

REPORT OF THE  
SECRETARY-GENERAL'S INTERNAL REVIEW PANEL  
ON UNITED NATIONS ACTION IN SRI LANKA

November 2012

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## **I. The Secretary-General's Internal Review Panel**

1. On 22 June 2010 the United Nations' (UN) Secretary-General established a "Panel of Experts on accountability in Sri Lanka" (Panel of Experts) to advise him on accountability during the final stages of the war in Sri Lanka. In addition to its conclusions regarding the need for accountability for violations by the parties to the conflict, the Panel of Experts also concluded that there was a need for the UN to review its own actions<sup>1</sup>. On 12 April 2011, the Panel of Experts presented its report to the Secretary-General, along with a memorandum stating its view that while many UN staff had distinguished themselves during the final stages of the conflict, some agencies and individuals had failed in their mandates to protect people, had under-reported Government violations, and suppressed reporting efforts by their field staff. The memorandum said that the UN "did not adequately invoke principles of human rights that are the foundation of the UN but appeared instead to do what was necessary to avoid confrontation with the government."<sup>2</sup> The memorandum described the failure to act by Member States as a low mark for the UN.

2. In response, the Secretary-General established an Internal Review Panel on UN actions in Sri Lanka (the Panel) tasked with: (i) providing an overview and assessment of UN actions during the final stages of the war in Sri Lanka and its aftermath, particularly regarding the implementation of its humanitarian and protection mandates; (ii) assessing the contribution and effectiveness of the UN system in responding to the escalating fighting and in supporting the Secretary-General's political engagement; (iii) identifying institutional and structural strengths and weaknesses, and providing recommendations for the UN and its Member States in dealing with similar situations; and (iv) making recommendations on UN policies or guidelines pertaining to protection and humanitarian responsibilities, and on strengthening the system of UN Country Teams (UNCTs) and the capacity of the UN as a whole to respond effectively to similar situations of escalated conflict.<sup>3</sup> The Panel began work in late April 2012 and submitted the present report to the Secretary-General in early November 2012.

3. The Panel, set up at the Assistant Secretary-General (ASG) level, was composed of a Head of Panel, Charles Petrie, and three staff. It also had limited additional ad hoc staffing from the UN Secretariat and agencies. The Panel reviewed about 7,000 documents, including UN internal emails and correspondence with the Government of Sri Lanka, minutes of UN meetings, UN public statements, publicly available reports by the UN, civil society, and the Government of Sri Lanka, video and photographs. The Panel met with representatives from the UN, Member States and civil society, as well as with the Permanent Representative of Sri Lanka to the UN. The Panel held periodic progress-review meetings with a Reference Group, representing the primary UN entities (departments, agencies and programmes) involved in UN action in Sri Lanka. In addition, the Panel asked several UN entities to host discussions on the dilemmas that the UN confronted in Sri Lanka, including balancing staff security with other mandated responsibilities, maintaining protection advocacy while also preserving access, and engaging with Member

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<sup>1</sup> Recommendation 4.B, Report of the Panel of Experts, 31 March 2011.

<sup>2</sup> Memorandum of 12 April 2011 from the Panel of Experts to the Secretary-General.

<sup>3</sup> Annex I.

States. The Panel also convened a one-day seminar of high-level current and former UN officials to discuss systemic issues regarding the UN's response to similar crises.

## **II. The events and United Nations actions**

4. This section of the report gives an overview of events. A more detailed narrative is provided in Annex III.

### **A. Lead up to the final stages – 2002/2008**

5. Over the past few decades, Sri Lanka's history has been marked by political, social and ethnic violence. Sri Lanka's 21 million-strong population includes a large majority of Sinhalese, as well as Tamils, Muslims, Burghers, Veddahs, and other minority ethnic communities. In the 1970s and 1980s, tens of thousands of people, many of them youths, were killed in political violence and conflict. The Government introduced legislation which limited the jurisdiction of courts to check abuses. From the late 1970s, the Liberation Tigers of Tamil Eelam (LTTE) had begun fighting the Government with the aim of establishing the state of Tamil Eelam in the north and east of Sri Lanka.<sup>4</sup> The LTTE used violence to silence other Tamil groups, and carried out suicide bombings against military, political and civilian targets. During these decades, Sri Lanka had one of the world's highest rates of disappearances by the State, as well as widespread cases of unlawful killings and torture by both State and non-State actors.<sup>5</sup>

6. The last in a series of internationally supported efforts to resolve the situation in Sri Lanka took the form of the Norwegian-sponsored February 2002 Cease Fire Agreement (CFA) and its monitoring body the Sri Lanka Monitoring Mission (SLMM). The CFA led to a reduction in armed clashes between the main parties to the conflict. However, the parties also used it to consolidate and improve their positions, and CFA and human rights violations persisted.<sup>6</sup> Within a 24-month period a series of developments changed the political context, in favour of the Government's pursuit of a military, rather than political, solution to the conflict: (i) in March 2004, the Tamil Makkal Viduthalai Pulikal (TMVP) split from the LTTE to ally itself with the Government; (ii) the 2005 Presidential election victory of the Sri Lanka Freedom Party's candidate, Mahinda Rajapaksa, backed by a nationalist coalition saw a shift towards a military strategy<sup>7</sup>; and (iii) the LTTE's continuing attacks on civilians, combined with the post-September 11 international consensus against political engagement with groups using terror tactics, led to the LTTE's increasing international political isolation. Following the European Union's May 2006 declaration of the LTTE as a terrorist organization<sup>8</sup>, the LTTE demanded that monitors of EU nationality be removed from the SLMM, severely weakening the entity's capacity to monitor CFA breaches. The peace process had stalled.

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<sup>4</sup> The report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, mission to Sri Lanka 28 November to 6 December 2005 (E/CN.4/2006/53/Add.5, 27 March 2006).

<sup>5</sup> Annex III.A.1 (paras. 1-4).

<sup>6</sup> Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, mission to Sri Lanka 28 November to 6 December 2005 (E/CN.4/2006/53/Add.5, 27 March 2006).

<sup>7</sup> International Crisis Group – Sri Lanka : the failure of the peace process – 28 November 2006

<sup>8</sup> Council of the European Union – Declaration by the Presidency on behalf of the European Union concerning listing of the LTTE as a terrorist group - 31 May 2006

7. The same period, 2002 to 2008, saw repeated warnings by UN human rights actors about violations, including alleged disappearances by state actors, the killing of civilians by the Government and the LTTE and TMVP, and child recruitment by the LTTE and TMVP.<sup>9</sup> There was also a warning that a major Government military offensive would be launched in the Wannai area of north Sri Lanka. Several reports were prescient in predicting events to come. The Representative of the Secretary-General on the human rights of internally displaced persons (RSG-IDPs) said in December 2007 “Important lessons applicable to future situations may be drawn from the experience of mass displacement and mass return in the East” and noted “The campaign in the East saw repeated allegations on both sides that civilians were targeted, used as human shields, or prevented from fleeing hostilities ...[and] ... allegations of deliberate co-location of military installations near civilian populations and indiscriminate shelling.”<sup>10</sup>

8. UN reaction to this early warning was mixed. From 2003 to 2007, a series of UN Special Rapporteurs had advocated for the UN to establish a human rights operation in Sri Lanka, but this was not achieved. In 2007 and 2008, the Department of Political Affairs (DPA) led several processes of analysis on UN strategy. The resulting policy and strategy documents attempted to capture the situation and the response required. UN objectives included: achieving a political solution to the conflict; nominating a special envoy; establishing a human rights field presence; and ensuring accountability for past human rights abuses and violations of international humanitarian law. In addition, in 2007, the UN Policy Committee<sup>11</sup> considered the situation in Sri Lanka. Subsequently the UN agreed on a strategy of high-level visits by senior UNHQ officials who could present UN concerns and recommendations: in 2007 alone Sri Lanka was visited by the UN’s senior official for humanitarian affairs (the Under Secretary-General (USG)-Humanitarian Affairs)<sup>12</sup> and head of the Office for the Coordination of Humanitarian Affairs (OCHA)), by the UN’s senior human rights official (the head of the Office of the High Commissioner for Human Rights (OHCHR), the USG-Human Rights), and by the Representative of the Secretary-General on the Human Rights of Internally Displaced Persons (RSG-IDPs). However, the Government rejected most of the proposed initiatives, including the appeal by the USG-Human Rights for a field operation, and the UN had little success in identifying alternative approaches.<sup>13</sup>

9. UNHQ leadership and coordination of the UN response took place through a number of mechanisms. UN development engagement in country-level planning processes was framed through the UN Development Assistance Framework (UNDAF) for the period 2008-2012, and two Consolidated Humanitarian Appeals (CHAPs), for the years 2008 and 2009. Overall coordination of UNHQ analysis and engagement on the crisis in Sri Lanka was initially centred in DPA, through an Assistant Secretary-General (ASG-Political Affairs), until this senior official left the Department in 2008 and the Secretary-General gave the lead role to his own Chef de Cabinet. As the situation deteriorated, leadership also came from the USG-Humanitarian Affairs, who conducted more visits to Sri Lanka than any other official. At UNHQ Sri Lanka was on the

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<sup>9</sup> Annex III.A.2 (paras. 6-7).

<sup>10</sup> Report of the Representative of the Secretary-General on the human rights of internally displaced persons, mission to Sri Lanka 14 – 21 December 2007) Paragraphs 78 and 79 A/HRC/8/6/Add.4; and Annex III.A.2 and III.A.3.

<sup>11</sup> The Policy Committee is the UN Secretariat’s most senior decision-making mechanism, and it is chaired by the Secretary-General and its members are the heads of UN selected departments, agencies and programmes.

<sup>12</sup> The USG-Humanitarian Affairs also carries the title and role of UN Emergency Relief Coordinator.

<sup>13</sup> Annex III.A.3 (paras. 8-18).

agenda not just of the Policy Committee but also of the Executive Committee on Humanitarian Affairs (ECHA), and an Inter-Agency Working Group on Sri Lanka (IAWG-SL).<sup>14</sup>

10. Within Sri Lanka the senior UN official was the Resident Coordinator, who operated in a 'Primus Inter Pares' framework as coordinator of UN action in Sri Lanka and reported to the Secretary-General through the Administrator of the UN Development Programme (UNDP), in the Administrator's role as head of the UN Development Group.<sup>15</sup> As in other countries, the RC carried multiple hats: as RC leading the UN Country Team (UNCT), with support from UNDP and the UN Development Group and its technical support office, the UN Development Operations Coordination Office (DOCO); as the Humanitarian Coordinator (HC), responsible for coordinating humanitarian activities with support from OCHA; as the Resident Representative of the UNDP Country Office; and as the UN's senior official on security and safety of staff, the Designated Official, with support from the UN Department for Safety and Security (UNDSS).

11. Common analysis and decision-making were the responsibility of the UNCT, under the coordination of the RC. The individual UNCT members - country-heads of the various UN entities present in Sri Lanka - reported to the headquarters or regional offices of their respective agencies. In Sri Lanka, several of the larger UN entities with mandates directly relevant to the crisis played the leading roles in determining UN policy with regard to the situation in the North, including UNDP, UNICEF, and UNHCR. The RC was supported by a Human Rights Adviser who provided a link to OHCHR, a Reconciliation and Development Adviser who provided a link to DPA, a communications adviser who was also a spokesperson, and a gender adviser. As the situation deteriorated a Crisis Management Group (CMG) was established with a reduced UNCT membership, including notably the RC and the country heads of UNDP (the RC), UNICEF, the UN High Commissioner for Refugees (UNHCR), the World Food Programme (WFP), the UN Office for Project Services (UNOPS), and OCHA. The group's initial focus was on the logistical and operational aspects of UN action in the north. However, as the situation evolved these issues could not be separated from the wider political and international human rights and humanitarian law aspects of the situation, and the UN's protection responsibilities.<sup>16</sup>

12. The UN's political engagement in Sri Lanka during the period from 2007 to the end of the conflict in May 2009 remained secondary to the efforts of other external actors. These included other countries in the region, including India and China, along with Norway which had sponsored the CFA; and the EU, Japan, and the US which, also along with Norway, formed a Co-Chair Group of States to coordinate financial contributions to Sri Lanka as a support to the peace process.<sup>17</sup> The UN was not invited to be a member of the Co-Chair Group.

13. The UN's relationships with the Government were difficult – not least because of a Government stratagem of UN intimidation. For several years, authorities had used the control of

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<sup>14</sup> Annex III.A.3 (paras. 12-18) and Annex V (paras. 1-13).

<sup>15</sup> The "Administrator" is UNDP's most senior official, based at UNHQ. In practice, the RC in Sri Lanka reported through the UNDP Regional Bureau for Asia and the Pacific. Additional details on the RC role can be found in the Resident Coordinator job description (<http://www.undg.org/index.cfm?P=133>) and Annex V (paras. 3-6).

<sup>16</sup> Additional detail on UN coordination in Sri Lanka can be found in Annex III.A.3 (paras. 12-18), and Annex V (paras. 1-13).

<sup>17</sup> The "Co-Chairs Group" was established in the context of follow-up to the 2003 Tokyo Donor conference on Sri Lanka, and the Tokyo Declaration on Reconstruction and Development of Sri Lanka.

visas to sanction staff critical of the State. The Government declared several RCs *persona non grata*, or made them understand that their visas were at risk of being withdrawn, while also rejecting proposed replacements with previous experience in crisis situations. The Government generally resisted efforts by the UN to establish staffing capacity to respond to the conflict's protection and humanitarian aspects. Although there was a significant increase in capacity in response to the 26 December 2004 Indian Ocean tsunami it remained difficult to obtain visas for incoming personnel. During this period the UNCT recruited national security officers from the Sri Lanka military and continued doing so well after the end of the conflict in May 2009. At the same time, Government-friendly media and senior authorities published false and intimidating allegations against UN agencies and staff.<sup>18</sup> Moreover, the UN's computer system, emails and telephones were understood to be entirely compromised by external surveillance.<sup>19</sup>

### **B. Final stages of the conflict – August 2008 – May 2009**

14. In 2007 the Government formally launched its military campaign in the Wannu against the last remaining area of Sri Lanka under LTTE control. Over the following 18 months, the fighting gradually intensified and in September 2008, as the conflict entered its final stages, the Government officially informed the UN it could no longer guarantee the safety of staff in the Wannu. The Government's security warning came after many months during which the UN perceived the Government to be trying to restrict the access of non-governmental organizations (NGOs) to the area. Within three weeks, the UN withdrew all international staff, effectively ending UN assistance operations from within the Wannu. The UN also tried to withdraw all its national staff, but the LTTE prevented staff dependents from leaving, and many national staff consequently chose to remain behind.<sup>20</sup>

15. As the UN prepared to leave, people approached UN staff pleading with them to stay, saying: "Some families have come to Killinochchi town due to the presence of international organizations and the belief that this would provide some form of physical security"; "there is a concern that the moment that humanitarian organizations leave, the Government will begin bombing Killinochchi town and that the physical security of the civilian population will be at increased risk; "... the absence of the UN would result in no one to bear witness to incidents ..."<sup>21</sup>

16. The relocation of international staff out of the conflict zone made it much harder for the UN to deliver humanitarian assistance to the civilian population, to monitor the situation and to 'protect by presence'. In October 2008 the UN agreed with the Government and the LTTE that weekly convoys of humanitarian assistance would be sent to the Wannu. The organization of the convoys was logistically complex and demanding. UN staff reported competition between UN agencies for visibility at the expense of providing the assistance needed.<sup>22</sup>

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<sup>18</sup> Among other incidents, in 2007, a Government Minister publicly accused the USG-Humanitarian Affairs of being a terrorist.

<sup>19</sup> Annex III.A.1 (paras. 3-4) and Annex IV (paras. 1-8).

<sup>20</sup> Annex III.B.1.a. (paras. 21-22), III.B.1.b (paras. 24-33) and III.B.1.c (paras. 34-37).

<sup>21</sup> Extract from notes sent to DPA.

<sup>22</sup> Annex III.B.2.a (paras. 39-43) and III.B.2.c (paras. 51-68).



17. On 15 January, the Government captured the remainder of the Jaffna peninsula. Despite this and an increasingly serious security situation, the UN decided to proceed with its 11<sup>th</sup> convoy, which entered the Wannai on 16 January and travelled to Puthukkudiyiruppu (PTK) with 58 trucks of food, five 4x4 light vehicles and six international and five national staff, in addition to truck drivers. The convoy's travel into the Wannai was cleared by the Security Forces and the LTTE. Although it had pre-approval to return the following day the convoy was trapped for two weeks, with national UN staff and two internationals who had volunteered to stay under intense artillery fire, primarily from Government forces.<sup>23</sup> Coming after repeated incidents of shelling in proximity to humanitarian convoys, the events during the 11<sup>th</sup> convoy ended all attempts to deliver humanitarian assistance by land. Under these very difficult conditions, just 11 UN land convoys travelled between October 2008 and January 2009, and none thereafter, delivering a small percentage of the food needed up to May 2009 and for which very little distribution monitoring was possible.<sup>24</sup> Meanwhile, living conditions for the population became increasingly difficult. With the start of the monsoon in late 2008, tens of thousands of internally displaced persons (IDPs) had no access to latrines and little to no shelter. By January 2009, to protect themselves from shelling, IDPs were living and sleeping in mud-and water-filled trenches. By March 2009, thousands were reported dead from inadequate medical care and lack of food.<sup>25</sup>

18. From early 2009, DPA-led analysis in UNHQ shows that the UN's leadership adjusted its Sri Lanka focus to: "avert a large-scale loss of civilian lives given the hundreds of thousands of civilians who remained within the constantly shrinking LTTE controlled area ... by encouraging the Government and the LTTE to either allow civilians to leave the conflict zone or bring the conflict to a negotiated end."<sup>26</sup> However, without clear Security Council support, the UN felt it could not play a lead role and made no attempt to implement a comprehensive strategy.<sup>27</sup>

19. Government forces continued to pursue their military offensive while the LTTE refused to allow civilians to leave the conflict zone, effectively using them as shields. The Government unilaterally declared a series of no-fire zones (NFZs)<sup>28</sup> within the conflict area and told civilians to move into them – by means of its local officials in the Wannai, through public appeals, and through leaflets dropped from aircraft.

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<sup>23</sup> Details on convoy 11 have been gathered from a variety of sources such as UN logistical, security and humanitarian actors, including through UN reports and through interviews with the Panel of Experts, the OHCHR documentation project and the Panel; additional details are included in Annex III.B.2.c (paras. 51-68).

<sup>24</sup> The Government has indicated that there was enough food. In its June 2011 report "Sri Lanka's Humanitarian effort during the final stages of the conflict", the Government states that "During the period January 2008 to early May 2009, 58,393 metric tons of essential items were sent to Killinochchi and Mullaithivu districts alone ... in addition to the excess paddy available in the districts, the buffer stocks maintained on location and 33,383 metric tons supplied to co-operative outlets during 2008 up to January 2009." However, UN entities informed the Panel that during the conflict, other than the deliveries in UN convoys, they had very little reliable information on other assistance being delivered, and multiple testimonies indicate that there was a life-threatening shortage of food. In addition, Government population estimates were far below actual population numbers; additional details are given in Annex III.B.2.b (paras. 44-50).

<sup>25</sup> Annex III.B.3.c (paras. 109-113).

<sup>26</sup> Annex III.B.3.a (para. 76) and DPA note to the Panel on UN political engagement in Sri Lanka, August 2012.

<sup>27</sup> The Panel's interviews with UN staff and review of UN staff notes on key meetings.

<sup>28</sup> See maps in Annex VII. The first NFZ, created on 20 January was to the North of the A35 road and several kilometers northwest of PTK. The second, created on 12 February was a 10km sq strip of land to the East of the original NFZ along the coast of the Bay of Bengal and north-west of Mullaithivu town. The third, NFZ was a tiny area of land within a southern portion of the second NFZ.

20. From January 2009 onward, Government forces carried out intense artillery shelling which killed or injured many civilians – whether in makeshift IDP sites in the NFZs, at hospitals, or in UN compounds. The LTTE wilfully placed their offices and military equipment near IDP sites and civilian installations and fired mortars and light arms from the vicinity of areas with civilians, and it shot civilians who tried to escape.<sup>29</sup>

21. Initially, deaths and injuries were not subject to systematic UN monitoring. At the end of January, the UNCT was presented with incontrovertible evidence of the killing of civilians by shelling when the two UN international staff who had remained with Convoy 11 returned to Colombo with first-hand witness reports and documentation of the events that other sources were already reporting. But there was no established process into which this testimony could usefully be fed. In Colombo, a small number of individual staff took the initiative to begin compiling information on civilian casualties and humanitarian concerns, as well as on the security situation of the UN national staff and dependents still in the Wannu. Their initiative received the support of the RC/HC and OCHA, and was called the UN Crisis Operations Group (COG), with representatives from several organizations. The COG designed a rigorous methodology for collecting and verifying information on civilian casualties using multiple independent sources for each reported death or injury, leading to a conservative list of civilian casualties.<sup>30</sup>

22. The Secretary-General spoke on the telephone with President Rajapaksa on 5 February. The same day a senior DPA staff member arrived in Sri Lanka for a three-day visit with the objectives of assessing the possibility of averting large-scale civilian casualties, bringing a rapid end to the fighting, and supporting long-term stabilization and rehabilitation. He arrived just as the newly collated data on casualty figures were being discussed and “was very seized by the information as it came out, and said we would be complicit if we do not act on it.”<sup>31</sup> The staff member’s 9 February mission report to the USG-Political Affairs said “Estimates by UN agencies based on *reliable* [emphasis added] first-hand information, but not yet made public, suggest that at least 5,000 civilians, many of them young children, have been killed and injured ... [including] at least 1,000 civilians ... killed and almost 3,000 injured during the period 20 January–5 February alone ... [T]here is ample evidence of shelling by both Government forces and the LTTE into areas of civilian concentration including the no-fire zone ...” The report’s recommendations focused on political solutions and the immediate development of a UN “system-wide strategy based on a shared analysis.”<sup>32</sup>

23. On 7 February, the RC wrote to the Government describing the recent effort to collate data and stating some of the information on casualties. The letter said “the United Nations in Sri Lanka estimates that the minimum figure of civilians killed and injured inside the Wannu pocket between 20 January and 5 February is 3700, and of this total, more than one thousand civilians have died.” The letter continued saying that “There is a high probability that fire from both LTTE and Government positions has led to these civilian casualties”, although it also noted this was “despite the best efforts” of the Government. The letter explained that “the UN believes that humanitarian concerns must now be given immediate and absolute priority” and said that the UN

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<sup>29</sup> Annex III.B.2.c (paras. 51-68), III.B.3.a (paras. 69-75), III.B.3.b (para. 91), III.B.3.c (paras. 109-113), as well as the Panel of Experts report.

<sup>30</sup> Annex III.B.3.a (paras. 74-79) Annex V (paras. 19-22).

<sup>31</sup> Interview with UN staff member involved in the data collection in Colombo.

<sup>32</sup> Internal report on 5-8 February 2009 mission to Sri Lanka, dated 9 February 2009.

planned over the coming days “to refer to the concerns ... without raising the specifics outlined in this letter.” According to the UN’s data most casualties were caused by Government fire and included attacks on UN premises and hospitals; however the letter did not say this and did not mention international human rights or humanitarian law which appeared to have been violated in many attacks that killed civilians. The letter noted that the UN had “raised our concerns” with the Government, and it emphasised “the grave responsibility the LTTE has for this terrible situation.” Within hours of receiving the letter the Minister of Foreign Affairs met with the RC and several UNCT members to discuss it. The meeting was reportedly very tense. The Government rejected suggestions that civilian casualties were occurring and the UN was told to re-examine its data-gathering methodology. Some UN staff in Colombo expressed to the UNCT leadership their dismay that the UN was placing primary emphasis on LTTE responsibility when the facts suggested otherwise, and urged a more public stance.

24. According to the Panel of Experts report “From as early as 6 February 2009, the SLA [Sri Lanka Army] continuously shelled within the area that became the second NFZ, from all directions, including land, sea and air. It is estimated that there were between 300,000 and 330,000 civilians in that small area. The SLA assault employed aerial bombardment, long-range artillery, howitzers and MBRLs [unguided missile systems] as well as small mortars, RPGs [Rocket Propelled Grenades] and small arms fire ...”<sup>33</sup> The RC told a 13 February meeting of the IAWG-SL that as many as 3,000 people may have been killed since 20 January.

25. On 9 March, the RC and some UNCT members presented an estimate of casualties to the diplomatic corps in Colombo. They listed the “total minimum number of documented civilian casualties”, between 20 January and 2 March 2009 in Mullaitivu District, as 2,683 deaths and 7,241 injuries, two-thirds of which occurred within the latest 14 km<sup>2</sup> NFZ. The briefing and accompanying documents were forthright in describing LTTE human rights and international humanitarian law violations – including “the forced recruitment of men and women ... [and] children as young as 12, at least one mass execution of civilians, mass corporal punishments, ... the blocking of corridors for civilians trying to leave the combat area ... the forced movement of civilians, the placing of weapons in areas of civilian concentration, and the diversion and possible withholding of humanitarian aid to civilians.” However, the briefing did not explicitly address Government responsibility for the situation or for shelling. The COG had prepared a casualty sheet which showed that a large majority of the civilian casualties recorded by the UN had reportedly been caused by Government fire, but the UN did not present this data. And when describing the lack of food and medicines, the briefing did not explain that the most immediate causes for the severe shortfall had been Government obstruction to the delivery of assistance, including its artillery shelling.

26. Three days later, on 12 March, at a UNHQ meeting of the Policy Committee to discuss Sri Lanka [REDACTED]  
[REDACTED]  
[REDACTED]<sup>34</sup> The next day, after receiving a draft of the statement, the Chef de Cabinet, the USG-Humanitarian Affairs, and the RC all wrote to the OHCHR leadership urging that the statement be changed to exclude specific

<sup>33</sup> Report of the Panel of Experts (para. 100).

<sup>34</sup> Annex III.B.3.a (para 81).

reference to the number of casualties and possible crimes and violations of international law by the Government.<sup>35</sup> DPA supported the statement. OHCHR released the statement on 14 March without substantive changes, listing the COG statistics, describing them as credible, and stating that actions by the Government and LTTE “may constitute international crimes, entailing individual responsibility, including for war crimes and crimes against humanity.” Throughout the final stages, the UN issued many public statements and reports accusing the LTTE of committing human rights and international humanitarian law violations, and mentioning thousands of civilians killed. But, with the above exception, the UN almost completely omitted to explicitly mention Government responsibility for violations of international law.<sup>36</sup> UN officials said they did not want to prejudice humanitarian access by criticizing the Government – and maintained this position even when access within the Wanni was almost non-existent. UN officials also said that by March they were trying to ensure access to IDPs who had already left the Wanni and that they were negotiating a humanitarian pause to allow more civilians to escape. According to these officials, both factors justified the UN’s mute criticism of the Government’s conduct. However, despite UN advocacy and its relative withholding of criticism, access to IDPs in camps outside the Wanni remained strictly limited by the Government and the UN never obtained the kind of humanitarian pause that would have allowed civilians to be moved to safety.

27. The Government responded robustly to any UN suggestions that there were civilian casualties at all. Aware of disagreement among UN principals, the Government used correspondence and public statements by senior UN officials to refute the OHCHR public statement. Diplomats who had attended the UNCT’s 9 March briefing and wanted the UN to take a public stand on casualties leaked the briefing materials to the media.<sup>37</sup> On 24 March the RC was summoned to meet with the Minister of Foreign Affairs; and on 25 March, the Government released a statement saying “[the RC] has stated that he is unable to confirm the veracity of the figures of civilian casualties ...”, and describing the numbers as having “not been attributed to any reliable or independent source” and the assertion that two-thirds of casualties had occurred in the NFZ as “patently false” and “unsubstantiated”. A second Government statement dated 26 March said “The UN system has been exposed for using figures that it cannot verified (sic) ... The figures of 2,800 civilians killed and more than 7,000 injured as claimed by the [USG-Human Rights] are not supported by the [UN] as verifiable figures.”<sup>38</sup> The UN in Sri Lanka published a statement on its website saying the USG-Humanitarian Affairs “has clarified since that these figures were drawn from an internal working document which is based on information that cannot be fully, reliably, and independently assessed, because of limits on access to civilians in the combat zone.”<sup>39</sup>

28. In late April, satellite photographs of the Wanni taken by UNITAR’s Operational Satellite Applications Programme (UNOSAT) became public, along with analysis of their possible significance. Examination of successive photographs had provided the basis for new estimates of the number of people still in the Wanni, as well as confirmation that, contrary to repeated

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<sup>35</sup> Annex III.B.3.a (paras. 81-88).

<sup>36</sup> Annex III.B.3.a (paras. 74-88) and III.B.3.b (paras. 89-108).

<sup>37</sup> The Panel’s interviews with former members of the diplomatic corps in Sri Lanka and UN staff.

<sup>38</sup> Accessed on 3 August 2012

[http://www.priu.gov.lk/news\\_update/Current\\_Affairs/ca200903/20090326un\\_gives\\_unverified\\_idp\\_casualty\\_figures.htm](http://www.priu.gov.lk/news_update/Current_Affairs/ca200903/20090326un_gives_unverified_idp_casualty_figures.htm)

<sup>39</sup> [www.un.lk](http://www.un.lk) accessed on 23 May 2012.

Government commitments, there was ongoing shelling by heavy artillery. The RC was challenged by the Government about this new data. In a 4 May letter to the Minister for Disaster Management and Human Rights the RC downplayed the photographs and analysis, and said “any commentary [on the images] made by UNOSAT is partial and provisional” and may not reflect the more recent “exodus of tens of thousands of people”.<sup>40</sup> The Government asked the RC to share his comments with the media. On advice from UNHQ he did not do so, but the Government made his letter public.

29. Meanwhile, the situation in the Wannu deteriorated and there were reports of ever increasing numbers of civilian deaths. The UN staff gathering casualty data through the COG were finding it increasingly difficult to corroborate each casualty from the required three independent sources. During this crucial period, some Member States on the Security Council complained that they were receiving almost no information from the Secretariat on the international human rights and humanitarian law situation in the Wannu, and senior officials in the Executive Office of the Secretary-General (EOSG) were reported as expressing the same concern. Both Member States and officials in the EOSG said they had begun to rely on reports from Human Rights Watch and other international NGOs.

30. From early May 2009 as the LTTE was nearing total defeat, some of its members contacted senior UN officials to ask for their help in facilitating a surrender. These contacts were initiated even as other LTTE leaders were advocating instead for a ceasefire and as late as 15 May some LTTE elements were still firing mortars at the Government from amongst civilians. The Chef de Cabinet asked the Government to allow him to fly into the conflict zone to witness a surrender and act as a guarantor of safe passage. The Government refused and the UN believed it could not attempt further follow-up.<sup>41</sup>

31. By 18 May 2009 most of the remaining LTTE leadership was reported killed. The Government claimed they died in armed engagements, possibly at the hands of other LTTE fighters. Other credible sources said many were executed, including some who on the morning of 18 May had crossed into Government-held territory unarmed and with white flags.<sup>42</sup>

32. During the final months and then weeks of the conflict, civilians emerging from the conflict zone were severely malnourished, traumatized, exhausted, and often seriously injured. The security forces, attempting to identify LTTE cadres, screened everyone and detained 280,000 people in military-run closed internment camps – which the Government referred to as “welfare villages.”<sup>43</sup> In the camps, IDPs were screened again and the military detained those suspected of LTTE affiliations in ‘surrendee’ camps. There were persistent allegations of human rights violations at the screening points and in IDP camps but the UN was not permitted fully independent protection monitoring access. The UNCT had used its 9 March briefing and subsequent documents to inform the diplomatic corps of UN efforts to be present at screening locations, but did not mention the reports of people disappearing from other screening locations to which the UN had no access. UN officials said they were confronted with a dilemma over

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<sup>40</sup> <http://www.dailynews.lk/2009/05/07/news01.asp> Accessed on 3 August 2012

<sup>41</sup> Annex III.B.5.c (paras. 144-145).

<sup>42</sup> Annex III.B.5.c (paras. 144-145).

<sup>43</sup> See, for example, the Government of Sri Lanka’s report “Sri Lanka’s humanitarian effort”, page 28.

whether to hold back and insist on respect for principles or to provide urgently needed assistance through camps that were operating in violation of international standards. The UN chose to support the camps.<sup>44</sup>

33. Throughout the final stages of the conflict, Member States did not hold a single formal meeting on Sri Lanka, whether at the Security Council, the Human Rights Council or the General Assembly. Unable to agree on placing Sri Lanka on its agenda, the Security Council held several ‘informal interactive dialogue’ meetings, for which there were no written records and no formal outcomes. At the meetings, senior Secretariat officials presented prepared statements that focused largely on the humanitarian situation. They did not emphasize the responsibilities of the Government or clearly explain the link between Government and LTTE action and the obstacles to humanitarian assistance. Nor did they give full information on the deaths of civilians. For example, in a 27 February briefing, the USG-Humanitarian Affairs said “dozens of people per day at least are being killed and many more wounded” but did not provide the COG casualty figures or mention that most casualties appeared to be the result of Government fire and were occurring in the NFZ. The Security Council did not issue a press statement until three days before the end of the conflict.<sup>45</sup> At the Human Rights Council, in Geneva, a number of Member States tried over the final weeks of the conflict to gather the minimum of 16 Council members required to support calling a Special Session on the situation in Sri Lanka.

34. On 19 May, with the death of the LTTE’s leadership, the Government claimed victory in the war. The final phase of the decades-long Sri Lankan conflict was catastrophic. The Panel of Experts stated that “[a] number of credible sources have estimated that there could have been as many as 40,000 civilian deaths”.<sup>46</sup> Some Government sources state the number was well below 10,000. Other sources have referred to credible information indicating that over 70,000 people are unaccounted for.<sup>47</sup>

### **C. Aftermath from May 2009 onward**

35. Immediately after the end of the war, from 22 to 23 May 2009 the Secretary-General travelled to Sri Lanka, although some senior advisers cautioned against a visit. The UN welcomed the end of the fighting, but advisers were nevertheless concerned that the purpose of the Secretary-General’s visit should not be misconstrued as participation in the Government’s victory celebrations, rather than its actual objective of raising the UN’s continuing concern for Sri Lankan civilians affected by the conflict and its aftermath. At the end of his stay, the Secretary-General reached an agreement with the President of Sri Lanka on a Joint Statement listing mutual Government and UN post-conflict commitments and providing the platform for UN priorities for the year ahead. The Statement included the hard-won reference to accountability that the Secretary-General had argued for.

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<sup>44</sup> Annex III.B.4.a (paras. 114-119) and III.B.5.b (paras. 120-126).

<sup>45</sup> Annex III.B.5.a (paras. 127-130).

<sup>46</sup> Panel of Experts report (para. 137), which goes on to state that “Only a proper investigation can lead to the identification of all victims and to the formulation of an accurate figure for the total number of civilians”.

<sup>47</sup> In its 9 August 2012 UPR submission to the Human Rights Council, the Government refers to “the unfounded allegations of ‘tens of thousands’ of civilian deaths having occurred in the first 5 months of 2009”, saying that these allegations will be conclusively refuted by use of 2011 census data. Annex II provides additional and alternative information on numbers of people in the Wannu during the final stages of the war.

36. Meanwhile, on 19 May, the same day the war was declared over, at the Human Rights Council a total of 17 Member States belatedly gave their support for a Special Session which was subsequently scheduled for 26 and 27 May. The Sri Lankan Government did not want a Special Session, but once it was scheduled the Government quickly submitted its own draft resolution. By doing so before the Member States who had advocated for the Special Session were themselves able to submit a text, under the procedural rules the Government ensured its own draft was the initial basis for the Council's deliberations. The Special Session ultimately adopted a slightly adapted version of the Sri Lanka Government draft, which commended the Government for its support to IDPs, welcomed Government commitment to human rights, and urged the international community to cooperate with the Government.<sup>48</sup> The resolution did not mention accountability, although it did endorse the Joint Statement.

37. From June 2009 onward, the UN sought to follow-up on the commitments in the Joint Statement, and pushed for policies on protection and assistance for IDPs, for long-term political solutions, and for accountability. While the Government welcomed UN material assistance it rejected the UN focus on principles regarding IDP returns and a political solution. The UN was largely unsuccessful in its plans to create a mechanism to coordinate post-conflict assistance among donors and the UN. In the absence of being able to obtain from the Government any sense of an overall public plan to guide post-conflict relief, recovery and reconstruction, the UN found itself implementing actions in an ad hoc and reactive manner. As a result, UN engagement could not be firmly leveraged on principles.<sup>49</sup>

38. Progress on accountability was slow, but the UN would continue to pursue the issue. In June 2009 the Policy Committee discussed the possibility of UN action to establish a mechanism for an international investigation, an option presented by OHCHR. [REDACTED]

[REDACTED] 50

The UN Office of Legal Affairs advised the Secretary-General that he had the authority, under Article 99 of the UN Charter, to establish Commissions of Inquiry. In July 2009, the Policy Committee held a meeting exclusively on accountability in Sri Lanka during which the Secretary-General decided to give the Government of Sri Lanka some time to meet its responsibilities on accountability, but to establish an international initiative of some sort if it did not do so. From July 2009 to the beginning of 2010 the Secretary-General and senior UN officials repeatedly urged the Government to take action to ensure accountability. In a 14 September 2009 letter to the President of Sri Lanka, the Secretary-General said he was "considering the appointment of a Commission of Experts to advise me further and to be available to you for assistance" on accountability. In March 2010, in the absence of Government initiative on the issue, the UN informed the Government and Member States of plans to establish a UN Panel of Experts on accountability in Sri Lanka. By May 2010, several NGO reports had

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<sup>48</sup> Human Rights Council resolution on "Assistance to Sri Lanka in the promotion and protection of human rights (S/11-1) 27 May 2009; and Annex III.C.1.a (paras. 153-155).

<sup>49</sup> Annex III.C.1.a (paras. 146-152) and III.C.1.b (paras. 156-170).

<sup>50</sup> Minutes of June 2009 Policy Committee meeting.

been published on alleged violations, including a report by the International Crisis Group that called for an international accountability mechanism. On 6 May 2010 the Government established a domestic mechanism, the Lessons Learned and Reconciliation Commission (LLRC). Despite some positive characteristics, the LLRC was fundamentally constrained by a mandate that did not focus on actual accountability and by the lack of an enabling environment for judicial follow-up.<sup>51</sup>

39. In June 2010, the Secretary-General established the Panel of Experts. With a mandate to advise the Secretary-General on steps that needed to be taken regarding accountability in Sri Lanka. It was not the international Commission of Inquiry for which some actors had advocated, but it did provide an international review of the violations that allegedly occurred and it hoped to provide an additional incentive in favour of domestic efforts. On 25 April 2011 the Secretary-General publicly released the Panel of Experts' report – a step that was widely praised - some two weeks after the UN had shared it with the Government. Several months later, the report was also sent to the President of the Human Rights Council with a covering letter from the Secretary-General. Some Member States and Secretariat actors regretted that the letter asked only that the Human Rights Council President “share” it with members of the Council, rather than transmit it for their possible action.

40. On 22 March 2012, in a significant evolution of its position, the Human Rights Council adopted a resolution on Sri Lanka that focused on accountability.<sup>52</sup> The resolution was cautiously supportive of the LLRC “acknowledging its possible contribution to the process of national reconciliation in Sri Lanka”, but regretted “the [LLRC] report does not adequately address serious allegations of violations of international law.” The resolution called upon the Government to implement the constructive recommendations in the LLRC report and “to take all necessary additional steps to fulfil its relevant legal obligations and commitment to initiate credible and independent actions to ensure justice, equity, accountability and reconciliation for all Sri Lankans”. OHCHR and the Human Rights Council Special Procedures were asked to provide advice and technical assistance in consultation and with the concurrence of the Government and to report back to the Council in one year on the provision of such assistance.

41. The conflict and its aftermath saw UN staff suffer abuses in contravention of their UN privileges and immunities, and of international human rights and humanitarian law. National UN staff prevented by the LTTE from leaving the Wanni lived through months of Government and LTTE shelling, and witnessed dependents being killed or injured. Staff were screened and interned in camps. At least two staff members were abducted and tortured by Government forces, and then formally detained by the police. Many NGO staff were also killed during the conflict. In March 2012, on UN premises in Geneva, members of the Sri Lanka Government delegation threatened and harassed NGO activists attending the Human Rights Council session.

42. Within a few months of the war's end, Sri Lankan Army soldiers were nominated by the Government for peacekeeping duties, and were deployed by the United Nations to Haiti.

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<sup>51</sup> Annex III.C.2.b (paras. 175-178 and 184).

<sup>52</sup> Resolution A/HRC/19/L.2 of 8 March, adopted at the 19th regular session of the Human Rights Council (27 February - 23 March 2012); see also Annex III.C.2.c (paras. 186-188).



43. Some UN national and international staff showed commitment far beyond the call of duty. Long after the relocation from the Wannu, under extraordinarily dangerous conditions, remaining national staff continued to facilitate the convoys and to provide crucial information on the humanitarian situation. The efforts in the Wannu of two international staff and a number of national staff to gather staff and their dependents, to seek ways to evacuate everyone from the conflict zone, to build bunkers while under heavy fire, as well as the decisions of some staff to volunteer to stay behind to guide the process, showed great courage. Many other staff worked to exhaustion to gather information on the protection and humanitarian situation, to advocate for improvements in UN action, and to support authorities in implementing those changes.<sup>53</sup>

### **III. Assessment of United Nations action to meet its protection and humanitarian responsibilities in Sri Lanka**

#### **A. Assessment of United Nations action: dilemmas and responsibilities**

##### **1. Relocation**

44. In September 2008 the UN relocated all international and some national staff out of the Wannu leaving behind other national staff who opted to remain in order to be with their families, whom the LTTE prevented from departing. The relocation was prompted by repeated shelling and bombardment adjacent to UN compounds and by the Government's announcement that it could no longer guarantee the safety of staff. Most UN staff perceived the Government's withdrawal of security assurances as a stratagem to remove international observers from the Wannu.<sup>54</sup> The LTTE wanted the UN and international NGOs to remain. Much of the most immediate security threat, including the recent incidents of shelling, reportedly came from fire by Government forces.<sup>55</sup> Faced with the Government statement on security and the accompanying attacks, the UNCT thought it had no choice but to begin preparations to relocate. However, the logic of relocating staff because of a Government safety warning when Government forces themselves represented the dominant threat to staff seems never to have been questioned. In contrast, the International Committee of the Red Cross (ICRC) chose to remain in the Wannu. Despite major concerns expressed by some UN staff outside Sri Lanka, the UN never presented the full circumstances of the relocation to Member States or the general public and the Government did not face any significant criticism for its actions. The expectation that the UN would not confront it on the issue may, in turn, have influenced Government action. The relocation had a severe impact on the delivery of humanitarian assistance and reduced the potential for monitoring the protection of civilians. It removed the most significant protection layers, even as thousands of civilians sought protection by remaining close to UN premises. The reaction of the UN system as a whole to the Government's withdrawal of security assurances represented a serious failure.

45. In 2011 and 2012, the UN made efforts to redefine its management of physical risk through the 'programme criticality' framework. The approach involves determining which programmes are the most critical and therefore warrant accepting a greater level of risk or a greater allocation of resources to mitigate those risks. Had these principles been in place at the time, the UN could

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<sup>53</sup> See also Annex IV.E.

<sup>54</sup> OHCHR Documentation Project Report (paras 21- 24), and interviews by the Panel.

<sup>55</sup> Annex III.B.3.a (para. 76) and Annex V (para. 20).

have engaged the Government in a discussion on the continuation of critical operations in the Wanni, rather than limiting the choice to the presence, or not, of international staff.

## **2. Humanitarian access and obstructions to humanitarian assistance**

46. Humanitarian access for the UN to the people trapped within the conflict zone, the physical delivery of assistance into the conflict zone, and the freedom of movement for populations to reach assistance, were all fundamental to the protection of life during the war's final stages. And, determination of the numbers of people in the Wanni was central to all of this humanitarian action.<sup>56</sup> A Wanni local government official testified to the LLRC that during the final stages there had been 360,000 IDPs in her district alone. Others who submitted testimony to the Commission quoted estimates of local Government authorities that placed the total population number in October 2008 at 429,000. Yet national Government authorities in Colombo insisted that there were no more than about 70,000 people. The UN believed there were up to 350,000 civilians, but in its internal and public statements made references which oscillated between 150,000 and 350,000, and used an assistance-planning figure of 200,000. The reception and registration of almost 280,000 people in IDP internment camps when they left the Wanni is an indication of the scale of inaccuracy in the national Government's figures. The Government's denial of the real numbers buttressed arguments against increasing humanitarian convoys and was later used to rebut reports of high civilian casualties. From September 2008 to May 2009 UN food assistance dropped from an estimated 20 per cent of requirements to almost zero.<sup>57</sup> Land convoys stopped in January 2009, primarily because of Government forces' shelling, and the unwillingness of the parties to issue temporary ceasefires. Efforts to deliver assistance by sea were also adversely affected by shelling and Government restrictions. Local Government officials in the Wanni informed the UN that the Ministry of Defence was preventing essential medicines being transported into the area. Moreover, since the Government refused to allow UN staff to monitor distribution in the Wanni, it was impossible to know how much assistance was actually reaching the trapped populations. The RC's request to accompany a boat sailing with humanitarian assistance to the Wanni coast was refused by the Government. By the spring of 2009, doctors in the Wanni reported people dying in their thousands from the effects of malnutrition and lack of antibiotics.<sup>58</sup>

47. Throughout these events, the UN repeatedly lobbied the Government and the LTTE for improved humanitarian access, for freedom of movement that would allow people to reach assistance, and for convoys. But the UN did not confront the Government directly with the fact that obstructing assistance was counter to its responsibilities under international law.

## **3. Human rights and humanitarian law in protection and humanitarian assistance**

48. "*Protection*": A significant proportion of the UN's action on the ground in Sri Lanka fell under the heading of "protection". But this was defined in very broad terms. Situation reports from early 2009 on protection included such issues as psycho-social care, food and shelter gaps,

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<sup>56</sup> Annex II.

<sup>57</sup> UN food assistance between September and May 2009 can be calculated as having totaled an average of 10% of needs, based on the assumption of a total beneficiary population of 350,000 in January 2009.

<sup>58</sup> Annex III.B.3.c (paras. 109-113).

recreational activities, and staff training – issues already well-covered under other humanitarian rubrics. In fact, the UN’s planning papers and projects did not reflect a full understanding of Sri Lanka’s violent past or the realities of protection risks originating primarily in violations by the Government and the LTTE. Some members of the diplomatic corps said that because the CHAPs and other UN documents referred prominently to protection they assumed that the UN had a monitoring and response system to address attacks on civilians and other violations. The fact that protection was defined so broadly that it included a wide range of humanitarian actions obscured the very limited extent to which the UN’s protection actions actually served to protect people from the most serious risks.

49. *“Political”*: Throughout the conflict, some UNCT and UNHQ actors sought to separate the humanitarian response from what they termed “political” issues.<sup>59</sup> While it can be helpful to distinguish between humanitarian, political and other matters, in Sri Lanka the UN’s reference to what was “political” seemed to encompass everything related to the root causes of the crisis and aspects of the conduct of the war. Issues appear to have been defined as political not because they had a political aspect but rather because UN action to address them would have provoked criticism from the Government. Thus, raising concern over who was killing civilians, how many civilians were being killed, or how many civilians were actually in the Wanni were all, at various times, described as political issues. The distinction was used by some senior UN staff as an argument against additional UN action or full reporting on these issues, and even to exclude them from the purview of UN monitoring or response.

50. *UN monitoring and response to the killing and injury of civilians*: Neither the UNCT nor UNHQ sought to ensure that the UN was adequately monitoring and reporting on the situation. Existing protection monitoring processes, such as on general “protection” or on children in armed conflict, had a number of limitations. They were variously: (i) ill-adapted to gather and report on human rights and humanitarian law violations within a relevant time frame; (ii) too narrow in their mandated-focus to capture the full situation; (iii) primarily focused on social assistance protection; (iv) co-opted by State authorities; or (v) not supported by UNCT leadership. The UN, in headquarters and in Sri Lanka, did not appear to fully recognize the scope of its responsibility to respond to Government violations and did not realize until very late that its protection actions were largely empty.

51. Despite the context of worsening armed conflict, the UN did not put in place an adequate system to collect information on killings and injuries until the beginning of February 2009. When the UN began to collate information through the COG, reports pointed to the large majority of civilian killings as being the result of Government shelling and aerial bombardment, with a smaller proportion of killings resulting from the LTTE actions. UN staff in Colombo and UNHQ had no doubt that Government attacks were killing many civilians – as demonstrated by internal correspondence and meeting minutes. During the two weeks when Convoy 11 was

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<sup>59</sup> For example, in an 8 October 2008 ECHA meeting, the Chair said “advocacy efforts should focus on humanitarian rather than political issues”; minutes from the 16 October 2008 meeting of the IDP Protection Working Group record the RC as telling members that “the group[should] try to keep its work at the technical level to avoid politicization of the IDP Protection Working Group’s work”; the Chef de Cabinet told the Panel that the USG-Humanitarian Affairs tried to keep his humanitarian action separate from the political efforts of other parts of the UN.

caught in the Wannu, international UN staff witnessed first-hand that Government and LTTE attacks were causing serious civilian casualties.<sup>60</sup>

52. The UN repeatedly condemned the LTTE for serious international human rights and humanitarian law violations but largely avoided mention of the Government's responsibility. Senior UN officials said this was because information could not be verified. In fact, information had been verified to a good standard; indeed UN statements on LTTE violations, including the killing of civilians and holding civilians hostage, were based on information verified in the same manner. Numerous UN communications said that civilians were being killed in artillery shelling, but they failed to mention that reports most often indicated the shelling in question was from Government forces. The UN condemned the use of heavy weapons in general, and some officials appeared to believe that because such weapons were almost exclusively used by the Government that this was a sufficient means of raising Government responsibility. Some RC letters to the Government on a small number of incidents were more explicit in referring to Government attacks killing civilians. However, letters on the most flagrant incidents were sent only to the head of protocol at the Ministry of Foreign Affairs or to the 'Ministry of Foreign Affairs' in general, rather than to a relevant and senior Government official, limiting the letters' impact.<sup>61</sup>

53. On the rare instances when UN letters to the Government and UN statements associated Government fire with civilian deaths they did not elaborate on the specific humanitarian law provisions that were being violated and that would have highlighted Government actions as possibly illegal, including with regard to the vital concepts of 'distinction', 'proportionality' and 'precautionary measures'. When the UN received implausible Government denials, these were not effectively rebutted. After the events, several senior UNHQ and UNCT actors recalled that the UN repeatedly raised concerns over "thousands of civilian deaths", and argued that referring to specific casualty numbers would have made little difference. However, the UN<sup>62</sup> greatly weakened the impact of its statements by not identifying the Government as the perpetrator of individual attacks associated with these casualties. Throughout the final stages of the conflict, the UN issued just one public statement, through OHCHR, which said that both the Government and the LTTE were reported to be killing civilians and committing crimes. Most senior UN officials opposed the statement's publication, and the Government used dissenting opinions by senior UN staff to discredit the statement, diluting its potential preventive impact.

54. *IDP screening and internment*: The Government had legitimate security reasons for screening people as they left the Wannu – to identify LTTE cadres concealed among civilians. But the security forces carried out the screening at locations from which the UN and even the ICRC were deliberately excluded. After initial screenings, the Government interned close to 280,000 people in camps where they were under army guard. The Government asked the UN to help it build and maintain camp infrastructure but it rejected UN appeals for freedom of movement for IDPs in camps and imposed severe restrictions on the UN's access to the camps and on communication with IDPs. There was considerable consternation within the UN and wider humanitarian community over their involvement in camps under these conditions. The UN had decided to engage in the camps under what it considered to be a humanitarian imperative to

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<sup>60</sup> Annex III.B.2.c (paras. 51-68).

<sup>61</sup> Annex III.B.3.a (paras. 77 and 81-88) and III.B.3.b (paras. 89-108) and staff interviews with the Panel.

<sup>62</sup> In this instance, including the UN Secretariat departments and UN agencies and programmes.

assist IDPs arriving in a desperate state. Nevertheless, there was a perception among many working-level UN staff and some members of the diplomatic corps that the continuing engagement of UN agencies in the camps for many months after the Government failed to address violations was also influenced by UN agencies' desire to access funds that were available to finance post-conflict assistance.

55. The Secretary-General wrote to the President on 15 September 2009 stating: "The [UN] is providing substantial help to the IDPs in the camps. However, I am now facing difficult questions about how far the [UN] is willing to go in supporting a situation where IDPs are denied freedom of movement. ... We will not be able to support the creation or maintenance of further closed camps that detain IDPs into the medium term." This and other high-level interventions, possibly combined with domestic political dynamics related to imminent Presidential elections, were eventually successful in pressing the Government to allow the return of populations from the camps earlier than it had initially planned.<sup>63</sup>

56. In contrast with its overall engagement in IDP camps, the UN largely declined to engage in the 'surrendee' camps in which alleged LTTE members were detained. The UN was concerned by reports of human rights violations and the lack of an adequate legal framework. Ultimately, however, the International Organization for Migration (IOM), which although not a UN agency was nevertheless a member of the UNCT, did choose to engage in building the camps for alleged LTTE members.

57. *The killing of the LTTE leadership:* Some Member States and the UN tried to facilitate an end to the conflict through an LTTE surrender. But the LTTE's senior leadership rejected these efforts in February 2009 and again in April. In early May, however, the LTTE initiated contacts with several Member States and the UN, seeking guarantees that its leaders could surrender safely. The Secretary-General's Chef de Cabinet asked the Government to allow him to be present during the surrender, as a witness, but the Government refused saying this was not necessary. Some of the diplomats present at the time have suggested that the LTTE had been adamant about surrendering with the UN's presence as observer or facilitator of the process. One Member State, speaking after the conflict, expressed the view that by the time the LTTE request was received it was simply too late, and there was too little time remaining for a monitored surrender process to be negotiated. However, others have argued that there was an opportunity for the UN to have guided the LTTE toward a surrender according to international humanitarian law. The point is further made that many members of the diplomatic corps in Colombo were willing to put pressure on the Government to accept a surrender and to allow the UN to oversee the process.

58. Nevertheless, the UN Secretariat and UNCT believed that it did not have the means to guarantee safe passage to the LTTE leadership. The Chef de Cabinet could not circumvent the Government's rejection of a UN presence during the surrender. UN officials said that in transmitting the LTTE request to the Government and in firmly expressing to the Government the UN's wish to be present at a surrender they did the best they could, and had no other options. Given the UN's approach toward the Government regarding its conduct of the conflict over the previous few months, and given the lack of clear support for UN action from Member States, in

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<sup>63</sup> Annexes III.B.4 (paras. 120-126) and III.C.1.b (paras. 156-160).

the war's final days the UN was not well positioned to exercise leverage with the Government on this issue.

#### **4. Oversight, management and coordination of United Nations action and responsibilities**

59. *Planning and analysis*: The analysis and understanding of the conflict within the UN as a whole was inadequate. The absence of any form of central coordination and common sense of purpose or responsibility made it impossible for the UN to formulate a comprehensive vision and plan of action.

60. The UN's operational planning in Sri Lanka was based on the UNDAF and the CHAP. Both had serious limitations. The UNDAF, written in 2007, covered a four-year time frame and was not well adapted to a fast-changing situation. Although it addressed important issues under its Peace, Poverty, Gender and Disaster pillars, the UNDAF failed to provide a basis for action on core rule of law problems, such as impunity, that would be determinant for the survival of civilians and the protection of human rights. The CHAP for 2008 provided a common analysis of the humanitarian needs and solicited over \$140 million from donors. But it did not identify the State as a main source of protection and humanitarian concerns, and so failed to plan for appropriate responses to the subsequent humanitarian and protection crisis. In early 2008, and again in early 2009, DPA led the UN in analysis of the deteriorating political and conflict situation. However, useful recommendations in the 2008 DPA Options Paper were not implemented by the UNCT, with which DPA had no managerial relationship. And other DPA-led recommendations, for example following a DPA visit to Sri Lanka in early February 2009, did not gain traction with the Government.<sup>64</sup>

61. *UNHQ*: It was unclear who had overall leadership or responsibility for the UN response to the escalating crisis. The most senior actor on Sri Lanka at UNHQ was the Chef de Cabinet – who had to divide his time with his onerous duties at the EOSG. The senior official most visibly involved was the USG-Humanitarian Affairs. In addition, the USG-Political Affairs, with support from an ASG, also played a leading role. UNHQ coordination on Sri Lanka took place through meetings of the Policy Committee, the ECHA and the IAWG-SL. It also took place through dozens of informal meetings between UN principals and senior working-level staff, but there is little written record of these meetings. During the nine months of the war's final stages, the Policy Committee discussed Sri Lanka just once, in March 2009. The IAWG-SL was seen as an information-sharing body rather than a decision-making one, and the Chef de Cabinet did not participate in its meetings. Overall, decisions were made in a manner that did not give rise to comprehensive ownership or responsibility for their impact.

62. A prominent element of the UNHQ strategy on Sri Lanka involved sustained missions by many senior UN officials. From January 2007 to December 2009, there were at least 19 such visits to Sri Lanka, including those of the Chef de Cabinet (two), USG- Humanitarian Affairs (five), USG-Political Affairs (three), USG-Human Rights (one), the RSG-IDPs (four), and the High Commissioner for Refugees (one), as well as single visits by two special envoys of the Special Representative on Children and Armed Conflict, and by an ASG-Political Affairs. Each

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<sup>64</sup> Annex III.A.3.a (paras. 8-16).

visit was oriented toward a particular mandate – humanitarian, political, human rights, IDPs, or children. But the visits were also intended to convey consistent messages including on: respect for staff privileges and immunities; humanitarian access; a political solution for all Sri Lankan communities; accountability for violations; the establishment of a UN human rights field operation; the freedom of movement of IDPs; a humanitarian corridor or ceasefire; and an end to the use of heavy weapons. During these visits the UN representatives frequently obtained commitments from the Government and the LTTE (for example to end the use of artillery in NFZs). However, by the end of the conflict it would be apparent that commitments during the high-level visits, along with those made to UN staff on the ground, were repeatedly broken.

63. The humanitarian response and the humanitarian aspects of protection were the responsibility of the Humanitarian Coordinator and OCHA. In contrast, even though violations of international human rights and humanitarian law were clearly the biggest overall protection concern in Sri Lanka, it remains entirely unclear who within UNHQ was responsible for the UN's response to these violations. While responsible for managing the RC system and the Sri Lanka RC and his UN coordination role, neither UNDP nor the UN Development Group and the UN Development Operations Coordination Office believed its role to be to provide the RC with guidance or instructions on dealing with these core protection issues. The Special Representative of the Secretary-General for Children and Armed Conflict (SRSG-CAAC) had a international human rights and humanitarian law mandate, but the '1612' reporting mechanism for which it has oversight was compromised at the country-level, most especially by Government membership of the body coordinating the mechanism; and at UNHQ, key information could only be presented to the Security Council's working group on children in armed conflict many weeks after the end of the conflict.<sup>65</sup> The Special Adviser on the Prevention of Genocide, who also has an international human rights and humanitarian law mandate, raised concern with the Government and the Secretary-General over the situation but favoured quiet diplomacy and told the Government he would "not speak out." When his office later tried to issue a public statement this was not supported by UNHQ. The UN's most senior human rights and humanitarian law official was the USG-Human Rights, but OHCHR had no direct role in UN monitoring of the situation, supervision or oversight for UN action, or UN engagement with the Security Council; and OHCHR's New York office had insufficient capacity to engage in sustained UNHQ-New York-based action on Sri Lanka. Even though neither actor had clearly assumed leadership responsibility on these issues, the Chef de Cabinet relied upon and agreed with the USG-Humanitarian Affairs' determination that UN data on civilian casualties were not verified. Along with most of the other Policy Committee members, they both largely disagreed with the USG-Human Rights' analysis, and that of key working-level staff in Sri Lanka, calling for fuller reporting and advocacy using available data.

64. Although some efforts were undertaken, from 2007 onwards the UN should have devoted greater political capital to the crucial objective of deploying a human rights field operation to Sri Lanka. And, failing this, the UN, and particularly OHCHR, should have ensured adequate monitoring and reporting from UNHQ, based on information from available sources.

65. *The Resident Coordinator/Humanitarian Coordinator and UNCT*: The UNCT leadership in Colombo had insufficient political expertise and experience in armed conflicts, and in human

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<sup>65</sup> Annex V.C (paras. 16-22).

rights and humanitarian law issues to deal with the extraordinary challenge that Sri Lanka presented. The UNHQ heads of agencies and departments, however, did not appear to recognize this. The senior-most position on the ground was ranked a D1. Several heads of UNCT entities in Colombo complained that the HQs of their respective agencies were not adequately seized of the evolving situation and did not provide sufficient policy and political support.

66. The RC struggled to juggle the many challenges, particularly as regards pursuing humanitarian assistance in a situation of grave international human rights and humanitarian law violations, and ensuring the well-being of staff. The RC did not get the direct management support from UNHQ that he needed to deal with an extraordinarily difficult situation. The instructions he received were duplicative, and lacked guidance on key aspects such as protection and international humanitarian law. He also had too many interlocutors, obliging him to repeat the same briefings and contacts with several different UNHQ bodies and actors. The RC's office was severely under-staffed, and the RC later said he would have benefited from legal and political advice, and a mentor to assist on key decisions. The presence of political and human rights advisers with narrow terms of reference did not make up for a lack of expertise among the leadership itself, or the lack of strong oversight from UNHQ. The RC's communications with Government were poorly framed from the perspective of violations of international law and UN responsibilities. Only three staff – the Human Rights Adviser and two supporting staff – had an explicit and broad international human rights and humanitarian law focus; however, at some point in early 2009, the RC excluded his Human Rights Adviser from key meetings and from providing inputs on correspondence with the Government and UNHQ on human rights violations.

67. The RC/Humanitarian Coordinator (HC) and UNCT were unable to sufficiently leverage their roles as leading development and humanitarian actors to secure key actions by the Government regarding the conduct of the conflict. Most fundamentally, Sri Lanka puts into question the ability of a RC/UNCT structure and headquarters hierarchy, set up to respond to a development situation and staffed by experts in development, to lead a UN response to a massive human rights crisis with acute political characteristics.

## **5. United Nations political engagement and the responsibilities of Member States**

68. *Member States*: As the conflict in the Wannu intensified, Sri Lanka was never formally considered by Member States at the UN, whether at the Security Council, the Human Rights Council, or the General Assembly. The Security Council's Working Group on Children and Armed Conflict was periodically considering a slender aspect of the situation through the 1612 Children in Armed Conflict Resolution monitoring process. But the pace of its deliberations was slow and its mandate limited, and the process had no impact on the wider situation. From late 2008, a small group of non-permanent members of the Security Council had become deeply concerned by events and by early February 2009 wished the Security Council to formally consider the situation. However, they could not gather a sufficient consensus, hampered by a serious lack of information from the Secretariat on the human rights and humanitarian situation and a general reticence among other members of the Security Council. The 'informal interactive dialogue' format through which the Council eventually met was seen by many members as a good compromise, but it had no formal status, led to no outcomes and left no formal minutes of



its deliberations. The Sri Lankan ambassador to the UN participated in the meetings, providing the Government's version of events and potentially influencing discussions. The travel to Sri Lanka of two Foreign Ministers from members of the Security Council in late April 2009 and their subsequent call, on 12 May in New York, for Sri Lanka to be placed on the Security Council's agenda came too late to change the course of events. The essential voice of India was not included within Security Council-specific deliberations at UNHQ.<sup>66</sup>

69. In Geneva, efforts to launch a Special Session of the Human Rights Council also lacked adequate support from Member States. The Human Rights Council's May 2009 resolution on Sri Lanka adopted only after the end of the conflict was based on a draft text submitted by the Government of Sri Lanka itself; the resolution failed to acknowledge the violations of international law that had taken place.<sup>67</sup> There was no serious consideration of turning to the General Assembly.

70. The Human Rights Council subsequently adopted a resolution to promote reconciliation and accountability in Sri Lanka in March 2012.<sup>68</sup> The changing stance of Member States in the years since the end of the conflict is credited partly to the increased availability of reports on the events, including reports by international NGOs and the report of the Panel of Experts. The broadcast of a British Channel Four film— Sri Lanka's Killing Fields – on 3 June 2011 during the Human Rights Council's 17<sup>th</sup> session in Geneva in a side event within UN premises is reported to have been particularly powerful in informing Member States of the violations reported to have taken place. Much of the information used in the film was obtained from, or had already been accessible to, the UN for some time previously.

71. *UN political engagement:* When the Norwegian-led peace process faltered, the UN's general exclusion from that process over several years left the Secretariat in a somewhat weak position from which to gather Member State political support for UN action during the final stages of the conflict. There was no Secretariat strategy either to seek general support or encourage specific action by the Security Council or the Human Rights Council. To some extent this reflected disagreements among some senior UN officials and the perceptions among staff of where the preponderant weight of Security Council Member States stood with regard to the situation. Some senior staff wished the Secretary-General to take a more visible stance on the international human rights and humanitarian law situation and to actively seek Security Council involvement. Others said they needed to protect the Secretary-General from taking sharper positions on the situation because there was no consensus from Member States that he should do so. The Security Council members who favoured early action said the Secretary-General should have convened a Council meeting under Article 99, but some senior UN staff said that in the absence of unity in the Council this would not have been realistic. A similar dynamic occurred in Geneva within the Human Rights Council; some actors suggested that OHCHR could have done more to provide Council members with information on the situation that would have helped them reach consensus much earlier.<sup>69</sup>

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<sup>66</sup> Annexes III.B.5.b (paras 132, 141) and V.C (para 18).

<sup>67</sup> Annex III.C.1.a (paras 153-155).

<sup>68</sup> Annex III.C.2.c (paras 186-188).

<sup>69</sup> The assessment is based on the Panel's interviews with UN staff and Member State officials, as well as examination of UN actions and documents. Ambivalence among Member States over UN action in Sri Lanka

72. Overall the Secretariat approach to engaging with Member States showed a lack of purpose – failing to acknowledge its responsibilities and those of Member States. The Secretariat’s presentations at the Security Council informal interactive dialogues, while touching upon human rights and political aspects, focused primarily on the humanitarian situation. Presentations were delivered by the USG-Humanitarian Affairs and on two occasions by the Chef de Cabinet. By not providing the Security Council with details of the failure of the Government and the LTTE to meet their responsibilities, UNHQ did not offer Member States the clear analysis and options for action that the situation required.

73. During the last months of the final stages of the conflict, the Secretary-General personally undertook sustained advocacy on the situation in Sri Lanka. He made numerous phone calls to the President of Sri Lanka and used any opportunity to meet with the President, such as on the margins of a Non-Aligned Movement summit. He also engaged in advocacy through lunches with the Security Council, and through personal or spokesperson’s references before the media. The Secretary-General’s personal investment in UN action appeared to have a positive impact on the pace of population returns and on accountability after the conflict. The less-apparent impact of the Secretary-General’s advocacy during the final stage of the conflict itself appears to be a combined consequence of the lack of an adequate Secretariat political strategy, inadequate information at UNHQ on the situation, and the lack of broad support from Member States.

74. The concept of a ‘Responsibility to Protect’<sup>70</sup> was raised occasionally during the final stages of the conflict, but to no useful result. Differing perceptions among Member States and the Secretariat of the concept’s meaning and use had become so contentious as to nullify its potential value. Indeed, making references to the Responsibility to Protect was seen as more likely to weaken rather than strengthen UN action.<sup>71</sup> The events in Sri Lanka highlight the urgent need for the UN to update its strategy for engagement with Member States in situations where civilian populations caught up in the midst of armed conflicts are not protected in accordance with international human rights and humanitarian law.

## **6. United Nations failure**

75. *Cultural challenges:* The UN can face significant challenges in retaining the essential support of a Government to help in delivering assistance while at the same time responding to serious violations of international law that may require the UN to issue criticism of the same Government. In the case of Sri Lanka, a number of UNCT and UNHQ senior staff perceived these challenges as dilemmas or as conflicting responsibilities : (i) choosing not to speak up about Government and LTTE broken commitments and violations of international law was seen as the only way to increase UN humanitarian access; (ii) choosing to focus briefings to the Security Council on the humanitarian situation rather than on the causes of the crisis and the obligations of the parties to the conflict was seen as a way to facilitate constructive engagement

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continued beyond the end of the war, with a group of Member States writing to the Secretary-General to oppose establishment of the Panel of Experts. Among those UN staff urging Secretariat action under Article 99, some noted that Sri Lanka was already being considered under an Article 99 process through the Secretary-General’s reports to the Security Council under the Security Council’s resolution 1612 monitoring and reporting mechanism, such that calling a meeting of the full Council would not be an exceptional step, they argued.

<sup>70</sup> 2005 World Summit Outcome document (paras. 138 and 139) <http://www.un.org/summit2005/documents.html>

<sup>71</sup> Interviews with UN Staff and diplomats by the Panel.

by the Secretariat with Member States; and (iii) UN support in the establishment of internment camps was seen as the only option for the UN to assist IDPs emerging from the Wannu, even if the IDPs were deprived of freedom of movement and the UN had limited access to them.<sup>72</sup> Decisions at UNHQ and in the field were affected by an institutional culture of trade-offs. The tendency to see options for action in terms of dilemmas frequently obscured the reality of UN responsibilities. In fact, with its multiplicity of mandates and areas of expertise, the UN possessed the capabilities to simultaneously strive for humanitarian access while also robustly condemning the perpetrators of killings of civilians. It should have been able to push further for respect for international norms in the delivery of assistance to IDPs and avoid accusations of complicity in the detention of IDPs.

76. There was a continued reluctance among UNCT institutions to stand up for the rights of the people they were mandated to assist. In Colombo, some senior staff did not perceive the prevention of killing of civilians as their responsibility – and agency and department heads at UNHQ were not instructing them otherwise. Seen together, the failure of the UN to adequately counter the Government’s under-estimation of population numbers in the Wannu, the failure to adequately confront the Government on its obstructions to humanitarian assistance, the unwillingness of the UN in UNHQ and Colombo to address Government responsibility for attacks that were killing civilians, and the tone and content of UN communications with the Government on these issues, collectively amounted to a failure by the UN to act within the scope of institutional mandates to meet protection responsibilities.

77. The tone, content and objectives of UNHQ’s engagement with Member States regarding Sri Lanka were heavily influenced by what it perceived Member States wanted to hear, rather than by what Member States needed to know if they were to respond. Reflection on Sri Lanka by UNHQ and Member States at the UN was conducted on the basis of a mosaic of considerations among which the grave situation of civilians in Sri Lanka competed with extraneous factors such as perceptions of the role of the Secretariat in its relations with Member States and frequently inconclusive discussions on the concept of the Responsibility to Protect. In particular, the Security Council was deeply ambivalent about even placing on its agenda a situation that was not already the subject of a UN peacekeeping or political mandate; while at the same time no other UN Member State mechanism had the prerogative to provide the political response needed, leaving Sri Lanka in a vacuum of inaction.

78. *Framework of action:* The overall framework for UN action in Sri Lanka was not well-adapted to the Organization’s responsibilities, given the situation. Over the past 15 years, Member States and the UN system have agreed that peace, development and the protection of basic rights are deeply intertwined and mutually reinforcing and that they must be tackled together. Under UN auspices, Member States have adopted a range of interlinked standards that define UN protection responsibilities in situations such as armed conflict. These include: the international human rights law framework of civil and political and economic, social and cultural rights; the adoption of the Responsibility to Protect; and numerous resolutions by the Security Council on protecting civilians in armed conflict through the protection of international human

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<sup>72</sup> Interviews with UN Staff and diplomats by the Panel.

rights and humanitarian law<sup>73</sup>. All UN entities, whether in the Secretariat or UNCT, are expected to support follow-up and implementation of these standards<sup>74</sup>; and UN action in Sri Lanka was being measured partly on this basis. And yet, the tools with which the UN can meet its responsibilities vary widely across different country-situations ranging from, on the one hand, Security Council-mandated missions designed for complex political and armed conflict situations to, on the other hand, the UN's infrastructure in Sri Lanka consisting of a UNCT and RC designed primarily to support development.<sup>75</sup> Although additions were made to the UNCT infrastructure in Sri Lanka to help it respond to the conflict, most notably the addition of the Humanitarian Coordinator role and the significant support of OCHA, the staffing composition and structural posture of the UNCT and UNHQ relative to Sri Lanka nevertheless remained largely unchanged. While the UN's infrastructure remained static, the worsening situation was drastically changing both the UN's responsibilities and the expectations of the UN's role. The UN's development and humanitarian branches were unsuited to the situation and unable to fully address the UN's political and human rights and humanitarian law responsibilities; while it was these same responsibilities that became most fundamental to the survival of civilians.

79. Above all, UN action in Sri Lanka was not framed by Member State political support. In the absence of clear Security Council backing, the UN's actions lacked adequate purpose and direction. Member States failed to provide the Secretariat and UNCT with the support required to fully implement the responsibilities for protection of civilians that Member States had themselves set for such situations.

80. *Systemic failure*: The primary responsibility for killings and other violations against the estimated 360,000 or more civilians trapped during the final stages of the conflict in the Wanni lies with the Government of Sri Lanka and the LTTE. Under very difficult conditions, the UN succeeded in transporting some humanitarian assistance in convoys into the Wanni, in providing a degree of emergency shelter and relief to almost 280,000 survivors who were able to leave the conflict zone, and in positively influencing some aspects of Government plans for IDPs; exceptional attention was devoted to the situation by some senior UNHQ officials, including the USG-Humanitarian Affairs; and the Panel was inspired to find how far many individual staff in the field have gone in their efforts to uphold the principles of the Organisation. Nevertheless, the Panel's report concludes that events in Sri Lanka mark a grave failure of the UN to adequately respond to early warnings and to the evolving situation during the final stages of the conflict and its aftermath, to the detriment of hundreds of thousands of civilians and in contradiction with the principles and responsibilities of the UN. The elements of what was a systemic failure can be distilled into the following: (i) a UN system that lacked an adequate and shared sense of responsibility for human rights violations; (ii) an incoherent internal UN crisis-management structure which failed to conceive and execute a coherent strategy in response to early warnings and subsequent international human rights and humanitarian law violations against civilians, and

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<sup>73</sup> See for example the operative paragraphs of S/RES/1674 (28 April 2006) as well as its preamble references to past Security Council resolutions.

<sup>74</sup> The Security Council "Demands that all States fully implement all relevant decisions of the Security Council, and in this regard cooperate fully with United Nations peacekeeping missions and country teams in the follow-up and implementation of these resolutions;" Security Council resolution 28 April 2006, (S/RES/1674) (para. 10).

<sup>75</sup> The RC system, created by General Assembly resolution 32/197, was built on the premise that the "overall responsibility for, and coordination of, operational activities for development carried out at the country level" was to be entrusted to a single official.

which did not exercise sufficient oversight for UN action in the field; (iii) the ineffective dispersal of UNHQ's structures to coordinate UN action and to address international human rights and humanitarian law violations across several different UNHQ entities in Geneva and New York with overlapping mandates; (iv) a model for UN action in the field that was designed for a development rather than a conflict response; (v) the most senior position in the field graded at a D1 seniority that was below the heavy responsibilities required of the position, and a corps of senior staff that did not sufficiently include the armed conflict, political, human rights and international humanitarian law and related management experience to deal with the challenge Sri Lanka presented, and who were given insufficient support; (vi) inadequate political support from Member States as a whole, notwithstanding bilateral efforts from all regions, and inadequate efforts by the Secretariat to build such support; and (vii) a framework for Member State engagement with international human rights and humanitarian law protection crises that was outdated and often unworkable, in part because it did not enable Member States to reach a sufficiently early and full political consensus on the situation and the UN response.

## **B. Sri Lanka's way forward**

81. As this report was being completed, the Government submitted its second Universal Periodic Review to the Human Rights Council. In addition, the Permanent Representative of Sri Lanka told the Panel that the Government had made significant progress in implementing the LLRC recommendations and that it was inviting OHCHR to conduct a technical mission to Sri Lanka. In this regard, the Government is indicating its efforts to respond to aspects of the Human Rights Council's March 2012 resolution on Sri Lanka.

82. It is beyond the scope of the Panel's mandate to assess current events and corresponding UN action in Sri Lanka. It is nevertheless clear that there can be no lasting peace and stability without dealing with the most serious past violations and without a political response to the aspirations of Sri Lanka's communities. The UN cannot fulfil its post-conflict and development responsibilities in Sri Lanka without addressing these fundamental concerns; and the UN should continue to support implementation of the recommendations of the Panel of Experts on Accountability.

## **IV. Recommendations regarding United Nations action to respond effectively to similar situations of escalated conflict**

### **A. Reference points**

83. The Panel's recommendations build on the conclusions of previous reviews of UN action. The December 1999 report of the Independent Inquiry into the UN's actions in Rwanda made recommendations that remain very relevant to UN action in Sri Lanka. They include: the need for political will and support from the Security Council; the leadership role of the Secretary-General; the importance of bringing human rights information to bear in the deliberations of the Secretariat and OHCHR's role in sharing such information with the Security Council; the "human rights competence" of staff on the ground; and concerns over the status of national staff.<sup>76</sup> It is also helpful to recall the focus of the 'Brahimi' reform process on the UN's engagement with Member States – including its admonition that the Secretariat should tell the

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<sup>76</sup> Report of the Independent Inquiry into the UN's actions in Rwanda, December 1999.

Security Council what it needs to know and not what it wants to hear. Also relevant are recommendations on the coherence of UN action, made in reviews of internal operations conducted after the Baghdad bombing of the UN<sup>77</sup> and of the UN's Haiti crisis response.<sup>78</sup>

84. The recommendations seek to complement recent initiatives undertaken by the UN since the end of the war in Sri Lanka. These include: (i) DPA's 'horizon scanning briefings' to the Security Council; (ii) the October 2011 decision to establish a Secretary-General's Crisis Centre (UNOCC) to provide common situational awareness to senior leaders across the UN system and Secretariat in support of crisis response; (iii) the Policy Committee's January 2012 decision that the Secretary-General may declare "Special Circumstances in Non-Mission Settings" where demands on the UN rise; and (iv) the ongoing introduction of 'programme criticality analysis' when making decisions on security, such as for relocation of UN staff.

85. The Panel's recommendations have also been made with an awareness of the strengths and weaknesses of UN actions in other recent situations. For instance, in at least one country situation<sup>79</sup> deployment of a small UN Secretariat effort helped to support national State and non-State actors in bringing about a ceasefire and an end to attacks on thousands of civilians within a roughly 12 month period. Secretariat actions, on the ground and at UNHQ, operated in parallel to the UNCT and in close consultation with national authorities and Member States. Efforts involved discrete political and human rights and humanitarian law actions to protect civilians and support political processes, supplementing the UN's pre-existing humanitarian and development actions. A fundamental platform for the success of the Secretariat effort came from various members of the Security Council and regional States who together created an informal 'full-circle coalition' of support for UN action. This positive experience provides an example of the UN's need for new means of gathering Member State support and new models of UN action in the field that can be effective but which also operate with the light footprint often desired by the country of deployment and by regional States, that relieve pressure from the existing UNCT without duplicating the country team, and that are easy to deploy and low cost. The Government of Sri Lanka would not have necessarily fully embraced such a deployment. However, if encouraged to do so by Member States, the Government could have been willing to accept it precisely because the deployment would have been small, time-bound, consultative and non-intrusive.

86. Finally, the recommendations have been framed by reflection on the political character of human rights crises and the role of UN Member States regarding such situations. All Member States regret and would wish to prevent situations where there is a large-scale loss of human life. The single most effective UN action to protect civilians from gross human rights violations is early and robust political consensus among UN Member States in favour of protection: the combined political will alone of the international community has dramatically positive effects in encouraging parties on the ground to change their conduct and protect civilians. But, conversely, the single most significant factor that limits the UN's ability to adequately address such situations is the difficulty Member States have, especially at the Security Council, in reaching an

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<sup>77</sup> UN Headquarters Crisis Response to the 19 August 2003 attack on the UN Office in Baghdad: Lessons Learned Report and Implementation Plan, March 2004.

<sup>78</sup> The After Action Review of the Haiti Crisis Response: Lessons Learned and Action Plan, September 2010.

<sup>79</sup> The example refers to the deployment of an initial team of about 15 international staff in Nepal in mid 2005, working closely with a small headquarters team, and with the support of State authorities.

early and qualitatively adequate political consensus on a situation. The difficulty in reaching consensus is caused by Member States' concerns that the UN actions they are asked to agree upon may have philosophical or practical consequences for national sovereignty or broader national political or economic implications. Reaching early and full political consensus among Member States is vital to improving protection of civilian lives: without firm political support the impact of UN actions is severely weakened and delayed; and without early UN action, situations quickly deteriorate creating ever-greater challenges for the Security Council that ultimately have a far greater impact on the separate concerns of Member States than would an early and light set of UN actions. Approaches need to be identified to allow UN Member States to more easily reach the necessary political consensus. These could include providing Member States with earlier and better information, and offering them new models of UN action which protect the human rights of civilians but which also have minimal impact on the wider concerns of Member States. In addition, although many Member States still have serious concerns regarding some interpretations and implications of the Responsibility to Protect, in practice possibly the greatest contribution of this concept would be as a process to help facilitate the emergence among Member States of early political consensus on human rights protection.

## **B. Recommendations**

87. The Panel submits the following recommendations for the Secretary-General's consideration. The recommendations seek to support profound changes in how the UN approaches similar situations in the future. The recommendations are nevertheless intended to be politically feasible and to be largely resource neutral:

- a) Renew a vision of the United Nations:** The Secretary-General should renew a vision of the UN's most fundamental responsibilities regarding large-scale violations of international human rights and humanitarian law in crises, with a particular emphasis on the responsibility of senior staff.
1. The vision should help frame strategy and policy responses, at senior levels of the organization, to situations of massive human rights violations.
  2. The vision should be introduced by the Secretary-General through a suitable opportunity. The vision should also be shared with all staff in various ways, such as: asking staff members to sign a letter to the Secretary-General re-committing themselves to upholding the principles and values of the UN when starting a new assignment; establishing mandatory, short refresher briefings on the UN's principles and values, with an emphasis on how these can be reflected in each staff member's work; incorporating these elements into appointments and performance appraisals for senior staff, and into training programmes and job descriptions for all staff.
  3. Senior staff should be accountable for implementation of the vision in the UN response to relevant crises. At the most senior levels of the organization, the vision should include an obligation to fully inform Member States and the public of the realities of ongoing violations, and should help frame strategy and policy responses to crises in which civilians are at risk.

**b) Embed a United Nations human rights perspective into United Nations strategies:** In order to strengthen UNHQ capacity it will be essential to include international human rights, humanitarian and criminal law perspectives in overall UN analysis and strategy in relevant situations, while also strengthening UNHQ capacity to build political support from Member States for advocacy and action to address grave concerns.

1. The EOSG's internal staffing should include additional, suitably senior staff with strong international human rights and humanitarian law experience as well as understanding of UN action in mission and non-mission settings. These additional staff should strengthen EOSG analysis and liaison with the UNOCC, DPA, OHCHR and other UN departments and agencies, and Member States.
2. There must be much clearer lines of responsibility in the UNHQ response to ongoing situations of international human rights and humanitarian law violations, and improved capacity to brief the Secretary-General and Member States, and work through the UNOCC. To this end: (i) OHCHR should be given an explicit UNHQ/NY oversight role for the international human rights and humanitarian law aspects of UN crisis response, and should be held accountable for fulfilling this responsibility, in accordance with OHCHR's General Assembly mandate to coordinate all such activities<sup>80</sup>; (ii) OHCHR's staffing presence in UNHQ/NY should be significantly strengthened; (iii) to make more efficient use of limited resources and reduce duplication in monitoring and high-level situation briefings, the Secretary-General should consolidate UNHQ/NY staffing capacity on international human rights, humanitarian and criminal law violations (such as genocide, mass atrocities, and war crimes) within OHCHR's New York office; (iv) day-to-day collaboration between DPA and OHCHR at management and working levels should be strengthened, including through joint teams and reporting, and extended staff exchanges.
3. In relevant crisis situations, every UNCT should include staff with expertise in political analysis, human rights and, where relevant, international humanitarian law. UNCT planning tools must include complete and honest analysis of the human rights situation; and 'protection' should be centred on ensuring respect for international human rights and humanitarian law.
4. Recognizing the constraints on UNCTs facing an emerging crisis, the Secretary-General should consider introducing new UN models of Secretariat action to ensure that the UN meets its international human rights and humanitarian law protection responsibilities during crises, including, for instance, 'light-touch, high impact' teams deployable in support of a UNCT and which would be small in size of up to 20 staff, be of short deployment of a few months, have low visibility and would collaborate closely with host authorities and regional States.

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<sup>80</sup> General Assembly resolution 48/141 of 20 December 1993. (Para 4) the General Assembly "Decides that the High Commissioner for Human Rights shall be the United Nations official with principal responsibility for United Nations human rights activities ... [and]the High Commissioner's responsibilities shall be ... [inter-alia] "To coordinate the human rights promotion and protection activities throughout the United Nations system."



- c) **Strengthen the management of the whole-of-United Nations crisis response:** To ensure coherent UNHQ oversight for UN strategy and action, the Secretary-General should strengthen management of the UN response to international law crises that present large-scale risks to civilians.
1. Oversight for UN crisis response should ideally be exercised through one senior official who has direct overall responsibility. Increased use could be made of Special Envoys or Special Representatives, serving as the Senior Official. However, every effort should be made to avoid creating additional, parallel, ad hoc support structures; in this regard, the senior official should be linked to the UNOCC ‘Crisis Response Manager’ framework. Depending on the context, appointees could cover more than one country and issue.
  2. To strengthen coordination, and also to make more efficient use of resources, reduce duplication and gaps, and increase accountability, consideration should be given to reducing the number of UNHQ inter-departmental/agency coordination mechanisms in favour of action through a single mechanism per crisis situation. The mechanism should be directly linked to, and ideally managed by, the Senior Official and Crisis Response Manager. The Policy Committee should be a forum of genuine discussion, based on complete information.
  3. In situations of grave international human rights and humanitarian law violations, the UN must always be ready to present in UNHQ the best available information, and publicly release such information at appropriate moments. Where access is denied, monitoring should be conducted from UNHQ. Monitoring, reporting and presentation of international human rights and humanitarian law information should be led by OHCHR which, when it has no field presence, should be able to draw on credible information from other sources.
  4. The field-level coordinator of UN action during crises should ideally have political, human rights and, where applicable, international humanitarian law expertise. Preference should be given to RC candidates who have had exposure across several UN departments, agencies and programmes. RCs should be evaluated in part on their political analysis and human rights performance. The field-level coordinator in a crisis should be managed by, and should report through, a UNHQ entity with suitable political and, where relevant, armed conflict operational and protection expertise; this could be the UN’s Senior Official on the crisis.
  5. In the light of the assessment section and the recommendations in this report, the useful concept of a ‘Policy on Special Circumstances in Non-mission Settings’, as adopted by the Policy Committee in January 2012, should be developed further. This should ensure that the Secretary-General’s declaration of such circumstances leads to improved UN action.
  6. The UN should continue to roll out the new ‘programme criticality’ approach to security, under which management-level decisions on evacuation and other security

measures take full account of programme needs, with the understanding that ‘programmes’ must be defined as including the full scope of UN responsibilities.

**d) Promote accountability and responsibility:**

1. UN departments and agencies both in headquarters and the field should adopt minimum commitments to ‘due diligence’, including that they regularly request from OHCHR information on serious human rights concerns within countries where they operate, and that they give consideration to such information in internal strategy and policy meetings.
2. Conduct a limited internal review of UN action in every acute crisis that presents large-scale risks to the protection of civilians.

**e) Improve United Nations engagement with Member States and build political support:**

For every relevant crisis, the Secretary-General must have an array of options that will permit him to inform Member States of the full breadth of the situation and to suggest actions. The Secretary-General cannot be in a situation where he is unable to speak about situations of grave urgency, and the Secretariat must be able to present to Member States, including regional groups, the best available information. Member States must be in the best position possible to make decisions on what response to pursue through the UN to such crises.

1. Possibly as a standard practice, regarding all situations of major international law crisis, the Secretary-General should invite interested Member States, especially regional States, to joint briefings systematically given by the heads of DPA, OHCHR and OCHA.
2. As an additional option, the Secretary-General should make more regular and explicit use of his Security Council convening authority under Article 99 of the Charter.
3. The Secretary-General should work with Member States to suggest new models through which they could convene, and begin consideration of a crisis much earlier, possibly pre-empting, through prevention, the need to take a situation to the Security Council. New models of Member State action or Secretariat briefing and deployment would pay particular attention to the role of regional States.
4. The Secretary-General should use the Responsibility to Protect (R2P) as a ‘convening’ initiative to invite Member States to receive and consider information on the human rights aspects of a relevant crisis situation; and in this regard, DPA and OHCHR should be jointly tasked with managing its use and fulfilling the Secretariat’s own responsibilities under the concept.
5. The Secretariat should make use of updated methods of briefing Member States on crises, including video and other digital media and briefings from field-based staff.

**f) Better address violations of privileges and immunities:** The Secretary-General should review options for inviting Member States to consider what actions they could take in

response to situations where one Member State engages in sustained actions against UN personnel and institutions, including violations of UN privileges and immunities, and which are having a serious impact on the UN's ability to meet its responsibilities. Further consideration should also be given to the UN's support to staff under threat.

- g) Follow-up:** the Panel strongly urges that: (i) its report be made public; (ii) follow-up be given to the report's recommendations, that the process be led by an official within the EOSG, and that an implementation road-map be set out; (iii) the report be taken into consideration in other related processes, such as development of the UNOCC, programme criticality, special circumstances and change management; and (v) the UN offer to engage with the Government of Sri Lanka regarding those elements of the report that are applicable to ongoing UN action in Sri Lanka.

## **V. Conclusion**

88. Coming at the beginning of his second term, the Secretary-General's decision to commission an internal review is a courageous step. The Panel believes that the report's findings and recommendations provide an urgent and compelling platform for action. The UN's failure to adequately respond to events like those that occurred in Sri Lanka should not happen again. When confronted by similar situations, the UN must be able to meet a much higher standard in fulfilling its protection and humanitarian responsibilities.

## Annex I

### Terms of Reference

#### **The Secretary-General's Internal Review Panel on United Nations action in Sri Lanka during the final stages of the war and its aftermath**

The Secretary-General's Internal Review Panel (the Panel) was set up pursuant to Article 4.B of the report of the Secretary-General's Panel of Experts on Accountability in Sri Lanka. The Panel's tasks were detailed as follows:

- Provide an overview of the actions of the United Nations during the final stages of the war in Sri Lanka and its aftermath, in particular regarding the implementation of its humanitarian and protection mandates within the overall context of the United Nations' engagement in Sri Lanka during this period.
- Assess the contribution and effectiveness of the United Nations system in responding to the escalating fighting and in supporting the engagement of the Secretary-General at the political level.
- Identify the institutional and structural strengths and weaknesses that emerge from such a review and provide recommendations that would benefit the United Nations, its Member States and the wider international community in dealing with similar situations.
- Identify any need to update or overhaul United Nations policies or guidelines pertaining to protection and humanitarian responsibilities based on the United Nations' experience in Sri Lanka and for strengthening the UNCT system and the capacity of the United Nations as a whole to respond more effectively in similar situations of escalated conflict.

## Annex II

### Number of people in, or emerging from, the Wannu

1. Making an accurate determination of the number of civilians in the Wannu during the final stages of the conflict was vital for assessments of the humanitarian assistance required, and would also become central to assessments of the number of civilian casualties. Major differences in population numbers were given during the final stages of the conflict by various actors, with the Government citing very low numbers in comparison with those cited by the UN and some other actors. Low population numbers were used to argue that the quantities of food and other humanitarian assistance being delivered were adequate; low numbers were also used during the conflict, and subsequently, to rebut allegations of civilian deaths.

2. Determining population numbers within the Wannu was complex for several reasons. First, the LTTE had long had reason to artificially inflate population estimates, so as to claim a larger constituency of support and to seek additional humanitarian assistance which it could appropriate. Second, even before the war's final months, thousands of people were being displaced within the Wannu, making it difficult to ascertain total population numbers. Third, different Government actors and different UN actors all used widely different figures during the conflict, making it difficult to identify an 'official' figure. In a 9 March 2009 presentation to donors the UN used several very different figures.<sup>1</sup> Fourth, after the end of the conflict, the Government significantly revised its own use of numbers, thus highlighting the inconsistency between the numbers that it said at the time were in the Wannu and the number that it later acknowledged as having subsequently come out of the Wannu.

3. It is beyond the capacity of the Panel to make a precise determination of the number of people in the Wannu during the period under review. Nevertheless, the issue remains central to UN efforts and the Panel must perform its assessment of the UN's actions based on the information available to the UN at the time. The Panel has prepared a table, listing some of the most relevant population numbers used by key actors. The table shows the number of people reported by different actors as within the Wannu at selected moments during the final stages of the conflict, as well as the number reported as having left the Wannu during the period. The two sets of numbers are linked: the numbers in the Wannu gradually drop as the conflict progressed; while the number outside the Wannu, mainly in camps, gradually increased.

4. Statements given to the Panel show that the UNCT was sensitive to the fact that the largest population estimates were very much higher than the national Government estimates and that the UN continued quoting the Government estimates reaching a 'compromise' by lowering its own estimates. In fact, the rise in the number of people reaching camps outside the Wannu shows that even the UN's estimates of numbers of people were well below the actual number.

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<sup>1</sup> Cited in a 9 March 2009 UNCT briefing to donors: "Humanitarian agencies estimate that between 150,000 and 200,000 people are trapped in the No-fire zone (NFZ) + an estimated 30,000 people outside the NFZ. The GoSL reports that 70,000 people are trapped in the Wannu (including NFZ). Reports received from the NFZ suggest there is an even greater number inside: up to 300,000 – 350,000 people."

5. Some commentators (see table) have argued that the discrepancy between the number of people recorded as being within the Wannu at the beginning of the final stages and the number recorded as having left the Wannu by the end of the war, indicates the number of people who are unaccounted for and who may have died during the period. On this basis, a written submission to the LLRC, cited population figures provided by the Government Agents of Killinochchi and Mullaithivu as listing a total population in the Wannu of 429,059 in early October 2008. The submission to the LLRC compared the population numbers in the Wannu in October 2008 with the number of people registered as IDPs outside the Wannu by July 2009 and said that some “146,679 people seem to be unaccounted for.” There is a similar discrepancy between the 360,000 people reported to be in the Mullaithivu area of the Wannu as the conflict intensified in early 2009, cited by the Government Agent of Mullaithivu in her own 2010 testimony to the LLRC, and the 289,915 cited by OCHA as having left the Wannu by June 2009.

6. The Government disputes any suggestion that these discrepancies reflect deaths during the conflict. In its 9 August 2012 Universal Periodic Review submission to the Human Rights Council, the Government’s report said: “As no comprehensive census has been carried out in the Northern Province since 1981, the Department of Census and Statistics was charged with the task of making an enumeration of persons in the Northern Province and this task was completed in 2011 ... A comparison of the population data from the enumeration and from the island-wide census will enable the GoSL to gain an understanding of the causes of deaths as a result of the conflict. Causes could include LTTE cadres killed in action, LTTE cadres and civilians who escaped the conflict and migrated to other parts of Sri Lanka/overseas, civilians likely to have been killed in the crossfire, civilians killed by the LTTE while escaping from LTTE control, false reporting and deaths reported but not occurring during the period of the humanitarian operation. It is expected that by the resulting statistics the unfounded allegations of ‘tens of thousands’ of civilian deaths having occurred in the first 5 months of 2009 will be conclusively refuted.”

7. In contrast, the Panel of Experts stated “despite its access to first-hand information regarding the size of the civilian population and its needs, the Government of Sri Lanka deliberately used greatly reduced estimates as part of a strategy to limit the supplies going into the Wannu ...”<sup>2</sup>

Number of people in, or emerging from, the Wannu according to various sources						
Dates	Population numbers in the Wannu				Total Wannu IDPs registered outside the Wannu	
	GoSL	(local) Govt Agent	Other sources	UN	UN	GoSL
2008 Sept/Oct		429,059 <sup>3</sup>		(221,660) <sup>4</sup>		
Nov/Dec				(230,000) <sup>5</sup>		
2009 Jan		>360,000 <sup>6</sup>			5,000 <sup>7</sup>	

<sup>2</sup> Panel of Experts report, paragraph 131.

<sup>3</sup> The total population numbers listed in two census documents of the senior Government Agents of Mullaithivu and Killinochchi on 30 September and 1 October 2008; the total is quoted in a written submission to the LLRC on 8 January 2011, page 4.

<sup>4</sup> Cited by OCHA in maps as of 23 September 2008, and listing IDPs only, not total population, in the Wannu .

<sup>5</sup> Cited in a 3 November 2008 press statement; number refers to IDPs only, not total population.

<sup>6</sup> Cited by the Government Agent of Mullaithivu in her statement to the LLRC on 4 November 2010 (pp 1-2 and 5). No precise date is given, however, the GA left the Wannu on 22 January 2009 and the statement refers to the final stages of the conflict, but not the very end. It refers to people in Mullaithivu only, although noting many people had come from other districts.

<sup>7</sup> Cited in IDP Protection Working Group meeting, 22 January 2009; indicates total IDPs having left the Wannu.

Feb	>100,000 <sup>8</sup> 75,000 <sup>9</sup> c.70,000 <sup>10</sup> 50-70,000 <sup>11</sup>	330,000 <sup>12</sup> 330,000 <sup>13</sup>		250,000 <sup>14</sup> 300,000 <sup>15</sup>	35,000 <sup>16</sup>	
1-15 Mar	70,000 <sup>17</sup> 70-100,000 <sup>18</sup>	300,000 <sup>19</sup>		180,000-350,000 <sup>20</sup> 150,000-190,000 <sup>21</sup> <200,000 <sup>22</sup>	(49,935) <sup>23</sup>	
16-31 Mar				150,000-190,000 <sup>24</sup>		
1-15 Apr			>230,000 <sup>25</sup>	>100,000	171,184 <sup>26</sup>	
16-30 Apr	c.70,000 <sup>27</sup> 5-10,000 <sup>28</sup>	150,000 <sup>29</sup>	>130,000 <sup>30</sup>	50,000 <sup>31</sup>	188,623 <sup>32</sup>	
1-12 May					198,089 <sup>33</sup>	
13-30 May					289,915 <sup>34</sup>	
June/July					282,380 <sup>35</sup>	+275,000 <sup>36</sup>

<sup>8</sup> Cited by the Defence Secretary on 7 February 2009, accessed on 15/10/2012 at <http://www.dailynews.lk/2009/02/07/sec01.asp>

<sup>9</sup> Attributed to the Security Forces in a 15 February article on the website of a domestic newspaper, accessed 15/10/2012 at <http://www.nation.lk/2009/02/15/militarym.htm>

<sup>10</sup> Cited by the Minister of Foreign Affairs in an 18 February 2009 speech to the diplomatic community, accessed on 15/10/2012 at [http://www.defence.lk/new.asp?fname=20090218\\_07](http://www.defence.lk/new.asp?fname=20090218_07)

<sup>11</sup> Attributed to the Defence Secretary on 17 February 2009, when he reportedly said estimates of civilians had been greatly exaggerated, viewed on 15/10/2012 at <http://reliefweb.int/report/sri-lanka/sri-lanka-civilian-safety-top-priority-defence-secretary>

<sup>12</sup> The report of the Panel of Experts on accountability (para.126) cites a report “Situation report/Mullaithivu District” submitted by the AGA of Mullaithivu to the Government on 2 February 2009, and shared with the UN, quoting this figure as the total population in the district. State authorities in Colombo reportedly rejected the number.

<sup>13</sup> Cited in the Panel of Experts report, p28; refers to the number of people in Mullaithivu only.

<sup>14</sup> Cited in a 6 February 2009 OCHA Sitrep.

<sup>15</sup> Cited in a 13 February 2009 IAWG-SL meeting.

<sup>16</sup> Cited in a 13 February 2009 IAWG-SL meeting.

<sup>17</sup> Sourced to the Government, 15 March 2009 [http://www.lankanewspapers.com/news/2009/3/40925\\_space.html](http://www.lankanewspapers.com/news/2009/3/40925_space.html).

<sup>18</sup> The Government’s Secretary General of the Secretariat for Coordinating the Peace Process, 16 March 2009 UN sources <http://www.ai-watch.net/blogs/?p=350>

<sup>19</sup> Quoted by AGA Mullaithivu to the RC in mid-April; based on AGA’s rough “census” in March 2009.

<sup>20</sup> Cited in a 9 March 2009 UNCT briefing to donors: “Humanitarian agencies estimate that between 150,000 and 200,000 people are trapped in the No-fire zone (NFZ) + an estimated 30,000 people outside the NFZ ... Reports received from the NFZ suggest ... an even greater number...: up to 300,000 – 350,000 people.”

<sup>21</sup> Cited in a 9 March UNCT briefing to donors on food needs; refers to IDPs in Mullaithivu only (i.e. within NFZ).

<sup>22</sup> Cited in the minutes of a 10 March 2009 ECHA meeting, stating “up to 200,000” people were in the Wannai

<sup>23</sup> Cited by OCHA with regard to IDPs; refers to those in Vavuniya camps only, as of 31 March 2009.

<sup>24</sup> Cited by the USG-Humanitarian Affairs in a 26 March 2009 briefing to the Security Council.

<sup>25</sup> Panel of Experts report paragraph 109; no date is specified but the text indicates the number applied before 19 April.

<sup>26</sup> Cited by OCHA in a map of Wannai sites and hospitals as of 28 April 2009.

<sup>27</sup> Cited in a 19 April 2009 article on the website of the Ministry of Defence, accessed on 15/10/2012 at [http://www.defence.lk/new.asp?fname=20090419\\_03](http://www.defence.lk/new.asp?fname=20090419_03)

<sup>28</sup> Stated by President of Sri Lanka in 26 April 2009 CNN interview; shown in Channel Four’s film “Sri Lanka’s killing fields”.

<sup>29</sup> Cited by the AGA Mullaithivu in a discussion with the RC in mid-April, and based on the AGA’s estimate of people left after a rough “census” in March 2009.

<sup>30</sup> Panel of Experts report (para. 109). The text indicates the number applied from about 19 April when about 100,000 civilians escaped to Government controlled territory, leaving “at least another 130,000 civilians ... trapped further south.”

<sup>31</sup> Cited by the RC in an email to the Chef de Cabinet on 21 April 2009, as his rough estimate.

<sup>32</sup> Cited by OCHA in a map of Wannai sites and hospitals as of 4 May 2009.

<sup>33</sup> Cited in an OCHA map of Wannai IDP sites and hospitals as of 13 May 2009.

<sup>34</sup> Cited in an OCHA map, “Wannai IDP movements as of 26 May 2009” – refers to total IDPs and not only people.

<sup>35</sup> Cited in a 10 July 2009 OCHA Sitrep.

<sup>36</sup> In its June 2011 report “Sri Lanka’s Humanitarian effort during the final stages of the conflict”, the Government stated that “over 275,000 civilians were freed” by the end of the war.

## **Annex III:**

### **Narrative of events and UN actions**

#### **A. LEADING UP TO THE FINAL STAGES: UN EARLY WARNING AND PREPARATION FROM 2005 TO AUGUST 2008**

##### **1. Background to the conflict**

1. The Democratic Socialist Republic of Sri Lanka (Sri Lanka) has a population of 21 million, including a large majority of Sinhalese, who speak Sinhala and are overwhelmingly Buddhist; as well as Tamils, who speak Tamil and are mostly Hindu; Muslims, comprised of Moors and Malays who practice Islam and are largely Tamil speaking; and Burghers, Veddahs, and other ethnic communities.<sup>1</sup> Independence in 1948 was followed in subsequent decades by ethnic and social tensions, leading Sinhalese youth in the South, and Tamil youth in the North, to separately oppose the Government from the 1970s, eventually turning to militancy and armed revolts. The Government's response to terrorism and insurgency was marked by disappearances, unlawful killings and torture. From the late 1970s, the Liberation Tigers of Tamil Eelam (LTTE) began fighting the Government with the aim of establishing the state of Tamil Eelam in the north and east of Sri Lanka. The LTTE adopted increasingly violent tactics to silence other Tamil groups. It used suicide bombing against military, political and civilian targets.<sup>2</sup> From the early 1980s, legislation, such as the 1979 Prevention of Terrorism Act and Emergency Regulations, provided extraordinary powers to the State security forces and limited the jurisdiction of the courts to check abuses.

2. Initiatives to end the war and associated violations, and towards political solutions took various forms over several decades, including the last major attempt -- the February 2002 Cease Fire Agreement (CFA) and the accompanying international Sri Lanka Monitoring Mission (SLMM). The CFA led to a reduction in armed clashes between the main parties to the conflict. However, both parties "sought to consolidate and improve their positions by exploiting the ambiguities and opportunities presented by the terms of the agreement, as well as weaknesses in its monitoring mechanism" and advanced their interests "by committing or permitting widespread killing."<sup>3</sup>

3. The Government generally resisted efforts by the UN to establish staffing capacity within Sri Lanka to respond to the protection and humanitarian aspects of the conflict. However, following the 26 December 2004 Indian Ocean tsunami the Government accepted humanitarian assistance leading to an increase in international humanitarian capacity in both Government- and LTTE-controlled areas.

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<sup>1</sup> Report of the Panel of Experts. Muslims are considered a distinct ethnic group in Sri Lanka. Population figures from [www.statistics.gov.lk/page.asp?page=population](http://www.statistics.gov.lk/page.asp?page=population)

<sup>2</sup> Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, mission to Sri Lanka 28 November to 6 December 2005 (E/CN.4/2006/53/Add.5, 27 March 2006)

<sup>3</sup> Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, mission to Sri Lanka 28 November to 6 December 2005 (E/CN.4/2006/53/Add.5, 27 March 2006).



4. The UN had a generally difficult relationship with the Government, which used its control of visas, as well as harsh and even defamatory articles in the domestic media, as a means to pressure and intimidate any staff perceived as critical of the State. Several Resident Coordinators (RCs) were declared persona non grata (PNG) and a number of senior staff were withdrawn by the UN before they suffered the same fate. Candidates proposed to replace them were apparently rejected because of past experience in conflict situations.<sup>4</sup> Many international staff felt intimidated by the Government. National staff were sometimes arrested and detained by the authorities and later, in 2009, two staff were abducted and tortured by Government agents.<sup>5</sup> National staff were reportedly abused by LTTE cadres. The Government's treatment of staff affected UN policy decisions and discouraged the UN from responding publicly or more firmly to reports of Government violations. Senior international staff were in particular concerned by the possibility of having their visas revoked and the impact this would have on their agencies' work in Sri Lanka, as well as on their professional and personal situations. One senior UN staff member was reported to have been told by his agency during the final stages of the conflict that his priority should be to avoid being declared PNG.<sup>6</sup>

## **2. 2005-2008: New political context and the implications of the campaign in the east**

5. Within a roughly 24-month period, a series of factors dramatically changed the political and military context framing the conflict towards a military rather than political response: (i) In March 2004, the Tamil Makkal Viduthalai Pulikal (TMVP) split from the LTTE to join the Government; (ii) the 2005 presidential electoral victory of the Sri Lanka Freedom Party's candidate, Mahinda Rajapaksa, backed by a nationalist coalition, led to a shift towards a military solution to the conflict<sup>7</sup>; and (iii) the LTTE's continuing attacks on civilians, and growing post-9/11 international consensus against political engagement with groups using terror tactics, led to the LTTE's increasing political isolation. The ostracizing of the movement culminated with the European Union's May 2006 declaration of the LTTE as a terrorist organization.<sup>8</sup> The LTTE reacted to the EU declaration by requiring that the SLMM remove monitors who were EU nationals, reducing the Mission's capacity to conduct its monitoring, and effectively terminating LTTE participation in the peace process.

6. Even while the CFA remained in force, and despite intermittent peace talks, human rights violations continued. In 2005, the Special Rapporteur on 'extrajudicial, summary or arbitrary executions' reported the intentional targeting of both combatants and civilians and widespread police torture, impunity for abuses by the military, and LTTE killing of Tamils who refused to support the LTTE. The same year two other UN independent experts reported allegations of murders, attacks, and threats against journalists, parliamentarians, political party members, and

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<sup>4</sup> As far as the Panel could determine, the UN does not collate records on the occurrence of PNG against UN staff, or the refusal by a Government to accept new candidates or issue visas to selected staff. The Panel was provided information on these issues in Sri Lanka in interviews with several UNHQ staff.

<sup>5</sup> See Annex IV.

<sup>6</sup> Interviews by the Panel with UN staff.

<sup>7</sup> International Crisis Group – Sri Lanka : the failure of the peace process – 28 November 2006

<sup>8</sup> Council of the European Union – *Declaration by the Presidency on behalf of the European Union concerning listing of the LTTE as a terrorist group* - 31 May 2006

human rights defenders.<sup>9</sup> From the 1990s, Sri Lanka was reported to have the second-highest number of disappearances in the World, after Iraq, and disappearances continued in the 2000s, although at a lower rate.<sup>10</sup> Despite peace talks held in June 2006 in Oslo, the LTTE continued to recruit thousands of children. The TMVP, now affiliated with the Government, was also accused of recruiting children.<sup>11</sup> From around December 2005, the LTTE stepped up a series of attacks using claymore mines, mostly in the north; the Government would argue these led to further erosion of the ceasefire. In July 2006, the Government launched a large-scale military offensive in the east, eventually succeeding in cutting off the LTTE's sea supply channel and recapturing the eastern region entirely in July 2007.

7. The Representative of the Secretary-General on the Human Rights of Internally Displaced Persons (RSG-IDPs), visited Sri Lanka in December 2007. His mission report predicted the protection issues that later emerged in the north, noting that the Government had recently announced its intention to reclaim control of the entire island and that there was increasing potential for mass displacement within and from the Wannai. He reported allegations of extrajudicial killings, physical assault, abduction, disappearances, forced recruitment, the use of civilians as human shields, prevention of civilians from fleeing hostilities, and indiscriminate shelling. He said lessons for future situations could be drawn from the experience in the east, including regarding restrictions on the freedom of movement of IDPs and their confinement in camps.<sup>12</sup> By December 2007 the intensity of the military operations was already increasing in the north, and UNHCR reported more than 70,000 new IDPs.<sup>13</sup> On 2 January 2008, the Government announced that it was abrogating the 2002 CFA, which the LTTE had itself done in 2003.<sup>14</sup> The Government had for several years expressed its dissatisfaction with the CFA, and the SLMM had recorded thousands of LTTE violations of its terms, as well as a far lesser number by the Government.<sup>15</sup>

### **3. UN strategies and planning for the North: human rights, development, humanitarian and political**

#### ***a. UNCT and UNHQ planning***

##### *i. International human rights and humanitarian law monitoring*

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<sup>9</sup> Rapporteur on freedom of expression A/HRC/4/27/Add.1 (paras. 581-588) and E/CN.4/2005/64/Add.1, para. 810 and 814, and the SRSG human Rights Defenders, A/HRC/4/37/Add.1 (paras. 592-598)

<sup>10</sup> The 2011 annual report of the Working Group on Disappearances (UN Doc. A/HRC/19/58/Rev.1) indicated a total of 12,460 cases had been received since the Working Group's establishment.

<sup>11</sup> "Karuna Group and LTTE continue abducting and recruiting children", Human Rights Watch, 29 March 2007.

<sup>12</sup> Report of the Representative of the Secretary-General on the Human Rights of Internally Displaced Persons, Mission to Sri Lanka from 14 to 21 December 2007 (A/HRC/8/6/Add.4, 21 of May 2008) (paras. 38-40, 77, and 79).

<sup>13</sup> "IDPs by Place of Displacement and Place of Origin as at 31 December 2007", UNHCR, 17 January 2008, at [www.unhcr.lk/statistics/docs/SummaryofDisplacement-7Apr06-31Dec07.pdf](http://www.unhcr.lk/statistics/docs/SummaryofDisplacement-7Apr06-31Dec07.pdf)

<sup>14</sup> International Crisis Group – Sri Lanka's return to war: limiting the damage – Asia Report n°146 – February 2008, and the Panel of Experts report (p11).

<sup>15</sup> According to a Sri Lanka Government report on its military campaign in the North - entitled Humanitarian Operation Factual Analysis, July 2006 to May 2009 - "Between February 2002 and May 2007, the SLMM ruled that the LTTE violated the ceasefire 3,830 times ..." (para. 125).

8. The changed political context, the patterns of protection and humanitarian concerns in the east and the significant intensification of conflict in the north were all strong indicators that should have informed UN planning for the events to come.

9. The UN had recognized early on that there was an urgent need for independent human rights monitoring, and that the SLMM was not a substitute for this. In 2003 Ian Martin, then the human rights adviser to the Norwegian-led peace process, urged that a monitoring capacity be set up. In June 2004, a Human Rights Adviser was deployed by the UN to support the RC/UNCT – a post that remained throughout the final stages of the conflict. However, the Adviser lacked a mandate to monitor or report on the situation and, with just two additional national staff, lacked the capacity and stature of a human rights operation. In 2005 the Special Rapporteur on ‘extrajudicial, summary or arbitrary executions’ recommended that “The human rights capacity of the [UNCT] should be expanded immediately, pending the creation of a broader monitoring mechanism ...” and “that human rights must be made central both to the peace process and the general system of governance.”<sup>16</sup> In October 2007 the Special Rapporteur on Torture visited Sri Lanka and recommended that OHCHR establish a field presence.<sup>17</sup> In March 2007, OHCHR prepared two internal papers on options for possible field operations in Sri Lanka, seeking to identify models that the Government could accept but which would also meet minimum conditions including a “monitoring, advocacy and reporting capacity of some kind”<sup>18</sup>. In October 2007, the then High Commissioner for Human Rights, Louise Arbour, travelled to Sri Lanka and asked the Government to accept deployment of a field operation. The Government rejected all of these proposed options.

10. Separately, in 2005 the LTTE was ‘listed’ in the Secretary-General’s 2005 annual report on children affected by armed conflict. In July 2006 the UNCT established a Task Force<sup>19</sup> on ‘1612 violations’<sup>20</sup> against children<sup>21</sup> and systems were put in place for monitoring and reporting. The mechanism was thought to have had some positive impact, in raising awareness on the recruitment of children in Sri Lanka. However, its area of focus was very specific and could not address the much wider international human rights and humanitarian law situation. The mechanism also faced several obstacles, including that Government representatives sat on the senior monitoring body.<sup>22</sup>

#### *ii. Accountability*

11. While calling for a human rights monitoring capacity, a second objective of UN strategy was to push for action on impunity for violations. This was given new urgency after the August

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<sup>16</sup> Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, mission to Sri Lanka 28 November to 6 December 2005 (E/CN.4/2006/53/Add.5).

<sup>17</sup> Report of the Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, mission to Sri Lanka, A/HRC/7/3/Add.6, of 26 February 2008, para. 94 (y).

<sup>18</sup> Internal report, and annexes, of an OHCHR staff February 2007 mission to Sri Lanka to assess progress of the National Commission of Inquiry.

<sup>19</sup> In accordance with Security Council resolution 1612 (2005).

<sup>20</sup> Violations monitored were: ‘killing and maiming’; ‘recruitment and use’; ‘rape and other forms of sexual violence’; ‘abductions’; ‘attacks on schools and hospitals’ and ‘denial of humanitarian access’.

<sup>21</sup> Internal OHCHR note to UNICEF, February 2007.

<sup>22</sup> See Annex V.C.

2006 execution of 17 staff of the NGO *Action Contre la Faim* (ACF) in Muttur. As in the past, the Government rejected calls for an international inquiry and instead established, in November 2006, its own ‘Presidential Commission of Inquiry’ to investigate 16 incidents, including the ACF killings. In October 2006 an OHCHR internal report<sup>23</sup> said “There are several serious problems in the domestic legal system that will hamper the effectiveness of this CoI [including] ...the lack of witness protection programs, and prohibition in the military law in utilizing the concept of command responsibility ... it is difficult to see how this CoI could be effective in leading to prosecution.” The internal report of a second OHCHR mission to Sri Lanka, in February 2007, confirmed the steady deterioration in the human rights situation, and the limited impact that was to be expected of the Presidential Commission of Inquiry.<sup>24</sup> In a compromise, the Government accepted that the commission’s work be monitored for conformity with international standards by an International Independent Group of Eminent Persons (IIGEP), established in February 2007. One year later, on 6 March 2008, in a public statement on the Presidential Commission’s work, the IIGEP said “[T]he proceedings of inquiry and investigation have fallen far short of the transparency and compliance with basic international norms and standards ...”, and regretted flaws such as “restrictions on the operation of the Commission ... refusal of the State authorities at the highest level to fully cooperate with the investigations and inquiries ... a climate of threat, direct and indirect, to the lives of anyone who might identify persons responsible for human rights violations ... [T]here has been and continues to be a lack of political and institutional will to investigate and inquire into the cases before the Commission.”

*iii. UN Development Assistance Framework and Consolidated Humanitarian Appeal Process*

12. The United Nations Development Assistance Framework (UNDAF) for Sri Lanka – covering the period 2008-2012 was prepared by the UNCT during 2007 and “provides the framework under which the UN Agencies in the country support Sri Lanka's long term development”. The UNDAF had many objectives addressing the protection of conflict-affected populations, including the strengthening of “independent oversight bodies” for improved governance and respect for human rights, improved public access to human rights and justice redress mechanisms, “Increased equity in socioeconomic opportunities and services for conflict-affected communities”, “Increased opportunities for early recovery of livelihoods disrupted by conflict”, and “Improved performance and participation of public institutions to uphold human rights and humanitarian law ...”. However, the UNDAF did not reflect and address the extent to which rule of law abuses and impunity were a fundamental obstacle to human development for large segments of the Sri Lankan population.<sup>25</sup>

13. The 2008 Consolidated Humanitarian Appeal Process (CHAP) was launched in January 2008 “as Sri Lanka’s humanitarian strategy to support essential interventions”, prioritizing emergency relief, protection, and early recovery, and requesting \$175.4 million for 108 projects.

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<sup>23</sup> Internal report of OHCHR technical assistance mission to Sri Lanka to support establishment of the National Commission of Inquiry.

<sup>24</sup> Internal report, and annexes, of an OHCHR staff February 2007 mission to Sri Lanka to assess progress of the National Commission of Inquiry.

<sup>25</sup> For a description of the kind of issues requiring action, see OHCHR October 2006 internal report to the USG-Human Rights on obstacles to accountability in Sri Lanka, in the context of a mission to support the Government in setting up the domestic Commission of Inquiry.

<sup>26</sup> The protection strategy included the objective: “Ensure minimum standards of safety and security, including physical protection measures and gender-based violence safeguards, are upheld during displacement while providing guidance to pave the way for voluntary return in safety and dignity leading to durable solutions ... Promote respect for the rule of law and human rights ... by enhancing advocacy, capacity building and training programmes for government bodies, security forces, NGOs, IDPs and returnees ... Ensure equitable access to humanitarian assistance through technical support and capacity building of local administrations ...”<sup>27</sup> The strategy for Early Recovery included the objective: “Support the implementation of a multi-sector approach to promote sustainable return and resettlement in particular through the provision of housing, agricultural and livelihoods measures.” Like the UNDAF, the CHAP listed the LTTE and paramilitary groups as perpetrators of violations, but across its 118 pages made no direct reference to the Government of Sri Lanka as a perpetrator of violations or obstacle to humanitarian assistance. In addition, while over \$15 million were requested for protection projects, the projects adopted did not reflect the spirit of the protection strategy: they did not involve UN action to monitor, investigate and report on specific violations of international law by the Government or LTTE. The projects covered important issues, but generally ones that were already covered by the shelter, food, health or other humanitarian clusters.

*iv. Overall strategy*

14. With the UNDAF and CHAP formal planning processes ongoing, DPA led the Secretariat in reframing the UN’s overall strategy in the wake of the abrogation of the CFA. The Policy Committee had already decided, in 2007, on a strategy of sustained visits to Sri Lanka by high-level UN officials, as a means of maintaining engagement with the Government. An Inter-Agency Working Group on Sri Lanka (IAWG-SL) was established to facilitate information exchange, and the Working Group also helped coordinate the high-level visits.

15. In UNHQ in January 2008, DPA completed an “Options Paper” which noted that prospects for reviving the peace process were bleak and expressed concern for the protection of civilians in armed conflict, the “anticipated massive new internal displacement” and the potential for humanitarian crisis. The paper shows particular concern that “the departure of the SLMM leaves a vast gap in monitoring and reporting” and that “the Government has chosen a confrontational and uncompromising position regarding a bigger stand-alone presence of the OHCHR with a monitoring mandate.” The note urges “more assertive action before [the crisis] becomes a bigger man-made disaster of Rwanda magnitude.” The paper made a series of strategy recommendations, including: continuation of the IAWG-SL; follow-up on the reports of Special Rapporteurs; follow-up by OLA on the persistent violations of UN privileges and immunities; pre-designated security “triggers” for the relocation or reduction of staff in the Wanni; that OHCHR consider working through a national partner while continuing efforts to establish a field presence and engage in its own public reporting on human rights; that other UN agencies should also get involved in monitoring and information gathering; that the UNCT should review the parameters of the UNDAF in the context of the spill-over of instability and violence beyond the north; and that the RC/HC and UNCT should re-invigorate implementation of the Inter-Agency Advocacy Strategy adopted in 2007.

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<sup>26</sup> Executive Summary, CHAP 2008.

<sup>27</sup> See the needs assessment, strategy and response plan sections of the CHAP 2008.

16. In early 2008, the senior DPA official leading action on Sri Lanka and chairing the IAWG-SL, Angela Kane, visited Sri Lanka with “the primary objective ... to improve relations between the UN and the Government”. She gave the President a letter from the Secretary-General complaining about the treatment of the UN. Reporting on the visit afterward, she noted “the prevailing view in Colombo, expressed by members of the international community including all Co-Chairs and civil society representatives, was that the Government was indeed fixated on pursuing a military strategy ... [S]ome stakeholders informed that they would remain silent on issues like human rights.” Three IAWG-SL meetings were held in January, March and August 2008. In the 24 March meeting the RC said “Since the visit of Ms. Kane ... improvements have been made by the Government to facilitate the work of the UNCT ... The negative stories about the work of the UN had decreased substantially ...” In the 18 August meeting the RC again reported that “cooperation with the Government had improved in recent weeks and hoped that this would allow for better access.” The meeting nevertheless noted problems of humanitarian access, serious humanitarian and security implications if government forces moved into the Killinochchi box, and the difficulty of obtaining visas for UN staff. The appointment of a new Sri Lankan Permanent Representative to UNHQ was welcomed. And DPA said that the UN should maintain its strategy of engaging the Government through both high-level and working-level visits.<sup>28</sup>

17. Overall coordination of UNHQ reflection and engagement on Sri Lanka was initially centred in DPA, through an Assistant Secretary-General (ASG-Political Affairs), until this senior official left the Department in 2008 and the Secretary-General gave the lead role to his own Chef de Cabinet. The Chef de Cabinet retained all of the, very heavy, responsibilities of his primary role as Chef de Cabinet. As the situation deteriorated, leadership also came from the Emergency Relief Coordinator, the USG-Humanitarian Affairs, who conducted more visits to Sri Lanka than any other official. There was no clear UN leadership structure on Sri Lanka at the UNHQ level with oversight for the primary protection and humanitarian concerns that would arise. The RC was clearly responsible on the ground, with all the limitations inherent to the RC’s complicated managerial relationship with UNCT members – heads of other UN entities – with the same seniority.<sup>29</sup>

18. At least 19 high-level visits were conducted from January 2007 to December 2009, including by the Secretary-General, Chef de Cabinet (2 times), USG-Humanitarian Affairs (5 times), USG-Political Affairs (3 times), USG-Human Rights, the RSG-IDPs (4 times), the USG-UNHCR, two special envoys of the SRSG-CAAC, and an ASG-DPA. Each visit was oriented toward a particular mandate– humanitarian, political, human rights, IDPs, children, etc. The visits were also intended to share a coordinated message, including on: respect for staff privileges and immunities; humanitarian access; a political solution for all Sri Lankan communities; accountability for violations; establishment of a UN human rights field operation; the freedom of movement of IDPs; a humanitarian corridor or ceasefire; and ceasing the use of heavy weapons. By the end of the conflict it would be apparent that commitments made by the Government and LTTE to the UN, including during the high-level visits, were repeatedly broken.

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<sup>28</sup> Minutes of three IAWG-SL meetings in January, March and August 2008, respectively.

<sup>29</sup> Annex V.

***b. Member States – the UPR and the Co-Chairs***

19. The Human Rights Council conducted its Universal Periodic Review (UPR) of Sri Lanka in May 2008.<sup>30</sup> The discussion between Sri Lanka and Member States reflected most of the broad human rights concerns in the country. On 19 May 2008, the Working Group adopted the UPR report (A/HRC/8/46) on Sri Lanka, listing the 85 recommendations that “enjoy the support of Sri Lanka”, some of which focused on human rights capacity building, but also including: “Take measures to ensure access to humanitarian assistance for vulnerable populations and take further measures to protect civilians, including human rights defenders and humanitarian workers”; and “Investigate and prosecute all allegations of extrajudicial, summary or arbitrary killings and bring the perpetrators to justice ...”. Recommendations by several Member States for the establishment of an OHCHR Field Operation were rejected. The Government made a ‘voluntary commitment’ to “continue its active and constructive dialogue and cooperation with [OHCHR].”

20. In parallel with the Norwegian-led peace process, in 2003 the Sri Lanka “Co-Chairs Group” was established after the 2003 Tokyo Donor Conference to focus on the disbursement of development assistance, chaired by Japan and including the European Union, Norway and the United States. Notwithstanding its development orientation, the Co-Chairs Group made several public statements appealing for the protection of civilians, respect for international humanitarian law and access for the UN and ICRC. During the final stages of the conflict, in UNHQ the Secretariat would sometimes refer to the Group as a political actor. However, it lacked an explicitly political role, and its members did not necessarily share common views on the means to reach a political solution to the conflict. Perhaps most importantly, the Group did not include other Member States with a key voice on the situation, such as India.

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<sup>30</sup> Established in accordance with Human Rights Council resolution 5/1 of 18 June 2007.

## **B. THE FINAL STAGES OF THE CONFLICT AUGUST 2008-MAY 2009**

### **1. August/September 2008: Relocation from the Wannai**

#### **a. *The Wannai***

##### *i. Context and UN presence*

21. For many years, the Government and the LTTE had accepted mutually beneficial arrangements whereby local Government officials – Government Agents (GAs), and Assistant GAs – were posted by the Government within the districts in the Wannai to deal with those aspects of local administration that the LTTE could not handle and that the Government was willing to take on. The Government also financed schools and hospitals and appointed teachers and doctors who worked in the Wannai. Until September 2008, seven agencies represented the UN in LTTE-controlled areas of the Wannai: OCHA, UNDP, UNHCR, UNICEF, WFP, UNOPS, and UNDSS; also present were IOM, ICRC and a series of international NGOs.

22. The conflict led to restrictions on the transport of food and fuel into the Wannai, causing shortages. The humanitarian community helped to assure deliveries of assistance. To prevent the LTTE from re-supplying itself, the Government exercised strict oversight over goods entering the Wannai, including through checkpoints on roads, and controls over deliveries by sea. Movement of UN staff and vehicles to the Wannai was subject to Ministry of Defence approval, via UNDSS. With strict Government limitations on the numbers of vehicles allowed to cross into the Wannai, alternative measures were put in place with staff and goods being deposited on the outskirts, and then collected by vehicles coming from within the Wannai. Drivers and vehicles sometimes had to wait many hours on one side of the checkpoint or the other. At checkpoints, supposedly as part of security searches, the Sri Lanka Army (SLA) would sometimes release the air from the tyres of UN vehicles and remove parts of vehicles; body searches were regularly conducted on staff.

##### *ii. Numbers of people*

23. Making an accurate determination of the number of civilians in the Wannai during the final stages of the conflict was vital for assessments of the humanitarian assistance required and the number of casualties. However, for various reasons, the UN would struggle throughout the final stages of the conflict to make a firm determination on numbers. First, there was no consensus on the total number of people in the Wannai before the final stages. The LTTE had reason to artificially inflate population estimates, so as to claim a larger constituency of support and to seek additional humanitarian assistance which it could appropriate; and the national Government had reason to lower numbers for symmetrical reasons. Second, even before the conflict's final months thousands of people were constantly being displaced within the Wannai, making it difficult to ascertain accurate population numbers. For a more detailed examination of the issue of numbers of people in the Wannai, see Annex II.

#### **b. *Attacks on UN premises – Government says it cannot assure staff safety***



24. The UN had agreed with the Government and the LTTE on a conflict-free zone, known as the ‘Killinochchi box’, of about 2 by 11 kilometres, which covered Killinochchi town. The LTTE repeatedly abused the principle of the box by placing strategic offices and equipment not only within the box but sometimes also close to UN premises. The Government sometimes launched attacks within the box. On 27 November 2007, offices within the Killinochchi box of WFP and FORUT, an NGO, within the Killinochchi box, sustained damage following Government air strikes, apparently targeting the offices of the LTTE political wing.<sup>31</sup> As aerial attacks within the Wanni as a whole intensified in 2008, there were growing concerns for the safety and security of staff in Killinochchi. A UNDSS presence was established in June 2008, and UNDSS set security phase four.<sup>32</sup> Restrictions imposed by the Ministry of Defence made it difficult for the UN to take security and communications equipment into the Wanni. Similarly, it was only with difficulty that in July and August 2008 the UN was able to take in the materials to build a limited number of bunkers and safe rooms for staff, and supplementary fuel to provide emergency reserve supplies,

25. A series of security ‘triggers’ had been identified by the UN, which if pulled would prompt an immediate withdrawal of staff. In the months prior to the September 2008 relocation, there was sharp disagreement among Wanni-based staff regarding a proposed trigger under which any ordinance landing within the Killinochchi box would lead immediately to relocation. Some staff complained the triggers were defined in such a way as to precipitate relocation out of the Wanni. The LTTE was eager to see the UN and international NGOs remain in large numbers within the Wanni. The international presence ensured the delivery of humanitarian assistance, which sustained the population that the LTTE needed to present as its constituency.

26. On 3 September 2008, several artillery shells hit within the Killinochchi box close to UN compounds – UN staff believed the artillery shells originated from Government forces.<sup>33</sup> That same night, UNHCR and WFP received written communications from the SLA informing them that the Government could not guarantee the safety and security of aid workers within the Wanni and that any movements would be at their own risk.

27. In addition to his role as Resident Coordinator, the RC was also the senior UN official on security issues – the Designated Official (DO). The next day, on 4 September, the RC wrote to the Minister of Foreign Affairs saying: “This is the first time artillery shell (sic) have fallen in Killinochchi in some years, and according to our security procedures, represent a significantly increased risk to our staff and our ability to continue with our work there ... [W]e seek your urgent advice on the safety of our staff in Killinochchi ... [and] on measures to be taken to reduce the risk. In the event that the security situation means that we must relocate staff out of Killinochchi, it would be imperative to arrange this relocation in a way that reduces risk to the maximum extent, and we would need to discuss with the government the arrangements and the timing. I look forward to the advice of your ministry in this regard.” The same day, the RC also wrote to the Head of the LTTE Political Wing raising concern over the safety of staff and civilian casualties.

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<sup>31</sup> IASC Situation Report # 102 – 22-30 November 2007

<sup>32</sup> Summary of a statement made to the Panel of Experts.

<sup>33</sup> Interviews of UN staff with the Panel.

28. The Minister of Foreign Affairs met with the UNCT on 5 September to discuss the safety of staff. On 8 September, a large majority of UNCT members opted to relocate staff out of the Wannu, to Vavuniya. In contrast, ICRC reacted to the security situation by relocating from Killinochchi to Puthukuddurippu (PTK), and therefore staying in the Wannu; DSS was reported to have said this was not a viable option for the UN because of the proximity of PTK to LTTE headquarters. A senior UNCT official would later say<sup>34</sup> that the then-recent bombing of UN offices in Algiers had affected the global UNDSS analysis of the UN's options when confronting security threats.

29. On 9 September the UNCT issued a public statement "The UN in Sri Lanka acknowledges the announcement by the Government of Sri Lanka that they can no longer ensure the safety of aid workers in the Wannu, and their request that UN and NGO staff should relocate to government-controlled territory. The UN notes that the Government recognizes it holds primary responsibility for ensuring the safety of humanitarian workers. The UN is now evaluating its operations in the area with a view to relocating humanitarian staff ... The UN remains fully committed to addressing the humanitarian needs of the civilian population in the affected areas, and will continuously monitor the situation to assess how this can be done under the circumstances." On receiving the statement, the same day a senior OHCHR official sent an email to counterparts in UNHQ saying "This draft looks very weak to me. In particular, it ignores the obligation of combatants to ensure the security of non-combatants" and asking whether a stronger stance could be taken. Later that day the Secretary-General's spokesperson issued a statement<sup>35</sup> referring to the "Government's request for relocation of UN humanitarian staff" and noting the international humanitarian law obligations of all parties, but making no mention of Government security forces as the apparent source of shelling.

30. In subsequent days, members of the population in Killinochchi presented a petition to UN staff, asking them to stay. In one meeting a group of community leaders shared a number of points with UN officials, including that: "Some families have come to Killinochchi town due to the presence of international organizations and the belief that this would provide some form of physical security"; "there is a concern that the moment that humanitarian organizations leave, the Government will begin bombing Killinochchi town and that the physical security of the civilian population will be at increased risk; "... the absence of the UN would result in no one to bear witness to incidents ... "if the UN tried to serve the Wannu from Vavuniya that they expect that the Government will make it very difficult, if not impossible, to provide support" "...much of the paddy fields and irrigation tanks had been either captured by the SLA or were in high conflict areas – this might indicate that there would be malnutrition or starvation in the next couple of months."<sup>36</sup>

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<sup>34</sup> RC interview with the Panel of Experts.

<sup>35</sup> New York, 9 September 2008 - Statement attributable to the Spokesperson for the Secretary-General on Sri Lanka and United Nations in Sri Lanka Statement – 9 September 2008.

<sup>36</sup> Extract from notes of to DPA.

31. Also on 9 September another artillery shell landed in the Box, hitting a WFP Compound. The next day there was a Government air attack on Killinochchi. Several staff contacted their heads of agencies in Colombo expressing concern for their safety.<sup>37</sup>

32. On 12 September the RC again wrote to the Minister of Foreign Affairs. The letter makes clear the UN understood shelling was originating from Government forces, but it did not challenge the Government on the incidents. The letter thanked the Minister for the 5 September meeting and said “Your immediate response to our concerns is deeply appreciated ... We are doing our best to comply with the advice from the Government that UN agencies should close our offices in Killinochchi in short time frame because the safety and security of those staff and premises cannot be assured by the Government ...” The letter went on to explain that all staff will have left the Wannu by 29 September, with the exception of national staff unable to leave and who would be in their homes. “It is my responsibility to bring to your renewed attention our deep concern for the security of all remaining staff and seek your written commitment that everything possible would be done to ensure that UN compounds will at no stage be directly targeted. The staff who cannot depart Killinochchi continue to be UN staff and should be treated as such ... I also reiterate our strong concern ... about the proximity of airstrikes to offices with UN and INGO staff ... We understand that the Government is taking all measures to reduce the possibility of civilian casualties from any possible military action in the coming period.” The letter included the GPS coordinates of UN and international NGO offices in Killinochchi, previously given to the Ministry of Defence. Between 15 and 19 September 2008, the RC also sent several letters to the head of the LTTE Political Wing regarding the planned departure of staff, insisting on the privileges and immunities of staff and recalling the LTTE’s reaffirmation, during a 13 September meeting, of its “100% commitment” to safety and security of staff. The RC also wrote to the Minister for Disaster Management and Human Rights regarding the relocation, and the staff and equipment that would remain behind.

33. On 18 September, the RC received a reply to his letter to the Minister of Foreign Affairs, but from a less senior official in the Ministry, acknowledging the UN’s arrangements to evacuate staff and stating “after 29<sup>th</sup> of September, when the departure from Killinochchi will be completed the Government of Sri Lanka will not be in a position to recognize any remaining UN staff in these areas ... The Government of Sri Lanka categorically states that it has not, and will not, target civilians or humanitarian operations when military action is taken to combat terrorism.”

### *c. Relocation*

34. While international staff in the Wannu were considered to be in a “non-family duty station” and were there without dependents, in contrast, national staff were for the most part from the Wannu and were accompanied by their whole families. Just as the Government kept a strict control on who could travel to the north and go to the Wannu, the LTTE kept a strict control on Sri Lankan civilians who could leave the Wannu, and used a ‘pass’ system to manage movements. When the UN decided to relocate, the LTTE refused to issue passes for the dependents of national staff. Many national staff decided they could not leave the Wannu without their children and other dependents, and chose to stay. On 12 September the RC wrote to all UN

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<sup>37</sup> Interviews of UN staff with the Panel.

Killinochchi staff describing the evacuation as a “regrettable situation”. He noted that not all staff would be able to leave and that letters would be issued for those who remained, as well as their dependents, affirming UN-staff status.

35. The relocation of staff, assets and vehicles from Killinochchi to Vavuniya happened through two convoys. The first was able to leave without problem on 11 September. However, the second was delayed from 12 to 15 September while hundreds of civilians protested against the UN’s departure and blocked the convoy’s exit. A UN international staff member said that over the three days the convoy was prevented from leaving she heard many heavy trucks travelling each night along the nearby A9 road, giving UN staff the impression the LTTE may have orchestrated the protest so as to delay the UN’s departure long enough for it to evacuate its own equipment from the area.<sup>38</sup> After negotiations with the LTTE by UNDSS, the second staff convoy was allowed to leave on 16 September.

36. Three years later international staff recalled the moment of their departure, and the crowds of civilians and national staff left behind, as one of their most distressing experiences.<sup>39</sup> One UN national staff member who stayed behind said “people ... felt they were being abandoned at a time when they most needed help”.<sup>40</sup> All international NGO staff also left the Wanni by the end of September, leaving behind about 360 national staff. The national staff remained in Killinochchi until the end of October and then, with increasing artillery shelling hitting Killinochchi town, they relocated to PTK.

37. At a time when the LTTE was desperate for the UN to remain in the Wanni, the immediate threat to safety and security of UN staff came from actions by Government forces, and artillery shelling in particular. In December 2008, referring to the relocation, Human Rights Watch said “Sri Lankan officials ... have shown overt hostility to outside agencies and humanitarian staff in recent months, suggesting that political considerations or a desire to remove independent observers from the scene might also have been behind the ouster”.<sup>41</sup> In an October 2008 report, a Sri Lankan human rights NGO said “[G]iven the record of a State that has been bombing and shelling its civilians for over 20 years and freely uses killer squads, the UN knew what the people would confront once they left ... What was really needed, as far as the Government was concerned, was an assurance that they would not bomb or shell in a manner that would place humanitarian staff in danger ... If the Government could not give this minimal assurance to the UN, how seriously could one take its pledges to protect the civilians ... [M]any people wish that the UN, before leaving, had negotiated a compromise for willing aid staff to remain.”<sup>42</sup> Some UN staff members said the LTTE saw the UN’s rapid withdrawal from the Wanni as evidence that the UN would not stand up to Government violations. Staff also said they believed that, given the manner of its departure, the UN lost much of the remaining leverage it had with the LTTE and that national staff who remained behind were subsequently much more vulnerable not only to Government attacks but also to violations by the LTTE.<sup>43</sup>

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<sup>38</sup> Interview of a UN staff member with the Panel.

<sup>39</sup> Interviews of UN staff with the Panel.

<sup>40</sup> Interview of a UN staff member with the Panel of Experts.

<sup>41</sup> Human Rights Watch report, *Besieged, Displaced, and Detained The Plight of Civilians in Sri Lanka’s Vanni Region*, 23 December 2008, Executive Summary.

<sup>42</sup> University Teachers for Human Rights, *Pawns of an Un-heroic War*, Part 2.1 Special Report 31, 28 October 2008,

<sup>43</sup> Interviews by UN staff with the Panel.

38. UN Offices in Killinochchi were damaged again on 3 October 2008 during a Government aerial bombardment. On 8 October, the RC wrote to the ‘additional Secretary’ at the Ministry of Foreign Affairs saying “...United Nations offices in Killinochchi ... [s]pecifically the UNICEF compound, but also the UNDP and UNOPS buildings, suffered substantial collateral damage as a result from the bombing. While we understand that these offices were not the intended target, because substantial amounts have been invested in them, and because we would like to use them again when the security situation permits ... we request that all possible efforts be made to prevent any damage to United Nations Premises in the course of fighting ... there were no UN staff affected however staff of the private security company were on duty ...” The letter shared, again, the GPS coordinates of UN premises and recalled “the primary obligation of the host government to ensure the protection of the property of the United Nations.”

## **2. October 2008/February 2009: Humanitarian situation and the convoys**

### ***a. Humanitarian convoys 1 to 10***

39. The UN was concerned that relocation would limit its ability to provide humanitarian assistance, and discussed the issue in an October 2008 meeting of the Executive Committee on Humanitarian Affairs (ECHA) – the UN’s senior mechanism for coordinating humanitarian action. Senior UN officials urged the Government to allow humanitarian access, including the USG-Human Rights and USG-UNHCR in meetings with the President and Ministers in late 2008. In discussion with the Government, the UN obtained agreement that one humanitarian convoy per week would be allowed to travel to the Wanni.

#### *i. The logistics of the convoys*

40. A team from WFP managed the logistics for the convoys. Security coordination was provided by UNDSS. The vehicles in each of the convoys were clearly marked. The trucks were large vehicles that were either painted white with UN or WFP markings in large blue lettering, or were locally hired vehicles with large white banners with blue lettering identifying them as UN. Each convoy, consisting of 30 to 60 large trucks, and was both led and followed by several light 4x4 white UN vehicles, with radio communications equipment.<sup>44</sup> National staff drove the trucks; additional accompanying staff were internationals, although the Government restricted the number of internationals per convoy. The IDP Protection Working Group had strongly recommended that every convoy should include at least one staff member with experience in “protection”, to gather information on the protection situation during the convoys stay in the Wanni, but this did not happen. The routes to be used by each convoy were agreed with both the Government and the LTTE prior to departure, and each convoy movement was specifically cleared with both sides. The goods transported were inspected by the Government and the trucks sealed before departure. In addition to the UN convoys the Government had a number of their own convoys that were much smaller than UN convoys, and ceased prior to the UN’s eleventh and final convoy.<sup>45</sup>

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<sup>44</sup> According to a UN source involved in the convoys.

<sup>45</sup> In its June 2011 report “Sri Lanka’s Humanitarian effort”, the Government states that “... Due to the security situation on the ground, supplies by road to the Wanni region had to be completely halted on 23 January, 2009. At

41. The UN established a 'Hub' for the convoys within the grounds of the Assistant Government Agent compound in PTK, and radios and other equipment were moved from Killinochchi to PTK. The GPS coordinates for the Hub were given by UNDSS to the Ministry of Defence Joint Operations Headquarters (JOH) in Colombo and Security Forces Headquarters in Vavuniya, as well as to the LTTE. The Government rejected UN efforts to have the Hub manned by internationals, although there was an eventual implicit agreement, until January 2009, that it be manned by the between six and 10 national staff still in the Wannu.

*ii. The convoys*

42. The first humanitarian convoy entered the Wannu on 4 October 2008. Despite the extensive coordination with Government security forces and the LTTE, artillery shelling landed close to the convoy as it followed the designated route. "[T]he convoy passed several LTTE Cadres ... I then saw and heard the first of a number of artillery shells exploding in front of the convoy ... Over a period of 4 or 5 minutes, around 4 or 5 shells ... exploded about 500 metres ahead of the convoy." The UN security officer accompanying the convoy, who had prior military experience in artillery, was convinced the shelling came from Government forces.<sup>46</sup> After calls were made via UNDSS to the SLA and the LTTE the shelling ceased and the convoy continued.

43. Convoys 2 through 10 remained in the Wannu for one night, entering on one day and all departing the following morning. The departure of Convoy 2 was delayed when the Government required a last minute change of the route. After eventually entering the Wannu, it initially turned back near Puliyanakulam when two artillery shells hit about 400 metres ahead of the lead vehicle; it was only able to proceed after the Army promised to stop firing artillery. Convoys 3 and 4, in late October and early November respectively took place without incident, although trucks broke down. Convoy 5 departed on 11 November with 40 trucks, 17 of which were stranded during the journey by heavy shelling from an unidentified source. Convoy 6 departed on 21 November with 46 trucks after one breakdown and the unavailability of an additional 3 trucks for hire. When it arrived in the Wannu the LTTE was angry to find hidden in a truck stacks of pamphlets asking civilians to oppose the LTTE. Convoy 7 departed on 9 December with 592 metric tons of food and additional non-food items. Convoy 8 departed on 22 December and several trucks got stuck en route after heavy rain. Convoy 9 travelled in and out of the Wannu on 29 and 30 December with 56 trucks, 5 light vehicles, 2 security vehicles and 10 international staff. The convoy was supposed to split its delivery between Tharmapuram and PTK, but heavy rains made the Tharmapuram road inaccessible and the whole convoy offloaded in PTK. Convoy 10 departed on 7 January. After five trucks broke down, the remaining 57 trucks, five light vehicles and two security vehicles, with nine international staff, continued. The convoy stopped when artillery shells, apparently from Government forces, landed 200 metres to the west. Outgoing fire, apparently by the LTTE, could be heard about 800 metres away. After UN contacts with both LTTE and Government forces the shelling ceased and the convoy continued to PTK.

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an emergency meeting convened in Colombo on 17<sup>th</sup> February with the participation of ICRC and senior officials of government and Sri Lanka Navy, a decision was taken to immediately commence sea transportation. ..."

<sup>46</sup> Statement by UN Staff member to the Panel of Experts.

***b. The limited impact of convoys amid deterioration in the humanitarian situation and the increasing killing of civilians***

44. The situation on the ground evolved as the Sri Lanka Army continued to advance. By late November it had become increasingly clear that the framework for humanitarian assistance was problematic on many levels. There was a serious lack of quantitative data on the situation of the populations trapped within the remaining Wannai ‘pocket’; the actual transport of assistance was heavily burdensome; the quantity and type of assistance being transported was far below requirements; and there was a lack of UN oversight for the distribution of what limited assistance did get through. Meetings of the IDP Protection Working Group on 8 and 11 December show concern among staff over “the balancing of assistance needs with adherence to protection principles” and over the lack of information on the situation.<sup>47</sup>

45. The Government continued to insist that there were no more than 70,000 people in the Wannai. According to the most credible information available, the actual number was at least 360,000 (see Annex II). The UN believed there to be about 350,000, but did much of its assistance planning on the basis of a figure of 200,000 beneficiaries. Using WFP calculations of nutritional measurements per person, the total food needed for the period October to December alone was 10,350 metric tons for the beneficiary planning figure of 200,000, and 18,630 metric tons for the actual population of 360,000. Between 2 October 2008 and 15 December 2008 a combined 4,120 metric tons of food were dispatched to the Wannai by the UN, about 40% of the requirements for the planning figure and just under 20% of the requirements for the actual population numbers.

46. The food shortfall was further compounded by several factors: food reserves were already low because assistance for most of 2008 had been well below needs and in September there was no delivery at all; Staff reported that UN food in storage within the Wannai was looted when the UN relocated staff out of the region; the UN was unable to monitor distribution beyond the off-loading of food to the GA in the Wannai; by early 2009 most IDPs had already been displaced several times making it difficult for families to transport personal food stocks and requiring them to re-register as an IDP after each displacement before receiving assistance, a process that could take days; and, according to one estimate, the LTTE may have taken up to 20% of assistance that reached the Wannai.<sup>48</sup> WFP explained that organizing convoys more frequently, such as twice a week, was unrealistic due to the heavy security clearance procedures for each convoy. Instead, WFP tried to increase the number of trucks per convoy.<sup>49</sup> ICRC delivered some food by ship, and WFP would later also deliver a small amount of assistance in this way.

47. The Government gives a substantially different account of the food situation. In its June 2011 report “Sri Lanka’s humanitarian effort”, it states: “During the period January 2008 to early May 2009, 58,393 metric tons of essential items were sent to Killinochchi and Mullaithivu districts alone. This was in addition to the excess paddy available in the districts, the buffer stocks maintained on location and 33,383 metric tons supplied to co-operative outlets during

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<sup>47</sup> Minutes of IDP Protection Working Group meeting.

<sup>48</sup> Proceedings of public sittings of the Commission of Inquiry on Lessons Learnt and Reconciliation, 4 November 2010, statement of the former Government Agent for Mullaithivu, page 7.

<sup>49</sup> Minutes of Logistics cluster meeting in Vavuniya 6 October 2008.

2008 up to January 2009 ... When the population in Killinochchi was forced by the LTTE to move with their cadres towards Mullaithivu in January 2009, the buffer stocks of food in Killinochchi district was transported and handed over to GA Mullaithivu to be distributed to the civilians. The buffer stocks were adequate for a period of three months. At the conclusions of military operations in May 2009, excess stocks of paddy were found in warehouses in Mullaithivu and Killinochchi as reported by the Commissioner of Co-operative Development in the Northern Province ... As the conflict escalated the government made the delivery of food to un-cleared areas its top priority.”<sup>50</sup> The report also states that the Government delivered an additional 3,150 metric tons of food by sea after road convoys were no longer possible. However, UN entities informed the Panel that during the conflict, other than the deliveries in UN convoys, they had very little reliable information on assistance being delivered directly by the Government, and multiple testimonies indicates that the shortages of food and medicines were so acute that they led to many deaths.

48. In addition to food, there was also an urgent need for shelter materials and medicines, particularly after the October start of the monsoon. The process of providing the goods included on convoys began with a UN inter-agency discussion followed by the UN’s submission of a list of priority goods to the Government for approval. The list typically went beyond the actual capacity of the convoy. The Government would then select its own priorities from within the list, and would reject certain items arguing they could be used by the LTTE. The RC said “it was beyond my imagination how some of [the items excluded] could be used for alternative or military purposes.” Several staff expressed concern that there was competition among UN agencies to include their own material and staff on convoys.<sup>51</sup> There were complaints from NGOs that as a means to maintain Agency visibility some UN convoys included non-essential items – in one instance cricket bats – at a time when there were severe food shortages.

49. An inter-agency humanitarian assessment team accompanied Convoy 9, from 28 to 29 December 2008 and met with authorities, IDPs and national staff in PTK and Tharmapuram. The assessment report noted growing protection concerns and displacement, heavy rains and flooding, a lack of food, and inadequate shelter and sanitation. The assessment was also recorded as saying: “systematic reporting and verification of protection issues [is] virtually impossible.” The assessment found that half the people treated as inpatients in PTK hospital were admitted for war wounds. Recommendations included renewed lobbying for the LTTE to release UN and NGO staff and families, freedom of movement of IDPs, and inclusion of protection staff in each convoy. Once again there was no mention in the report of the killing of civilians through shelling or of obstacles to humanitarian access.<sup>52</sup>

50. From October to December, the RC sent a series of letters to the Government regarding the convoys, writing variously to the Minister of Defence, the Chief of Defence staff, the Deputy Secretary to the Treasury and Commissioner General of Essential Services, and to the Minister for Disaster Management and Human Rights (see Annex III.B.3.b, below).

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<sup>50</sup> Government of Sri Lanka’s June 2011 report “Sri Lanka’s Humanitarian effort”, the Government (Executive Summary pp 4 and 5).

<sup>51</sup> Interview in 2011 with the OHCHR Documentation Project.

<sup>52</sup> Minutes of the IDP Protection Working Group meeting of 8 January 2009 record a de-briefing of the findings of the assessment mission.



*c. The 11<sup>th</sup> and last convoy – staff and civilians under fire*

51. On 2 January 2009, the Government captured Killinochchi. From the first days of the New Year, the UN in Colombo was receiving increasing reports from the Wannu of the death and injury of civilians.<sup>53</sup> Reports came from a variety of sources, including UN national staff, NGO national staff, Government medical and administrative personnel, and community leaders such as religious figures. A UN staff member who had travelled into the Wannu on several convoys said “I was disturbed by what I saw at the hospitals in the Wannu and on my return [to Vavuniya] I went to the [Security Forces HQ]. I spoke directly with [the SLA commanding Officer], and I informed him of the high number of civilians including women, children and elderly folk who had been killed and wounded by artillery fire.”<sup>54</sup>

52. On 15 January, the Government captured the rest of Jaffna peninsula. Despite an increasingly serious security situation, the UN took the decision to proceed with preparations to organize its 11<sup>th</sup> convoy. On 16 January, Convoy 11 entered the Wannu and travelled to PTK. The convoy included 58 trucks with food, accompanied by five 4x4 light vehicles with long-distance radios. In addition to the truck drivers, there were six international staff and five national staff. The convoy’s movement into the Wannu followed clearance from Security Forces and the LTTE. It had pre-approval to return the following day.<sup>55</sup>

53. The trip to PTK took an uneventful several hours and the convoy reached the UN’s hub and off-loaded goods without problem. On the morning of 17 January, however, the SLA did not give approval for the convoy to leave PTK, apparently because of ongoing military operations. That night there was shelling close to the hub. The convoy leader organized construction of a temporary bunker for staff made of logs and empty oil drums in the middle of the hub, with four of the trucks forming a square around the outside of the bunker. On the mornings of 18 and 19 January there was again no Government approval for a departure from PTK. Shelling was reported across heavily populated areas of the Wannu, including PTK. Various UN and NGO staff still in the Wannu were using SMS messaging to provide the UN with information on the situation across numerous locations: 15 January 9.32PM: “6 injured closer to AGA office in Ptk, 1 km from ICRC. More than 40 injured at market area and Thodiyady in Visuvamadu.” 16 January 5.55PM: “Situation getting worse. SLA advancing from both sides. Heavy shelling lots of casualties.” 17 January 8.45PM: “5 dead in Visuvamadu, 21 injured by shelling. 18 January 7.31PM: “Heavy shelling in Visuvamadu area. 9 dead, 40 injured.” 19 January 02.36PM: “Heavy shelling in Thevipuram & Valipunam.

*i. Failure of efforts to evacuate national staff – Convoy 11 splits*

54. In the PTK hub on 18 January, the convoy leader was deeply concerned for the safety of national staff and their dependents. “Around 11am I came to the conclusion that this was the last

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<sup>53</sup> For example, the IDP Protection Working Group meeting of 22 January 2009 noted, without details, that reports of civilian casualties were rising.

<sup>54</sup> Statement given to the Panel of Experts.

<sup>55</sup> Details on convoy 11 have been gathered from a variety of sources including UN logistical, security and humanitarian actors and reporting.

opportunity for me to do something for the national staff and dependents ... I was pretty much sure that there will be no convoy 12.” The convoy leader decided that: “The only way to do it was to try to unite them all in a common place under UN identity and create enough pressure on LTTE to release them.”<sup>56</sup> He called the Designated Official and received support for the idea. Despite considerable opposition from international staff travelling with the convoy, some of whom argued the food convoy was not intended to evacuate people, there was eventually agreement to try. Those resisting the most were international contractors who deemed that the evacuation of national staff put them at risk and went beyond their contractual obligations. Facing considerable danger, a number of national staff left the hub by bicycle and motorbike to travel to nearby areas to contact remaining staff and let them know of the evacuation plan. Staff and dependents began arriving the following morning.<sup>57</sup>

55. For the next two days the convoy leader tried unsuccessfully to contact the LTTE Political Wing to seek permission for staff and dependents to leave. He became convinced the Political Wing was deliberately avoiding a meeting. On 20 January, the RC sent a letter to the Secretary to the Ministry of Foreign Affairs complaining that Government forces had not given approval for the convoy to depart. The letter said “ ... on the basis of clearance from Sri Lanka forces ... we sent a convoy to [PTK] on Friday 16 January ... We followed the standard procedure and itinerary which is to depart as early as possible upon clearance of the Sri Lankan forces in the Wannu, and to offload the food in the afternoon/evening and to return the first thing the next morning with assurance of safe passage from the Sri Lankan forces for both directions. However on Saturday morning the Sri Lankan forces said they could not give us clearance to travel from PTK back to Vavuniya. Since then we have had indications that we could travel out each day, but so far this has not happened ... We have been in regular contact with the SF Wannu commander and his staff with whom we have worked well and a number of government officials and ministers and conveyed our request for safe passage ... We require the same facilitation of safe passage this time, which has been provided regularly since October ... We call on the Government for all assistance to permit the travel of our staff and vehicles from PTK to Vavuniya. Your assistance in this regard is highly appreciated by the United Nations.”

56. During the evening of 21 January the Convoy was told that Government forces had approved its departure the next day. However, the UN had still not been able to locate a senior LTTE Political Wing official who could provide clearance for the departure of national staff and dependents. The UN staff on site decided to try and proceed with an evacuation without informing the LTTE. During the night of 21 January, under cover of darkness, the national staff and dependents climbed into five trucks. At about 09.00 on 22 January, the convoy lined up along the road outside the PTK hub and the trucks carrying national staff and dependents were positioned in the middle of the convoy – when previous convoys had left the Wannu, the LTTE usually checked only the first few vehicles. This time, however, the LTTE was apparently suspicious and checked every vehicle. After each one was cleared it would move a hundred metres or so beyond the LTTE checkpoint into no-man’s land and then wait for the others to clear the checkpoint. When the LTTE reached the trucks with national staff and dependents they ordered everyone out. The convoy leader told them to stay inside. He then drove again into PTK in a further unsuccessful attempt to locate an official in the LTTE Political Wing who could

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<sup>56</sup> Statements by UN staff to the Panel of Experts and the Panel.

<sup>57</sup> Interviews of UN staff with the Panel of Experts and the Panel.

provide clearance for the staff and dependents to leave. When he returned he “took a desperate move to take the Lorries through the LTTE check post and asked our drivers to move towards the no man’s land passing through the PTK junction. At this stage, the check post commander shouted for more support and a group of armed men, armed with automatic weapons and rocket launchers surrounded us.”

57. During the stand-off, the convoy was in Satphone contact with the RC/DO and some UNCT members in Colombo. The decision was taken in Colombo that the convoy should leave PTK without the staff and dependents. The convoy leader was asked to stay behind with the national staff. While this discussion was taking place, the half of the convoy that had already passed the checkpoint, and had been waiting in no-man’s land, began to depart. The rear half of the convoy was stationary, including one light vehicle with three international staff inside. The convoy leader was standing on the road next to the vehicles. The UNOPS international staff member volunteered to remain behind with the convoy leader in PTK. UN Colombo agreed that seven trucks should also remain, as well as a second light vehicle (in addition to the convoy leader’s vehicle), so that the convoy leader and the UNOPS international staff member would have two vehicles with long-range radios. Accordingly, one international staff member was asked to leave behind the 4x4 vehicle he was driving and to get into one of the trucks in the now departing convoy. However, he refused to do so, threw out from the vehicle the personal effects of the UNOPS staff member who had volunteered to stay and drove away following the trucks. The remaining UN national and international staff were left with just one light vehicle with a long-range radio. The convoy leader said “There was a calm all around with so many armed people deployed. Suddenly I felt that this move has failed and the hard days are ahead . . . I stayed at the junction until 1130 and then instructed all to fall back to the PTK hub. When we all returned back to the hub. I could see in the face of all staff and dependents a fear and confusion.” There were 17 national staff and 86 dependents, as well as the two international staff.

*ii. Remnants of convoy 11 under heavy fire in the No-fire Zone*

58. On 21 January the Government unilaterally declared a 32 square-kilometre No-fire Zone (NFZ), about 5 km north-west of PTK, between the A35 highway and the Chalai Lagoon.

59. Upon learning on 22 January, that parts of the convoy had remained behind in PTK, the Government informed the UN that the UN staff had to leave PTK the following day – apparently because of ongoing Government military offensive action. The Government instructed the UN that staff should go to Udayarkaddu, situated inside the new NFZ. The staff worked throughout the night of 22 January to dismantle prefabricated portable buildings, communications equipment and stores. The UN continued to receive information on the shelling of civilians across the area. SMS message from 22 January: 9.49PM: “According to Ptk hospital staff, today 40 civilians killed and 188 met serious injuries in shelling that took place in Thevipuram, Udayarkaddu and Moonkilaru villages. The Vallipunam Hospital was shelled by Government forces injuring many.”

60. At 10.00 on the morning of 23 January the convoy of seven trucks and one light vehicle, carrying staff, dependents, food and equipment took an hour to drive along the A35 road, from PTK to Udayarkaddu, which was littered with dead animals and damaged infrastructure. They

planned to set up a camp within the grounds of the Government Agent Food Distribution Centre. Illustrating the number of civilians in the Wannu, when the convoy arrived “it was almost impossible to enter as the (area) was so chaotic that our vehicles were moving inch by inch.” They selected a site about 100 metres north of the A35 road and began to construct bunkers for staff and dependents. GPS coordinates of the site and perimeter, with a 200 meter buffer between the site and the perimeter were sent to UNDSS, which transmitted them to the Government. The location was also marked by the UN trucks and one light vehicle, all white with “UN” on their sides and roofs. A UN flag was hoisted. Staff said Unmanned Aerial Vehicles could be seen flying and noted “the UN-character of the location must have been very clear.”<sup>58</sup> Seeing the UN presence hundreds of civilians set up tarpaulin shelters within the buffer zone.

61. Shortly after arriving, the staff heard “outgoing artillery & mortar fire ... within 1000m of our position” which they presumed to be from the LTTE. Then, between 14.00 and 16.00 “A number of shells fired from [Government lines] landed along & north of the A35 within the [NFZ]. A shell landing 200m away on the A35 kills 2 & injures 11. A shell landing 60m away in the junction kills 17 & injures 21. A shell landing 400m away just north of the A35 kills 4 & injures 9” Between 22.00 and 22.30: “7 shells landed in our immediate vicinity killing a large number of people. One staff dependent was hit in the head with shrapnel.” Work on the bunkers progressed, only more slowly due to continued interruptions from incoming fire.<sup>59</sup>

62. On 24 January, from about 02.40 onward, staff in the convoy reported heavy shelling from Government forces.<sup>60</sup> One staff member said there was a huge bang “I went deaf. Something fell right in front of the entrance of the bunker. I looked through the air ventilation of the bunker and saw a total devastation of the blast area of 130 mm medium shell.” Another staff member said “03.00-04.00...shells fired from the SE landed in our immediate vicinity killing at least 2 families 8m from our bunker, 7 dead 15 injured. The decapitated body of the 18yr old daughter we had spoken to earlier in the evening landed at the entrance to our bunker. One WFP driver was hit in the back of the head with shrapnel ... The scene at first light was devastating; within 20m of our location lay 7 dead & 15 seriously injured. 1 dead infant was in a tree under which the family had sheltered and the 2<sup>nd</sup> decapitated infant was hanging from the wire perimeter fence along the Udaiyaarkaddu Suthanthirapuram Junction.” The single light vehicle “was covered with blood and human body parts all over.” The convoy leader said “fear of certain death was creeping in to all our staff and dependents.” Reports began to emerge of deaths and injuries from other areas of the GA Food Distribution Center and surrounding areas. Staff reported, from 17.00-24.00, “[v]ery heavy incoming artillery during the evening prompted [us] to move the dependents from the lorries into the partially completed bunkers. By 10.00pm a virtual uninterrupted barrage of 130mm artillery was landing within the GA compound or in the surrounding suburbs ... Continuous calls to UNDSS Vavuniya & Colombo had no effect on the intensity of the incoming artillery barrage.”<sup>61</sup>

### *iii. The convoy escapes to Killinochchi*

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<sup>58</sup> Interviews of UN staff with the Panel.

<sup>59</sup> Interviews of UN staff with the Panel of Experts and the Panel.

<sup>60</sup> Statements provided by staff to the Panel of Experts, the OHCHR Documentation Project and the Panel.

<sup>61</sup> Statements provided by several staff to the Panel of Experts, the OHCHR Documentation Project and the Panel, with supporting photographs.

63. On 25 January “The work was going on in full swing in the middle of shells landing all around our location. At approximately 01.30 am the bunkers were completed.”, “00.00-06.00 hrs [s]ustained & virtual uninterrupted barrage of incoming 130mm artillery from the South & SE onto our precise location at an average rate of over 3 shells per minute. Most shells landing within 500m and many within 20m.” “With some shells I can hear screams and shouting for a while confirming deaths and injuring at a near distance.” Another staff member with the convoy sent SMS messages. 04.22AM: “Urgent urgent they are shelling next to us, many injured in the land where we are living, no idea of what will happen next.” 07.51AM: “It happened in the area allocated for the UN. 8 killed inside, [Staff 1] & [Staff 2] narrowly escaped in the bunker. Lots of injuries, we did not get out from our trucks.”<sup>62</sup>

64. The convoy leader was in continuous contact with DSS: “The situation is not acceptable at all. I start contacting [UNDSS-Vavuniya] to approach the SLA for not targeting the area as the GPS locations are given ... At 7 am I insisted [to UNDSS Vavuniya] that we need to extricate or else we will not survive the next onslaught of shelling. I insist for a safe corridor and go back to PTK or anywhere north towards the coastal area where the battle front will not reach within next few weeks. [DSS] came back to me with two options saying that two internationals, meaning me and [the UNOPS staff member] should leave by the single Light Vehicle back to PTK or the second option to take all with us ... I spoke to [UNDSS] again and made it very clear that the first option is not an option ... Rather I would like to move all together given a safe corridor to another location safer than this ...” “Finally, at 11.30 am [UNDSS] called and told me that we have safe passage from 1130 to 1 pm. I saw my watch and found that I was losing every minute of the safe passage. I quickly organized the entire group in five subgroups and allocated commanders. Gave clear instructions to run in a group and board the allocated lorry on my order, all small infants and children to be carried by able males and run through the field to the road. The field by then because of the rain was totally wet and slushy. I allocated drivers to all 7 lorries and instructed them to take them on the road. All but two could not be moved because of the soft wet ground and I gave instruction to leave them without wasting time as the shelling was still going on in spite of the safe passage agreement.” The five mobile trucks and one light vehicle drove out of the NFZ at Uddayarkaddu and proceeded eastward back along the A35 route they had taken two days earlier, back to PTK. “The road was completely without any vehicle but there were lots of vehicles destroyed burning on the road with lots of dead ... civilian bodies lying on the side of the road as well. They were killed by shelling. Lots of trees were hit and broken due to shelling ... Dead bodies and animals were lying all along the road up to Kaiveli.”<sup>63</sup>

65. When the UN staff and dependents arrived at PTK hospital after a drive of about 45 minutes, they found the hospital crowded with injured: “16.00-22.00, patients are stacked in every conceivable space, under tables, in hallways, outside, in the driveways. Most have serious to very serious injuries and a number have extensive burns. New patients with horrific injuries continue to arrive ...” That night there was “Very heavy shelling going on; we didn’t sleep over the night but no shells in our hub but there was shelling in the same village.”<sup>64</sup> The staff reported

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<sup>62</sup> Statements provided by several staff to the Panel of Experts, the OHCHR Documentation Project and the Panel.

<sup>63</sup> Statements provided by several staff to the Panel of Experts, the OHCHR Documentation Project and the Panel.

<sup>64</sup> Excerpts from statements provided by several UN staff to the Panel of Experts, the OHCHR Documentation Project and the Internal Review Panel, with supporting photographs.

that additional patients continued to arrive at PTK hospital over the following days including large numbers of women and children missing limbs and with extensive burns and “horrific injuries”. Shelling began to land within 1km of the hospital and staff dug new bunkers. Civilians had gathered around the building hoping it would be safer.

66. On 26 January, the RC wrote to the Government raising the events of the previous days. The letter described a selection of the artillery strikes and deaths and injuries closest to UN personnel and said “In all instances the shelling originated from government lines. In close communication with Sri Lankan forces the fire was halted or shifted further away from our location. While recognizing this fire is reportedly in response to outgoing LTTE fire, we had shifted to this location in close consultation with the Sri Lankan forces ...” The letter requested additional efforts by the Government to secure the release of staff and dependents, and said: “We also reiterate our request that all efforts be made to minimize civilian casualties ... We recognize the LTTE bears responsibility for this as they have not permitted civilians the choice of departing and likely have fired from areas in the no-fire zone. However thousands of civilians moved into the no-fire zone, on the understanding the Government forces would not fire in these areas, and that it would be an area safe from any offensive at this stage ...” The letter was addressed to the Chief of Protocol, Ministry of Foreign Affairs. A second letter that day informed the Chief of Protocol that the convoy was now in PTK.

67. On 29 January, the two international staff who had accompanied Convoy 11 were able to leave the Wannai and return to Colombo. National staff and dependents had to remain. Staff reported that during this period, PTK hospital was hit by shelling and many of the civilians, including the injured, left the hospital and its surroundings because of their security concerns.

68. The 11<sup>th</sup> Convoy was the last UN humanitarian assistance convoy by road into the Wannai. The UN tried to deliver assistance by ship: in a 3 April statement WFP noted “WFP, with the support of the Government, has dispatched a total of 2,219 metric tons ... using the sea route.”<sup>65</sup>

### **3. 1 February-16 April 2009: Situation becomes catastrophic as UN equivocates**

69. After the 22 January 2009 creation of the first NFZ, President Rajapaksa announced on 30 January 2009 safe passage for all civilians. The announcement was welcomed by the UN in NYHQ through a statement attributable to the Secretary-General. On 2 February, a Ministry of Defence statement said: “While the Security Forces accept all responsibility to ensure the safety and protection of civilians in the Safety Zones, they are unable to give such an assurance to those who remain outside these zones. Therefore, the government ... urges all civilians to come to the Safety Zones<sup>66</sup>. However, shelling of civilians continued with growing intensity in subsequent weeks. OCHA Sitreps<sup>67</sup> noted there were in fact no safe areas for civilians. Pursuant to OCHA’s mandate, the Sitreps focused usefully on the humanitarian situation. They were not intended to

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<sup>65</sup> <http://www.wfp.org/stories/wfp-dispatches-food-sri-lankan-safe-zone>

<sup>66</sup> Accessed 3 August 2012 [http://www.defence.lk/new.asp?fname=20090203\\_08](http://www.defence.lk/new.asp?fname=20090203_08)

<sup>67</sup> For example, OCHA Sitreps of 6, 9 and 10 February 2009.

address issues of human rights violations during attacks or breaches of humanitarian law, and they did not address the sources or legality of shelling.

70. On 12 February, the SLA declared a new 10 square-kilometre NFZ, north-west of Mullaithivu town.

71. Staff from international organizations still present in the first NFZ continued to send text messages on the situation, in addition to phone calls, based on their own direct observations or on credible information from other sources. 3 February, 3.26PM: “Intense shell towards & around us. Hosp theatre shelled 2 victims. 58 people killed & 43 injured at Suthanthirapuram.” 4 February 4.33AM: “Ptk hospital being vacated, heavy shelling for about 16 hrs we are in trenches.” 7 February 01.46PM: “4 killed and several injured in shelling attacks occurred close to our location nearly 300 meters from here. Pls ask SLA to stop shelling here, we’re under risk.” 01.58PM: “Yes, my current location is Phutumattalam, in front of temp hospital. ... all people are scared; pls ask SLA stop stop stop shelling.” 9 February 6.51PM: “Many shells landed in our ground, we’re in life threat. 08.03PM “Shelling started again and we narrowly escaped, pls make sure not shelling here.” 10.19PM: “3 security incidents today. 1st in Pokkanai, aerial bombardments 3 civilians killed 5 injured. 2nd reported from Thevipuram areas 7 killed 12 injured ... 3rd in Mathalam (our area), 16 killed 49 injured. 11 February 10.03PM: “According to hospital, 34 civilians killed and 46 injured by shelling today in 2 places. In Thevipuram 19 killed, in Vallipunam 15 killed. Totally 15 children killed in both incidents.” 14 February 21.22PM: “Today score: 14 killed in a kfir [F-21 fighter-bomber aircraft] attack in areas close to Ptk hospital. 36 killed, 84 injured by shelling in Thevipuram and Vallipunam. 4 elders killed in a home by shelling.”

72. It was apparent to the UN that the conflict was now rapidly moving towards a military defeat of the LTTE. On 3 February, the Sri Lanka Co-Chairs Group called on the LTTE to negotiate its surrender; the overture was rebuffed by the LTTE’s leadership, but the UN nevertheless began preparing a proposal for a possible LTTE surrender, although this was ultimately not used.<sup>68</sup> A flurry of activity ensued in UNHQ, including a series of senior policy and strategy meetings – the IAWG-SL on 19 January and 13 February, ECHA on 10 March and the Policy Committee on 12 March – as well as calls by the Secretary-General to the President of Sri Lanka. In Colombo, members of the diplomatic community requested briefings from the UNCT, and the RC took up a series of issues in writing with the Government.

73. Meanwhile, the shelling and killing of civilians witnessed and documented by the two UN international staff who had remained with Convoy 11 in the Wanni throughout the second half of January, confronted the UNCT with incontrovertible evidence of the events that other sources were also reporting. The UN had not been monitoring and reporting on such incidents in any systematic manner. The testimony from the Wanni prompted the UN to establish a Crisis Operations group to compile and verify such information (see Annex V for a more detailed description of UN monitoring and reporting on violations).

*a. Fundamental disagreements in UNHQ on strategy and responsibilities*

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<sup>68</sup> According to a senior source within the Co-Chairs group, and interviews of the Panel with UN staff.

74. On 19 January, while Convoy 11 was still in its first few days of being trapped in the Wanni, an IAWG-SL meeting opened with a discussion on “the likelihood of a humanitarian disaster if the civilians increasingly caught up in the middle of the fighting were not moved to safer locations.” The RC suggested a senior UNCT member could talk to the LTTE regarding the evacuation of civilians from the Wanni. The UN had been preparing a joint letter to the Government from heads of several UN departments and agencies raising concern over the situation; the hope was to use their combined weight to advocate for the protection of civilians and humanitarian action. However, during the time needed to circulate the draft across the various UN entities involved, to make changes and redistribute the new draft, the situation had evolved and participants agreed the letter needed updating. DPA recalled the need for a “viable political framework” and common situation analysis and coordination among UN agencies. Participants discussed alternatives, other than road convoys, for delivering assistance.

75. The return of international staff from Convoy 11 coincided with and prompted growing international media focus on the situation. Internally, their eye witness statements prompted several Colombo staff to determine that they had to try and collate the incidents viewed by the Convoy 11 staff and others being reported into a format that could be analysed and used to address the situation. There was also a concern to keep a track of the situation of the UN national staff and dependents still in the Wanni. The initiative of these staff led the UNCT to formally establish the UN Crisis Operation Group (COG), composed of representatives from several UN organizations. The COG defined a rigorous methodology for collecting and verifying information on civilian casualties using multiple independent sources for each individual death or injury reported. The COG would consider a casualty report as ‘verified’ only when it had been corroborated by three independent sources. The first compilation was ready in the first few days of February.<sup>69</sup>

76. The Secretary-General spoke on the telephone with President Rajapaksa on 5 February. The same day a senior DPA staff member arrived in Sri Lanka for a three-day visit with the objectives of assessing the possibility of averting large-scale civilian casualties, bringing a rapid end to the fighting, and supporting long-term stabilization and rehabilitation.<sup>70</sup> He arrived just as the newly collated data on casualty figures were being discussed and “was very seized by the information as it came out, saying that it was very serious and that we would be complicit if we do not act on it.”<sup>71</sup> The staff member’s 9 February mission report<sup>72</sup> to the USG-DPA said “Estimates by UN agencies based on *reliable* [emphasis added] first-hand information, but not yet made public, suggest that at least 5,000 civilians, many of them young children, have been killed and injured ... [including] at least 1000 civilians ... killed and almost 3,000 injured during the period 20 January–5 February alone ... [T]here is ample evidence of shelling by both Government forces and the LTTE into areas of civilian concentration including the no-fire zone ...” The report’s recommendations focused on political solutions and the immediate development of a UN “system-wide strategy based on a shared analysis.”

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<sup>69</sup> Annex V.C provides additional details on the Crisis Operations Group.

<sup>70</sup> Mission report of visit to Sri Lanka of a senior DPA staff, 9 February 2009.

<sup>71</sup> Interview with UN staff member involved in the data collection in Colombo.

<sup>72</sup> Internal report on 5-8 February 2009 mission to Sri Lanka, dated 9 February 2009.



77. Meanwhile, within the UNCT there was discussion on what to do with the casualty data. The RC sent a letter to the Minister of Foreign Affairs on 7 February. The letter stated “We recognize that throughout the military campaign during 2008 the level of civilian casualties was minimal, especially considering the scale of the military operation. This was in large part due to the actions and caution of the Sri Lankan forces. However since the first week of January, despite the best efforts, there has been a rapid increase in civilian casualties as the areas within which they are concentrated shrinks, and we have raised our concerns to the Government of Sri Lanka both publicly and privately in this regard. We have also highlighted publicly a number of times the grave responsibility the LTTE has for this terrible situation ... [T]he United Nations in Sri Lanka estimates that the minimum figure of civilians killed and injured inside the Wannu pocket between 20 January and 5 February is 3700, and of this total, more than one thousand civilians have died. Furthermore of this number, we estimate that at least 750 children under the age of 15 have been killed or wounded. There is a high probability that fire from both LTTE and Government positions has led to these civilian casualties, based on documented evidence by UN international staff, as well as other sources. Furthermore, we estimate that in the 10 days following the 5 February, a further 500-700 civilians are likely to die, regardless of whether the fighting halts immediately. This is due to the current caseload of seriously wounded; very limited humanitarian access; the scarcity of food and clean water; the decline in the capacity of medical facilities; the scarcity of medical equipment and drugs; and the difficulty and sometimes unwillingness of civilians wounded to attend hospitals due to shelling that has occurred of those facilities and ambulances, as well as the shelling of roads, the lack of transport, distance; and poor sanitation and crowding. Given the seriousness of the above, the UN believes that humanitarian concerns must now be given immediate and absolute priority in order to mitigate the further loss of life among the civilians trapped by fighting ... the United Nations shares in the Government’s serious concerns for the welfare of these people. We are also aware the Government is taking action to prevent the worsening of the situation and we hope by sharing these estimates with you now rather than more widely, it will help those efforts to be successful. Therefore over the next days we plan to refer to the concerns, as raised by the Secretary General without raising the specifics outlined in this letter. We will strongly reiterate the call to the LTTE to give people the choice to leave – a choice they have yet to give except a few.”

78. In immediate follow-up to the letter, on 8 February, the RC and the heads of three UNCT entities met with the Minister of Foreign Affairs and other Government officials in what was described as a tense meeting. The premise of the UN’s argument in the meeting was that there were many civilian casualties from the fighting, while the Government rejected the data and told the UN to review its methodology for compiling the data. The Government’s harsh reaction to even the suggestion that there were civilian casualties led the UN in Colombo to limit the sharing of information on the casualties. International journalists who had travelled to Sri Lanka left and the UN stopped receiving calls for information from abroad.<sup>73</sup>

79. On 13 February the IAWG-SL met again in UNHQ. The RC, participating by telephone, said “an estimated 30,000 civilians had left the Wannu, 300,000 had moved to the newly designated NFZ on the northern coast, and others remained trapped in western parts of Mullaithivu.” Participants at the meeting were told there had been no relief supplies since 29

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<sup>73</sup> Interview of the Panel with UN staff member involved in the UN’s media response in Colombo,

January and that the Government was unresponsive to appeals to slow down military operations to facilitate delivery of relief aid. The RC estimated the numbers of persons killed could be as high as 3,000 between 20 January and 10 February alone. The EOSG asked “whether stronger public statements by the Secretary-General would be helpful or rather counter-productive given the Government’s sensitivities ....” The RC “... warned that publication of figures on the mounting civilian casualties could incite adverse reactions from extremist elements” and “highlighted the need to convey messages through appropriate channels without going overboard.” In contrast, OHCHR said “recent ... international appeals had indeed influenced the Government in a positive direction and stressed that such statements needed to be reinforced.” DPA suggested the IAWG-SL develop a strategy on the short-term situation including: “speedy and orderly end to the fighting; treatment of IDPs in compliance with international standards; a political solution for long-standing grievances”; “an immediate high-level visit to Sri Lanka by a senior envoy/official”; and, in the absence of a Co-Chairs mechanism in New York, coordination with individual members, and India. OHCHR highlighted the need for “a broader accountability process” and “expressed a preference for the designation of an envoy for Sri Lanka to engage on all aspects of the current situation rather than a one-off visit by a senior Secretariat official.” The RC “warned that the designation of a UN envoy could “incite adverse reactions as this could potentially be seen as undermining Sri Lanka’s international standing.”<sup>74</sup>


80. Three weeks later, ECHA<sup>75</sup> also met in UNHQ and was presented with very different population estimates of “up to” 200,000 civilians in the Wannu, and 36,000 IDPs in Vavuniya. Participants noted that, despite Government assurances to the ERC in February, “it appeared that heavy artillery continued to be deployed ... by both sides” while the Government had also not addressed UN concerns on IDP registration data, restrictions on freedom of movement, and militarization of camps. The meeting’s Action Points included: a call for parties to respect international humanitarian law; a call for a temporary suspension of hostilities to allow civilians to leave; advocacy for humanitarian convoys; respect for international standards regarding IDPs; UNCT coordination; donor support for the newly launched CHAP 2009; and the safety of relief workers and their families. The Chair suggested that the RSG on the Human Rights of Internally Displaced Persons, conduct a mission to Sri Lanka.

*Policy Committee meeting of 12 March and the OHCHR public statement*

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<sup>74</sup> Minutes of the 13 February 2009 meeting of the IAWG-SL.

<sup>75</sup> ECHA meeting of 10 March 2009.



82. On 14 March 2009 OHCHR released a statement that expressed the “growing alarm” of the High Commissioner “at the increasing number of civilians reported killed and injured in the conflict ... Certain actions being undertaken by the Sri Lankan military and by the LTTE may constitute international crimes, entailing individual responsibility, including for war crimes and crimes against humanity” and pointing out that “Despite the Government’s designation of safe – or ‘no-fire’ -- zones for civilians, repeated shelling has continued inside those zones, including from Sri Lankan army positions, ...[C]redible sources have indicated that more than 2,800 civilians have been killed and 7,500 injured since 20 January, many of them inside the no-fire zones ... [T]here are legitimate fears that the loss of life may reach catastrophic levels if the fighting continues in this way ... More civilians have been killed in Sri Lanka in the past seven weeks, than in Afghanistan during the whole of last year ...” The statement ended with a call for an immediate suspension of hostilities to allow evacuation of civilians, and for full UN access for humanitarian and human rights assessments. The statement was by far the strongest UN language on the situation throughout the conflict. The figures quoted were based on the COG’s verified casualties, and were in fact well below the actual casualty numbers.

83. The day before the statement was released, early on 13 March, the Deputy High Commissioner, in Geneva, sent the document to the Secretary-General’s Chef de Cabinet, in UNHQ, explaining that the High Commissioner had cleared the statement and it would be released the next day. The Chef de Cabinet sent a reply during the night of 12 to 13 March (GMT-5) to the High Commissioner: “... my ensuing comments are not intended to ... question the clear role you need to play as an independent voice of the human rights community ... [H]owever, I perceive that the severity of the draft statement you propose to make is likely to have very serious political and legal repercussions for the rest of us and I hope you can consider carefully this fact while finalizing your statement ... [redacted] the [RC/HC] as well as [the USG-Humanitarian Affairs] of OCHA underlined the fact that the accuracy of figures remains still quite questionable ... By getting on the record with these figures I feel we are getting into difficult terrain ... It would have been better to be a little more general or tentative about the figures. Also by making direct mention that actions by the Sri Lanka military may constitute war crimes or crimes against humanity, we are opening up a new front without having prepared very firm grounds in advance. We are placing the LTTE and SL Government on the same footing ...” The email expresses concern regarding security risks that may arise for the UN and concludes “My point in all this is not to question in any way your undoubted need to sound a strong moral voice on behalf of the international community on the

kind of grave violations of international law that are actually taking place there. But I would strongly implore some dilution of tone and rigour in reference to numbers in your statement.”

84. The Statement was also sent by email to the USG-Humanitarian Affairs, who responded on 13 March stating: “I ... see value in speaking out about what is an increasingly appalling situation. I nevertheless offer some specific comments for [the High Commissioner’s] consideration, in what is a sensitive situation where the risk of counterproductive reaction from the Sri Lankan government is high ... (i) As we discussed, we have ourselves avoided being too specific about the casualty figures because of the difficulty of being able to defend them with confidence in the absence of reliable, verifiable information ... The civilian casualties have certainly been, and continue to be, heavy, but the detailed figures are still hard to be sure about

... [REDACTED]

85. Also on 13 March<sup>76</sup> the RC wrote to the Deputy High Commissioner explaining that he had received the statement from the USG-Humanitarian Affairs as well as the OCHA response. The RC noted his agreement with the points made by the USG-Humanitarian Affairs and said “...we have had close colleagues and friends caught up in the middle of the terrible situation, and in fact this gave the start to our efforts to record the number of casualties, as both national and international staff physically saw and experienced civilians dying from shelling right next to them. In those two days in late January, shelling which we believed was from the government for the first full night and full day and the next morning caused casualties, and then on the afternoon of the second day shelling which we believe was from LTTE position caused more ... [T]he statistics we compiled do give as full a picture of the dimensions and patterns as there are, but they are not exact, and cannot be verified as rigorously as in some other conflict areas ... We also feel there is no proof of a systematic targeting of the civilian population ... [i]t seems to us that the bulk of the civilian casualties have come about as “collateral” damage because population densities are so high, that if one shell hits now in the current “safe zone”, 20-30 people can be killed. However a case can be made that it is – at the least – highly irresponsible to use such heavy weapons near to civilians ... Finally, we feel that the criticism of the LTTE is not strong enough. They have physically and violently stopped people leaving areas under their control ... We have stated there is clear evidence ... of forced recruitment ... Having said all the above, the moral voice of the UN OHCHR is very important ... and a strong and correct statement can move things forward in protecting these poor people and helping them get out of the hellish situation they are in.”

86. The OHCHR statement had also been sent to DPA on 13 March and the department was supportive of its tone, content and timing. The statement was released in Geneva on 14 March without substantive changes. Separately, on 9 March, the Special Adviser to the Secretary-General on the Prevention of Genocide (SAPG) met with the Sri Lanka Permanent Representative and told him that there were “massive civilian casualties” but that he would only express concern in bilateral contacts and not public statements.<sup>77</sup> The SAPG would later reverse this position, sending the Secretary-General two notes that grouped the general human rights

<sup>76</sup> The message was sent on the morning of 14 March in Sri Lanka, but the evening of 13 March in Geneva.

<sup>77</sup> According to notes of the meeting provided by the SAPG’s office.

humanitarian law elements that were known about the situation and seeking, unsuccessfully, the approval of EOSG to release a public statement.

87. Responding to the hesitation among senior staff, OHCHR reviewed the premise of its statement prior to release, and an internal email underlined several points noting: “On January 21, the Sri Lankan armed forces unilaterally declared a 35-square-kilometer ‘safe zone’ for civilians ... [t]he Sri Lankan Air Force dropped leaflets appealing to civilians to move into the safe zone as soon as possible, ... two thirds of those injured and killed ... were ... in the safe zones, [and] the [Government] shelling on safe zones continued even after the government's statement on 24 February that the government would no longer use heavy weapons on the safe zone.”

88. Senior UN staff said the Government was aware of disagreement among the principals on the OHCHR public statement, and the Government later used correspondence from the RC and public statements by the RC and USG-Humanitarian Affairs to refute the OHCHR statement, which lost much of its potential leverage (see “UNCT briefings to the diplomatic community” below).

***b. Resident Coordinator advocacy to Government, UNCT briefings to diplomats, and public statements do not address the Wannu reality in full***

*i. Resident Coordinator advocacy to Government*

89. As the conflict intensified, the RC sent numerous letters to multiple Government actors including the Minister of Defence, the Chief of Defence staff, the Deputy Secretary to the Treasury and Commissioner General of Essential Services, the Minister for Disaster Management and Human Rights, and the Minister of Foreign Affairs. The letters increasingly addressed important concerns in the camps outside the Wannu, but communications also focused on the situation within the conflict zone. The letters combined concern over humanitarian assistance, requests for additional actions by the Government to facilitate humanitarian assistance and monitoring, and criticism of the LTTE.

90. The letters should be recognized as representing a significant effort by the RC, during months of considerable pressure as the UNCT juggled competing responsibilities, to take up grave issues directly with the Government and in writing. However, the letters cover only a tiny proportion of the cases of killings and related incidents reported to the UN. And, in most cases the letters avoid any wording that might be construed as explicitly holding the Government accountable for the events recounted in the letters. Valuable references to international human law were not framed in terms of the specific provisions that were reportedly violated and that would have explicitly attributed responsibility for apparently illegal killings to the Government, including the vital concepts of ‘distinction’, ‘proportionality’ and ‘precautionary measures’. None of the letters make reference to the fact that available information suggested many of the incidents could be war crimes with consequent individual criminal responsibility. The wording of the letters may have made it easier for the UN to sustain working relationships with the authorities at a time when maintaining access was seen as essential to allowing the UN to operate. However, the wording also significantly reduced the impact of the letters which were the

primary channel through which the UN was expressing formal concern regarding specific cases of civilian deaths from both Government and LTTE action.

91. Given the thousands of civilian deaths by Government attacks being reported and the challenging situation of the UN in Colombo, the burden of communicating these cases to the Government could potentially have been carried in part through UNHQ. But, as far as the Panel is aware no effort was made by the RC's hierarchical supervisory chain or by other UNHQ actors to take on this role, to support the RC in framing the UN's responses, or to exercise any oversight for the UN's responses to the reports of killings.

92. On 3 October UN Offices in Killinochchi were damaged during Government aerial bombardment of neighbouring locations. On 8 October, the RC wrote to the additional-Secretary at the Ministry of Foreign Affairs saying: "...United Nations offices in Killinochchi ... [s]pecifically the UNICEF compound, but also the UNDP and UNOPS buildings, suffered substantial collateral damage as a result from the bombing. While we understand that these offices were not the intended target, because substantial amounts have been invested in them, and because we would like to use them again when the security situation permits, to facilitate a smooth resumption of our work, we request that all possible efforts be made to prevent any damage to United Nations Premises in the course of fighting . . ."

93. On 3 December the RC wrote to the Minister for Disaster Management and Human Rights and noted the importance of increasing the humanitarian assistance delivered to the Wanni, raised concern over the impact of rains, and asked that the UN have access to conduct a "detailed assessment" of the assistance needs for civilians in Mullaithivu and Killinochchi and to improve "monitoring" of the distribution of food.

94. In one of the strongest letters from the UN, on 12 December the RC complained to the Government's Chief of Defence staff regarding Government shelling on 9 and 10 December close to a UN convoy for over an hour and despite repeated security assurances being given: the letter provided details of the shelling and specifically stated: "the shelling was delivered by Government forces" and warned that UN staff could have been hit. On 16 December the RC sent a second letter to the Chief of Defence staff complaining of restrictions placed on UN international staff entering the Wanni, including increasingly frequent searches by Government forces and a prohibition to carry cameras or satellite phones. Regarding restrictions on national staff, the letter also acknowledged that the UN had made concessions to the Government, to achieve humanitarian objectives and to satisfy the legitimate security concerns of the Government.

95. A 17 December letter reported two aerial bombardments that hit near the Vaddakachchi hospital, while hundreds of people were waiting at the out-patient department, killing two small children and injuring 13 civilians. The letter recalled the Government's international humanitarian law obligations and urged the "steps to ensure the protection of civilians from the harms of conflict." The letter did not directly state that the aerial bombardments were by Government forces, and it was addressed to "the Ministry of Foreign Affairs", but not to a specific person.

96. On 13 January the RC wrote to the Government regarding “reports of civilian injuries and deaths as a result of shelling and aerial bombardments” citing the killing of four civilians and injury of 18 in Visuvamadu and the killing of one person and injury of six at the Puthukkudirippu Hospital, as well as substantial damage to the hospital. The letter again recalled international humanitarian law obligations but did not explicitly raise Government responsibility for the attacks. The letter was addressed to the Chief of Protocol of the Ministry of Foreign Affairs. The Ministry responded on 15 January “categorically” denying Army involvement. The UN did not provide a rebuttal.

97. On 26 January, the RC wrote to the Government regarding some of the artillery strikes and deaths and injuries of civilians that were witnessed by UN staff on convoy 11, which was still trapped in the Wanni. The letter said “In all instances the shelling originated from government lines. In close communication with Sri Lankan forces the fire was halted or shifted further away from our location. While recognizing this fire is reportedly in response to outgoing LTTE fire, we had shifted to this location in close consultation with the Sri Lankan forces ...” The letter requested additional efforts by the Government to secure the release of staff and dependents, and said “We also reiterate our request that all efforts be made to minimize civilian casualties which have mounted in the last days. We recognize the LTTE bears responsibility for this as they have not permitted civilians the choice of departing and likely have fired from areas in the no-fire zone. However thousands of civilians moved into the no-fire zone, on the understanding the Government forces would not fire in these areas, and that it would be an area safe from any offensive at this stage ...” The letter was again addressed to the Chief of Protocol, Ministry of Foreign Affairs.

98. On 16 February 2009, the RC wrote to the Minister of Foreign Affairs raising concern over the “dire” lack of medicines and food in the Wanni, and asking that the authorities provide clearance for delivering these items through the next ship. The RC wrote to the Foreign Minister again on 11 March thanking him for meeting with the UNCT a few days previously and for promises on food and medicines to be allowed into the Wanni.

99. In a 20 February letter to the Senior Adviser to the President the RC expressed thanks “for all the arrangements with respect to the visit of [USG-Humanitarian Affairs]. In good part because of your active involvement I think it strengthened the constructive partnership between the government and UN agencies ...” A second letter, of 26 February, expressed encouragement after the Government facilitated the transport of WFP food by ship, and, after an international UN staff member was refused permission to accompany the ship and monitor distribution said: “we kindly ask that this policy be reviewed.”

100. On 18 March, the RC wrote to the Chief of Defence staff saying “Myself and my colleagues appreciate greatly the excellent working relationship we have with you and your staff in JOH [Joint Operations Headquarters] and the high level of professionalism you bring to your work. ... [I]t would in our view be better for there to be a temporary suspension of hostilities for humanitarian purposes ... We recognize that in such a circumstance as that now faced in Mullaithivu, protection of civilians is a huge challenge for the Sri Lankan forces, but it is a responsibility I know the Sri Lankan forces have a commitment to continue to make.” At the time that the letter was sent the UN’s Crisis Operations Group had verified nearly three thousand

individual civilian deaths, with reports of thousands more, mostly from Government shelling. Two days before the letter was sent the UN had been copied on a letter from Government doctors in the Wanni to the Ministry of Defence stating that at least 500 and possibly thousands of people had died because the Ministry of Defence was preventing delivery of essential drugs and dressings.

101. The Government's responses to UN letters were few and often focused on rebutting any reference to the killing of civilians. On 13 March, in response to a 10 March letter from the USG-Humanitarian Affairs to President Rajapaksa, the Minister for Disaster Management and Human Rights wrote stating: "Our Government shares the Secretary-General's concern for the safety of civilians and can assure you that we are firmly committed to ensuring that these civilians are protected and provided for in every possible way. The Government will continue to send food and medicine to the civilians held hostage by the LTTE and spare no effort to ensure the welfare of the thousands who have managed to escape. I would like to reiterate the policy that the Secretary to the Ministry of Defence articulated to you, that our security forces do not fire into the safe-zone and are not using heavy weapons in civilian areas." There is no record of any UN rebuttal of Government letters or public statements rejecting its responsibility for killings.

*ii. UNCT briefings to the diplomatic community*

102. Members of the diplomatic community, and some UN staff themselves, were frustrated at what some perceived as the UN's hesitation to share a clearer analysis of the situation. UN staff at the working level urged their contacts in the diplomatic community to insist upon a formal briefing from the UNCT's leadership, in the hope that this would oblige the UN to present information it had gathered on civilian casualties. A briefing to the diplomatic community was given by UNCT officials on 3 February, with participation of the UN staff who had returned from Convoy 11. The RC and several heads of the larger UN entities in Sri Lanka, including UNICEF, UNHCR and OCHA gave a second briefing to the diplomatic corps on 9 March, supplemented by several PowerPoint presentations bearing the same date. These were followed by a second PowerPoint document dated 1 April.<sup>78</sup>

103. The UN's March briefing gave a wide range of population estimates: "Humanitarian agencies estimate that between 150,000 and 200,000 people are trapped in the No-fire zone (NFZ) + an estimated 30,000 people outside the NFZ; The GoSL reports that 70,000 people are trapped in the Wanni (including NFZ); Reports received from the NFZ suggest there is an even greater number inside: up to 300,000 – 350,000 people". The March briefing explained that the UN's road convoys had delivered 18,217 MT of food into the Wanni for the period of September 2008 to January 2009, and 730 MT delivered by boat in February and March. The briefing stated that a minimum of 3,000 metric tons (MT) of food was needed for 200,000 people, although the 1 April briefing document said that 1,000 MT was needed per 60,000 people – i.e. 3,000 MT for 180,000 people. Applying the minimum food requirement statistics quoted in the briefing, a population of 350,000 people would require 5,250 MT per month, such that the total of UN-delivered food was probably the equivalent of just 12% of the food needed over the timeframe

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<sup>78</sup> UN "Humanitarian Overview for Donors, North Sri Lanka, March 2009".



September to January.<sup>79</sup> It is impossible to know how much food remained in stocks held by individual families within the Wanni, but the repeated population displacements and lack of shelter would have made it very difficult for families to retain stocks.

104. The March briefing included the first presentation by the UN of its statistics on civilian casualties and listed the “total minimum number of documented civilian casualties” between 20 January and 2 March 2009 in Mullaithivu District as 2,683 deaths and 7241 injuries, two-thirds of which occurred within the new 14 square-kilometre NFZ. The PowerPoint documents described international human rights and humanitarian law violations by the LTTE including “the forced recruitment of men and women ... [and] children as young as 12, at least one mass execution of civilians, mass corporal punishments, ... the blocking of corridors for civilians trying to leave the combat area ... the forced movement of civilians, the placing of weapons in areas of civilian concentration, and the diversion and possible withholding of humanitarian aid to civilians.”

105. The briefings and accompanying documents were forthright in describing LTTE violations. However, they did not directly address Government responsibility for the situation. The COG had prepared a casualty sheet which showed that almost all the civilian casualties recorded by the UN had reportedly been killed by Government fire. However, the RC/UNCT members present did not present the casualty sheet to participants in the briefing. When describing the lack of food and medicines, the briefings did not emphasize that the most immediate causes for the severe shortfall had been Government obstructions to the delivery of assistance and its artillery shelling of Convoy 11. The 1 April presentation document notes UNHCR efforts to be present at screening, but did not mention the reports of people disappearing from other screening locations to which the UN had no access. Some members of the diplomatic community expressed frustration that UNCT members left the briefing before taking questions that would have allowed diplomats to raise the issue of State responsibility. The RC’s Human Rights Adviser was not invited to attend the briefing.

106. At the same time that these briefings were being given by the UNCT, members of the diplomatic corps were surprised by a series of situation reports they received via email from UNDSS-Colombo that appeared to present the situation from the Government perspective. For example, entitled “SIOC OSSI”, a report of 22-23 April 2009 states: “Sri Lanka Navy is continuing its special rescue mission in the North-eastern seas to facilitate the mass exodus of Tamil civilians ... Sri Lankan soldiers of 53 and 58 Divisions are continuing on their noble mission of rescuing civilians held hostage by the LTTE in Wanni ... the terrorists are now boxed in ... The number of IDPs who have escaped the brutal clutches of the LTTE ... exceeds 175,714 ...” Although a footnote explains the presentations were based on publicly available information, which for the most part appears to be from Government sources, the documents themselves had the UN logo on each page, and gave the appearance of reflecting UN analysis.<sup>80</sup>

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<sup>79</sup> UN briefing of 9 March 2009 to diplomatic community, listing minimum food requirements as 3,000 MT for a population of 200,000, per month.

<sup>80</sup> The footnote reads, inter-alia, “Open Sources Security Information (OSSI): Form of Security Information collection management that involves finding, selecting, and acquiring information from publicly available sources and analyzing it to produce actionable Security Information. In the “Security Information Community” the term “open” refers to overt, publicly available sources (as opposed to covert or classified sources).”

*iii. The UN's public stance on numbers and the Government response*

107. The briefing notes were leaked to the media by diplomats who wanted the UN to take a public stand. The RC was summoned to meet with the Minister of Foreign Affairs on 24 March. On 25 March, the Government released a statement saying “[the RC] has stated that he is unable to confirm the veracity of the figures of civilian casualties ...”, and describing the numbers as having “not been attributed to any reliable or independent source” and the assertion that two-thirds of casualties had occurred in the NFZ as “patently false” and “unsubstantiated.” A second Government statement dated 26 March said “The UN system has been exposed for using figures that it cannot verified (sic) ... The figures of 2,800 civilians killed and more than 7,000 injured as claimed by the [USG-Human Rights] are not supported by the [UN] as verifiable figures”<sup>81</sup> The UN in Sri Lanka published a statement on its website saying the USG-Humanitarian Affairs “has clarified since that these figures were drawn from an internal working document which is based on information that cannot be fully, reliably, and independently assessed, because of limits on access to civilians in the combat zone.”<sup>82</sup>

108. The debate over numbers was renewed in late April when satellite photographs of the Wannu taken by UNOSAT became public, along with analysis of their possible significance. Examination of successive photographs had provided the basis for new estimates of the number of people still in the Wannu, as well as confirmation that shelling by heavy artillery was ongoing within the Wannu contrary to repeated Government commitments. The RC was again confronted by the Government about this new data. In a 4 May letter to the Minister for Disaster Management and Human Rights the RC downplayed the photographs and analysis, and is reported as saying “any commentary [on the images] made by UNOSAT is partial and provisional” and may not reflect the more recent “exodus of tens of thousands of people”.<sup>83</sup> The Government asked the RC to share his comments with the media. On advice from UNHQ he did not do so, but the Government made his letter public.

*c. The situation in the Wannu*

109. The UN was receiving explicit information from its own staff, international NGOs and local government officials about the gravity of the protection and humanitarian situation and its causes in the Wannu that fundamentally contradicted the tone and content of the UN's communications and advocacy.

110. On 2 March 2009, the Mullaithivu Office of the Regional Director of Health Services, wrote to the Mullaithivu Government Agent, copying the Secretary to the Ministry of Health, ICRC, and WFP, saying “You are already aware that the people are facing death by starvation consequent to the ensuing war ... most of the people are consuming leaves ... Six persons from one family who had consumed cooked leaves to which they were not used to had been brought to

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<sup>81</sup> Accessed on 3 August 2012

[http://www.priu.gov.lk/news\\_update/Current\\_Affairs/ca200903/20090326un\\_gives\\_unverified\\_idp\\_casualty\\_figure\\_s.htm](http://www.priu.gov.lk/news_update/Current_Affairs/ca200903/20090326un_gives_unverified_idp_casualty_figure_s.htm)

<sup>82</sup> See [www.un.lk](http://www.un.lk) viewed on 23 May 2012.

<sup>83</sup> Accessed on 3 August 2012 <http://www.dailynews.lk/2009/05/07/news01.asp>

the hospital in an unconscious state after vomiting.” In a publicly released statement, on 5 March the Office of the Regional Director of Health Services referred to “a humanitarian catastrophe” in the Wanni. The statement describes a severe shortage of medicines, including anaesthetic drugs, surgical items, IV fluids, antibiotics and vaccines. It stated that “Due to the non-availability of materials to construct toilets, open defecation has become common among the majority of the people.”

111. On 16 March, the Regional Directors of Health Services of Mullaithivu and Killinochchi addressed an open letter to the Secretary of the Ministry of Health saying “... less than 5 percent of the combined quota of drugs and dressings that are meant for the last quarter of last year and for the first quarter of this year have been sent to us, so far. You are well aware of the fate of the remaining bulk – to be kept in Vavuniya awaiting security clearance from the Ministry of Defence, despite our repeated requests and reminders made to you ... Since January 2009, more than 500 civilian deaths, either on or after admission, have been registered at hospitals and thousands of civilian deaths could have gone unrecorded as they were not brought to the hospitals ... Most of the hospital deaths could have been prevented if basic infrastructure facilities and essential medicines were made available ... We have been supplied with no antibiotics, no anaesthetics and not a single bottle of IV fluid ...”. A separate source described deaths related to the lack of medicines as being from war related injuries, diarrhoea, starvation, malnutrition, the adverse effect of eating plants, or from pre-existing critical medical conditions such as heart disease, asthma, and diabetes. The source referred to ships under ICRC flags that could have brought in medicines, but which experienced heavy shelling in their immediate vicinity, forcing them to withdraw. “Badly wounded civilians on the beach, who needed urgent transport to a full medical facility in Trincomalee or Pulmoddai, would often die when the security forces attacked ... preventing the ships from being able to pick them up or causing the ships to leave early ...”

112. One UN international staff member explained that doctors in the Wanni had called him in the middle of the night several times in March April and May in desperation, saying that their patients were dying because they lacked the means to treat them. The continuing SMS and other reports from the Wanni provide information on specific incidents in which people are killed and injured in large numbers: On 7 March reports referred to 52 killed and 96 injured, including 38 children in the NFZ. 08.45AM: “It's raining here, water started entering in our shelters and in bunkers trying to stop it. If rain continues it would be a big disaster as people live in open spaces.” 10 March 11.47PM: “its urgent heard some thousands people trying to enter in military controlled areas LTTE is trying to stop. Pls pass this to [UN Security].” 11.51PM: “Shells in the way where people are coming, tried many times to call [UN Security], no reply. Pls help”. 11 March 07.05AM: “No land available, no pure water no sanitation facilities no firewood no bunkers yesterday over 150 people killed by shells ... LTTE not ready to let people out, SLA is firing continuously. How can people live here?” 07.47AM: “Tell the humanitarian people that now the time to take an action, don't delay!” 04.06PM: “Very very heavy shelling going on close to our hub in west. Many shells landed from 200m, lots of human casualties, and no injuries in hub so far. Pls ask SLA to stop.” 06.05PM: 11.25PM: “There is no shelling now but the point a shell hit was the place of my previous location where I had a tarpaulin before floods. If I didn't shift ???”. 12 March 09.06PM: “Very urgent, 3 artillery shells came from west hit 400 mts from

hub in south of Mathalam, lots of casualties. Pls ask SLA to stop.” 09.21PM “Shelling continues, 7 hit here so far please do something quickly.”

113. 13 March 01.07AM “22 civilians admitted with heavy injuries by shell hit 30 mins back in Mathalam. There were deaths but no dead bodies were taken to hospital.” 02.19AM: “shelling started again, 3 artillery hit in the same direction as earlier but closer south, we’re under the trucks.” 04.22PM: “Two dependents of UN staff have been [forcibly] recruited [by LTTE] at 10.00AM.” 04.31PM: “I have explained about UN status to recruitment team actually they tried to recruit all youths but we stopped that however 2 were taken, still negotiating.” 07.33PM: “2 artillery shells hit Mathalam just 20 mins back, one hit 200 mts from hub in west, one child killed and in 2nd incident, 500 mts from port in west, 7 civilians killed.” 09.05PM: “Our area under shelling very heavy and very close, many shells hit in the surroundings.” 14 March 09.54PM: “RDHS – Mullaithivu announced that due to drugs shortages Mathalam hospital will be closed from tomorrow. It’s the only functioning hospital after closure of Ptk.” 15 March 09.38AM: “We’re ok but I’d like to know about steps taken against recruitment. Here more tense.” 06.45PM: “On 14th of March, 52 injured (17 children, 19 women), admitted in Mathalam hospital and 25 (7 children, 9 women), also admitted died.” 16 March 06.59PM: “On 15th of March, 61 injured (18 children, 23 women) by shells in NFZ admitted in Mathalam hospital, 5 admitted with severe injuries died.” 07.08PM: “On 16th of March, 55 injured (22 children, 25 women) admitted in Mathalam hospital hit by shell, gunfire in NFZ, 4 died.” In a 17 March, publicly released Bulletin<sup>84</sup>, ICRC described a desperate humanitarian situation in the Wannu and said “The ICRC continues to monitor allegations concerning violations of international humanitarian law affecting civilians throughout the country.

#### **4. January-June 2009: Screening and internment of IDPs**

##### ***a. Screening***

114. As the conflict progressed and increasing numbers of IDPs fled the fighting in the Wannu, the security forces conducted interviews – ‘screenings’ – of the IDPs, with the aim of identifying and separating suspected LTTE combatants from among the civilians. The first screening of IDPs took place at different locations within the Wannu, upon first contact with the SLA. Subsequent screening took place at exit points from the Wannu, such as in transit sites at Omanthai, and screening continued outside the Wannu in the camps where IDPs were interned and in hospitals for those who were sick or injured.<sup>85</sup> Other screening points probably existed.

115. It was not unusual for IDPs to undergo repeated interviews by the military and police, sometimes in the presence of paramilitary elements, as they passed through these locations.<sup>86</sup> There appeared to be no standard process or consistency in the administration of the screenings. While it was justifiable for the Government to identify LTTE cadres, and indeed desirable that the LTTE fighters be kept out of civilian IDP camps, the entire screening process was highly problematic: the criteria used to determine what constituted a cadre were unclear; family

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<sup>84</sup> Bulletin No: 02/2009, 17 March 2009.

<sup>85</sup> Minutes of child protection forum in Vavuniya, 5 February 2009.

<sup>86</sup> International Commission of Jurists report on surrendees; and IDP Protection Working Group: *Briefing Note for RSG-IDPs*, 31 March 2009 (p. 4)

members were not informed of where the suspected LTTE cadres would be taken, and for how long; contradictory messages on the treatment of LTTE cadres were given by the Government;<sup>87</sup> and the practices used in the screening and separation of suspected LTTE cadres were inconsistent with the procedures set out in the Government's Emergency Regulations on the handling of LTTE 'surrendees' – as the suspected LTTE combatants were known.<sup>88</sup>

116. Officially, those identified as LTTE in screening were taken to 'surrende' camps, while LTTE elements of particular concern were taken to special detention facilities. Selection of people during screening was sometimes based on arbitrary allegations by paramilitary elements operating in the camps, raising the question of the credibility of the process.<sup>89</sup>

117. In September 2008, initially through UNHCR's *Aide Memoire* (see below), the UN made a case to the Government for screening to be time bound, transparent, and grounded in law. In February 2009, after raising concerns, the USG-Humanitarian Affairs received assurances from the Government that UNHCR would be allowed to monitor the screening of IDPs leaving the Wannu.<sup>90</sup> These assurances were in line with the commitments to apply international standards in screening IDPs, made by the Sri Lankan Attorney General to the RSG-IDPs.<sup>91</sup> However, despite UN advocacy and repeated Government commitments, from 15 February UNHCR was given access only to Omanthai, and the agency was only allowed to observe the screening from a distance and communicate with IDPs in the presence of a military escort, restricting any confidential dialogue and therefore any effective protection monitoring.<sup>92</sup> As of April 2009, no international agency had access to screening sites in Killinochchi, where the first in-depth screening took place, nor elsewhere north of Omanthai, in Pulmoddai or Padaviya.<sup>93</sup> By April, daily statistics on the individuals separated at Omanthai were being provided to UNHCR, but this was of little import given the lack of clarity on separation prior to arrival to Omanthai, and elsewhere, and the lack of independent verification of the statistics provided.

118. During the visit to Sri Lanka of the French and British Ministers of Foreign Affairs on 29 April 2009, the Government again agreed to greater access to the screening sites by the UN and ICRC. Nevertheless, in the final days of the conflict, UNHCR's access to Omanthai was revoked entirely, and humanitarian access to the IDP sites was curtailed, hampering protection monitoring as well as the distribution of aid to the IDPs.<sup>94</sup>

119. After IDPs had left the Wannu, screening continued in the IDP camps – indeed, the need to complete screening was the central argument used by the Government to justify IDP

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<sup>87</sup> In October 2008, Defence Secretary Gotabaya Rajapaksa had stated that unarmed LTTE cadres 'would not be considered as LTTE terrorists but welcomed as normal civilians' (CPA: *A Profile of Human Rights and Humanitarian Issues in the Wannu and Vavuniya*, March 2009, p. 31); this is in contradiction to the actual treatment of suspected LTTE combatants.

<sup>88</sup> It was unclear whether the Emergency Regulations themselves could be applied, given the circumstances under which they had entered government custody.

<sup>89</sup> ICJ, *Beyond Lawful Constraints: Sri Lanka's Mass Detention and LTTE suspects* (p. 8).

<sup>90</sup> ERC briefing to the Security Council, 27 February 2009 (p. 3).

<sup>91</sup> NFF, Panel of Experts meeting with RSG-IDPs, 21 October 2010.

<sup>92</sup> IDP Protection Working Group: *Briefing Note for RSG-IDPs*, 31 March 2009 (p. 4).

<sup>93</sup> UNHCR: *Mid-term review of Guidance Note on assistance to IDPs*, April 2009 (p. 3).

<sup>94</sup> IDP Protection Working Group: *Briefing Note for RSG Walter Kaelin* (p. 1).

internment. By June, roughly 9,000 individuals had been taken to 11 ‘surrendee’ sites in the Vavuniya area. By November 2009, the Government spoke of almost 11,000 ‘surrendees’ in their custody, although precise figures were not made available and some officials cited figures up to 12,000.<sup>95</sup> Reports indicate that some surrendees were moved between surrendee camps and other places of detention. Without independent protection monitoring of the ‘surrendee’ camps it was not possible for the UN to independently account for the whereabouts of detainees.

**b. Internment camps**

120. Once IDPs had passed through initial Government screening as they left the Wannu they were taken to closed camps guarded by the Army. The Government called the camps ‘welfare villages’, but they were in fact internment camps.

121. Concerned by the multiple infringements of the rights of IDPs, in September 2008 UNHCR’s *Aide Memoire* set out for the Government the “conditions under which it was prepared to support IDP sites” and the “parameters for [UNHCR’s] engagement in camp management issues.”<sup>96</sup> The document identified principles of UN engagement, including: the preference for host family accommodation over camp-based shelter; IDP freedom of movement; unhindered access by humanitarian actors to camps; ensuring the civilian character of IDP sites; and the transparency, legality, and expediency of screening. In addition to advocacy toward the Government, the *Aide Memoire* was a useful tool to help ensure a common and principled position among humanitarian actors working in camps. Despite the *Aide Memoire*, however, as the year went on, access by humanitarian agencies to transit sites and to the camps in Menik Farm was irregular, IDPs arriving from the Wannu continued to be denied freedom of movement, and the procedures for screening the IDPs remained inconsistent and unclear. With a growing discrepancy between the commitments of Government officials to international standards and the practices on the ground, the RC wrote to Minister Samarasinghe on 28 November 2008, saying ‘... if humanitarian agencies and their respective donors [are] to be closely associated, there would likely need to be substantive changes to this process.’<sup>97</sup>

122. However, there was never to be any sustained improvement in the Government’s respect for the principles of protection and assistance afforded to IDPs. The implied UN ‘threat’ of a disassociation from humanitarian action was not used. Towards the end of 2008 the Government began contingency planning for a large influx of IDPs into areas under its control, and in January 2009 it presented a plan to the humanitarian community for the establishment of IDP sites in Vavuniya, Mannar and Jaffna. The contingency planning process made clear the Government’s intention to confine IDPs in semi-permanent camps run by the security forces, with an initial focus on a three-year internment period.

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<sup>95</sup> ICJ, *Beyond lawful constraints: Sri Lanka’s mass detention of LTTE suspects*, September 2010 (p. 9-10).

<sup>96</sup> UNHCR Sri Lanka: *Aide Memoire*, 4 September 2008 (p. 1).

<sup>97</sup> Letter, Resident Coordinator to Minister of Disaster Management and Human Rights, 28 November 2008, (p 34 in IRP report of 6 June).

123. In response to the Government's proposed plan, UNHCR prepared a *Guidance Note* "to consolidate interagency assistance and advocacy strategies for existing and future IDP sites".<sup>98</sup> The Guidance note recalled the 'principles of engagement' contained in the, very useful, *Aide Memoire*, which had strategically focused attention on concerns. However, the tone and content of the note marked a change from the *Aide Memoire* and previous UN engagement on assistance to the IDPs. The note largely accommodated the Government's approach to IDPs and relegated some of the UN's persistent concerns in the Government's handling of the IDPs to 'advocacy' and 'bilateral discussions'. While the *Aide Memoire* suggests that assistance to the Government would be conditional on respect for basic standards, defined in eleven principles necessary for UNHCR engagement, the *Guidance Note* reduces the conditions for UN engagement to two: safety and security (including the civilian character of camps) and unrestricted humanitarian access. The note indicates UN willingness to provide "emergency assistance response" to "complement Government gaps and satisfy emergency needs" in camps and transit sites, where IDPs were screened, and it effectively confirms UN acceptance that '[g]eneral control mechanisms will be put in place to limit IDP freedom of movement, with certain IDPs being allowed freedom of movement based on security clearance'.<sup>99</sup> The note did not emphasize host family shelter. The *Guidance Note* states that "there may be a need for IDPs to remain in sites for a period beyond a strictly emergency period of three months" and explains that "non-adherence to the principles of the Aide Memoire should not affect material and non-material assistance to particularly vulnerable groups."<sup>100</sup> The issues of freedom of movement and the screening of IDPs would be addressed, the note states, through "bilateral discussions and advocacy." Meanwhile, UNHCR would, "wherever possible, provide technical assistance on site planning and camp management."<sup>101</sup>

124. By mid-March 2009, 43,341 IDPs had crossed from the Wannu into Government-held areas<sup>102</sup> and by mid-April there were some 180,000 IDPs registered in Vavuniya. Astutely, in April UNHCR prepared a balance sheet of fulfilment of the principles set out in the *Aide Memoire*. On each of the standards identified, the assessment was mixed. Notably, the IDPs were not allowed freedom of movement, nor (except for the elderly) the option to stay with host families; Government-affiliated paramilitary elements sometimes operated in the camps; military personnel were stationed within the camps; and the UN had only limited access to screening. The Government was requested by the UN to take immediate action to address the poor assessment on each of the principles. UN advocacy succeeded in getting the Government to reverse its position on an automatic three-year internment of all IDPs, but little progress was made on other issues of principle.<sup>103</sup>

125. The primary reason given by UN humanitarian actors for having continued to engage with the Government despite its consistent violation of principles was that there was a humanitarian imperative to provide assistance to IDPs emerging from the Wannu, frequently after

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<sup>98</sup> UNHCR Sri Lanka: *Guidance Note, Assistance to New IDP Sites in Mannar, Vavuniya and Jaffna*, January 2009, (p. 1).

<sup>99</sup> UNHCR Sri Lanka: *Guidance Note*, (p. 3).

<sup>100</sup> UNHCR Sri Lanka: *Guidance Note* (p. 4).

<sup>101</sup> UNHCR Sri Lanka: *Guidance Note* (p. 4).

<sup>102</sup> OCHA Wannu Emergency Sitrep No. 19, 20 March 2009.

<sup>103</sup> Independent review by the Norwegian Refugee Council of its actions in Sri Lanka, "*An Independent and Courageous Spokesman? NRC and the dilemmas in Sri Lanka*", 2009 (p. 17).

having lived through appalling conditions, and many of whom were injured, sick, malnourished and with no resources of their own. It was certainly the case that, as the influx of IDPs continued to increase from March to May, without assistance there may have been a second humanitarian catastrophe outside the Wannu. While the arrival of IDPs from the Wannu had justified the delivery of life-saving aid even in the absence of a respect for protection principles, within a few months of the end of the conflict the dire conditions in the IDP camps became an entirely Government-created emergency. Keeping the IDPs in internment camps was a Government policy decision, not a matter of necessity. It was only by September 2009, including after the RSG-IDPs September 2009 visit, that the UN began to use more robust advocacy with the Government, and indeed several Member States took a similar stand at this point.

126. Testimonies from UN staff have suggested that decisions of some agencies to engage with the Government on camps, including surrendee camps, were motivated by institutional competition for visibility and resources. A good relationship with specific civilian and military authorities led to requests from the Government for specific agencies, including from the UN, to undertake particular tasks, such as the provision of water and sanitation or shelter, which in turn allowed these agencies to obtain funds from donors. Some agencies were perceived by a considerable number of their own working-level staff and some members of the diplomatic corps as quick to compromise on principles in the interests of increasing the profile of their agencies' and gaining access to funding during the humanitarian emergency that accompanied the final stages of the conflict.<sup>104</sup>

## **5. April –May 2009: Increasing civilian deaths and the limits of UN political leverage**

### ***a. No formal action by Member States; the Security Council's 'informal interactive dialogues'***

127. Throughout the final stages of the conflict, there was no formal action by Member States at the UN on the events in Sri Lanka – it was only after the end of the war that the Human Rights Council met in Geneva (see Annex III.C). Since 2006, Sri Lanka had been on the agenda of the Security Council Working Group on Children and Armed Conflict, under resolution 1612 and as a result of the listing of the LTTE as a party that committed violations against children. However, the Working Group's focus was limited to the six grave violations against children applicable to the 1612 process, the timeframes for the Working Group's consideration of reports on Sri Lanka did not correspond with the fast-moving events, and there were significant obstacles in the mechanism's operation (see Annex V).

128. From late 2008, several non-permanent Security Council Members were increasingly concerned about the evolution of the situation. In early February 2009 three non-permanent Security Council members were urging that Sri Lanka be put on the Council's formal agenda. There was, however, little readiness among the membership as a whole to do so. There was also disagreement among senior members of the Secretariat on whether or not the Secretariat should push for the Security Council to become involved, and there was no clear Secretariat strategy to

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<sup>104</sup> Interviews by the OHCHR Documentation Project and the Panel with UN staff and members of the diplomatic corps.



help build political support among Member States for Council action. One Foreign Minister of a non-permanent member of the Security Council at the time and who had pushed for early action by the Council, expressed frustration at a lack of information in bilateral briefings from the UN on the international human rights and humanitarian law situation in the Wanni, saying that if the UN had provided more information earlier this may have helped Member States reach consensus on holding a formal meeting.<sup>105</sup> Diplomats had looked to NGOs for information but had difficulty using this source to gather consensus among Member States. There was some discussion among Member States of calling a procedural vote on the agenda issue, as had been done with Myanmar in 2006, but this was not done.

129. With the Security Council divided, a compromise was found: ‘informal interactive dialogue’ sessions would be held, without minutes and without formal outcomes. It was also agreed that the Sri Lankan Permanent Representative to the UN would join the discussions. From February to June 2009, Sri Lanka was discussed four times with the Security Council in ‘informal interactive dialogues’ with an additional briefing by the Secretary-General in June.<sup>106</sup> In addition, the Secretary-General raised Sri Lanka in three of his regular lunches with Council members.<sup>107</sup>

130. During the informal interactive dialogues, the USG-Humanitarian Affairs presented prepared statements after which there was a ‘dialogue’ between participants in the meeting. On two occasions, the Chef de Cabinet also participated in the meetings. The USG-Human Rights was never asked to attend or provide information. In keeping with the informal character of the meeting, there was no written record of the discussions. The UN’s prepared briefings made some references to international human rights and humanitarian law and political concerns but these were largely focused on the humanitarian situation. Briefings did not emphasize the responsibilities of the Government or clearly explain the link between Government and LTTE action and the obstacles to humanitarian assistance and killing of civilians. For example, in a 27 February briefing, the USG-Humanitarian Affairs said “dozens of people per day at least are being killed and many more wounded” but did not provide the COG figures on casualties or mention that most casualties appeared to be the result of Government fire and were occurring in the NFZ.

#### **Membership of the Security Council in 2009<sup>108</sup>**

China	Austria	Libya
France	Burkina Faso	Mexico
Russia	Costa Rica	Turkey

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<sup>105</sup> Meeting with the Panel.

<sup>106</sup> The Council also addressed Sri Lanka during consultations of the whole on 27 February, as well as under ‘other matters’ on 24 April and 13 May.

<sup>107</sup> For situations not formally on Member States’ agenda, the Secretary-General has several options for engaging with States including, convening the Security Council under Article 99; briefing the General Assembly under Article 12 of the Charter, reporting to the Security Council Working Group on Children and Armed Conflict (CAAC) under ‘other situation of concern’ in Annex II of his annual CAAC reports, Security Council Lunches, and good offices.

<sup>108</sup> The Co-Chairs Group was led by Japan and included, Norway, the United States and the EU.

United Kingdom

Croatia

Uganda

United States

Japan

Viet Nam

131. Meanwhile, in Geneva, the Human Rights Council also lacked consensus. Several Member States were advocating throughout April for a Special Session to be held on the situation in Sri Lanka. It was only in mid-May that these advocates obtained the minimum of 16 signatures to request a meeting, and the meeting itself was only held a week after the conflict ended (see III.C.1).

***b. Desperate efforts to obtain an adequate humanitarian pause***

*i. Humanitarian pause*

132. Even as the situation in the Wanni deteriorated further and there were reports of ever-increasing numbers of civilians being killed, the UN staff gathering casualty data through the COG were finding it increasingly difficult to get corroboration of each casualty from the three independent sources that were required. At this crucial period, some Member States on the Security Council complained that they were receiving almost no information from the Secretariat on the international human rights and humanitarian law situation in the Wanni, and senior officials in the EOSG were reported as expressing the same concern. Both Member States and EOSG officials said they began relying on reports from Human Rights Watch (HRW) and other international NGOs to learn about the killing of civilians and possible violations of international human rights and humanitarian law.

133. The reported lack of detailed information notwithstanding, there was increasing realization at the UN that the situation had now reached catastrophic levels. The focus of UN advocacy turned almost exclusively to bilateral approaches to the Government seeking a humanitarian pause and an end to the use of artillery, and to getting the LTTE to then allow civilians to flee the conflict zone. Senior UN officials repeatedly asked the Government to stop using heavy weapons in the NFZs. The Government continued to claim it was not using such weapons, despite evidence to the contrary, and the UN did not challenge the Government on its denials.

134. On 12 April the Government announced there would be a two-day humanitarian pause on 13 and 14 April to allow humanitarian aid to reach civilians in the NFZ. The Secretary-General used a public statement to welcome the announcement and called on the LTTE to also respect it and allow civilians to leave. While the suspension of hostilities was honoured “for the most part”, enabling the evacuation of 988 civilians by the ICRC, small-arms fire, mortar fire and aerial attacks resumed in the evening of 14 April.<sup>109</sup> The last-minute announcement and short duration of the pause prevented a larger evacuation of civilians, additional delivery of assistance or the deployment of humanitarian workers. The USG-Humanitarian Affairs issued his most robust public comments, just prior to the Government’s announcement of a humanitarian pause, warning that “a bloodbath on the beaches of northern Sri Lanka seems an increasingly real

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<sup>109</sup> OCHA Wanni Emergency Sitrep No. 23, 16 April 2009.

possibility” and that “further military action not only risks more civilian deaths and injuries but also threatens to undermine the government's credibility with the international community and the national groups with whom it must soon seek reconciliation.”<sup>110</sup>

135. The Secretary-General dispatched the Chef de Cabinet to Sri Lanka from 15 to 17 April, “to push for a pause in hostilities and explore the role the UN could play” in brokering a negotiated ceasefire or surrender by the LTTE.<sup>111</sup> The Government refused appeals for a longer humanitarian pause arguing that a pause would give the LTTE a chance to regroup and forcibly recruit more civilians. However, the Government told the Chef de Cabinet that it was prepared to allow a working-level UN and ICRC team to enter the NFZ to explore the possibilities of the LTTE allowing civilians to evacuate by sea, and that it would allow short pauses for the delivery of food and medicine, and the evacuation of wounded. The UN began confidential discussions with the US, through its embassy in Colombo, regarding the possibility of the US Navy helping to evacuate civilians from the conflict zone. However, no evacuation or significant pause in the conflict took place, and no working-level team was able to visit the conflict zone.

136. On 19 April, the SLA penetrated LTTE defences and split the NFZ in two. Intense Government artillery shelling reportedly caused heavy civilian casualties.<sup>112</sup> With the splitting of the NFZ, some 100,000 civilians were able to flee into Government-controlled areas, while at least 130,000 civilians were estimated to remain trapped in the NFZ.<sup>113</sup> On 20 April the Government gave a “final warning” to the LTTE to surrender within 24 hours. The LTTE did not respond until six days later, on 26 April, when it announced a unilateral ceasefire that was rejected by the Government.<sup>114</sup>

137. On 20 April, the Secretary-General’s spokesman issued a statement welcoming the escape of civilians when the second NFZ was split, and deploring the continued use of heavy weapons in the vicinity of civilians and the use of force by the LTTE which prevented civilians from escaping the conflict zone. The statement did not refer to the casualties inflicted during the military operations, nor did it clearly attribute the use of artillery to Government forces or firmly recall the parties’ international humanitarian law obligations to ensure respect for the principles of proportionality, distinction, and precaution in attack. On 22 April, the Chef de Cabinet briefed the Security Council in an ‘informal interactive dialogue’ on his recent visit to Sri Lanka. Following the meeting, the President of the Security Council delivered ‘remarks to the press’ on the Council’s discussion. While urging all parties to abide by their obligations under international humanitarian law, the ‘remarks’ focused on the LTTE, and did not mention the use of heavy weaponry by the Government. Responding to a question from the press, the Security Council President indicated that the informal format of the Security Council’s meetings on Sri Lanka was an ‘innovative solution’ given the lack of agreement among Council members to formally take Sri Lanka up on the Council’s agenda.<sup>115</sup>

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<sup>110</sup> John Holmes, USG-Humanitarian Affairs op-ed in the Guardian, ‘Let Them Decide’, 7 April 2009.

<sup>111</sup> IRP report compilation dated 12 June 2009, p. 89.

<sup>112</sup> Panel of Experts report (p. 33).

<sup>113</sup> Panel of Experts report (p.33).

<sup>114</sup> Panel of Experts report (p. 34).

<sup>115</sup> Mexico led the Council in April 2009 and had been one of the States pushing for the Council to take appropriate action on Sri Lanka. None of the Security Council’s ‘informal interactive discussions’ were posted on the Council’s monthly programme. Remarks to the press have no official status.

138. On 25 April, the Secretary-General spoke to President Rajapaksa, and the USG-Humanitarian Affairs travelled again to Sri Lanka from 26 to 28 April to press for a humane end to the conflict, and to review the humanitarian response. Like the Chef de Cabinet, upon his return the USG-Humanitarian Affairs briefed the Security Council in an ‘interactive dialogue’ meeting. He indicated that 50,000 people remained in less than 10 square kilometres. He told the Council that despite the “strong impression”<sup>116</sup> shared by both himself and the Chef de Cabinet that the Government had agreed to a UN working-level visit to the Wannu, in practice the Government never allowed it to happen. The Government had argued that the UN “could not visit safely and [the assessment] was not necessary.”<sup>117</sup> He also raised concern over the situation in the IDP camps. No proposals for Security Council action were made during the briefing.

*ii. Political pressure builds; the third NFZ is created: thousands are reported killed*

139. On 24 April, the Indian External Affairs Minister made a public call for an immediate cessation of hostilities. On 29 April, the British and French Foreign Ministers visited Sri Lanka to seek a ceasefire, access to IDPs, and a timetable for IDP returns. The Ministers failed to secure a commitment from the Government on a ceasefire, but the Government agreed, again, not to use heavy weaponry in the conflict zone and to better cooperation with the UN and NGOs and to greater access to IDP transit sites. Possibly in response to the appeal from India, the President declared on 27 April that combat operations against the LTTE had ended, including the use of heavy weapons, combat aircraft and aerial weapons. Nevertheless, despite this declaration and the promises to the visiting Foreign Ministers, shelling in the conflict zone continued unabated, resulting in civilian deaths.<sup>118</sup>

140. The Secretary-General called President Rajapaksa again on 5 May. On 8 May the Government declared a third NFZ – to the south of the NFZ that had been split in two by the SLA on 19 April – approximately 2 by 1.5 kilometres. Several hundred civilians were reportedly killed by heavy shelling in the days that followed.<sup>119</sup>

141. The Foreign Ministers of Austria, France and the UK travelled to UNHQ in a bid to get the Security Council to issue an official press statement on the situation. On 11 May they hosted a meeting on Sri Lanka for Security Council members and humanitarian organizations, and the UK and French Ministers provided a briefing on their visit to Sri Lanka.<sup>120</sup> In the press conference after the meeting, the UK Foreign Minister indicated that the situation in the conflict zone was “appalling”, and that there was “no question of loss of life at a large scale”, resulting from the use of heavy artillery by the Government.<sup>121</sup> Two days later, the Security Council issued a press statement on Sri Lanka. Press statements are an important official reflection of the Council’s stance on a situation, but they are non-binding and fall short of mandating UN actions.

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<sup>116</sup> Transcript, 29 April 2009, of USG-Humanitarian Affairs press conference following his mission to Sri Lanka

<sup>117</sup> USG-Humanitarian Affairs briefing to the Security Council, 30 April 2009

<sup>118</sup> See OCHA Wannu Emergency Sitrep of 28 April 2009, New York Times: *Europeans fail to get Sri Lanka truce*, 29 April 2009.

<sup>119</sup> Panel of Experts report (pp. 34 – 36).

<sup>120</sup> Security Council Report, *Update Report* 4 June 2009 (p. 3).

<sup>121</sup> <http://www.franceonu.org/france-at-the-united-nations/press-room/speaking-to-the-media/remarks-to-the-press/article/11-may-2009-sri-lanka-joint>

While they addressed both parties to the conflict, the focus of opprobrium was on the LTTE, and references to the artillery fire responsible for most civilian deaths was only obliquely linked to the Government. The statement said: “The members of the Security Council strongly condemn the Liberation Tigers of Tamil Eelam (LTTE) for its acts of terrorism over many years, and for its continued use of civilians as human shields, and acknowledge the legitimate right of the Government of Sri Lanka to combat terrorism. The members of the Security Council demand that the LTTE lay down its arms and allow the tens of thousands of civilians still in the conflict zone to leave. The members of the Security Council express deep concern at the reports of continued use of heavy calibre weapons in areas with high concentrations of civilians, and expect the Government of Sri Lanka to fulfil its commitment in this regard.”<sup>122</sup>

142. The same day, 13 May, the Secretary-General’s spokesperson also issued a statement calling upon the parties to stop using heavy calibre weaponry in areas with high concentrations of civilians; while the LTTE’s “reckless disrespect” for the safety of civilians is singled out, no reference is made to Government forces. Also on 13 May, the Secretary-General made his fourth phone call since early April to President Rajapaksa to reiterate concerns over the protection of civilians and to note that his Chef de Cabinet was travelling again to Colombo. The Chef de Cabinet arrived on 16 May with the objective ‘to urge the Government to explore all possible options to bring conflict to an end without further bloodshed and to make public the terms under which that can be achieved without further loss of civilian life’.<sup>123</sup>

143. While the Chef de Cabinet was travelling from UNHQ to Sri Lanka, on 14 and 15 May several thousand civilians continued to flee the NFZ, mostly south along the lagoon, some walking, some on small boats or clinging to inflated tyres. Artillery fire reportedly continued from Government forces.<sup>124</sup>

**c. *The killing of the LTTE leadership and UN actions***

144. From February 2009 onward the UN, in consultation with the Government and Member States, had been advocating for an LTTE surrender that would end the war, protect civilians, and prevent further deaths of SLA soldiers and LTTE fighters. International efforts were rebuffed by the LTTE’s top leadership which apparently believed it could survive the Government’s military campaign. It appears that only in early May did the top-most leadership fully appreciate that it was about to lose the war, and only then made serious overtures regarding surrender. In the second week of May, LTTE civilian political leaders were in contact with the Chef de Cabinet and the office of USG-Humanitarian Affairs, as well as senior representatives of some Member States, asking that they facilitate a surrender and be present when it took place.<sup>125</sup> In parallel, as late as 15 May, some LTTE elements were reportedly still firing mortars and light weapons at

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<sup>122</sup> Security Council press statement on Sri Lanka, 13 May 2009, (SC/9659).

<sup>123</sup> UN press briefing 14 May 2009, <http://www.youtube.com/watch?v=nxqDgXMJZJo>

<sup>124</sup> See Panel of Experts report, page 35 “SLA shelling during the final days (13-18 May)”. See also US State Department, Report to Congress on recent incidents during the conflict, page 44, “An organization reported that shelling into the NFZ continued on a regular basis after the 9 May attack, based on information from aerial photographs. Separately, top officers in the SLA and SLN confirmed the shelling during this period.”

<sup>125</sup> Interviews by UN actors, diplomats and former LTTE sources with the Panel of Experts and the Panel.

the Government from amongst civilians in the NFZ.<sup>126</sup> When the Chef de Cabinet arrived back in Colombo on 16 May he indicated to the Government that he was willing to travel to the Wannī and be present at the surrender. His offer was refused. The Chef de Cabinet said he was nevertheless assured by senior Government officials that LTTE leaders bearing a white flag could surrender.

145. General Fonseka, commander of the Sri Lankan Army, declared victory against the LTTE on 16 May. By 17 May, according to the Army, the LTTE was confined to an area of 400m by 400m. On 18 May, Government representatives were announcing that Prabhakaran and other LTTE leaders were dead, as was subsequently confirmed in videos and photographs.<sup>127</sup> The Government stated that the LTTE leadership had been killed while trying to escape, or possibly in intra-LTTE fighting. Pointed questions were raised later by NGOs and in the international media regarding the possibility that the deaths were in fact the result of executions.<sup>128</sup> And there were questions regarding the UN's role.<sup>129</sup> In an interview months later, General Fonseka, who had subsequently launched his candidacy for President in opposition to President Rajapaksa, stated that the Defence Secretary had instructed a commander in the north to kill all surrendering LTTE leaders. General Fonseka was later arrested and retracted his statement.<sup>130</sup> The UN Special Rapporteur on extrajudicial, summary or arbitrary executions wrote to the Government requesting clarification on the matter.

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<sup>126</sup> "At the beginning of the operation the Army had used some shells which resulted in some civilian casualties. However, the IDPs are uniformly emphatic that the Army shelled only in reply to the militants' mortar and gun fire from among the civilians." Report by University Teachers for Human Rights, "A Marred victory and a defeat pregnant with foreboding" 10 June 2009, section 1.3.

<sup>127</sup> See [http://articles.timesofindia.indiatimes.com/2012-03-13/south-asia/31159227\\_1\\_ltte-sri-lankan-forces-tamil-tigers](http://articles.timesofindia.indiatimes.com/2012-03-13/south-asia/31159227_1_ltte-sri-lankan-forces-tamil-tigers)

<sup>128</sup> See for example: report by University Teachers for Human Rights, "A Marred victory and a defeat pregnant with foreboding" 10 June 2009, section 1.3; and <http://www.independent.co.uk/news/world/asia/tamil-leaders-killed-as-they-tried-to-surrender-1687790.html>

<sup>129</sup> See for example: report by University Teachers for Human Rights, "A Marred victory and a defeat pregnant with foreboding" 10 June 2009, section 1.3; and <http://www.independent.co.uk/news/world/asia/tamil-leaders-killed-as-they-tried-to-surrender-1687790.html>

<sup>130</sup> See <http://www.colombotelegraph.com/index.php/wikileaks-fonseka-opens-up-pandoras-box/>

## C. THE AFTERMATH – MAY 2009 TO MARCH 2012

### 1. The UN continues to struggle to implement a principled strategy

#### a. *Sharp contradictions in post-conflict strategies*

##### i. *Secretary-General's visit, the Joint Statement, and UN policy decisions*

146. In UNHQ, during the 36 hours after the Government announced the end to the conflict, there was discussion among senior UN official on the merits of an immediate visit by the Secretary-General to Sri Lanka. The Secretary-General wanted to show his concern over the recent events and the ongoing situation. The UN was relieved that the conflict had come to a close but, in the light of reports of violations by the Government, there was concern among senior staff that the visit could be misconstrued as overtly supportive of the Government. Nevertheless, the Secretary-General decided to proceed with a visit from 22 to 23 May 2009 with three objectives: to meet humanitarian needs for IDPs, including minimum standards and full access for the UN; to expedite the screening of IDPs in a way that respected human rights, with a view to their rapid return home; and to urge “powerful and immediate steps to initiate a political process of dialogue, accommodation and reconciliation.”<sup>131</sup>

147. During his visit, the Secretary-General was flown over the Wannu by Government helicopter. The craters from heavy artillery shelling were clearly visible along the narrow strip of beach and coast line where tens of thousands of IDPs had been living in previous weeks. The Secretary-General later described the area as “devastated” and said that civilians “must have suffered terribly”.<sup>132</sup> The Secretary-General also visited IDP camps in Menik Farm, and accompanying journalists later complained that the IDPs were evidently interned, that IDPs were prevented from speaking with them, and that the visit was heavily constrained by the Government. The Secretary-General said the camps were worse than he had seen anywhere in the world<sup>133</sup>.

148. The Secretary-General held a formal meeting with President Rajapaksa on 23 May, with the objectives of establishing an initial “foundation for progress on humanitarian assistance”, emphasizing the need for accountability for violations and “long-term political reconciliation and outreach to minorities, including Tamils and Muslims”<sup>134</sup>, and to agree the content of a joint statement with the Government. According to UN minutes of the meeting, the Secretary-General also raised concern over problems of access to IDP camps, the internment of national staff, and the detention of doctors who had been in the Wannu. The President and his advisers stated the Government would resettle IDPs within 180 days, that full access was already being given to humanitarian agencies, and that the Government would pursue a “political solution” that was “home grown”. In a subsequent tête-a-tête meeting the Secretary-General encouraged President Rajapaksa to be “proactive on human rights issues”, suggested appointing a UN “envoy” to assist in finding a political solution, and raised the question of accountability and respect for

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<sup>131</sup> Secretary-General's spokesperson's statement of 22 May 2009.

<sup>132</sup> During a meeting with the diplomatic corps on 23 May 2009.

<sup>133</sup> During a meeting with the diplomatic corps on 23 May 2009.

<sup>134</sup> Summary record of Policy Committee meeting of 23 June 2009.

international humanitarian law and human rights. At the Secretary-General's insistence, the President reluctantly agreed to a reference to accountability in the Joint Statement. Issued later that day, the Joint Statement ended with a paragraph reading "Sri Lanka reiterated its strongest commitment to the promotion and protection of human rights ... The Secretary-General underlined the importance of an accountability process for addressing violations ... The Government will take measures to address those grievances." These three sentences would become a pillar of subsequent UN action.

149. In a bid to engage the support of Member States, the Secretary-General debriefed the diplomatic community in Colombo, seeking support on human rights, and discussed Sri Lanka during an informal meeting with the Security Council on 5 June. Council members asked that the UN pursue implementation of the Joint Statement, and on 10 June the Secretary-General wrote to President Rajapaksa with regard to follow-up on its provisions.

150. The sudden end to the conflict prompted additional reflection by the UN on its strategy. A 23 June Policy Committee meeting acknowledged the very limited political space given to the UN in Sri Lanka. Members agreed to:

[REDACTED]

[REDACTED].<sup>135</sup> The meeting also devoted considerable attention to the issue of accountability (see Annex III.C.2).

*ii. Government positioning*

151. Even before meeting with the Secretary-General in Colombo, President Rajapaksa's victory speech in parliament on 19 May set the tone for the Government's approach to post-conflict governance and reconciliation in Sri Lanka. While most of the speech was delivered in Sinhala, it began with some statements in the Tamil language: "The war against the LTTE is not a war against Tamil people. Our aim was to liberate our Tamil people from the clutches of the LTTE. Our heroic forces have sacrificed their lives to protect Tamil civilians. The victory we have gained by defeating LTTE is the victory of this nation, and the victory of all people living in this country. Protecting the Tamil speaking people of this country is my responsibility. That is my duty. All the people of this country should live in safety without fear and suspicion. All should live with equal rights." The speech ended on a similar note: "I must specially mention here that this great battle for national revival will be waged with the aim of raising the lives of the Tamil people who live in the North and East of our land, too. In the past several decades those people did not have the right to a meaningful life. They were denied the right to life, the right to freedom, the right to development." However, the speech also set a tone that was less accommodating of the UN's long-standing concerns: it thanked the international community for its support but rejected "imported" solution; and it said "We have removed the word minorities from our vocabulary three years ago. No longer are there Tamils, Muslims, Burghers, Malays

<sup>135</sup> Policy Committee Decisions on Sri Lanka, 23 June 2009



and any other minorities. There are only two peoples in this country. One is the people that love this country. The other comprises the small groups that have no love for the land of their birth. Those who do not love the country are now a lesser group.”<sup>136</sup>

152. In the weeks after the end of the conflict, the UN noted heightened intolerance and that “journalists, civil society actors and others have come under physical threat and attack, often labelled “traitors”, for their criticism of the Government’s conduct of the war ...”<sup>137</sup>

After the Human Rights Council’s adoption of a resolution (see below) considered highly favourable to the Government, enormous posters were placed on advertising panels in Colombo showing the faces of senior Government officials who had defended Sri Lanka at the Human Rights Council.

*iii. Human Rights Council Special Session May 2009*

153. During April and May in Geneva a number of Member States on the Human Rights Council had been considering what action they should take on Sri Lanka. Some States focused on gathering the minimum of 16 Human Rights Council members to support calling a Special Session<sup>138</sup>; others were concerned that it would be impossible to get the minimum of 24 votes required to adopt a resolution, without which a Special Session would be of limited use. There was some criticism by civil society actors of the USG-Human Rights, with suggestions that OHCHR could have done more to share information on the situation with Human Rights Council Member States, thereby helping the effort to reach a consensus on a need to respond to the situation. Some member states mooted the possibility of an informal format, similar to that being used at the Security Council. Nevertheless, on 19 May, one day after the end of the conflict, having confirmed the support of a total of 17 Human Rights Council members, the Ambassador of Germany to the UN in Geneva wrote to the Human Rights Council President requesting that a Special Session be convened to address “*The human rights situation in Sri Lanka*”. Usually, the sponsors of a Special Session attach a draft resolution to the request for a session, and the draft becomes the basis for discussion within the Human Rights Council. The sponsors of the Special Session on Sri Lanka had formed a ‘group of friends’ to prepare a draft, but had not completed working on the text and were unable to present it at the same time that the request for the Special Session was submitted. According to the Human Rights Council’s procedural rules, any UN Member State, regardless of whether it is a member of the Human Rights Council or the subject of a resolution, can table a resolution at the Council; and the first text to be tabled is the first to be discussed. Within one hour of the notification of a request for a Special Session, the Government of Sri Lanka submitted its own draft resolution to the Human Rights Council Secretariat. The Sri Lankan draft therefore became the first text to be discussed at the Special Session. The group of friends subsequently sought to submit its own text for discussion, but other Human Rights Council Member States, indicating they had not been in favour of the

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<sup>136</sup> President Rajapaksa’s speech to Parliament on the defeat of the LTTE, 19 May 2009, accessed at [http://www.satp.org/satporgtp/countries/shrilanka/document/papers/president\\_speech\\_parliament\\_defeatofLTTE.htm](http://www.satp.org/satporgtp/countries/shrilanka/document/papers/president_speech_parliament_defeatofLTTE.htm)

<sup>137</sup> Minutes of the 23 June UN Policy Committee meeting.

<sup>138</sup> As provided for under General Assembly resolution A/RES/60/251, paragraph 10, of 3 April 2006.

Special Session in the first place, said they were ready to begin the process on the basis of the Sri Lankan government draft.

154. The Special Session was held from 26-27 May. Speaking at the session, the USG-Human Rights said “There are strong reasons to believe that both sides have grossly disregarded the fundamental principle of the inviolability of civilians”, and called for an “independent and credible international investigation ... to ascertain the occurrence, nature and scale of violations of international human rights and international humanitarian law, as well as specific responsibilities”. The Human Rights Council Special Procedures mandate-holders presented a joint statement to the Council calling for respect for international human rights and humanitarian law, an end to internment of IDPs, and accountability.

155. The Sri Lankan Government’s draft resolution was adopted on 27 May by 29 votes for, 12 against, and 6 abstentions. The resolution’s preamble includes the following: “*Condemning* all attacks that the Liberation Tigers of Tamil Eelam launched on the civilian population and its practice of using civilians as human shields ... *Welcoming* the conclusion of hostilities and the liberation by the Government of Sri Lanka of tens of thousands of its citizens ... as well as the efforts by the Government to ensure the safety and security of all Sri Lankans and to bring permanent peace to the country ...” The resolution’s operative paragraphs commend the Government for its support to IDPs, welcome Government commitment to human rights, encourage continuing cooperation with the UN, and urge “the international community to cooperate with the Government of Sri Lanka in the reconstruction efforts”.<sup>139</sup> The resolution did not mention any allegations of violations committed by the State and made no reference to accountability. It did however endorse the Joint Statement between the Secretary-General and the President of Sri Lanka, which had mentioned accountability – indeed some Member States supported it for this reason.<sup>140</sup>

***b. UN provides post-conflict assistance, but with mixed success***

156. As in the past, the UN would struggle to make progress on implementation of the strategy and objectives outlined in the Joint Statement and the Policy Committee’s decisions of 23 June.

*i. Pressure to release IDPs from internment*

157. The number of IDPs in internment camps reached a peak of 282,000 in May and June 2009, with some 250,000 in the Menik Farm camps alone.<sup>141</sup> The Government continued to argue that IDPs must remain in the camps until additional screening was completed and their home districts de-mined. Many IDPs were injured, malnourished and traumatized. The camps were run by the military; IDPs could not leave, and access for UN staff was tightly controlled. Sanitation

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<sup>139</sup> Human Rights Council resolution on “Assistance to Sri Lanka in the promotion and protection of human rights (S/11-1 27) of May 2009.

<sup>140</sup> Human Rights Council resolution on “Assistance to Sri Lanka in the promotion and protection of human rights (S/11-1 27) of May 2009, paragraph 10.

<sup>141</sup> OCHA Wannu Emergency Sitrep No. 16, 21 May 2009

and access to water were insufficient. Effective protection monitoring was very difficult in the immediate post-conflict period.<sup>142</sup>

158. There were public reports of disappearances in the camps.<sup>143</sup> UN staff based in Vavuniya had also been reporting their concerns regarding rights violations within the first of the Menik Farm camps, and had been distressed to see that while those concerns remained unaddressed several UN entities were engaging with the authorities in constructing additional camps. By the late summer of 2009, advocacy from the UN's most senior officials was focused on getting the Government to speed up screening and releasing IDPs into host families or other temporary arrangements that would get them out of internment.

159. Throughout the UN's exchanges with the Government over the rights of IDPs in camps in the north, the UN continued to provide humanitarian assistance to the camps. At the most senior levels, the UN was nevertheless concerned by the situation. From late August, a series of high-level UN interventions were launched to press the Government on its commitments. On 27 August, the Secretary-General's Chef de Cabinet met with representatives of the Co-Chairs, and with India, to share the UN's concerns. On 14 September the Secretary-General telephoned President Rajapaksa to raise concerns regarding the implementation of the Joint Statement, and immediately followed up with a letter, stating that "The [UN] is providing substantial help to the IDPs in the camps. However, I am now facing difficult questions about how far the [UN] is willing to go in supporting a situation where IDPs are denied freedom of movement. ... We will not be able to support the creation or maintenance of further closed camps that detain IDPs into the medium term."<sup>144</sup> The letter was followed by a mission of the USG-Political Affairs to Sri Lanka from 17 to 18 September, to find out why so little progress had been made on the release of IDPs. The UN's advocacy began to change from seeking the release of IDPs to seeking the rapid 'return' of IDPs to their home communities. The Government told the USG-Political Affairs that 70 to 80 per cent of IDPs would be resettled by January 2010. From 24 to 26 September, the RSG-IDPs also visited Sri Lanka. In his meetings with the Government and in a post-mission Memorandum he raised the potential illegality of the IDP internment saying it may amount to arbitrary detention.

160. Meanwhile, the Government had called presidential elections for January 2010. With the former chief of the Army, General Fonseka, running as an unexpected opposition candidate. The concerted international pressure in favour of releasing IDPs, the pending elections, and the logistical challenge of managing the camps and their security, all combined in favour of a hastened return of IDPs. By 22 January 2010, roughly 160,000 IDPs had returned to their district of origin since August, leaving 107,000 IDPs in camps. An additional 29,000 people, primarily vulnerable groups like the elderly, had been released from the camps to host families or

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<sup>142</sup> Wide international coverage was given to the conditions in the camps from June onwards. E.g. see CNN report of 21 August 2009 at <http://www.youtube.com/watch?v=skCXINfDwiY> as well as reports and statement by International Crisis Group, Human Rights Watch and Amnesty International in October, September and December 2009 respectively.

<sup>143</sup> See, for example, Amnesty international and the BBC, viewed on 15 October 2012 respectively at: <http://www.amnesty.org/en/library/asset/ASA37/016/2009/en/5de112c8-c8d4-4c31-8144-2a69aa9fff58/asa370162009en.html> ; and

[http://www.bbc.co.uk/sinhala/news/story/2009/06/090615\\_sunila\\_hooded.shtml](http://www.bbc.co.uk/sinhala/news/story/2009/06/090615_sunila_hooded.shtml)

<sup>144</sup> Secretary-General's letter to President Rajapaksa, 15 September 2009.

alternative care. Ad hoc, last-minute decisions on which people to release, when to release them, and where to send them meant that the process was “chaotic and ill prepared”.<sup>145</sup> The UN supported the release and return process, by providing transportation and start-up kits to IDPs. The Government took steps to lighten the restrictions on the IDPs who remained in camps but there were still limitations on freedom of movement.

*ii. Return and resettlement: UN excluded from Government planning*

161. A Presidential Task Force for Resettlement, Development and Security in the North (PTF) had been established in May 2009 with a mandate to “prepare strategic plans, programs and projects to resettle internally displaced persons, rehabilitate and develop economic and social infrastructure of the Northern Province.”<sup>146</sup> The need to define and plan for the UN’s post-conflict support to Sri Lanka had been flagged by some UN actors even while the conflict was ongoing. An internal UN report by DPA had urged in February 2009 that the UN’s support for post-conflict reconstruction and demobilization be linked to long-term political solutions that would address the underlying causes of conflict. The UN’s June 2009 Policy Committee discussion and decisions reflected this view, and show the UN realized that the handling of the post-conflict humanitarian response would have a major bearing on the viability of long-term political solutions for Sri Lanka. Some UN entities were concerned to ensure that the resettlement process, and UN assistance, was not abused by the Government to stifle the human rights of IDPs, for example by preventing people from returning to their original homes in the Wanni. To this end, the Policy Committee’s 23 June 2009 decision, in keeping with DPA’s analysis from 2007 and 2008, had focused on ensuring UN assistance was given only as part of a long-term plan which met certain parameters. The decision also sought to unite international action behind a shared understanding of the situation by creating a coordination mechanism and setting benchmarks for assistance.

162. However, early on, the Government had made clear it did not desire UN assistance in the elaboration of reconstruction and rehabilitation plans, let alone plans toward a political solution. Six months after the defeat of the LTTE, the Government had not yet made public a plan for the recovery and reconstruction of the areas formerly under LTTE control. The Government agreed to a CHAP for 2010, but the Presidential Task Force then insisted the CHAP be limited to humanitarian assistance for IDPs in camps, while early recovery needs would be addressed under a separate process that, by mid-February 2010 had not been defined. International NGOs, the UN Country Team’s implementing partners, were required by the Government to keep advocacy distinct from relief, recovery and development activities.<sup>147</sup>

163. Further, the UN did not succeed in establishing a suitable coordination mechanism, with the International Financial Institutions and Member States, that would have helped ensure the international community approached early recovery and resettlement with a common strategy and the political weight of its combined leverage. In a February 2010 follow-up on progress made in implementing the various aspects of its 23 June 2009 decisions, the Policy Committee noted: [REDACTED]

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<sup>145</sup> ICG, *Sri Lanka: A Bitter Peace*, January 2010, p. 3, quote from a senior aid worker.

<sup>146</sup> <http://www.slmfa.gov.lk>

<sup>147</sup> ICG, *Sri Lanka: a bitter peace*, 11 January 2009, p. 7

<sup>148</sup> As a result, the donor community was not united in its approach to the Government's policies on the post-conflict future of the north. Certain donors abstained from providing support to the Government's more problematic post-conflict initiatives, such as the rehabilitation of 'surrendees', or conditioned their support on a Government guarantees of respect for human rights or on specific issues like ICRC access to the surrendee camps. However, other donors provided unconditional financial and material support. The lack of an adequate coordination mechanism made it harder to ensure donor assistance was tied to objectives of long-term stability and respect for human rights. In February 2010, the EU decided to withdraw preferential tariff benefits to Sri Lanka under a special incentive arrangement for sustainable development and good governance, known as GSP+, following an investigation by the European Commission which identified significant shortcomings in Sri Lanka's implementation of three UN human rights conventions. However, this was a process that had begun in 2007 and was only reaching its culmination two years later.

164. Regarding the UN's own planning on Early Recovery, the UNCT, through UNDP, had initiated an Early Recovery Group with a UN and Government co-chair. In November 2009 the UNCT discussed its strategy and efforts at outreach to the World Bank and the Asian Development Bank, both of which were planning to launch emergency loan packages to support reconstruction. By the end of 2010 the UN Peace Building Fund had provided \$3 million and the OCHA-managed UN Trust Fund for Human Security had also provided assistance. Nevertheless, in the absence of an overall public plan from the Government to guide post-conflict relief, recovery and reconstruction, UN action was ad hoc and reactive. As during the conflict itself, UN engagement through assistance was not firmly leveraged to principles. Each action in the returns process was tightly controlled by the Presidential Task Force. Within this environment, significant protection problems dogged the return process. The displaced were not consulted on the process by which they would be returned home; IDPs were dispatched onto IOM and UNHCR buses without the UN having the access necessary to conduct protection monitoring of the returns process; UN agencies were not immediately allowed access to areas that IDPs were returning to; a large number of IDPs were not able to return to their homes because of continued mine contamination or the destruction of their homes, and instead were accommodated in 'transit centres' in their district of origin; resettled IDPs were closely monitored by the military, limiting their freedom of movement; and there were reports of the renewed detention of released IDPs.<sup>149</sup> Concerns with returns were acknowledged by the UN in private but public UN advocacy continued to emphasize expediting the returns process, as preferable to continuing internment.

165. Some 18 months after the end of the conflict, in an IAWG-SL meeting on 3 November 2010, the RC reported that "approximately 80% of IDPs had returned and between 90-95% were out of the camps" and that about 3,000 out of 6,000 surrendees had been released. He reported positive developments regarding infrastructure, such as the supply of electricity and the functioning of schools and hospitals in areas impacted by the conflict. The RC reported generally positive working relations with local officials and the military in the north. He said that "humanitarian assistance remained a priority for those still returning and for vulnerable groups,

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<sup>148</sup> Table on implementation of decisions from the 23 June 2009 Policy Committee meeting, dated of 17 February 2010

<sup>149</sup> ICG, *Sri Lanka: A Bitter Peace*, 11 January 2010, pp. 3-5

and noted the need to develop agriculture, strengthen education, restore the local governance structure, create a justice system, reconstitute a police force and establish courts, and strengthen bridging-mechanisms between different communities. Nevertheless, participants in the meeting shared their concern that an opportunity for reconciliation in Sri Lanka was being lost, noting a post-conflict triumphalism, the continued heavy military presence in the north, and the activities of paramilitaries. The RC noted that “balancing the delicate equilibrium between the UNCT’s ground operations and domestic political sensitivities had been a difficult task.” He also said that “the Government intended to increase its armed forces, as there was now a larger part of the country which needed to be controlled” and that the defence budget had increased because of “the handover of more responsibilities to the Defence Ministry, including the administration of immigration, NGOs and urban development.”<sup>150</sup>

iii. *Planning for the rehabilitation and reintegration of suspected LTTE combatants*

166. The handling of former LTTE combatants – and in particular their demobilization and reintegration – would be a key element in UN support to peace-building efforts. With this in mind, UNDP and ILO, in the final stages of the conflict, supported the Ministry of Disaster Management and Human Rights in the development of a *National Framework Proposal* and an *Action Plan for the Reintegration of Ex-combatants into Civilian Life in Sri Lanka*, finalized in July and October 2009 respectively. The Action Plan set out a process by which up to 15,000 former LTTE combatants were to be rehabilitated and reintegrated, involving a three- to 24-month centre-based rehabilitation period, based on the ex-combatants’ level of involvement with the LTTE, followed by community-based socio-economic reintegration.<sup>151</sup>

167. However, neither the Framework nor the Action Plan developed by the Ministry of Disaster Management and Human Rights with UNDP and ILO support was approved by the Cabinet, and as such they were not adopted as national policy. This meant that neither document became the basis for the rehabilitation and reintegration of the roughly 12,000 suspected LTTE combatants detained in internment camps.

168. Meanwhile, in response to an offer from IOM, the Presidential Task Force requested IOM assistance in the rehabilitation and reintegration of former LTTE cadres. IOM support was requested for the construction of demobilization/rehabilitation sites; the development of a database and registration of combatants; and support to socio-economic reintegration.<sup>152</sup> In response, IOM prepared a Demobilization, Rehabilitation and Reintegration (DRR) programme. Despite reservations expressed by the UN on the internment camps, IOM constructed a sample ‘rehabilitation site’ in the Menik Farm complex (‘site 5’) in October 2009. This site, to which the ‘surrendees’ were to be transferred, was never operationalized due to lack of funds. The process had the support of the Minister of Justice, and the Commissioner-General for Rehabilitation, who had purview over ‘surrendees’.

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<sup>150</sup> Minutes of the IAWG-SL meeting of 3 November 2010.

<sup>151</sup> While based on the UN’s integrated DDR standards, the Framework and Action Plan were silent on the legal framework on which the DDR process would be based. This was a critical gap, given that the legal framework would have defined the parameters for the prosecution, possible amnesty, and rehabilitation/reintegration benefits of the former combatants. The absence of a legal framework constituted a major void.

<sup>152</sup> Letter from Secretary of the Presidential Task Force for Resettlement, Development and Security in the North to Chief of Mission, IOM, 15 July 2009.

169. The Government's approach to the detention of surrendees raised serious human rights concerns, including: the mandatory and involuntary nature of rehabilitation, which involved the deprivation of liberty of the 'rehabilitee' and may have amounted to individual and collective punishment without criminal conviction; the denial of legal safeguards; and the duration of up to two years' detention without charge, trial or access to legal representation. Regarding the treatment of surrendees, the International Commission of Jurists said it was "concerned that the Government's 'surrendee' and 'rehabilitation' regime fails to adhere to international law and standards, jeopardizing the rights to liberty, due process and fair trial. There are also allegations of torture and enforced disappearance."<sup>153</sup>

170. In a 21 January 2010 ECHA meeting OHCHR raised concern regarding "the legality of the detention of those separated for alleged involvement with the LTTE and placed in 'rehabilitation centres', adding that there were "over 11,000 according to available figures but that true numbers are unknown," and urging that "ECHA members advocate strongly to the Government that ICRC be given access to the centres." Despite these concerns, IOM proceeded with its rehabilitation and reintegration programme, including the 'socio-economic profiling', of the surrendees, which involved gathering personal information from the surrendees and sharing it with the Government. So-called 'low risk' surrendees were released in increasing numbers from January 2010 onwards.

## **2. Accountability**

### ***a. The UN shows commitment to accountability***

171. On 20 May 2009, a day after the end of the conflict and two days before the Secretary-General would visit Sri Lanka, the USG-Human Rights sent a Code Cable to the Chef de Cabinet to offer information she thought useful for the visit, saying "I have been deeply concerned that actions taken by the Government and the LTTE in recent months ... may have amounted to serious international crimes ... In my view an international independent investigation of the acts committed in recent months should be advocated ... [I]mpunity will only complicate the necessary healing process within the country".<sup>154</sup> A few days later, the Joint Statement signed by the UN with the Government at the conclusion of the Secretary-General's visit, a few days later, was seen as a UN endorsement of a domestic accountability option, rather than an international one. The UN considered it a victory that there was a reference to accountability in the document at all. The Code Cable had also urged establishment of an OHCHR office in Sri Lanka to advise the authorities, monitor and report on human rights and support the "national human rights protection system".

172. By late June 2009, the heads of UN departments and agencies were increasingly focused on accountability [REDACTED]

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<sup>153</sup> Executive Summary of a briefing note published in September 2010 by the International Commission of Jurists published, "Beyond Lawful Constraints: Sri Lanka's Mass Detention of LTTE Suspects".

<sup>154</sup> A similar position was taken in an Amnesty International report, "Twenty years of make believe: Sri Lanka's Commissions of Inquiry, 11 June 2009.

[REDACTED] OHCHR supported the creation of an international investigation mechanism. But others, noting the limited support from Member States in the wake of the Human Rights Council Special Session, suggested alternatives such as a national peace and reconciliation initiative, a national investigation involving credible international figures or a regionally-led process. [REDACTED]

[REDACTED] Following up on the discussion, the next day OLA sent a note to the Secretary-General advising him that he had the authority, under Article 99 of the Charter, to establish Commissions of Inquiry, and to subsequently determine whether or not he forwarded the subsequent report to Member States.<sup>155</sup>

173. On the margins of the July 2009 Non-Aligned Movement (NAM) summit in Egypt, the Secretary-General met with President Rajapaksa and urged him “to uphold his commitment to establish an accountability process”.<sup>156</sup> On 30 July the Policy Committee met again at UNHQ to address “follow-up on accountability” in Sri Lanka [REDACTED]

[REDACTED] The meeting agreed that the UN would continue to encourage the Government to uphold its commitment to establish a credible national accountability process, while also identifying alternatives.

174. By September 2009 the UN still had no indication that the Government was taking action to meet its responsibilities on accountability. The UN began to indicate to the Government that it was prepared to take its own action. The Secretary-General used his 14 September letter to President Rajapaksa, in follow-up to the Joint Statement, to also inform the President that he was “considering the appointment of a Commission of Experts to advise me further, and to be available to you for assistance” on accountability. He emphasized “I cannot stress enough the importance of a transparent, independent and credible accountability process in demonstrating the Government’s serious intent to build a lasting peace ...” He also raised the issue on 21 September in a lunch with the Security Council. The same issue had been raised on 16 September by the President of the Human Rights Council in a meeting in Geneva with the Sri Lankan Minister of Disaster Management and Human Rights. And the USG-Humanitarian Affairs wrote to President Rajapaksa, on 7 December 2009, renewing the UN call for accountability. On 2 February 2010, in a BBC interview the Government’s Defence Secretary dismissed international calls for an investigation. A week later, the High Commissioner for Human Rights, in a meeting with Government officials, also raised her continued concern over accountability for past human rights violations and ongoing human rights concerns, as well as over the public statement by the Defence Secretary.

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<sup>155</sup> See Annex III.C.2.b.

<sup>156</sup> Referenced in the summary record of the 30 July 2009 Policy Committee meeting.



***b. The Lessons Learned and Reconciliation Commission and the Secretary-General's Panel of Experts***

175. By February of 2010, the UN still had no information of concrete Government action on accountability. The USG-Human Rights continued to urge for an international commission of inquiry. However, the bulk of the Policy Committee favoured a UN initiative that would kick-start national efforts to ensure accountability. The Secretariat proceeded to give practical consideration toward setting up an international mechanism of some kind. On 4 March 2010, the Secretary-General, speaking to the President of Sri Lanka by telephone “informed the President of his intention to go ahead with the establishment of a panel of experts ... [to] ... advise him -- meaning the Secretary-General ... on the way forward on accountability issues relating to Sri Lanka.”<sup>157</sup>

176. The Government of Sri Lanka issued a press statement the following day describing the proposal of a Panel of Experts as unwarranted. On 9 March the Non-Aligned Movement (NAM) group of Member States sent a letter to the Secretary-General also complaining about the proposal. On 16 March the Secretary-General used a press briefing to address the concerns of the Government and the NAM saying that the Panel of Experts would not infringe on Sri Lanka's sovereignty, and linking the establishment of the Panel with the May 2009 Joint Statement: “This joint statement contained a commitment related to ensuring an accountability process for addressing violations of international humanitarian and human rights laws ... The panel I am establishing will advise me on the standards, benchmarks and parameters, based on international experience, that must guide any accountability process such as the one mentioned in the joint statement. Now this panel will report to me directly and not to another body ... I am convinced that it is well within my power as Secretary-General of the United Nations to ask such a body to furnish me with their advice of this nature. This does not in any way infringe on the sovereignty of Sri Lanka.”<sup>158</sup>

177. Around the end of April 2010, the International Crisis Group submitted a draft copy of its own report on international human rights and humanitarian law violations in Sri Lanka to the Government, for its comment. The report, published on 17 May, said: “Evidence gathered by the International Crisis Group suggests that [the months January to May 2009] saw tens of thousands of Tamil civilian men, women, children and the elderly killed, countless more wounded, and hundreds of thousands deprived of adequate food and medical care, resulting in more deaths. This evidence also provides reasonable grounds to believe the Sri Lankan security forces committed war crimes with top government and military leaders potentially responsible. There is evidence of war crimes committed by the LTTE and its leaders as well, but most of them were killed and will never face justice. An international inquiry into alleged crimes is essential given the absence of political will or capacity for genuine domestic investigations.”<sup>159</sup> The report documented allegations including: the intentional shelling of civilians; the intentional shelling of

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<sup>157</sup> Reference by the Secretary-General's spokesperson in the UN noon day briefing on 5 March 2010 (<http://www.un.org/News/briefings/docs/2010/db100305.doc.htm>)

<sup>158</sup> <http://www.un.org/apps/news/story.asp?NewsID=34102&Cr=sri+lanka&Cr1=#.UE-AuY11QSs>

<sup>159</sup> International Crisis Group report “War crimes in Sri Lanka”, 17 May 2010, Executive Summary, page (i).

hospitals; the intentional shelling of humanitarian operations; the intentional shooting of civilians; the intentional infliction of suffering on civilians.<sup>160</sup>

178. Possibly in reaction to the growing pressure on accountability from International Crisis Group, the UN, and others, and as a way to pre-empt actual establishment of the Panel of Experts, on 6 May 2010 President Rajapaksa announced the Government's establishment of the Lessons Learned and Reconciliation Commission (LLRC). The Commission was mandated to look into the facts and circumstances which led to the failure of the Cease Fire Agreement from 21 February 2002 until 19 May 2009 and whether any person, group or institution directly or indirectly bore responsibility in this regard.<sup>161</sup> There were immediately critical comments from international NGOs about the body. A joint letter from the respective heads of three organizations, the International Crisis Group, Human Rights Watch, and Amnesty International to the LLRC Secretary listed numerous concerns, including an inadequate mandate, lack of independence, and lack of witness protection.<sup>162</sup> OHCHR remarked in a July 2010 internal note that "Since 1991 Sri Lanka has established nine Commissions of Inquiry, with very little impact and resulting in very few prosecutions for human rights violations. Even when the international community has tried to support a national process ... this has been thwarted by institutional resistance and political interference."

179. The International Crisis Group report, in addition to focusing on the Government of Sri Lanka, was also critical of the UN's performance in Sri Lanka, and said: "International organizations have a responsibility to respond to allegations of war crimes ... [The UN] has done too little to protect its national staff in Sri Lanka and allowed the government to intimidate and expel international staff. By complying with Sri Lankan government's demand to withdraw from the Wanni it undermined its humanitarian mandate. By allowing the LTTE to control the movements of its national staff, it undermined their safety." Calling for an international investigation into alleged violations, the report noted there was little expectation that the Human Rights Council or the Security Council would launch such an inquiry, but that "[t]he Secretary-General, however, has authority to authorize his own inquiry and should be strongly encouraged to do so ... UN officials and member states must go beyond statements calling for domestic measures of accountability and vigorously support the Secretary-General in setting up a robust inquiry."<sup>163</sup> The report also called for an inquiry into the conduct of the UN in Sri Lanka from

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<sup>160</sup> International Crisis Group report "War crimes in Sri Lanka", 17 May 2010, Executive Summary, page (i).

<sup>161</sup> The full Terms of Reference of the LLRC are listed in the Commission's report:

<http://slembassyusa.org/downloads/LLRC-REPORT.pdf>

<sup>162</sup> Responding to an invitation from the LLRC to appear before it, the letter said: "Unfortunately, we are compelled to decline the Commission's invitation. While we would welcome the opportunity to appear before a genuine, credible effort to pursue accountability and reconciliation in Sri Lanka, the LLRC falls far short of such an effort. It not only fails to meet basic international standards for independent and impartial inquiries, but it is proceeding against a backdrop of government failure to address impunity and continuing human rights abuses ... Nothing in the LLRC's mandate requires it to investigate the many credible allegations that both the government security forces and the Liberation Tigers of Tamil Eelam (LTTE) committed serious violations of international humanitarian and human rights law during the civil war, especially in the final months, including summary executions, torture, attacks on civilians and civilian objects, and other war crimes. The need to investigate them thoroughly and impartially is especially urgent given the government's efforts to promote its methods of warfare abroad as being protective of the civilian population, when the facts demonstrate otherwise."

<sup>163</sup> International Crisis Group report "War crimes in Sri Lanka", 17 May 2010, page 33.

January 2008 until January 2010 and an inquiry into alleged crimes against UN staff by both the Government of Sri Lanka and the LTTE.<sup>164</sup>

180. While not completely rejecting the LLRC, the UN was sufficiently concerned by the Commission's limited mandate and the long-standing structural and political obstacles to accountability, that it went ahead with plans to establish an international initiative. On 22 June 2010, in UNHQ, a statement attributable to the Spokesperson for the Secretary-General announced the appointment of a Panel of Experts to advise him on issues of accountability with regard to alleged violations of international human rights and humanitarian law during the final stages of the conflict in Sri Lanka. Through this statement, and a subsequent one on 9 July, the Secretary-General presented the Panel of Experts as a body "set up to advise the Secretary-General ... on the modalities, applicable international standards and comparative experience relevant to an accountability process. It will be a resource available to assist the Government of Sri Lanka and the Commission on Lessons Learnt and Reconciliation in applying the international best practice ..." The Panel did not have an investigative mandate, and thus it was not the international fact-finding body that some had been advocating for since at least 2006 as an alternative to national efforts. However, it was a mechanism that the UN hoped would allow it concretely measure and encourage Government efforts, to help provide Member States with information on the issue, and to keep accountability on the agenda. Particularly in the light of the concern expressed by the NAM in March, DPA had engaged in considerable advocacy toward the Government of Sri Lanka and other Member States on the merits of the Panel of Experts, and underlining the fact that it was not an investigative body. In 7 July 2010 remarks during the Security Council open debate on the Protection of Civilians in Armed Conflict, the Secretary-General linked accountability for human rights and humanitarian law in Sri Lanka with the UN's commitment to the protection of civilians.

181. The establishment of the Panel of Experts angered some political actors in Sri Lanka. On 7 July 2010, the UN compound in Colombo was surrounded by demonstrators who prevented anyone from entering or leaving for a number of hours, with harassment of staff continuing for several days thereafter, and a Government Minister set up a podium in front of the compound and began a hunger strike.<sup>165</sup> On 8 and 9 July, UNHQ released statements from the Secretary-General saying it was unacceptable that the Government failed to prevent disruption of the normal functioning of the UN offices in Colombo as a result of unruly protests organized and led by a cabinet minister, and explaining the mandate of the Panel of Experts. He recalled the RC to New York for consultations and announced the closure of the UNDP Regional Centre in Colombo.<sup>166</sup> The RC travelled to UNHQ from 12-18 July.

182. On 19 July 2010 the Panel of Experts met for the first time in UNHQ-New York. It sent letters of introduction to the Government of Sri Lanka and requested permission to visit. When negotiations for a visit to Sri Lanka fell through, its work was conducted through research and interviews from outside the country. On 12 April 2011, the Panel of Experts submitted its report

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<sup>164</sup> International Crisis Group report "War crimes in Sri Lanka", 17 May 2010, Executive Summary, pages 36-37.

<sup>165</sup> See, for example, [http://articles.cnn.com/2010-07-07/world/sri.lanka.un.seige\\_1\\_president-mahinda-rajapaksa-thousand-protesters-sri-lanka?\\_s=PM:WORLD](http://articles.cnn.com/2010-07-07/world/sri.lanka.un.seige_1_president-mahinda-rajapaksa-thousand-protesters-sri-lanka?_s=PM:WORLD)

<sup>166</sup> In fact, plans to close the regional centre had been underway for some time, but the Secretary-General's spokesperson linked closure announcement with the recent events.

to the Secretary-General, accompanied by a confidential memorandum stating “[T]he Panel believes that the Government of Sri Lanka is completely unwilling to grapple with its own conduct in the prosecution of the war, as well as the fate and plight of the victims. Despite the Government’s rhetoric, it is not serious about accountability and does not believe that it needs to be accountable for the abuses that have taken place. Thus, as we do not believe that the Government will seriously undertake any investigations, we recommend the immediate establishment of a follow-up United Nations investigation mechanism”. In June 2009, OLA had already been asked for advice on the Secretary-General’s options in addressing impunity for alleged violations during the conflict and had responded by saying that the Secretary-General had the authority to act on his own initiative to undertake fact-finding missions concerning matters that may threaten international peace and security.<sup>167</sup> In mid April 2011, the EOSG requested the legal analysis of OLA on the “viability and practicality” of the Panel of Experts recommendations. On 21 April, OLA responded to the EOSG saying, with particular regard to the recommendation for an international commission of inquiry, that “In the absence of both a mandate and a Government’s consent – as is likely to be the case of Sri Lanka – the establishment of a Commission of inquiry to conduct investigations in its territory is virtually impossible. The option of conducting an investigation outside the territory of Sri Lanka is, of course, possible (as was the case in a number of occasions in the past), but if it is, it is likely to replicate the experience of the present [Panel of Experts] with little added value.”

183. Throughout April, the EOSG, DPA and OHCHR were trying to determine how to advise the Secretary-General on what should be done with the Panel of Experts report as a whole. The Secretary-General took the courageous decision to make the report public. Regarding the possibility of follow-up action by Member States, OLA provided advice suggesting the Secretary-General could write to the President of the Human Rights Council saying he wished “to bring the Report to the attention of the Human Rights Council for its consideration”.<sup>168</sup> In the same note, OLA advised the Secretary-General not to attempt to transmit the report to the Security Council because this would pose “political challenges” and noted that “historically the Security Council has resisted receiving reports from the Secretary-General that the Council has not mandated, nor requested.” Considerable debate ensued on the language of the cover letter. The final draft of the letter described its purpose as “to share” the report. Upon receiving the letter, the President of the Council, after consultation with Member States at the Human Rights Council Bureau and with the Human Rights Council Secretariat, concluded that she could not refer the report to the Human Rights Council for discussion if the Secretary-General had not expressly asked her to do so in his letter. Several Member States and Secretariat actors complained that the Secretary-General had the authority to suggest follow-up action when transmitting a report, including for example, requesting that States release the report as an official document of the UN. Some UN staff suggested that the fact that the report was not released as an official UN document created opportunities for the report to be labelled as the voice of its three-member panel, rather than of the UN.<sup>169</sup>

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<sup>167</sup> Note from the UN Office of Legal Affairs to the EOSG “Investigations by the Secretary-General in the field of international peace and security”, 24 June 2009.

<sup>168</sup> Note from the UN Office of Legal Affairs to the EOSG on the Panel of Experts on Sri Lanka, 21 April 2011.

<sup>169</sup> Interviews of UN staff with the Panel.

184. The LLRC submitted its own report to the Government of Sri Lanka on 15 November 2011, and the report was made public several weeks later. The report determined that the LTTE had committed serious violations of international humanitarian law. It also determined that although Government security forces had killed civilians, that this was accidental. Several international NGOs were critical of the report's limited focus on State responsibility.<sup>170</sup> The report nevertheless recommended additional investigations into several incidents which could incur the responsibility of the military. It also looked at the causes of the conflict, placing blame on politicians from both sides and the failure to offer appropriate political solutions. A wide range of recommendations touched upon structural and procedural actions to address past crimes and protect international human rights and humanitarian law in the future. The LLRC's work was limited by its mandate and by the reluctance of some potential witnesses.<sup>171</sup> Nevertheless, many witnesses did speak out with important testimony and, despite the fact that the LLRC was not a replacement for an accountability mechanism, many of its recommendations could be of positive impact in Sri Lanka.

185. Separately, in March of 2011, concerned that with the passage of time the testimony of UN staff would be lost, OHCHR launched the "Sri Lanka Documentation Project" "an exercise of due diligence on the part of the UN as an effort to add to the documentation of events that may be of historical interest", including "gathering information, compiling it in an electronic archive and drafting an interim report on information available within the UN System on alleged violations of international human rights and humanitarian law". The project was carried out in accordance with the mandate of the High Commissioner to coordinate human rights promotion and protection activities throughout the UN System.<sup>172</sup>

***c. March 2012 Human Rights Council session and resolution on Sri Lanka***

186. In the months prior to the March 2012 Human Rights Council session, political support began to build for a resolution on Sri Lanka. By January 2012, the climate in the Human Rights Council was significantly different from the summer of 2009. The membership of the Human Rights Council had changed, and the Council had been heavily influenced by events during the Arab Spring, including international human rights and humanitarian law violations committed against civilians by State and non-State actors. In an indication of the importance that the Government of Sri Lanka gave to the Human Rights Council's deliberations it sent a very large delegation – reportedly over 70 persons – from Colombo to Geneva in March. Human Rights Council sessions are attended not only by Member States, but also by civil society actors and experts who advocate on human rights issues in bilateral meetings and informal events on the margins of the main meeting room.

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<sup>170</sup> E.g. an Amnesty International press release of 16 December 2011 said: "A preliminary review of the report suggests that it acknowledges the very serious human rights problems in Sri Lanka. But where it appears to really falter is in ignoring the serious evidence of war crimes, crimes against humanity and other violations of the laws of war by government forces, even though the report highlights the serious and systematic violations committed by the LTTE," <http://www.amnesty.org/en/for-media/press-releases/sri-lanka-report-falls-short-2011-12-16>

<sup>171</sup> For example, three international NGOs refused to meet with the LLRC; viewed on 15 October 2012 at: <http://www.hrw.org/news/2010/10/13/sri-lanka-groups-decline-testify-flawed-commission>

<sup>172</sup> General Assembly resolution 48/141.

187. During the days before the resolution on Sri Lanka was put to a vote, Sri Lankan human rights defenders were present at the Human Rights Council. Members of the Sri Lanka Government delegation followed the human rights defenders around UN premises, taking video of their public statements and private conversations; some of the recordings were later broadcast on national television. Some human rights defenders were followed by members of the Government delegation when they walked in the streets of Geneva and, in at least one instance, into their hotel lobby. The Government Public Relations Minister said he would “break the limbs” of journalists and human rights defenders who he mentioned by name and called “traitors.”<sup>173</sup> The Minister of Foreign Affairs subsequently rejected the statement and distanced the Government. The unprecedented intimidation of human rights defenders attending a UN function was reported to UNDSS. The Human Rights Council President raised the issue with the Sri Lankan ambassador, with the Council Bureau, and from the podium of the Council. OHCHR released a press statement on 23 March 2012 on the threats, harassment and intimidation and noting that in Sri Lanka itself, domestic media outlets had since January been running a continuous campaign of vilification against NGO activists, accusing them of treason and association with terrorism. The statement explained that some of these attacks “were carried in Sri Lankan state media and Government websites or were filed by journalists who had been officially accredited to the [Human Rights Council] session by the Sri Lankan permanent mission.”

188. The Human Rights Council adopted a resolution on Sri Lanka on 22 March by 24 votes for, 15 against, and 8 abstentions.<sup>174</sup> The resolution was cautiously supportive of the LLRC “acknowledging its possible contribution to the process of national reconciliation in Sri Lanka”, and welcoming “the constructive recommendations contained in the Commission’s report, including the need to credibly investigate widespread allegations of extra-judicial killings and enforced disappearances, demilitarize the north of Sri Lanka, implement impartial land dispute resolution mechanisms, re-evaluate detention policies, strengthen formerly independent civil institutions, reach a political settlement on the devolution of power to the provinces, promote and protect the right of freedom of expression for all and enact rule of law reforms.” The resolution regretted “the [LLRC] report does not adequately address serious allegations of violations of international law.” The resolution called upon the Government to implement the constructive recommendations in the LLRC report “to take all necessary additional steps to fulfil its relevant legal obligations and commitment to initiate credible and independent actions to ensure justice, equity, accountability and reconciliation for all Sri Lankans”. The Government was asked to rapidly present a “comprehensive action plan detailing the steps that the Government has taken and will take to implement the recommendations ... and also to address alleged violations of international law.” OHCHR and the Human Rights Council Special Procedures were asked to provide advice and technical assistance in consultation and with the concurrence of the Government and to report back to the Council in one year on the provision of such assistance.”

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<sup>173</sup> Accessed 25 May 2012 <http://www.bbc.co.uk/news/world-asia-17491832>

<sup>174</sup> Resolution A/HRC/19/L.2 of 8 March.

## Annex IV

### UN Staff: risks, violations, and commitment

#### A. National Staff who remained in the Wannai

1. The LTTE refused to issue travel passes to the dependents of national staff when the UN decided to relocate out of the Wannai in September 2008 and, as a result, many national staff chose to stay behind. The RC had written on 12 September to UN Killinochchi staff explaining why the UN was relocating, and subsequently issued staff with letters confirming their UN status. He also wrote to the LTTE and the Government to inform them that UN offices were being shut and that staff would be staying at home, and recalling obligations regarding the safety of UN staff and premises. The Government responded to the RC's letter on 18 September saying "after 29<sup>th</sup> of September, when the [UN] departure from Killinochchi will be completed the Government of Sri Lanka will not be in a position to recognize any remaining UN staff in these areas ..." The UN did not rebut this letter. Before leaving, international staff gave those staying behind as much equipment and supplies as they could. Reflecting back on the moment when the convoy left, Killinochchi, one national staff member who stayed behind said "the UN was abandoning the staff and IDPs, as well as its principles."<sup>1</sup>

2. A few weeks after the relocation, the remaining national staff moved from Killinochchi to PTK with their dependents, for safety and following UNHCR instructions. They established a base from where they continued to help local authorities distribute the assistance that began arriving on the humanitarian convoys. In mid-January 2009, when the 11<sup>th</sup> Convoy<sup>2</sup> was departing PTK on its return journey out of the Wannai, the UN used it to try and evacuate all remaining staff. The LTTE, however, blocked the departure. In the days that followed, the remaining 19 staff and 86 dependents of Convoy 11, came under heavy shelling largely originating from Government lines and killing many civilians. From January to May 2009, national staff and their dependents moved several times trying to avoid the worst of the fighting and relocating consecutively, as per Government instructions into No Fire Zone 1 and No Fire Zone 2, only to come under intense artillery shelling in each place. Like other IDPs around them, they had little shelter, clean water, food or medicine. One UN staff member was shot in the leg, and several dependents were killed. In spite of an increasingly catastrophic situation, national staff continued to work as far as possible. The LTTE was increasingly dominated by its military wing and, after the UN's relocation, was not inclined to respond to UN appeals on behalf of staff. Meanwhile, the UN's reluctance to challenge the Government on its shelling of civilians in general made it harder to challenge attacks that affected staff specifically.

#### B. Confinement of UN national staff in internment camps

3. From March 2009 onwards, the first of the UN staff trapped in the conflict area started to come out, taking different routes to escape. Some were able to leave with an ICRC ship via Trincomalee while others were able to leave by land via Killinochchi and then Olanthai. All the

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<sup>1</sup> Interview of UN staff member with the Panel of Experts.

<sup>2</sup> Annex III.B.2.c.

staff went through “screening”, along with other IDPs, at the Forward Defence Line. Arriving at military checkpoints the staff and dependents had to wait for periods that ran from hours to days, as each person went through multiple interrogations by the Army. Staff reported that they did not see any international presence, from the UN or ICRC, when they went through these screenings. Staff were unable to contact their respective agencies while going through screening. It was only once they were taken to the camps at Menik Farm for internment that they saw humanitarian workers inside the camp and were able to send messages to the UN to say they had come out of the Wannu and were alive.

4. The RC sent numerous letters to the Government and Army, in addition to meetings and phone calls, showing considerable effort by the UN to secure the release of staff and dependents from the camps. However, although dealing with a situation of apparently arbitrary detention, most UN communications were framed as appeals, often repeated over several weeks. At Government request, the UN filled out ‘Personal Information Forms’ on every interned staff member, and provided the Army with the residential addresses of every national staff member deployed by the UN to work in the camps. Using the Government’s terminology for the camps, a 6 April letter from the RC to the Minister for Foreign Affairs asked for action “to facilitate the release of UN staff and dependents from the welfare centres in Vavuniya.” A 15 April letter to the Commander of the Security Forces in Vavuniya, referring to the personal information forms said: “I will appreciate if you can give us feedback on the first phase and second phase of forms that was submitted to you as per my letters dated 18 and 25 March 2009.” In an 8 June letter to the Foreign Minister and referring to staff dependents, the RC asked that, if it was not possible to release all staff and dependents at once, “preference be given to ...prioritizing the release of children aged less than 15, and their mothers.” Some NGO and UN working-level critics of UN action asked whether the UN’s focus on its own staff in the camps over-shadowed concerns regarding the protection of all IDPs<sup>3</sup>; while others asked whether the UN did enough to ensure the rapid release of staff, showing one aspect of the challenging and sometimes conflicting responsibilities facing the RC.

### **C. Abduction, torture and detention of staff**

5. On 13 June 2009, in Vavuniya, two UN national staff members, working for UNOPS and UNHCR respectively, were abducted by men in civilian clothes who forced them into a vehicle. The staff were beaten in the vehicle while it was driven to a series of locations where UN and international NGO Offices were located in Vavuniya, including Oxfam, Save the Children, Danish Refugee Council, Norwegian Refugee Council, UNHCR, FORUT and World Vision. While parked outside each office the staff were ordered to say whether national or international staff with each organization had any connection with terrorists. The abductors threatened to kill one of the staff, pointing a gun at him. The same day, the staff were driven to Colombo and locked in a building behind a police station where they were beaten again over several days. The UN raised concern over the missing staff with the police and the Sri Lanka Human Rights Commission. On 20 June, the UN in Sri Lanka released a statement saying “The UN understands that two of its national staff members have been arrested. The two employees ... were reported as missing 8 days ago, after which it emerged that they had been taken into custody ... The UN is in contact with the government over the matter, and has requested details as to their well-being

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<sup>3</sup> Interviews with the Panel.



and the basis on which they are being held. We are providing all assistance possible to the authorities in the interest of due process.” It was only 12 days after the abduction, during a routine visit by ICRC to the police station on 25 June that the UN received confirmation on the actual location of the staff. Relatives, colleagues and lawyers were able to visit the staff and saw open wounds on their heads and legs. On 26 June they were compelled to sign a statement in Sinhalese, a language they could not read. Complaints were lodged with the judicial authorities and on 7 July OLA sent a letter to the Government recalling the immunities of both staff. They were transferred to a remand prison in September. The Secretary-General raised his concern in a 15 September letter to the President. After periods of three months and one year of detention, respectively, they were released without charge.

#### **D. Threats and intimidation**

6. When the USG-Humanitarian Affairs visited Sri Lanka in August 2007 he said “this country has one of the worst records in the world for humanitarian aid workers safety”. Reacting to the USG-Humanitarian Affairs’ comments, a Government Minister accused him of being a terrorist “We consider people who support terrorists also terrorists ... So Holmes, who supports the LTTE, is also a terrorist.”<sup>4</sup>

7. In early 2008, an ASG-Political Affairs had travelled to Sri Lanka to present a letter from the Secretary-General to the Government raising concern over the treatment of UN staff in what was a long-standing erosion of UN privileges and immunities. In August 2008, the UN released its annual report on abuses committed against UN staff around the world in the previous year. With regard to Sri Lanka, the report listed 14 cases of arrest and detention of UN staff by State authorities and 43 cases of harassment and intimidation.<sup>5</sup> The Government asked the UNCT for an explanation of the inclusion of these cases in a UN report. On 8 October 2008, the RC sent a letter to the Ministry of Foreign Affairs explaining that many of the incidents involving UN staff were not taken by the UN to the Government but instead dealt with at ‘local’ levels. The RC later said this approach was sometimes taken so as to reduce the further exposure of the staff and their families.

8. International staff described a day-to-day working environment in which any UN agency or staff member perceived as even slightly critical of the Government would be the subject of harassment through the domestic media. A number of international staff were the subjects of highly critical articles placed online by a Government official. The Government used its control of visas and work permits to sanction UN staff or agencies that were even mildly critical of the Government. Past RCs had been declared persona non grata (PNG), and candidates proposed for RC with experience in conflict situations and with international humanitarian law had been rejected. In the aftermath of the conflict several international staff had their visas effectively withdrawn, and the Secretary-General took up the issue in an 8 September 2009 statement. Senior UNCT personnel said that every time they made a public intervention or a communication to the Government they had to consider the risk of being made PNG.

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<sup>4</sup> Reuters, “Top Sri Lanka official calls U.N. aid chief "terrorist" 15 August 2008 at <http://in.reuters.com/article/2007/08/15/idINIndia-28991720070815>.

<sup>5</sup> Annual report of the Secretary-General on the “Safety and security of humanitarian personnel and the protection of United Nations personnel (A/63/305), 28 August 2008.

## **E. Staff courage and commitment**

9. Some UN national and international staff showed commitment far beyond the call of duty. The efforts of national staff to continue to facilitate humanitarian convoys long after the relocation and to provide crucial information on the humanitarian situation, while under extraordinarily dangerous conditions, were outstanding. The efforts, in the Wanni, of two international staff and a number of national staff to gather staff and dependents, to seek ways to evacuate everyone from the conflict zone, to build bunkers while under heavy fire over days, and the decision by the two international staff to stay behind to help guide the process, all showed enormous courage. Many other staff, national and international, worked to exhaustion to gather information on the protection and humanitarian situation, to advocate for improvements, and to support authorities in implementing those changes.

## Annex V

# UN coordination, and monitoring and reporting in Sri Lanka

## A. Coordination: the North, Resident Coordinator/Humanitarian Coordinator and UNCT in Colombo, and at UNHQ<sup>1</sup>

1. The UN in Sri Lanka was operating on the basis of the standard framework applicable to any crisis situation without a political or peacekeeping mission. The heads of the various UN agencies in Sri Lanka were based in Colombo, with field offices in key locations across the country. A series of mechanisms at the Colombo and field levels were intended to share information, and coordinate analysis, policy and strategy. As the situation deteriorated, the process of analysis, decision-making and coordination of the UN response, between the North and Colombo, among UN actors in Colombo, and between Colombo and UNHQ, became increasingly important.

### 1. The North

2. Although national staff remained in the Wanni and continued to perform some UN duties, the UN's offices were officially closed in late September 2008 when Wanni staff relocated to Vavuniya. Up until this point, Vavuniya had served largely as a logistical staging point on the way to the Wanni but now became the centre of UN action in the north. There were inter-agency meetings once a week, and eventually every evening, in Vavuniya according to each theme of UN action including, for example, protection, shelter and logistics – for instance the IDP Protection Working Group and the Child Protection Forum. Meetings were typically very crowded and covered updates and statistics; there was only limited space for analysis and discussions on advocacy. Some staff complained that coordination mechanisms in Vavuniya did not allow for sufficiently frank or strategic discussions and staff from several agencies said coordination between the field and headquarters in Colombo was often tense, and that UN Colombo was slow in responding to protection concerns and unhappy when these were raised. A number of staff tried to find alternative ways to raise issues, and they initiated a separate informal meeting forum under the title the 'Umbrella Group' which bypassed the established hierarchy and protocol. In contrast, senior staff in Colombo said staff in the north were often unaware of the many actions taken in Colombo or of the political and other challenges faced by agencies. The RC noted his perpetual concern for safety and security of staff in the north. Some senior staff were concerned that there was inadequate experience of armed conflict among the field-based staff. Some working-level staff in UNHQ said that the quality of reporting from Sri Lanka was sometimes inadequate for action to be taken at UNHQ. One UNCT member said that there should have been a more senior staff member based in the north, to assist with coordination and representation with authorities.

### 2. Resident Coordinator/Humanitarian Coordinator

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<sup>1</sup> Quotations based on written statements and interviews between UN staff and the Panel of Experts, the OHCHR Documentation Project and the Internal Review Panel.

3. The RC was the senior UN official in Sri Lanka, operating in a ‘Primus Inter Pares’ framework and reporting to the Secretary-General through UNDP<sup>2</sup>. As in other countries, the RC carried multiple hats. (1) Leading the UNCT and coordinating a common UN message and strategy, with support from a Reconciliation and Development Adviser who maintained links with DPA, a Human Rights Adviser who maintained links with OHCHR, a Gender Adviser, and from the Development Operations Coordination Office (DOCO) in UNHQ. (2) The RC was also the Humanitarian Coordinator (HC), responsible for coordinating humanitarian activities, oversight for the cluster system and CHAP, and coordination of the Humanitarian Country Team, and he was supported in this function by OCHA-Sri Lanka. (3) The RC was also the Designated Official (DO), with responsibility for security and safety of staff, with support from UNDSS- Sri Lanka. (4) In addition, the RC was also the Resident Representative of the UNDP Country Office, with day-to-day management delegated to a UNDP Country Director. In his RC role he reported through the UNDP Regional Bureau for Asia & the Pacific (RBAP) to the Administrator of UNDP in her capacity as head of the UN Development Group. As HC he reported to the UN Emergency Relief Coordinator in UNHQ, who is the USG-Humanitarian Affairs. As UNDP Resident Representative he reported, through RBAP again to the Administrator of UNDP. The RC’s performance appraisal was conducted by UNDP, based on input from a team of senior officials at regional level that reflected most of the UNCT presence in Sri Lanka.

4. In a 2011 interview for the OHCHR Sri Lanka Documentation Project<sup>3</sup>, the RC said: “The actors on the ground were mainly humanitarian actors, the RC was a bit alone ... The heavy decisions on whether to evacuate in 2008 and should the convoys still go even if they’re fired upon, etc were RC/HC responsibility but it would have been good to have a political or legal adviser on these issues.” Referring to the UNCT, the RC said: “There was the tension that we had humanitarian purists – I had to find the balance, but they didn’t necessarily understand the political context.” “Technical support would have been good to have on political issues where I was on my own. I had no special assistant and I could have used more support in my role as HC.” The RC noted in early 2011 that he had the same number of staff then as in the middle of

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<sup>2</sup> A new generic job description for Resident Coordinators was launched by the UN Development Group on 29 January 2009. The job description states, in particular: “The RC is the designated representative of – and reports to – the Secretary-General ... through the UNDP Administrator in [her] capacity as chairman of the United Nations Development Group (UNDG). The management of the RCS [RC System] is anchored in UNDP; however, it is owned by the UNS [UN System] as a whole ... [T]he RC is also the UNDP Resident Representative (RC/RR), and as such s/he remains accountable for UNDP business ... The RC acts on behalf of the UNS in an impartial way, strategically positioning the UN in each country ... [The RC] Ensures effective advocacy of UNS values, standards, principles and activities on behalf of the UNCT with the highest level of Government ... Promotes international human rights standards and principles and advocates for human rights as a common UN value in dialogue with national actors ... [The RC] Liaises with the UN Secretariat, and specifically the Department of Political Affairs, for support in the event of a significant political deterioration or evolution in or affecting the country. The RC does not undertake human rights monitoring, investigation or casework ... If ... a separate [Humanitarian Coordinator] position is not established ... [The RC] Advocates with all relevant parties, including non-state actors, for compliance with international humanitarian and human rights law” (The full text can be consulted at <http://www.undg.org/index.cfm?P=133>). In addition, separate Terms of Reference for RCs adopted in 2008 state “All UN agencies, funds and programmes are governed by the Charter and further guided by the 2005 World Summit Outcome to which supported the further mainstreaming of human rights throughout the UN system.” Paragraphs 138 and 139 of the Outcome Document call for UN action to “help protect populations from genocide, war crimes, ethnic cleansing and crimes against humanity”.

<sup>3</sup> See III.C.2.b.

the crisis in 2008 and 2009. “Colleagues that are in political missions, they have a whole army of assistants.” In a 2012 interview, the RC said it would have been helpful “to have a mentor” providing advice on the relocation decision.

5. There appear to have been serious gaps in the guidance, support and instructions being provided to the RC/HC from UNHQ. Despite their explicit responsibility for managing the RC system and the Sri Lanka RC and his UN coordination role, neither UNDP RBAP nor the UN Development Group and the UN Development Operations Coordination Office appear to have provided the RC with guidance or instructions on dealing with these core protection issues. It was suggested that guidance to the RC on the UN’s strategy and response to the killing of civilians and other violations of international human rights and humanitarian law in Sri Lanka, in the crisis fell under the Humanitarian Coordinator hat, not the RC, and that instruction would have been provided by OCHA and possibly also by DPA. On the same issue, OCHA-NY said it provided the HC with support and guidance on the humanitarian response but that human rights violations were the responsibility of the RC, and not the HC. The DPA Desk officer for Sri Lanka, when asked the same question, said that these issues did not fall under DPA, but he considered that the overall strategic response of advocacy, to which DPA contributed, had nevertheless given the issues significant consideration. The Chef de Cabinet, leading the UN’s political action on Sri Lanka, said that the USG-Humanitarian Affairs steered away from human rights and other political issues.<sup>4</sup> In contrast, the High Commissioner for Human Rights sharply disagreed with the views from other UN entities on how the UN was responding. OHCHR provided some guidance to the RC/HC, including during a visit he made to Geneva, through telephone calls and via the Human Rights Adviser. However, OHCHR was not involved in the RC or HC supervisory chain and did not set policy; and the Human Rights Adviser said she was excluded from key strategy and decision-making forums and meetings and was not generally consulted in the RC’s communications with the Government on human rights and international humanitarian law violations.<sup>5</sup>

6. The issue of support to the RC was vital. Given the fact that the UN’s information indicated that thousands of civilians were being killed primarily by Government shelling, it was crucial that all UN communications, including by the RC, with the Government be undertaken as part of a careful strategy which would recognize Government responsibility and begin to create a measure of accountability. However, there is no evidence that any UNHQ actor exercised any oversight for the RC’s communications in particular. The RC was not provided with systematic support or instructions by his supervisory chains or by other UNHQ actors in framing his responses in terms of the responsibilities under international law of the Government of Sri Lanka and the responsibilities of the UN in this regard. And, as noted above, the principal heads of UN entities disagreed on the approach to take, and responsibility for international human rights and humanitarian law issues is shared between numerous UN entities which also had different views.

### **3. The UN Country Team**

7. Common analysis and decision-making were the responsibility of the UNCT, under the coordination of the RC. The individual UNCT members reported to the headquarters of their

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<sup>4</sup> Focus group meeting with the Panel, July 2012.

<sup>5</sup> Meetings with the Panel.

respective agencies, with some reporting through an agency's regional office. Numerous members of the UNCT, representing the most relevant UN entities, were very critical of what they perceived as the lack of support from their respective headquarters. The head in Sri Lanka of one of the larger UNCT entities complained that the entity's headquarters had said the priority for the head of the country office was to avoid being declared *persona non grata* by the Government, and that this instruction therefore guided all other policy decisions. Another senior staff member cited the same UN entity saying its senior official in UNHQ was almost entirely "absent" on Sri Lanka, stifling the sense of urgency and offers of support to the field that could otherwise have been expected from its headquarter. A third senior official said "there could have been more high level engagement" from the headquarters of the UN agencies. There was criticism of OHCHR for not having a human rights operation in Sri Lanka, although OHCHR's efforts to establish an operation had been repeatedly rebuffed by the Government including during the 2007 visit of the USG-Human Rights to Colombo. There was also near-universal frustration expressed by the UNCT at the perceived failure of the Security Council to take action on Sri Lanka. One member said "how could we, on our own, have had greater impact when Member States were not meeting their responsibilities?" Many interlocutors noted they had to deal with an exceptionally confrontational, but also very well-organized, determined and consistent Sri Lankan Government that had set a course of action on the Wannu and was not going to waver.<sup>6</sup>

8. Several UNCT members expressed their concern at inadequate political skills and a lack of experience in armed conflict among some other UNCT members. The UNCT was described as "very passive" and "weak" by many UN working-level staff in Sri Lanka, some members of the diplomatic community and one Minister from a key Member State, and by civil society. One interlocutor said the loss of confidence among staff in their Colombo headquarters was so profound that "Staff in Vavuniya went as far in their frustration as telling visiting diplomatic missions not to fund their respective agencies." Several staff complained that some UNCT members responded to the crisis very late and that "in January and February 2009 the conflict was still only perceived as a regional problem." There was a widespread perception that the international human rights and humanitarian law aspects of protection were not a part of UNCT priorities. It was also suggested that a weak protection response was partly the consequence of individual agencies adapting their priorities to the programmatic and policy interests of donors, most of which were primarily interested in funding assistance. NGOs praised OCHA's support for the mapping of NGO activities in the Wannu, but expressed general frustration at what they perceived as the exclusion of NGOs from overall UN planning, largely at Government insistence.

9. Programmatic UN coordination was framed around the UNDAF 2008/2012 and the respective CHAPs for 2008 and 2009,<sup>7</sup> but inevitably week-to-week coordination had to respond to events as they happened. The recommendations from the report of the Representative of the Secretary-General on the human rights of IDPs (RSG-IDPs) of his December 2007 visit to Sri Lanka were seen by UN staff on the ground as providing a potential "road map" for UN action in

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<sup>6</sup> Comments given in meetings between UN staff and the Panel of Experts, the OHCHR documentation project and the Panel.

<sup>7</sup> See Annex III.A for a description of the UNDAF and CHAP planning.

response to the worsening situation. However, staff complained that the report was not sufficiently made use of.

#### *The UNCT's Crisis Management Group in Sri Lanka*

10. The RC established a Crisis Management Group (CMG) which included the RC and the heads of UNICEF, UNHCR, WFP, UNOPS, and OCHA. The group's initial focus was on the logistical and operational aspects of UN action in the north. However, some of these issues could not be separated from the political, international human rights and humanitarian law aspects of the situation and the UN's protection responsibilities. As the situation evolved, the CMG increasingly began to consider the UN response to these other issues. The OHCHR Human Rights Adviser was not a member of the CMG. When the Adviser realized that the CMG was in effect addressing issues central to her mandate she asked to be included, but the RC declined the request.<sup>8</sup>

#### **4. Cluster system**

11. On 18 December the RC/HC informed UNHQ by email of the UNCT's decision to launch the 'cluster system' in Sri Lanka, saying "Sri Lanka is therefore clusterized as of 31<sup>st</sup> December 2008. Clusters were intended to feed into the Government-run CCHA sub-committees."<sup>9</sup> Some agencies resisted having a Protection Cluster because cluster rules required that State authorities be included in cluster membership and they believed this would compromise the cluster's ability to consider protection concern - this was one reason why UNHCR instead established a Protection Working Group. The clusters met weekly and sometimes daily in Vavuniya. Cluster meetings were typically heavily attended, by a mixture of UN and NGO actors. They were mainly used for information exchange rather than for analysis and strategy.

#### **5. UNHQ**

12. Overall coordination of UNHQ reflection and engagement on the Sri Lankan conflict was initially centred in DPA. However, the Secretary-General tasked the Chef de Cabinet to assume a lead role when the ASG-DPA lead staff member left DPA in 2008. Further, as the situation deteriorated, the Emergency Relief Coordinator, the USG-Humanitarian Affairs, played an increasing leadership role, and conducted more visits to Sri Lanka than any other official. In addition to the Policy Committee, at UNHQ Sri Lanka was on the agenda of the Executive Committee on Humanitarian Affairs (ECHA), and an Inter-Agency Working Group on Sri Lanka (IAWG-SL) was also established. UNHQ coordination on Sri Lanka took place through meetings of the Policy Committee, ECHA and the IAWG-SL, as well as through many informal meetings between UN principals and working-level staff. During the nine months of the final stages, the Policy Committee met once, in March 2009. There were numerous IAWG-SL meetings; the IAWG-SK was seen as an information sharing forum rather than a decision-making one, and the Chef de Cabinet did not participate.

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<sup>8</sup> Meetings with the Panel.

<sup>9</sup> Minutes of the 22 January, IDP Protection Working Group meeting.

13. In January 2012, the Policy Committee adopted a decision on ‘Special Circumstances’, intended to strengthen the UN’s response in crisis situations, like Sri Lanka, where the UN does not have a political or peacekeeping mandate from the Security Council. The decision recognizes that certain changes in a political, conflict or related context will require the UN to do additional things and that the UN’s development mechanisms are not sufficient to allow the UN to effectively respond in such a changed environment. The decision seeks in particular to provide additional support to Resident Coordinators and to emphasize the role of DPA in such circumstances. The decision represents a good first step to improve the UN’s response. However, the decision remains general and imprecise; there is nothing in it that would guarantee a different UN response if confronted by the same situation in Sri Lanka today.

## **B. Breaches in the confidentiality of UN operations**

14. The day-to-day management of staff safety and security was run by UNDSS, including security clearances for staff travel, contingency planning, and ongoing monitoring. Some national and international UNDSS staff performed with particular distinction. However, some UN national staff were frightened of certain UNDSS national staff who had formerly worked within the State security forces – a number of UNDSS national staff were former members of the Sri Lankan military and police and UNDSS continued to recruit staff directly from the Army just a few months after the USG-Human Rights March 2009 statement alleging that the SLA may be committing war crimes.

15. An investigator commissioned by the UNCT to do a forensic analysis of its IT system found that the majority of the servers on which UN data was stored, including emails, had been set up outside the firewall intended to protect them from external monitoring. International staff assumed documents on their UN computers and email sent from a UN email address were monitored. The UN found electronic listening devices in their offices and vehicles.

## **C. Documenting violations**

16. The IDP Protection Working Group chaired by UNHCR and the Child Protection Forum chaired by UNICEF met on a regular basis to discuss protection in the context of the humanitarian response. Violations committed against civilians were occasionally touched upon during the discussions, but were not monitored, documented, or responded to systematically through these mechanisms. For instance, as the conflict intensified significantly, with many reports of child deaths and injuries from shelling, the minutes from Child Protection Forum meetings in January and February 2009 focused largely on contingency planning for when IDPs left the Wannu, and on issues such as special needs, psychosocial care, child friendly spaces, registration, reunification/tracing, participatory needs assessment, community awareness, mine risk education, legal liaison, training<sup>10</sup>, the limited involvement of fathers in awareness programmes, and the need for greater networking, programme management, and analytical skills for child protection staff. IDP Protection Working Group meetings over the same period did

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<sup>10</sup> Minutes of Child Protection Forum meeting of 22 January 2009.



note “reports of increased civilian casualties within the Wannı”<sup>11</sup> but meetings largely focused on assistance concerns outside the Wannı.<sup>12</sup>

17. The UN had several Sitrep-type documents produced by the various agencies in the UNCT. In some instances these documents provided general information from the Wannı such as on “increasing” civilian casualties and “intensified hostilities” and occasionally on specific incidents in which people were reported killed. The reports would sometimes record LTTE violations – such as: “The LTTE is ... said to be preventing civilians from travelling into government-controlled areas, with continuous reports of forced recruitment and mandatory labour among the Wannı IDP population.”<sup>13</sup> But reports of violations by Government actors were not commonly attributed to Government forces.

#### *Monitoring and reporting mechanism on grave violations against children*

18. In July 2006 the UNCT established the 1612 Task Force and a Technical Working Group, for monitoring and reporting on six grave violations against children<sup>14</sup> Reports were submitted to UNHQ for inclusion, by the office of the SRS-CAAC, in the Secretary-General’s reports<sup>15</sup> to the Security Council Working Group for Children and Armed Conflict.<sup>16</sup> However, the ‘1612’ monitoring and reporting mechanism (MRM) was compromised. Firstly, the inclusion of a State body<sup>17</sup> in the Task Force, contrary to common practice in other MRMs, affected its independence and inhibited frank discussions on violations.<sup>18</sup> Secondly, the lack of UN resources dedicated to monitoring international human rights and humanitarian law violations meant the information reported did not reflect the full magnitude of the situation, and fell well behind real time.<sup>19</sup> The mechanism had difficulty setting up a database for its information: staff in the field were not experienced in using such databases and also found the database was not well adapted to the situation on the ground.<sup>20</sup> Concerns and recommendations raised by OHCHR, in a report following a February 2007 mission to Sri Lanka, regarding the 1612 MRM were not addressed.<sup>21</sup> Ultimately, reporting through the ‘1612 mechanism’ to the Security Council was limited and tardy. An informal note to the Council Working Group for its 1 July 2009 session covered the most intense period of combat from 1 February to 15 June 2009, but it reported the killing of just 46 children and the maiming of 16, far below the numbers being reported on the ground, and

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<sup>11</sup> For example, minutes of IDP Protection Working Group meeting of 22 January 2009.

<sup>12</sup> A rare exception was a meeting of 19 March 2009 which looked primarily at the situation in the Wannı.

<sup>13</sup> UNHCR Flash Update, 5 February 2009.

<sup>14</sup> The six grave violations monitored and reported on are: killing and maiming; recruitment and use; sexual violence; abductions; denial of humanitarian access; attack on schools and hospitals.

<sup>15</sup> From December 2006 to June 2009, three Secretary-General reports on violations in Sri Lanka were submitted.

<sup>16</sup> A subsidiary body created by Security Council resolution 1612 (2005).

<sup>17</sup> The National Child Protection Authority.

<sup>18</sup> For example, at a time when the UN believed hundreds of children had been killed in previous weeks, the 3 February 2009 Task Force monthly meeting, as reflected in the minutes, focused almost entirely on adoption of a Work Plan for 2009 and an evaluation of the Task Force.

<sup>19</sup> See 1612 Task Force minutes of 30 April 2009 for discussion on limited capacity for monitoring and reporting.

<sup>20</sup> Interview by UN staff with the Panel.

<sup>21</sup> Including “the 1612 monitoring in Sri Lanka avoids the precise identification of perpetrators and thereby detracts from a focus on accountability, losing leverage for violations to be stopped; 1612 monitors lack training in human rights monitoring; and the engagement of multiple actors in the 1612 monitoring with different standards of verification of violations, facing different security and political pressures, is limiting and diluting its overall impact.”

none of the casualties from shelling were attributed to Government fire. In addition, being informal, the note did not lead to discussion by the Working Group. A year and a half later, in December 2011, a Secretary-General's report on the situation of children affected by armed conflict in Sri Lanka was published, in which a fuller account of casualties during the final stages of the war was provided.<sup>22</sup> As of August 2012, the Security Council Working Group had not yet considered the December 2011 report, and the Working Group's outcome document, based on the report, was therefore yet to be issued. The MRM neither served as an effective platform for advocacy and Security Council engagement, nor did it serve as a documentation mechanism for accountability.

### *The Crisis Operations Group*

19. It was not until February 2009 that the UNCT established a system for information gathering and analysis. The shelling and killing of civilians witnessed and documented by the two UN international staff who had remained with Convoy 11 in the Wannai throughout the second half of January, presented the UNCT with incontrovertible evidence of the events that other sources were also reporting. However, there was no established reporting process into which this testimony could be usefully fed. Indeed, the RC acknowledged in March 2009 that it was only when the staff returned from Convoy 11 that the UNCT began to consider what to do with such information.<sup>23</sup> In early February, the UNCT remained hesitant in its approach. A small number of individual staff took the initiative to begin compiling the information they had already received and to seek additional data on civilian casualties and humanitarian concerns, as well as on the security situation of the UN national staff and dependents still in the Wannai, to create a body of information that could be used for analysis and advocacy. This initiative led the UNCT to formally establish the UN Crisis Operation Group (COG), composed of representatives from several UN organizations. The COG gathered information from a range of sources, including hospital staff, Government Agents, and UN staff trapped in the Wannai. But the Human Rights Adviser was not included.

20. The COG defined a rigorous methodology for collecting and verifying information on civilian casualties using multiple independent sources for each individual death or injury reported. The methodology would seem to have been of a standard comparable to best-practice on information collection in other conflict situations. The COG received specific reports of 17,810 people killed and 36,905 injured from January to May 2009. Reports were received from numerous sources including the regional directors of the health services of Killinochchi and Mullaithivu; medical officers assigned to the PTK hospital; additional government agents from Mullaithivu; eyewitness reports from UN and international NGO national staff; satellite imagery and analysis obtained from UNOSAT; medical staff in receiving military and civilian health facilities at Mannar, Vavuniya, Trincomalee, and Pullmadile; and clergy, education department staff and community leaders. Once a casualty report was received, the COG would contact other

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<sup>22</sup> The UN's COG report states that 'Between January and May 2009, the United Nations was able to directly verify that 264 children had been killed ... and 164 children maimed ... in the districts of Killinochchi and Mullaithivu, based on information gathered in the IDP camps.' The report also notes that, heavy artillery fire 'between the Government and the LTTE' during these months led to 'a significant number of casualties' S/2011/793, paras 17 and 19.

<sup>23</sup> RC email to the Deputy High Commissioner for Human Rights on 14 March 2009 regarding OHCHR's press statement on the situation in Sri Lanka.

credible sources, independent of the original source, to confirm every single casualty. The COG would consider a casualty report as ‘verified’ only when it had been corroborated by three independent sources. As a result of this methodology, out of the total number of reports of 17,810 killed and 36,905 injured that the COG received, it was able to verify 7,737 killed and 18,479 injured.

21. The COG was nevertheless certain that it was only receiving reports of a small proportion of the actual number of casualties. In addition, as time went on the number of casualties is thought to have risen dramatically while the capacity of the COG to obtain three independent sources for each casualty became harder. In the last few weeks the intensity of the fighting made the collection of data extremely difficult. The COG reached grossly underestimated figures for May of 2,013 to 4,394 killed and 5,620 to 12,267 injured. As acknowledged through witness testimonies, satellite imagery and related records, May 2009 saw the worst of the fighting and must have resulted in the highest casualty rates.

22. Notwithstanding the standard of the methodology for collecting information, there was considerable disagreement within the UNCT on whether to use the figures, and later within UNHQ. One person involved in the data collection said there was great resistance within the UNCT’s leadership to the collection of the data and its use. He emphasized that according to the information received the majority of killings were the result of Government action but that UN advocacy did not reflect this, including the USG-level briefings given to the Security Council by the USG-Humanitarian Affairs and the Chef de Cabinet.<sup>24</sup>

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<sup>24</sup> Meeting with the Panel.

## Annex VI

# Supporting Resident Coordinators in situations of rising political tensions and human rights abuses

## A. Background

1. Sri Lanka is one of a growing number of situations where the UN's standard presence in country – the UN Country Team led by the UN Resident Coordinator (RC) as the head of the development effort and the senior-most UN official in-country – finds itself having to confront more directly the politics of the context in which it operates. This is a reality thrust upon the RC or UN Country Team (UNCT) as a result of different forms of violent conflict and steady deterioration of the political environment. The UNCT role is affected in several ways: firstly, UN Member States (at the General Assembly, Security Council and Human Rights Council) have increasingly passed resolutions calling on the UN, including UNCTs, to work toward the protection of human rights when civilians are threatened; and secondly, as a crisis develops, decisions on development and humanitarian action are often impossible to separate from their political and human rights contexts, and some form of recognition and accommodation of the political reality becomes necessary if the UN's development, human rights and humanitarian goals are to be achieved. In an emerging and ongoing crisis, the UN country presences cannot meet their responsibilities, without including political and human rights analysis in their work. While UN political action may be very limited, the capacity to understand the political and human rights context still needs to exist in all situations where the UN is present.

2. What unfailingly defines the particular complexity of addressing these challenges for the UN system is that in such situations governments are frequently averse to allowing the establishment of an in-country presence of the UN's political and human rights branches. The environments in which RCs and UNCTs have to operate vary greatly and while no one situation exactly matches another, current roles, functions and institutional coordination arrangements in different country contexts include:

- *The RC “standard presence”* – The situation in the majority of “regular” development contexts where the main responsibility of the RC position is to coordinate the UN development effort. As such the position is strongly tied to the UNDP Administrator in her/his capacity as the chair of the UN Development Group;
- *The RC/HC designation* – The designation of the RC as Humanitarian Coordinator introduces a number of additional humanitarian responsibilities. Key among these is the humanitarian advocacy mandate, and the establishment of an in-country Inter-Agency Standing Committee and more recently the cluster coordination approach. In addition to the reporting line to the UNDP Administrator/UNDOCO, the HC designation introduces a direct reporting line to the UN Emergency Relief Coordinator. The HC designation further gives the RC direct access to the UN Secretariat and brings with it additional HQ liaison and staffing support from OCHA;
- *The Deputy Special Representative of the Secretary-General (DSRSG) within a mission set-up* – Within the framework of an integrated mission the RC, as DSRSG, assumes the more classic role of coordination of assistance, while the political issues are addressed either by the SRSG or a dedicated DSRSG for political affairs; and

- *Situations with a RC or RC/HC where a non-resident UN Special Envoy has been appointed.*
  - It is this last configuration where the political dimension of a crisis is considered of such gravity as to warrant the designation of a UN Special Envoy. For the most part the UN Special Envoy is not based in the country, and thus many of the discussions occur outside. The RC is expected to provide in-country liaison and facilitation support for the political work of the Special Envoy, yet the respective reporting lines are not clearly defined or articulated.

3. A number of initiatives in recent years have focused on strengthening the tools and mechanisms for the UN to “deliver as one” in regular development contexts as well as in humanitarian contexts, such as Sri Lanka, in which the political challenges are great. As briefly described in Annex V, the UN has adopted an approach of appointing ‘advisers’ to the RC who can bring human rights (the Human Rights Adviser), political (the Reconciliation and Development Adviser) and other expertise.

4. In 2012, the UN adopted a policy recognizing ‘special circumstances’ under which the RC and UN system in general must operate differently. The decisions were essential in acknowledging the complexities of the challenges confronted by the UN system in such contexts. Of special note was the attempt to reassure RCs who risk being declared *persona non grata* for implementing the UN system-wide strategy that their personal employment and careers would not be jeopardized as a result. So while these initiatives and other related efforts are steps towards greater coherence of a UN response to special political contexts, they do not yet fully address the more profound challenges of leadership and accountability within the system when confronting such situations.

## **B. Context**

5. *Positioning the UN Resident Coordinator* – The basic question concerning the positioning of the RC in contexts of rising political difficulties is who does the position represent? Is the RC the coordinator of a development effort or is the position the first along a spectrum of options for coordination architectures that culminates with an integrated mission under a UN Special Representative of the Secretary- General?

6. At its origin the RC system, created by General Assembly resolution 32/197, was built on the premise that the “overall responsibility for, and coordination of, operational activities for development carried out at the country level” was to be entrusted to a single official who would be designated “in consultation with and with the consent of the Government concerned”. At the time and for many years thereafter, the definition of what constituted *operational activities for development* was narrower than it has since become. In the past 15 years, Member States and the UN system have together agreed that peace and development are deeply intertwined and mutually reinforcing and they must therefore be tackled in a coherent fashion. Thus it could be argued that it is no longer possible to dissociate operational activities for development from the political, humanitarian, human rights and other functions.

7. While Member States with an in-country UN presence mostly accept, if not even welcome, UN development efforts, UN political and human rights engagement is usually much

less acceptable. UN engagement on these issues can be perceived as acknowledging problems that some Governments prefer not to discuss, or as giving critics or opponents of a Government some legitimacy; and at the far extreme of UN political and human rights action there can be involvement by the UN Security Council. This is not to say that there is no engagement. As demonstrated in Sri Lanka, DPA has working-level contacts with the key stakeholders through visits by senior DPA staff and, when feasible, missions. OHCHR was able to establish a limited presence in Sri Lanka and conduct a limited number of missions. But generally there is reluctance on the part of host governments to agree to the establishment of a UN political or reinforced human rights presence, and the preferred modus operandi is to limit the UN's in-country capacity to the RC in its development format.

8. And yet, as a country situation deteriorates during a crisis, the UN requires its country presence to respond to the changing situation. UN Member States have passed resolutions on the protection of human rights in general and of civilians in particular, which all apply to all UN entities. A crisis situation almost always includes some kind of politicised aspect, and the RC must lead the UN's action. Thus in many contexts the RC by necessity takes on responsibilities that are broader than those initially envisaged in General Assembly resolution 32/197. This poses problems for some operational partners who fear that any involvement in addressing political issues complicates, or even compromises, ongoing development efforts. This is particularly true for UNDP, on which the RC system has been largely framed and remains heavily dependent. The concerns of these operational partners are at odds with the higher expectations of the international community and international public opinion placed on the Secretary-General. This was especially true for situations such as Sri Lanka.

9. *The role of the RC* – The function of RC is by definition a complex one, even in classic development settings. It has an inbuilt component that makes it an almost impossible challenge: the responsibility of coordinating powerful entities through nothing more than the art of persuasion. The internal challenges to a well coordinated UN effort can often stem from extreme protectiveness of some UN agencies' (particularly the more powerful agencies) of their prerogatives and mandates. Although it has to be acknowledged that over the years the commitment of UN agencies to coordination has increased and the tools to support strategic and innovative inter-agency action have improved, the accountability or enforcement mechanisms to make this coordination effective have yet to be fully developed. To date the authority of the RC remains for the most part reliant on the individual RC's leadership and persuasion skills rather than on a more systematic accountability-based inter-agency coordination set-up.

10. In contexts where the UN in-country system is confronted with a combination of political, human rights and humanitarian challenges, the role of the RC becomes dimensionally more difficult. As demonstrated in Sri Lanka, the greater the complexity of the situation, the more masters the RC is expected to serve (UNDP, DPA, OCHA, OHCHR, DOCO). Efforts to coordinate or weigh the different demands at headquarters level are often lacking. In Sri Lanka, the D1-level RC was corresponding with far more senior USGs and ASGs in different UN departments taking widely different approaches from each other. In some instances, special coordination efforts (task forces) are set up among concerned UN entities at HQ but frequently without major involvement of the RC. Any system-wide prioritization and broader coherence or coordination of the various elements of UN efforts is left to be materialized almost "by chance" while the person 'coordinating' is being asked to respond to multiple masters.

11. The task of coordination is made even more complicated by the difficulty in funding an effective RC office or support structure. While in theory individual UN agencies contribute to staffing the RC office, the practice is that in an increasingly resource-constrained environment where agencies are already asked to support other coordination structures (such as the UNDAF individual outcome monitoring and reporting, and the cluster coordination in humanitarian contexts), there is little extra capacity to support much needed cross-sectoral coordination functions (such as CCA, UNDAF strategic planning and development, monitoring and evaluation, joint programming support and MDG monitoring and reporting, and when necessary human rights reporting and political reporting or analysis). Thus in complex political settings, the RC is forced to rapidly respond to an increasing number of demands, provide analysis and engage with a broader set of political interlocutors often with very limited support.

12. Without an explicitly new mandate, the RCs must nevertheless navigate a newly complex political environment on the ground. In most cases the linkage of the RC position to the coordination of development activities not only defines the profile of most incumbents, but also describes the traditional understanding that many RCs have of the responsibilities of the position and the expectations placed on the individual by her/his supervisors. Thus RCs are not always necessarily equipped or have the background to manage political issues. Historically the pool from which RCs have been drawn has been made up for the most part of officials from UN programmatic agencies, rather than UN departments that engage on a much more regular basis on politically delicate issues with State and non-state actors. As a result, many candidates have had mixed levels of exposure to political challenges.

### **C. Issues for consideration**

13. *Define the RC's involvement in situations with a heightened political context* – The role of the RC as the principal representative of the Secretary-General, and through him the UN system in a designated country needs to be unambiguously confirmed. Greater clarification is necessary not only to support RCs but also to ensure a fully transparent engagement with the host authorities in Member States. The RC has to be the principal interlocutor for the UN Secretariat on all issues of concern to the country in which the individual is based. Such a role would not only benefit the UN's actions, but would also provide the host authorities with a more useful UN interlocutor – one who can reach to the Secretary-General when needed. RCs must remain within the mandates agreed for country-level UN action by Member States, but they must also be equipped and supported to fulfil these obligations as effectively and responsibly as possible. Just as all Member States seek engagement with DPA at UNHQ, so it is essential that DPA have a more explicit role in engaging with the RC and UNCT as well as with other UN partners with a view to developing common UN approaches. In times of crisis, this role may need to include a supervisory component. Greater and more direct involvement of DPA in contexts of deteriorating political situations reduces the exposure of the RC and can facilitate the continuation of development activities by establishing a clear channel for non-development and crisis related activities. Similarly, RCs and UNCTs need clear reporting instructions to DPA and the system needs to be able to identify and act on the need for additional support.

14. *More focused selection of RCs for countries confronting political complications* – As already mentioned, since its conception the management of the RC system has been anchored in

UNDP, which has ensured that individuals selected for the posts possess skill-sets suited more for the management of a development portfolio than for the full range of tasks which are now being prescribed to the RC function. Thus for countries where complex political situations prevail, the UN should select RCs who are capable of handling the specific set of country circumstances. In particular, RCs should be selected for their strong political skills, and where relevant human rights skills,. DPA should have a dominant role in selecting these RCs. These RCs should report to the SG through DPA.

15. *Identify and train RCs for a range of contexts* – Just as is the case for strengthening the humanitarian coordination capacity for candidates who have been identified to serve as RC/HC in a development/humanitarian context, the political and human rights competencies of RC candidates identified as having the potential to manage complex situations combining development and political elements should be strengthened. While training is partially being addressed by the joint effort of UNDOCO and the UN System Staff College through the provision of induction courses for RCs, this needs to be reinforced by the introduction of specific case studies (such as for example one developed from the case of Sri Lanka). Ideally, all RCs in complex situations should have prior experience from several different UN entities, including within the Secretariat and agencies. The UN could consider defining a fast track for mid-level staff who are interested in becoming RCs, offering staff the chance to work with three to four different UN entities over a multi-year period, at the end of which they would be given preferential consideration for RC positions.

16. *Develop coordinated and coherent HQ engagement with the UN system in country* – Oversight for UN response in crisis situations should be exercised through one senior official who is outside of and above the UNCT, and who has direct overall responsibility for UN action on the crisis. Increased use could be made of Special Envoys or Special Representatives, serving as the senior officials. However, every effort should be made to avoid creating additional, parallel ad hoc coordination and related structures; in this regard, the senior official should be linked to the UNOCC ‘Crisis Response Manager’ framework. Depending on the context, appointees could cover more than one country and issue.

17. Inter-department and agency coordination mechanisms at UNHQ should ideally be reduced to one single mechanism per crisis, possibly under the framework of the UNOCC. Coordination in the future should avoid duplication of processes that leads to an inefficient use of resources and gaps. Acknowledging that the system of the Integrated Mission Taskforce attempts to accomplish this, there needs to be a more systematic mobilization of relevant UNHQ interlocutors to engage at least on a monthly basis with RCs confronting increasingly complex contexts. Members of the taskforce should also be expected to conduct one or two missions a year to the respective countries either as a group or individually.

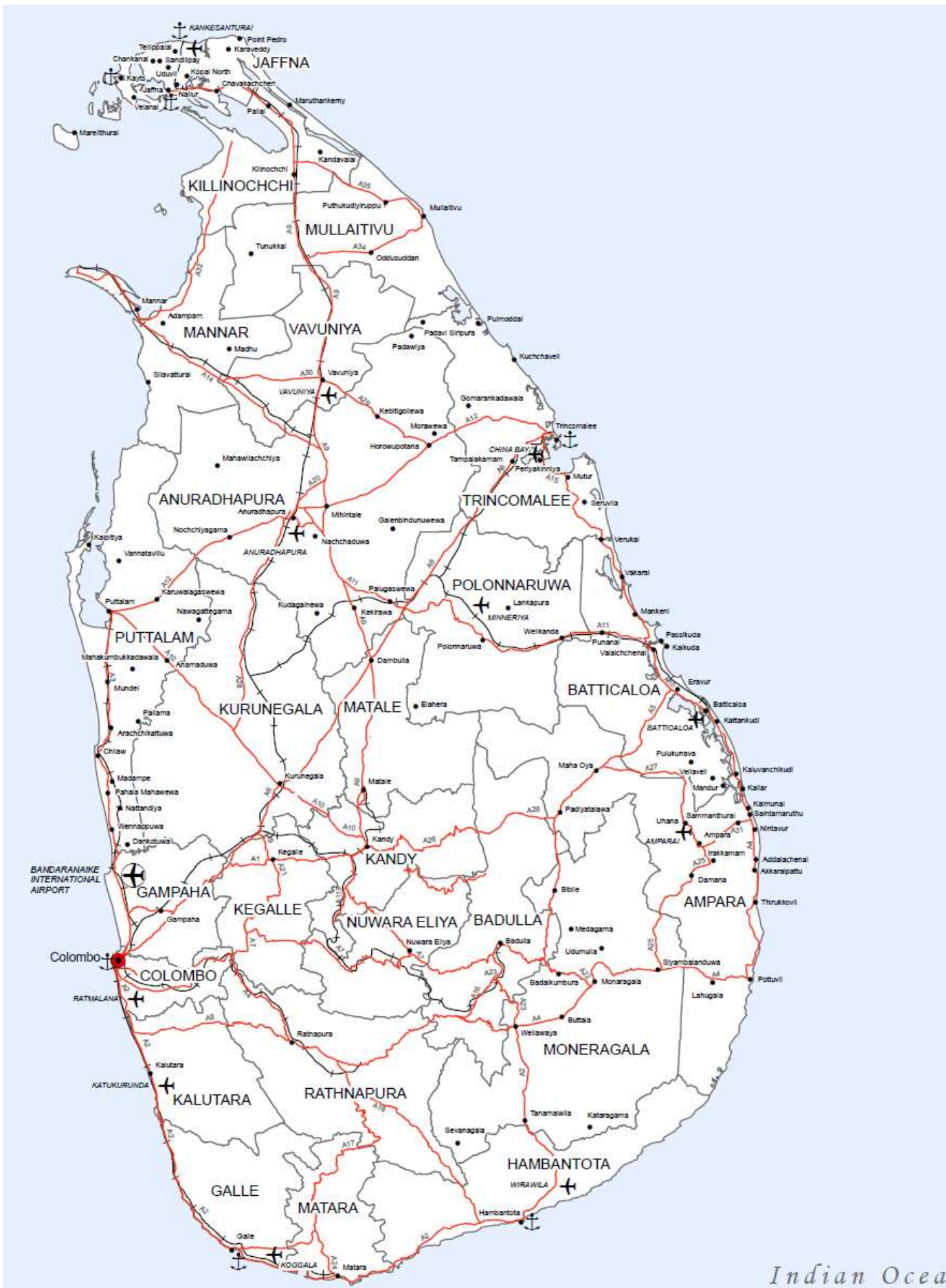


## **Annex VII**

### **Maps:**

1. Administrative Map of Sri Lanka
2. Close-up of the northern section of the Administrative map of Sri Lanka
3. Showing the main locations referred to in the report, including Killinochchi and the first two no-fire zones (see Maps 4 and 5 for a more detailed view).
4. A close up view of part of Map 3, showing the first 35.5 Sq no-fire zone (created 21 January 2009) and the second 14sq km no-fire zone (created 12 February).
5. A close up view of part of Map 3, showing the third no-fire zone, created after the second zone was split in half.

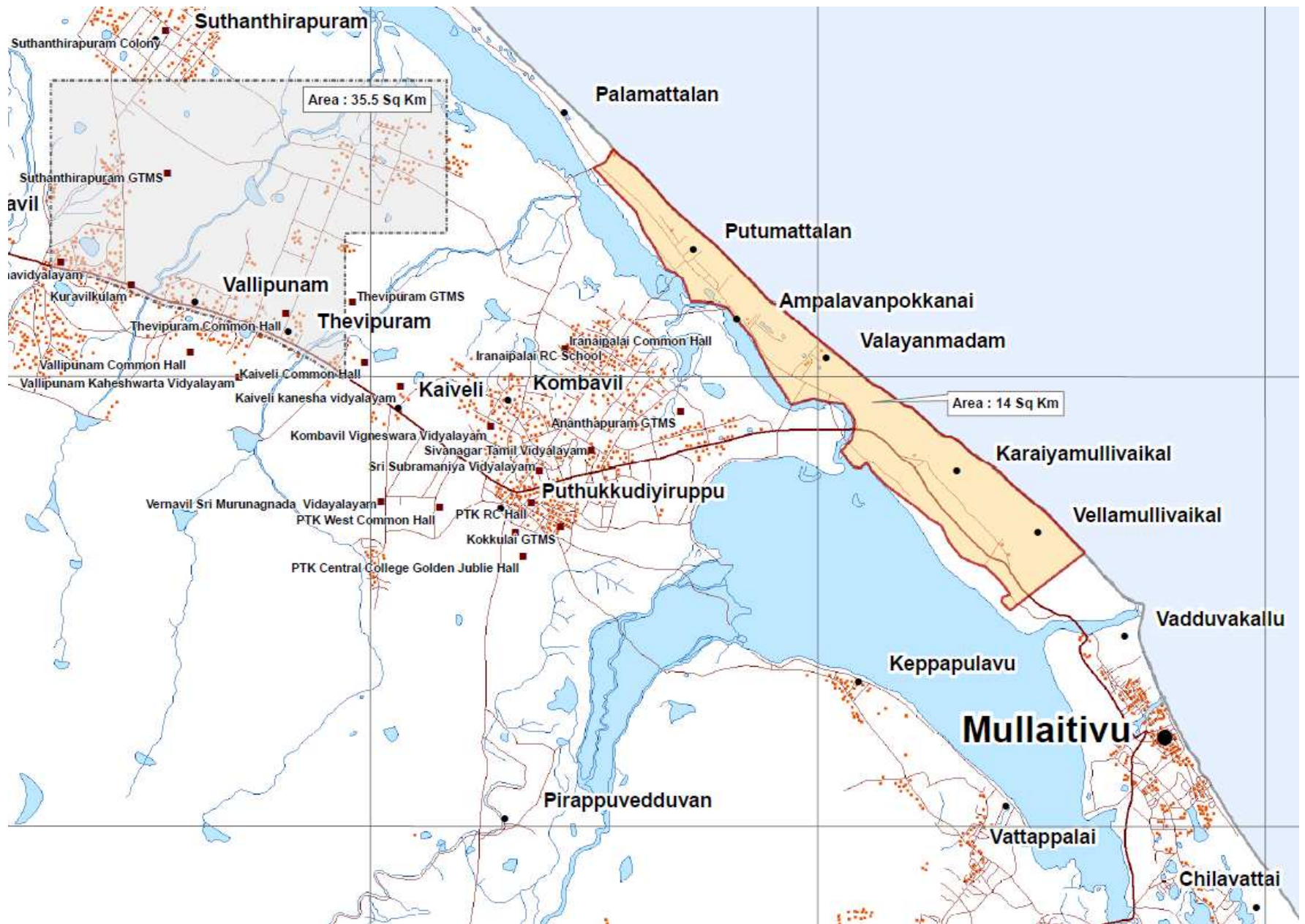
All maps drawn from <http://ochaonline.un.org/Default.aspx?alias=ochaonline.un.org/srilanka>



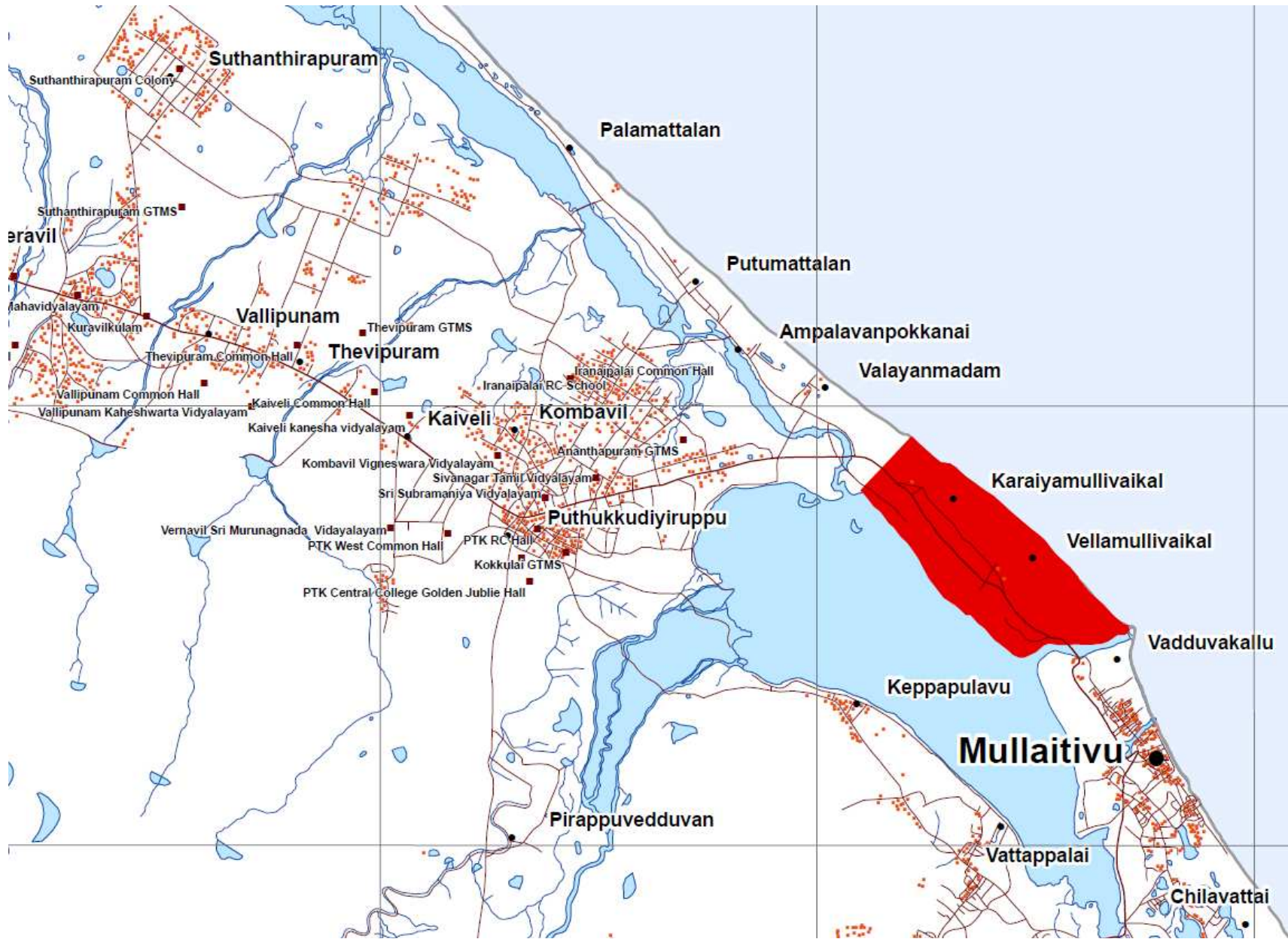












## Annex VIII

### Acronyms

<b>ACF</b>	Action Contre la Faim
<b>AGA</b>	Assistant Government Agent (local Government official)
<b>AI</b>	Amnesty International
<b>ASD</b>	Assistant Secretary-General
<b>CCHA</b>	Consultative Committee on Humanitarian Assistance
<b>CFA</b>	Cease Fire Agreement
<b>CHAP</b>	Consolidated Humanitarian Appeals process
<b>CMG</b>	Crisis Management Group
<b>COG</b>	UN Crisis Operations Group
<b>CoI</b>	Commission of inquiry
<b>DO</b>	UN Designated Official
<b>DO</b>	Designated Official
<b>DOCO</b>	Development Operations Coordination Office
<b>DPA</b>	UN Department of Political Affairs
<b>DRSSG</b>	Deputy Special Representative of the Secretary-General
<b>DRR</b>	Demobilization, rehabilitation and reintegration
<b>ECHA</b>	Executive Committee for Humanitarian Affairs
<b>EOSG</b>	Executive Office of the Secretary-General
<b>ERC</b>	Emergency Relief Coordinator
<b>EU</b>	European Union
<b>FSCO</b>	Field Security Coordination Officer
<b>FSCO</b>	Field Security Coordination Officer
<b>GA</b>	Government Agent (local Government official)
<b>GoSL</b>	Government of Sri Lanka
<b>HC</b>	Humanitarian coordinator
<b>HRC</b>	Human Rights Council
<b>IASC</b>	UN Inter-Agency Standing Committee
<b>IAWG-SL</b>	Inter-Agency Working Group on Sri Lanka
<b>ICG</b>	International Crisis Group
<b>ICRC</b>	International Committee of the Red Cross
<b>IDP</b>	Internally displaced person
<b>IFI</b>	International financial institution
<b>IHL</b>	International humanitarian law
<b>IIGEP</b>	International Independent Group of Eminent Persons
<b>ILO</b>	International Labour Organization
<b>INGO</b>	International non-governmental organization
<b>IOM</b>	International Organization for Migration
<b>JOH</b>	(Government of Sri Lanka) Joint Operations Headquarters
<b>LLRC</b>	Lessons Learned and Reconciliation Commission
<b>LTTE</b>	Liberation Tigers of Tamil Eelam
<b>MRM</b>	Monitoring and reporting mechanism
<b>MT</b>	Metric ton
<b>NAM</b>	Non-Aligned Movement

<b>NGO</b>	Non-governmental organization
<b>OCHA</b>	UN Office for the Coordination of Humanitarian Affairs
<b>OHCHR</b>	Office of the High Commissioner for Human Rights
<b>OLA</b>	UN Office for Legal Affairs
<b>PNG</b>	Persona non grata
<b>Panel of Experts</b>	Panel of Experts on accountability in Sri Lanka
<b>PTF</b>	Presidential Task Force for Resettlement, Development and Security in the North
<b>PTF</b>	Presidential Task Force for Resettlement, Development and Security in the North
<b>PTK</b>	Puthukuddurippu (town in the Wanni)
<b>RBAP</b>	(UNDP) Regional Bureau for Asia & the Pacific
<b>RC</b>	Resident coordinator
<b>RDHS</b>	(Government) Regional District Health Service
<b>RSG-IDPs</b>	Representative of the Secretary-General on the human rights of Internally Displaced Persons
<b>SAPG</b>	Secretary-General's Special Adviser on the Prevention of Genocide
<b>SLA</b>	Sri Lanka Army
<b>SLMM</b>	Sri Lanka Monitoring Mission
<b>SRSG-CAAC</b>	Special Representative of the Secretary-General on Children Affected by Armed Conflict
<b>THA</b>	Tharmapuram (town in the Wanni)
<b>TMVP</b>	Tamil Makkal Viduthalai Pulikal
<b>UNCT</b>	UN Country Team
<b>UNDAF</b>	UN Development Assistance Framework
<b>UNDP</b>	UN Development Programme
<b>UNDSS</b>	UN Department for Safety and Security
<b>UNHCR</b>	High Commission for Refugee
<b>UNHQ</b>	UN Headquarters
<b>UNICEF</b>	UN Children's Fund
<b>UNOPS</b>	UN Office for Project Services
<b>RC</b>	United Nations Resident Coordinator
<b>UPR</b>	Universal Periodic Review
<b>USG-Human Rights</b>	Under Secretary-General and High Commissioner for Human Rights, head of the UN Office of the High Commissioner for Human Rights
<b>USG-Political Affairs</b>	Under Secretary-General for the Department of Political Affairs
<b>USG-Humanitarian Affairs</b>	Under Secretary-General (and Emergency Relief Coordinator) for the Office for the Coordination of Humanitarian Affairs
<b>WFP</b>	World Food Programme