

**UNITED  
NATIONS**

**E**



**Economic and Social  
Council**

Distr.  
GENERAL

E/CN.4/Sub.2/1993/17\*  
6 July 1993

Original: ENGLISH

COMMISSION ON HUMAN RIGHTS  
Sub-Commission on Prevention of  
Discrimination and Protection  
of Minorities  
Forty-fifth session  
2-27 August 1993  
Item 8 of the provisional agenda

THE REALIZATION OF ECONOMIC, SOCIAL AND CULTURAL RIGHTS

The human rights dimensions of population transfer,  
including the implantation of settlers

Preliminary report prepared by Mr. A.S. Al-Khasawneh and Mr. R. Hatano

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Introduction

1. In resolution 1990/17 of 30 August 1990, the Sub-Commission on Prevention of Discrimination and Protection of Minorities, considering that mass population movements, particularly where induced or conducted by governmental authorities, invariably had had serious consequences for the enjoyment of human rights of the populations affected, decided to consider the matter, especially the human rights dimensions of population transfers, including the policy and practice of the implantation of settlers and settlements at its future sessions under the agenda item "The realization of economic, social and cultural rights".

2. In resolution 1991/28 of 29 August 1991, the Sub-Commission, noting that the implantation of settlers and the removal of people had received explicit attention in various country-specific resolutions that it had

adopted in 1990 and previously, and noting with appreciation the country paper submitted by Ms. Christy E. Mbonu (E/CN.4/Sub.2/1991/47) on that subject, recognized that population transfers affected the basic human rights and freedoms of the peoples concerned, including the original inhabitants, the people removed and settlers and decided to include the question of the human rights dimensions of population transfers including the implantation of settlers and settlements, in its future work programme with a view to considering further effective action on that matter.

3. At its forty-fourth session, in resolution 1992/28 of 27 August 1992, adopted without a vote, the Sub-Commission entrusted Mr. Awn Shawkat Al-Khasawneh and Mr. Ribot Hatano as Special Rapporteurs with preparing a preliminary study on the human rights dimensions of population transfer, including the implantation of settlers and settlements, and requested them to examine, in the preliminary study, the policy and practice of population transfer, in the broadest sense, with a view to outlining the issues to be analysed in further reports, in particular the legal and human rights implications of population transfer and the application of existing human rights principles and instruments, and to submit the preliminary study to the Sub-Commission at its forty-fifth session.

4. At the same session Ms. Claire Palley submitted a preliminary working paper on the human rights dimensions of population transfer (E/CN.4/Sub.2/1992/WP.1).

5. The Commission on Human Rights, at its forty-ninth session, in decision 1993/104 of 4 March 1993, adopted by a vote of 48 to 1, endorsed Sub-Commission resolution 1992/28. At the same session, the Commission adopted resolution 1993/70 entitled "Human rights and mass exoduses", resolution 1993/77 entitled "Forced evictions" and resolution 1993/95 entitled "Internally displaced persons", which all have a direct bearing on the subject of population transfer.

6. The Economic and Social Council, by its decision 1993/... of ... approved Commission decision 1993/104.

7. The present document is the preliminary report on the human rights dimensions of population transfer, including the implantation of settlers and settlements. The report describes the circumstances under which population transfers occur, as well as the cumulative effects. It lists the relevant international standards with major emphasis on humanitarian and human rights law, as well as relevant regional human rights instruments and bilateral population exchange agreements and treaties.

8. The report concludes by recommending approaches in this particular field, including potential remedies to address the problem.

9. The Special Rapporteurs would welcome comments on or suggestions concerning the preliminary report and seek the endorsement of the Sub-Commission of the preliminary recommendations which will enable them to continue along the lines suggested.

## I. NATURE, EXTENT AND PREVALENCE OF POPULATION TRANSFER

10. As much as population transfer has prevailed as an instrument of State-craft in every age in recorded history, ours could be distinguished as the century of the displaced person. According to United Nations sources, the current number of registered refugees in the world approximates 18 million. Estimate of 15,293,833 in UNHCR, "Global Refugee Statistics" (Washington: UNHCR, September 1992). However, this number omits 2,519,487 Palestine refugees registered with UNRWA. Uncounted, as well, are refugees and displaced persons from the civil war and invasion of Lebanon, where some 90 per cent of that country's approximately three million population has been forced from their homes. UNHCR may undercount refugees of various origins in Iran by some one million, as compared with estimates elsewhere.

Cypriot refugees, including the approximately 265,000 civilians expelled or forced to flee during the August 1974 invasion and all subsequent expulsions and forced "exchanges", are similarly left out. However, displaced persons in other categories may equal an additional 20 to 24 million. Primarily internally displaced persons, estimated to exceed 20 million in such sources as U.S. Committee for Refugees World Refugee Survey 1993 (Washington, U.S. Committee for Refugees, 1992); Africa Watch (New York); Hemispheric Survey Project, CIPRA, Georgetown University (Washington); Refugee Policy Group (Washington). The Secretary-General's analytical report on internally displaced persons cited 24 million (E/CN.4/1992/23, para. 5). while many others may simply go uncounted.

11. The Second World War demonstrated the full destructive potential that emerges from population transfers. However, post-war measures, including the promulgation of laws and international agreements, have not averted this continuing phenomenon. Rather, it has remained a common feature of the conduct of war, as well as peace-time policy. There is little doubt that dramatic population movements carry with them commensurate effects on both domestic and international relations of States. Given the volume of historical memory at our disposal, these effects are largely predictable, usually negative, and often a source of global instability and a threat to security. For a general discussion, see Gil Loescher, "Mass Migration as Global Security Problem", in World Refugee Survey 1991 (Washington, U.S. Committee for Refugees, 1991), pp. 7-14.

12. The effects of past population transfer policies involving the implantation of settlers have lingered to haunt newly emerging States, particularly in the former Soviet Union, where some 65 million former Soviet citizens live outside their republic of origin. Francis M. Deng, "Comprehensive study on the human rights issues related to internally displaced persons", E/CN.4/1993/35, para. 178. Such consequences of the transfer and implantation of alien settlers now hamper the exercise of self-determination by peoples there. The failure of the international community to provide a lawful context in the Middle East has contributed to continued colonization of the self-determination unit of the Palestinian people and the denial of basic rights of the Kurdish people. This dynamic remains central to the volatile, often lethal situation besetting the region for the past half-century.

13. With reference to a classic case involving internal transfer that has mobilized international recrimination, the Secretary-General issued a public statement, in 1985, to protest "recurrent reports of arbitrary detention, banishment, [and] uprooting families" in South Africa. Four years later, he convened a meeting in Khartoum to devise measures to avoid further the starvation and death of "populations displaced or adversely affected" by conflict there. In addition to well-publicized cases of interethnic conflict, some economic development processes have brought similar consequences of population transfer during peace-time. In recent years, the World Bank has thus become increasingly seized with the human right consequences of, and international protests against, its projects, which have displaced hundreds of thousands of powerless civilians.

14. Population transfer, known also by a number of synonyms, involves the movement of people as a consequence of political and/or economic processes in which the State Government or State-authorized agencies participate. These processes have a number of intended or unintended results that affect the human rights of the transferred population, as well as the inhabitants of an area into which settlers are transferred.

15. The term "transfer" implies purpose in the act of moving a population; however, it is not necessary that a destination be predefined. The State's role in population transfer may be active or passive, but nonetheless contributes to the systematic, coercive and deliberate nature of the movement of population into or out of an area. Thus, an element of official force, coercion or malign neglect is present in the State practice or policy. The State's role may involve financial subsidies, planning, public information, military action, recruitment of settlers, legislation or other judicial action, and even the administration of justice.

16. For millennia such transfers have been the experience of governments and society, and the human rights consequences may have been similar whether resettlement was caused by military action, political upheaval or by some sort of natural disaster. The main focus of this report is the general issue of the ongoing, residual and potential human rights effects of population transfer, in so far as they relate to the role and responsibilities of the State under international law.

17. Population transfer has been conducted with the effect or purpose of altering the demographic composition of a territory in accordance with policy objectives or prevailing ideology, particularly when that ideology or policy asserts the dominance of a certain group over another. The objective of population transfer can involve the acquisition or control of territory, military conquest or exploitation of an indigenous population or its resources. State action based on such reasons has not only caused suffering to vulnerable people and communities, but has often proved to be unmanageable in the long run. The consequences of population transfer, particularly involving deepened ethnic conflict, environmental degradation, resistance and even secession, may ultimately affect the very foundation of the State itself.

## II. RELATING POPULATION TRANSFER TO THE BODY OF WORK OF THE SUB-COMMISSION

18. The human rights dimensions of population transfer, including the implantation of settlers, encompasses a number of the concerns of the Sub-Commission. The core subject of the Sub-Commission's work, minorities, has emerged as the focus of efforts by the Special Rapporteur, who has identified a number of dynamic situations in the relations between minorities and dominant populations, and recognized that the common experience of population transfer deserves specific consideration. Asbjørn Eide, "Possible ways and means of facilitating the peaceful and constructive solution of problems involving minorities", E/CN.4/Sub.2/1992/37, p. 30. In his second progress report he identified social policies grounded in ideological concepts of State and nation that are pursued by Governments for the purpose of suppressing, marginalizing or otherwise exploiting distinct populations (or their resources) by removing them from their homes and lands. The present report expands on one of the prevalent aspects of this dynamic, and its relation with the Sub-Commission's central concern is reflected throughout the body of this document.

19. Recent trends in racism, discrimination, intolerance and xenophobia, as reflected in the report of the Secretary-General to the Sub-Commission in 1992, E/CN.4/Sub.2/1992/11. are rooted in new ideologies of "racialization", promoting allegedly insurmountable differences between cultures. The emphasis on culture, discrimination and other related concepts underscores the need to expand the parameters of the racism debate in the light of present realities. Whereas the theme of racism in the United Nations system has been largely absorbed by the struggle against apartheid in southern Africa, fresh attention to other features and mechanisms of racism might be enhanced by the present and future investigations of the human rights dimensions of population transfer.

20. Population transfer also integrates a number of the traditional issues within the purview of the Sub-Commission's work. Among them, "the right to leave and return" is a fundamental human rights issue with obvious links to population transfer. Transfer may manifest itself as a feature of special situations involving the derogation of human rights, and deserves attention in such contexts. For example, the exercise of special State powers may, in some cases, involve aspects of population transfer, and thus relates to the Sub-Commission's work on the question of human rights and states of emergency. In its resolution 1992/22, the Sub-Commission invited its Special Rapporteur to submit his report to the Commission on Human Rights at its forty-ninth session. That fifth report, revised and updated (E/CN.4/Sub.2/1992/23/Rev.1), was transmitted by the Secretary-General in document E/CN.4/1993/27.

21. The Sub-Commission has also taken the initiative of addressing the human rights situation of internally

displaced persons. That effort has pursued ways to improve human rights protections not traditionally covered by relief and other agencies in the United Nations system whose mandate relates to cross-border refugees only. While that work deals with the aftermath of population transfer within countries and the improvement of humanitarian assistance mechanisms, it is intended in the present report to advance the common objective by focusing on the international legal issues pertaining to policies and practices that cause displacement. In its work to advance protection and prevent violative population transfer the Sub-Commission is encouraged by the work of the Commission on Human Rights on this global problem, and takes note of the comprehensive study prepared by Mr. Francis M. Deng, representative of the Secretary-General on the human rights issues related to internally displaced persons. E/CN.4/1993/35, 21 January 1993 submitted pursuant to Commission on Human Rights resolution 1992/73 of 5 March 1992. The contributions of expertise, relief works and technical advice of specialized agencies and non-governmental organizations, whose field of operation includes service delivery, public information and policy analysis, are also greatly appreciated.

22. Efforts to ensure the human rights and dignity of all migrant workers should benefit from the clarification of law regarding population transfer, particularly where such vulnerable populations may be subject to arbitrary action to transfer or expel them collectively without due process. In conjunction with other work to protect against all forms of discrimination, For example, the Commission decided in resolution 1992/17 to extend for three years the mandate of the Special Rapporteur on the implementation of the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief, Angelo Vidal d'Almeida Ribeiro. See the report of the Special Rapporteur, E/CN.4/1993/62, and the report of the Secretary-General E/CN.4/1993/63. such efforts may relate to forward-looking measures to address human rights and mass exoduses. Report of the Secretary-General, on human rights and mass exoduses, A/44/622, 17 October 1989; and General Assembly resolution A/RES/45/153 of 1 March 1991. The work of identifying sources and features of population transfer may relate to the humanitarian objectives of other United Nations bodies as well, in particular, the Ad Hoc Working Group on Early Warning regarding New Flows of Refugees and Displaced Persons of the Administrative Committee on Coordination (ACC). See General Assembly resolution 46/127 requesting the Ad Hoc Working Group to submit its report on the early-warning mechanism to be established, and the subsequent report.

23. In 1992, the Sub-Commission reaffirmed its decision to review the matter of forced evictions as a gross and consistent pattern of human rights violations, and took steps towards further analysis of this practice. See resolutions 1991/12 of 26 August 1991 and 1992/14 of 27 August 1992 of the Sub-Commission. The Commission on Human Rights subsequently adopted without a vote a resolution requesting the Secretary-General to compile an analytical report on the practice of forced eviction for the Commission's consideration at its fiftieth session. Commission on Human Rights resolution 1993/77 of 10 March 1993. Forced eviction may form one of the central mechanisms of population transfer, particularly when applied on a large scale and against a distinct population group. Therefore, it is encouraging that this issue will be considered in the forthcoming report of the Secretary-General.

24. On the side of prevention of human rights violations through the development and elaboration of law, special note is taken of the efforts of the Sub-Commission to advance and to increase understanding of the right to housing and to elaborate the definition of this fundamental right through its Special Rapporteur. Among the notable contributions to this issue is the Special Rapporteur's recognition that the denial of the right to housing may be a consequence of planning and population transfer, especially under foreign occupation. See working paper by the Special Rapporteur on the right to housing, Rajindar Sachar, E/CN.4/Sub.2/1992/15. The denial of the right to adequate housing and the resulting conditions may be sufficiently extreme, as some authors have suggested, to constitute a relationship with "torture and other cruel, inhuman or degrading treatment". For the argument linking housing rights denial with "inhuman or degrading treatment", which applies in the context of article 7 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, see Scott Leckie [From Housing Needs to Housing Rights: An Analysis of the Right to Adequate Housing under International Law](#) (London, International

Institute for Environment and Development, 1992), p. 46.

25. The subject of study of the Sub-Commission's Working Group on indigenous populations bears an obvious and strong connection with the current and historical practice of population transfer. The Working Group's progress in reporting on conditions affecting indigenous people and in drafting the international declaration on the rights of indigenous peoples reflects an integrated effort also to avoid the effects of future population transfer on those quintessential rights. The contributions of the Working Group to emerging law are specifically discussed in the body of the present report.

26. Existing prohibitions on population transfer have been drawn upon in resolutions of the Sub-Commission and other United Nations bodies relating to specific cases. Population transfer has been a fundamental feature of the human rights situation in various countries and areas in which the United Nations has been seized of conflicts over the decades, including Cyprus, South Africa, Palestine, Cambodia, East Timor and, in the past decade, Haiti, Burundi, Sudan and Iraq, as well as the especially pernicious "ethnic cleansing" in the former Yugoslavia.

27. With the relatively recent focus on the nature and effects of development on environment and people, the Sub-Commission now finds itself in a position also to derive an understanding of the experience of populations affected by population transfer in the context of large-scale infrastructural development projects. Such economic processes and the role and policy of international funding agencies emerged as a special focus of the Sub-Commission's work with the report of the Special Rapporteur on the realization of economic, social and cultural rights. Danilo Türk, Final report on the realization of economic, social and cultural rights, E/CN.4/1992/16, with its special focus on the effects of structural adjustment, including the displacement of vulnerable populations resulting from state-directed and World Bank-financed development. Related cases before the Sub-Commission involve the phenomenon of population transfer as a consequence of some forms of large-scale development, although no specific Sub-Commission action has yet been taken.

28. Since the Sub-Commission was first convened in 1949, significant events and developments have taken place with regard to standard-setting procedures in human rights related to State-directed coercion of individuals and groups in general, and specifically to the involuntary movement of population. The present report takes these into consideration and serves to consolidate these developments in various quarters with established and emerging international law in order to explore the legal prospects for addressing and preventing any human rights violations which may arise from this underscrutinized phenomenon.

29. The population transfer initiative may contribute to the consummate objective of the prevention of discrimination and protection of minorities by recognizing common and long-standing violations that have been so far inadequately addressed, and by developing and strengthening law as a prophylactic measure. In doing so, it is important to identify the roots and mechanisms of the violation and clarify their relationship to international law as developed.

### III. CIRCUMSTANCES AND FEATURES OF POLICY UNDER WHICH POPULATION TRANSFER OCCURS

30. The circumstances under which a population is forced or pressured to leave its homes are varied; transfers can be brought about as a consequence of armed conflict or in peace-time. These two broad categories of population transfer correspond with legal classifications relative to the discussion of causes. The practice and official rationale for forcing the transfer of populations have not changed significantly in the course of history, nor have the consequences. Technical aspects may have advanced, however, to increase efficiency and/or speed of transfer.

31. The causes of population transfer can be dramatic, or subtle and insidious. Transfer can be carried out en masse, or as "low-intensity transfers" affecting a population gradually or incrementally. The following section intends to cast light on the various situations and sources of population transfer. This discussion, however thorough, does not presume to be exhaustive. Nor are these categories mutually exclusive; any number of circumstances may coincide to cause a population's transfer.

#### A. Context of war/armed conflict

32. The following categories of causes give attention to population transfers resulting from military (or paramilitary) actions. Transfer may serve any combination of strategic, political or humanitarian objectives. They may be carried out by any party to a given conflict; however, post-conflict transfers have historically been the practice of victors or belligerent occupiers. Thus, this category embraces transfers taking place during, as well as in the aftermath of, conflict.

##### 1. Military imperative

33. The dramatic events of civil and international wars, with the movement of combatants and collateral damage, may threaten civilians and their structures, compelling flight. On the pretext of wartime military necessity, or as a means of protecting civilians, populations are forced from their homes. Although proscribed by the laws of war, the transfer of civilian populations to serve a strategic objective has not disappeared from human experience.

34. Political violence and counterviolence in the form of pogroms and purges can be directed against members of distinct groups and communities as such, regardless of their status, affiliation or political role. Jurisdictions and zones of influence, including municipal and interstate borders, may be modified. Consequent flight and resettlement out of the home area or across borders may, in some cases, be the only viable response of unarmed populations to persecution. See Barbara Harrell-Bond, Imposing Aid (Oxford, Oxford University Press, 1986); and Beatriz Manz Refugees of a Hidden War (Albany, State University of New York Press, 1988).

##### 2. Foreign occupation

35. One of the principal devices used by an occupying Power to extend control over a territory is to implant its own, or other reliable population into the territory. Although they may serve a military objective and may even be armed by the occupying Power, settlers implanted in occupied territories are claimed by the occupying Power as its "civilian" citizens. Thus, the occupying Power eventually asserts that humanitarian concerns compel it to remain in the territory to extend its protection to the implanted population. This argument may be combined with other ideological claims concerning the occupier's "right" to possess the territory for putative security and humanitarian reasons, or even on the basis of rights, such as "historical rights", which have no legal basis. This policy is typically coupled with incremental and/or large-scale expulsions of the indigenous population. In such cases, the right of the indigenous population to return is usually denied, ostensibly for "security" reasons, despite the prior obligations of the occupying Power to respect the refugee's right of return.

36. In addition to the occupier's security claims, the implantation of settlers from the occupying Power's own population is sometimes used with a future, non-military strategy in mind. In the event that the status of a disputed territory is resolved by eventual referendum or plebescite, this putatively democratic procedure can be greatly influenced with the participation of the implanted population on an equal footing with the indigenous population. Even if this process results in the eventual separation of the occupied



territory from the occupying Power, the settlers' participation may influence the terms and conditions of the future status of the territory in a manner that serves the former Occupant.

37. In addition to facilitating or directing the influx of its own population through settlement, the occupying Power also may contravene the terms of international law by expelling individuals or groups of the occupied population, prosecuting policies which deny them their residency rights, or creating economic or civil conditions which compel the indigenous population to leave. An array of measures, involving economic pressure, altering the legal set-up or using armed forces (including armed settlers), typically are applied following the initial seizure of territory with the ultimate effect of transferring the indigenous population out of the occupied zone.

### 3. Pretext of "national security"

38. Under perceived or actual military threat, the authorities of a State may establish that a class of citizens or residents — determined by "race", religion or other criteria — is identified with the source of that real or hypothetical threat. Authorities may transfer members of this special group away from a border or into organized internment. In order to garner popular support for such a policy, a requisite public information effort may be exerted, which may confront international law prohibitions against all dissemination of propaganda inciting racial discrimination. For example, article 4 of the International Convention on the Elimination of All Forms of Racial Discrimination (1965). In the process, property belonging to the group may be confiscated, families separated and other adverse conditions may prevail. The legality of this practice has been unsuccessfully challenged in the United States Supreme Court; however, some compensation for victims in that country has been awarded through recent legislation. Japanese-Americans were denied relief in Hirabayashi v. United States, 320 U.S. 81 (1943) and Korematsu v. United States, 323 U.S. 214 (1944), but the injustice of their transfer and internment was acknowledged with the signing of HR 442 into law in 1987, forty-six years after the fact. The legislative gesture offered to the victims the token compensation of \$20,000, paid over 10 years. Japanese-Canadians were similarly affected during the Second World War.

### 4. Food and health care as a weapon

39. Attention has only been drawn relatively recently, as a result of current cases of extreme deprivation leading to population transfers, to the pernicious targeting of certain populations through the denial of food or needed health care. By inverting these basic needs into a tool of social control, States have created or exacerbated political crises, such as civil and international conflicts. One of the more prominent examples of this condition resulting in population transfer is the imposition of economic sanctions by other States which have the extreme effect of limiting or denying food or medical services to civilians. Particularly when such denial coincides with or follows armed conflict, it can result in chaos and displacements of civilian population within the affected State, or across international boundaries.

40. Those affected by natural disasters can also become the targets of food or health care deprivation when authorities or combatants deliberately starve a population for political purposes, or fail to fulfil humanitarian obligations on the basis of an ideological or other motive to punish the affected population.

### 5. Post-conflict transfers

41. Wars, including civil wars, in this century have been largely fought along ethnic or sectarian lines, and the commensurate antagonisms have been felt in the non-combatant populations. Transfer of a population during conflict may reflect these antagonisms, or emerge from a search for expedient resolution between

conflicting parties involving separation of civilians along ethnic lines. Such measures can be carried out by consent of the parties, or be imposed by one (usually a victorious) party to the conflict.

(a) Preference of victorious Power(s)

42. During or after armed conflict between or among States, past practice has seen victorious Powers create conditions for the movement of certain populations, on the basis of either ethnic or geographic criteria. These conditions can include bilateral or international agreements between Governments, involving varying degrees of human rights protection. Such transfers often coincide with territorial transfers and may involve the agreement, either by expressis verbis or tacitu consensu of the affected State (s). Alternatively, the population transfer has, in some cases, been forced upon populations within the vanquished State, or those outside of it corresponding by ethnicity or citizenship to that State, as the terms of surrender or "reparations in kind".

(b) Option agreements/population-exchange treaties

43. Historical cases reflect a now-foregone belief that population transfer may serve as an option for resolving various types of conflict, within a country or between countries. The agreement of recognized States may provide one criterion for the authorization of the final terms of conflict resolution. However, the cardinal principle of "voluntariness" is seldom satisfied, regardless of the objective of the transfer. For the transfer to comply with human rights standards as developed, prospective transferees must have an option to remain in their homes if they prefer.

44. With strict regard to the terms of the exchange agreements, some historical transfers did not call for forced or compulsory transfers, but included options for the affected populations. Nonetheless, the conditions attending the relevant treaties created strong moral, psychological and economic pressures to move. "Option clauses" were contained in population exchange treaties involving border changes, such as those between the Third Reich Government and Eastern European countries, See Joseph B. Schechtmann, "The option clause in the Reich's treaties on the transfer of population", American Journal of International Law vol. 38, No. 3 (July 1944), pp. 356-74. and between the Soviet Union and new States from the old Russian Empire, as well as between Soviet-annexed territories and neighbouring countries. Timothy A. Taracouziou, The Soviet Union and International Law (New York, Macmillan, 1935), p. 97. These option clauses find their roots in European practice dating at least from the Treaty of Capitulation of the City of Arras (1640) and the Treaty of Breda, between Louis XIV and Anne of England (1667).

45. The secretive nature of some historical population exchange treaties would today contravene fundamental principles of "good governance" and would be largely impractical. Still, however, the terms of recent transfer agreements have been censored apparently to avoid dissent or to keep secret parallel arms transfers and other related arrangements which may violate contractual restrictions or other international law. See "Israel helping arm Ethiopia in spite of U.S. opposition", Washington Star, 18 January 1976; also section 2754 of the United States Arms Export Control Act; "Storm breaks over 'Operation Moses': Israel's Palestinians question the airlift of 12,500 Ethiopian Jews", al-Fajr (international edition), 11 January 1985; Richard H. Curtiss, "Airlift culminates 17 years of secret Israeli links to Mengistu Government", Washington Report on Middle East Affairs, (July 1991), pp. 48-50; Jennifer Parmelee, "Falashas still 'wishing for the good life' in Israel: For now, Ethiopian Jews live in squalor", Washington Post, 19 April 1991. Other State-directed schemes to direct migration (against the preferences of the migrating population) have also included unpublicized terms concluded as part of a "strategic alliance" between or among cooperating States. "Soviet Jews: Whose humanitarian concern?" (Washington, Settlement Watch, 1992). Such transfers are generally associated with a period of real or potential conflict. The removal of transferees may be organized ostensibly for humanitarian reasons; however, other motives of social engineering policy or political expediency may also be present. Although practices such as those associated with the Third Reich are today unconscionable, secret

population transfer agreements may persist that affect the human rights of concerned populations.

## B. Non-wartime population transfer

### 1. Man-made environmental degradation

46. Environmental degradation caused by economic exploitation or technical destruction can render an area uninhabitable, forcing population transfer. In response to such manmade disasters, residents may be compelled to leave, by the resulting conditions or the State may resettle them in the interest of public health or safety. It is important to consider the cause of the degradation in the light of any pattern suggesting State responsibility and consistent effect on a distinct population. Technical responsibility for environmental disasters resulting in population transfer may also involve human rights values and help determine appropriate responses.

47. Forced transfer may be the unexpected result of poorly planned or executed development. In one country hard hit by famine and social upheaval in the past decade, development schemes have actually exacerbated the local situation. A notable development programme there, for example, destroyed much of the grazing lands and forests upon which some 150,000 pastoralists depended for their livelihood. When the World Bank subsequently funded the conversion of most of the irrigable land into cotton and sugar plantations in the mid-1980s, the consequent displacements rendered 20,000 people completely dependent upon imported food relief. Testimony of Patricia Adams of Energy Probe to the U.S. Senate Appropriations Committee, Subcommittee on Foreign Operations, 1 May 1986; cited in Marcus Colchester, "The social dimensions of government-sponsored migration and involuntary resettlement: policies and practice" (Geneva, Independent Commission on International Humanitarian Issues, January 1986), p. 7.

### 2. "National development"

48. Economic displacements caused by radical changes in modes of production account for a significant portion of non-wartime population transfers. Such transfers may be carried out for the sake of industrial installations, mining or other large-scale commercial enterprise.

49. Infrastructural development projects consistently result in large-scale removal of inhabitants from their homes and lands. Projects such as hydroelectric dams, create conditions of submergence and other changes in the primordial habitat which force residents to flee, acquiesce to State-sponsored resettlement or perish. Sometimes, these economic population transfer processes run parallel to State policies of social engineering intended to enhance State control over a territory or region and/or the peoples dwelling there, either within, contiguous to, or even outside the State's de jure boundaries.

50. In areas of extreme poverty, populations affected by development projects may be particularly vulnerable. Even when the transfer of a population is motivated by the need to ensure its survival, the physical and human rights situation could deteriorate if the transfer is not executed properly. Some human rights investigations have indicated that low health and life expectancy assumed to be caused by famine may have actually resulted from conditions of planned involuntary resettlement. Alexander De Waal, Evil Days: Thirty Years of War and Famine in Ethiopia (New York, Human Rights Watch, 1991). For example, data among resettled populations may have been falsely attributed to general famine, whereas similar demographic indicators were found among those at resettlement sites in both famine and non-famine zones; also alluded to in "Analytical report of the Secretary-General on internally displaced persons", E/CN.4/1992/23, para. 50.

51. As with all civil planning, the ethic and purpose of sound national development policy is to serve the "greater good". This concept can be interpreted subjectively, and a considerable debate may emerge from the question of who is to benefit from a given project or policy. Some development schemes may violate fundamental rights of a population, especially when a distinct population is disproportionately harmed in the process. Where affected populations have begun to speak on their own behalf, the human rights values at stake are belatedly being heard at planning and policy levels of development.

52. In the past century, the lands of indigenous and tribal peoples have been appropriated at an accelerated rate under centralized authorities, by both colonial and independent governments. Over the past 50 years, many such peoples have experienced more land loss due to confiscations than in all of the past half-millennium. In most countries today, governments still refuse to recognize forms of ownership which are not confirmed by their own records, thus tribal and land-based peoples' customary-use, treaty and even titled lands have been systematically appropriated by the State for development purposes under "eminent domain", "plenary powers" and other legal doctrines. These lands, which were previously considered to be remote and peripheral, have increased in demand as the subject of expanding national development schemes. An Asian analyst has summarized this process as one "by which the rich and more powerful in society reallocate the nation's natural resources in their favour, and modern technology is the tool that subserves this process". Anil Agarwal, The State of India's Environment: 1982 (New Delhi, Centre for Science and the Environment, 1982).

53. Consequently, the lands owned by these formerly peripheral people have assumed greater market value, and their acquisition and development often assume the removal of the lands' primordial inhabitants. Development projects, such as roadbuilding, power plants, military installations, mining, forestry and water schemes, and even wildlife sanctuaries and national parks typically call for the removal of the inhabitants of the requisitioned land sites. Since the Second World War, the most dramatic cases of indigenous and tribal peoples' land loss and transfer have resulted from hydroelectric dam construction. Simultaneous with the consequent environmental disruption, social dislocation from dams affects tens of millions of people. See E. Goldsmith and N. Hilyard, eds., The Social and Environmental Effects of Large Dams, 2 vols. (Camelford, Wadebridge Ecological Centre, 1986). Such projects funded by the World Bank over four years alone resulted in the involuntary transfer of nearly half a million people. World Bank, Social Issues Associated with Involuntary Settlement in Bank-financed Projects: A View of OMS 2.33 (Washington, World Bank, 1984). In one country whose large dam-building campaign was launched upon independence in 1947, that programme has caused the expulsion of some 21.6 million people from their homes and lands in its first 40 years. This figure was corroborated by research reported separately by Manab Chakraborty, "Resettlement of large dam oustees", Lokayan Bulletin (1986); and Walter Fernandes and Enakshi Thukral, Development Displacement and Rehabilitation: Issues for a National Debate (New Delhi, Indian Social Institute, 1989).

### 3. Political control

54. Forced transfer of populations distinguished by their political position has been carried out to serve the interest of dominant groups or governments. Such programmes as "villagization," or "systematization" have involved radical changes in the physical conditions, modes of production and social fabric of affected populations. The net effect of these policies is the political control, marginalization or replacement of a population perceived to oppose, or harbour resistance to the dominant group.

### 4. State integration/consolidation

55. Integration and consolidation of the State are terms of State formation which echo the nineteenth century experience of the Western hemisphere, where "integration of the State" or "manifest destiny" were slogans for an expansionary process that involved forcible removal and physical elimination of indigenous

populations. Further, the colonial-era processes in colonized Asian countries at roughly the same time transformed the demographic composition of remote regions and extended control over them and their resources by implanting settlements with reliable populations. Historically, this has involved forcible removals for political expediency, simultaneously with the development of compatible legal pretexts to facilitate and justify transfer, notably including the wholesale denial of legal rights of seasonally transhumant populations to the lands they owned in common. See, for example, Nicholas P. Canny, "The ideology of English colonization: From Ireland to America", William and Mary Qtrly., 3d Ser., XXX (1973), 575-598; also Francis Jennings, The Invasion of America: Indians, Colonialism and the Cant of Conquest (New York and London, W.W. Norton, 1976). Many of these legal concepts and their consequences still persist.

### 5. New State formation

56. Newly independent countries in the process of formation commonly seek to establish and maintain a common identity which binds all the citizenry. A State priority in a decolonized or developing country is to promote comprehensive and simultaneous development in all areas under the State's control. Sometimes this involves the forced settlement of transhumant populations, or the transfer of population segments designated by policy planners as filling a particular role in national society under new modes of production.

57. It is important to note that the new imperatives and ebullience of the moment of independence may cause policy planners to derogate certain rights of distinct peoples and population groups whose rights to consent, participation, internal self-determination or other human rights may be at stake.

### 6. Ethnic homogenization and separation

58. A number of political solutions are available to States faced with problems of governing a plural society. As explained in the second progress report of the Special Rapporteur on the protection of minorities, Eide, *op. cit.*, pp. 15-19. State responses may range from homogenization to separation. Each point on the policy spectrum is neither intrinsically benign nor malign; that determination would rest on a variety of human rights criteria. Homogenization and territorial separation fall into two general categories: those based on egalitarianism and those based on dominance. The egalitarian - and, therefore, legal - nature of physical separation of populations requires consent and voluntary movement. The criteria for egalitarian territorial separation, according to the Special Rapporteur, entail:

- (a) Voluntary choice of each party involved;
- (b) No hierarchical ranking between groups;
- (c) Sharing of common resources on a basis of equality;
- (d) Whenever the groups interact, there are no privileges for members of one group to the detriment of members of another group. *Ibid.*, pp. 16-17.

59. Violative forms of homogenization policy may involve purposeful demographic manipulation and the practical negation of the previously held identity of a person or group. Such measures may obstruct the enjoyment of the rights of free association, consent regarding the development of one's own community or demographic unit, and other group rights. Homogenization can contribute to the loss of culture and certain social rights, for instance, through imposing legal prohibitions against customary land-use patterns, political structures, or the use or teaching of one's language which is different from the official or

dominant one.

60. The extreme version of dominant separation, apartheid, seeks, in its classical sense, to keep peoples territorially separated, on the basis of their physical and cultural characteristics. In some variations of the practice which may be habitually referred to as apartheid, other criteria may serve as the basis for separation. Under apartheid, population groups remain unmixed and ranked in hierarchical divisions. The purposes of such a policy, not necessarily limited to its implementation in South Africa, is formally to exploit and marginalize the non-dominant group for labour, or to acquire and transfer territory, natural resources or other property to the exclusive use of the dominant group.

61. The policies of forced segregation and assimilation pose serious human rights problems for the subjects of ethnic engineering programmes, and some forms of separation may be violative in ways that are not immediately apparent. For example, an insidious apartheid policy may extend "independence" to newly established demographic units resulting from transfer, sometimes under puppet regimes. This separation does not reflect self-determination of the subject population and proposes a separate "legal" status, recognized under the law of the transferring State, which has the function of negating the transferees' right of return to their original homes and lands.

62. Some policies of homogenization for political reasons may be disguised under the pretext of a natural or man-made emergency. In a recent case in which a Government accelerated its resettlement plans in response to famine, precious resources were spent on transferring affected people - many against their will - to resettlement zones carved from the traditional lands of other resident people in another region of the country. A year after the issue was raised at the Sub-Commission, General debate was initiated by Survival International; see their "Ethiopia's resettlement programme: an evaluation" (London, Survival International, 1985). the exiled Government official responsible for the resettlement programme admitted that it was, in fact, designed to enforce ethnic homogenization. Marcus Colchester and Virginia Luling, eds., Ethiopia's Bitter Medicine: settling for disaster (London, Survival International, 1986); Peter Niggli, Ethiopia: Deportations and Forced Labor Camps: doubtful methods in the struggle against famine (Berlin, Berliner Missionwerk, 1985); Virginia Luling, "Ethiopia: resettlement, villagisation and the Ethiopian peoples", IWGIA Newsletter, No. 47, pp. 27-39.

### 7. Expulsion of aliens or national minorities

63. One of the most frequent circumstances of transfer involves the expulsion of a population group across State borders into a receiving State. The impetus for such expulsion may be economic or ideological (racist or religiocentric) reasoning. The expulsion typically targets either resident aliens, for example migrant workers, or minority citizens and often involves the confiscation or forfeiture of the expellees' property.

64. In recent years, the most common victims of this policy have been workers and their families who are citizens of another State, or stateless persons who are not naturalized citizens of the expelling State. The subject populations commonly originate from a neighbouring State or territory, and the arbitrary, abrupt and mass nature of the expulsion is incompatible with due process requirements for the deportation or expulsion of legal entrants. The naturalized and native-born family members of the target group may be likewise affected.

### 8. Demographic situations resulting from historical conquest

65. Throughout history and until the present day, the seizure and long-term occupation of territory has depended largely on the transfer of populations. The acquisition of territory by military force is generally a

preliminary step towards achieving the objective of control of a given territory. When the occupied or annexed population is ethnically different from that of the occupying Power, that Power assures its hold on the seized land by replacing its population with a more compliant group. This may be accompanied by various means of removing the indigenous inhabitants and/or their children, or simply by implanting settlers with the purpose or effect of diluting the occupied or annexed demographic unit. This process may take years to accomplish, and has been the experience in the Americas, Central and Eastern Europe and some parts of Asia and Africa, as well as much of the colonized world.

66. When the political status of the occupied or annexed territory changes through some form of political separation from the previous occupier, a variety of demographic situations may obtain, depending on conditions. For instance, if the settler population in the formerly occupied or annexed territory is contiguous to its "mother country", a majority may return with their progeny there. However, if a change in the political status of a territory takes place after generations of occupation and settlement, such a resettlement may prove more complex and problematic. Particularly if the occupied or annexed territory is not contiguous to the country of the occupying or annexing Power, different formulae may emerge, perhaps involving pluralistic schemes of governance. In any event, the ultimate disposition of the implanted population and its descendants and their relationship to the successor government of the formerly occupied country involve a number of human rights issues that may be guided by current and emerging international law pertaining to "good governance" and individual and group rights.

#### 9. Planning for "public purposes"

67. Providing sufficient land to meet present and future needs is a problem facing many local and national authorities. The compulsory acquisition of land for "public purposes" should serve a common interest, or pursue a social need or necessity. However, with the best intentions, human rights may be negatively affected by both the planning and implementation of public-purpose projects.

68. A significant factor in the creation of disaster through development-related population transfer lies with the planners. In a West-African case, land-based people were ultimately given only 6,000 ha. to replace their loss of 75,000 ha. to a dam project. The Lake Volta scheme in Ghana proposed 21,600 ha. replacement land, but this amount was ultimately unavailable. Henri Roggeri, African Dams: Impact on the Environment (Nairobi: Environmental Liaison Centre, 1985), at 20. Large-scale development is planned with government and engineering interests foremost in mind. However, the planners at all levels may fail to consider, or consult adequately the affected communities to assess their physical, spiritual and economic needs. The World Bank's independent review of Asia's largest ongoing hydro-dam project determined that the ambitious scheme is being undertaken "in almost total ignorance of the people and the impact". Bradford Morse and Thomas Berger, Sardar Sarovar: The Report of the Independent Review (Ottawa, Resource Futures International, 1992), p. 44. On the operational side of the World Bank, an internal review recently assessed that a major factor in the increased failure rate of World Bank projects has been the pressure inside the Bank to lend money, which has emerged as the project concern which has subsumed all others. The Portfolio Management Task Force, Wapenhans Report.

69. Project planners often make disastrous assumptions without a factual basis. One crucial issue related to population transfer is the dilemma of land scarcity. The lack of replacement lands creates conditions that ultimately lead to governments reneging on replacement-land promises, overcrowding, the scattering of families and communities, and transferees being forced to encroach on the lands of other communities.

70. Under the laws of most countries, squatters, residents of "informal settlements" and others dispossessed for public purposes typically are excluded from compensation for the State's acquisition of "unauthorized" or "illegal" structures, although ex gratia compensation may be offered in some cases. The planners' classification of a residence or human settlement as "unauthorized" may itself be violative, particularly where a pattern of such classification disproportionately affects a distinct population group.

Denial of recognition thus functions as one of the legal mechanisms for planners and State agencies to effect population transfer, which may form part of a larger pattern of demographic manipulation.

71. Although most countries have an established public machinery for planning, the managerial and technical skills are sometimes weak. Planning authorities in many developing countries, for example, are primarily engaged in housing the poorer segments of society, or improving services in response to a crisis. Land for Public Purposes: Guidelines (Nairobi, UNCHS, 1985), p. 8. Planning is carried out under the administrative authorities of government, where a policy of discrimination already may exist. In such a context, planners serve as instruments for the dispossession and transfer of populations where human rights criteria are not enforced. Moreover, planning, per se, can be antidemocratic and enforce living conditions and patterns which contradict the economic, social and cultural needs or identity of the target community. In this sense, planning can cause gradual disintegration of social groups and, thus, become the agent of insidious forms of population transfer with far-reaching local, national or regional effects.

72. In general, contemporary urban development patterns often reflect segregation along any combination of class, religious or ethnic lines. The consequences of this segregation potentially lead to social divisions and ethnic conflict between or among groups. But planning regimes can either alleviate or exacerbate these patterns and consequences.

73. In order for development to be socially viable, planners should represent the priorities and needs of the community they serve. Too often, however, planners and their designs are alien and indeed antagonistic to the communities which they affect. Thus, "public purpose" can stand as a euphemism for the transfer of benefits from one population group to another on a preferential basis, and may violate international legal standards prohibiting discrimination.

#### 10. "National security"

74. A compulsory transfer of citizens may be carried out for ordre public or security purposes. However, the circumstances in such cases must be weighed with regard to the competing interests and the validity of the State's claim of necessity against the humanitarian injury which may result.

75. Expulsions and population transfer may be carried out under the pretext of "national security" during states of emergency and other situations involving the derogation of human rights in their own right. The methods and criteria for targeting the subject population may qualify as issues of human rights concern.

76. Ideological and strategic notions of "the living frontier" and other objectives to accelerate development by transferring – through economic pressure or coercion - a population may negate certain human rights, particularly those of the host population. Such transfers may lead to international perceptions of potential cross-border effects.

#### 11. Balancing population density

77. Some State-directed schemes of population transfer in rural areas are ostensibly the result of acute population pressures, where a population imbalance in a country, territory or region has necessitated a policy of implanting settlers in frontier areas of less-dense population. These State-directed schemes are nonetheless referred to in the social-science literature as "spontaneous settlement formations", and are generally designed to benefit poorer segments of the overcrowded population. (However, some genuinely spontaneous settlement may coincide). It has emerged that certain such programmes primarily benefit neither the landless nor the urban poor, as is frequently stated. In these cases, it turns out that the initiators of the process are absentee landlords, rich farmers, land speculators, traders, or even government officials,



whose movement reflects no correlation between poverty and the decision to migrate. For example, see R. Soebiantoro, "Transmigrasi dengan prospek prosperity dan security" (Jakarta, Directorate General for Transmigration, 1971) mimeo, p. 17, cited in Joan Hardjono, "Spontaneous rural settlement in Indonesia," Spontaneous Settlement Formation in Rural Regions (Nairobi, United Nations Centre for Human Settlements, 1986), pp. 50-70. The poor settlers and rural indigenous population are generally used as wage labourers, contract farmers, tenants or sharecroppers. See for example, Ulrich Scholz, "Spontaneous rural settlements and deforestation in South-East Asia: Examples from Indonesia and Thailand", Spontaneous Settlement Formation in Rural Regions, op. cit., pp. 13-34.

78. The indigenous population in the area of such new settler implantation often undergoes direct or secondary displacement. New market forces and land seizures are introduced to remove the indigenous population from the lands targeted for new "spontaneous" settlement. A wide gamut of human rights consequences affect the indigenous inhabitants, including the possible violation of their rights as a self-determination unit. As the settler movement advances, environmental consequences also have a disproportionately negative effect on the habitat and livelihood of the indigenous group, who largely depend upon the natural environment for subsistence and a significant share of revenue. The sale of forest products is an important source of monetary income for many tribal people in India, for example, amounting to as much as 30 per cent of total earnings. The State of India's Environment a citizen's report, 1984-85 (New Delhi Centre for Science and the Environment, 1985), p. 91. Typically, settler activities, such as shifting agriculture and infrastructural development, also cause a considerable waste of biomass through forest depletion, as well as the loss of certain plant and animal species and genetic resources, soil exhaustion, erosion and consequent flooding.

## 12. Racism and discrimination

79. With regard to the features that motivate population transfer, a pattern of discrimination also emerges. This feature constitutes both a cause and an effect in most population transfer cases. Where population transfer consistently and exclusively affects a particular distinct racial or religious group, internationally recognized human rights protections may apply. For example, the indigenous and tribal peoples may be consistently or exclusively subjected to forcible transfer, with all of the predictable, harmful consequences. In other cases, lands belonging to one population may be consistently appropriated by the State, only to be transferred to the sole benefit of another population group. It is not possible to generalize here whether this pattern is deliberate or consequential; however, when examined, a pattern in some countries strongly suggests that an objective of population transfer involves creating conditions that marginalize or eliminate the presence of distinct peoples as such.

## IV. CUMULATIVE EFFECT

80. Regardless of the political context, the legal classification of causes, or the increments of population affected, the potential for human rights violations in such practice is clear, and the common consequences can be severe, virtually stripping affected persons and groups of their most fundamental rights. Moreover, the official prosecution of population transfer has a number of serious implications for responsible States and governments.

81. Unless otherwise indicated, the effects of population transfer on people, discussed here first, are common to cases carried out in any of the above-mentioned circumstances. This discussion is followed by a partial list of consequences for States involved, both as protagonists and as respondents, to situations which flow from the transfer.

### A. Consequences for people

82. Transfer requires people to relinquish rights to their place to live. This involves a wide spectrum of resulting material and intangible losses. The human rights dimensions of population transfer relate to this spectrum of consequences. Again, the consequences set out below do not constitute a complete list of prospective effects, which may arise separately or in combination with others. However, the following discussion elaborates on the most serious and prevalent consequences of population transfer for the people affected.

#### 1. Physical and medical effects

83. The most severe immediate or long-term consequences involve the loss of life. Death may result from transfer-related illness, or directly from the brutality and violence applied in the execution of forcible transfers, including deliberate food deprivation and severe economic hardship.

84. Perhaps the most obvious and dramatic of the physical consequences of transfer involves the use of force and violence by authorities or others effecting transfer. Particularly in the context of armed conflict, physical injury and death by a variety of means, including outright killing, are known. The hazard of such physical harm and death increases both with the violent nature of the context and the counter-response to resistance arising from the community opposing their transfer.

85. In cases which involve bringing a relatively isolated population into contact with alien, cosmopolitan populations, previously unknown communicable diseases typically decimate the more isolated group. Transfer alone may also result in the introduction or emergence of new diseases with long-lasting effect. As exemplified in the continued prevalence of the sickle-cell trait and sickle-cell anaemia among those transferred from Africa to North America for purpose of slavery and their descendants. More commonly, the housing and sanitation conditions which prevail for refugees and other transferred populations are such that lead to sickness especially among the more vulnerable children and elderly among them. Typically, too, the conditions of transfer lessens resistance to common diseases and infections, which may be exacerbated correlative to distance transferred. R. Mansell Prothero, "Disease and Mobility: A Neglected Factor in Epidemiology" Working Paper 26 (Liverpool University of Liverpool, Department of Geography, African Population Mobility Project, 1976), p. 14. The problems of economic adjustment may result in undernutrition or malnutrition during periods of unemployment and food shortage, or with the break up of families through death or separation and the consequent loss of breadwinners or food preparers within a family or community. The cumulative effects of the transfer may complicate efforts to contain disease and other medical consequences.

86. Many of the stressful effects under most population transfer circumstances may be difficult to measure and, thus, often go unrecorded. Nonetheless, such consequences are no less real than the physical ones. The range of stressful effects has been the subject of study by both social scientists and the World Bank. World Bank, "The relocation component in connection with the Sardar Sarovar (Narmada) project" (unpublished ms., 1982); Prothero, op. cit.; see also Thayer Scudder and Elizabeth Colson, "From welfare to development: A conceptual framework for the analysis of dislocated people", in Art Hansen and Anthony Oliver-Smith, eds., Involuntary Migration and Resettlement: The Problems and Responses of Dislocated People (Boulder, Westview Press, 1982), pp. 267-86.

87. These stressful effects mainly fall into three general categories: psychological, physiological and economic/material loss. Psychological stress involves "grieving for a lost home", a syndrome characterized by anxiety for the future and a feeling of impotence associated with one's inability either to control events affecting oneself, or to protect one's home and community from disruption. Such stress may be so severe as to cause physiological stress, involving the onset of new or increased health disorders.

88. Concerning physiological disorders, communities subjected to transfer have been recorded as having increased mortality and morbidity rates, including dramatic increases in infant mortality. Scudder and Colson, op. cit.; also, Joseph Schechla, The Price of Development: Environment, Housing and People in India's Narmada Valley (Mexico City, Habitat International Coalition, 1992), p. 10. These patterns may become reversible, in time. However, the loss of life is not, nor are the consequences from stress which is sociocultural in nature. In other words, communities may never recover their equanimity after transfer.

89. The third category of stressful effects is broadly characterized and has wide-ranging human and social consequences. The involuntary loss of home, property and community severely reduces "the cultural inventory due to a permanent or temporary loss of behavioural patterns, economic practices, institutions and symbols". Scudder and Colson, op. cit., p. 271. Thus, culture is profoundly affected by transfer, and many subtle, but important, cultural features may be irreversibly lost.

## 2. Economic effects

90. Transferees forfeit various immovable assets, including land and housing and improvement investments in both. They lose access to economic activities, jobs and public services, as well as non-economic assets, such as holy sights, burial grounds and the like.

91. Familiar common property and non-title-based usufruct systems evaporate, and exchange and property-transfer systems disappear and are replaced by alien systems. Regardless of the motive of the transfer, the shunted population typically experiences the hardship of long-term impoverishment. The immediate and/or cumulative consequences are reflected in a number of health problems, either related to the conditions of transfer, the conditions at the destination or resettlement site, the various forms of stress related to the transfer, or any combination of the above.

92. Those transferred or expelled from urban settings experience the disruption of most forms of commercial activity, lose regular employment and sacrifice wages and salaries. Economic activity is cut off from suppliers, distributors and clients. Rural communities are separated from their crops, irrigation works, trees and forests, and fishing waters. Each of these losses creates immediate and lingering hardships, as well as the suffering associated with them.

## 3. Land loss

93. For the rural communities which are the typical victims of population transfer, the principal and most obvious effect is the loss of land and property, both owned privately and in common. When land-based communities are affected, the lands and properties confiscated, degraded or submerged have unique value. Not only were these lands the principal source of livelihood, but the identity of the individual and community are closely linked to the specific place, and no amount of monetary compensation or replacement land can make up for the loss created in the psychological or metaphysical dimensions of the transfer victims' lives.

94. Land speculation and other market forces usually inflate prices around development projects, and alien settlement prohibitively increases demand and prices for goods and services for the host population. Typically, such forced removal schemes provide sorely inadequate compensation to transferees, if any at all. Hence, where displaced people have been forced to purchase new lands, the transferred population is usually only able to purchase by incurring insurmountable debt. Owing to the capitalist unsophistication of many transferred people, the new uncertainties as to their revenue and subsistence, the high cost of assimilation and the need to purchase commodities which were of little or no cost back home may have a shocking and debilitating effect on them. Many rural transferees who are fortunate enough to purchase

new land often lose it to creditors in a few short years. These factors and the usual inadequacy of the (purchased or State-provided) lands in resettlement sites commonly transform transferees into menial workers, not infrequently as surplus or bonded labour. Kashyap Mandal, "Learning from the Ukai experience" (Surat, Centre for Social Studies, 1982). Forced removal schemes often result in the loss of means of living for those who remain in the area from which mass transfer of population takes place. For example, the merchants and barbers may not be able to carry on their business with the reduced population.

95. Typically, tribal or other land-based people displaced from their habitat can suffer a severe reduction in food sources commensurate with the net loss of land. This phenomenon has been reported as pandemic, and social science analysts have observed that "almost universally, governments fail to pay proper attention to how relocatees are going to make a living after removal". Scudder and Colson, *op. cit.*, p. 270. For land-based peoples who have been forced from their lands and community, their readjustment to life is uncertain.

96. Even when government resettlement programmes exist, replacement lands are often provided by appropriating private or customary-use lands belonging to other long-settled communities. This inevitably sparks resentment and creates the conditions for bitter conflicts between the resettled and host communities. New social conflicts have been reported to have emerged in a number of resettlement schemes in the past decade. See, for example, Schechla; also Survival International, "Ethiopia's Resettlement Programme", *op. cit.*

#### 4. Sociopolitical effects

97. The cessation of a variety of familiar and gratifying social, economic and religious activities linked to the old home are related to an overall breakdown of social structures, especially political structures.

98. Political consequences for the transferred population include a characteristic crisis of leadership. Traditional authority is undermined, and the potential for community cooperation and reciprocity is broken, often irreparably. Traditional leaders of transferred communities find themselves cornered; they lose their legitimacy if they approve of the community's transfer, usually against the majority, and they also risk proving themselves powerless if they unsuccessfully oppose their transfer against the will of the enforcing power. Invariably, transfer has the effect of destroying a community's cohesion as a political unit, and if political structures remain intact at all, they most often become dependent upon the transferring authority (the State) in a number of ways.

99. Transfer weakens or severs social networks, and disperses communities and kin groups. This may result in the loss or abandonment of social mores and traditions, leading to further deterioration of familiar codes of behaviour, ethics and value systems. Not only physical separation, but new economic imperatives after transfer may lead to radical change in the roles and behaviour generally attributed to gender, class and age groups within a community. Such dynamics tend to create collateral social breakdown with unforeseen consequences.

#### 5. Ethnocide and genocide

100. Although it has not been developed as a legal term, social science literature has recognized and defined the phenomenon of "ethnocide", most notably over the past three decades. The term emerged during the 1960s and was apparently first published by French anthropologist Robert Jaulin in La Paix Blanche (Paris, Editions de Seuil, 1970). Writers have applied variations of common understanding of the causes and effects of ethnocide, and most definitions generally refer to the role of State and government

policy as instrumental in the process of eliminating the cultural aspects of existence for a people. The cumulative effects of population transfer appear to coincide with the ethnocidal process as characterized to involve a State destroying or usurping control over the vital cultural elements or resources of a distinct population, people or nation, up to and including the ultimate elimination of such elements. For a survey of social science definitions of ethnocide, see Marc A. Sills, Ethnocide and Interaction between States and Indigenous Nations: A Conceptual Investigation of Three Cases in Mexico (doctoral dissertation, Graduate School of International Studies, University of Denver, June 1992), pp. 1-41. See also Rodolfo Stavenhagen The Ethnic Question: Conflicts, Development and Human Rights (Tokyo, United Nations University Press, 1990), pp. 85-93.

101. Both land-based and urbanized transferees suffer varying degrees of loss of cultural identity, depending on the extent to which that identity is linked to the place of residence. For example, where population transfer is the primary cause for an indigenous people's land loss, it constitutes a principal factor in the process of ethnocide. This factor alone may so severely impair a population's living conditions through loss of food resources, deterioration of health and increased infant mortality that significant deaths may occur within the group. Particularly where these effects are foreseeable, sufficient evidence may exist to demonstrate official intent to cause physical harm to the affected population. The cumulative effects of population transfer may, therefore, coincide with one or more of the definitions of genocide (discussed below).

## B. Consequences for States

### 1. Economic consequences

102. Many State-directed schemes involving population transfer for reasons of economic development are considered failures with particular regard to the economic rates of return and community formation. Both planners and appraisers tend to exaggerate the expected benefits during the initial years of the transfer, but integrated development may result from such schemes in the long run, Thayer Scudder, The Development Potential of New Lands Settlement in the Tropics and Subtropics: A Global State-of-the-art Evaluation with Specific Emphasis on Policy Implications (Binghamton, New York, Institute for Development Anthropology, 1981); also Thayer Scudder, "A social science framework for the analysis of new lands settlements in the tropics and subtropics", in Michael Cernea, ed., Putting People First: Sociological Variables in Development Planning (London, Oxford University Press for the World Bank, 1985). albeit after the target population incurs considerable cost. (This seems to be true as well for voluntary settlers.) There do not seem to be any viable examples of development success from economic population transfer over several recent decades, and the target population's inability to move beyond subsistence, for a variety of reasons, is a major reason for the need for continued State assistance.

### 2. Ethnic conflict and resistance

103. As population transfers have recently come under study, accounts indicate increasing instances of resistance. Survival International, International Rivers Network, Environmental Defense Fund, Antislavery Society, Earth Island Institute, Anthropology Resource Center, World Bank, and volumes of reports and analyses of forced removals in South Africa, Namibia, the indigenous world, Palestine, etc. The violence that frequently accompanies population transfer, as well as the losses and human rights violations incurred by individuals and communities, provide strong motives for violent responses to the State and its agents responsible for, or presumably benefiting from the process.

104. Factors leading to resistance involve:

- (i) The possibility to resist: the cause of the transfer and the nature of the force effecting the transfer;
- (ii) What is at stake: the relationship of the affected population to the home environment;

(iii) Historical factors: the relationship of the target population to the agent of transfer, usually the State (with or without the military). This can be complicated by ethnic differences related to which group retains State power and which group is subject to it. Resistance may occur whether or not the transfer involves planned resettlement of the subject population. Consider cases in which armed resistance has emerged in response to planned resettlement, particularly involving an ethnic component: Manz, op. cit.; Charles Drucker, "Dam the Chico: Hydropower Development and Tribal Resistance", The Ecologist vol. 15, No. 4 (1985), 149–57; and M.Q. Zaman, "Crisis in Chittagong Hill Tracts: Ethnicity and Integration", Economic and Political Weekly vol. XVII, No. 3 (January 1982), pp. 75–80.

105. A World Bank source recognizes resistance and characteristic hostility to the idea and fact of State-directed transfer as "normal ... and expected". Michael Cernea, Involuntary Resettlement in Development Projects: Policy Guidelines in World Bank-financed Projects (Washington, World Bank, 1988), p. 15. Measures to alleviate the effects of population transfers - whether conducted under political or economic programmes - have emerged rather late in the long history of its practice; however, planners and executors of population transfers evidently have operated with full consciousness of the resistance they are bound to encounter. Note the statement in one World Bank publication which asserts that "involuntary resettlement is often an unavoidable aspect of many urban development projects and the volume of people who must be displaced in the name of progress is sure to grow as the world's urban populations increase". (World Bank, "Coping with involuntary resettlement", Urban Edge, vol. 13, No. 2 (March 1989), p. 6.

106. The reasons for resistance and the degree of hostility may lie in the physical and historical circumstances related to the transfer. Transfers for purely economic reasons may eventually culminate in readjustment of the affected community, while conflicts arising from political transfers tend to be open ended, even atavistic. It can be said that the potential for conflict is endemic to population transfer.

107. Some may choose to accept the transfer schemes of an infrastructural development project as a fait accompli and seek instead merely to improve the conditions of resettlement. Even conflict within the affected group, especially between the community and its leadership, and between the community and its actual or potential allies elsewhere, who may then perceive them as legitimizing the whole questionable development approach.

108. The threat, or execution of transfer of a group by another powerful, ethnically distinct group may have the effect of inspiring or reviving ethnic sensibilities and identity which rally the group in defence against a perceived common adversary. The oppositional process has been identified as a primary factor in the maintenance of ethnic identities against assimilation or other forms of ethnocide. Particularly when the conflict touches on questions of land, with its close links to heritage, religion, ancestry and world view (ideology), groups tend to become galvanized in the face of external threats. "Conflict is a powerful organizing principle of behaviour, for defining friends and enemies, good and bad, in terms of immediate, transitory purposes" notes Peter Marris, Loss and Change, second edition (London, Routledge & Kegan Paul, 1975), p. 159. Especially where ethnicity is already a source of conflict within society, the attempt of population transfer may escalate these conflicts far beyond their original dimensions or cause. Conflict may provide the context by which an affected population perceives events in logical order, and seeks to regain control over them.

### 3. Armed insurrection

109. The population transfer-related cases of resistance escalating to armed insurrection are well

documented and regrettably numerous. However, just as prevalent is the failure of resistance movements to prevent involuntary transfers. Although the armed movements may be a minority among cases of resistance to development-related transfer, they have nevertheless demonstrated the potential for transfer to result in extreme cases of conflict.

#### 4. Secession movements

110. The politicization and ethnicization of the subject population in opposition to transfer has, on occasion, led to demands that encompass far more than the issue of resettlement. The more militant expressions of political empowerment have emerged as demands for secession (if the group was previously acquiescent to the State), or self-determination, taking any number of forms. While such demands usually arise out of a long history of disaffection with the State, population transfers may bring a population to its breaking point, whereby it emerges from acquiescence to seek political independence.

111. Containment of such movements can prove costly, in every sense, for all parties concerned. Certainly a military response to this resistance is not seen as less expensive than a positive programme to address the needs, grievances and aspirations of the affected population, especially those already on the table before the transfer plan. Active resistance to transfer forges a clearer sense of identity, valuable alliances, more concise agendas of community needs, the elaboration of strategies and the assertion of needs. Empowerment may emerge from such struggles and enable people to confront the State.

112. Regardless of the outcome of either armed resistance or secession claims, the transfer debacle and resistance to it can challenge the very foundations of the State and the ideological premises upon which its cohesion depends.

#### 5. Cross-border migration

113. Population transfer within a country or occupied territory can result in the flow of refugees across international borders. Although not obliged to do so by law, the receiving State usually diverts resources to meet some of the immediate needs of the transferred population, and this burden may persist despite the relief work of the United Nations and intergovernmental and non-governmental agencies. Such agencies may not help in many aspects of the adjustment, as with the costs of advanced training and placement of the refugee workforce, law enforcement and other civil protection, land for housing and other infrastructure, as well as any medical and environmental consequences for the host society resulting from the absorption of the alien population. The cross-border migration also raises administrative problems related to extending civil status to the entrants and related legal complications.

#### 6. International responses

114. The escalation of resistance and the State's repressive mechanisms can foster a confrontation that may threaten regional or international peace and world order. In such an instance, the international community may be compelled to respond through various mechanisms and collective actions to activities considered to be an internationally wrongful act. These responses may involve rhetorical and legal condemnations, travel bans and economic sanctions, as well as a unilateral or collective economic, political or military response. Such involvement may result in the restoration of human rights or the preservation of the State at the expense of its constituent sectors. An international failure to respond may result in a violation by other States of their treaty obligations to ensure respect for and to maintain humanitarian and human rights standards. For example, under common article 1 of the Civilians Convention (1949), which obliges High Contracting Parties to "ensure respect" for the terms of that convention.

## V. BILATERAL POPULATION EXCHANGE AGREEMENTS AND TREATIES

115. In this century, population transfer has occurred as a result of the application of the provisions of international and bilateral conventions, often called "option agreements" or "population exchange treaties", dating back to 1913. Protocol No. 1 of the Treaty of Constantinople, 16–29 September 1913. The post-First World War peace settlement of 1919 attempted to solve problems attributed to the presence of minorities within States by eliminating some potential sources of grievance and offering protection through the League of Nations. The Minorities Treaties recognized the rights of minorities to take active part in the political life of the State in which they lived, while allowing them to retain their own national heritage and culture. The interwar exchange agreements did not call for wholesale transfers of population, but offered individuals the option of voluntary emigration to the State corresponding to her/his ethnicity, while also alleviating individuals' resulting financial burden. This option was first adopted and exercised in the Balkans, but then only as a supplement - not an alternative - to protection.

### A. Inter-war "option agreements"

116. At the peace conference, the Greek delegation proposed to the New States' Committee that a minorities-exchange convention be concluded among Greece, Bulgaria and Serbia. The Committee was receptive, but Serbia rejected the idea. However, Bulgaria and Greece agreed at Neuilly-sur-Seine Treaty between the Allied and Associated Powers and Bulgaria, signed at Neuilly-sur-Seine on 27 November 1919, entered into force on 9 August 1920. to provide for the "reciprocal voluntary emigration of the racial, religious and linguistic minorities in Greece and Bulgaria". This was viewed as a resolution, in part, of the demographic confusion resulting from the territorial transfers and forcible population movements of the first and second Balkan wars, and applied to the estimated 37,000 Greeks in Bulgaria and some 150,000 Bulgarians in (Greek) Macedonia and Thrace. Under the Convention of Neuilly, emigrants could take movable property duty free across the border, and the value of immovable property was to be reimbursed to emigrants upon liquidation. The States reciprocally agreed to facilitate these conditions by way of the Mixed Commission.

117. Whereas the Convention of Neuilly provided for complete reciprocity between States, the post-war Treaty of Neuilly provided for unilateral action against a defeated enemy. Upon liquidation, enemy property would be credited to the State of which the owner was a national Treaty of Neuilly-sur-Seine, article 177 (b). and, in the case of Bulgaria, such credit was applied to the State's reparation obligations. Several authors noted at the time that the motives of the Treaty were actually political, rather than humanitarian: Greece took advantage of an opportunity to remove the Bulgarian minority from its territory and Bulgaria sought safeguards against unilateral actions of a neighbouring State. See Carlile A. Macartney, National States and National Minorities (Oxford, Oxford University Press, 1934); also "The exchange of minorities and transfers of population in Europe since 1919", Part I, Bulletin of International News, vol. XXI, No. 16 (July 1944), p. 580.

118. The actual degree of voluntariness in the subsequent emigration is subject to doubt, despite the wording of the agreements. When the Commission began its work in September 1921, the Bulgarians in Greece showed no desire to leave; meanwhile the Greek peasants in Bulgaria saw advantages in moving to richer lands in Western Thrace while they faced potential expropriation under the new Bulgarian Land Reform Act. By June 1923, only 197 Greek families and 166 Bulgarian families had filed for emigration. Both Governments pressured the respective minorities, and the Commission had to "struggle, by measure of all kinds, to prevent forced emigration and to combat influences tending to boycott the Convention". Ibid., p. 581, citing a report of the Mixed Commission. Ultimately, the Commission itself came under severe criticism for its lack of legal qualifications and experience, as well as the debilitating antagonism which manifested itself between the two national delegates. Stephen P. Ladas, The Exchange of



Minorities: Bulgaria, Greece and Turkey (New York, Macmillan, 1938). None the less, the Commission was able to establish compensation terms. These, however, proved unsatisfactory.

119. The Commission's chief function was to determine eligibility, but in the context the ambiguities of language, "race" and religion made this task insurmountable. Citizens joined the transfer scheme in large numbers only after the failed Greek campaign in Anatolia (1923–1924). However, these "emigrants" were actually war-time refugees seeking a haven under the Convention.

120. The Greek Government deported Bulgarian residents from Western Thrace to Aegean islands and Thessaly for "military purposes" in 1923. Anatolian Greeks were transplanted into the Bulgarians' vacated homes, where they remained after the hostilities ended. Thus returning Thracian Bulgarians had little choice but to move to Bulgaria, as for the others who preceded them out of fear of deportation, or escaped the precarious economic and social conditions that accompanied the influx of surplus Greek labour from Anatolia. Correspondingly, Bulgarians from Thrace overran ethnic Greek villages in southern Bulgaria and, with the deterioration of relations between the two countries, the Commission had to conduct inquiries into the unrest in 1924. It ceased to accept further emigration requests, but these continued to remain low even after peace resumed. Between 92,000 and 102,000 Bulgarians left Greece and were compensated under the Convention (with 39,000–40,000 applying retroactively). According to the 1928 census of Greece, 82,000 Bulgarians still lived in that country (mostly in Western and Central Macedonia); thus, approximately 50 per cent of the Bulgarian minority declined to participate. The director of the Refugee Survey reported an additional 55,000 Bulgarians had emigrated by 1934. Sir John Hope Simpson, Refugees: A Preliminary Report of a Survey (London, Royal Institute of International Affairs, 1938).

121. The Peace Settlement at the end of the Greek-Turkish war of 1919-1922 differed from the Neuilly Treaty in that it made population exchange compulsory and set religion as the singular criterion for transfer. The Treaty of Lausanne Signed by the Greek and Turkish Governments on 30 January 1923; the Treaty of Lausanne replaced the Treaty of Sèvres of 10 August 1920. formally exempted the Greek community in Constantinople and the Muslims of Western Thrace from forced removal.

122. Mutual hostility between the principal States pervaded the work of the Mixed Commission. It had failed utterly at the task of supervising compensation, while the respective Governments typically confiscated emigrants' non-movable property, often before a certificate of value could be obtained. Both Governments favoured cancelling the whole indemnification question. With the Convention of Angora, 10 June 1930. they deferred the matter to the neutral members of the Commission, who renounced the relevant provisions of the Convention and determined that compensation should be effected by the receiving States.

123. Transfer held numerous human rights implications for the emigrants, especially for the Orthodox emigrants. After confiscation of their property and arduous journeys to designated ports, the transferees were often detained or turned back to their original villages. Destitute, they fell victim to epidemics and starvation at the ports and, upon arrival at rural resettlement sites in Greece, League of Nations Health Section doctors had to join local physicians in stamping out new malaria and tuberculosis outbreaks. Urban resettlement proved even more problematic, at least in the short term, given the economic strains attendant to a flood of surplus labour. Various studies reported that from 30 to 40 per cent of immigrant settlements still depended on State subsidies in 1928. However, many of these communities were reportedly prospering by the end of the decade.

124. The financial strain on Greece was great and repayment of external debt Amounting to £9,970,000 in 1924 and £3,000,000 in 1928. to finance the immigration placed a heavy burden on Greek taxpayers. The Turkish Government had an easier task: resettlement of a relatively smaller number was financed internally. At £1,539,511, but the Government was only able to spend approximately £2 per immigrant, compared with £80 per family in Greece.

125. A total of 355,635 Muslims had left Greece by 1924. Some 189,916 Orthodox were moved from Anatolia after the Convention was signed, but over a million Greek Orthodox refugees had already migrated to the Greek State between 1912 and 1923. From the Greek perspective, the Convention essentially recognized a fait accompli. For Greece, according to one source, "the undeniably advantageous economic development of the country and the attainment of ethnical homogeneity was achieved at the expense and great hardship to her and financial embarrassment to her Government". See "The exchange of minorities ...", p. 588.

126. For the most part, Turkey correspondingly eliminated its indigenous Orthodox minority and concentrated more Muslims in metropolitan Turkey. Turkey continued to encourage Di Türkler (outside Turks) to immigrate to Anatolia, particularly from Bulgaria and Romania, and signed an agreement with Romania for the immigration of 67,000 Turkish speakers from Dobruja in 1936–1937. Convention of Bucharest, 4 September 1936.

127. In Soviet practice, the right of option resulting in population exchange arrangements was exercised with regard to citizens of States emerging from the former Russian Empire, as well as those living in Soviet annexed territories. Such terms formed part of agreements there following the First World War. The Treaty of Peace with Estonia, 2 February 1920; Treaty of Peace with Latvia, 11 August 1920; Treaty of Peace with Lithuania, 12 July 1920, and subsequent Agreement of 18 June 1929; Treaty with Finland, 14 October 1920; Treaty with Turkey, 16 March 1921; Treaty of Peace with Poland, 18 March 1921. Although ethnic identity and marriages were often mixed, nationality customarily was determined for families by the head of household, according to international practice of option. While it could be inferred here that citizenship corresponded to an ethnic criterion, that would have contradicted Soviet principles at the time and it is doubtful that these agreements constitute the establishment of a new international legal concept of "race"-based civil status.

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