbilisi between mid-June 2010 and end of August 2010 when a moratorium was put in place. Evictions, as such, are not illegal under international human rights law. In some cases, evictions are inevitable where IDPs refused to leave their accommodation voluntarily and the owners insist on regaining possession. Nonetheless, evictions should be carried out in full compliance with international standards and, at the same time, not be undertaken without offering the persons concerned viable alternatives as regards housing, livelihoods and access to basic services such as health and education.

12. There were serious concerns about the manner in which some evictions were undertaken during the summer of 2010. There were reports that those IDPs about to be evicted were not or not sufficiently consulted about the process and given only a few days’ advance notice, mostly verbally. They were not provided with sufficient information about

⁴ Information provided by the Ministry of Refugees and Accommodation.

housing alternatives or compensation, and could not therefore make an informed choice. In most cases, IDPs were offered alternative accommodation in rural areas, far from their present place of residence where they would have lost the access to livelihoods and/or basic services they had when living in Tbilisi. In some cases, the alternative accommodation offered was reportedly of a worse standard than what the IDPs enjoyed in the collective centre where they lived. Some IDPs were allegedly verbally and physically assaulted during the evictions.⁵

13. The Representative visited rehabilitated buildings in Potskho-Etseri (Tsalenjikha region) which hosts 12 IDP families who had been evicted in the previous month from premises in Tbilisi. He was informed that there had been heavy police presence when the evictions took place and that police officers removed all domestic items from the buildings to be evacuated. The settlement to where they were brought, located 40 kilometres away from Zugdidi, had been built for the people constructing the local hydro-electric plant during the Soviet era. Most inhabitants had left the place in recent years, mainly because of unemployment. While the new accommodation appeared to have been renovated to a good standard, it still lacked heating facilities. More importantly, most of the IDPs had managed to find some sources of income in Tbilisi, while economic opportunities in this rural area were almost non-existent. They also felt that food prices were higher than in Tbilisi, which meant that the IDPs preferred to do their shopping in Zugdidi, but then faced transportation problems. Some IDPs had serious medical problems, but little access to medical services as they were still registered in Tbilisi. In any case, the closest medical facility appears to be 10 kilometres away.

14. IDPs should be treated with dignity at all times, which means that they must be given adequate notice of plans to vacate a collective centre and offered reasonable options for alternative accommodation. More generally, the authorities should put in place clear procedures in order to ensure that evictions are carried out in accordance with international standards. Standard operating procedures have been agreed between the Government and UNHCR and had started to be implemented at the time of submission of the present report. These provide that notification of eviction is to be issued only after alternatives have been offered. Where IDPs have chosen to receive the housing grant of US\$ 10,000 instead of alternative housing, notification should not be issued until the payment of that grant is effective and the IDPs are given at least 10 days to find new accommodation. The standard operating procedures also provide that no evictions should take place earlier than 10 days after the letter of notification is received. Beyond the issue of procedures, evictions must not mean that people lose their livelihoods and access to quality education or health services. While they may in some cases be unavoidable, they must not destroy the modest standards of living that people have achieved so far.

15. While the majority of IDPs live in private accommodation (58 per cent as of June 2009), the Government has not yet tried to find durable solutions for them. Part of the difficulty relates to the fact that these IDPs find themselves in a range of situations. Some own real estate. Others live with relatives, friends or rent their accommodation. Improving the living conditions for IDPs living in private accommodation is envisaged to start in 2011 according to the Action Plan for the implementation of the State Strategy on Internally Displaced Persons. A first step in trying to deal with this population would be to conduct a profiling exercise and then start with the most vulnerable cases which should be offered social housing on a priority basis. Other solutions can be explored for the remaining cases.

16. In all cases, it is imperative that measures aimed at improving housing conditions be accompanied by livelihood projects. This point had already been emphasized by the

⁵ See Public Defender of Georgia, "Report on the human rights situation of internally displaced persons and conflict-affected individuals in Georgia", January-July 2010, p. 54.

Representative during his 2008 visit (A/HRC/10/13/Add.2, para. 62). While the improvement of the socio-economic conditions of IDPs is one of the stated aims of the Action Plan, this aspect of the Action Plan still needs to be strengthened.⁶ For one thing, the Action Plan relies too much on the market to provide livelihood opportunities and envisages the role of the authorities as merely providing support to IDPs seeking to take advantage of these opportunities. This approach can hardly work in remote rural areas where a labour market does not exist and is also problematic in urban areas with very high rates of unemployment. The Government needs to take a proactive approach to this issue. For instance, information on IDPs' skills and competences could be recorded in Government databases, which would allow job creation or work opportunities to be specifically targeted at qualified individuals. Renewed emphasis on employment and livelihood opportunities for internally displaced persons is essential, as neglecting this dimension may ultimately jeopardize attempts to improve the situation of the displaced.

17. Moreover, durable solutions may not be found for all IDPs by 2012, which is when the Action Plan is supposed to end, *inter alia* because the implementation of the Action Plan is already behind schedule.⁷ The Government should thus anticipate that further funding will be needed beyond that date.

18. Finally, there should be stronger involvement of civil society in the implementation and revision/update of the Action Plan. Once again, the Representative was impressed by how active civil society was and their views should be taken into account. As a comparison, civil society was invited to actively participate in the formulation of the State Strategy on Internally Displaced Persons adopted in 2007. This positive experience could inspire the planning of future activities. In particular, the Government should provide better information and consult with IDPs themselves systematically so that they can participate in the decisions which directly affect them.

III. Return of internally displaced persons to Abkhazia, Georgia

A. Returns effected and returns envisaged

19. The 1992-1994 conflict in the Abkhazian region of Georgia displaced some 300,000 persons. This figure includes some 79,000 mostly ethnic Georgians who constituted almost the entire population of the Gali district. Over the years, tens of thousands returned to their homes, only to be displaced again when violence broke out again in 1998. According to UNHCR estimates, there are currently some 45,000 to 50,000 returnees within the old borders of the Gali district. Some of the returnees live in the Gali district on a temporary basis and keep some form of accommodation on the other side of the Inguri River in the Zugdidi area. Such an arrangement has been much more difficult to sustain, as freedom of movement across the Inguri River has been restricted since August 2008 after a bomb attack in Gali. While there is some indication that individual families have recently returned or are in the process of returning to the Gali district,⁸ such numbers appear to remain low.

⁶ To complement the Government's efforts towards providing IDPs with livelihood opportunities, a special Technical Experts Group was established within the framework of the Steering Committee (which is an MRA-led decision-making body to coordinate joint efforts by the Government and international organizations in operationalizing and implementing the State Strategy for IDPs and its Action Plan).

⁷ See Public Defender of Georgia, "Report on the human rights situation of internally displaced persons and conflict-affected individuals in Georgia", January-July 2010, p. 13.

⁸ See the report of the Secretary-General on the status of internally displaced persons and refugees from Abkhazia, Georgia, and the Tskhinvali region/South Ossetia, Georgia (A/64/819), para.5.

20. The United Nations Observer Mission in Georgia (UNOMIG), which had been established in 1993 through Security Council resolution 858, came to an end in 2009 when the Security Council failed to renew its mandate. UNOMIG was mandated to monitor and verify compliance with the 1993 ceasefire agreement and then the 1994 ceasefire agreement concluded in Moscow. UNOMIG was also mandated to monitor the operations of the peacekeeping force from what was then the Commonwealth of Independent States. Within UNOMIG, a human rights office was established in 1996 for the protection and promotion of human rights in Abkhazia, Georgia.

21. Under the Quadripartite Agreement on Voluntary Return of Refugees and Displaced Persons concluded in 1994, UNHCR was assigned the role of international lead agency for the return of displaced persons to Abkhazia, Georgia. While the present status of this Agreement remains unclear (as no party to the Agreement has formally informed the other parties that it considered the Agreement as terminated), UNHCR continues to work towards the search for durable solutions for the displaced population through integrated protection and assistance activities. In this regard, the Representative visited a UNHCR-administered programme in the Saberio village in the Gali district. The programme involved a house rehabilitation project, a social community centre hosting a school, a canteen and a handicraft workshop, and an income-generating project. The Representative was impressed by the positive impact of the programme on the local community and on potential returnees. Indeed, it was reported that in 2009-2010, 16 IDP families returned following the announcement of the house rehabilitation project in the village. The programme was a good example of the complementarity of projects aimed at improving housing and income-generating projects and of the role community centres can play in reviving local communities and strengthen their capacities for self-help.

B. Obstacles to sustainable returns

22. Overall, the prospects of return for those displaced from the Gali district and elsewhere in Abkhazia almost twenty years ago remain low for several reasons. During his 2005 visit to Abkhazia, the Representative noted that the lack of security for IDPs and returnees was a major source of concern (E/CN.4/2006/71/Add.7, para. 35). Since then, the security situation in the Gali district has improved, particularly because of fewer incidents across the Inguri River. Nonetheless, people are still exposed to risks related to acts of violence, and do not trust the local authorities to investigate such acts effectively. The Representative saw six houses in the village of Dikhazurga which had been subject to an arson attack in June 2010, most of which were inhabited and one of which had just been rehabilitated by UNHCR. This crime against ethnic Georgians was allegedly committed in revenge for the killing of an Abkhaz customs officer which had taken place a few days earlier. To date, no one has been arrested for either crime. As the affected families intend to stay on their land, UNHCR has provided emergency assistance and is presently rehabilitating the burned houses. People also expressed concerns about acts of common criminality and the ineffective responses by authorities.

23. Beyond security, the lack of adequate housing continues to be a major obstacle to return. There is no doubt that IDPs will not return as long as their houses are still damaged and not suitable to be used as living quarters. It is therefore crucial that efforts to rehabilitate houses be pursued. At the same time, IDPs will not be inclined to return where there are no employment and livelihood opportunities. The economic situation in Abkhazia has not improved in the last few years and remains almost entirely dependent on that of

Russia.⁹ In this regard, pragmatic solutions to enhance freedom of movement across the Inguri River would be important to many IDPs as it facilitates their access to markets (A/64/819, para. 17).

24. Following his 2005 visit, the Representative called on the authorities in control in Abkhazia to respect the right of returning IDPs to use their own language, including in educational institutions, as enshrined in principle 23 of the Guiding Principles on Internal Displacement (see E/CN.4/2006/71/Add.7, para. 49 (c)). When visiting a school in the Gali district, the Representative was informed that the language of education was Russian, upon the instruction of the de facto Ministry of Education. Some parents were not opposed to the use of Russian in local schools, as they saw this as facilitating the integration of their children into the wider society. Nonetheless, they felt uneasy about their children being taught solely in Russian from their very first year in school, considering that this is a totally unfamiliar language for them. More generally, IDPs should not face difficulties in maintaining their cultural traditions.

25. Information related to the issue of documentation and applied practices continues to be controversial. When meeting with some returnees in the Gali district, the Representative was informed that rather than being pressured to apply for Abkhaz identity documents, these people actually felt they had to acquire some form of Abkhaz identity documents, including Abkhaz passports, in order to have easier access to local public services.

26. The main obstacles to more IDP returns to Abkhazia, Georgia remain political. The authorities in control in Abkhazia are still very reluctant to allow any returns to Abkhazia beyond the Gali district. Even if after so many years of displacement, many IDPs have integrated locally in the places to where they were displaced, conditions should be created to ensure that those who still wish to exercise their right to return can do so. As a minimum, all parties to the conflict should recognize the right of all IDPs to return in accordance with, inter alia, Security Council resolutions on the situation in Georgia.¹⁰

IV. Resolution of housing, land and property issues

27. According to principle 29, paragraph 2, of the Guiding Principles on Internal Displacement, all IDPs have the right to have their property returned to them or to receive compensation where restitution is not possible, regardless of whether they choose to return, integrate locally or settle in another part of the country. This right has been explicitly recognized for IDPs from Abkhazia by the Security Council and the General Assembly.¹¹ In practice, it has proven extremely difficult for persons displaced from Abkhazia, Georgia to exercise this right. Since the Representative's 2005 visit to Abkhazia, there has been no progress in relation to the resolution of property issues. While the Representative did not receive any concrete complaints from the IDPs he met with about violations of property rights in the Gali region, including those who have returned or are in the process of returning, the restitution of housing, land and property left behind by IDPs or the provision of appropriate compensation in lieu of restitution remains a serious challenge that needs to be addressed. The applicable legal framework is clearly very complex, in particular in the light of the various types of property-like rights which prevailed in Abkhazia during the Soviet era (see also A/64/819, paras. 29-30). Unfortunately, the authorities in control in

⁹ International Crisis Group, "Abkhazia: deepening dependence", Europe Report No. 202, 26 February 2010, p. 6.

¹⁰ See for instance Security Council resolutions 1808 (2008), para. 9 and 1866 (2009), para. 4. See also General Assembly resolution A/64/296, para. 1.

¹¹ See for instance Security Council resolutions 1808 (2008), para. 9 and 1866 (2009), para. 3. See also General Assembly resolution A/64/296, para. 2.

Abkhazia have shown little inclination to examine any property claims submitted to them by refugees and IDPs.

28. Some IDPs who fled Abkhazia in the early 1990s subsequently went to live in Russia and now hold Russian passports. They have lobbied the Russian authorities to assist them in recovering their property in Abkhazia, which in turn has led the Russian Government to raise the issue with the authorities in control in Abkhazia. Discussions are reportedly ongoing.

29. The discussion over property restitution or compensation is further complicated as some stakeholders tend to link this issue with that of reparation for damages incurred during the 1992-1994 conflict. For the moment, the only forum where such issues can be discussed is the international discussions held in Geneva under the co-chairmanship of the European Union, the Organization for Security and Cooperation in Europe and the United Nations. In order to facilitate the resolution of property issues, it would be crucial to undertake a thorough review of the various types of property-like rights which prevailed in Abkhazia, Georgia when the IDPs fled the region. International expertise could be provided for this review and ensure that good practices from other situations be applied.¹²

V. Humanitarian access

30. Following his 2008 visit, the Representative expressed concerns about the negative impact of the Law on the Occupied Territories adopted on 23 October 2008 on humanitarian access to the Tskhinvali region/South Ossetia, Georgia and Abkhazia, Georgia (A/HRC/10/13/Add.2, paras. 55 and 69). This Law provides that all economic activities, including humanitarian activities that are not of a life-saving character in an emergency situation, shall be prohibited in the Tskhinvali region/South Ossetia and Abkhazia unless they are specifically authorized by the Government of Georgia. It should be recalled here that Security Council resolution 1866 (2009) called “for facilitating, and refraining from placing any impediment to, humanitarian assistance to persons affected by the conflict, including refugees and internally displaced persons” (para. 4) and that General Assembly resolution 64/296 underlined “the urgent need for unimpeded access for humanitarian activities to all internally displaced persons, refugees and other persons residing in all conflict-affected areas throughout Georgia” (para. 4) without limiting it to emergency assistance.

31. The Government of Georgia adopted in October 2010 a Decree regulating the modalities for performing activities in the Occupied Territories of Georgia. Under this Decree, all activities and projects conducted by international organizations in the designated areas must be notified to the authorities. In the case of projects which do not involve emergency humanitarian assistance, these can be implemented only if the Government does not object to them within 21 working days.¹³

32. Concerns remain about the potential impact of the changes recently decided in the implementation of the Law on the Occupied Territories. Indeed, the Decree mentioned above is broadly worded and leaves some room for interpretation. In this regard, the Representative recalls that it is imperative that the Law does not adversely impact

¹² Such reviews took place in Bosnia and Herzegovina and in Kosovo, and proved to be useful starting-points for solving property issues. See for instance S. Leckie, “Housing, land and property rights in post-conflict societies”, Office of the United Nations High Commissioner for Refugees document PPLA/2005/01, March 2005.

¹³ See Decree of the Government of Georgia No. 320 of 15 October 2010 on “approving the rules for performing activities on Occupied Territories of Georgia”.

humanitarian access to the Tskhinvali region/South Ossetia, Georgia and Abkhazia, Georgia and even hinder the return of displaced persons.

VI. Conclusions and recommendations

33. The Representative of the Secretary-General on the human rights of internally displaced persons acknowledges that the Government has made good progress in the implementation of the Action Plan for the Implementation of the State Strategy on Internally Displaced Persons since his last visit in 2008. Nevertheless, further efforts are necessary in order to find durable solutions for all internally displaced persons (IDPs) in Georgia. With this in mind, the Representative would like to make the following conclusions and recommendations.

34. The Representative commends the Government for the efforts made in rehabilitating collective centres and building new housing for IDPs since 2008. Such efforts have resulted in an improvement of the living conditions of many IDPs. It is now important to make these shelter solutions durable, and to further the integration process through systematic efforts which go beyond infrastructure and give more attention to the creation of employment and livelihood opportunities for IDPs. Moreover, the Government should ensure that the situation of IDPs living in private accommodation is also addressed.

35. While the closing of collective centres is to be welcomed, the Representative underlines that any evictions which have to be carried out to achieve this objective must be undertaken in full compliance with international human rights standards. In this regard, the Representative welcomes the development by governmental authorities of a standard operating procedure in consultation with the Office of the United Nations High Commissioner for Refugees (UNHCR), donors and other humanitarian actors, and recommends that these procedures be rigorously applied in all cases where evictions cannot be avoided.

36. The Representative recommends that the Action Plan be reviewed, and where necessary revised and updated on a regular basis in order to take into account the evolving needs of IDPs including, in particular, those living in collective centres or private property. It is crucial that civil society and the IDPs themselves be fully associated in the review, revision and implementation of the Action Plan. In addition, the Action Plan would benefit from being revised to include the indicators of the Inter-Agency Standing Committee framework to measure the Action Plan's success in supporting durable solutions, as well as some mechanisms to monitor progress.¹⁴

37. One of the main obstacles in the search for durable solutions for IDPs in Georgia remains the absence of political solutions to the conflicts, as observed by the Representative in his previous reports. Once again, the Representative calls upon all parties to take all necessary measures to ensure that all IDPs can exercise their right to make a free and informed decision as to whether to return voluntarily to their homes in safety and dignity, to locally integrate or to resettle elsewhere in the country. Moreover, necessary measures should be taken to secure their right to have their property restored to them or receive compensation where restitution is not possible.

38. As noted during his last visit to Abkhazia, Georgia, in 2005, the Representative remains concerned that the return prospects of persons displaced by past conflicts remain disappointingly low. While the security situation appears to have improved,

¹⁴ See the Representative's report on the Framework on Durable Solutions for Internally Displaced persons (A/HRC/13/21/Add.4).

serious obstacles to sustainable returns remain. The Representative urges once again the authorities in control in Abkhazia to create the conditions for sustainable returns. He also continues to urge the authorities in control in Abkhazia to allow IDPs to return in safety and dignity to their homes in the Gali district and elsewhere in the territory under their control.

39. The restitution of housing, land and property left behind by IDPs or the provision of appropriate compensation in lieu of restitution remains a serious challenge that needs to be addressed. As a first step, the Representative calls upon the authorities in control in Abkhazia, Georgia, to undertake or commission a detailed study reviewing the various types of property-like rights which prevailed at the time when IDPs were displaced from their homes. A mechanism should then be put in place to allow IDPs to submit property claims. In this regard, the Representative recommends that the international community, in particular UNHCR, support the authorities in control in Abkhazia in the process of undertaking this thorough review of property legislation.

40. The Representative remains concerned about the possible impact of the Law on the Occupied Territories on humanitarian access to the Tskhinvali region/South Ossetia, Georgia and Abkhazia, Georgia. He takes note of the Decree on “approving the rules for performing activities on Occupied Territories of Georgia” recently adopted. He urges again the Government of Georgia and the authorities in control in the Tskhinvali region/South Ossetia, Georgia and Abkhazia, Georgia to ensure that unimpeded access to all conflict-affected areas be granted to humanitarian actors so that they may attend to all relevant humanitarian needs of IDPs and other war-affected populations without delay, and to international human rights monitoring mechanisms.
