



Representative of the Secretary-General on the Human Rights of Internally Displaced Persons, Mr. Walter Kaelin

Human Rights of Internally Displaced Persons in Haiti:
Memorandum based on a Working Visit to Port-au-Prince (12-16 October 2010)

1. This memorandum contains conclusions and observations of the Representative of the Secretary-General on the Human Rights of Internally Displaced Persons (the Representative) on how to improve the protection of those internally displaced by the earthquake of 12 January 2010 and make progress towards durable solutions for them. It stresses that while the scale of the disaster, which struck against the backdrop of a chronic crisis, creates unique complexities and dilemmas, more could have been, and can be done to improve the situation with decision-making driven by pragmatism and due regard to human rights implications.
2. The memorandum is based on a working visit the Representative carried out from 12 to 16 October 2010 in accordance with his mandate. The Representative appreciated the opportunity to discuss the situation with representatives of the Government of Haiti, notably the Ministers of Foreign Affairs, Interior and Justice, the United Nations, donors, national and international civil society organizations and, most importantly, people affected by the earthquake living in camps and *bidonvilles* of greater Port-au-Prince.
3. Given the numbers of IDPs and the complexity of problems in a metropolitan setting, the Representative focused his visit on the greater Port-au-Prince area. He would like to acknowledge that large numbers of people were affected outside Port-au-Prince, notably in and around Léogâne and Jacmel, who deserve equal attention by the Government, humanitarian and development actors. Not all recommendations contained in this report may be appropriate for dealing with the challenges in those less densely populated areas.
4. The Representative would like to thank MINUSTAH and the Humanitarian Country Team for the support provided to him during the course of the visit.

I. A crisis within a crisis: An overview of the current situation

5. When the earthquake struck on 12 January 2010, Port-au-Prince, and Haiti generally, had been already in a deep socioeconomic, institutional and humanitarian crisis. More than half of Haiti's population (55 percent) was living in extreme poverty on less than USD 1.25 per day and more than half of all children were under-nourished.¹ The majority of the population lacked access to clean water.² Unemployment was estimated to be at

¹ Office of the Special Envoy for Haiti, Key Statistics (2010).

² Shortly before this memorandum was finalized, a cholera epidemic broke out in St. Marc, located in northern Haiti well outside the earthquake affected area.

80 percent. 90 percent of the school system and most health services were run by private entrepreneurs or charitable organizations. The country ranked 149th among 182 countries listed on the 2009 United Nations Human Development Index.

6. The collapse of the agricultural sector in the 1980s created a massive internal migration to the capital. The poorest among the new arrivals settled in shanty towns in low lying areas or constructed in dangerous ravine areas. Building planning and safety standards were no longer enforced; basic services collapsed. In 2009, a UNHABITAT study concluded that the “Haitian state and the city authorities do not have the capacity to manage metropolitan Port-au-Prince.”³ At the time of the earthquake, highly densely populated informal settlements, hosted 80 percent of the population on 20 percent of the available urban land.⁴

7. Not least due to the massive urban planning deficits, the earthquake wreaked such enormous destruction. According to official figures, it killed more than 220,000 people and injured more than 300,000. It destroyed or badly damaged large parts of the city’s public infrastructure and more than 180,000 private residences, especially in lower middle class neighborhoods as well as in poor neighborhoods constructed in ravine areas. It is estimated that 80 percent of those who lost their home in the earthquake had either rented their accommodation or had de facto occupancy rights without formal title to ownership. Other people, who may not have lost a home, especially Haitians living in extreme poverty, have also been affected in less visible ways. People lost their jobs and livelihood opportunities, rent became unaffordable due to the sudden imbalance of supply and demand, or people lost their remaining access to education and health, because public infrastructure was destroyed.⁵

8. In the initial aftermath of the earthquake, a large part of the population became displaced, because their homes were destroyed or they feared returning due to frequent aftershocks.

9. About 600,000 people fled the earthquake affected area altogether and were hosted by family members or friends. Few programmes to assist these internally displaced persons (IDPs) and their hosts were launched and by now most have returned.⁶ Visiting Cité Soleil, the Representative also met some IDPs who had chosen to set up shacks away from visible camps.

³ UNHABITAT, Strategic Citywide Spatial Planning: A Situational Analysis of Metropolitan Port-au-Prince, Haiti (2009), p. 6.

⁴ Figures provided by UNHABITAT.

⁵ 30 out of 49 hospitals in the earthquake affected region were destroyed or so badly damaged that they need to be rebuilt.

⁶ According to a survey using mobile phone tracking data about 250,000 Port-au-Prince inhabitants were still staying outside the city in June 2010. See Karolinska Institute / Columbia University, Internal Population Displacement in Haiti: Preliminary analyses of movement patterns of Digicel mobile phones: 1 December 2009 to 18 June 2010 (August 2010). It is widely assumed that this number further decreased with the reopening of schools in Port-au-Prince.

10. The displaced population who remained in Port-au-Prince spontaneously regrouped in the few open spaces of land remaining in the densely populated metropolitan area. Nine months after the earthquakes, these “camps”⁷ have now become fixtures. It is officially estimated that there are 1.3 million people in more than 1,300 camps throughout the earthquake affected area. Over 900 of these sites are located in Port-au-Prince. Some camps have several tens of thousands of inhabitants, bringing together people from different neighborhoods. However, the majority of sites have less than 2000 inhabitants who usually come from the neighborhood surrounding the open space where the site formed. Overall, most people without shelter still live in their own neighborhood,⁸ which has important implications for reconstruction planning.

11. Conditions in the camps vary widely depending on who supports the camp and in many places they still fall short of the SPHERE minimum humanitarian standards, especially with regard to water, sanitation and shelter space. Nine months into the response, shortages have become increasingly visible as emergency actors shift to other countries in crisis without others replacing them in Haiti. Pre-existing problems of violence and exploitation, including sexual violence and exploitation, are being replicated in the camps. Many camps are also said to have a youth gang presence.

12. The Caribbean hurricane season (July-December) poses a serious safety hazard for camp populations sheltered only by tarps and tents.⁹ On 24 September 2010, a comparatively weak tropical storm affected shelter of more than 14,000 families. The United Nations estimate that more than half of all camps are at extreme risk (120 camps) or high risk (600) in the case of a hurricane and has initiated mitigation measures in some camps. The extreme congestion of many camps creates additional fire and public health hazards.

13. It is widely acknowledged that the camp population by now consists of a mix of inhabitants. Many are IDPs who lost their homes and have no shelter alternative. Others are escaping pre-existing levels of extreme poverty exacerbated by the earthquake. In some cases, families have established a second residence in a camp as a coping strategy. The actual break-down between camp residents with and without alternative shelter is not known¹⁰ and varies between sites. Camps located in the poor *bidonvilles* tend to have a higher number of residents with alternative shelter, although in many such instances the alternative shelter may be no better than or even worse than the camp option.

⁷ The term “camp”, although widely used in the Haitian context, is somewhat of a misnomer since the sites where spontaneously formed and are in many places mere extensions of the neighborhoods from which inhabitants originate.

⁸ According to the UNFPA Internal Migration Survey, conducted in October 2010, 12.1% of the population of Port-au-Prince lives in shelter in the same neighborhood, whereas 10.8% live in shelter located in another neighborhood.

⁹ The Colorado State University Tropical Meteorological Project estimates that there is a 37% chance that a hurricane passes Haiti within 50 miles and 21% that it falls on land. See USAID, Hurricane Season Food Security Alert, 22 June 2010.

¹⁰ This may have been avoided, had camp populations been asked to present themselves in their places of origin for registration, which would have been feasible in an urban area.

14. The camps are poles of attraction since they provide free living space for people who can no longer afford rent. Better managed camps also offer services not available in many *bidonvilles*, including potable water and sanitation, health services and, in certain cases, free education.¹¹ Camps often also offer better access to livelihood opportunities, due to cash for work programmes targeting camps and, in relation to some of the biggest camps, their location in the centre of town. Furthermore, there is a widespread perception among camp residents that they will be given land and a home if they hold out long enough.

15. The reconstruction has hardly started. Building on the Government's National Plan of Reconstruction, an Interim Haiti Recovery Commission (IHRC), co-chaired by the Prime Minister of Haiti and President Bill Clinton, has started approving large-scale projects, although some key donors have been slow in disbursing tranches of the reconstruction funds pledged for 2010 in the aftermath of the catastrophe.¹²

16. There has been very little progress in setting the displaced population on a path to durable solutions by providing safer shelter. Exactly nine months after the earthquake, a mere 17,194 transitional shelters had been constructed.¹³ Capacity to build far more transitional shelter is in place, but there is lack of suitable land that is free of rubble and contested ownership claims to place them on and the Government has been very reluctant to resort to expropriations or declarations of eminent domain. Meanwhile, programmes to repair the so-called "yellow" houses¹⁴ are moving only haltingly due to ongoing negotiations over acceptable standards.

17. Underlying the lack of progress towards safer shelter is a larger failure on the part of the Government of Haiti to formulate and communicate to the public a plan on how to deal with the camps. This also affects the work of the IHRC on the subject. With the first round of presidential and parliamentary elections scheduled for 28 November 2010, there is concern that no plan regarding the camps will be adopted before a new Government is in place in the early spring of 2011.

18. This failure also reflects rifts between different strata of Haitian society and among international partners. Initially the desire not to recreate informality and "decongest" the city dominated the discourse. Some proposals generated in debates on the ground foresaw the relocation of large numbers of people to newly constructed large settlements around Port-au-Prince or in secondary cities, but were often criticized as driven by speculative interests. These initial proposals have gradually given way to a vision, which places greater emphasis on return, while building back better and resettling only where necessary.

¹¹ The Water, Sanitation and Hygiene Cluster, for instance, estimates that latrine coverage, though below SPHERE minimum humanitarian standards in the camp is higher than in poor areas before the earthquake.

¹² For an overview of figures see Office of the Special Envoy for Haiti, International Assistance to Haiti: Key Facts as of 30 September 2010.

¹³ Shelter Cluster, 11 October 2010.

¹⁴ By 20 September, 270,476 buildings, including 156,360 residences had been assessed by the Ministry of Public Works: 51% (137,392) were considered safe for occupation ("green"), 26% (70,521) were repairable ("yellow") and only 22% (58,860) not salvageable ("red").

19. In addition to a number of smaller non-governmental initiatives, two large-scale ad hoc initiatives have been taken to find at least transitional solutions for displaced populations. In early spring, the Government and international military and humanitarian actors focused attention to evacuating or relocating up to 250,000 people from sites declared to be at “high risk” of natural hazards to areas outside the city. Following a reassessment of actual risk and related mitigation options, only about 6,000 people were moved to the newly constructed Corail Site constructed on land at the outskirts of Port-au-Prince the Government had made available by declaring eminent domain over it.

20. When the Representative visited the Corail site, many of these relocated were still waiting in Corail, to move from their tattered tents into transitional homes that were being built on the site. This relocation plan, the original dimensions of which were widely reported in the media, has fostered expectations among camp residents across the city of eventually receiving land. It is telling that about 20,000-40,000 people have spontaneously set up shacks on land around the Corail Site even though the barren area offers virtually no sustainable livelihood opportunities.

21. In May 2010, the President of Haiti formed an ad hoc Bureau on Relocations to find solutions for some of the largest camps, notably those in and around Champ de Mars, the district where the Presidential Palace and most State ministries are located. The Bureau has launched a project to remove rubble and reconstruct the Fort National area, from where many of the IDPs living in the Champ de Mars are assumed to come from. The Representative was informed that the presidential Bureau plans to prioritize the reconstruction of about 20 neighborhoods.

22. Many camps are located on private land. Due to the lack of progress in finding alternative solutions for the camps and the related lack of public communication, many landowners fear losing their land and have exerted pressure on IDPs to leave. Some have paid IDPs small sums to move, but without offering alternative land, effectively shifting the problem elsewhere. However, forced evictions, either through the regular procedures foreseen by Haitian law or by way of threats and use of illegal violence by gangs and in some reported cases municipal or police agents, are also on the rise. Senior government officials reportedly engage discretely with private landowners to lessen eviction pressures. However, despite repeated requests accompanied by practical proposals from relevant United Nations entities, the Government has not adopted, let alone publicly communicated, any official policy on how to deal with evictions. Observers expect an increase in evictions after the elections, when the interests of powerful landowners will have greater sway in comparison to those of the majority of the electorate.

II. Addressing the human rights of the displaced

23. In accordance with the United Nations Guiding Principles on Internal Displacement, people displaced by the earthquake retain their basic human rights, in particular:

1. The right to receive the humanitarian assistance necessary to cover their most basic needs;¹⁵
2. the right to be protected against all forms of violence, exploitation and discrimination; and
3. the right to a durable solution, including through return to their place of origin.

The Government of Haiti has the primary responsibility in respecting, protecting and ensuring these rights.¹⁶ The international presence in Haiti, including MINUSTAH, humanitarian and development actors, can assist the Government in discharging its responsibility, but cannot substitute for it. The Representative sees five major challenges related to IDPs' rights that need to be addressed:

1. The humanitarian assistance dilemma

24. Haiti is a humanitarian crisis that needs a development solution. Without development through intelligent reconstruction, a majority of the population will see their basic social and economic rights not fulfilled and continue to depend on humanitarian assistance for indefinite periods of time.

Differentiating displacement and general humanitarian needs

25. Faced with overwhelming humanitarian needs across the capital, many humanitarian actors have sought to delimit their response to the camps, where needs are most visible and beneficiaries can be most conveniently reached in accordance with assistance models largely transposed from rural or armed conflict settings, where sustaining a concentration of populations in need may make more sense.

26. Nine months into the response, this has become practically and morally unsustainable. Populations in need are shaping their own coping mechanisms to address the imbalance between services and needs, by gravitating towards the camps instead of spontaneously working towards their own recovery.

27. At the same time, it is clear that camps will remain a fixture for years to come. Even if it were possible to find suitable durable solutions (return or settlement elsewhere in or outside Port-au-Prince) for the entire population of at least one camp per day it would still take close to four years to close all camps in the affected area.

28. The Representative therefore **recommends** adopting a differentiated approach. Humanitarian needs that are displacement-specific, i.e. would not exist had the persons concerned not been displaced (for instance, the need to replace worn-out shelter materials) should continue to be addressed at the camp level. However, other humanitarian needs

¹⁵ This right is derived from the rights to adequate food, water, shelter and health, as *inter alia*, enshrined in the 1966 International Covenant on Economic, Social and Cultural Rights. For more details see Report of the Representative of the Secretary General on the Human Rights of Internally Displaced Persons, A/76/282, 11 August 2010, paras. 55 – 93.

¹⁶ See Guiding Principles on Internal Displacement, Principles 3, 25 and 28.

faced by the affected population at large – livelihoods, education, health, water and sanitation – should be made available through a neighborhood approach, giving particular focus to areas where return has become possible. Smart early recovery initiatives (e.g. repairing a private school in exchange for the school accepting poor students without fee) should be given priority over unsustainable substitution measures.

Responsible humanitarian donorship and early recovery

29. Humanitarian donors have to accompany this shift of humanitarian operations through responsible humanitarian donorship. A drastic drawdown in humanitarian funding, apparently envisaged by some key donors for 2011, is likely to exacerbate the crisis and related negative coping mechanisms. This may also result in a breakdown of the minimum of social stability necessary for reconstruction and development to get underway and thereby produce the type of protracted crisis most dreaded by the humanitarian donor community.¹⁷

30. Humanitarian donors should also revisit their priorities and place greater emphasis on sectors that aim to reduce dependency. The Representative notes in this respect with serious concern that while the revised 2010 Flash Appeal for Haiti was funded at 72 percent, funding for sectors that promote alternatives to protracted dependency in camps, namely early recovery (38 percent funding) and agriculture (49 percent), clearly lagged behind.¹⁸

31. Given the scale of needs, the Representative also **recommends** to flank humanitarian measures with micro-level development initiatives to increase the income families have at their disposal to shape their own durable solutions. Conditional cash transfer programmes for poor families who have returned should be considered.¹⁹ Existing school voucher programmes could be scaled up, since low-income Haitian families are estimated to invest up to 40 percent of their disposable income into the education of their children.²⁰ Micro-credit programs focused on creating livelihood opportunities have to be expanded and existing providers, badly shaken by earthquake-related defaults might have to be refinanced. Such programs would have to be rolled out on a national scale to avert creating pull factors and support the general decentralization process.

¹⁷ The Representative recalls that the riots, which were fomented in early 2008 during the food price crisis in Haiti, led to political stalemate for most of the year.

¹⁸ See OCHA Financial Tracking System, Haiti Revised Humanitarian Appeal (January - December 2010), report as of 23 October 2010, available at: http://fts.unocha.org/reports/daily/ocha_R32sum_A893___1010221703.pdf.

¹⁹ In Colombia the *Familias en Acción* program, pays a small subsidy to mothers who ensure that their children go to school and receive regular medical check-ups. The Brazilian *Bolsa Familia* subsidy programme is based on similar conditions.

²⁰ See <http://www.haitispecialenvoy.org/reports/education>.

2. Violence, in particularly gender-based violence, and exploitation

32. Problems of violence, insecurity and youth gangs, which were serious problems in Port-au-Prince before the earthquake, have been replicated in the camps. Women's groups drew the Representative's attention to important levels of rape and gang-rape and also domestic violence in the camps, which they identified to be problems that are growing in number and brutality. Child prostitution as a negative coping mechanism is reportedly also rife in many camps.

Filling Information Gaps

33. While available hospital data does not show an increase in rape victims, this could be related to non-governmental medical organizations addressing cases. When this memorandum was finalized, the Ministry of Health and UNFPA were preparing to release a comprehensive survey on the public health situation in the camps. According to preliminary survey data provided to the Representative, 1 percent of women surveyed in the camps responded that they had been forced to have sexual relations against their will during the course of the last six months; among women aged 20-24 the figure was even 1.7 per cent. The figures are alarming, although it is difficult to assess whether this marks an increase compared to the situation before the earthquake, as no baseline survey with a comparable methodology and respondent group is available.

34. The Representative is concerned that there appears to be no unified system to record cases reported to different organizations and service providers, even though this would provide valuable indications whether victims are considering the system responsive. The Representative **recommends** that the Government identify the State authority best placed to track such violence and, with the support of the Protection Cluster/Sub-cluster on Gender-based Violence, establish a mechanism to record reported cases of sexual and gender-based violence.

35. Welcoming referral mechanisms and information resources for victims that were established, the Representative **recommends** that grassroots Haitian women's organizations that can show to be capable of providing relevant services be fully included in these mechanisms.

Projecting police presence to the camps

36. Following a joint camp security assessment, initiated by the Protection Cluster and undertaken by MINUSTAH and the Haitian National Police (PNH) in March 2010, the MINUSTAH police, military and PNH have established joint patrols as well as permanent presences in seven (soon eight) of the biggest camps. MINUSTAH informed the Representative that the 24-hour coverage rate amounted to about 40 percent of the camp population and pointed out that many additional camps benefitted from regular police patrols in neighborhoods where the camps are located.²¹ Furthermore, the PNH's

²¹ In order to free up police capacity for community patrolling, MINUSTAH military is set up to take over night patrols, while UNPOL will be responsible for the morning and afternoon/evening shifts.

Brigade for the Protection of Minors, which received special training to take up cases of violence against women and children, has been strengthened and now disposes of 65 officers. The Representative was informed that security improved significantly in camps covered by such measures, especially if they were also coupled with efforts to provide lighting and other camp infrastructure with a protective value. While acknowledging these significant achievements, the Representative **urges** MINUSTAH and the PNH to redouble efforts to further increase the coverage rate for camps and problematic neighborhoods, placing a particular emphasis on night and foot patrols. More efforts should also be made to enhance the effectiveness of police reporting mechanisms, including the “113” emergency number, and to link them with mechanisms to provide support to victims.

37. Haitian National Police officers not showing up to participate in scheduled joint patrols, especially night patrols, has been identified as a serious problem. Without the PNH, perpetrators cannot be detained and no criminal proceedings initiated. The Representative **urges** the Government to take measures to enhance the performance of the PNH. On the MINUSTAH side, police often do not speak French, let alone Haitian *Kreyol* and the Representative **recommends** hiring interpreters to close this chronic gap and to make the necessary budget allocations in this regard. The Representative welcomes the appointment of a Protection Cluster/MINUSTAH Human Rights Officer to work full-time with MINUSTAH Police and the PNH.

Ending impunity and advancing police reform

38. Impunity for violent crime remains a key problem. Apprehended perpetrators often escape punishment, because shoddy investigations do not hold up in court or perpetrators benefit from corruption in law enforcement, the judiciary and the penitentiary system. Specifically with regard to sexual and domestic violence, the gravity of such crimes is often not understood by Haitian law enforcement and justice officials on the ground. The Representative **urges** the Government to provide clear guidance in this respect.

39. Furthermore, the Representative strongly **recommends** to the Government to prioritize the reform of the police, including by instituting a police career management law and system and by following through with the police vetting process. The Representative notes with particular concern that 100 PNH agents who have been identified by MINUSTAH to have been engaged in criminal activity and whose names have been communicated to the Government have not yet been removed from the police force. Furthermore, the Representative **recommends** that the Protection Cluster launch a program to systematically monitor the progress of sexual violence prosecutions in the judicial system.

Dealing with camp “brigades”

40. Most camps have “committees” who were often formed on an ad hoc basis and without community decision when humanitarian actors sought interlocutors to assist in distributing aid. Many of these committees have set up “security brigades” to patrol

camps. Beyond providing committees with flashlights, whistles and information on how to reach the police, which is useful, some NGOs have started going a step further and started paying brigade members a small stipend to ensure their sustainability.

41. The Representative is concerned about the payment approach, which institutionalizes the brigades. Especially in larger, more heterogeneous camps, committees are unlikely to be the product of grassroots democratic decision-making and in some cases there is reason to believe that gangs have infiltrated camp brigades.²² Moreover, in Haiti (and elsewhere), even self-protection groups who are initially well-intentioned have often rapidly transformed themselves into vicious militia. The Representative would instead **urge** camp managers to link up with community policing efforts of the PNH and MINUSTAH. He also urges the *Département de la Protection Civile* to swiftly implement the Minister of Interior's stated commitment to deploy civilian officials to all camps.

Preventing electoral violence

42. The votes of camp residents are likely to have a decisive impact on many electoral races and the Representative has already received anecdotal reports of candidates trying to mislead camp residents. Recalling patterns of violence occurring in past elections, some observers have expressed concern that the election campaigns could lead to polarization and violence in the camps.

43. The Representative **urges** all candidates to conduct themselves responsibly in accordance with electoral laws and **urges** the *Conseil Electoral Provisoire* (CEP) and the judicial system to swiftly react to electoral violence and anyone inciting it and with all appropriate measures at their disposal. He also **urges** MINUSTAH and the Protection Cluster to closely monitor and report on violence and manipulation related to the election campaign.

3. Forced evictions

44. Following a period of solidarity in the initial months after the earthquake, private landowners have started making moves to reclaim land occupied by IDPs. Some owners need the land for their own reconstruction projects; others fear that IDPs will seek to impose a durable presence on their land. The Housing, Land and Property Working Group of the Protection Cluster estimates that at least 28,000 people have so far been evicted; 140,000 more face an immediate threat of eviction.

45. When evictions first emerged as a concern, from March 2010 the United Nations and other actors, including the Protection Cluster, urged the Government to adopt a policy on responding to attempted evictions, including by imposing an initial moratorium until a

²² For a study of committees and the effect on existing community solidarity structures generally cf. Marc Schuller, *Unstable Foundations: Impact of NGOs on Human Rights for Port-au-Prince's Internally Displaced People* (October 2010), available from: <http://ijdh.org/wordpress/wp-content/uploads/2010/10/Report-unstable-foundations-final-2.pdf>

comprehensive plan to relocate the camps had been devised. The Government has steadfastly rejected the call for a moratorium, with senior officials arguing that it would not have the power to enforce a moratorium in relation to illegal evictions. In response, however, the Government has not announced any alternative policy, which has only exacerbated the problem.

46. Landowners enjoy a right to property, but this right needs to be balanced with IDPs' economic and social rights. The Representative would **recommend** that the Government and the United Nations adopt and publicly endorse an approach resting on two tenets:

1. No one must be evicted from an existing camp without being provided a reasonable living alternative.
2. Evictions that do not follow all due process guarantees set out by Haitian and international law will not be tolerated and reversed, in particular evictions using violence or threats thereof.

No evictions without alternatives

47. If no compromise allowing IDPs to stay on the private property can be negotiated, people should ideally be relocated to a place where they can stay indefinitely and eventually achieve a durable solution or at least find transitional shelter. But even failing that, landowners and IDPs will often be able to work out temporary alternatives. If no alternatives can be found, the Government should be prepared to declare temporary eminent domain over private land occupied by IDPs and compensate the owner accordingly. Receiving affected persons in an organized way in a new managed camp should be considered as a last resort only.

No evictions without due process

48. Haitian civil procedure law sets out a clear process through the *action possessoire*, which has to be brought before a justice of the peace. In addition, there are international safeguards that must be respected:

- (a) an opportunity for genuine consultation with those affected;
- (b) adequate and reasonable notice prior to the scheduled date of eviction;
- (c) the timely provision of information in an accessible format on the eviction and future use of the land;
- (d) the presence of Haitian government officials during the eviction
- (e) the proper identification and registration of all persons being evicted;
- (f) the prohibition of evictions during bad weather or at night;
- (g) provision of legal remedies and, where needed, legal aid seek such redress.²³

49. The Representative **urges** the United Nations and humanitarian actors not to endorse or take part in evictions not in line with these standards.

²³ See Inter-Agency Standing Committee, Operational Guidelines on the Protection of Persons in Situations of Natural Disasters (revised version, 2010), C.2.5.

4. Registration and Documentation

50. The Representative would like to draw attention to one matter related to durable solutions that so far seems to have been largely overlooked. Reportedly, children born in the camps are not registered, creating the risk that they become de facto stateless or encounter other serious problems due to a lack of birth certificates. Many IDPs and others have lost important documents. It is estimated that about 10 percent of earthquake victims lost their national ID card and it can be assumed that the rate of loss other documents such as birth and marriage certificates, which people usually do not carry with them at all times, is higher. Given the extraordinary complicated administrative procedures to issue or replace some of these documents, the Representative would **recommend** that the Government adopt a decree to put in place facilitated and free mechanisms to issue or replace personal documentation.

51. Furthermore, the Representative **recommends** that the CEP urgently devise and publicly communicate mechanisms allowing voters who have lost their national identification card to identify themselves and exercise their right to participate in the upcoming elections.

5. Durable Solutions for the displaced

52. Internally displaced persons have a right to a durable solution which can be achieved through sustainable integration at the place of origin (return), sustainable local integration where IDPs have taken refuge (local integration) or sustainable integration in a third place (settlement elsewhere). IDPs have the right to make an informed and voluntary decision on what durable solutions to pursue.²⁴ In an environment of land scarcity, the right to choose between durable solutions is not absolute; due regard must be paid to other relevant rights including acquired occupancy rights and countervailing private property rights.

53. A plan to set the displaced currently in camps on a path to durable solutions should look at a mix of all three types of durable solutions – return, settlement elsewhere and also local integration. A draft Housing and Community Recovery and Reconstruction Framework, shared with the Representative at the time of his visit, which builds on the Government's general National Action Plan for Recovery and Development and is being elaborated in the framework of the Interim Haiti Recovery Commission, makes sensible suggestions in this respect. The Representative **recommends** that the Government of Haiti to consider and endorse this Framework as soon as possible.

²⁴ See Inter-Agency Standing Committee, Framework on Durable Solutions for Internally Displaced Persons (revised version, 2009), para. 21 (d).

Return as the principal option

54. With the majority of internally displaced persons actually still living in their neighborhoods, insisting on their right to return to their old homes will be the logical choice for most IDPs.

55. In many areas, professional assessments have revealed that physical destruction is less severe than initially feared. However, assistance is needed in making rent affordable for those who rented prior to the catastrophe. A redoubled focus on repairing “yellow” houses²⁵ and clearing rubble with heavy machinery to place transitional shelter will help balance supply and demand and bring down rents that are said to have tripled in some places. Assistance to owners of rented accommodation to rebuild or repair their premises should be consistently conditioned upon owners accepting former tenants on preferential conditions. As indicated, conditional cash transfer programmes and school vouchers are additional measures to boost family income, while avoiding the market distorting effects of direct rental subsidies.

56. Certain neighborhoods are so badly damaged that they will have to be torn down and reconstructed. In this context, some have advocated for using the occasion of reconstruction to sort out questions of formal ownership and establish a coherent cadastre. This would be a very problematic approach. For one, this would wipe out the acquired occupancy rights of large numbers of people now in the camps, for whom alternatives would then have to be found by the Government. Moreover, experience from other countries and previous episodes of Haitian history shows that situations of crisis and social upheaval are regularly abused to initiate land grabs through the corruption of formal registries. In discussions with the Representative, senior Haitian officials have expressed concern that certain corrupt magistrates and notaries were already colluding with unscrupulous private actors to fabricate property titles and thereby formalize land grabs. The Representative therefore **recommends** carrying out reconstruction efforts based on identified pre-disaster ownership or occupancy rather than using such efforts to sort out property disputes. Such disputes should be left to judicial proceedings that may be instituted by persons claiming to be rightful owners at a later stage.

57. Housing rights experts advocate instead for an approach to reconstruction based on community enumeration. This process, which is already being piloted in some neighborhoods, foresees establishing who physically occupied what land at the moment of the earthquake by taking individual statements that are then completed and validated by the community, professionals and local authorities. Reconstructing neighborhoods based on prior occupancy rights does not have to imply recreating pre-existing urban planning deficits. The lay of buildings can be equitably reconfigured and agreements struck to reclaim land for common public use, in particular if affected communities are consulted and participate in such reconfigurations. The Representative **considers** that community enumeration would be one excellent way to operationalize the right of IDPs to participate in the planning and implementation of durable solutions.

²⁵ See footnote 15 above.

Resettlement, in particular for safety reasons

58. There may be exceptional situations where the choice of a durable solution can be restricted because conditions are too unsafe to permit returns or settlement in a specific location. This will be particularly the case, where IDPs came from areas, where expert assessments determine that safe construction is not possible, for instance because they are located on a steep ravine.

59. In such cases, IDPs need to receive assistance to settle elsewhere. Experience from the relocation to the Corail Site and relocations undertaken in the context of hurricane relief in Haiti indicate that a “transitional” relocation will regularly end up becoming a situation of protracted displacement given the plethora of competing needs. Therefore, the Representative **recommends** that relocations are planned and dimensioned so that durable solutions can emerge at the site of relocation. The availability of livelihood opportunities at the site of relocation, along with access to basic services and infrastructures, must be key considerations. Transitional shelter should be built in a way that allows owners to transform it into permanent housing at a later stage.

60. In some cases, it may be possible to simultaneously establish large settlements alongside industrial parks for large-scale investors. However, these will be exceptions. Based on positive experience gained in other countries, the Representative would **recommend** generally designing much smaller resettlement projects, where hosting communities receive upgrades to their basic infrastructure (e.g. a new school or repair to their water system) in exchange for agreeing to host 50-100 families.

Local integration through formalizing some camps

61. At this point, the official position has been that all camps will be closed sooner or later. As a result humanitarian and other actors have been hesitant to make sustainable investments in the camps that would be costly to reverse.

62. Lately, however, many decision-makers, mindful of how other informal settlements across the capital emerged, have started tacitly acknowledging that some of the spontaneous sites in less central locations will become new permanent settlements, even if some of its inhabitants will eventually manage to leave. The Representative **recommends** that the Government and the United Nations start a consultation process to determine which camps would not be cleared, so that basic sustainable services and infrastructure can be introduced into the camps and structural deficits affecting other informal settlements in Port-au-Prince can be avoided to the extent possible.

The wider framework for durable solutions

63. The Representative would like to stress that durable solutions for IDPs require more than just providing IDPs with a new home. The Framework on Durable Solutions for Internally Displaced Persons, endorsed by the Inter-Agency Standing Committee, notes in particular that IDPs have to have access to an adequate standard of living, including at

a minimum access to adequate standard of living, food, water, housing, health care and basic education; and, key in Haiti, access to employment and livelihood opportunities.

64. Addressing these concerns is a gradual process embedded in the wider recovery and reconstruction effort, a discussion of which extends beyond the scope of this brief memorandum.