

**PROTECTION
OF INTERNALLY
DISPLACED PERSONS
IN SITUATIONS OF
NATURAL DISASTER**

**A Working Visit to Asia
by the Representative of the United Nations
Secretary-General on the Human Rights
of Internally Displaced Persons Walter Kälin**

27 February to 5 March 2005

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Introduction

From 27 February to 5 March 2005 the Representative of the Secretary-General on the Human Rights of Internally Displaced Persons, Dr. Walter Kälin (the Representative), traveled to Colombo, Sri Lanka, and Bangkok, Thailand, to attend a number of working meetings and seminars on the issue of the protection of internally displaced persons (IDPs) with a particular focus on the response to the tsunamis of 26 December 2004. The mission did not have a fact-finding component and as such was not characterized as an official visit. However, the Permanent Missions of Sri Lanka and Thailand had been contacted and informed prior to the mission, and both agreed that the Representative attend the meetings in both countries.

The main objective of the mission was for the Representative to discuss with various actors from this region affected by the tsunamis, the human rights situation of internally displaced persons, and to identify and recommend next steps in the international, regional and national response to the disaster. The visit was particularly timely as the response was shifting from the immediate humanitarian emergency phase to the recovery and reconstruction phase.

From 28 February to 2 March the Representative was in Sri Lanka. The Human Rights Commission of Sri Lanka had invited him to attend an event, jointly organized with the Office of the United Nations High Commissioner for Refugees (UNHCR), to discuss the human rights situation of IDPs created by the tsunamis. He also attended a number of additional meetings with international organizations as well as local humanitarian and human rights non-governmental organizations (NGOs).

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From 2 to 5 March he was in Bangkok, Thailand, where he attended a number of meetings and seminars. On 3 March he attended meetings with various civil society groups organized by Forum Asia, and on 4 March he gave a keynote speech at the 8th Practitioners' Forum on Human Rights in Development organized by the regional Office of the UN High Commissioner for Human Rights. In this context he also met the Special Coordinator of the Secretary-General, Ms. Margareta Wahlström, and discussed with her a number of recommendations for follow-up.

Based on these working visits, this document gives an overview of the types of protection and human rights issues that may arise in situations of displacement due to natural disasters and also provides some concrete illustration of concerns and issues expressed and identified during the various meetings attended by the Representative.

Using the Guiding Principles on Internal Displacement as benchmarks for protection, Section I introduces the application of the Guiding Principles to natural disasters. Section II addresses the question of prevention of displacement in the context of disaster. Section III highlights the various protection needs that can arise after a disaster. Section IV turns to the different actors who have a role in ensuring that human rights concerns are addressed so that internally displaced persons receive the protection they require and to which they are entitled. Each section is supplemented with certain examples brought to the fore during the meetings attended by the Representative. The document ends with specific recommendations for future action in Section V.

Overview

The tsunamis of 26 December 2004 left in their wake more than 300,000 people killed, 500,000 injured, over 100,000 still missing, and more than one million internally displaced, mostly in South Asia, in particular Indonesia, Sri Lanka, India, the Maldives, Thailand and to a lesser extent Bangladesh, Malaysia and Myanmar (Burma). Four countries in East Africa were also affected, Kenya, Somalia, Mauritius and the Seychelles. Some countries hit by the tsunamis are experiencing and addressing the problem of internal displacement for the first time. In other cases, the tsunamis struck areas of ongoing armed conflict and internal displacement, exacerbating pre-existing humanitarian crises and forcing many persons previously displaced by violence to flee once again, further compounding their plight.

In the immediate aftermath of the disaster, efforts have focused, as might be expected, on search and rescue, bringing clean water, food, clothing, medical care and shelter to survivors, and identifying and burying the vast number of dead. The response, local to global, in addressing these emergency needs has been truly unprecedented. Indeed, during his visits to Colombo and Bangkok, the Representative repeatedly noted how impressed he was at the overwhelming humanitarian response to the disaster by Governments, NGOs, National Human Rights Institutions as well as United Nations and other agencies.

However, much less attention has been devoted to issues of human rights protection that also have arisen and need to be addressed. Protection con-

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cerns include access to assistance, discrimination in aid provision, enforced relocation, sexual and gender-based violence, recruitment of children into fighting forces, loss of documentation, safe and voluntary return or resettlement, and issues of property restitution.

NGOs participating in the Asian Civil Society Consultation on Post-Tsunami Challenges (13-14 February 2005) listed as major areas of concern: the transparency and accountability of funds raised and received; the need to place people before corporate interests; the required synergy and cooperation based on humanitarian principles of neutrality, impartiality, universality and non-discrimination; and the importance of empowering local communities and NGOs. They stressed the need for a rights-based approach to humanitarian assistance that would in particular include the application of international human rights norms and standards, particularly the right to participation, the right to livelihood (food, health, housing, etc.), and non-discrimination (against minorities, marginalized people, Dalits, women, children, etc.).

That these and other protection concerns have emerged in the aftermath of the tsunamis underscores that it is no less important in the context of natural disasters, than it is in cases of displacement by conflict, to examine and address situations of displacement through a “protection lens”. Indeed, doing so is essential for a comprehensive and effective humanitarian response.

Section I

The Guiding Principles on Internal Displacement and Natural Disasters

The Guiding Principles on Internal Displacement¹ set forth the rights of internally displaced persons and the responsibilities of States and other actors toward these populations. Developed in 1998 by the Representative of the Secretary-General on Internally Displaced Persons, acting with the express encouragement of the United Nations Commission on Human Rights and the General Assembly, the Guiding Principles compile and restate the various relevant norms of international human rights and humanitarian law and spell out what they mean in situations of internal displacement. Recognizing that persons forced to leave their homes share many common types of vulnerability regardless of the underlying reasons for their displacement,² the Principles use a broad definition of “internally displaced persons” as persons “forced or obliged to flee or leave their homes or places of habitual residence”³ for an array of reasons, such as conflict and civil strife as well as “natural disaster”.

Although the major human rights treaties upon which the Principles are based do not directly refer to internal displacement, the protections these instruments provide certainly apply to displaced persons, including those displaced by natural disasters. Likewise, when natural disasters strike in the context of ongoing armed conflicts, the requirements of international

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humanitarian law continue to apply. As described in greater detail below, the rights derived from both fields of law include: (1) protection from arbitrary displacement in the first instance; (2) protection and assistance after displacement has taken place; and (3) assistance with safe and voluntary return or resettlement and rehabilitation.

At the heart of the Guiding Principles, and of the international human rights and humanitarian law on which they are based, is the concept that States bear the primary responsibility for the protection of persons within their jurisdiction (Principle 3). At the same time, and in accordance with international humanitarian law, the Principles also apply to non-state armed groups, which is important as many persons displaced by the tsunamis are located in areas controlled by such groups. Indeed, the Principles provide guidance to all actors with a role to play in addressing internal displacement. Widely recognized as an important tool and standard for addressing situations of internal displacement, the Principles are being used around the world by Governments, the United Nations, regional organizations, NGOs, and other actors concerned with internal displacement. They have been translated into more than thirty-five languages, including several of the languages spoken in the region affected by the tsunamis, namely Burmese, Bahasa Indonesian, Sinhala, Tamil and Thai. Indeed, United Nations resolutions have welcomed the fact that “an increasing number of States, United Nations agencies and regional and non-governmental organizations are applying them as a standard.”⁴

Section II

Protection from Displacement by Disaster

Natural disasters present particular challenges for the fulfilment of national responsibility as regards protection from displacement. Earthquakes, floods, tornados, tsunamis and other natural disasters are beyond the capacity of any State to prevent. However, States can and should seek to mitigate the human toll of damage from such natural phenomena, including by ensuring effective early warning systems. Indeed, as affirmed in the “Hyogo Declaration” adopted at the World Conference on Disaster Reduction, held in Kobe, Japan in January 2005, “States have the primary responsibility to protect the people and property on their territory from hazards and ... to give high priority to disaster risk reduction in national policy, consistent with their capacities and resources available to them.”⁵

Disaster risk reduction is not just a matter of good governance, but is an issue of the fundamental rights of populations at risk. As noted by Guiding Principle 5, authorities and international actors are obligated to “respect and ensure respect for their obligations under international law, including human rights and humanitarian law, in all circumstances, so as to prevent and avoid conditions that might lead to displacement of persons.” Thus, for example, as the UN Commission on Human Rights’ Special Rapporteur on the right to adequate housing has pointed out, the right to

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“habitable” housing implies that adequate provisions must be made in housing codes and then properly enforced to ensure that residences are prepared, to the extent possible, to withstand the effects of earthquake.⁶ Moreover, national law should empower affected individuals to assert these rights, for example, through mechanisms to claim compensation where public officials have failed to take reasonable measures to protect populations and prevent displacement due to disasters.

Of course, not all displacement from disasters can be prevented even when every reasonable precaution has been taken. For example, while an effective regional tsunami alert system might have avoided many deaths on 26 December, and remains an important initiative to implement, it nonetheless is true that such brief advance warning would not have prevented all casualties or the loss of homes and livelihoods. Indeed, during the Representative’s mission it became clear that while a better early warning system might have mitigated some of the destruction caused by the tsunamis, in some areas such a system would not have been able to play an important role in protecting the lives of the affected populations. In particular, in Aceh, Indonesia, the time-lag between the actual earthquake and the ensuing tsunami was less than fifteen minutes.

Accordingly, it is also necessary to be prepared to respond to protection issues arising from displacement that cannot be prevented, as discussed in the next section.

Section III

IDP Protection Issues that Can Arise after Natural Disasters

Access to Humanitarian Aid

Internally displaced persons have the right to request and to receive protection and assistance from national authorities, who, in turn, have the primary duty and responsibility to protect and assist populations within their jurisdiction (Guiding Principles 3 and 25(1)). In situations of natural disaster, States may be more willing to respond quickly to provide humanitarian assistance to affected populations and to do so in collaboration with the international community than, e.g., in cases of internal armed conflict. They also may grant aid workers access to conflict-affected areas that previously had been closed off to international assistance, as occurred in certain areas affected by the tsunamis. In other cases, Governments may prefer, for a variety of reasons, to provide all necessary assistance themselves; and this is a legitimate exercise of national sovereignty and responsibility. However, when Governments refuse outside offers of humanitarian assistance, but at the same time are themselves unable or unwilling to provide adequate assistance to their own populations, they fail to discharge their responsibilities under international law.

Moreover, even when the cooperation of the international community is requested or accepted, issues of humanitarian access nonetheless may arise.

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Restrictions on the delivery of aid such as excessive delays to obtain the necessary permits to reach affected populations or requirements to accept military escorts for humanitarian deliveries are possible examples. It may also be the case that humanitarian access is limited solely to populations affected by the natural disaster, but not permitted to extend to earlier displaced populations in need, who were uprooted by conflict or civil strife or who are located in areas still subject to conflict or considered strategically sensitive.

During his trip, the Representative noted how impressed he was by the response of national Governments, NGOs, and international agencies in the immediate aftermath of the tsunamis. Indeed, Governments throughout the region had generally responded promptly and also granted access to international humanitarian assistance when needed.

Discrimination

After natural disasters, discrimination may arise in the distribution of humanitarian and reintegration assistance as well as in other aspects of the response, such as in decisions regarding relocation and resettlement. This risk is especially high when the affected areas have pre-existing patterns of discrimination or ethnic conflict. As affirmed in the Guiding Principles, assistance and other interventions in response to natural disasters must be undertaken in accordance with the principles of impartiality and neutrality, without discrimination on the basis of race, ethnicity, religion or other inherent characteristic (e.g. caste) (Principles 4(1) & 24(1)). There is also a need to safeguard against discrimination among different groups of IDPs, for instance, as noted above, where assistance is provided to IDPs uprooted by a natural disaster but not to those displaced by conflict or is provided only to IDPs in camps or government-run relocation centers while denied to IDPs staying with host families who also are in need. Such inequities in aid distribution not only violate the principles of impartiality and non-discrimination, they also risk creating resentment and tensions among communities, which can complicate the rehabilitation and reintegration of IDPs and threaten their security. Instead, opportunities should

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be seized to counter pre-existing patterns of discrimination by ensuring an inclusive response, and thereby promote national reconciliation.

Most interlocutors during the Representative's meetings noted that discrimination in the treatment of IDPs was of particular concern. Many observers noted that in areas already affected by conflict and hosting IDPs there had in some cases been unequal treatment in the assistance provided by Governments and international actors, in particular certain NGOs. Generally, there was a tendency to neglect IDPs created by conflict, who had been displaced some time ago, while focusing immediate attention on the IDPs created by the tsunamis, who would benefit from the increase in political attention as well as from the sudden influx of international humanitarian assistance. In other areas there had been reports of discrimination in treatment of different groups of IDPs caused by the tsunamis, which was sometimes ascribed to political and religious factors and to discrimination on the basis of caste. Some interlocutors also noted the particular vulnerability of indigenous peoples and the need to make certain that their relocation, return or reintegration be undertaken in ways that do not conflict with their traditions and culture.

Involuntary Relocation to, or Exclusion from, Settlements and Camps

Once forced from their homes by natural phenomena, IDPs may then find their movements subject to restrictions. Frequently, authorities direct IDPs into temporary shelters or camps to house them, to facilitate the delivery of humanitarian assistance, and to ensure their security. Sometimes, however, this is done against the will of those affected, who instead would prefer to stay close to their homes to discourage looting, maintain their sources of employment (e.g. tending to agricultural land or fishing), seek lost relatives, or simply wish to find shelter and support elsewhere.

In fulfilling their responsibility to protect and assist the victims of natural disasters, States plainly have a legitimate interest to devise expeditious

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ways of doing so. However, this interest must be weighed against the affected persons' rights to personal liberty and to move freely within their own countries, including the right to move freely in and out of IDP camps and settlements (Principles 12 & 14). In particular, relocations based on motivation such as containing those suspected of sympathizing with insurgent forces in ongoing armed conflicts would be inconsistent with human rights requirements.

Some observers pointed out to the Representative that there were reports claiming that the Government of Indonesia in its response to the IDP crisis caused by the tsunami in the Aceh province, had imposed undue restrictions on the freedom of movement of IDPs and confined them in camps in an effort to control the activity of armed rebel groups in the area. The Representative was not in a position to confirm or deny these claims and hopes to be able to visit Indonesia in future.

On the other hand, IDPs can sometimes find themselves evicted or excluded from shelters or settlements that they seek out on their own. For example, in the immediate aftermath of their displacement, IDPs frequently occupy public buildings, such as schools, for temporary shelter. Long-term, however, their ongoing presence can create a problem for those who rely on those public buildings for services. This can result in tensions with the local community and increase the risk of IDPs' eviction without adequate provision of alternative accommodation. The Representative noted that, for instance, in Sri Lanka, many IDPs had been initially hosted in public buildings, in particular, schools. However, the Government and its partners were presently devising solutions to this problem, to enable children to return to school without further disadvantaging the IDPs. Moreover, there have been some reports in the region that in some cases, displaced persons have been turned away from camps and other temporary settlements for reasons such as ethnicity, religion, and national origin. Such practices are contrary to Guiding Principle 4 which affirms for IDPs the right to protection against discrimination on ethnic, religious and other grounds.

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Camp Security and Military Presence

Security is frequently an important issue in the wake of natural disasters because of the disruption that disasters cause to community structures, including police and other security services. In displaced persons camps, persons traumatized by their own harrowing experiences may frequently find themselves living in crowded, unsanitary conditions where food and other necessities may be scarce and tensions run high or, conversely, where food and other items are made available with inadequate protection against the diversion of aid or exploitation by those distributing it. There is thus a potential for violence, theft and other crimes against and among those living in such camps. National authorities bear primary responsibility for protecting the displaced against such threats.

While it is often the case that the military is the national institution most equipped with the logistics, personnel and supplies to undertake initial rescue and humanitarian response to large disasters, ongoing military control of aid and of camps can also endanger beneficiaries, because it can heighten the IDPs' vulnerability to sexual exploitation and abuse as well as children's military recruitment, and dampen displaced persons' ability to control decisions affecting their lives. This risk is especially high in situations of internal armed conflict, where the proximity of the military can render the camps a military target for non-state armed groups. It is essential to establish and maintain the civilian character of IDP camps and settlements as well as of the distribution of humanitarian aid.

Moreover, in keeping with their primary responsibility for protecting and assisting displaced persons, national authorities have a specific duty to ensure that humanitarian assistance to the displaced is not diverted for political or military purposes (Principle 24).

During the Representative's mission, most observers noted that the assistance provided by the military in the immediate aftermath of the tsunamis had indeed been impressive and invaluable. However, others also noted a concern that military presence in the long run would be negative, and that

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some indications of this were already present since, for instance, in some situations the freedom of movement of IDPs had been limited by the military. Others also noted that there had been an increase in reports of sexual and gender-based violence in IDP locations with a marked military presence.

Protection of Women and Children

Displaced women and children face a range of particular risks, and the Guiding Principles accordingly call for special attention to their needs (Principle 4(2)). They experience heightened vulnerability to sexual and gender-based violence, especially in camps, where the risks also include increased levels of domestic violence, child abuse and alcohol-related violence. When food is not delivered directly to women and when they are excluded from camp management and the design of relief and reintegration plans, women's vulnerability to sexual exploitation and abuse increases dramatically. Trafficking is another serious risk that is heightened when people are displaced, families separated, children are orphaned and livelihoods are destroyed. Children who have lost their homes and even families also are particularly at risk of military recruitment by fighting forces. Indeed, the loss of life resulting from a natural disaster may intensify efforts for the recruitment of children, to replace members of fighting forces who perished or were injured in the disaster.

During his mission the Representative noted that the human rights issues most actors highlighted with regard to internally displaced women and children, included concerns about sexual and gender-based violence, reproductive health, trafficking, lack of consultation of women as well as the particular difficulties many women were facing in obtaining documentation and in repossessing property.

Family Reunification

The family is the most basic unit of protection and a cornerstone of psychosocial support, particularly for children. Family members who are separat-

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ed by displacement therefore should be reunited as quickly as possible, with expedited measures taken whenever children are involved (Principle 17(3)). Children who are separated from family members need to be registered so that tracing and reunification efforts can be done as soon as possible. In the interim, they need to be sheltered and cared for as well as safeguarded against risks including trafficking and military recruitment. When family reunification is not possible, even with an extended family member, foster care or other arrangements will need to be made, to ensure children's safety and well-being in the long-term. Moreover, in any relocation of IDP populations to camps or other sites, families have the right to remain together.

Access to Education

Returning to school as quickly as possible after a natural disaster is important not only to minimize the disruption to children's education, to which they are entitled by right (Principle 23), but also is critical for their psychosocial well-being. School attendance also can reduce children's exposure to risks including trafficking and military recruitment. However, the destruction and damage to schools, as well as difficult transport conditions, lack of school uniforms and lack of teachers (who usually are also affected by the disaster), pose barriers to IDP children's access to education. Moreover, as noted above, access to education for non-displaced as well as IDP children will also be constrained where IDPs are sheltered in school buildings. Resettling IDPs to more appropriate temporary accommodations, with adequate support and in close consultation with the displaced, is therefore important for access to education not only for IDPs but also for children from the broader community.

Loss of Documentation

The loss of personal documentation commonly occurs in situations of displacement, and particularly in cases of natural disaster; in one country affected by the tsunamis, it is estimated that more than 70 percent of sur-

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vivors lost their documentation. This lack of documentation can lead to denial of access to public services, such as education and health care as well as problems in resolving issues of property restitution or compensation. There may even be cases where access to food and other essential life-saving relief is denied to individuals because of their lack of proper documentation. Moreover, obtaining replacement documentation often can be difficult, entail long delays and, in some situations, require that IDPs first return to their places of origin, which may remain unsafe. The Guiding Principles specify the right of IDPs to obtain, without unreasonable requirements, all necessary documentation for the enjoyment and exercise of their legal rights, as well as the right of women to documentation issued in their own names (Principle 20). Issuing such documentation clearly is the responsibility of the authorities. One noteworthy example in this regard comes from Sri Lanka, where regional offices of the Sri Lanka Human Rights Commission have worked with local administrative officials—both in areas of refuge and in IDPs' areas of origin—to develop mobile teams to process IDPs' requests for replacement documentation.

Usually, in situations where the loss of documentation is a general problem among internally displaced persons, the systematic registration of the displaced can assist them in obtaining access to services and respect for their rights in general without discrimination. The Representative was therefore pleased to note that as a direct result of his visit, the Government of Sri Lanka agreed with UNHCR to initiate a comprehensive registration of the tsunami affected IDPs, greatly benefiting from UNHCR's expertise in the area.

Participation of IDPs

In the interest of efficient management of assistance efforts, there is a tendency to centralize decision-making, particularly when military forces are involved. IDPs can thus find themselves excluded from the planning about the location and layout of camps and settlements, the manner in which aid is distributed, the type of food and other items supplied, and other matters central to their daily lives. IDPs' exclusion from the decisions that affect

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their lives can heighten the sense of helplessness inflicted by a natural disaster, undermine the effectiveness of humanitarian assistance, and even put IDPs' physical security at risk, in particular that of women (as described above). Even where IDP participation is sought, women too often are left out, despite the fact that they, along with the children they care for, have specific protection, assistance and reintegration needs that, in the absence of consultation, risk not being addressed.

Throughout his mission the Representative consistently highlighted the critical importance of consultation with the displaced in all phases of displacement. He noted that this issue is an important theme that runs throughout the Guiding Principles. In particular, any decisions for relocation of the displaced are to be taken in consultation with those affected. The displaced, particularly women, should be involved in the planning and management of the relocation (Principles 7(3)(d)). In the distribution of humanitarian assistance, special efforts should be made to ensure the full participation of women in the planning and distribution of these supplies (Principle 18(3)). When it comes to finding durable solutions to displacement, consultation with the displaced is a key component of respecting the right of the displaced to voluntary return (Principle 28(1)). In addition, special efforts should be made to ensure the full participation of IDPs in the planning and management of their return or resettlement and reintegration (Principle 28(2)).

Many observers pointed out to the Representative that in the context of the immediate response to the tsunamis, there had initially been a possibly understandable lack of consultation with the affected populations given the imperative of providing the most basic assistance as quickly as possible. However, in the present context of the start of the recovery and reconstruction phases where consultation is crucial to identifying lasting durable solutions to the plight of the displaced, the authorities in many situations had so far been slow in setting up adequate mechanisms for consultation.

Voluntary Return and Resettlement

After the emergency stage of a disaster is over, displaced persons will usually require assistance to rebuild their lives. National authorities have the primary duty and responsibility to facilitate this, by establishing the conditions, as well as providing the means, for IDPs to return voluntarily, in safety and dignity, to their places of origin or to resettle in another part of the country and to facilitate their reintegration (Principle 28). In addition to rebuilding homes and other infrastructure, this may include assistance to enable the displaced to re-establish previous livelihoods (e.g., rehabilitating damaged agricultural land, business assets, fishing boats, etc.) or providing the displaced with training and assistance for developing new sources of income. Safety may remain an important issue in areas of return, due to environmental damage from the disaster, damaged policing systems, and, in areas of ongoing armed conflict, landmines and other unexploded ordinance which might have been shifted.

Return home may also be hindered for other reasons. Governments may feel that residences in areas chronically vulnerable to disaster, such as active seismic faults, volatile shorelines, areas subject to mudslides, or flood plains, are simply too exposed to be adequately protected and, as a result, they may declare such areas “security zones” or “exclusion zones” where reconstruction is forbidden. Alternatively, in lieu of return, the authorities might seek to change residential patterns in order, for instance, to centralize delivery of services or, in cases of armed conflict, to deprive rebel forces of a civilian “base”. Both of these scenarios have implications for IDPs’ freedom of movement and, in some instances, property rights and their ability to make a living (e.g. in the case of fisherman barred from living near shore). International norms would call for a balancing of the rights of those affected with the interests of the State in mitigating the damage and ensuring public safety, and provide an opportunity for judicial review. Where the authorities determine that such exclusion zones legitimately should be enforced, such decisions should be taken in close consultation with the displaced, who should receive compensation for property and land lost as a result as well as assistance in relocating and re-establishing their livelihoods and residence elsewhere (Principles 7 and 28). Of course it is

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also essential that such decisions not discriminate against certain ethnic, religious or other groups or among persons displaced for different causes, such as in cases where natural disaster strikes areas with existing displaced populations as a result of armed conflict or civil strife.

On the other hand, IDPs may choose not to return to their original homes, particularly if their displacement is protracted and they have begun rebuilding their lives elsewhere. Authorities are sometimes anxious to promote return as a symbol of normalization after the chaos brought on by a disaster. However, they should respect IDPs' right to choose whether to return to their place of origin or to resettle elsewhere, and in either case are expected to assist them to reintegrate (Principle 28).

During his mission, the Representative noted that in many countries affected by the tsunamis, serious consideration was being given to introducing so-called buffer-zones in coastal areas where construction would not be allowed so as to limit destruction and devastation by any future disasters of a similar nature. However, in some countries, there were reports that these zones were being established sometimes in a discriminatory manner without proper scientific or other justification; for instance, some coastal areas would have a buffer-zone imposed reaching further inland than in other areas without any clearly identifiable reason. In some areas, construction of tourism facilities was permitted, while local residents were not allowed to reconstruct their homes. In other areas, the local fishing industry was very hard hit by such restrictions, furthermore their legitimate concerns were not taken into consideration. Generally, the Representative notes that the creation of such buffer-zones has to be done in a fair and non-discriminatory manner, balancing all relevant aspects, including geographical features, concerns for environmental protection, and impact on the livelihoods of traditional communities or indigenous peoples.

Property Issues

Throughout his mission the Representative noted the importance of addressing problems related to property, as the loss of property was a prob-

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lem common to all countries affected by the tsunamis. Even where IDPs are willing and otherwise able to return home, property issues may pose an additional barrier. Property claims may compete over particular plots, particularly where a natural disaster has wiped out landmarks used for demarcation. In some areas, it is rare for residents to have obtained formal title or other evidence of land ownership in the first place. Where they are used, property records, both individual and those maintained by authorities, may have been destroyed as a result of the disaster. Moreover, rules on registration and inheritance may discriminate against women, who then experience particular difficulty regaining their homes and property, especially when their husbands have been killed. As an element of their assistance for return or resettlement, authorities should anticipate and work to address these types of problems in the most equitable way possible.

Such issues are inevitably complicated legally and subject to conflicting practical pressures, namely the need for immediate solutions to the lack of shelter and the need for fair and lasting resolution of conflicting property claims. Past experience in many countries confronted with similar issues following displacement has shown that the designation or establishment of one or more dedicated administrative bodies to handle property claims with a mandate both for mediation, adjudication (subject to appeal to courts), and flexible types of remedies is the most effective way of handling such large-scale property issues. Indeed, addressing the property issues resulting from displacement crises can also be an opportunity to address any long-standing inequities or inefficiencies in registration and cadastral schemes generally as well as to modify laws and policies to ensure that customary rights and non-traditional forms of ownership evidence are given due regard, as appropriate in the domestic circumstances.

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Protection Roles and Responsibilities

As noted above, international law provides that primary responsibility for protecting and assisting internally displaced populations rests with the Government of the country concerned. Specifically what national responsibility towards the internally displaced entails is spelled out in the Guiding Principles on Internal Displacement, which States have recognized as a standard and encouraged other States to use as a tool in addressing situations of internal displacement. Overall, Government responsibility, as described above, encompasses prevention of displacement, protection during displacement and protection during return and reintegration. It means the adoption of policies and laws, authorizing civilian institutions to address the problem, and working together with civil society and the displaced themselves in finding solutions.

In case of internal armed conflict, non-state armed actors, who in many cases exert effective control over territory where displaced populations are located, also have a responsibility to ensure the protection and assistance of the internally displaced. Working with these actors in response to natural disasters can present an important opportunity to make known and reinforce to these groups their responsibilities. Non-state actors' cooperation in relief efforts in response to a disaster also can present an opportunity for a Government and insurgent forces to work towards a common

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cause and thereby contribute to national reconciliation and confidence-building and be an important building block in the process towards peace.

National human rights institutions (NHRIs) can play an important role in promoting national responsibility and reinforcing protection of the rights of IDPs. It is encouraging that a number of NHRIs in States most affected by the 26 December tsunamis are beginning to engage in protection activities relating to the disaster, including by drawing attention to the human rights dimension of the crisis, monitoring protection concerns, investigating complaints, examining issues of property restitution and highlighting the need for responses to be in conformity with the Guiding Principles. The National Human Rights Commission in Sri Lanka has been particularly active in these areas, having established a dedicated unit to monitor protection issues related to the tsunami. In the Maldives Islands, which is experiencing the problem of internal displacement for the first time, the National Human Rights Commission issued a statement shortly after the tsunami noting that the disaster had deprived thousands of people of the ability to meet their basic needs and was pushing them to abject poverty, which “provides breeding grounds for abuse of human rights.”⁷

Civil society and local NGOs, usually at the forefront of efforts to assist populations at risk, can play a critical role in reinforcing national responsibility and in assisting efforts to address IDPs’ protection and assistance needs. Civil society and local NGOs working with the displaced should be considered as partners in national efforts and consulted in the design and implementation of programs. All possible measures should be taken to ensure that they have safe and unhindered access to the displaced and can undertake their humanitarian work and advocate for the rights of the displaced without risk of punishment or harm.

Given the regional repercussions of so many situations of internal displacement, regional bodies also have an important role to play. In the case of the tsunamis, these bodies would include the Association of the Southeast Asian Nations (ASEAN), the South Asian Association for Regional Cooperation (SAARC), the Commonwealth (a cross-regional organization

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of which a number of member states were affected by the tsunamis) and, in East Africa, the Inter-Governmental Authority on Development (IGAD). Some of these bodies have recognized their responsibilities to engage in the issue of internal displacement, including in situations of natural disaster, and have recognized the Guiding Principles as an important tool for guiding regional as well as national responses to internal displacement.

In many cases of natural disaster, the scope of the devastation can be such that there may also be need for an international effort. It is therefore important to look at how national and international responsibilities can be brought together. International humanitarian organizations and agencies have a right to offer their services in support of IDPs, to which States should not withhold consent, when the national authorities themselves do not have the capacity or are unwilling to provide the required assistance (Principle 25). Such cooperation with the international community is a sign of national responsibility toward the displaced. It further recognizes that when international humanitarian organizations provide assistance, they have a responsibility to give due regard to the protection needs and human rights of IDPs, not only to their needs for assistance, and must take appropriate measures in this regard (Principle 27(1)). For example, international organizations have a long experience in protecting IDPs in camps and settlements, especially in conflict situations, which can be applied to situations of natural disaster as well.

Overall, there is need for affected Governments together with NHRIs, regional bodies, civil society and the international community to develop a framework for action for addressing both the protection and assistance needs of internally displaced persons in situations of natural disaster. This framework should identify the different elements of that responsibility, for Governments as well as non-state actors, specify the key steps to be taken to ensure that the human rights of IDPs are respected and their protection needs effectively addressed, and also spell out how NHRIs, NGOs and UN agencies can work together to monitor human rights and promote accountability for protection in situations of natural disaster.

Section V

Recommendations for Future Action

Throughout his mission most interlocutors responded positively to the points raised by the Representative. There was a positive response concerning the need for a human rights based approach in developing and implementing a response to natural disasters, in particular following the immediate emergency relief phase. It was recognized that there was an inherent risk that the response would be inadequate if the human rights dimension were neglected, although words of caution were expressed on the need to strike a balance in the immediate emergency phase between championing human rights and reaching as many people as possible. There was wide agreement that while a human rights focus had been largely absent in the initial phase of the response to the 26 December tsunamis, now that the immediate emergency phase was over, it was important to include human rights in the next phases. The Representative noted that experience shows that the longer displacement caused by natural disasters lasts, the greater the risk of discrimination and of violations of economic, social and cultural rights, and also of some civil and political rights. Such violations are often not intended but they result from inappropriate policies, and therefore could be easily avoided if relevant human rights guarantees were to be taken into account from the beginning. The Representative stressed that for these reasons there was a need for all involved actors to be more proactive with regard to the protection of IDPs in the next phases of the response.

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He recommended that national Governments, when developing and implementing programs of reconstruction and reintegration for internally displaced persons, aim at finding equitable solutions for them in accordance with the human rights requirements that they have undertaken upon ratifying international human rights treaties and in doing so, take into account the Guiding Principles on Internal Displacement.

He also urged the UN agencies to better integrate a rights based approach in their programming and implementation of the projects listed in the Flash Appeal and to include specific human rights projects, e.g. as regards the protection of property, the rights of women and children or the protection of minorities and indigenous peoples.

In all cases he strongly recommended a systematic consultation and inclusion of IDPs in decisions that affected their current and future situations.

With a view to avoiding future conflicts, he furthermore reminded the donors of their particular responsibility to ensure that the people displaced due to prior existing conflict were not discriminated against in comparison to the tsunami displaced persons, as well as to avoid assistance to those displaced by the tsunami that would reinforce pre-existing inequalities between different ethnic, religious or social groups, or on grounds of gender.

He encouraged National Human Rights Institutions to monitor the situation of internally displaced persons, in particular to identify patterns of violations or systemic problems with a view to enabling Governments and agencies to address them at an early stage. He welcomed the fact that the representatives of the National Human Rights Institutions of the affected countries (India, Maldives, Sri Lanka, Indonesia and Thailand) were willing to play a significant role in the next phase of the response, in particular through monitoring the human rights situation of the displaced and agreed to work on developing a common methodology for this role with regard to internally displaced persons in the context of natural disasters based on the Guiding Principles on Internal Displacement.

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He furthermore encouraged the Office of the High Commissioner for Human Rights (OHCHR) to become more involved now that the emergency phase was over, in particular in supporting the National Human Rights Institutions in their monitoring role and advising the relevant actors.

While stressing that it was obviously the national Governments which had the primary duty and responsibility to ensure the protection of IDPs, the Representative suggested that the international actors involved in the response could also find useful guidance in the Guiding Principles. In this regard, the Representative recommended that OHCHR and the Office for the Coordination of Humanitarian Affairs (OCHA), in consultation with relevant partners, should jointly develop guidelines on human rights for humanitarian and human rights actors in situations of natural disasters, in particular with regard to internally displaced persons, which could provide practical operational guidance to IASC (Inter-Agency Standing Committee) members on the ground.

Endnotes

¹ UN Doc. E/CN.4/1998/53/Add.2, available at <http://www.unhchr.ch/html/menu2/7/b/principles.htm>.

² For a general discussion of IDPs' particular protection needs, see the report of the Representative of the Secretary-General on the human rights of internally displaced persons, UN Doc. E/CN.4/2005/84, available at www.ohchr.org.

³ See Guiding Principles on Internal Displacement—*Introduction: Scope and Purpose*.

⁴ See, for example, General Assembly Resolution 58/177 of 2004, para. 7, and Commission on Human Rights Resolution 2004/55 of 2004, para. 6.

⁵ Hyogo Declaration, World Conference on Disaster Reduction, UN Doc. A/CONF.20/L.3/Rev.1, para. 4 (2 February 2005).

⁶ Press statement, “Bam tragedy must drive resolve towards development of safe housing standards” (7 January 2004), available at www.ohchr.org.

⁷ “Tsunami Appeal,” issued by the Human Rights Commission of the Maldives, 2 January 2005.

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