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增进和保护所有人权、公民、政治、经济、
社会和文化权利，包括发展权

负责国内流离失所者人权问题的秘书长代表

瓦尔特·卡林的报告

增 编 *

对刚果民主共和国的访问

* 本报告的内容提要以所有正式语文分发。报告本身附于提要之后，仅以原文和英文本分发。

内容提要

应刚果民主共和国当局的邀请，负责国内流离失所者人权问题的秘书长代表瓦尔特·卡林于 2008 年 2 月 12 日至 22 日对该国进行了正式访问。

特别代表访问后得出结论认为刚果民主共和国东部局势正经历着一场严重的保护危机和人道主义危机，其突出的表现主要是流离失所人员数量非常之大。据估计，这种人员在该国东部四个区多达 100 多万，其中北基伍省大约有 80 万人，南基伍省有 30 多万人。据报道，仅 2007 年一年就有 50 多万人流离失所，这是 2003 年内战结束以来的最高纪录。

多数情况下，人们被迫离家出走是由于刚果武装部队和该国东部各种武装团体之间或者是不同的武装团体之间的冲突造成的。武装团体和国家治安部队的成员都对平民犯有虐待和侵犯人权的行为，结果造成某些省份普遍治安不好，暴力盛行，这也迫使许多刚果人远走他乡。

流离失所人员的生活状况令人非常担忧。据特别代表获悉，多数流离失所人员寄居他人家里，糟糕一点的住在大部分位于北基伍省的临时营地或场所。流离失所人员生活绝对贫困，许多人无家可归，得不到饮水或医疗，他们的子女没有受教育的机会。在许多情况下，他们的食物相当没有保障。大批人丢失了在刚果民主共和国作为身份证的选民证，而这更使他们处于容易受害的境地。

特别代表尤其关切妇女和儿童的处境。妇女仍然遭到近乎系统的性暴力的凌辱，儿童则被某些叛乱武装派别强迫征召入伍。

由于最近出现一些政治发展变化，2008 年 1 月 6 日至 23 日得以在戈马市召开了南北基伍省和平、安全和发展会议，会上签署了承诺声明，另外还有 2007 年 11 月的内罗毕公报，这些有可能是真正的机会，使国家稳定下来，流离失所者有可能返回家园。但是，这些协议的落实进程似乎十分复杂而困难，局势仍然不稳定，局部冲突的结果还是流离失所。在这种情况下，即使有些地区有人返回，但是只有在克服了许多挑战之后，才可以设想流离失所人员有尊严、安全而持久的返回。

特别代表呼吁有关各方立即以坚定不移的政治承诺贯彻南北基伍省和平、安全和发展会议签署的承诺声明以及内罗毕公报。他具体建议采取着重争取在政府、各武装团体和其他有关团体之间展开政治对话的战略，并推动开展流离失所居民的人道主义

援助和保护活动。此外，他还建议在有人正在返回或可以考虑返回的地方采取早日恢复的措施。

特别代表提请刚果政府注意，在进行规划和开展治安作战行动时，必须尊重战斗人员和平民之间的根本差别，不从事国际人道主义法和国际人权法禁止的任何行为。凡是发生这种违法行为的，特别代表建议加倍努力进行调查，打击有罪不罚行为，将这类违法行为的主要肇事人绳之以法，保障受害人获得司法公正和补救的权利。

在寻找流离失所问题持久解决办法方面，特别代表建议刚果政府在联合国组织刚果民主共和国特派团(联刚特派团)的大力支持下，开展以下活动：

- 和解，尤其是族群之间的和解活动
- 打击有罪不罚行为的过渡性司法和努力
- 解决涉及土地的争端。

特别代表还提醒指出，各武装团体有义务遵守国际人道主义法，尤其要尊重战斗人员和平民的根本差别，不从事任何国际人道主义法禁止的行为。

特别代表鼓励国际社会继续不断大力支持刚果民主共和国流离失所人员援助和保护方案，积极着手开展经济融入活动，在流离失所人员返回地区重新开展基本服务和开发事业。

Annex

**REPORT SUBMITTED BY THE REPRESENTATIVE OF THE
SECRETARY-GENERAL ON THE HUMAN RIGHTS OF
INTERNALLY DISPLACED PERSONS, WALTER KÄLIN,
ON HIS MISSION TO THE DEMOCRATIC REPUBLIC
OF THE CONGO (12-22 FEBRUARY 2008)**

CONTENTS

<i>Chapter</i>	<i>Paragraphs</i>	<i>Page</i>
Introduction	1 - 8	5
I. GENERAL CONTEXT	9 - 23	6
A. The phenomenon of internal displacement in the Democratic Republic of the Congo: background, causes and scale of the phenomenon	9 - 17	6
B. The situation of human rights in the Democratic Republic of the Congo	18 - 23	8
II. RESPONSES TO THE PHENOMENON OF INTERNAL DISPLACEMENT	24 - 37	10
A. Response of the national authorities	24 - 28	10
B. Response of the international community	29 - 37	11
III. PROTECTION OF DISPLACED PERSONS	38 - 70	14
A. Protection against displacement	38 - 42	14
B. Protection during displacement	43 - 58	15
C. Protection in the context of the search for a durable solution	59 - 65	18
D. Women and children: categories of displaced persons with special protection needs	66 - 70	19
IV. CONCLUSIONS AND RECOMMENDATIONS	71 - 75	20

Introduction

1. At the invitation of the Government of the Democratic Republic of the Congo, the Representative of the Secretary-General on the human rights of internally displaced persons carried out an official mission to the Democratic Republic of the Congo from 12 to 22 February 2008. In keeping with his mandate, as extended by Human Rights Council resolution 6/32, the Representative's mission fell within the framework of the dialogue he is seeking to pursue with government authorities, non-governmental organizations and all those concerned in order to improve the protection of the human rights of displaced persons.
2. In visiting the Democratic Republic of the Congo, the Representative sought to gain a clearer idea of the situation of displaced persons. He also wished to work with the Government and all those involved to size up the challenges they are facing while endeavouring to provide aid and assistance to displaced persons and to explore possible durable solutions to the problem of internal displacement using a human rights-based approach.
3. In Kinshasa, the Representative met the ministers handling issues relating to internal displacement, and specifically the Minister of Justice and Human Rights, the Minister of Humanitarian Affairs, the Deputy Minister of the Interior, the Chef de Cabinet of the Minister for Foreign Affairs and the Independent Electoral Commission, as well as the representatives of the United Nations system and representatives of civil society. In order to gain a more immediate idea of the situation on the ground, the Representative travelled to the east of the country to the provinces of North Kivu and South Kivu and the district of Ituri, where he met representatives of the local authorities and humanitarian organizations, including non-governmental organizations. In each of the areas he visited the Representative talked to displaced persons and in some cases returnees and host families, so as to learn from those primarily concerned of the challenges they face.
4. The Representative wishes to express his gratitude to the Government of the Democratic Republic of the Congo for its invitation and the frank and constructive dialogue in which he was able to engage with the authorities he met. He also thanks the other persons he met, in the United Nations Organization Mission in the Democratic Republic of the Congo (MONUC), the Office for the Coordination of Humanitarian Affairs (OCHA), the Office of the United Nations High Commissioner for Refugees (UNHCR) and the United Nations Children's Fund (UNICEF), for the support he received in organizing this mission. Lastly, the Representative wishes to convey special thanks to all the displaced persons he had the honour to meet during his stay, who kindly recounted to him their stories, the difficulties they face and their dreams of hope for themselves and their families but also their country.
5. On the basis of the Guiding Principles on Internal Displacement, which have been recognized by States as constituting an important international framework for the protection of internally displaced persons,¹ the Representative wishes to remind the Congolese authorities that

¹ Résolutions de l'Assemblée générale A/60/1, par. 132; 60/168, par. 8; 62/153, par. 10. Voir aussi la résolution 6/32, par. 6 c) du Conseil des droits de l'homme. Pour le texte des

States have the primary duty and responsibility to provide assistance and protection to all displaced persons under their jurisdiction. This responsibility stems both from treaty norms and from customary law, and displaced persons are granted guarantees on the same footing as any other persons living in the national territory. Displaced persons do not lose the rights enjoyed by the rest of the population as a result of their displacement. Moreover, like every other citizen, they have the right to demand of their Government that such protection should be provided (Principle 3).

6. The Representative of the Secretary-General also wishes to emphasize, with reference to Principle 25, that in the event of the authorities being unable to fulfil their obligations towards displaced persons, either because of insufficient resources or because they are unable to exercise control throughout the territory, it is incumbent upon them to invite other actors, in particular the specialized agencies and related bodies of the United Nations system, to assist them.

7. At the same time, the Guiding Principles also apply to non-State actors effectively controlling part of the territory, when this affects the rights of displaced persons. Thus, Principle 2 provides that all groups must observe the Guiding Principles and apply them without discrimination to displaced persons located in the area under their control and allow those who wish to return home to do so safely and with dignity, without this affecting their legal status.

8. The Representative considers that the principle of protection goes beyond the need to ensure the survival and physical integrity of displaced persons, but covers all the guarantees set out in international human rights law and, where applicable, in international humanitarian law.²

I. GENERAL CONTEXT

A. The phenomenon of internal displacement in the Democratic Republic of the Congo: background, causes and scale of the phenomenon

9. The recent history of the Democratic Republic of the Congo is notable for two major armed conflicts during which millions of people lost their lives, and which displaced people on an unprecedented scale. The first war, which took place between 1996 and 1997, was the direct result of the genocide in Rwanda. Thousands of Rwandese took refuge in the eastern part of the Democratic Republic of the Congo; they included many people who had participated in the genocide and who rapidly took over certain refugee camps. Intervention by the armed forces of the neighbouring countries and the military operations which followed displaced half the population of some regions, temporarily at least. Many of these people were able to return to

Principes directeurs relatifs au déplacement de personnes à l'intérieur de leur propre pays, voir E/CN.4/1998/53/Add.2.

² Voir en particulier les rapports du Représentant à la Commission des droits de l'homme, E/CN.4/2005/84, par. 34 à 85, et E/CN.4/2006/71, par. 4 à 12.

their villages after a few weeks, but in mid-1997 an estimated 150,000 people were still displaced.³

10. In 1998, a second war began in which several countries in the region were involved. In January 2000, the Secretary-General, in his report to the Security Council on MONUC, estimated the number of displaced persons at nearly 960,000.⁴

11. In January 2001, President Kabila was assassinated and replaced by Joseph Kabila. In 2002, a peace agreement was signed with the main rebel leaders, and a transitional government was installed. The period of transition which followed the signing of the agreement in Sun City (South Africa) made it possible to improve security considerably in most of the regions, creating a favourable context for the adoption of a new constitution in 2005 and the holding of Presidential and parliamentary elections in 2006.

12. The stabilization of the political and security situation in some regions, in particular the district of Ituri in Orientale province, has enabled some 850,000 people to return home since 2004. In Katanga, around 1 million people have returned, and it is now considered that there is no displacement problem.

13. However, tension remains high in the eastern part of the Democratic Republic of the Congo, and on the eve of the 2006 elections, dissidents led by General Nkunda had already resumed attacks against the Armed Forces of the Democratic Republic of the Congo (FARDC). Despite the signing of an agreement with Nkunda for the integration of his troops into mixed brigades, fighting broke out again in August 2007, leading to further massacres and new waves of displaced persons. The year 2007 was considered by analysts as having seen the largest number of displaced persons since the end of the war in 2002: over 500,000 persons displaced, principally in the two Kivu provinces.⁵

14. In the opinion of the Representative, the signing of the Nairobi communiqué in November 2007 and the new developments which culminated in the statements of commitment signed at the Conference for Peace, Security and Development in North and South Kivu, held in Goma from 6 to 23 January 2008, potentially offer genuine opportunities for stabilizing the country which may allow the displaced persons a possible return home. Nevertheless, the process of implementation of these agreements appears complex and difficult, as the situation remains unstable in a number of regions. In the words of an observer of the situation whom the

³ *World Refugee Survey, USCR, 1998*, cité dans *Internally Displaced Persons in the Democratic Republic of Congo (DRC)*, février 2000, [http://www.nrc.ch/8025708F004BE3B1/\(httpInfoFiles\)/A53D4E45AE318B38802570B500501DED/\\$file/D.R.Congo-+February+2000.pdf](http://www.nrc.ch/8025708F004BE3B1/(httpInfoFiles)/A53D4E45AE318B38802570B500501DED/$file/D.R.Congo-+February+2000.pdf).

⁴ Rapport du Secrétaire général sur la Mission de l'Organisation des Nations Unies en République démocratique du Congo (S/2000/30).

⁵ *Source*: BCAH.

Representative met: “Peace agreements do not create peace. What is important is what follows from such agreements.”

15. Currently the Democratic Republic of the Congo is considered to be among the countries with the highest number of displaced persons. OCHA estimates the number at around 1.3 million in the country’s eastern regions. The situation is particularly disturbing in North Kivu, with an estimated total population of 4.2 million, and where the number of displaced persons is estimated

at 800,000, or 58 per cent of the total number of displaced persons in the Democratic Republic of the Congo. The deterioration in the security situation in this region between November 2006 and December 2007 often forced population groups to move more than once; the number of further displacements during this period is estimated at 448,000. In South Kivu, the number of displaced persons is estimated at nearly 330,000. As the security situation in some areas of South Kivu improved, some 280,000 persons were able to return to their villages during 2007.

16. In most cases, people were forced to leave their homes owing to clashes between the FARDC and the various armed groups which are present in the east of the country, or following clashes between different armed groups. The widespread insecurity and violence which are prevalent in certain provinces, as a result of the abuses and violations of human rights committed against civilians, also forced many Congolese to move. The Representative has learned of cases of massacres, arbitrary executions or the looting of houses and the near-systematic holding of the population to ransom, but also very many cases of rape, sometimes committed in a systematic manner, arbitrary detention and forcible recruitment of children. According to information received from the majority of those he met, including many displaced persons, this violence is mainly caused by the armed groups and bandits located in the relevant regions of North and South Kivu and Ituri. In North and South Kivu, the violence stems mainly from clashes between the FARDC and the troops of the dissident general Nkunda, who claims to be a protector of the interests of the Tutsi communities, on the one hand, and on the other between Mai-Mai groups (self-protection militias) and the Forces Démocratiques pour la Libération du Rwanda (FDLR), who are accused of harbouring in their ranks persons responsible for the genocide in Rwanda. However, the Representative has also been informed of many violations committed by the FARDC, in particular against women, which have fostered a climate of violence.

17. Lastly, and to a lesser degree, population displacements have also been caused by the natural disasters which have struck various regions of the country. For example, the recent earthquakes in the region of Bukavu in January 2008 or the drought and food insecurity in the Ruzizi plain in South Kivu in 2007 led to the displacement of a number of families.

B. The situation of human rights in the Democratic Republic of the Congo

18. As the Secretary-General indicates in his latest report to the Security Council,⁶ the situation of human rights in the Democratic Republic of the Congo remains a source of concern. Many reports refer to summary executions, torture and cruel and degrading treatment committed by the FARDC and the Congolese police. In addition, cases of the forcible recruitment of children by armed groups in the east continue to be reported, and rapes and other forms of sexual violence perpetrated by combatants from various armed groups, FARDC and, increasingly, individual civilians are legion, and very few leaders have been obliged to answer for their actions in the courts.

⁶ Vingt-quatrième rapport du Secrétaire général sur la Mission de l'Organisation des Nations Unies en République démocratique du Congo (S/2007/671).

19. The question of impunity continues to be considered one of the major concerns in terms of protection of human rights. Although there are some encouraging signs, such as the authorities' efforts to cooperate with the International Criminal Court, the Representative considers that the conclusions reached by the Human Rights Committee on the topic remain pertinent, in particular when we read that "despite the information from the delegation on several criminal proceedings against human rights violators, the Committee notes with concern the impunity with which many serious human rights violations have been and continue to be committed in the territory of the Democratic Republic of the Congo, even though the identity of the perpetrators of these violations is often known".⁷ More recently, the Security Council, in resolution 1794 (2007), deplored "the persistence of violations of human rights and international humanitarian law in the Democratic Republic of the Congo, in particular those carried out by the FDLR, ex-FAR/Interahamwe and the dissident militia of Laurent Nkunda, as well as other militias and armed groups and elements of the [Armed Forces of the Democratic Republic of the Congo (FARDC)], the Congolese National Police (PNC) and other security and intelligence services", and stressed that the Council considered it important for those responsible for these crimes to be brought to justice.

20. The Democratic Republic of the Congo is a party to the principal human rights conventions: the International Covenant on Civil and Political Rights, and the first Optional Protocol to the Covenant, 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, and the Convention on the Rights of the Child and its two optional protocols. It is also a party to the Rome Statute of the International Criminal Court.

21. At the regional level, the Democratic Republic of the Congo is a party to the African Charter on Human and Peoples' Rights and the OAU Convention governing the Specific Aspects of Refugee Problems in Africa. In addition, it has ratified the Pact on Security, Stability and Development in the Great Lakes Region and the related protocols, in particular the Protocol on Protection and Assistance to Internally Displaced Persons, which sets out an important conceptual framework for the protection of the human rights of internally displaced persons. However, the Democratic Republic of the Congo has not yet ratified the African Charter on the Rights and Welfare of the Child, and is not yet a party to the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa.

22. Where international humanitarian law is concerned, the Democratic Republic of the Congo is a party to the four Geneva Conventions of 12 August 1949 and the additional protocols of 8 June 1977.

23. Although the Democratic Republic of the Congo has not issued an open invitation to the special procedures, the Representative notes with interest that the Congolese authorities have invited certain mandate-holders for official visits. In addition to the independent expert on the situation of human rights in the Democratic Republic of the Congo, the Special Rapporteur on

⁷ Observations finales du Comité des droits de l'homme (CCPR/C/COD/CO/3), par. 10.

violence against women, its causes and consequences, and the Special Rapporteur on the independence of judges and lawyers carried out official visits in July and April 2007 respectively (their reports were issued under the symbols A/HRC/4/25/Add.3 and A/HRC/7/6/Add.4).⁸

II. RESPONSES TO THE PHENOMENON OF INTERNAL DISPLACEMENT

A. Response of the national authorities

24. The Representative welcomes the fact that the authorities are aware of the scale of the phenomenon of internal displacement in the Democratic Republic of the Congo and the challenges they face in responding adequately. In particular, he notes with interest the importance attached to this issue by the Minister of Humanitarian and Social Affairs, with whom he held talks, whose Ministry bears the heavy responsibility of handling assistance to displaced persons. In particular he welcomes the fact that, as soon as he took up his office in 2006, the Minister commissioned a study on the humanitarian situation in the Democratic Republic of the Congo, which deals extensively with issues related to internal displacement.

25. According to this study, a National Commission for Humanitarian Coordination has been set up with the cooperation of other ministries with the aim of defining strategies for responding rapidly to humanitarian problems. However, during his mission, the Representative did not receive any information on the implementation of this Commission's tasks, its activities or the financial resources available to it.

26. At the provincial level, governors bear responsibility for organizing protection and assistance for displaced persons. In Goma, the Representative met the Deputy Governor, who outlined to him the challenges posed by the issues of displacement in the region and informed him of the establishment of a humanitarian unit to handle those issues, to be run jointly with the Ministry of Humanitarian Affairs. Equally in this case, the Representative did not receive any detailed information on the activities of this unit. In Bukavu, the Governor emphasized the inability of the government authorities to provide the displaced persons with adequate assistance.

27. The Representative shares the view of the Minister of Humanitarian Affairs, which was also expressed by the local authorities and many other persons to whom he spoke, concerning the fact that the Congolese Government currently lacks the capacity to respond on its own to the protection and assistance requirements of the displaced persons under its jurisdiction. Nevertheless, he wishes to remind the country's authorities that they have the duty and responsibility to assist displaced persons. In this context, and while taking account of the limited resources of a country in the middle of a transition, the Representative regrets the lack of a legal

⁸ Les rapports de l'expert indépendant sur la situation des droits de l'homme en République démocratique du Congo ont été publiés sous les cotes A/HRC/7/25, A/HRC/4/7, E/CN.4/2006/113, E/C.N.4/2005/120 et sont disponibles sur le site du Haut-Commissariat aux droits de l'homme.

framework, a government strategy and clearly demarcated areas of competence. He also regrets the lack of focal points in the central Government and in the provinces, as well as the lack of the resources needed for activities aimed at displaced persons.

28. The Representative points out in this context that the Democratic Republic of the Congo has recently ratified the Protocol on Protection and Assistance to Internally Displaced Persons, which was adopted at the International Conference on the Great Lakes Region. This Protocol requires the States parties to incorporate the Guiding Principles in their legal systems and to adopt a legislative framework for their implementation. The Protocol also echoes the Guiding Principles in pointing out that the primary duty and responsibility for providing protection and assistance to internally displaced persons within their jurisdiction lies with national authorities.⁹ The Representative considers that the implementation of the Protocol offers a unique opportunity to develop, in close cooperation with the international community, the legal and institutional framework required to enable the authorities to take on this responsibility.

B. Response of the international community

29. The mandate of MONUC falls under Chapter VII of the United Nations Charter, and currently comprises four elements:

(a) The protection of civilians, humanitarian personnel and personnel and installations of the United Nations, particularly MONUC, should contribute to the improvement of the security conditions in which humanitarian assistance is provided and assist in the voluntary return of refugees and displaced persons;

(b) Security of the Democratic Republic of the Congo;

(c) Disarmament and demobilization of foreign and Congolese armed groups; in particular, MONUC should support operations led by the integrated brigades deployed in the eastern part of the Democratic Republic of the Congo, in accordance with internationally recognized norms on human rights and international humanitarian law, with a view to disarming local and foreign armed groups and preventing the provision of support to illegal armed groups;

(d) Security sector reform.¹⁰

30. As far as humanitarian institutions are concerned, the Representative was informed that from the outset they provided emergency assistance to displaced persons to the extent of their abilities. In particular, he was informed of the role played by UNICEF, which was already in the field, in organizing assistance for displaced persons. On their initiative, two multisectoral tools

⁹ Conférence internationale sur la région des Grands Lacs, Protocole sur la protection et l'assistance à apporter aux personnes déplacées à l'intérieur de leur propre pays, Principe 3.

¹⁰ Pour une explication plus détaillée du mandat de la MONUC, voir la résolution 1756 (2007) du Conseil de sécurité. Ce mandat a été prorogé par le Conseil de sécurité dans sa résolution 1794 (2007).

were developed. First, a rapid response mechanism (RRM) was set up throughout the country, and particularly in North Kivu and South Kivu and Ituri, with the aim of enhancing the capacity of the humanitarian community to respond to acute humanitarian crises linked to displacement, natural disasters or health emergencies. This mechanism is jointly run by UNICEF and OCHA, with the support of non-governmental organizations. Activities in 2007 included water treatment, deliveries of water by lorry, construction of latrines and showers, but also the supply of emergency shelters and non-food items. Under the programme for expanded assistance to returnees (PEAR), launched by UNICEF at the end of 2006, the needs of returnees were assessed and a response prepared. Rapid and, where necessary, multisectoral assessments are organized in returnee areas for the purpose of devising better-targeted assistance from humanitarian agencies. PEAR has provided additional material for the discussions and analyses carried out, for example, in the working group on reintegration and early recovery. In 2007, the PEAR partners carried out 290 rapid assessments and 64 multisectoral assessments in 294 localities in North Kivu and South Kivu, Ituri and Katanga.¹¹

31. Since 2006, the cluster approach has been introduced in the Democratic Republic of the Congo in pursuance of the reform of the humanitarian sector and with the aim of making the humanitarian response more effective and predictable. In this context, UNHCR has been entrusted with the protection mandate, with particular responsibility for the working group on protection, jointly with MONUC. This working group on protection meets in Kinshasa at the national level, and devolved units have been set up in various provinces. The Representative was able to attend a meeting of the national group on protection and met the members of the other protection groups in Goma and Bukavu. He was able to observe that the work of the protection group was essentially, if not exclusively, focused on protection against violence and exploitation.

32. One of the principal aspects of the work of the protection group is its close relations with the military wing of MONUC, designed to ensure that protection issues are brought to the attention of the armed forces, and thereby to influence the deployment of troops and improve the protection of civilians. According to an assessment of its operations in the Democratic Republic of the Congo carried out in September 2007, UNHCR concluded that this approach led to genuine results, in particular the deployment of mobile MONUC brigades to places where violations had been reported, or which had been identified as risk areas from the viewpoint of protection of individuals. Moreover, this close dialogue has also made it possible to sideline certain FARDC commanders who committed human rights violations against civilians, but also to establish security and facilitate access by humanitarian organizations to the areas in which military operations were taking place. This positive assessment was confirmed by many people to whom the Representative spoke during his mission.

33. The Representative also found that the human rights division of MONUC was largely inactive in relation to the protection of displaced persons. In reply to his questions on this subject, he was told that the civilian affairs section represented MONUC in this framework, in keeping with a distinction drawn between large-scale violations and individual violations of

¹¹ Pour plus d'informations sur les programmes RRM et PEAR, voir notamment le Plan d'action humanitaire 2008 pour la République démocratique du Congo.

human rights. The fact that the working group on protection had no access to the information held by the human rights division and its expertise was a problematic consequence of that distinction.

34. The Representative was able to observe during these discussions with various parties, particularly representatives of international civil society, that the fact that, in keeping with the mandate given to the United Nations mission, MONUC was associated with the FARDC, who are responsible for a large share of violations of human rights, particularly those of women, could become a source of difficulties. It was mentioned that the fact that MONUC is jointly heading the working group on protection might have an impact on the ability of the working group to take independent decisions in relation to advocacy. In addition, although specific examples were not brought to its attention, the impartiality of humanitarian activities might, in the view of some observers, be called into question when one of the parties involved provides support to one of the warring parties. Furthermore, in the event of a deterioration in the situation, some humanitarian personnel might become victims of this confusion in categories.

35. Following his mission, the Representative concluded that the working group on protection is operational both at the central and at the local level. He noted that, in keeping with its mandate to protect the civilian population, MONUC, through the deployment of troops, has in many cases facilitated or even enabled humanitarian access and stabilized the security situation, thus making an extremely important contribution to the protection of civilians, including displaced persons and returnees. In general, he considers that the working group on protection should continue to support the protection activities of the military wing of MONUC and cooperate with it. However, he wishes to emphasize the need to uphold the fundamental distinction between humanitarian action and military action at all times, and encourages all practices aimed at broadening protection activities, on the operational level, beyond this coordination with the armed forces. In this regard, he considers that greater involvement by the MONUC human rights division would certainly help to provide a fuller view of these issues.

36. With regard to humanitarian assistance, the Representative notes the presence of a considerable number of international humanitarian organizations and the important work they are accomplishing in the Democratic Republic of the Congo. He also takes note of the humanitarian action plan for 2008 which specifies five areas for priority action - mortality and morbidity, nutrition, protection, internally displaced persons and returnees. This flexible strategy makes it possible to respond to the humanitarian crises throughout the country and concentrate the still very limited resources on immediate needs. He also noted that, although the vast majority of displaced persons are living with host families (the estimated proportion in South Kivu is 97 per cent), the aid is mainly sent to the displaced persons' camps, whether informal or organized. The host communities and families receive comparatively little aid, although many of them are overwhelmed by the burden of supporting the new arrivals, and are often unable to do more.

37. Lastly, having received information concerning displaced persons to whom the humanitarian organizations had not yet had access, as in the mountains around Minova, in the north of South Kivu, the Representative considers that the humanitarian agencies have a duty, taking into account MONUC's particularly substantial logistical capabilities, to do their utmost

to provide the persons concerned with assistance and protection. Although the presence of humanitarian personnel and the support of donors for humanitarian assistance are important, access to many displaced persons is often interrupted and sometimes impossible owing to a lack of roads or insecurity in certain regions. In South Kivu, for example, only 60 per cent of the identified beneficiaries received assistance in 2007, and many of these received food aid only once. It is also generally recognized that there are an unknown number of displaced persons who are thought to be eligible for assistance, but that they have not been identified because of the inaccessibility of much of the province.

III. PROTECTION OF DISPLACED PERSONS

A. Protection against displacement

38. Following the Conference for Peace, Security and Development in North and South Kivu, the Representative was informed of a period of calm in the security situation in the eastern regions of the Democratic Republic of the Congo. Nevertheless, the ceasefire, which is an integral part of the statements of commitment signed in January 2008, remains fragile, and stability has not yet been assured. The Representative was informed of new displacements following localized clashes. For example, it was reported that, in the night of 11-12 March 2008, seven civilians were killed during an attack on their village of Kibabi in the area of Masisi in North Kivu. Six other persons, including two children, are said to have been wounded during the attack, and an unknown number of local inhabitants fled the area.

39. The Representative is also concerned at reports received from other regions of the Democratic Republic of the Congo where there is a risk that intercommunal violence will generate new waves of displacement. In the province of Bas-Congo, for example, over 24 people lost their lives in clashes between the members of a religious sect and the security forces. The Representative is particularly disturbed at the fact that humanitarian personnel were unable to gain access to these groups and assess their need for assistance.

40. The climate of insecurity prevailing in these regions, the conduct of the security forces and in particular the still near-total impunity they enjoy are also factors which trigger further displacements. In this context, the Representative points out that every human being has the right to be protected against being arbitrarily displaced from his or her home or place of habitual residence, and that arbitrary displacements are prohibited. It is incumbent on the authorities to respect their obligations under international human rights law and international humanitarian law. Armed groups are also bound by the fundamental principles of humanitarian law.

41. The extent of the territory, logistical difficulties in a country where road infrastructure is almost non-existent, but also security issues, make it difficult to maintain a United Nations presence throughout the areas concerned so that the civilian population can be effectively protected. Nevertheless, expanded deployment of the mobile brigades and the broadening of their areas of action, which currently often seem to be limited to the main highways, as well as a boosted presence of international and local humanitarian personnel and the civilian/human rights component of MONUC in the high-risk areas would make it possible to regularly monitor local situations and violations, and perhaps to prevent further displacements.

42. In the medium term, the Representative is concerned at the potentially devastating impact of military operations undertaken in the context of the implementation of the Nairobi communiqué on the protection of population groups. This communiqué, which deals essentially with the situation of foreign groups which are located on Congolese soil, makes provision for efforts to persuade the members of these armed groups to return to their countries of origin, or, as a last resort, the disbandment of the groups. If this last option were to be implemented, the Representative is concerned about the consequences for civilians and further displacements which would certainly be triggered by an offensive against the FDLR, for example. Many of the persons to whom the Representative spoke, mainly in humanitarian circles but also among the displaced population, expressed their concern in this regard. They repeatedly emphasized that the implementation of the Nairobi communiqué, but also the Goma statements of commitment, should be based on a constructive dialogue and be limited to peaceful means. This dialogue demands first and foremost political will on the part of all those involved, including the FDLR. The Representative is particularly concerned at the threats that the FDLR would turn on the civilian population if military operations were to be conducted against them. Such behaviour would not only breach Principle 6 of the Guiding Principles, but would also constitute a war crime and a crime against humanity.

B. Protection during displacement

43. Following this first mission, the Representative notes that the Democratic Republic of the Congo, and particularly the eastern regions, are experiencing a serious protection crisis and a serious humanitarian crisis. Most of the displaced persons (some 70 per cent) are living in host families or communities, but observers have noted the recent emergence of informal sites. OCHA estimates that in North Kivu, 30 per cent of the newly displaced persons are living in informal sites or in more organized camps. This phenomenon stems from the large-scale arrival of newly displaced persons during 2007, but also the longer duration of displacement and the fact that the absorption capacity of the host families has diminished markedly.

44. Traditionally, displaced persons found refuge within a radius of 15 to 30 kilometres from their original homes. Recently, as a result of the violence and fighting, civilians have fled further and further away in search of refuge and safety. Many people have had to run away several times as the fighting has drawn closer. The Representative met a teacher in Goma who explained that after first fleeing his village in Masisi in 1997 as a result of inter-ethnic tensions, in the next 10 years he had fled in succession from clashes between Kabila and the Interahamwe, between the Mai Mai and the Interahamwe and between the dissident general Nkunda and the government forces.

1. Rights related to security and physical integrity

45. Apart from the risk of finding themselves in the midst of the fighting when attacks occur, displaced persons are exposed to attacks by armed groups but also by the FARDC, who in some cases try to steal their meagre possessions. For example, the Representative was told that last November, displaced persons who had found refuge in camps around Goma, and who had fled once again from heavy FARDC gunfire during an FARDC operation, discovered on their return that the few possessions they had, in particular plastic tarpaulins donated by humanitarian organizations, had been stolen by the national security forces.

46. For fear of being intercepted and ill-treated by the members of armed groups and sometimes the FARDC, many displaced persons hide in the forest in appalling conditions. In general such displacements are short-lived and the persons concerned return to their villages once the hostilities have ceased. However, in some localities, the continued presence of armed groups, especially foreign groups, prevent the displaced persons from returning. According to statements by several displaced persons, deaths have occurred in these circumstances, in particular because of malnutrition and the unavailability of medical treatment.

47. The very location of some camps presents substantial threats to the physical safety of displaced persons. MUGUNGA II camp, close to Goma, which houses nearly 200,000 persons, is located a few kilometres below an FARDC position, and hence runs the risk of being caught in crossfire.

48. The question of the preservation of the civilian character of the displaced persons' camps and sites is also of considerable importance, in the Representative's view. He is concerned at reports of the presence of members of the FARDC and armed groups in the camps. In the MUNGUNGA I and II camps, some reports indicate that displaced persons are sometimes forced to carry soldiers' belongings and build camps for them, and that displaced children are obliged to bring them water. Cases of forcible recruitment of children and young people have also been reported. It is said that women regularly fall victim to rape and other sexual violence when they go to look for wood, for example.

49. Displaced persons living in host families also face specific security problems. The Representative was told that in the area of Rutshuru, displaced persons had left the families with whom they were living as a result of growing tension stemming in particular from lengthy cohabitation and lack of space, but also because of competition for resources. In other communities, displaced persons are reported to have been accused of collaboration with armed groups.

2. Rights related to basic needs and other economic and social rights

50. According to reports reaching the Representative, most of the displaced persons live in host families, and to a lesser extent in informal camps or sites, located for the most part in North Kivu. As the Representative was able to observe during his visits to the field, displaced persons are living in complete destitution, in many cases having lost their homes and with no access to drinking water, health care or decent clothing. The displaced persons often have no access to health infrastructure, either because of the distance involved or because of economic constraints. In addition, the health system has been severely affected by the successive wars, and many health centres have been destroyed or looted by the warring parties.

51. In many cases, the displaced persons are living in conditions of considerable food insecurity, in particular because often they no longer have access to their fields. Several harvests have been lost as a result of the conflict. Agricultural output is estimated to have dropped by around 35 per cent in North Kivu. Moreover, when they do have access to food aid, such aid is distributed only for a limited period of three months, renewable once, with no prospect of alternative options. In some areas, cases of severe malnutrition have reappeared and 60 per cent of the total population suffer from malnutrition.

52. Where housing is concerned, the Representative is concerned about the vulnerable conditions in which displaced persons are living, especially in spontaneous settlements. For example, in Minova, the huts are made of mud and straw and measure barely four or five square metres. They provide no protection against the rain in a region well known for its high rainfall.

53. Because of their special vulnerability, the loss of their possessions, their inability to farm their land or the loss of jobs or any other income-generating activities, displaced persons suffer particularly from the growing impoverishment which is affecting the whole of Congolese society, and especially host families and communities. In this regard, the Representative regrets that little has been done to enable displaced persons to take their fate into their own hands and thereby lighten the burden on host families.

54. Where education is concerned, school courses have been seriously disrupted. In addition, many schools have been taken over by displaced persons. The Representative's attention was also drawn many times to the economic constraints encountered by displaced persons in this area. Even if education is officially free in the Democratic Republic of the Congo, parents are expected to contribute to teachers' salaries, and displaced persons often cannot afford such expenses. In addition, no schools have been set up in the camps so as to encourage contacts and dialogue with the host communities and prevent excessive marginalization of the displaced persons. However, economic difficulties and often considerations of distance mean that many displaced children living in camps have no access to education.

55. The Representative reminds the Government that, in accordance with the Guiding Principles, all displaced persons have the right to an adequate standard of living and that at the minimum, the authorities must provide them with, or ensure access to, essential food, housing, decent clothing and essential medical services and sanitation (Principle 18).

3. Civil and political rights

56. A considerable number of displaced persons in the Democratic Republic of the Congo have lost the voters' cards which also serve as identity cards. Displaced persons who do not have these cards are much more vulnerable as a result and regularly suffer harassment at the hands of the security forces at checkpoints. They are sometimes arrested illegally or accused of belonging to the armed groups.

57. In addition, looking forward to the local elections scheduled for 2008, this situation, combined with the fact that many displaced persons will have been unable to return to their homes, threatens to deprive the displaced persons of the opportunity to exercise their right to vote or the right to register on the electoral rolls and thus participate in taking decisions concerning their future and that of their country. According to Guiding Principle 20, every human being has the right to recognition everywhere as a person before the law, and to give effect to this right, the authorities concerned shall issue to displaced persons the documents they need. And Principle 20 adds that displaced persons have 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. The Representative recommends, as a transitional measure, that consideration

should be given to the possibility of distributing duplicate voters' cards. If this suggestion was adopted, it would of course need to be accompanied by an information campaign directed at displaced persons explaining how to obtain the duplicates.

58. The fact that neither the State nor the administration have any presence in many areas also has adverse consequences for displaced persons. In particular, the lack of access to the judicial system in some localities fosters the culture of impunity in the country.

C. Protection in the context of the search for a durable solution

59. In keeping with Guiding Principle 28, which is cited in the Great Lakes Protocol on protection and assistance to internally displaced persons, the authorities have the duty and responsibility to establish conditions which allow displaced persons to return voluntarily, safely and with dignity, or to resettle voluntarily in another part of the country. Principle 29 adds that the authorities have the duty and responsibility to assist returnees and/or resettled persons to recover, to the extent possible, their property and possessions which they left behind or were dispossessed of upon their displacement.

60. All those with whom the Representative held discussions, and particularly the displaced persons, emphasized the determination of all displaced persons to return to their places of habitual residence. The Representative is encouraged to note that some (nearly 1 million persons according to estimates by the international community) have already returned in Katanga, Ituri and to a lesser extent in the regions of Kivu. Nevertheless, in the regions of Kivu in particular, many displaced persons he met said that for the time being the conditions have not been met, especially in terms of security, which would allow them to contemplate returning home. Many of the people he met, particularly displaced women, mentioned not only the risk of being subjected to acts of violence, including rape, but also the lack of infrastructure in the areas of return, including schools for their children's education. The destruction of houses, the special situation of certain displaced persons such as female heads of families, but also the lack of official machinery, especially in the judicial field, should also be taken into account.

61. Although the Representative recognizes that, in the current situation in the east of the country, it is not possible to envisage large-scale returns, he considers that the signature of the Goma statements of commitment might potentially open the way to pacification of these regions, and thus to the possible return of those displaced persons who so wish to their original localities. In that regard, the Representative wishes to state that experience has shown that, if the return of the displaced persons is to be successful, three conditions must necessarily be met: security, the restitution of property and the creation of an environment which will enable those concerned to live in decent conditions. In this context, he welcomes the fact that the Goma statements of commitment and the Amani programme derived from them provide for the establishment of a humanitarian and social subcommission to deal, inter alia, with the issues facing internally displaced persons, as well as a technical commission for stabilization and reconstruction with the task of mobilizing human, material and technical resources for the implementation of the plans for the reconstruction of the provinces of North and South Kivu. However, he also notes that these documents do not contain any specific provisions concerning the search for durable solutions for the displaced persons.

62. The Representative welcomes the fact that in MONUC there is also a resolve to do everything possible to create an environment where the population would feel at ease and the displaced persons encouraged to return home.¹² In particular, the Special Representative of the Secretary-General for the Democratic Republic of the Congo recently announced that MONUC, in cooperation with its United Nations partners, had drawn up a support strategy for security and stabilization in the east of the Democratic Republic of the Congo. Nevertheless, the Representative wishes to encourage all concerned to work as hard as possible to coordinate activities planned under the various initiatives for the implementation of durable solutions for the displaced persons. A joint plan for return and early recovery which contains clear objectives and systems for the evaluation of its implementation should also be planned.

63. Pending the implementation of this ambitious programme, the Representative considers that voluntary return is already possible in some cases, and he urges the competent authorities, in close cooperation with the humanitarian organizations, to support this process in particular through the granting of transitional humanitarian aid and implementing projects for early recovery and development in the communities concerned. Considering that at this stage efforts in support of the returnees are inadequate, in particular owing to the lack of funding in this area, the Representative calls on all concerned, especially the donors, to boost their efforts to this end. The Representative considers that without substantial support for the return or resettlement of the displaced persons, it may be difficult to find durable solutions for their situation, which might lead to adverse consequences in terms of the process of peacebuilding. It is therefore vital to strengthen the presence of the agencies and organizations working in this field. In this context, greater involvement by the development agencies, and particularly the United Nations Development Programme (UNDP), should be given serious consideration.

64. The Representative also wishes to underline the importance of consulting the displaced persons in the search for durable solutions to their situations. The Government should encourage and facilitate their participation in the planning and implementation of programmes designed to meet their needs, and this would also greatly enhance the effectiveness of such programmes.

65. Lastly, the Representative has noted that in some regions - in particular Ituri and the territory of Masisi - there is a high risk of intercommunal tension linked in some cases to the resurgence of land-related problems. He strongly recommends, in order that the return should be sustainable, that efforts directed towards reconciliation and transitional justice should be undertaken.

D. Women and children: categories of displaced persons with special protection needs

66. As in many conflicts, displaced children in the Democratic Republic of the Congo suffer to a greater extent from the difficulties which must be overcome by the whole of the displaced

¹² Propos de Ross Mountain, Représentant spécial adjoint du Secrétaire général des Nations Unies et Coordonnateur résident du système des Nations Unies en République démocratique du Congo cité par Hem Okaré, «Ross Moutain: l'Ituri est sur le bon chemin», 13 mars 2008, <http://www.monuc.org/News.aspx?newsID=16881>.

population. In addition, they are denied certain rights which are specific to children, such as the right to education. The Representative is particularly concerned at reports of the forcible recruitment of children and young people by armed groups. He himself spoke to two young teenagers he met in Bohimba camp, near Goma, who told him how members of the group led by the dissident general Nkunda had surrounded a school for the purpose of forcibly recruiting the pupils. During the attack, some of them were killed and others wounded.

67. The Representative notes that the Goma statements of commitment, reiterating the principles of humanitarian law set out in Principle 13, for example, strictly forbid the recruitment of children. In this context, he encourages the parties to the conflict to respect this provision and calls on all concerned to respect their obligations under international humanitarian law and urgently embark on the demobilization of children and refrain from any attempt to recruit them into armed groups. He calls on the international organizations concerned to assign priority to this issue.

68. Where women are concerned, the Representative joins all those who have already expressed their concern at the near-systematic acts of sexual violence which they continue to suffer. For example, there were 5,470 cases of sexual violence in South Kivu in the first half of 2007, and 4,997 victims of sexual violence were identified in 2007 in Ituri. Displaced women whom the Representative met, particularly in the three camps he visited near Goma, confirmed that many cases are not reported, owing to the social stigma attached to victims and the prevailing impunity in the country.

69. The forcible recruitment of children and the number of rapes not only cause forced displacement and pose a risk for the women and children concerned, but also constitute a major obstacle preventing displaced persons from returning home.

70. The Representative wishes to point out that the Special Rapporteur on violence against women submitted a detailed report to the Human Rights Council following the mission she carried out in July 2007 (A/HRC/7/6/Add.4).

IV. CONCLUSIONS AND RECOMMENDATIONS

71. Following this first mission in the Democratic Republic of the Congo, the Representative concludes that this country is experiencing a serious protection crisis and a serious humanitarian crisis, particularly in its eastern region, highlighted inter alia by the very large numbers of internally displaced persons. He considers that the adoption of peaceful solutions to the present conflicts, the renunciation of violence, scrupulous respect by all concerned for human rights and the guarantees set out in humanitarian law and an unflinching commitment to combat impunity are essential in order to put an end to the serious violations of human rights suffered by the displaced persons in the eastern part of the Democratic Republic of the Congo.

72. The Representative calls on all the parties to implement without delay and with unflinching political commitment the statements of commitment signed at the Conference for Peace, Stability and Development in North and South Kivu, held in Goma from 6 to 23 January 2008, as well as the November 2007 Nairobi communiqué. In particular, he

considers that continued dialogue is the only way out of the conflict affecting the country, and that any resort to arms would lead to disastrous consequences for the civilian population, especially the hundreds of thousands of persons who have already been displaced or who would be forced to flee as a result of such operations.

73. In order to provide displaced persons in the Democratic Republic of the Congo with assistance and protection in the context of a durable solution to the issue of displacement in this country - a prerequisite for peacebuilding - the Representative recommends a strategy focusing simultaneously on continued political dialogue between the Government and the various armed groups and the other parties concerned and the strengthening of humanitarian assistance and activities for the protection of the displaced population, as well as early recovery measures where returns are already under way or can be contemplated.

74. The Representative points out that, in keeping with the Guiding Principles, the State has primary responsibility for protecting its citizens, and that it is incumbent upon it to take all measures to ensure the protection of the civilian population. He also draws attention to the role and responsibility of the international community in supporting the Government in its efforts.

75. In particular, he makes the following recommendations:

(a) Addressed to the Government:

- (i) The Representative emphasizes the need to respect the fundamental distinction between combatants and civilians when planning and carrying out security operations, and to refrain from any act prohibited by international humanitarian law and international human rights law. In this context, he encourages the authorities to launch without delay a systematic programme, supported by MONUC, to promote training and awareness in international humanitarian law and human rights for members of the security forces, especially the rights of displaced persons as contained in the Guiding Principles on Internal Displacement.**
- (ii) Given the many violations of human rights of which certain members of the armed forces are accused, particularly where violence against women is concerned, the Representative recommends more vigorous efforts to combat impunity, by means of investigations and by bringing the main perpetrators of such violations to justice and guaranteeing the right of victims to justice and reparation.**
- (iii) The Representative recommends that the Government, with substantial support from MONUC, should engage in the following activities:**
 - Reconciliation, in particular between ethnic communities**

- **Transitional justice and efforts to combat impunity**
 - **Settlement of land-related disputes**
- (iv) **The Representative calls on the Government to take the necessary steps so that all displaced persons can participate in the local elections scheduled for this year, in particular by ensuring the replacement of voters' cards lost during displacement, the transport of displaced persons to their original localities, the organization of voting in the place of displacement or any other step in keeping with international standards which will enable the displaced persons to exercise their right to vote.**
- (v) **The Representative recommends that, in keeping with the Protocol on Protection and Assistance to Internally Displaced Persons adopted at the International Conference on the Great Lakes Region, the Guiding Principles on Internal Displacement should be incorporated into their legal systems and that, with support from MONUC and the organizations concerned, a legislative framework, a strategy and a plan of action for the implementation of the obligations stemming from those Principles should be drawn up.**
- (b) **Addressed to the armed groups:**
- (i) **The Representative points out that the armed groups have an obligation to respect international humanitarian law, in particular the fundamental distinction between combatants and civilians, and should refrain from any act prohibited by international humanitarian law, such as making use of the civilian population as a base for their actions, recruiting children into their ranks and exposing the civilian population to the risk of reprisals.**
 - (ii) **The Representative calls for the disarming and immediate rehabilitation of child soldiers.**
- (c) **Addressed to the international community and donors:**
- (i) **The Representative encourages the international community to continue to provide substantial and sustained support to assistance and protection programmes for displaced persons in the Democratic Republic of the Congo. He encourages the humanitarian organizations to broaden the support provided to host communities which are overwhelmed by the presence of displaced persons.**
 - (ii) **The Representative recommends proactive engagement in activities for economic reintegration, relaunching of basic services and development in regions of return. In this context, he emphasizes the importance of sustainability of returns and its economic and developmental aspects as a key contribution to reconciliation and peacebuilding.**

- (iii) The Representative also encourages efforts to boost the activities of the humanitarian agencies in the field, in particular by using all means to strengthen the humanitarian presence and gain access to the displaced groups which are located furthest from the centres, many of whom are highly marginalized and have been unable to benefit from humanitarian aid.**
- (iv) The Representative recommends that, as far as possible, humanitarian aid should be better adapted to the needs of the displaced populations, in particular by taking into account the specific food requirements of young children. Where non-food items are concerned, an additional effort should be made, in particular by supplying tools and seeds so as to enable the displaced persons to continue farming, and by developing other activities related to early recovery.**
- (v) The Representative recommends cooperation with the Government to train and heighten the awareness of the security forces, in particular as concerns international humanitarian law, human rights and the Guiding Principles on Internal Displacement. At the same time, he encourages MONUC to launch a systematic programme to train and foster awareness among its military contingents concerning international humanitarian law and human rights, in particular the rights of displaced persons as contained in the Guiding Principles on Internal Displacement.**
- (vi) The Representative recommends that the working group on protection should continue to support the protection-related activities of the military wing of MONUC and cooperate with it, but at the same time to uphold the distinction between humanitarian action and military action and not limit its protection activities to such coordination, but strive to better operationalize the protection of displaced persons and returnees in non-military fields.**
