



Asamblea General

Distr.
GENERAL

A/HRC/8/6/Add.4
21 de mayo de 2008

ESPAÑOL
Original: INGLÉS

CONSEJO DE DERECHOS HUMANOS
Octavo período de sesiones
Tema 3 de la agenda

Informe del Representante del Secretario General sobre los derechos humanos de los desplazados internos, Sr. Walter Kälin

Adición *

**MISIÓN A SRI LANKA **
(14 a 21 de diciembre de 2007)**

Resumen

El Sr. Walter Kälin, Representante del Secretario General sobre los derechos humanos de los desplazados internos, visitó Sri Lanka en misión oficial del 14 al 21 de diciembre de 2007 por invitación del Gobierno del país y en cumplimiento de su mandato, que figura en la resolución 6/32 del Consejo de Derechos Humanos. Su principal objetivo fue entablar un diálogo con el Gobierno con miras a mejorar la protección de los derechos humanos de las 577.000 personas desplazadas que se estima que hay en Sri Lanka y garantizar su pleno disfrute. Por consiguiente, en su evaluación se señalan los principales obstáculos que impiden que los desplazados internos en Sri Lanka puedan llegar a soluciones duraderas a su situación y las condiciones necesarias para que ello ocurra.

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

** Presentado con retraso.

Annex

**REPORT OF THE REPRESENTATIVE OF THE SECRETARY-GENERAL
ON THE HUMAN RIGHTS OF INTERNALLY DISPLACED PERSONS,
WALTER KÄLIN**

MISSION TO SRI LANKA

CONTENTS

	<i>Paragraphs</i>	<i>Page</i>
I. INTRODUCTION	1 - 4	4
II. GENERAL CONTEXT	5 - 13	4
A. International framework	8 - 10	5
B. National context	11 - 13	6
III. MAGNITUDE AND DYNAMICS OF DISPLACEMENT	14 - 18	7
IV. RESPONSES TO INTERNAL DISPLACEMENT	19 - 33	9
A. Domestic responses	19 - 28	9
B. The international community	29 - 33	11
V. FINDING DURABLE SOLUTIONS	34 - 71	12
A. General remarks	34 - 37	12
B. Safety	38 - 46	13
C. Housing and property	47 - 50	15
D. Livelihoods and basic services	51 - 53	16
E. Inter-communal tensions	54 - 57	17
F. Cross-cutting issues	58 - 71	17
Documentation and freedom of movement	58 - 63	17
Information and consultation	64 - 66	19
Humanitarian access	67 - 69	19
National policy and institutions	70 - 71	20

CONTENTS (*continued*)

	<i>Paragraphs</i>	<i>Page</i>
VI. FINDING DURABLE SOLUTIONS FOR IDPs IN PROTRACTED SITUATIONS	72 - 76	21
VII. PREVENTING FUTURE DISPLACEMENT AND MITIGATING ITS CONSEQUENCES	77 - 81	22
VIII. CONCLUSIONS AND RECOMMENDATIONS	82 - 87	23

I. INTRODUCTION

1. In accordance with his mandate contained in Human Rights Council resolution 6/32, and by invitation of the Sri Lankan Government, the Representative of the Secretary-General on the human rights of internally displaced persons (hereinafter “the Representative”), Walter Kälin, conducted an official mission to Sri Lanka from 14 to 21 December 2007.¹ His main objective was to engage in dialogue with the Government with a view to ensuring the full enjoyment of human rights of internally displaced persons (IDPs) in Sri Lanka by identifying conditions necessary for them to achieve durable and sustainable solutions.
2. In Colombo, the Representative met with government officials, international organizations, non-governmental organizations, civil society and donors. He travelled through Puttalam, Vavuniya, Trincomalee and Batticaloa districts, where he met with IDPs and returnees, community and religious leaders, government agents, local area security commanders, local and international non-governmental organizations and United Nations agencies. He regrets that he was unable to visit Kilinochchi to raise humanitarian and protection concerns with the Liberation Tigers of Tamil Eelam (LTTE) and to meet IDPs in the Vanni.² While this mission focused on those displaced by armed conflict and acts of violence, the Representative recalls those displaced by the devastating tsunami of 26 December 2004.
3. The Representative appreciates the cooperation of the Government of Sri Lanka, the access granted to him to most parts of the country, and the open conversations he had with all interlocutors. He is most grateful for the perfect support provided by the United Nations Country Team, in particular the United Nations High Commissioner for Refugees (UNHCR) Colombo and its field offices. He was well served by the wealth of information provided to him by civil society organizations and appreciates the communications he received in advance and during his visit. Above all, he thanks the many IDPs who graciously shared their experiences with him under difficult circumstances; their courage and dignity left an enduring impression.
4. The Representative shared his primary findings with the Government at the conclusion of his mission and was encouraged by the willingness of governmental officials to acknowledge problems in the response to internal displacement and the protection of IDPs. He particularly welcomes the Government’s prompt consideration of his recommendations through the mechanism of the Consultative Committee for Humanitarian Assistance (CCHA). He underscores his desire and intention to continue this dialogue.

II. GENERAL CONTEXT

5. Sri Lanka, with its population of 21 million, has been embroiled in an internal armed conflict of varying degrees of intensity for the last 25 years. Government policies following independence left the Tamil minority feeling increasingly marginalized from the Sinhalese majority, and by the 1970s a segment of radicalized Tamil leaders dropped demands for

¹ A/HRC/6/L.46.

² The Vanni denotes areas under LTTE control and roughly includes Kilinochchi and Mullaitivu districts and parts of Jaffna, Mannar and Vavuniya districts.

increased devolution of powers in Tamil majority areas and instead raised the call for a separate state. A segment of this population advocating armed resistance ultimately was consolidated under the control of the Liberation Tigers of Tamil Eelam (LTTE), which has been designated by the Government of Sri Lanka and others as a terrorist organization.

6. The intervening years have left more than 70,000 dead and many hundreds of thousands displaced. Following a ceasefire agreement (CFA) between the Government and the LTTE in 2002, a period described as “no war, no peace”, open hostilities resumed after general elections in late 2005. In 2006, government forces regained control of parts of the Eastern Jaffna Peninsula and consolidated control of the Eastern Province. Government and military leaders have recently announced their intention to reclaim control of the entire island. The theatre of conflict has concentrated in the north, and there is increasing potential for mass displacement within and from the Vanni. Shortly following the Representative’s visit, the Government announced its formal abrogation of the CFA.

7. In 2004, the LTTE commander for the Eastern Province, Vinayagamoorthy Muralitharan (commonly referred to as Karuna) broke with the LTTE leadership, taking a substantial portion of former LTTE cadres with him. The Karuna Faction subsequently registered as a political party, the Tamil Makkal Viduthalai Pulikal (TMVP). It became clear that Karuna was cooperating with the Sri Lankan military and operating with its tacit approval. TMVP paramilitary forces operate openly in parts of the Eastern Province. Following a split, the TMVP is led by Karuna’s former deputy, Pillaiyan; Karuna is in custody for immigration fraud in Great Britain. In early March, the TMVP won a majority of seats in local elections in Batticaloa.

A. International framework

8. As citizens of their country, IDPs in Sri Lanka remain entitled to all guarantees of international human rights and international humanitarian law subscribed to by the State or applicable as customary international law.³ They do not lose, as a consequence of their displacement, the rights of the population at large. At the same time, IDPs have needs and vulnerabilities distinct from the non-displaced population, which must be addressed by specific protection and assistance measures. These rights are detailed in the Guiding Principles on Internal Displacement,⁴ which, though not directly binding, reflect and are consistent with international human rights and international humanitarian law. They have been recognized by States as “an important international framework for the protection of internally displaced persons”,⁵ and are increasingly reflected in national laws and policies. The Guiding Principles apply equally to non-State actors, including armed groups such as the LTTE and TMVP.

³ On the Representative’s understanding of protection, see E/CN.4/2005/84, paras. 34-85 and E/CN.4/2006/71, paras. 4-12.

⁴ E/CN.4/1998/53/Add.2.

⁵ A/Res/60/1, para. 132; 60/168, para. 8; A/Res/62/153, para. 10. See also A/HRC/6/L.46, para. 6 (c).

9. The primary duty and responsibility to provide protection to IDPs lies with the national authorities, and IDPs have the right to request and receive such protection and assistance from the Government (Guiding Principle 3). There may be times when a State does not have the capacity to fulfil these obligations, because it either lacks means to do so, or does not have de facto control over parts of its territory. In the former case, the State has an obligation to seek the assistance of others, particularly international organizations; such support shall be considered in good faith and not as interference in a State's internal affairs (Guiding Principle 25).

10. Furthermore, and without prejudice to their legal status, those who do hold de facto control are obliged to respect the rights of IDPs and secure their protection. The Guiding Principles "provide guidance to [...] all other authorities, groups and persons in their relations with internally displaced persons". In Sri Lanka, this means that the LTTE is responsible for preventing and avoiding actions which could lead to arbitrary displacement, as well as for protecting those who are displaced in areas under its control. As a party to the conflict, the LTTE is bound by international humanitarian law. As a non-State actor, it is not party to human rights treaties, but it is subject to the demand of the international community that "every individual and every organ of society" respect and promote human rights.⁶ The LTTE has itself recognized this responsibility.⁷

B. National context

11. Sri Lanka is party to the main United Nations human rights conventions and their optional protocols, except to the Second Optional Protocol to the Covenant on Civil and Political Rights and the Optional Protocol to the Convention against Torture. It has not signed the International Convention for the Protection of All Persons from Enforced Disappearance. Similarly, while it is party to the four Geneva Conventions of 1949, it has not ratified their Additional Protocols, nor has it signed the Rome Statute of the International Criminal Court.

12. The Constitution of Sri Lanka contains a fundamental rights chapter reflecting the rights to equal protection before the law, non-discrimination, freedom of movement and choice of residence.⁸ Following the assassination of the Foreign Minister in August 2005, a state of emergency was declared, and the President has since adopted a series of emergency regulations.

⁶ Preamble to the Universal Declaration of Human Rights, UNGA, 10 December 1948 (UDHR).

⁷ The Charter of the North-East Secretariat for Human Rights "recogniz[es] the Universal Declaration of Human Rights and other United Nations Human Rights instruments" and states as its objective, "promot[ing] recognition and respect for the human rights and the basic freedoms of the people of the Northeast of this Island according to [the UDHR and the major human rights conventions to which Sri Lanka is party]".

⁸ The Human Rights Committee has observed that "Sri Lanka's legal system still does not contain provisions which cover all of the substantive rights set forth in the [International Covenant on Civil and Political Rights], or all of the necessary safeguards required to prevent the restriction of Covenant rights beyond the limits permissible" (CCPR/CO/79/LKA), para. 7.

These regulations have had particular bearing on the rights of IDPs, including expanding powers of arrest and preventive detention and creating a High Security Zone (HSZ) in Trincomalee and along coastal areas.

13. Serious violations of human rights and international humanitarian law by the parties to the conflict have been noted by the United Nations treaty bodies and mandate holders of the Human Rights Council.

III. MAGNITUDE AND DYNAMICS OF DISPLACEMENT

14. Sri Lanka has been affected by cycles of displacement over the past 25 years. International attention has largely focused on two phenomena: the 2004 tsunami killed 40,000 persons and displaced more than half a million, and the re-escalation of the armed conflict since early 2006 has displaced more than 308,000. In fact, there remains an equivalent number of Sri Lankans (312,000) in situations of “protracted displacement”, prior to the 2002 ceasefire.

15. Displacement in Sri Lanka is characterized by its fluidity and unpredictability. Mass returns were prioritized by the Government and carried out extremely quickly in the East during 2007. In a period of months in mid-2007, more than half of the 308,000 newly displaced returned home. Meanwhile as military activities have intensified in the North, there has been more displacement. Finally, some IDPs have been displaced more than once, i.e., some of those displaced prior to 2002, or displaced by the tsunami, were again displaced by the resumption of the armed conflict. In total, however, as of December 2007, the Government estimated that there were 577,000 IDPs in Sri Lanka.

16. The Representative distinguishes among six situations:

(a) IDP returns in Trincomalee and Batticaloa districts. In the period between April 2006 and March 2007, more than 220,000 persons had to flee their homes as a result of military operations in Trincomalee and Batticaloa districts. At the height of the crisis, Batticaloa district alone had more than 160,000 IDPs living in 96 temporary IDP sites. Due to government policy, since August 2006, roughly 170,000 of these IDPs have returned to their divisions of origin;

(b) Continuing displacement since 2006 and 2007 in the Eastern districts. Roughly 188,000 of the 300,000 displaced since the resumption of hostilities remain in displacement in both the North and the East. Those who remain displaced in the East are primarily those from areas where there are (i) high security zones, (ii) zones awaiting demining, or (iii) houses or villages occupied by security forces. Many of these IDPs are concerned about security, access to services and livelihoods. Most are in camps or host families in Batticaloa district, although some are in “transit camps” in Trincomalee district;

(c) Recent displacement in the Northern Province. As a consequence of military operations along the FDL (Forward Defence Line), Mannar and Vavuniya districts, the Vanni and the Jaffna Peninsula have been the locus of the most recent displacements. By August 2006, 51,000 persons had registered as newly displaced in Jaffna district, of which 31,000 currently remain displaced. Nearly 3,000 newly displaced persons registered in Puttalam during 2006-2007. Since September 2007, another 22,500 persons were displaced by fighting in the north, mostly in Mannar district but also within the Vanni and some within Jaffna and Vavuniya;

(d) Displacement inside the Vanni. In the areas under LTTE control, covering Mullaitivu and Kilinochchi districts and parts of Mannar, Vavuniya and Jaffna districts, estimates indicate 106,000 IDPs, or perhaps one third of the total population. This category overlaps with categories (c), (e) and (f) but warrants attention as a distinct category, because these IDPs face additional challenges related to freedom of movement and access to services and livelihoods. In particular, Kilinochchi and Mullaitivu districts experienced large influxes of IDPs from Jaffna in 1995 and 1999. The two districts have experienced new displacement since 2006, of 81,000 arriving from Jaffna, from within the districts, and recently Mannar;

(e) Protracted displacement. In Jaffna, Mannar, Puttalam and Vavuniya, there are communities of displaced persons who fled their homes due to the conflict 6 to 17 years ago. Approximately 312,000 IDPs are in this category. Puttalam and Jaffna provide striking cases. Approximately 63,000 northern Muslims have remained in displacement since 1990, living today in 141 Government-maintained welfare centres in Puttalam. Another 57,000 are displaced on the Jaffna Peninsula, many unable to return because their homes are encompassed in High Security Zones which, cumulatively, cover one fifth of the peninsula. Vavuniya hosts more than 36,000 IDPs, many of whom fled military operations in Jaffna, Mullaitivu, Kilinochchi and Mannar districts in the mid- and late-1990s;

(f) Displacement caused by the tsunami and other natural disasters. Presently, 9,000 families remain displaced from the 2004 tsunami and live in 58 welfare camps, primarily in the North and East. Up to another 2,000 families have found other living arrangements.

17. The vast majority of IDPs find accommodation with host families, often relatives and friends, or on vacant land. Thus displacement has a far-reaching effect on many more families than the IDPs alone, and these families and their communities play an essential role in supporting IDPs that must be recognized and reinforced. Close to 20 per cent of IDPs (98,000) live in camps or “welfare centres”. Those in welfare centres tend to be those in protracted situations. In contrast, during the recent mass displacement in the East, the majority of the displaced stayed in 1 of 96 temporary IDP sites set up in schools, temples or mosques, or other public buildings or land. In Jaffna, fewer than 10 per cent of IDPs live in 68 welfare centres, with the remaining 90 per cent dispersed among family or friends. A similarly low percentage lives in welfare centres in Vavuniya, though in Puttalam the majority do live in such centres.

18. The ethnic dimension of displacement cannot be ignored. Because of their geographic concentration on the North and East, Tamils have been disproportionately affected by the conflict. While Sinhalese, Tamils and Muslims constitute 74 per cent, 18 per cent and 7 per cent of the population as a whole, figures on the long-term displaced indicate that this population is to 78 per cent Tamil and 13 per cent Muslim. At the same time, the population of Trincomalee historically has been roughly balanced among the three groups. The Representative repeatedly heard IDPs describe their fears that patterns of displacement, organized returns and the designation of areas as High Security Zones, special economic zones or cultural or religious sites are affecting the prior distribution and balance of populations, and tensions among the communities are increasing.

IV. RESPONSES TO INTERNAL DISPLACEMENT

A. Domestic responses

19. Sri Lanka does not have a specific law or policy comprehensively addressing internal displacement. The Representative was informed that a law on protection and assistance to IDPs is being considered.

20. Several ministries have responsibilities for displacement-related issues. The Ministry of Disaster Management and Human Rights (MDM&HR) coordinates among government actors, including ministries and the military, and also between national and international actors. The Ministry of Resettlement and Disaster Relief Services (MR&DRS) has primary responsibility for camps and welfare centres and the provision of essential services including assistance to the long-term displaced. It has played a central role in the return process in the East. The Ministry of Nation Building and Development and Estate Infrastructure (MNB&DEI) has responsibility for registration of IDPs, which is implemented through the Government Agent (GA), and distributes food provided by WFP to the newly displaced. The Secretariat for Coordinating the Peace Process (SCOPP), the Ministry of Foreign Affairs, and the Ministry of Defence also participate in formulating official policies and responses to displacement. Early last year, legislation established a Resettlement Authority under the Ministry of Resettlement, charged with formulating a resettlement policy and coordinating governmental and non-governmental actors “in order to end displacement of persons”.⁹ Its authorizing legislation grants power in the areas of documentation, property disputes, housing, education and health infrastructure, recovery, development and livelihoods. However, it neither indicates substantive standards nor assigns accountability for implementation in relation to other governmental actors. The Authority is not yet operational.

21. The GA is the key authority at the district level and is responsible for shelter, rations, water/sanitation, and access to health and education services. The GA, along with the Divisional Secretary (DS) and district and national Registrar offices, is responsible for issuance of national identity cards (NIC) and other personal documentation.

22. The Sri Lanka Human Rights Commission has an IDP Unit with field offices that provide assistance to IDPs, especially in the area of arrest and detention and personal documentation. Mobile documentation clinics have helped many obtain needed documents, but requests have by far exceeded processing capacity, leaving a lengthy backlog.

23. The Representative did not obtain information concerning government allocations for assistance and protection to IDPs. Government compensation is sometimes provided to victims of the armed conflict, including the displaced, but compensation appears to be allocated in response to particular incidents, on an ad hoc basis. As for daily needs, the Government relies heavily on international organizations to supply food and non-food humanitarian assistance, as well as emergency and transitional shelter and infrastructure for resettlement or relocation

⁹ Resettlement Authority Act, No. 09 of 2007, Part II, art. 14 (b).

projects.¹⁰ Most immediate emergency assistance is provided by international agencies and NGOs. The Government provides limited funding for the Human Rights Commission, with growing reliance on funds from the international community.

24. Following the majority of returns in the East, MR&DRS developed a six-month post-resettlement emergency assistance plan. The Representative heard concerns that the plans had been developed at the central level, without consultation of IDPs. He was advised that MNB&DEI is developing a three-year plan of recovery for the East and that a new initiative is addressing land rights.

25. Two primary coordination mechanisms exist between the Government and humanitarian actors. The Consultative Committee on Humanitarian Assistance (CCHA) is a high-level forum for coordination and policymaking led by the Minister of Disaster Management and Human Rights and attended by key ministries, United Nations and key bilateral donors. There are subcommittees on IDP resettlement and welfare, logistics and essential services, livelihoods, health and education. MDM&HR also chairs a monthly IDP coordination meeting which allows humanitarian agencies to raise operational and protection concerns with ministries, government agents and security forces.

26. A potentially powerful initiative is the cooperation between MDM&HR and UNHCR to develop guidelines on “Confidence Building and Stabilization Measures for Internally Displaced Persons in the North and East of Sri Lanka”. These measures aim to reduce tensions between communities, as well as strengthen communication and confidence between the civilian population and civil administration and armed forces, through targeted interventions such as establishing civil-military liaison committees; capacity-building and training in human rights and international humanitarian law; disseminating information on government programmes and policies; promoting community participation; village profiling to identify obstacles to durable solutions; supporting reconstruction and livelihoods through quick impact projects; and reviewing existing restitution and compensation schemes for resolving land and property disputes. An Action Plan was endorsed by the CCHA in October 2007, and at the time of the Representative’s visit, administrative structures were being established but implementation has been slow, in part due to lack of government allocations.

27. While these efforts show the Government’s willingness to improve existing efforts, significant structural obstacles hinder the national response. First, there is evident confusion among responsible actors, as responsibilities are dispersed and accountability not clearly established. Second, policies on matters such as return and the emergency and development plans for the East have been made in Colombo, without consultation of the communities affected, and this appears to be general practice. Third, policy decisions taken in Colombo, such as those affecting access of NGOs, are not always effectively communicated and implemented at the local level, especially military authorities. The outcomes of the CCHA are not public, undermining transparency and accountability. In addition, where plans have been adopted, more can be done to empower local actors, especially civilian authorities. Finally, the lack of

¹⁰ The 2008 Common Humanitarian Action Plan (CHAP), which is the international humanitarian community’s strategy for essential interventions, requests over US\$ 68 million for food aid and nearly US\$ 36 million for shelter and non-food relief items.

comprehensive and uniform policies on key matters, particularly compensation and assistance, has led to ad hoc and piecemeal responses.

28. The Representative was impressed by the vibrant civil society, which plays an essential role in protecting and assisting IDPs. He is concerned that insecurity still impedes access for humanitarian agencies and NGOs and threatens the safety of their staff. The commitment of national staff is remarkable. Many undertake significant risk, as humanitarian workers have been the targets of violence including killings, abductions and disappearances, as well as intimidation and extortion. The Representative remains concerned that an air of mistrust of international humanitarian organizations and national NGOs, especially voiced by a vocal minority of government officials, pervades the public discourse. So long as such criticism remains unchallenged by those in positions of authority, it will continue to hamper this valuable work and pose a risk to the well-being of all humanitarian workers.

B. The international community

29. Pursuant to the Government's request, UNHCR is the lead international agency for IDPs in Sri Lanka. For the conflict-displaced, UNHCR engages in contingency planning and emergency response and provides protection and humanitarian assistance. It is also implementing confidence-building and stabilization activities for all IDP communities, with an additional emphasis on the search for solutions for those in protracted displacement.

30. International agencies have not adopted the cluster approach,¹¹ although UNHCR coordinates efforts in the areas of protection, camp coordination and management (shelter), and non-food relief. UNICEF leads sectoral groups on water, sanitation, education and nutrition; WFP on logistics and food security; WHO on health; UNDP on early recovery; and OCHA supports coordination.

31. At the national level, UNHCR chairs the IDP Protection Working Group. It has provided a forum for addressing protection concerns, particularly through joint advocacy efforts, including its *Study on Forced Displacement, Freedom of Movement, Return and Relocation*, adopted by the Inter-Agency Standing Committee (IASC).¹² The study detailed specific incidents of forced displacement and forced return in 2006-2007, and made recommendations to all relevant actors based upon national and international legal norms. The IASC is a forum for overall coordination of the work of the humanitarian community, including contingency planning and fund-raising, and it has been an important platform for public advocacy on the protection of civilians, consultation of IDPs in the return process and the imperatives of humanitarian access and protection of humanitarian workers.

¹¹ See Inter-Agency Standing Committee, *Guidance Note on Using the Cluster Approach to Strengthen Humanitarian Response*, 24 November 2006.

¹² The IASC is chaired by the United Nations Resident and Humanitarian Coordinator and comprised of the executive heads of the United Nations agencies and international and national NGOs.

32. The cooperative and supportive role of the international community could be strengthened by greater consultation and transparency on the part of national authorities. In some instances, this cooperation has been strong, such as with the development of the Confidence Building and Stabilization Measures. In other cases, including the early stages of the return process in the East, the international community was not always timely informed or consulted on the Government's plans, and had to respond to critical humanitarian needs of the population with little or no notice.

33. Until recently, international organizations tended to focus on emergency humanitarian relief or development initiatives, with a gap in attention to transitional measures needed for early recovery and resolution of protracted displacement. The Representative is pleased at indications that this is changing. He strongly encourages organizations proposing livelihood initiatives and other elements necessary to provide durable solutions, and hopes that donors will fund these programmes. Most notably, the World Bank, in conjunction with MR&DRS, recently began implementing a project to assist approximately 40 per cent of the long-term displaced in Puttalam district through cash grants for the construction of homes. While from a development perspective, it is understandable that this project targets families who have made a similar investment of their own, through prior acquisition of land rights, it is precisely those who cannot make such an investment who are the most vulnerable. Additional projects are needed to assist these groups. A concerted and coordinated approach among the international community and national authorities, that would address the housing needs of all IDPs, as well as access to livelihoods and income-generating activities, would go a long way in improving the living conditions of many IDPs and, for some, in finding a durable solution.

V. FINDING DURABLE SOLUTIONS

A. General remarks

34. Despite their disparate circumstances, all of the IDPs the Representative met expressed a common desire to lead their lives in safety and security, with access to livelihoods and basic services. Accordingly, this report aims to identify those obstacles to durable and sustainable solutions that must be addressed in order to allow IDPs and returnees to regain their lives.

35. In accordance with Guiding Principles 14 (a) and 28, IDPs have the right to choose among three durable solutions: (i) return to their place of origin (commonly referred to as "resettlement" in Sri Lanka), (ii) integration in the area of displacement, or (iii) relocation to another part of the country (what the Guiding Principles refer to as "resettlement"). The decision to return shall be voluntary and informed, and the return itself conducted in a manner that ensures the safety and dignity of the individuals involved. Moreover, authorities have an affirmative obligation to facilitate the integration of IDPs into the social, cultural and economic life of the community, regardless of the solution chosen.

36. Substantive conditions necessary to sustain any durable solution include: (i) physical security, (ii) full protection of the law, specifically non-discrimination on the basis of prior displacement; access to national and local protection mechanisms including police and courts; restored access to personal documentation; and access to property restitution or compensation mechanisms; (iii) matters affecting the ability of IDPs to (re)integrate economically, socially and

culturally, including access to shelter, livelihoods, and basic services. At the same time, the process leading to durable solutions must ensure that IDPs receive relevant information and are consulted on envisaged solutions.¹³

37. The Representative has found that failure to effectively address IDPs' concerns may jeopardize the possibility and sustainability of peace. When IDPs are not able to recover their property, or to otherwise find solutions allowing them to live decent lives, and when they feel that they have suffered injustice without redress, prospects for reconciliation diminish. Similarly, the exclusion of IDPs from political participation reinforces feelings of marginalization and undermines the legitimacy of governments. In contrast, resolution of such issues can be a positive force for social rehabilitation and peacebuilding.

B. Safety

38. The first and overwhelming concern of both returnees and those still in displacement is physical security. The Representative was struck by the pervasive, often disabling, sense of fear among those he met. Whether they have returned to their communities, are in camps or transit sites, or are travelling, IDPs feel at risk. This is not limited to the newly cleared areas of the East; rather, he received reports of extrajudicial killings, physical assault, abduction, disappearances, forced recruitment and harassment in all areas he visited. He was particularly affected by the many women among the IDPs and returnees who told him about husbands or sons who had been murdered, abducted or arrested with no information on their whereabouts.

39. Sources of insecurity are varied. They include disappearances allegedly by all parties; abductions by unidentified actors; continued incursions and attacks by the LTTE, including claymore mine explosions; threats and attacks by irregular armed groups including the TMVP; tactics used by security forces including roundups, identification techniques, and detentions without notification to family of the reasons for and location of detention; looting; and incomplete mine-clearance.

40. Camps and transit sites in the East, in particular, are subject to harassment by paramilitaries, primarily the TMVP. The Representative received reports about lootings in plain sight as well as abductions. Shelter material has been stolen in large quantities. At one camp, metal sheeting protecting the toilets and bathing area was completely gone, and women had nowhere to go in safety and privacy. Where residents witnessed an abduction or killing and admitted knowing the responsible party, they stated that they would be killed if they spoke of it. IDPs reported abductions by armed elements for forced labour; they also complained of common practice among TMVP and Special Task Force (STF) to appropriate IDPs' bicycles for their own use. IDPs complained that civilian police refuse to enter the camps at night, although in many instances there are army or STF outposts nearby.

¹³ The specific problem of finding durable solutions for those in protracted displacement is addressed separately below.

41. In some areas returnees seemed at greater risk, as the harassment appeared to be more systematic and conducted jointly by security forces and TMVP. As part return to areas formerly under LTTE-control, it was practice to screen the IDPs, to photograph, fingerprint and “register” them, and then issue an IDP (returnee) card to be carried at all times, identifying the place of origin. Often screening was conducted by military in the presence of masked men. Return communities were subjected to cordon and search operations, particularly following security incidents such as the shooting of a soldier or a claymore explosion. Searches often occur at night. One community had experienced this three times in four months: they described how everyone was taken to the village centre, houses searched, women stripped and beaten, and more than a dozen men arrested after being identified by men wearing masks. Everyone in the village now sleeps together. Confidence in the security forces is undermined by routine disregard of procedures for arrest and detention, including notification of family members of the reasons for and location of the individual’s detention. The fact that women simply do not know where their son or husband is, who he is with, or why he was taken, turns their fear into terror. Ultimately, when asked, returnees said that they felt less - rather than more - secure due to the presence of the many army and STF outposts that had cropped up in return and transit areas.

42. The Representative acknowledges that the State faces legitimate and serious security concerns, which it furthermore bears the responsibility to address. A military official has indicated that it is for their own safety that returnees are screened, fingerprinted and issued special identity cards. However, the impact of such a pervasive military presence, and the heavy procedures used, has been to severely restrict and control movement of IDPs and returnees and undermine their own sense of security. In some instances, men are made to report to the nearby army camp on a daily basis and told to report their whereabouts if they do not intend to return at night. Movement may be prohibited after 7 p.m. The resulting fear and vulnerability have broad-ranging consequences for IDPs’ and returnees’ ability to regain normal and self-sustaining lives. Families fear sending men to work, or boys and girls to school, noting that men and boys had been abducted or detained, and girls harassed, when passing military camps or checkpoints.

43. Entire communities now feel under suspicion because of their place of origin or ethnicity, rather than on the basis of individual behaviour. IDPs are asked for their identity cards at checkpoints, and Tamil IDPs feel that they are interrogated and searched while Sinhalese travellers are not. Moreover, they feel that they have no recourse when wrongs are committed, because the civilian police are not there or they fear retaliation. The lack of prosecution of serious crimes has further bred a sense of impunity and increasing alienation.

44. The Government has recognized some of these problems and taken some action. Some officials recognize the importance of promptly restoring civilian administration in the East. The Representative particularly welcomes efforts to recruit local and Tamil-speaking police and train existing officers. He urges a similar emphasis on recruiting women officers. Increased civilian police presence - particularly police who know the community and can speak its language - is essential. It is hoped that the Confidence Building and Stabilization Measures, when implemented, will improve both IDPs’ and returnees’ security and confidence in the State to protect them.

45. However, additional measures are needed. The Government must re-establish safety and security in all IDP and return areas, protecting the civilian population against all forms of harassment, physical harm and abduction, regardless of the source. Clear accountability for these

crimes would help reduce their occurrence and confer a necessary degree of public confidence in the Government's ability to protect its citizens. The Government must re-establish the authority of the civilian police and ensure compliance with procedural protections guaranteed by national and international law, including the Presidential Directives on Arrest and Detention. The physical presence and accessibility of police could be expanded through mobile patrols. Other innovations might be considered: elsewhere, for example, IDPs have received improved access to civil and criminal protection mechanisms through the deployment of joint teams of police, human rights commission staff and protection staff of an international organization or NGO.

46. The continued prevalence of landmines in areas of return requires urgent attention. Posing an obvious threat to life, the presence of landmines and unexploded ordnance also affects returnees' freedom of movement and access to livelihoods. The Representative is gravely concerned about reports that some returns occurred before low risk certificates were issued. While placing returnees at unacceptable risk, humanitarian organizations were denied access to these areas for this very reason. In addition, demining was completed to facilitate return to residential areas, but insufficiently in surrounding areas, so that IDPs could not safely resume their farming or fishing, or access forests for firewood. While it appears that initially timetables for return may have been used to pressure demining teams, the Government has recognized demining as a priority in return planning and has improved its coordination in this regard.

C. Housing and property

47. Housing and property raise several discrete but equally important issues. From the moment of displacement, most IDPs have immediate assistance needs stemming from the loss of their homes and land. IDPs have the right to an adequate standard of living, one component of which is basic shelter and housing. After the emergency phase, authorities bear an additional responsibility to establish the conditions that allow IDPs to find durable solutions and rebuild their lives. Repairing and reconstructing homes, or providing alternate permanent shelter, is a part of this.

48. Notably, what may be considered "adequate" shelter during an emergency phase becomes unacceptable the longer the situation endures. Adequately responding to the phases between emergency shelter, transitional shelter and permanent housing is challenging, but the continued hope that IDPs will soon find durable solutions cannot excuse even temporary living conditions that are substandard. Visiting welfare centres in Puttalam and Vavuniya and transit sites in Trincomalee, the Representative was seriously concerned. The welfare centres were intended as transitional shelter many years ago but have become de facto permanent housing. A second generation of IDPs now lives there in overcrowded, dilapidated structures, without sufficient sanitation. Families came to temporary transit sites such as Killiveddi on the promise that they would be there briefly while homes were being repaired. Instead, they remain in overcrowded and inhospitable conditions, many months later, still with no indication when they might go home. The Representative witnessed whole families crowded into one small open room, with only a tarp on the hard earth, rain seeping through the roof and penetrating sleeping areas.

49. Distinct from the right to adequate shelter, protection of IDPs' housing, land and property rights is an essential component of durable solutions. IDPs are entitled to restitution or compensation for their property, regardless of whether they choose to return, integrate locally or relocate. Many IDPs in the East could not return to their homes. Houses were occupied by the

Army or fell within camp perimeters or buffer zones. A mother, camping on the outskirts of her village, explained: “We are resettled (returned) now but still live in displacement.” These IDPs had no information about when they might reclaim their homes or receive compensation.

50. A much larger group of IDPs have been affected by the establishment of HSZs in Jaffna and, more recently, in Muttur East/Sampur, Trincomalee. Collectively, HSZs in the North and East have displaced more than 120,000 people. Though the Government indicated plans to release some land in the Muttur East zone, IDPs in the transit sites had not themselves been informed of this fact or the time frame for return. To the Representative’s knowledge, no one had received compensation for loss of their land or home in an HSZ.

D. Livelihoods and basic services

51. The Representative noted significant problems in the timely delivery, quality, quantity and nutritional variety of food. The Government administers the regular food assistance scheme and controls distribution, although most of the input is provided by the World Food Programme, and humanitarian NGOs supply emergency and supplemental assistance. He was informed that insufficient rations fixed on prices of 20 years ago would be reviewed. He urges that the Government undertake a comprehensive review of basic assistance and that the system of entitlements be rationalized and standardized. Long delays should be eliminated and better access provided to WFP and humanitarian organizations. He noted disparities in rations based upon the geographic location, length and cause of displacement and size of the family, which are issues unrelated to IDPs’ basic humanitarian needs. He also noted a need for essential non-food items. Some women in camps and transit sites had no soap and no sanitary supplies.

52. IDPs in return areas remain almost entirely dependent upon humanitarian assistance. Due to the declaration of HSZs and other restrictions, whole communities of fishermen cannot access the sea, or they are restricted from fishing at night, when catches are best. Insecurity, HSZs, incomplete demining and military occupation of land also restrict access to fields and forests. Many farmers are idle simply because they had lost their tools, seeds and livestock during their displacement, and now lack the means to replace them. At the time of the Representative’s visit, UNHCR had quick impact projects for livelihoods, as well as UNDP and FAO, and the 180-day plan for the East mentioned the need to prioritize agriculture and fishing, but this cannot begin to have the needed reach. Whole communities literally had nothing to do. The Representative encourages the Government, with support of the international community, to make extensive efforts to restore livelihoods (rehabilitating and improving access to land; replacing lost assets) and to provide training and assistance to develop income-generating activities for the large portion of displaced who previously worked as day labourers. Particular attention should be paid to developing opportunities for the most vulnerable, especially female-headed households.

53. The Representative saw some achievements in access of IDPs to basic services. In general, IDPs had equal and non-discriminatory (*vis-à-vis* the non-displaced population) access to health and education facilities, although insecurity inhibited some from accessing these services. Pending restoration of security and freedom of movement, mobile medical clinics should be considered to address immediate needs. In return areas, efforts were under way to restore and extend basic services - a particular challenge in formerly LTTE-controlled areas lacking infrastructure. Nonetheless, he notes that IDPs must have access to basic sanitation, health and education services at the time of their return.

E. Inter-communal tensions

54. The Representative was concerned by mistrust he saw among different communities and groups of IDPs. While some tensions are deep-seated, certain policies inadvertently exacerbate these tensions. The Confidence Building and Stabilization Measures introduce programmes to build trust (e.g., peace committees and IDP advisory groups; peaceful coexistence measures including student exchanges), but targeted measures are needed to eliminate sources of tension.

55. It is natural for tensions to develop when host communities are under significant strain themselves, or when assistance to IDPs appears to favour IDPs over non-displaced who are similarly situated. Puttalam is economically disadvantaged, with comparatively high levels of unemployment. Although it has hosted a large community of northern IDPs for 17 years, public allocations for those IDPs continue to be paid to their districts of origin. Given the size of the IDP population in relation to the entire community and the length of displacement, a review of assumptions underlying budget allocations is warranted.

56. A second challenge is designing aid programmes to target specific needs and vulnerabilities of IDPs when there are large needs within the host community. The World Bank project importantly recognizes that a singular focus on IDPs would fan existing tensions; accordingly, it provides some housing and infrastructure to the non-displaced host community as well. A new health centre also meets increased demand attributable to the IDPs but serves all members of the community equally.

57. The Representative also observed tensions among groups of IDPs. In Puttalam, “old” IDPs perceived the arrival of “new” IDPs from the East as fomenting an increase in disappearances, roundups, arrests and detentions. In Muttur, restricted access to fishing grounds and HSZs resulted in officials directing Muslim fisherman to traditional Tamil fishing areas. Similarly, IDPs throughout Sri Lanka were keenly aware that different groups receive different assistance packages. Though the disparities may not be intentional, where these differences seem arbitrary - or worse, where they appear to favour one ethnic group over another, this fuels inter-communal tensions and mistrust of the authorities. A uniform and standardized approach to assistance and entitlements - whose determinants are the needs and vulnerabilities of the beneficiaries - coupled with greater transparency about entitlements and the requirements and procedures for obtaining them, would have the additional benefit of eliminating this source of mistrust and, ultimately, insecurity.

F. Cross-cutting issues

Documentation and freedom of movement

58. Documentation is especially important for IDPs because it is often instrumental in assuring their access to public services, entitlement to humanitarian assistance, and ability to exercise freedom of movement. Without extreme care, procedures and systems relating to documentation can effectively deny IDPs these rights or become vehicles for discrimination and abuse. The Representative found not only that there were difficulties for IDPs to obtain and retain needed documentation, but also that documentation was used inappropriately by some authorities.

59. The National Identity Card (NIC) is the key piece of personal identification for Sri Lankans. It is used for all official interaction the individual has with the State. Because IDPs commonly have lost personal documentation, authorities must provide clear and accessible procedures for the prompt replacement of NICs at the site of displacement.

60. IDP registration may be used as a temporary form of identification, but cannot substitute for prompt replacement of the IDP's NIC, to which IDPs are entitled as citizens. Not all countries use IDP registration, but where it is used, registration can be important in its own right: for the IDP, it is a marker of entitlement to assistance, and for the government and humanitarian community, it is a powerful tool for planning and delivering assistance. Aggregated data supports the adequacy and appropriateness of emergency response, allocation of central resources for public services and planning for durable solutions.

61. Presently there is no comprehensive, uniform system of registration, resulting in a number of difficulties, since registration is used to establish entitlement to government assistance.¹⁴ Varying standards are applied for registration and deregistration. IDPs staying with friends or families, as well as those originating from areas approved for return, are not registered. In accordance with the principle of non-discrimination, where aid eligibility is dependant upon registration status, all IDPs meeting the factual description in the Guiding Principles should be eligible for registration, regardless of date or place of displacement or place of accommodation. Registration cards should be issued to each IDP individually and in the case of women, in their own names. Finally, procedures should be simplified and information centralized such that IDPs can move freely and not risk losing their assistance. IDPs reported difficulty with a requirement that they deregister at the first site of displacement before registering at the second site because either they could not return in safety, or the local authority was reluctant to deregister the IDP because it would reduce the amount of assistance the area received. A centralized system would facilitate a single step to transfer registrations, and uniform standards would prevent premature deregistration or manipulation.

62. The Representative was concerned that additional registration and identification requirements were imposed on returnees in the East. There was a practice to screen, register and issue family photo ID cards during the process of return. Screening often involved the use of masked men to identify individuals who were then photographed and fingerprinted. Lists were then distributed among checkpoints. Individuals have been closely monitored upon their return, with some men required to report to security forces on a daily basis; villages are checked to ensure everyone returns at night and that only those on the ID card are present. Many IDPs indicated that they limited their movements, lest they be asked for these ID cards at checkpoints and then questioned or harassed.

63. These ID cards, and ID cards required by the Army or STF in some areas, do not appear to serve a legitimate purpose. IDP or returnee status per se is not a reasonable basis for suspicion of illegal activity, nor for restricting freedom of movement. For identification and freedom of movement, it should be sufficient that IDPs carry a NIC. Requiring IDPs/returnees to show identification that singles them out based on this status is discriminatory, and it has led to abuse.

¹⁴ Emergency assistance prior to receiving the registration card is provided by NGOs and international organizations.

The Government must clarify the purpose of any registration, identification or data collection. There may be important and appropriate reasons for doing so, but these must serve the purpose of meeting the needs and fulfilling the rights of IDPs.

Information and consultation

64. IDPs had not been consulted on their needs, interests and concerns in key areas - whether assistance, plans for return, compensation or other issues affecting durable solutions. Even more, IDPs have little access to information on these matters. One family, waiting for months in a transit centre, said that they did not know about the status of their land, now encompassed within the Muttur HSZ: as such, they were simply unable to conceive of the future. IDPs in Puttalam had not had any interaction with government officials for years; they, too, appeared in limbo. In the early stages of the return process in the East, whole communities were simply informed after their villages were declared ready for return. They were not assisted to assess conditions for themselves; nor were they consulted about their needs and intentions. Subsequently, “go and see” visits have been arranged for some communities, but this is not sufficient. Where IDPs did not have basic information - about security and physical conditions in their villages; the process for return including what assistance they would receive; and what choices were available if they did not wish to return - their return cannot be said to comply with the required standards of voluntariness.

65. The Representative recalls that extensive consultation and information-sharing with IDPs has been undertaken in Sri Lanka in the past, following the tsunami. Presently he is encouraged that communication and community involvement have been identified as core activities for the Confidence Building and Stabilization Measures. He also acknowledges that some important improvements were made in the return process, including distribution of information notices and the organization of some “go and see” visits. These efforts are positive, but not sufficient.

66. A systematic approach must be developed to ensure consistent consultation and information-sharing with IDPs. IDPs have a fundamental right to participate in decisions affecting their lives.¹⁵ For responsible authorities, the information gained can improve the effectiveness of the response. For IDPs, consultation enhances feelings of participation and trust. Information sharing, complete, timely and accessible, is furthermore essential to allow IDPs to make voluntary, informed and therefore sustainable decisions regarding their futures.

Humanitarian access

67. The primary duty and responsibility for providing humanitarian assistance to IDPs lies with national authorities. International organizations, however, play an important role in supporting the Government to meet these responsibilities, especially where governments are unable or unwilling to provide necessary assistance. In Sri Lanka the support of international and national humanitarian organizations has indeed been essential, especially in the areas of emergency shelter, food and non-food relief items.

¹⁵ See for example, Guiding Principles 18 (3) and 28 (2).

68. While humanitarian access has improved somewhat in the East, some humanitarian organizations still do not enjoy full access to all areas of return, and access in the North is increasingly difficult. Decisions made at the CCHA have not always been respected in practice, and agencies find themselves delayed by cumbersome and changing procedures. In the East, organizations are often subject to two levels of approval, on a project-by-project basis, by the GA and the area security commander. The Representative is concerned that agencies engaged in protection activities find it much more difficult to obtain access than those providing material assistance. Serious and legitimate security concerns may occasionally dictate temporary restrictions on access, but such restrictions should be the exception and not the rule. Moreover, once an area is deemed safe for the return of civilians, safety should not be a basis for the exclusion of humanitarian actors.¹⁶

69. Increased transparency - for example, better communication and coordination between the Government and international agencies and humanitarian NGOs in advance of returns - would significantly improve the timeliness and adequacy of the humanitarian response. The Representative noted above his deep concern for the safety of humanitarian workers and his regret at the sentiment of mistrust apparent in the media. In this regard, he welcomes the adoption of Guiding Principles for Humanitarian and Development Assistance in Sri Lanka, subscribed to by the Government of Sri Lanka, the United Nations, and major donors and international agencies. These Principles acknowledge the common humanitarian objectives of all signatories, as well as their commitment to key principles such as non-discrimination and impartiality in activities and assistance, consultation and participation of affected communities, and unrestricted access to all people in need of assistance.

National policy and institutions

70. An abundance of institutions are involved in the response, but without a clear designation of roles. This diminishes efficacy because actors are uncertain regarding (i) who has the authority in certain circumstances, and (ii) who ultimately bears responsibility and accountability. Existing coordination structures provide valuable opportunity to share concerns, but without the element of accountability they have not always resulted in sufficient cooperation among all actors or implementation.

71. Linked to institutional fragmentation, the Representative found that the response to various aspects of displacement tends to be piecemeal and ad hoc. This is particularly true for policies on assistance (rations and shelter) and compensation for loss of property and livelihoods. In some areas, such as IDP registration, there is an absence of common standards or disparity in their application. These gaps and inconsistencies leave needs unmet and are susceptible to an interpretation of indifference or even of bias, regardless of actual intent.

VI. FINDING DURABLE SOLUTIONS FOR IDPs IN PROTRACTED SITUATIONS

72. Perhaps half of Sri Lanka's IDPs were displaced before the CFA. These IDPs are predominantly in the North Central and Northern Provinces. A large number were displaced by

¹⁶ See Guiding Principles 30 and 25 (3).

the forced evictions of northern Muslims by the LTTE in 1990. They are mainly in Puttalam and Mannar; another 57,000 remain in Jaffna unable to return to land within the HSZ. Others, in Vavuniya, came from the hill country and were originally landless; still others are displaced from or within the Vanni. Though the circumstances of their displacement vary, these IDPs share a common reality: the process for finding a durable solution has stalled, and they continue to have specific protection and assistance needs related to their displacement. As a result, they show greater social and economic marginalization from their communities of displacement and a greater dependence upon humanitarian assistance.

73. The Representative was encouraged by the authorities' recognition that finding durable solutions for these IDPs must become a priority. As the IDPs' needs and intentions vary, so too will appropriate responses. Thus two important projects thus far (the World Bank housing project in Puttalam, and UNHCR's relocation villages in Vavuniya) take different approaches, one assisting those who have taken a step toward local integration by acquiring land rights and the other assisting the landless. To adequately address the situation of protracted displacement in Sri Lanka, however, efforts must be undertaken on a different scale, requiring the collaboration of diverse actors, including national and local government, humanitarian and development communities, bilateral donors and international financial institutions.

74. UNHCR has undertaken surveys in a number of districts, in welfare centres and among host families, to gather information on IDPs' preferred solutions and the obstacles they face in achieving them. With comprehensive information, application of the Framework for Durable Solutions could provide a common point of departure to develop a coordinated response.

75. In the face of the conflict, return will not presently be possible for everyone who would elect it. This is the situation of many of the Puttalam IDPs. The Representative met a group of northern Muslim IDPs in Puttalam who expressed great frustration that a welfare centre survey concluded that 96 per cent of residents wished to integrate locally. In this regard, it must be recognized that local integration and return are not mutually exclusive. To the contrary, those living marginalized lives in displacement often do not have either the means or energy to rebuild their lives upon return. Pending achievement of a durable solution, all IDPs have the right to a life in safety and dignity at their site of displacement. Local integration can be an interim solution, allowing IDPs to live the most normal lives possible. Moreover, local integration does not negate the right to return, nor does it terminate rights to restitution or compensation.

76. While the World Bank project could facilitate local integration as both an interim and a durable solution, there was substantial confusion regarding the effect that participation in the project would have on IDPs' voting and property. A clear declaration of IDPs rights is needed to reassure the IDPs and to allow them to begin planning both their intermediate and ultimate solutions.

VII. PREVENTING FUTURE DISPLACEMENT AND MITIGATING ITS CONSEQUENCES

77. The Government has clearly stated its intention to continue military activities and disarm the LTTE. Accordingly the Common Humanitarian Action Plan (CHAP) assumes substantial additional displacement in 2008.

78. In their efforts to prevent displacement, the Representative reminds all parties to the conflict of the imperatives of international humanitarian law. The campaign in the East saw repeated allegations on both sides that civilians were targeted, used as human shields, or prevented from fleeing hostilities. Likewise, there were allegations of deliberate co-location of military installations near civilian populations and indiscriminate shelling. While he did not look into these allegations, actions of this kind would violate the principles of distinction and proportionality and the duty to take precautionary measures. Remembering the civilians who were trapped for a period in Vaharai, the Representative reminds the parties of their duty to facilitate rapid and unimpeded passage of humanitarian relief. Similarly, the duty to exercise constant care to spare the civilian population requires that the parties ensure safe passage to IDPs seeking safety elsewhere.

79. Important lessons applicable to future situations may be drawn from the experience of mass displacement and mass return in the East. First, in conflict, security forces often will be the first to receive fleeing IDPs, before humanitarian actors can arrive. It is therefore essential that the security forces have in place a plan that focuses on addressing the immediate needs of this civilian population. While the need to address security may be a component of the plan, it should be humanitarian and civilian in nature. In particular, IDPs' freedom of movement must be respected, and IDPs may not be confined to a camp. Contingencies should include identification of possible sites for emergency accommodation, stockpiling of emergency shelter items, and planning for the immediate provision of food, water, sanitation and essential medical assistance upon arrival. As quickly as possible, however, there should be a prompt transition from military involvement to civilian control of the humanitarian response. In particular, planning and management of IDP camps should be done by civilian authorities.

80. Second, authorities have positive obligations to facilitate conditions for IDPs to make a voluntarily, informed and meaningful choice among the three durable solutions. Return often is the preferable and preferred solution for IDPs. With 220,000 displaced in the East, government announcements evidenced a strong desire to see the displaced quickly returned home; officials may have sought to pre-empt a situation of protracted displacement. But the speed and magnitude of return prompted concerns about voluntariness and sustainability. The need for greater consultation, participation and information sharing in the return process is discussed above. Conditions necessary for voluntary choice further include eliminating any aspect of coercion, whether using a military presence in camps during returns, the announcements of deadlines, or threats to close camps and discontinue assistance. Similarly, IDPs must not be directed prematurely or unwillingly to relocation. Where return is their preferred solution, this must be facilitated by all reasonable means.

81. Conditions to support sustainability such as security, shelter, livelihoods and basic services are addressed above. It is essential that these issues be addressed in parallel with return, and not only in development plans to be implemented following return. Thus, questions remain about the long-term viability of sustainable return in the East. IDPs in return communities and transit centres expressed a desire and intent to return; but when asked whether they preferred to be where they were or back at the site of displacement, the answers were mixed. Some communities seemed poised on the edge of flight, should a serious security incident occur. In the longer term, the lack of livelihoods and utter reliance on humanitarian assistance threaten the sustainability of this mass return.

VIII. CONCLUSIONS AND RECOMMENDATIONS

82. Sri Lanka's displacement crisis is a challenge because of its size and the range of circumstances in which IDPs live, their immediate needs, and the challenges they face finding durable solutions. The Representative acknowledges the substantial achievements of the Government but believes that significant further efforts are required. He reiterates his desire to continue his dialogue with the Government, and specifically, to cooperate in the search for durable and equitable solutions for all of Sri Lanka's IDPs. In this spirit, he makes the following conclusions and recommendations.

83. Concerning the national response, the Representative recommends that the Government:

(a) Develop a comprehensive policy addressing all aspects of internal displacement, in line with the Guiding Principles on Internal Displacement. This policy should assign institutional responsibilities and establish accountability and should address issues including standards for registration and deregistration, entitlements to assistance and equitable standards for compensation for loss of property and livelihoods. It should also enshrine the principle of voluntariness of return in safety and dignity and the right of IDPs to informed choice;

(b) Allocate sufficient resources and increase its own capacity to protect and assist IDPs;

(c) Ensure consistent and accessible dissemination of information to IDPs concerning their rights and entitlements, and procedures for accessing them;

(d) Establish mechanisms to ensure that IDPs are consulted and participate in decisions affecting their lives;

(e) Undertake contingency planning for increased displacement in the North, in particular that both military and civilian authorities be prepared to receive IDPs in conditions of safety and dignity;

(f) Support international and national humanitarian actors in their efforts through advance communication and consultation and facilitated access to all IDP and returnee populations for assistance, protection and early recovery activities alike.

84. With regard to the 300,000 displaced since 2006 who have returned home or remain in displacement, the Representative recommends that the Government:

(a) Address all sources of insecurity and threats to safety, including abductions and disappearances, the presence of armed elements in camps and transit sites, the presence of UXO in return areas, heavy-handed responses by security forces, and the use of additional identification to restrict returnees' freedom of movement;

(b) Restore security through increased civilian police presence, including local and Tamil-speaking police, and promptly restore civilian administration;

(c) Take effective measures to address impunity;

(d) Assure, at all times, the right to adequate shelter;

(e) Recall, with regard to housing and property, that participation in needs-based assistance schemes does not negate rights to restitution or compensation;

(f) Ensure that access to livelihoods and basic services is provided in parallel with return.

85. Concerning the 300,000 IDPs in protracted displacement, the Representative:

(a) Urges national authorities and international agencies to identify and address obstacles to the achievement of durable solutions, including special attention to issues of landlessness and livelihoods and the needs of the most vulnerable, including widows and female-headed households;

(b) Calls upon all relevant actors to improve the standard of living and protection of individuals pending the achievement of durable solutions.

86. The Representative recommends that the United Nations, humanitarian and development organizations and donors:

(a) Continue to support the Government of Sri Lanka in meeting its primary responsibility to protect and assist IDPs;

(b) Continue to support capacity-building within the Government;

(c) Address gaps that fall between traditional humanitarian and development assistance but that are necessary to establish the conditions for durable solutions, including efforts supporting early recovery and confidence-building and stabilization measures, with attention to protracted situations;

(d) Prioritize support for livelihoods initiatives for IDPs, host and return communities.

87. The Representative urges all parties to the armed conflict to:

- (a) Ensure full respect for and compliance with international humanitarian law, especially the prohibition against arbitrary displacement and the principle of distinction;
- (b) Fulfil their duty to facilitate rapid and unimpeded passage of humanitarian relief;
- (c) Ensure safe passage of all civilians seeking safety;
- (d) Recognize the impartiality and integrity of humanitarian assistance and ensure the safety and security of all humanitarian workers.
