

Appendices to Document

Centre on Housing Rights and Evictions
(COHRE)

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Office of the High Commissioner for Human Rights

Concerning

Sri Lanka

To Assist in Preparation of Documents for First Cycle Universal Periodic Review

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(COHRE Report May 2006)

APPENDIX A

Housing and property restitution for families in tsunami transitional shelter sites: Preliminary results from the Dehiwala District Secretariat Division¹

Background

The Indian Ocean tsunami of 26th December affected the lives and livelihoods of families in 11 districts in Sri Lanka. Over 55,000 individual transitional shelters were constructed to house tsunami-displaced families. Some shelters were constructed as singular, scattered units while other shelters were organized into camps that provide basic infrastructure services such as water and sanitation, power supply, drainage and solid waste management. Some public buildings such as schools and abandoned mills and warehouses also serve as sites to house displaced families.

Since August 2005, the Transitional Shelter Site Tracking (TSST) Project has been conducting routine monitoring of the conditions in shelter sites in 5 districts (Ampara, Trincomalee, Hambantota, Matara, and Galle), with generous funding from HIC and currently from UNICEF. It was not until May 2007 that an assessment of shelter sites in the Colombo and Kalutara districts took place (funded by IOM and the American Red Cross). After the routine TSST monitoring concluded in August 2007, the results showed that of all the districts where the TSST exercise was undertaken, the largest number of families residing in transitional shelter sites was in the Colombo District (Table 1).

Table 1: Families living in transitional shelter sites May – August 2007

	Colombo	Kalutara	Galle	Matara	H'tota	Ampara	Trinco	Total
# of sites	19	9	19	16	8	75	25	171
# of families	1,323	128	90	156	39	1,028	430	3,194

The TSST survey instrument collects only cursory information about resettlement options for families living in transitional shelter and includes: # of families who have been notified that a donor agency is building them a house, # of families who received a grant to purchase a piece of land for resettlement, and # of families who have received neither. The May 2007 assessment found that over 50% of the families living in transitional shelter sites in the Colombo District fell into the later category (Table 2).

¹ UNOPS Report November 2007 in cooperation with UNICEF, COHRE, IOM and UN Habitat. Available at <http://www.unops.org.lk/tsst/search2.aspx> . Last accessed January 2008.

Table 2: Resettlement options for families in shelter sites in Colombo – May 2007

		#	%
A	Families who were notified of receiving a permanent house	160	12
B	Families who received a land grant for Rs. 250,000	447	34
C	Families who received the grant and bought the land	418	93.5 of B
D	Families who neither received notification nor a land grant	716	54

Given the numbers of families who were in shelter sites at the time of the May assessment and the percentage of them who did not have a permanent solution to their housing problems, the TSST project management together with UNICEF decided that a more detailed investigation of families remaining in shelter sites was warranted. As UN HABITAT, the Centre for Housing Rights and Evictions (COHRE), and IOM have been working closely with the tsunami-displaced population and assisting them to find permanent solutions to their housing needs, representatives from these agencies were asked to participate in the construction of the survey instrument.

Methodology

As a UNICEF-funded project implemented by the UNOPS TSST/EA Project, data collection was facilitated by DevInfo. The questionnaire was programmed using Emergency Info software and downloaded onto a Personal Digital Assistant (PDA). The data collectors input responses directly into the PDA. Each questionnaire is saved in the PDA and later downloaded onto a central computer as an XML file, processed and exported into a Microsoft Excel spreadsheet. Microsoft XLSTAT is used for analysis and the computation of descriptive statistics.

The questionnaire contains a total of 97 questions. However, a respondent will not necessarily answer every question. The questionnaire is divided into sections that correspond with various property rights regimes and tenurial arrangements that would have been possible at the time of the tsunami such as private property ownership, permission to occupy via permit or grant, renting, squatting or encroaching on government land, or living on ancestral / family land without possession of legal title in one's own name.

The data collection team has three members (2 male / 1 female) and include Tamil and Sinhala speakers. Legal experts from COHRE held 2 half-day sessions with the data collection team during which time they discussed the meaning and intent behind every question on the questionnaire. Senior UNOPS and COHRE staff supervised the data collection teams on the first two days of survey implementation.

The administration of one questionnaire takes between 20-50 minutes depending on the ability of the data collector to make himself / herself understood by the respondent and how much s/he chats with the respondent and engages in rapport building. As some of the

questions involve complex legal matters, the question often needs to be posed more than once in different ways in order to convey its meaning. The majority of the questions are closed with pre-defined response categories. An ‘other’ category is always provided to capture individualized experiences that are unique and do not easily fit into the pre-programmed responses. The questionnaire has a few open-ended questions the responses for which are written into a field notebook.

The daily collection process is as follows: visits to sites and administration of the questionnaire takes place every day between 8:45- 12:30 PM. Upon returning to the office all of the XML files are downloaded, processed and organized into an Excel spreadsheet. While one IT technician is undertaking this task, the 3 data collectors are writing up interview field notes for each of the homes that they visited that day. The field notes that are qualitative elaborate on the answers provided in the questionnaire, provide opinions and beliefs of the respondents, and otherwise document perceptions of the respondents and what has happened thus far with respect to finding a permanent housing solution.

Before the end of the day, the team debriefs the project manager who has crosschecked the Excel files for internal consistency within a respondent’s set of answers and between the field notes and these responses. The reviewed data is sent to COHRE where it is review once again. The legal team also poses follow up questions about the data. The following morning these questions are addressed before the team starts another day of data collection.

The sampling framework is based on the May 2007 data. Two of the three sites were selected (Upananda College and Kalubowila Maha Vidyalaya). It just so happens that by the time of implementation, one site in Dehiwala had closed (Methodist College) and only the Upananda College and Kalubowila Maha Vidyalaya remained.

Table 3: Sampling Framework (based on Table 2)

Code	DS Division	Site Name	# of families (May 2007)	# of these families (Oct 2007)	# notified about receiving house from a donor	# receiving grant to buy a piece of land	# who received grant & did not purchase	# without housing / land option
Deh_1	Dehiwala	Upananda Vidyalaya	10	6	1	1	0	1
Deh_2	Dehiwala	Kalubowila Maha Vidyalaya	55	53	1	20	4	23
TOTAL			65	59	2	21	4	24

A total of 51 questionnaires were completed over the course of 4 days, 15-18 October 2007. This is 86% (51 of 59) of the original shelter site population.

Results and Discussion (N=51)

- Two-thirds of the families interviewed are Sinhala and one-third is Tamil.²
- 50 of the families are originally from the Jayathilakagama GN Division; one family originally is from Dehiwala West GN Division.
- 35% of the families interviewed are female-headed families. Both *de jure* and *de facto* female headship are considered with *de jure* referring to widowhood or legal divorce and *de facto* meaning that a woman is legally married to but is either separated from her husband or her husband is in jail, physically disabled, mentally unfit to work, is an alcoholic, or has a major illness and does not work. In the case of *de facto* headship, the woman is financially and otherwise responsible for the well being of the household.³
- Only 12% of the respondents knew a tsunami orphan, but none of them know whether or not the housing and property issues of the deceased parents have been addressed on behalf of the child.
- 98% of the families have not lived in the current shelter site location for the duration of their displacement; only 2% have always lived in the same site.
- 98% of the respondents state that they were living in permanent structures at the time of the tsunami. 80% stating that their homes were made of cement blocks or bricks.
- 57% of the respondents believed that they are entitled to financial compensation in the form of a lump sum payment to compensate for this loss.
 - 62% said that they were entitled to Rs. 250,000 or more
 - 14% said that they were entitled to between Rs. 200,000 – 240,000
 - 24% responded that they believed that they were entitled to something but could not state a figure
- 49% of the respondents stated that they believed that they were entitled to some form of compensation such as materials to build a new home or be given a new home.
- 82% of respondents stated they were in contact with officials about their damaged homes. Of these families, 49% said that assessments of the damages were done and 51% stated that people came and looked but nothing happened after that.
- The majority of respondents are working with the DS (33%) to obtain housing compensation followed by the GN (27%), GA (18%), religious leaders and NGOs (14%) and other agencies / individuals (8%).
- Many families have received some form of compensation to address their permanent resettlement:

² Due to the small sample size correlation analyses between ethnicity and access to / receipt of compensation will not be done until the entire survey is complete.

³ Definitions and categories of female headship are based on Ruwanpura, Kanchana N. 2006. *Matrilineal Communities, Patriarchal Realities: A feminist nirvana uncovered*. University of Michigan Press / Zubaan Books, New Delhi.

- 47% of the respondents have received a land grant (discussed more below).
- 42% have received no assistance
- Only 11% of respondents have a housing solution. The donor driven and owner driven models are in operation as well as a mixed modality. In the later, a family receives money from the government (the standard owner-driven model), which is then handed over to an NGO to build the home for them (donor driven). They are not participating in the construction of their own homes.
- 55% of respondents stated that their property was looted after the tsunami.
 - Of those who were looted 83% filed a claim for compensation; all of them with the police.
 - Of those who did not file a claim (N=4), the following reasons were given:
 1. Didn't believe that if I made a claim I would receive anything.
 2. Was told that I could not make a claim or making a claim would be a waste of time.
 3. Needed assistance to make a claim.
 4. Other: Believed that if a claim was made that the compensation would come quickly and as house their was destroyed they would have no place to put the new belongings (assumed that compensation was 'in-kind' the items that were lost would be given and there would be no place to store these new items once they were received as they had no home)
- Families were asked whether or not they knew if their name was on the DS beneficiary list: 98% stated they were on the list; 2% said that they did not know.⁴
- In order to corroborate the above-mentioned answer, an additional question was added on of the second day of the survey about the receipt of the four Rs. 5,000 cash transfers that tsunami-affected families received from the government after the tsunami (N=32). While there were targeting problems in the cash transfer program, receipt of the cash transfers is recognized as one indicator of being on some type of government beneficiary list.

66% of the respondents stated that they received all 4 cash transfers, 19% stated receiving 3 cash transfers, 9% stated that they never received any of the cash transfers, and 3% stated receiving only 2 of the 4 cash transfers. Finally, one woman in a female-headed household stated that she received 4 cash transfers of Rs. 2,500.⁵

⁴ The respondent who stated that she did not 'don't know' is from a female-headed household and believes that her name was on the list and then was cut off recently after making several complaints to the site's community centre officials, after not getting assistance. She also received 2 of 4 Rs. 5,000 cash transfers.

⁵ In another tsunami-related study conducted in late 2006, 85% of tsunami-affected families living in the Colombo district claimed to have received all 4 transfers. Needs Assessment Survey for Income Recovery (NASIR) IV. ILO -Income Recovery Technical Assistance Programme (IRTAP).

All of the families who claimed that they did not even receive one cash transfer had stated that they were on the beneficiary list.

- 75% of respondents had not received any notification of receiving a permanent home (These responses corroborate the results above where 42% have not received and assistance and among the 47% who have received land grants, some of these families have not had their permanent shelter needs addressed *in full*)
- 25% had received some notification from:
 - The GN (42%) followed by the DS (25%), religious leaders (17%), INGOs (8%) and the GA (8%).
 - Of those who received some form of notification, 69% had received notification of getting a home verbally; only 1 family was notified in writing.
- 51% of the respondents stated that an agency / organization had been in contact with them about a permanent resettlement option (land or house). In the majority of cases (43%), contact was made by the DS office followed by the GA office (40%) and other (17%).
- The most common method of contact was being invited to participate in a workshop / meeting. An official coming to the shelter to speak to the family was the second most popular method. With respect to the outcomes of these interactions:
 - 23% said officials were very helpful
 - 51% said officials were quite helpful
 - 23% said officials were unhelpful
 - 3% refused to answer
- With respect to the distances that families in shelter sites are willing to resettle within:
 - 68% want to relocate within 10 kilometres of their original location
 - 26% are willing to relocate 10-49 kilometres from their original location
 - 6% are willing to relocate beyond 50 kilometres
 - The families working with a religious group are moving to the Dankotuwa / Kochchikade area. Other families have deposits on or have purchased land in places such as Puttalam, Wadduwa, Payagala, Bokumbara, and Moragahahena.
- Respondents were asked what their property rights and housing conditions were at the time of the tsunami, as it is upon this arrangement / situation that compensation and entitlements are based.
 - 70% stated that they were occupying land either squatting or encroaching
 - 12% said that they were renting
 - 8% claimed to have held a land grant
 - 2% stated that they were living in a joint family situation (either occupying the same house or two houses built on one piece of land)

- 8% stated that they owned their own land
- With respect to their current status in finding a housing solution, the following situations were documented:
 - 36 families claimed to be **squatting** or otherwise occupying land at the time of the tsunami- their current situations with respect to permanent resettlement are:
 - Have received nothing – 16. In 3 of these 16 cases, the families already had been relocated once from the area and given a house and land by the government somewhere else. However they sold that house and land and returned to Dehiwala.
 - Have new homes and waiting for utility connections – 2
 - Have been offered assistance but have refused it as it is not enough to purchase land and build a house – 1
 - Have deposits on land but need more money to complete the purchase– 5
 - Being looked after by a Church / NGO – 9
 - Bought land in Puttalam (no mention about housing) – 1
 - Have received Rs. 250,000 to buy land and Rs. 50,000 to build a foundation with balance funds to complete house outstanding – 2
 - There are 6 families who claimed to be **renting** at the time of the tsunami. All of these homes were completely damaged and none of the respondents believe that they have a valid tenancy agreement with the landlord. 67% of former renters are not renting in that same location as it is now in the buffer zone and cannot be rebuilt, while the other former renters stated that the landlord does not want to rent again or gave another reason (N=1). Five of the six renters (83%) stated that the landlord did not receive compensation for his/her loss.

The current situation for these **renters** with respect to permanent resettlement is:

- Have received land grant of Rs.250, 000 but cannot find suitable land – 1
- Have received no assistance – 3
- Have been offered assistance but have refused it as it is not enough to purchase land and build a house – 1
- Have received Rs. 250,000 to buy land and Rs. 50,000 to build a foundation with balance funds to complete house outstanding – 1
- There is one family that was living in a **joint family** situation- its current situation with respect to permanent resettlement is:
 - Have received nothing but only because they don't have a savings account / pass book. Unclear why they have not gone to a bank and opened an account. The other half of the joint family (the grandmother who owned the land) also has not received assistance. This family also did not receive any of the Rs. 5,000 cash transfers.

- There are 4 families who claim to have held **land grants** at the time of the tsunami- their current situations with respect to permanent resettlement are:
 - Have been offered assistance but have refused it as it is not enough to purchase land and build a house – 1
 - Have been offered nothing – 3 (families have handed over paper work to DS and also filed claims with DS and/or HRC)
- There are 4 families who claimed to have had **full ownership** at the time of the tsunami- their current situations with respect to permanent resettlement are:
 - Have new homes and waiting for utility connections – 1
 - Have received Rs. 500,000 to buy land with a house need more money (another Rs. 100,000) to complete the purchase - 3
- For families who have received no assistance or not enough assistance to move out of the shelter site, the majority of the respondents said that if the shelter site closes they will stay; while a smaller number said that they will find a piece of vacant land somewhere and put up a shed. Residents also have been told that the site is closing in December. They have not been told where they are supposed to go or if they will be given assistance to relocate to another shelter site.

In order to highlight the processes and the wide range of experiences of these families, excerpts from interviews are shared below. These excerpts are taken from the research assistants' field notes from the Kalubowila MV site.

At the beginning new houses were built for many families in Kochchikade. But these houses were then given to the local Sinhalese families there, as those families who are living at that place did not want them to be relocated there. So those houses are given to those Sinhalese people. Now CCS is building these families homes somewhere else in Kochchikade. (It should be noted that all the families that fall into this category are Tamil and ethnic relations most likely figured into the local host community's refusal of their relocation).

He has received Rs. 250,000 from the government and another Rs. 50,000 from CCS as a loan for the land. He has to pay the loan back by installment without interest (monthly payments of Rs. 4000). He bought land for Rs. 75,000 a perch through the CCS. (Interviewee was squatting at the time of the tsunami)

This man was a renter at the time of the tsunami. He has received sum of Rs. 250,000 for land. He bought land in Makkuna and also received 50,000 from GoSL and bought the materials for foundation. But people in Makkuna told him he couldn't live here. He is not sure why the neighbors have done this, but he sold all the foundation construction materials. Now he has no materials and he spent the money. Thus there is no house under construction, but he still owns the land.

She said that the Government is ready to give Rs. 500,000 to them. But they have refused that amount because that amount is not enough to buy land and build a new house. So the

GN has said they will receive a permanent house in Homagama. But no one has started to build that house. (Interviewee was squatting at the time of the tsunami)

This woman runs a female-headed household. She divorced from her husband 27 years ago, but the divorce is not legally recognized. Even though the house that was destroyed was in her name, the government gave the house to the husband. Now she lives with another man sometimes, but is not legally married to him. So because of this situation the GN said 'we can't give a permanent house to you. That is why you don't receive any assistance'. (Interviewee was squatting at the time of the tsunami)

This is an elderly couple. The wife is paralyzed and husband is suffering from arthritis. There was an article about them in the Daily Mirror newspaper (30-07-2006) asking for help. But no has come to help them. They have received Rs. 250,000 from the President's fund and Rs. 250,000 from the DS but they cannot get the money released until they find land and they can't find land because they cannot travel due to old age and ill health. (Interviewees were renting at the time of the tsunami)

About 12 years ago three families had received land with a house from the government and were relocated to Baduwita. This village is far from the sea and too far from their employment (fishing). Therefore they sold that land and house and returned to their original location near the sea. Then they were affected by the tsunami. But the GN has told them they are not entitled to any compensation since they have already been given a house once by the government. (All interviewees in this situation were squatting at the time of the tsunami)

They had full ownership of their land. The government bought that land from them for Rs. 500,000. They have bought new land with a permanent house in Moragahahena, but still need more money to finish paying for it.

This family has not received any assistance. The GS said that he would try to get a house for them. But still nothing has happened. (Interviewee was squatting at the time of the tsunami)

This family also owned property at the time of the tsunami. A new piece of land has been found for Rs. 600,000. They have already paid Rs. 500,000. Their original deed was lost, and they tried to get a new copy, but still have not managed to secure it. The Pradeshiya Sabha has said that they can get another Rs. 250,000 from Red Cross to pay off the balance. Now they are waiting to get that money. Once they get at least Rs. 100,000 they can move.

They have found land in Payagala, Kaluthara. Since the given money (Rs. 250,000) is not enough, they have made an advance payment to the landowner. If they are unable to pay the balance for this land in the future, they will not be able to move. Furthermore, the landowner has told them that he will not give back the full amount they paid earlier. (Interviewee was squatting at the time of the tsunami)

The data show the following trends:

- In many cases the law is not systematically applied.
- A significant number of families remaining in shelter sites are female headed (more than one-third).

- Local government officials have considerable power and Grama Sevakas especially appear to be the gate-keepers of and control access to information.
- The majority of respondents who have received some assistance have received only partial assistance and therefore can not move out of the camp. In such instances, families only need to connect their utilities or have only received one instalment from the government to build their home or need addition funds to complete their land purchases. Efforts should be taken to see that construction payments under the owner driven model are completed with efficiency.
- The majority of residents are not very well educated, do not have permanent jobs but rely on fishing and other forms of collie labour, also are not pro-active. The general feeling is to wait for something to happen. They are relying on the GS and the DS to solve their problems and sort out their permanent resettlement options for them.

Implementation Status:

- 83 questionnaires with interviews have been completed in two sites in Ratmalana. Data is being aggregated for analysis.
- 26 questionnaires with interviews have been completed in one site in Moratuwa.
- The survey will continue in Colombo DS Division once Moratuwa is completed.

Survey implemented by:



Funded by:



Powered by:



In cooperation with:



Housing and property restitution for families in tsunami transitional shelter sites: Preliminary results from the Ratmalana District Secretariat Division⁶

Background

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		#	%
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Given the numbers of families who were in shelter sites at the time of the May assessment and the percentage of them who did not have a permanent solution to their housing problems, the TSST project management together with UNICEF decided that a more detailed investigation of families remaining in shelter sites was warranted. A questionnaire was developed by UNOPS and COHRE in coordination with UNICEF, UN HABITAT, and IOM. These organisations have been working closely with the tsunami-displaced population and assisting them to find permanent solutions to their housing needs.

Methodology

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The data collection team has three members (2 male / 1 female) and include Tamil and Sinhala speakers. Legal experts from COHRE held 2 half-day sessions with the data collection team during which time they discussed the meaning and intent behind every question on the questionnaire. Senior UNOPS and COHRE staff supervised the data collection teams on the first two days of survey implementation.

The administration of one questionnaire takes between 20-50 minutes depending on the ability of the data collector to make him/herself understood by the respondent and how much s/he chats with the respondent and engages in rapport building. As some of the questions involve complex legal matters, the question often needs to be posed more than once in different ways in order to convey its meaning. The majority of the questions are closed with pre-defined response categories. An 'other' category is always provided to capture individualized experiences that are unique and do not easily fit into the pre-programmed responses. The questionnaire has a few open-ended questions the responses for which are written into a field notebook.

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spreadsheet. While one IT technician is undertaking this task, the data collectors write up their interview field notes for each of the homes that they visited that day. The field notes elaborate on the answers provided in the questionnaire, provide opinions and beliefs of the respondents, and otherwise document the respondents' understanding about what has happened thus far with respect to a permanent housing solution.

Before the end of the day, the team debriefs the project manager who has crosschecked the Excel files for internal consistency within a respondent's set of answers and between the field notes and these responses. The reviewed data is sent to COHRE where it is review once again. The legal team also poses follow up questions about the data. The following morning these questions are addressed before the team starts another day of data collection.

The sampling framework is based on the May 2007 TSST assessment data. Three of the Division's seven sites were selected (Karmanthapura, Rastamwatta and Kotalawala). When the team went to start data collection in the Rastamwatta shelter site, the team was told by the residents that no one residing in that site is allowed to speak to outsiders without the permission of a member of local government (a particular individual elected to the Pradeshiya Sabha). The specifics of this case are discussed below. Therefore the questionnaire was administered in only 2 of the 3 selected sites.

Code	DS Division	Site Name	# of families (May 07)	# of families (Oct 07)	# notified about receiving house from a donor	# receiving grant to buy a piece of land	# who did not purchase land	# receiving no resettlement assistance
Rat_1	Ratmalana	Karmanthapura	66	60	3	1	1	51
Rat_2	Ratmalana	Rastamwatta Camp						
Rat_3	Ratmalana	Kotalawala Camp	31	31	4	19	0	4
TOTAL			97	91	7	20	1	55

Table 3: Sampling Framework (based on categories Table 2 above)

A total of 83 questionnaires were completed in the four sampling populations over the course of 7 working days (19-27 October 2007) that represents 91% (83 of 91) of the current shelter site population.

Results and Discussion (N=83)

- 90% of the families interviewed are Sinhala, 8% are Tamil and 2% are Muslim.
- While the camps are in Ratmalana DS Division, 67% of the residents are displaced from the Moratuwa DS Division, 20% from the Ratmalana DS Division and 12% are displaced from the Dehiwala DS Division.
- 39% of the families interviewed are female-headed families. Both *de jure* and *de facto* female headship are considered with *de jure* referring to widowhood or legal divorce and *de facto* meaning that a woman is legally married to but is either separated from her husband or her husband is in jail, physically disabled, mentally

- unfit to work, is an alcoholic, or has a major illness and does not work. In the case of de facto headship, the woman is financially and otherwise responsible for the well being of the household.
- None of the respondents know of any tsunami orphans.
 - 100% of the respondents stated that they are on the DS beneficiary list.
 - 88% of the respondents stated that they received all 4 of the Rs. 5,000 cash transfers; 10% of the respondents stated receiving 3 cash transfers. Finally, two women (2%) both in a female-headed household stated that they received 4 cash transfers of Rs. 2,500.
 - 18% of respondents stated that their property was looted after the tsunami.
 - Of those who were looted 73% filed a claim for compensation; with either the police or the DS office.
 - All of the respondents who **did not** file a claim said that they didn't believe they would receive anything if they made a claim.
 - 98% of the families have not lived in the current shelter site location for the duration of their displacement; only 2% have always lived in the same site.
 - 100% of the respondents state that they were living in permanent structures at the time of the tsunami of which 87% stated that their homes were made of cement blocks or bricks.
 - Respondents were asked whether or not they thought they are entitled to compensation either financial or in-kind to replace their lost homes:
 - 36% of the respondents believe that they are entitled to financial compensation in the form of a lump sum payment to compensate for this loss. Of those who said that they believe that they are entitled to financial compensation
 - 33% said that they were entitled to Rs. 250,000 or more
 - 27% said that they were entitled to between Rs. 200,000 – 240,000
 - 40% responded that they believed that they were entitled to something but could not state a figure
 - 46% of the respondents believed that they are entitled only to some form of non-financial compensation such as materials to build a new home or be given a new home.
 - None of the respondents stated that they think they are entitled to both types of compensation.
 - 17% of respondents stated that they do not believe that they are entitled to either type of compensation. 64% of these respondents are women heading female-headed households.
 - 92% of respondents stated they were in contact with officials about their damaged homes. 8% had no contact with officials. The outcomes of this contact by frequency are:
 - Assessments of the housing damages and/or property were done

- Came and took information but nothing has happened
- They came and filled out some forms, not sure why.
- Nothing special was done / came and looked but nothing has happened
- Took some information and promised to give a house
- The majority of respondents are working with the GS (70%) to obtain housing compensation followed by the DS (22%), GA (4%), and religious leaders & NGOs (4%).
- The extent to which families are satisfied with these working relationships is reflected in responses given to the question- “What agency would you like to work with?”- for which:
 - Working with the Grama Sevaka reduces to 39%
 - Work with the DS office increases to 27%
 - Work with the GA/Kachcheri increases to 12%
 - Work with religious leaders, NGOs or other agency increases to 22%
 - 100% of the families who are currently working with religious leaders & NGOs would like to continue this working relationship in comparison to 55% of families who would like to continue working with the GS.
- Many families have received some form of compensation to address their permanent resettlement:
 - 25% of the respondents have received a land grant (discussed more below).
 - 63% have received no assistance
 - Only 12% of respondents have a housing solution. The donor driven and owner driven models are in operation.
- 89% of respondents **have not** received any notification of receiving a permanent home (These responses corroborate the results above- approximately 5% of families are involved in owner-driven housing and 7% are having a home built for them by a donor)
- 10% had received some notification of receiving a house from:
 - An INGO (44%) followed by religious leaders (33%), GN (11%) and the DS (11%).
 - Of those who received some form of notification, only verbal notification was given.
- 41% of the respondents stated that an agency / organization had been in contact with them about a permanent resettlement option (land or house). In the majority of cases (49%), the GAs office made the contact followed by the DS office.
- In order to get any information about what the future would hold with respect to resettlement the majority of families (50%) had to contact the government on their own. 31% were invited to a meeting/workshop and 11% had an official come to their home and speak to them. With respect to the outcomes of these interactions:

- 8% said officials were very helpful
- 48% said officials were quite helpful
- 36% said officials were unhelpful
- 7% did not want to / could not answer or had no contact
- There were a small number of families (6) who were not contacted by an agency and who then in turn did not try to contact anyone on their own. Two reasons for not trying to initiate contact on their own were given: it is the government's responsibility to contact us and solve this problem and did not know whom to contact.
- With respect to the distances that families in shelter sites are willing to resettle within:
 - 80% want to relocate somewhere within the district
 - 20% are willing to relocate outside the district
- Respondents were asked what their property rights and housing conditions were at the time of the tsunami, as it is upon this arrangement / situation that compensation and entitlements are based.
 - 79% stated that they were occupying land either squatting or encroaching
 - 12% said that they were renting
 - 5% stated that they were living in a joint family situation (either occupying the same house or multiple houses built on the same piece of land)
 - 2% stated that they owned their own land
 - 2% of the families indicated highly complex arrangement by which they occupied land. These families do not strictly fit in to any of the above categories. The legal position with respect to the occupation of the land is uncertain.
- With respect to their current status in finding a housing solution, the following situations were documented:
 - 65 families claimed to be **squatting** or otherwise occupying land at the time of the tsunami- their current situations with respect to permanent resettlement are:
 - Have received nothing – 42
 - Have new homes and waiting for utility connections or the opening ceremony – 5
 - Have received a land grant -10
 - Have deposits on land but need more money to complete the purchase– 1
 - Being looked after by a Church / NGO – 3
 - Have received Rs. 250,000 to buy land and Rs. 50,000 to build a foundation with balance funds to complete house outstanding – 4
 - There are 10 families who claimed to be **renting** at the time of the tsunami. All of these homes were completely damaged and none of the

respondents believe that they have a valid tenancy agreement with the landlord. 100% of these former renters are not renting in that same location as it is now in the buffer zone and cannot be rebuilt. Only one renter stated that the landlord received compensation for his/her loss.

The current situation for these **renters** with respect to permanent resettlement is:

- Have received land grant of Rs.250, 000 and bought land – 4 (It should be noted that all of the former renters who received land grants live in the Kotalawa camp)
- Have received no assistance – 6
- There are 4 families that were living in a **joint family** situation- their current situations with respect to permanent resettlement is:
 - Have received nothing – 3
 - Received Rs 500,000 – 1 (Family lived with their mother-in-law at the time of the tsunami. Are in possession of a document from the GoSL that says that they are entitled to Rs. 750,000.00. They received Rs. 500,000 and bought land with a small house in Pandaura. They are trying to get the balance Rs. 250,000 as per this document, but the GS has told them to stop pursuing it. They claim they cannot move until they repair the kitchen roof on the house that they bought).
- There are 2 families who claimed to have had **full ownership** at the time of the tsunami- their current situations with respect to permanent resettlement are:
 - Have received nothing – 2 (Both of these owners however claim to have copies of their deeds to prove land ownership but this would need to be verified)
- There are 2 families who had highly complex arrangements by which they occupied land at the time of the tsunami. In both cases neither family has received any assistance. Both families derive their right to occupy the land from other members of the family, but in both cases it is unclear whether these other family members actually have full ownership over the property. However one respondent did admit that he knew that his paperwork for his land was problematic, but he didn't realise the importance of resolving these problems prior to the tsunami. It is only now that he realizes how important proper legal documentation is, to secure the right to occupy the land he was on before.
- For families who have received no assistance or not enough assistance to move out of the shelter site, the majority of the respondents said that if the shelter site closes they will stay; while a smaller number said that they will go stay with friends or relations. 10% of the families who said that they would need to stay also said that they would take to picketing and protesting on the Galle Road if they were forced to leave.

In order to highlight the processes and the wide range of experiences of these families, excerpts from interviews are shared below. These excerpts are taken from the research assistants' field notes.

Rastamwatte

The people living at this site did not agree to speak to us. They said organizations/authorities came to this site in earlier days, have collected their information and took photographs and showed those data and photos to some donors and got money and have cheated them. A government official (Member of Pradeshiya Sabha) has told them to not to give information to outsiders without his permission.

Karmanthapura Site

This family received a land grant and bought land in Bandaragama. They are in possession of the deed. The estimated value of the house that they want to build is greater than money to be received by the DS. The DS won't release any money if the estimated cost of the building that they propose exceeds the amount that they will be given. Therefore, they need to submit a new house design that is more affordable in order to get the money.

This family was squatting at the time of the tsunami. The GS told them that if they find some land he would try to get them some money. But when they found land, the owner asked for an advance before handing over a copy of deed. The GS told them to give their own money to the owner and after that he would try to give a land grant to them. When they said that they do not have the money, the GS replied that they should pawn their jewelry to get money to pay a deposit.

This family was also squatting at the time of the tsunami. They have not received any assistance but the GS was helpful. He told them not to rebuild anything on their original property because it is in the buffer zone.

For the majority of the people living in this site, the GS has told them to find a piece of land, but land in this area is too expensive. The people say that they do not have money even for bus fare and lunch to go and find land outside the area.

This family was squatting at the time of the tsunami. They have not received a land grant, but the GS has told them to find a piece of land and after that he can give them Rs.250,000 to buy it. The DS said that land must come with the following things:

- Clear deed to that land
- Entrance road to the land must be a 10 foot road
- Minimum area of the land 5 perches.
- The value of that land must be Rs.250,000

After they buy this land they have to move there and build a temporary shelter. Then the GoSL will give them another Rs.250,000 within 6 months to build a house. However, they cannot find land that fulfills all these requirements. Until they do, they will not receive a land grant the GS said.

This family was squatting at the time of the tsunami. The GS told them to find land. They found 7.5 perches land in Bandaragama and handed over every document to the GS. Then GS said if they want to get the land grant they have to get the approval from the DS in Bandaragama because in order to get the land grant the size of the land must be 10 perches.

They have met the GS many times and filled some documents. They have no idea what kind of documents they filled. But despite filling documents nothing has happened. The GS held a general meeting 1.5 years ago. He said that they would all have houses built for them in Kaldemulla. So they went there on their own to see that place and saw the houses. This was not a formally organized trip, a group of families just went to see. Now the construction is finished, but the GS says he does not have any authority give them those houses.

Kotalawala Shelter Site

This couple received some notification from the GS two years ago that they could get Rs.750,000.00 They received Rs.250, 000 and bought land in Serupita (Kalutara district). They do not have money to build a permanent house. The GS has now told them to go to geriatrics' home. They believe that the GS has told them this, as he is upset with them for asking for the balance amount, however, they think that if they leave the camp they will never receive the balance funds.

This man received Rs.250,000 from the Government and bought land in Gohanapola. The GS told him to have a plan for a new house made and he will give him the money to build the house. However, he doesn't have money to make a plan, as he only does small work such as collecting old bottles and papers from houses and selling them somewhere. He has two children aged 3 and 5. He is not happy with the land he bought because there is no water, electricity facilities and school is also very far. He would like to work with the Red Cross because if they promise something they will give it.

This family received Rs.250,000 for land and bought land in Payagala. They bought it under pressure. The DS told them to buy the land quickly because otherwise he could not give them money to build a house. Later they realized the land is not suitable (too far away for school and work opportunities and no utilities).

Three families say that they will receive their houses within two weeks (interview conducted on 25 October). The houses are built by Red Cross, but do not have water and power supply yet. One family could identify the new location (11 Gulomadama Junction).

The data show the following trends:

- In many cases the prevalent policy is neither applied systematically, nor is the relevant information given to families about their entitlements.
- A significant number of families remaining in shelter sites are female headed (more than one-third).
- Local government officials have considerable power in determining futures. The Grama Sevaka in particular appears to be the 'gatekeepers' controlling access to information. People are becoming more dissatisfied with the service that the GS provides and would prefer to work with other agencies.
- It must be noted that Grama Sevakas are under increasingly more pressure to deliver funds and/or services that they do not seem able to or know how to deliver. Perhaps due to this the GSs give out contradictory and conflicting information to people at the same site and occasionally lose their temper with families.

- The fact that religious leaders and NGOs can deliver or provide satisfactory service is reflected in the fact that 100% of the respondents who currently work with either of these organizations would like to continue the working relationship.
- Families fear that if they move out of the shelter site before receiving 100% of what they know or believe that they are entitled to, they will not receive the entire compensation package. Remaining in the site is their way of staking their claim to this compensation.
- The majority of families in the Karmanthapura site have received no assistance; families in the Kotalawala site have received more assistance. Even families who were renting at the time of the tsunami have received land grants in the Kotalawala site.⁷
- A small number of families have received partial assistance and therefore cannot move out of the site. In such instances, families only need to connect their utilities or have only received one instalment from the government to build their home or need additional funds to complete their land purchases. Efforts should be taken to see that construction payments under the owner driven model are completed with efficiency.
- The majority of residents are not very well educated, do not have permanent jobs but rely on fishing and other forms of coolie labour. People have filled out numerous forms because they are told to, but many respondents have no idea what the implications of filling out these forms might be. They are relying on officials to solve these problems.

Survey implemented by:



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⁷ Note that the Tsunami (Special Provisions) Act (2005) only mentions renters in Section 31 where it says that tenancy agreements remain valid after the tsunami. However, neither the Act nor the Tsunami Housing Policy has a provision about entitlements to housing for renters.

Housing and property restitution for families in tsunami transitional shelter sites: Preliminary results from the Moratuwa DS Division⁸

Background

The Indian Ocean tsunami of 26th December 2004 affected the lives and livelihoods of families in 11 districts in Sri Lanka. Over 55,000 individual transitional shelters were constructed to house tsunami-displaced families. Some shelters were constructed as singular, scattered units while other shelters were organized into camps that provide basic infrastructure services such as water and sanitation, power supply, drainage and solid waste management. Some public buildings such as schools and abandoned mills and warehouses also serve as sites to house displaced families.

Since August 2005, the Transitional Shelter Site Tracking (TSST) Project has been conducting routine monitoring of the conditions in shelter sites in 5 districts (Ampara, Trincomalee, Hambantota, Matara, and Galle), with generous funding from HIC and currently from UNICEF. It was not until May 2007 that an assessment of shelter sites in the Colombo and Kalutara districts took place (funded by IOM and the American Red Cross). After the routine TSST monitoring concluded in August 2007, the results showed that of all the districts where the TSST exercise was undertaken, the largest number of families residing in transitional shelter sites was in the Colombo District (Table 1).

Table 1: Families living in transitional shelter sites May – August 2007

	Colombo	Kalutara	Galle	Matara	H'tota	Ampara	Trinco	Total
# of sites	19	9	19	16	8	75	25	171
# of families	1,323	128	90	156	39	1,028	430	3,194

The TSST survey instrument collects only cursory information about resettlement options available to families living in transitional shelter and includes: # of families who have been notified that a donor agency is building them a house, # of families who received a grant to purchase a piece of land for resettlement, and # of families who have received neither type of assistance. The May 2007 assessment found that over 50% of the families living in transitional shelter sites in the Colombo District fell into the later category (Table 2). These four categories are integral to the sampling framework (Table 3).

Table 2: Resettlement options for families in shelter sites in Colombo – May 2007

		#	%
A	Families who were notified of receiving a permanent house	160	12
B	Families who received a land grant for Rs. 250,000	447	34
C	Families who received the grant and bought the land (as a % of B)	418	93.5
D	Families who received neither (no resettlement assistance)	716	54

⁸ UNOPS Report December 2007 in cooperation with UNICEF, COHRE, IOM and UN Habitat. Available at <http://www.unops.org.lk/tsst/search2.aspx> . Last accessed January 2008.

Given the numbers of families who were in shelter sites at the time of the May assessment and the percentage of them who did not have a permanent solution to their housing problems, the TSST project management together with UNICEF decided that a more detailed investigation of families remaining in shelter sites was warranted. A questionnaire was developed by UNOPS and COHRE in coordination with UNICEF, UN HABITAT, and IOM. These organisations have been working closely with the tsunami-displaced population and assisting them to find permanent solutions to their housing needs.

Methodology

As a UNICEF-funded project implemented by the UNOPS TSST/EA Project, DevInfo was used to collect data. The questionnaire was programmed using Emergency Info software and downloaded onto a Personal Digital Assistant (PDA). The data collectors input responses directly into the PDA. Each questionnaire is saved in the PDA and later downloaded onto a central computer as an XML file, processed and exported into a Microsoft Excel spreadsheet. Microsoft XLSTAT is used for analysis and the computation of descriptive statistics.

The questionnaire contains a total of 97 questions. However, a respondent will not necessarily answer every question. The questionnaire is divided into sections that correspond with various property rights regimes and tenurial arrangements that would have been possible at the time of the tsunami such as private property ownership, permission to occupy via permit or grant, renting, squatting or encroaching on government land, or living on ancestral / family land without possession of legal title in one's own name.

The data collection team has three members (2 male / 1 female) and include Tamil and Sinhala speakers. Legal experts from COHRE held 2 half-day sessions with the data collection team during which time they discussed the meaning and intent behind every question on the questionnaire. Senior UNOPS and COHRE staff supervised the data collection teams on the first two days of survey implementation.

The administration of one questionnaire takes between 20-50 minutes depending on the ability of the data collector to make him / herself understood by the respondent and how much s/he chats with the respondent and engages in rapport building. As some of the questions involve complex legal matters, a question often needs to be posed more than once in different ways in order to convey its meaning. The majority of the questions are closed with pre-defined response categories. An 'other' category is always provided to capture individualized experiences that are unique and do not easily fit into the pre-programmed responses. The questionnaire has a few open-ended questions the responses for which are written into a field notebook.

The daily collection process is as follows: visits to sites and administration of the questionnaire takes place every day between 8:45- 12:30 PM. Upon returning to the office all of the XML files are downloaded, processed and organized into an Excel

spreadsheet. While one IT technician is undertaking this task, the data collectors are writing up interview field notes for each of the homes that they visited that day. The field notes that are qualitative elaborate on the answers provided in the questionnaire, provide opinions and beliefs of the respondents, and otherwise document perceptions of the respondents and what has happened thus far with respect to finding a permanent housing solution.

Before the end of the day, the team debriefs the project manager who has crosschecked the Excel files for internal consistency within a respondent’s set of answers and between the field notes and these responses. The reviewed data is sent to COHRE where it is reviewed once again. The legal team also poses follow up questions about the data. The following morning these questions are addressed before the team starts another day of data collection.

The sampling framework is based on the May 2007 TSST assessment data. Two of the division’s nine sites were selected (Lunawa Rest House and the Roman Catholic School).

Table 3: Sampling Framework (based on categories Table 2 above)

Code	DS Division	Site Name	# of families (May 07)	# of families (Nov 07)	# notified about receiving house from a donor	# receiving grant to buy a piece of land	# who did not purchase land	# receiving no resettlement assistance
Mor_7	Moratuwa	Lunawa Rest House	110	99	5	2	0	55
Mor_4	Moratuwa	Roman Catholic School	42	39	0	13	0	13
TOTAL			152	138	5	15	0	68

There is a 9% drop in the total population in these two sites since the first assessment was conducted in May 2007. A total of 88 questionnaires were completed in the four sampling populations over the course of 15 working days (29 October – 16 November 2007), which represents 64% (88 of 138) of the current shelter site population.

Results and Discussion (N=88)

- With respect to ethnicity, 98% of the families interviewed are Sinhala and 2% are Muslim.
- All of the families have been displaced within the Moratuwa DS Division- the majority of families are displaced from Uyana South GN Division (48%), Egodayana South GN Division (23%) and Moratuwella South GN Division (9%).
- 24% of the families interviewed are female-headed families. Both *de jure* and *de facto* female headship are considered with *de jure* referring to widowhood or legal divorce and *de facto* meaning that a woman is legally married to but is either separated from her husband or her husband is in jail, physically disabled, mentally

unfit to work, is an alcoholic, or has a major illness and does not work. In the case of de facto headship, the woman is financially and otherwise responsible for the well being of the household.

- None of the respondents know of any tsunami orphans.
- 98% of the respondents stated that they are on the DS beneficiary list.
 - 48% of the respondents stated that they received all 4 of the Rs. 5,000 cash transfers; 4% of the respondents stated receiving 3 cash transfers; 36% stated receiving 2 cash transfers and 5% stated receiving none or did not know. Finally, two women (2%) both in a female-headed household stated that they received either 2 or 3 cash transfers of Rs. 2,500.
- 10% of respondents stated that their property was looted after the tsunami.
 - Of those who were looted 44% filed a claim for compensation with the police.
 - All of the respondents who **did not** file a claim said that they didn't believe they would receive anything if they made a claim or that they were afraid of consequences if a claim were to be filed.
- 45% of the respondents have lived in their current location since the time of their displacement by the tsunami; 55% of the families have lived in more than one location since their initial displacement by the tsunami.
- 100% of the respondents stated that they were living in permanent structures at the time of the tsunami of which 77% stated that their homes were made of wood. 80% of respondents stated that their homes were completely destroyed by the tsunami; 20% of respondents stated that they were partially damaged.
- Respondents were asked whether or not they thought they are entitled to compensation either financial or in-kind to replace their lost homes:
 - 37% of the respondents believe that they are entitled to financial compensation in the form of a lump sum payment to compensate for this loss. Of those who said that they believe that they are entitled to financial compensation
 - 9% said that they were entitled to Rs. 250,000 or more
 - 24% said that they were entitled to between Rs. 200,000 – 240,000
 - 67% responded that they believed that they were entitled to something but could not state a figure
 - 63% of the respondents stated that they are entitled to some form of non-financial compensation such as materials to build a new home or be given a new home.
 - 8% of the respondents stated that they think they are entitled to **both** types of compensation.
 - 7% of respondents stated that they do not believe that they are entitled to either type of compensation.

- 92% of respondents stated they were in contact with officials about their damaged homes. 8% had no contact with officials. The outcomes of this contact by frequency are:
 - Assessments of the housing damages and/or property were done
 - Came and took information but nothing has happened
 - Nothing special was done / came and looked but nothing has happened
 - Took some information and promised to give a house
- The majority of respondents are working with the GS (72%) to obtain housing compensation followed by the DS (15%), religious leaders & NGOs (12%) and GA (1%).
- The extent to which families are satisfied with these working relationships is reflected in responses given to the question- “What agency would you like to work with?”- for which:
 - Working with the Grama Sevaka reduces to 20%
 - Work with the DS office increases to 40%
 - Work with the GA/Kachcheri increases to 6%
 - Work with religious leaders, NGOs or other agency increases to 34%
 - The level of dissatisfaction with current service providers in general is quite high, for even 55% of families who currently work with NGOs or religious organizations would prefer to work with another organization for resettlement assistance. (In comparison to Ratmalana DS Division where 100% of families would continue their working relationship with NGOs or religious organizations.)
- Many families have received some form of compensation to address their permanent resettlement:
 - 72% have received no assistance
 - 28% of respondents have received some kind of assistance either donor driven house or combination of land grant and expectations of receiving money to build a house through the owner driven model.
- 92% of respondents **have not** received any notification of receiving a permanent home (6% of families are involved in owner-driven housing and 2% are involved in donor schemes).
- 8% of respondents have received some notification of receiving a house from:
 - An INGO (57%) followed by religious leaders (28%), and the DS (15%).
 - Respondents received either verbal or written notification.
- Only 35% of the respondents stated that an agency / organization had been in contact with them about a permanent resettlement option, however contact does not always results in receiving assistance. In the majority of cases (74%) contact was with the DS office followed by the GA, Human Rights Commission and other agencies.

- But in order to get any information about what the future would hold with respect to permanent resettlement, the majority of families (70%) had to contact the government on their own. 18% had an official come to their home and speak to them and 12 % have had no contact with government officials at all. With respect to the outcomes of these interactions:
 - 4% said officials were very helpful
 - 27% said officials were quite helpful
 - 69% said officials were unhelpful
- There were a small number of families (11) who were not contacted by an agency and who then did not try to contact anyone on their own. Two reasons for not trying to initiate contact were given: “it is the government’s responsibility to contact us and solve this problem” followed by “did not know whom to contact.”
- With respect to the distances that families in shelter sites are willing to resettle within:
 - 54% want to relocate somewhere within the district
 - 45% are willing to relocate outside the district
- Respondents were asked what their property rights and housing conditions were at the time of the tsunami, as it is upon this arrangement / situation that compensation and entitlements are based.
 - 55% stated that they were occupying land either squatting or encroaching
 - 13% said that they were renting
 - 19% stated that they were living in a joint family situation (either occupying the same house or multiple houses built on the same piece of land)
 - 3% stated that they held either a land grant or a permit
 - 10% stated that they owned their own land
- With respect to their current status in finding a housing solution, the following situations were documented:
 - 48 families claimed to be **squatting** or otherwise occupying land at the time of the tsunami- their current situations with respect to permanent resettlement are:
 - Have received nothing – 39
 - Have received a land grant, but need money to build a house - 5
 - Being looked after by a Church / NGO – 4
 - There are 11 families who claimed to be **renting** at the time of the tsunami. None of the respondents believe that they have a valid tenancy agreement with the landlord. 73% of the respondents stated that these homes were completely damaged.

The current situation for these **renters** with respect to permanent resettlement is:

 - Being looked after by an NGO-1

- Have received no assistance – 10
 - There are 17 families that were living in a **joint family** situation- their current situations with respect to permanent resettlement is:
 - Have received no assistance – 14
 - Received land grant but needs money to build a house –1
 - Being looked after by an NGO –1
 - Received a land grant, but building of IOM temporary shelter was stopped by the Pradeshiya Sabha - 1
 - There are 3 families that held either a **land grant or a permit** at the time of the tsunami- their current situations with respect to permanent resettlement is:
 - Received no assistance – 2
 - Received land grant but needs money to build a house - 1
 - There are 9 families who claimed to have had **full ownership** at the time of the tsunami- their current situations with respect to permanent resettlement are:
 - Have received no assistance –4
 - Received a land grant, but building of IOM temporary shelter was stopped by the Pradeshiya Sabha – 1
 - Bought land but need money to build a house – 4
- For families who have received no assistance or not enough assistance to move out of the shelter site, the majority of the respondents (54%) said that if the shelter site closes they will stay; while a smaller number said that they will find a piece of vacant land somewhere and put up a shed.

In order to highlight the processes and the wide range of experiences of these families, excerpts from interviews are shared below. These excerpts are taken from the research assistants' field notes.

Lunawa Rest House Site

This site has two sections that are on opposite sides of the road from one another. There is a court case against the people who are living on one side of the road, even though they have occupied that place since the day of the tsunami. The previous GS has filed a court case against all the families living on this one side of the road.

One woman explained it this way:

“We came to this Lunawa Rest House just after the tsunami as it was empty and ruined at the time. But this rest house is not a good place to live in rainy days due to flooding. Red Cross put up a few tents. While we were living in these tents, Sewa Lanka came and built shelters using wood. Then the GS has told us to go and stay in these shelters to avoid them being occupied by other people who were tsunami affected and who did not have shelter. People might come from outside areas and occupy these. So, we moved to these shelters. But some

time after, the same GS filed a court case against us saying that we have occupied these shelters illegally.”

However other people who are involved in this court case say that they GS said that they have occupied these shelters without his permission. According to this story, the GS claims that Sewa Lanka built the shelters without informing him. As he was not informed about the construction he said that this is an illegal settlement and the people who live in these shelters will get no assistance.

The GS who filed the court case has been replaced. According to the people the previous GS doesn't come to court on the court days even though it is his case. They don't understand why the GS has filed this case against them. Earlier they received informal notification that 20 families in this location will receive flats built by Lions Club. The flats are under construction near to the site, but now the people have been told that they are not getting these flats.

People in this site also complain that the GS and the DS are always changing and being replaced, so the new officers never understand their individual histories so they have to explain them again and again.

In one joint family situation, everyone living in the house at the time of the tsunami was registered under one name. They did not bother to register separately as they did not think it was very important. But now the new GS has told them it is very difficult to re-register now as separate families.

The NGO LEADS is building permanent houses for families that purchased land in Paragastota, Millanaiya.

With respect to receiving the Rs. 5,000 cash transfers: Less than 50% of the respondents received all four cash transfers. Some families understand that these payments are tied to the damage done to their homes. If a house was partially damaged, then only 2 of the 4 transfers were given. If the house was fully destroyed than 4 transfers were given. Another woman was told that a single woman at the time of the tsunami was only entitled to cash transfers at a value of Rs. 2,500 (this particular woman only received 3 of the 4 installments).

Roman Catholic School Site

The most substantial problem in this site is that the YWCA has promised to buy land and distribute it among 15 families living in this site. The people still expect the YWCA to fulfill this promise. One man stated that the GS did not put him on the list to receive a land grant because he was on a list to get a house from the YWCA.

A few other families received land grants and bought land in Raigama in Kalutara District. IOM started to build temporary shelters for these families, but then the Secretary of the Pradseshiya Sabha stopped the construction of the shelters stating that the land needs to be used for a new drainage system that is to be constructed. One family has filed an appeal against the PS. The other families have not clearly stated what they will do or how they expect the situation to be resolved.

The data show the following trends:

- In many cases the prevalent policy is neither applied systematically, nor is the relevant information given to families about their entitlements.

- Local government officials have considerable power in determining futures. The Grama Sevaka (GS) in particular appears to be the ‘gatekeeper’ controlling access to information. People are becoming more dissatisfied with the service that the GS provides and would prefer to work with other agencies.
- However, frustration is high amongst all shelter residents as the majority of residents would prefer to work with any new agency and that includes stopping work with NGOs to work with the DS or GA office. This desire to switch is markedly different from other sites where NGOs and religious groups remain popular.
- It must be noted that Grama Sevakas are under increasingly more pressure to deliver funds and/or services that they do not seem able to or know how to deliver. This inability to deliver leads to GS refusing to register some families or giving contradictory information. However in one case a GS has been straightforward and mentioned to families renting at the time of the tsunami that they are the last group to be considered for resettlement assistance.
- Tensions between shelter residents and local authorities are high in the Lunawa Rest House site due to a court case that families believe is delaying their right to a solution.
- A small number of families have received partial assistance and therefore cannot move out of the site. Efforts should be taken to see that construction payments under the owner driven model are completed with efficiency.
- The majority of residents are not very well educated, do not have permanent jobs but rely on fishing and other forms of coolie labour such as cleaning houses. Many families are earning and must support their families on less than USD 2 per day.

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Housing and property restitution for families in tsunami transitional shelter sites: Preliminary results from the Colombo District Secretariat Division ⁹

Background

The Indian Ocean tsunami of 26th December 2004 affected the lives and livelihoods of families in 11 districts in Sri Lanka. Over 55,000 individual transitional shelters were constructed to house tsunami-displaced families. Some shelters were constructed as singular, scattered units while other shelters were organized into camps that provide basic infrastructure services such as water and sanitation, power supply, drainage and solid waste management. Some public buildings such as schools and abandoned mills and warehouses also serve as sites to house displaced families.

Since August 2005 the Transitional Shelter Site Tracking (TSST) Project has been conducting routine monitoring of the conditions in shelter sites in 5 districts (Ampara, Trincomalee, Hambantota, Matara, and Galle) with generous funding from HIC [Humanitarian Information Center] and currently from UNICEF. It was not until May 2007 that an assessment of shelter sites in the Colombo and Kalutara districts took place (funded by the International Organization for Migration (IOM) and the American Red Cross). After routine TSST monitoring concluded in August 2007, the results showed that the largest number of families residing in transitional shelter sites was in the Colombo District (Table 1).

Table 1: Families living in transitional shelter sites May – August 2007

	Colombo	Kalutara	Galle	Matara	H'tota	Ampara	Trinco	Total
# of sites	19	9	19	16	8	75	25	171
# of families	1,323	128	90	156	39	1,028	430	3,194

The TSST survey instrument collects only cursory information about resettlement options available to families living in transitional shelter and includes: # of families who have been notified that a donor agency is building them a house, # of families who received a grant to purchase a piece of land for resettlement, and the number # of families who have received neither type of assistance. The May 2007 assessment found that over 50% of the families living in transitional shelter sites in the Colombo District fell into the later category (Row D, Table 2).

⁹ UNOPS Report December 2007 in cooperation with UNICEF, COHRE, IOM and UN Habitat. Available at <http://www.unops.org.lk/tsst/search2.aspx> . Last accessed January 2008.

Table 2: Resettlement options for families in shelter sites in Colombo – May 2007

		#	%
A	Families who were notified of receiving a permanent house	160	12
B	Families who received a land grant for Rs. 250,000	447	34
C	Families who received the grant and bought the land (as a % of B)	418	93.5
D	Families who received neither (no resettlement assistance)	716	54

Given the numbers of families who were in shelter sites at the time of the May assessment and the percentage of them who did not have a permanent solution to their housing problems, the TSST project management together with UNICEF decided that a more detailed investigation of families remaining in shelter sites was warranted. A questionnaire was developed by UNOPS and COHRE in coordination with UNICEF, UN HABITAT, and IOM. These organisations have been working closely with the tsunami-displaced population and assisting them to find permanent solutions to their housing needs.

Methodology

As a UNICEF-funded project implemented by the UNOPS assessment team, DevInfo [a programme developed to monitor human development] was used to collect data. The questionnaire was programmed using Emergency Info software and downloaded onto a Personal Digital Assistant (PDA). The data collectors input responses directly into the PDA. Each questionnaire is saved in the PDA and later downloaded onto a central computer as an XML file, processed and exported into a Microsoft Excel spreadsheet. Microsoft XLSTAT is used for analysis and the computation of descriptive statistics.

The questionnaire contains a total of 97 questions. However, a respondent will not necessarily answer every question. The questionnaire is divided into sections that correspond with various property rights regimes and tenurial arrangements that would have been possible at the time of the tsunami such as private property ownership, permission to occupy via permit or grant, renting, squatting or encroaching on government land, or living on ancestral / family land without possession of legal title in one's own name.

The data collection team has three members (2 male / 1 female) and include Tamil and Sinhala speakers. Legal experts from COHRE held 2 half-day sessions with the data collection team during which they discussed the meaning and intent behind every question on the questionnaire. Senior UNOPS and COHRE staff supervised data collection on the first two days of survey implementation.

The administration of one questionnaire takes between 20-50 minutes depending on the ability of the data collector to make him / herself understood by the respondent and how much s/he chats with the respondent and engages in rapport building. As some of the

questions involve complex legal matters, a question often needs to be posed more than once in different ways in order to convey its meaning. The majority of the questions are closed with pre-defined response categories. An ‘other’ category is always provided to capture individualized experiences that are unique and do not easily fit into the pre-programmed responses. The questionnaire has a few open-ended questions the responses for which are written into a field notebook.

The daily collection process is as follows: visits to sites and administration of the questionnaire takes place every day between 8:45-12:30 PM. Upon returning to the office all of the XML files are downloaded, processed and organized into an Excel spreadsheet. While one IT technician is undertaking this task, the data collectors are writing up interview field notes for each of the homes that they visited that day. The field notes that are qualitative elaborate on the answers provided in the questionnaire, provide opinions and beliefs of the respondents, and otherwise document perceptions of the respondents and what has happened thus far with respect to finding a permanent housing solution.

Before the end of the day, the team debriefs the project manager who has crosschecked the Excel files for internal consistency and against the field notes. The reviewed data is sent to COHRE where it is reviewed once again. The legal team also poses follow up questions about the data. The following morning these questions are addressed before the team starts another day of data collection.

Survey implementation is based loosely on the categories presented in Table 2 above. In the Colombo DS Division, two of the division’s three sites were selected (St Mary’s Community Hall and Wistvike Park) for questionnaire administration.

Table 3: Sampling Framework

Code	DS Division	Site Name	# of families (May 07)	# of families (Nov 07)	# notified about receiving house from a donor	# receiving grant to buy a piece of land	# who did not purchase land	# receiving no resettlement assistance
Col_1	Colombo	St. Mary's Community Hall	41	9	0	5	0	2
Col_3	Colombo	Wistvike Park	136	38	0	19	3	3
TOTAL			177	47	0	24	3	5

There is a **73.5%** drop in the total population in these two sites since the first assessment was conducted in May 2007. A total of 32 questionnaires were completed in the four sampling categories over four working days (20-24 November 2007), which represents 68% (32 of 47) of the current shelter site population.

Results and Discussion (N=32)

- With respect to ethnicity, 53% of the families interviewed are Tamil, 25% are Sinhala and 22% are Muslim.

- All of the families have been displaced with the Colombo District Secretariat Division - the majority of families are displaced from Mattakuliya Grama Niladari Division [smallest unit of local government] (31%), Modera Grama Niladari Division (25%), Lunupokuna Grama Niladari Division (25%) and Sammantharanapura (19%).
- **59%** of the families interviewed are female-headed families. Both *de jure* and *de facto* female headship are considered with *de jure* referring to widowhood or legal divorce and *de facto* meaning that a woman is legally married to but is either separated from her husband or her husband is in jail, physically disabled, mentally unfit to work, is an alcoholic, or has a major illness and does not work. In the case of *de facto* headship, the woman is financially and otherwise responsible for the well being of the household.
- None of the respondents know of any tsunami orphans who might have outstanding land claims (from their deceased parents).
- 100% of the respondents stated that they are on the DS beneficiary list.
 - 50% of the respondents stated that they received all 4 of the Rs. 5,000 cash transfers; 44% stated that they did not received any of the cash transfers.
 - Families in Wistvike Park stated that in total 23 families did not receive any of the cash transfers, despite numerous attempts to obtain it. Officials from the Kachcheri [Government Agent responsible for a district] and the People's Bank manager provide contradictory and conflicting information. Officials from the Kachcheri told them that the money was transferred to the bank. When they went to the bank the bank manager told them that their name was on the list, but the transfer was never received. The people are of the opinion that the bank employees stole the money. They are not questioning whether or not the government transferred the funds.
 - At St. Mary's Community Hall, at least 3 families who were registered on the list of tsunami beneficiaries could not secure the cash transfers from the government because the GS didn't give the 'card' to them. When they went to get that card, he (GS) postponed them every day. They do not understand why the GS refused to give them the card, but eventually they gave up.
- 12.5% of respondents stated that their property was looted after the tsunami.
 - Of those who were looted 75% filed a claim for compensation with the police.
 - The family that **did not** file a claim said that they were unaware they could file one.
- 22% of the respondents have lived in their current location since the time of their displacement by the tsunami; 78% of the families have lived in more than one location since their initial displacement by the tsunami.
- 100% of the respondents stated that they were living in permanent structures at the time of the tsunami, of which 78% stated that their homes were made of wood. 65% of respondents stated that their homes were completely destroyed by the

- tsunami; 28% of respondents stated that they were partially damaged and 6% said that relatives now occupy their former home.
- Respondents were asked whether or not they thought they are entitled to compensation either financial or in-kind to replace their lost homes:
 - 93% of the respondents believe that they are entitled to financial compensation in the form of a lump sum payment to compensate for this loss. Of those who said that they believe that they are entitled to financial compensation
 - 90% said that they were entitled to Rs. 250,000 or more
 - 10% said that they were entitled to between Rs. 200,000 – 240,000
 - 56% of the respondents believe that they are entitled to both kinds of assistance (financial and in-kind / materials).
 - 87.5% of respondents have been in contact with officials about their damaged homes. 75% of respondents stated that they did not know if an assessment was done of their previous home. 25% stated that an assessment had been done.
 - The majority of respondents are working with the Government Agent/Kachcheri (69%) to obtain housing compensation followed by the District Secretariat (25%), and Grama Sevaka [smallest unit of local government, the same as Grama Niladari] (6%).
 - The extent to which families are satisfied with these working relationships is reflected in responses given to the question- “What agency would you like to work with?”- for which:
 - Working with the Government Agent/Kachcheri reduces slightly to 59%
 - Work with the District Secretariat office reduces slightly to 19%
 - No one would continue working with the Grama Sevaka.
 - Work with religious leaders, NGOs or other agency increases to 22%
 - Many families have received some form of compensation to address their permanent resettlement:
 - 84% of the respondents have received a land grant (discussed more below).
 - 16% have received no assistance
 - Only 9% of respondents have a housing solution.
 - 91% of respondents **have not** received any notification of receiving a permanent home {9% (N=3) families have received the first instalment from the government for owner-driven housing}.
 - 41% of the respondents stated that an agency / organization had been in contact with them about a permanent resettlement option (land or house). In the majority of cases (75%), the Government Agent’s office made the contact followed by the District Secretariat office (25%)

- In order to get any information about what the future would hold with respect to resettlement, the majority of families (69%) had to contact the government on their own. 31% of respondents had an official come to their home and speak to them. With respect to the outcomes of these interactions:
 - 94% said officials were quite helpful
 - 6% said officials were unhelpful
- With respect to the distances that families in shelter sites are willing to resettle within:
 - 56% want to relocate somewhere within the district
 - 44% are willing to relocate outside the district
- Respondents were asked what their property rights and housing conditions were at the time of the tsunami, as it is upon this arrangement / situation that compensation and entitlements are based.
 - 53% stated that they were occupying land either squatting or encroaching
 - 38% said that they were renting
 - 9% stated that they were living in a joint family situation (either occupying the same house or multiple houses built on the same piece of land)
- With respect to their current status in finding a housing solution, the following situations were documented:
 - 17 families claimed to be **squatting** or otherwise occupying land at the time of the tsunami- their current situations with respect to permanent resettlement are:
 - Have received nothing – 4
 - Have received a land grant, purchased land, but now in a land dispute / problem with deed to newly-acquired land- 4
 - Have received a land grant, but have no money to build a house - 4
 - Have deposits on land but need more money to complete the purchase– 3
 - Have received Rs. 250,000 to buy land and Rs. 50,000 to build a foundation with balance funds to complete house outstanding – 2
 - There are 12 families who claimed to be **renting** at the time of the tsunami. According to these former tenants, 41% of landlords rebuilt their homes, but the landlord either does not want to rent anymore or the families can longer pay the rent that they were once paying.

The current situation for these **renters** with respect to permanent resettlement is:

 - Have received no assistance – 1
 - Have received land grant of Rs.250, 000 - 11
 - Of the 11 families who received a land grant only 1 family purchased land with a house. The balance 10 families do not have the funds to construct a permanent home on this newly-acquired land.

- There are 3 families that were living in a **joint family** situation- their current situations with respect to permanent resettlement is:
 - Have received land grant – 2
 - Have received land grant plus Rs. 50,000 to start building foundation – 1
- For families who have received no assistance or not enough assistance to move out of the shelter site, the majority of the respondents said that if the shelter site closes they will stay.

In order to highlight the processes and the wide range of experiences of these families, excerpts from interviews are shared below. These excerpts are taken from the research assistants' field notes.

Wistvike Park

This family was renting at the time of the tsunami. After the tsunami they went to the tsunami shelter site and were told to leave because their name was not entered into the shelter site registration list. Their landlord was registered on that site so the landlord could live there, but as they were only the tenants, they were not registered. They went back to their original place to live and put up a small hut. After two weeks, the police told them that they could come back and live at the shelter site. The landlord had received some assistance to rebuild that house and then he sold that house. They handed over all the relevant documents requested by the District Secretariat office 8 months ago. The District Secretariat office recommended them to receive Rs.750,000.00 from the government. But so far they have not received the money. They hope to buy a house in Unapitiya.

Four families who were squatting at the time of the tsunami got together and used their land grants of Rs. 250,000 to buy land in Kegalle. They have been told recently that the land is not suitable to build four houses and that the land should be filled with sand by the landlord. IOM has contacted these families and has visited the site. IOM has informed that they can only build two temporary shelters in the land and rest of the land should be filled with sand. Once the land is filled, IOM will provide temporary shelters for others. The families also spoke to officers of the Kachcheri regarding this matter. The officers of the Kachcheri told them to find a place with a house somewhere else in Kegalle. It might be too expensive to fill the land as according to one of these four families, the landlord has now said he will give the money back to the families.

St. Mary's Community Hall

- This family squatting at the time of the tsunami was registered on the list of tsunami beneficiaries. But they could not get Rs.5000 (cash transfers) from the government because the Grama Sevaka refused to give them the card and they do not understand why. After the tsunami they built a temporary shed on their original land and lived there. After that a church needed that land to build permanent houses for tsunami-affected families. So the church told to them to go to an annex and they will pay for it. The church paid Rs. 1250 a month in rent for the annex for 6 months. After the 6 months they refused to pay any more rent for them at the annex. Therefore they came to this site. The church of Semata Sarana told them that they will give them a permanent house on their original

land. The church built 64 houses and handed over these houses 3 months ago. But even though the church used their original land to build new houses, they did not get one and the government also has not given them any assistance. They do not understand why the church did not give them a house.

The data indicate the following:

- Significant progress has been made as only **26.5%** of the original shelter site population (May 2007) still remains in these two shelter sites.
- Respondents' knowledge / awareness about assistance packages, other forms of compensation and what they might be entitled to is *highest* in these 2 shelter sites compared to the respondents interviewed in other shelter sites in the survey.
- In many cases the prevalent policy is neither applied systematically, nor is the relevant information given to families about their entitlements.
- A significant number of families remaining in shelter sites are female headed (nearly 60%).
- Local government officials have considerable power in determining futures. The Grama Sevaka (GS) in particular appears to be the 'gatekeeper' controlling access to information and access to compensation such as the cash transfers.
- A small number of families have received partial assistance and therefore cannot move out of the site. Efforts should be taken to see that construction payments under the owner driven model are completed with efficiency.
- The majority of residents are not very well educated, do not have permanent jobs but rely on fishing and other forms of coolie labour. Many families are earning and must support their families on less than USD 2 per day. In many cases people do not understand why they have been denied assistance.

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APPENDIX B

SRI LANKA: AN UNEASY CEASE FIRE

Seeking enhanced enjoyment of Housing, Land and Property Rights in a climate of insecurity¹⁰

I. Introduction

The enjoyment of housing, land and property rights in Sri Lanka has over the past two decades been hindered by war. The conflict resulted in large scale internal displacement and refugee flows. It is estimated that in the North East of the country - the main conflict area – more than 300,000 housing units, or 58% of the housing stock, have been fully or partly damaged.¹¹ With the upsurge in violence in 2006 and the continuous volatile situation more houses will undoubtedly be damaged and destroyed. The enjoyment of HLP-rights in Sri Lanka is further hindered by a variety of other practical problems as well as legal constraints. Various UN agencies present in Sri Lanka have tried to address these constraints. This paper will provide an overview of the existing practical and legal constraints and will analyze the role of various United Nations agencies in seeking enhanced enjoyment of housing, land and property rights in Sri Lanka, whereby the volatile security situation in many part of the country is a continuous significant factor. It should be noted that contrary to other countries covered by this research Sri Lanka does not have an International Peace Operation or even any formal Peace Agreement to keep. This research was completed on 1 July 2006. More recent developments have not been taken into account.

In the first part of this paper, a brief background description of the conflict and the post-conflict situation will be given. Part II will focus on the various practical and legal constraints contributing to the inability of – in particular displaced - people to enjoy their housing, land and property rights. In Part III the impact of the December 2004 tsunami on the housing, land and property rights environment in Sri Lanka will be addressed. Part IV will then provide an analysis of the role various United Nations agencies and other key international governmental organizations in addressing the practical and legal constraints. Finally, Part V will provide some conclusions and recommendations.

A. Background - The conflict and post-conflict situation in Sri Lanka

For almost twenty years Sri Lanka has experienced an internal armed conflict between the Government of Sri Lanka (GoSL) and the Liberation Tigers of Tamil Eelam (LTTE). It was not until February 2002 that a cease fire agreement (CFA) between the GoSL and the LTTE was reached with the government of prime-minister Ranil Wickremasinghe (UNF) having an agenda of peace and economic reform.¹² Norway was the main facilitator in brokering the

¹⁰ B. Tax & K. Wouters, “Sri Lanka: An Uneasy Cease Fire”, Centre on Housing Rights and Evictions background report 2006. For more information contact COHRE Sri Lanka at cohresrilanka@cohre.org.

¹¹ World Bank 2004, Annex 1, p. 16 and Annex 4, p. 32.

¹² Goodhand and Klem 2005, p. 7.

CFA. With the agreement to hold six rounds of peace talks¹³ a return to war seemed to have been successfully averted. However, the CFA remained fragile. Prior to the sixth round of talks the LTTE suspended its participation in the peace process, although it reaffirmed its commitment to finding a political solution to the conflict. There was growing frustration on the side of the LTTE with the slow pace of reconstruction in the North-East, with the persistence of army occupied high security zones (HSZs) and with continued restrictions on fishing and agriculture¹⁴. In addition, LTTE plans for an interim administration, including de facto autonomy for the North-East in most aspects of life, resulted in President Chandrika Bandaranaike Kumaratunga declaring a state of emergency and calling for new elections, held in April 2004. She won the elections, but without an overall majority. On top of this, the situation in the East became more volatile. A split occurred between the LTTE and the so-called Karuna faction, which now formed a splinter group of the LTTE operating independently in the East of the country.¹⁵ In addition, political killings and extortion became more frequent.

The situation further deteriorated after a tsunami hit Sri Lanka on 26 December 2004, resulting in the deaths of 30,000 persons, displacement of over half a million people, and massive damage and destruction. Despite hopes to the contrary, the tsunami deepened the distrust and resentment on both sides. It took six months for the GoSL and the LTTE to agree on a joint mechanism, the Post-Tsunami Operational Management Structure (P-TOMS), to facilitate a fair distribution of tsunami humanitarian aid. The P-TOMS led to a split in the government¹⁶ and a Supreme Court decision calling into question the legality of the P-TOMS, finally led to a de facto cancellation.¹⁷

¹³ The following five rounds of talks were held:

1. September 16-18, 2002: Sattahip Naval Base, Chonburi, Thailand.
2. October 31-November 3, 2002: Rose Garden Hotel, Nakhorn Pathom, Thailand.
3. December 2-5, 2002: Radisson SAS Plaza Hotel, Oslo, Norway.
4. January 6-9, 2003: Rose Garden Hotel, Nakhorn Pathom, Thailand.
5. February 7-8, 2003: Norwegian Embassy, Nordic Embassy Complex, Berlin, Germany
6. March 18 – 21, 2003, Prince Hotel, Hakone, Japan

A further round of talks cum donor pledging conference was scheduled in Tokyo in June 2003, but prior to the event, the LTTE suspended its participation in the peace process. The meeting in Tokyo was held nonetheless, but with the Tigers absent only the Sri Lankan government and donors participated.

¹⁴ Goodhand and Klem 2005, p. 20.

¹⁵ “Colonel Karuna (nom de guerre) was a leading figure in the Eastern LTTE who has split from the Northern leadership of Velupillai Prabhakaran. Violence ensued as the LTTE sought to quell the rebellion and eliminate Karuna’s supporters. To add to the tension, the LTTE alleges that the GoSL and/or the Sri Lanka Army (SLA) is helping to hide Karuna and is encouraging a split”, see Norton 2004, p.3. Contacts between the Karuna faction and the GoSL have always been vehemently denied by the GoSL until 23 May 2006 when in a statement the head of the government’s peace secretariat acknowledged the existence of some contacts between low-ranking Sri Lankan troops and the Karuna faction, according to the Reuters (<http://today.reuters.com/News/CrisesArticle.aspx?storyId=SP137768>).

¹⁶ In protest of the P-TOMS the JVP (Janatha Vimukthi Peramuna) withdrew from the government coalition on the grounds that the agreement was unconstitutional. The JVP subsequently lodged a petition against the P-TOMS with the Supreme Court.

¹⁷ In July 2005 the Supreme Court placed a stay order on some key elements of the P-TOMS, Supreme Court of the Democratic Socialist Republic of Sri Lanka, S.C.F.R. Application Nos. 228/05, 229/05 and 230/05, 15 July 2005.

In 2005 and 2006 the number of CFA violations increased at an alarming rate and tensions grew. The security situation deteriorated to the extent of a “low-intensity war”.¹⁸ The new president, Mahinda Rajapakse, elected in November 2005, excluded the possibility of a federal solution, but stated to be committed to the peace process. In a climate of escalating violence with more than 258 people killed in CFA-violations during a period of 3 months¹⁹, and several hundreds of Sri Lankans fleeing the renewed violence and arriving in Tamil Nadu (India), the parties agreed, again with the facilitation of Norway, to hold talks in Geneva in March 2006. The parties mutually committed to ending the violence against each other and the civilian population. The next round of talks between the two parties was scheduled to be held in Geneva from 19 to 21 April 2006.

However, before this date, the violence and CFA-violations increased to an unprecedented level since the conclusion of the CFA. On 4 March 2006, two LTTE cadres were shot dead in Batticaloa District, precipitating threats from the LTTE to pull out of the next round of talks with the GoSL. Increasingly frequent and more violent incidents followed. Numerous claymore mine attacks have taken a heavy military toll. A market place bomb blast on 12 April 2006, claiming 16 civilian lives, was the first occasion on which a large number of civilians had been killed for many years. As a result of panic in the town, with communal violence noted in many predominantly Tamil areas, around 2,000 Tamils (600 families) fled their homes to schools and churches located in safer areas. After the suicide attack targeting the Army Chief, Lt. Gen. Fonseka, in Colombo on 25 April 2006, the GoSL commenced air strikes in Sampur, resulting in further displacement in Trincomalee District. Some 21,500 persons in total were displaced. In addition, displacement on the border of Trincomalee and Mullaitivu of several hundred families as a result of incidents on 30 April 2006 was reported. In other parts of the country, such as Batticaloa, Jaffna and Vavuniya, security incidents continued to be reported. In total, 191 people (mostly civilians) were killed in April 2006. With violence and insecurity at a peak, the LTTE refused to attend talks in Geneva until the killings stop.²⁰

The conflict in Sri Lanka is complex and cannot simply be viewed as an ethnic conflict between the majority Sinhalese (approximately 74% of the population) and the minority Tamil (approximately 13%). Many, mainly political factors, have contributed greatly to a climate resulting in years of fighting and insecurity. Major structural factors that have contributed to the conflict in Sri Lanka include²¹:

- the centralized and ‘clientalistic’ nature of the state;
- the state’s failure to institutionalize democratic politics;
- the historical linking of democratic processes with intolerant nationalism, with the Sinhalese using nationalism to gain votes in the South;

¹⁸ Statement by Major General Ulf Henricsson, Head of Mission, Sri Lanka Monitoring Mission (SLMM) on 11 May 2006.

¹⁹ Rupesinghe 2006.

²⁰ Between the closing date of this research – 1 July 2006 – and November 2006 violence in the country has continued with regular clashes between the SLA and the LTTE. One round of talks between the Government of Sri Lanka and the LTTE has been organized in Geneva in October but without any positive result.

²¹ Goodhand and Klem 2005, p. 25-27.

- a sense of exclusion and alienation among both Tamil and Sinhalese nationalists, resulting in violent challenges to the state;
- competing systems of governments with a false assumption of clearly defined North-eastern and Southern constituencies;
- uneven development patterns with a structural disparity between the North-East and the South;
- economic liberalization resulting in heightened inequalities;
- religious radicalization both among Buddhists and Muslims; and
- competing Sinhalese and Tamil nationalisms.

As a result of the conflict and the many underlying factors the climate for enhanced enjoyment of housing, land and property rights is far from ideal.

B. Displacement as a result of the conflict

Two decades of conflict have resulted in more than 3 million people being displaced both within Sri Lanka as well as to other countries.²² As a result of the conflict fifty eight percent of the housing stock in the North East of Sri Lanka, approximately 326,000 houses, has been damaged or destroyed. Approximately 40 percent of these houses were owned by internally displaced persons (IDPs).²³

According to UNHCR statistics²⁴, as at 30 April 2006, there were 314,378 persons (77,596 families) displaced within Sri Lanka as a result of the conflict. The internally displaced are either living in welfare centres, or with host families, including family members and friends, or have made other arrangements. Welfare Centres vary from slum-like settlements in more urban settings, to settlements that look like poor villages in more rural settings. Out of the 314,378 IDPs, 66,950 individuals (17,556 families) are living in 243 Welfare Centres. The majority of IDPs living in Welfare Centres reside in Puttalam District. It has to be noted that the statistics on IDPs outside Welfare Centres cannot be verified and may not be accurate. IDPs living with host families, friends or family, are often de facto invisible to the humanitarian community and do usually not benefit from humanitarian interventions targeting IDPs. At the same time, it must be noted that the Welfare Centres accommodate many of the most vulnerable conflict IDPs, who had no other place to go. Many residents in Welfare Centres have lived there for some 16 years now.

After the CFA was concluded between the GoSL and the LTTE in 2002, until end April 2006, 417,012 IDPs (108,978 families) have returned to their place of origin. In addition, 18,960 refugees from India have returned to their homes in Sri Lanka in the same period. As at 30 April 2006, 68,000 refugees remain in camps and outside camps in Tamil Nadu, India. In addition, according to UNHCR's Population data unit, some 56,800 Sri Lankan refugees remain in other countries.²⁵

According to UNHCR, the total number of arrivals of Sri Lankan refugees in Tamil Nadu, Southern India, since 12 January 2006, surpassed the 3,500 mark in June 2006. The arrivals

²² Hasbullah, Balasundarampillai and Tudor Silva, 2005, p. 24.

²³ World Bank 2004, Annex 1, p. 16 and Annex 4, p. 32.

²⁴ UNHCR 2006b.

²⁵ As at 1 January 2005.

began as a consequence of the increase in violent incidents during December 2005 and early 2006. In the same period, there has also been new internal displacement as a result of the violence. Statistics are fluid, as certain people may leave their homes only for a couple of days and then return, but new displacement of some 45,000 individuals, mainly in and around Trincomalee, has been recorded as at mid-June 2006, with most people leaving as of May 2006.

C. The United Nations and the peace process in Sri Lanka

Sri Lanka became a member of the United Nations (UN) in December 1955, but the UN presence in Sri Lanka was already established in 1952.²⁶ According to the UNDP public website, the joint United Nations System operations in the country focus on “*contributing to socio-economic efforts associated to the peace process and contributing to the establishment of social harmony; reduction of poverty and governance reform aimed at people-centred development*”.²⁷

The CFA of February 2002 has been facilitated by Norway. The United States, the European Union and Japan, as co-chairs in the 2003 Tokyo Conference on Reconstruction and Development of Sri Lanka, also play a significant role in monitoring and reviewing the Peace Process.²⁸ In the CFA it was agreed to create the Sri Lanka Monitoring Mission (SLMM). The SLMM, made up of staff of the Nordic countries and reporting to the Norwegian government, has the task of monitoring the CFA and resolving truce related disputes. In this respect the UN has neither a – formal – role to play in the CFA, nor has been directly involved in the peace process. It is important to note that the peace process has never outgrown the stage of confidence-building. The process has not reached a level where matters of substance were discussed and negotiated. Nevertheless, while anticipating the conclusion of a peace agreement, UN agencies have collaborated on efforts to assist the country in its transition from humanitarian crisis to sustainable development. This collaborative effort is documented in several strategy and transition documents.

After the entry-into-force of the CFA, the UN Country Team, together with the GoSL, prepared in 2003 a ‘Joint Strategy to Meet the Immediate Needs of Returned Internally Displaced’.²⁹ In this document, the UN has outlined its priorities and plans in addressing the post-conflict needs of returnees, including most pressing issues regarding housing, land and property rights (HLP-rights). Amongst others, the UN country team formulated objectives of the UN post-conflict support. Relevant in the context of HLP-rights are the following objectives:

- *“To promote commitment to the peace process through economic growth, poverty reduction, reconciliation and social dialogue, upholding fundamental principles and rights, and the central role of women.*
- *To help preserve lives and promote the well-being of vulnerable populations, including women, children, displaced persons and refugees, through a rights-based approach, coordinated with the Government.*

²⁶ United Nations Information Centre, ‘United Nations in Sri Lanka’, Colombo, August 1995, p. 1.

²⁷ UNDP Sri Lanka website: www.undp.lk, accessed in June 2006.

²⁸ ‘Tokyo Declaration on Reconstruction and Development of Sri Lanka’, available on www.peaceinsrilanka.lk, accessed on 21 June 2006.

²⁹ GoSL and UN 2003.

- *To facilitate the return, reintegration and rehabilitation of vulnerable war-affected groups in Sri Lanka, and ultimately the refugees from India.*³⁰

More specifically, through the ‘Joint Strategy’ the UN, together with the GoSL, intended to take more specific measures to support the peace process. Although not HLP-rights-specific, the agreed activities all have their bearing on the HLP-rights environment. The HLP-relevant planned activities included:

- *“Presenting an integrated programme to cope with immediate and initial reintegration of spontaneous returnees into their home communities; protecting and assisting vulnerable groups – both IDPs and those who remained – through support to essential services, food and non-food relief, immediate employment aimed at rehabilitation of community assets, and helping them towards basic self-reliance.*
- *Redouble collective efforts to minimize the incidents and limitations to recovery in areas contaminated by landmines and UXO, by carrying out mine/UXO awareness, mapping, marking and emergency clearance.*
- *Help to foster early reconciliation and peaceful coexistence between the different ethnic groups through appropriate immediate confidence-building measures (...).*
- *Facilitate the process of transition from humanitarian support for IDPs to rehabilitation, reintegration and recovery in their home communities (...)*³¹.

In 2004, the Multilateral Group (MG) consisting of UN and UN liaised agencies³² finalized the report ‘Preparing for Transition in Sri Lanka - Contribution of the Multilateral Group’.³³ This report identifies potential areas of support to national rehabilitation and reconstruction efforts. The sectors ‘human security’ and ‘revitalization of social infrastructure and services’ contain several paragraphs relevant to ensuring access for all to HLP rights:

“The MG is committed to promote and facilitate the establishment or restoration of access to justice, access of people to their houses and property, and to support people regaining their livelihoods and dignity. It is envisaged to provide legal advice and assistance to the most vulnerable individuals and families, training activities on human rights education, conduct broad-based campaigns and awareness raising programmes, easing the individual access to justice. (...) Support to organisations providing legal advice and assistance will be provided by MG agencies on the ground, including UNHCR, UNICEF, UNFPA, ILO and UNDP, (...).

(...) Ability to safely reoccupy family housing, which they owned or occupied, will be the key to reintegration of families affected by the conflict back into their communities. Rehabilitation of the damaged and destroyed housing in North East could be seen as a strategic social and economic investment. The immediate financing needs for housing reconstruction is estimated at USD155.8 million. The current Unified Assistance Scheme (UAS) lacks sufficient funds. In this transition

³⁰ GoSL and UN 2003, p. 12.

³¹ GoSL and UN 2003, p. 12 and 13.

³² The MG consists of the following agencies: Asian Development Bank (ADB), Food and Agricultural Organisation (FAO), International Fund for Agriculture Development (IFAD), International Labour Organisation (ILO), International Monetary Fund (IMF), International Organisation for Migration (IOM), United Nations Children’s Fund (UNICEF), United Nations Development Programme (UNDP), United Nations High Commission for Refugees (UNHCR), United Nations Human Settlements Programme – UNHABITAT, United Nations Population Fund (UNFPA), World Bank Group (WB), World Food Programme (WFP) and World Health Organisation (WHO).

³³ The Multilateral Group 2004.

period, demand for repairs and improvements to the existing housing stock is expected to increase significantly.

Through this strategy, addressing the urgent needs of conflict affected families are prioritized and will become a vehicle for additionally addressing a range of socio-economic and environmental concerns that are critical in a transition phase (such as land rights and security of tenure, (...)). Mine action activities, particularly survey, clearance and mine risk education will continue to be closely associated with the shelter programme”³⁴.

Although the UN agencies in Sri Lanka do not have a joint strategy specifically towards solving HLP-issues, such issues are relevant to the mandates of several UN agencies. Despite the lack of a joint strategy or a formal concerted effort, through shared ‘from-relief-to-development’ strategies and through activities under their respective mandates, several UN agencies have substantially contributed toward addressing HLP-issues.

After an explanation of the key post-conflict HLP-issues in Sri Lanka, we will review these contributions in detail.

II. Key post-conflict housing, land and property rights issues in Sri Lanka

After the CFA various HLP-rights issues have surfaced regarding the inability of displaced persons to return to their homes and lands and fully enjoy their housing, land and property rights. In May 2003, UNHCR Colombo in co-operation with the Human Rights Commission of Sri Lanka published a comprehensive report on Land, Housing and Property.³⁵ In this document, the obstacles to voluntary repatriation of IDPs and refugees in the context of HLP restitution in Sri Lanka were listed and analyzed. Although an update of this report, in light of de facto returns of over 300,000 IDPs and other developments, would be timely, the main findings are still relevant to understand and describe the conflict-related HLP-issues in Sri Lanka today.

From the aforementioned report and other studies it becomes clear that the constraints regarding the return of displaced persons to their homes and lands and the enjoyment of their HLP-rights are complex. In general, they can be categorized into two groups³⁶:

1. practical constraints, such as damaged and destroyed housing and property, landmines and unexploded ordnance, the lack of livelihood options, the establishment of High Security Zones (HSZs) and the lack of suitable land for resettlement or relocation.
2. legal constraints, such as insufficient institutional and legal framework for protection HLP-rights of returning IDPs and refugees, secondary occupation, discriminatory legislation, the administration of state lands or crown lands, unclear property transactions, inability to prove ownership, issues of compensation and issues of gender inequality.

In addition, many emotional and more personal constraints may exist. People may be concerned about security and the stability of the cease fire. Other concerns relate to fears about being accepted back and having lost attachment with the host community.³⁷ Moreover,

³⁴ The Multilateral Group 2004, p. 9-21.

³⁵ UNHCR and HRC Sri Lanka 2003.

³⁶ Norton 2004, p. 14.

³⁷ Norton 2004, p. 14.

it goes without saying that the current volatile situation in the country, in particular in the North and East is detrimental to improvement of HLP rights.

In this paragraph the various practical and legal constraints mentioned above will be briefly outlined. This will be followed in part III with an analysis of the response of various UN agencies to these key constraints. Note that this paper is not meant to provide solutions to the obstacles, but rather to analyze the role of the UN in addressing them.

Before discussing the various constraints in more detail, it is important to note that approximately half of the conflict-IDPs have actually returned since 2002. Although somewhat oversimplified, one could state that most of the IDPs for whom the obstacles to return could be easily overcome, have actually returned to their original homes, while the more complicated cases remain unresolved, resulting in continued displacement for those affected.

A. Practical constraints

1. Damaged and destroyed housing and property

The conflict has resulted in massive destruction and damage to housing and property. A government estimate of 2002 indicates that approximately 58% of the housing stock in the North East (approximately 326,000 houses) has been damaged or destroyed.³⁸ About 40% of these houses are owned by IDPs. Approximately 90% of the houses owned by IDPs have been damaged or destroyed as a result of the conflict. According to the World Bank the GoSL will require 485 million USD to address the total housing repair needs in the North East of Sri Lanka.³⁹ The damage is geographically concentrated in Jaffna and Batticaloa which account for more than half the damaged houses, followed by Kilinochchi, Mullaitivu, Mannar and Vavuniya.

Several factors inhibit the repair of damaged or destroyed housing and properties, such as the scarcity of building materials, lack of transport facilities and other infrastructure, the resulting rise in costs of building materials and the severe shortages of skilled labour. These factors have been further exacerbated by the boom in the housing sector resulting from the post-tsunami (re-)construction of transitional and permanent houses.

2. Landmines and unexploded ordnance

Landmines and other unexploded ordnances (UXOs) remain a significant problem. Landmines and UXOs can be found in the conflict-affected areas in agricultural fields, paddy fields, close to houses and in places for common use. In the Northern and Eastern provinces there were said to be 900,000 mines at the time of the signing of the CFA.⁴⁰ Clearance of landmines and UXOs will need to be expedited, but in the mean time, alternative or temporary accommodation may need to be made available to returnees waiting for clearance of the areas where their original homes and/or lands are located.

³⁸ World Bank 2004, Annex 4, p. 32.

³⁹ World Bank 2004, Annex 4, p. 32.

⁴⁰ UNHCR and HRC Sri Lanka 2003, 17.

3. The lack of livelihood options for returnees

In many cases, it is impossible for returned IDPs or refugees to return to their pre-displacement occupation, business or profession, after many years of displacement.⁴¹ Also, now adult children need employment of their own. People may no longer have the skills to live off the land. Certain vulnerable groups have special needs in relation to livelihood options. Special assistance and vocational training are required, in order to convince potential returnees that their return will be sustainable and that they will be able to attain and maintain a reasonable standard of living after return.

4. The continued impact of high security zones (HSZs) on displaced populations

Many displaced persons in the North and East cannot return to their original homes because these homes are located in areas occupied by Government armed forces (Sri Lankan Army, SLA) as High Security Zones (HSZs). Also, economic activities of those displaced from HSZs are restricted since people have been prevented from carrying out any economic activities, for example farming or fishing in or around the HSZs. Schools and religious centres located in the HSZs cannot be used. With the stalling of the peace process, the armed forces have been increasingly reluctant in releasing privately-owned land in HSZs as not strategically important. Those displaced are paid no or a minimal amount of rent for the occupation of their properties and are not given compensation to find alternate accommodation. In addition to displacement from HSZs, there are also civilian-owned houses still occupied by armed forces outside the HSZ to station SLA servicemen. For example, in Jaffna, approximately 800 houses are still used for this purpose. In most cases, owners have not been adequately compensated. Furthermore, the construction of defence bunkers in or around HSZs or LTTE-controlled areas, both by LTTE and SLA forces, has resulted in the destruction of houses, wells and livelihood opportunities, without any form of compensation for affected civilians⁴².

One HSZ – the Palaly HSZ in Jaffna - has been successfully challenged before the Supreme Court on the ground that the HSZ had not been established by law. The Supreme Court considered this HSZ to result in the infringement of fundamental rights under the Sri Lanka Constitution of those persons displaced by the HSZ and ordered the GoSL to take steps to interview the persons who have indicated their willingness to return under certain conditions.⁴³ However, challenging the declaration of HSZs itself would be complicated, given the legitimate defense of national security that the Government would put forward.

Besides GoSL HSZs there are also HSZs of the LTTE. Unfortunately, there is not much data regarding the impact of HSZ established by the LTTE, but LTTE high security zones are also presumed to have resulted in involuntary displacement without compensation.

⁴¹ UNHCR and HRC Sri Lanka 2003, 21.

⁴² Hasbullah, Balasundarampillai and Tudor Siva 2005, p.61.

⁴³ Supreme Court of the Democratic Socialist Republic of Sri Lanka in the case of Senathirajah (petitioner) v Kumarantunga, Wickremasinghe, Balagalle and Kulathunga, SCFR Application No. 646/2003, 8 May 2006. The criteria laid down by the Supreme Court for return include: submission to an interview conducted by the District Secretary and representatives of the Security Forces to establish the identity, the claim to any land, the livelihood activities and to check potential security risks.

5. The lack of suitable land for resettlement or relocation

According to UNHCR the lack of suitable land which can be used for the resettlement or relocation of IDPs is a major obstacle for finding durable solutions to displacement.⁴⁴ Although the GoSL is allowed to alienate state lands (see paragraph II.B.4 below) in some areas there is very little land available that can be used for resettlement or relocation purposes, while in other areas land is available but local populations are resistant to an influx of IDPs.⁴⁵ In addition, many IDPs live in Welfare Centres near cities and have been accustomed to an urban life and may – after many years of displacement - no longer possess the skills necessary to live in rural areas, where access to basic infrastructure is often not available. The GoSL has not shown willingness to work towards an urban solution owing to costs and anticipated social implications which such a demographic change would create.⁴⁶

6. Ethnic tensions and land grabbing

A major constraint in finding solutions to HLP issues for displaced persons is the tension between the various ethnic groups in Sri Lanka, in particular between the Sinhalese, Tamil and Muslim population. Consequently, the allocation of land for return, resettlement or even local integration is highly sensitive. In areas such as Trincomalee, where all three ethnic groups are present, negotiating terms of resettlement for IDPs is very difficult because of concerns within each community that the other should not live in areas that they have traditionally inhabited.⁴⁷ In addition, concerns have been raised that the GoSL is more willing to accommodate Sinhalese IDPs than Tamil IDPs who make up the vast majority of IDPs.⁴⁸ Furthermore, land-grabbing has taken place, whereby Tamil conflict-IDPs had built houses in, for example, Trincomalee district on land earmarked for the relocation of Muslim tsunami-IDPs, possible with the encouragement of the LTTE, although the IDPs themselves deny this.⁴⁹ It seems that Muslims are particularly discriminated against in the allocation of land as they are the victim of land-grabbing by the LTTE on the one hand and the “*government-sponsored colonisation by Sinhalese communities*” on the other hand.⁵⁰ With the current increase in CFA violations and rising violence, including inter-ethnic and inter-community violence, distrust between communities is again on the rise rendering it even more difficult to address the ethnic component of HLP issues.

B. Legal constraints

1. The institutional and legal framework for protecting HLP rights

Sri Lanka is party to several human rights treaties relevant for the protection of HLP-rights.⁵¹ However, the institutional and legal framework for protecting HLP-rights, in particular of

⁴⁴ UNHCR 2006a, p. 10.

⁴⁵ UNHCR 2006a, p. 10.

⁴⁶ UNHCR 2006a, p. 11.

⁴⁷ Amnesty International 2006.

⁴⁸ Amnesty International 2006.

⁴⁹ Amnesty International 2006.

⁵⁰ Amnesty International 2006.

⁵¹ This includes the International Covenant on Economic, Social and Cultural Rights (ICESCR), the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on the Elimination of All Forms of Racial Discrimination (CERD), the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), the Convention on the Rights of the Child (CRC) and the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (MWC).

returning IDPs and refugees, is minimal. The Sri Lankan Constitution does not recognize a general right to housing. It only identifies the freedom of all citizens to choose one's residence within Sri Lanka.⁵² The Directive Principles of State Policy recognize that the State should ensure the realization by all citizens of an adequate standard of living for themselves and their families, including adequate food, clothing and housing.⁵³ The Directive Principles are, however, not legally enforceable and only guide the State.⁵⁴

Existing laws are insufficient to meet the needs of those wishing to return to their original homes and lands. In addition, large numbers of previously landless people in the North and East are in need of permanent housing solutions in the context of return. Contrary to the tsunami-displaced persons, as will be discussed in paragraph III.D below, no national policy addressing the needs of conflict IDPs has been drafted or adopted.

Mediation boards and civil courts are not equipped to deal with all property disputes that have arisen and will arise with the return of greater numbers of IDPs and refugees, if only for the sheer number of cases to be expected.⁵⁵ Further problematic in this regard is the fact that the existing GoSL dispute resolution mechanisms are not accepted in LTTE-controlled areas. Vice versa, the GoSL does not recognise the LTTE legal framework, which includes LTTE courts and dispute resolution mechanisms, and even a specific Land Act. Therefore, a legal vacuum exists regarding the implementation and recognition of any legal system within the LTTE-controlled areas.

In addition, there is no single specialised institution dealing with the recovery of IDP land, housing or property. Rehabilitation and reconstruction is mostly planned at a central level, with minimal consultation at the local level.⁵⁶ Furthermore, policies and other relevant information from the central authorities in Colombo are often slow to reach local authorities and communities or do not reach them at all leading to confusion, misinformation and implementation of incorrect policies.⁵⁷ In addition, there is a variety of governmental entities involved, often with overlapping and competing responsibilities.⁵⁸ Apart from other institutions, three Ministries share a responsibility for IDP-issues, including issues related to restitution: the Ministry of Disaster Management and Human Rights, the Ministry of Nation Building and Development and the Ministry of Resettlement. In addition, the Ministry of Justice has its role to play in any reform of the legal system related to restitution issues.

Regional institutions are often not functioning on full capacity or are not functioning at all, in particular in LTTE controlled areas.⁵⁹ Furthermore, the judiciary, in particular in the

⁵² Article 14(1)(h).

⁵³ Article 27(2)(c).

⁵⁴ The Sri Lankan Supreme Court has indirectly given some recognition to some socio-economic rights particularly through Directive Principles of State Policy. Also, in *Sanjeewa, Attorney-at-Law (on behalf of Gerald Mervin Perera) v. O. I. C. Wattala* (2003) 1 SLR 317, the Court, in granting relief, took into account, expenses borne by the petitioner in seeking treatment at a private hospital consequent to torture, stating that “citizens have the right to choose between State and private medical care in order to save (a) patient’s life.” It referred to Article 12 of the ICESCR, which recognises the right of everyone “to the enjoyment of the highest attainable standard of physical and mental health.”

⁵⁵ UNHCR and HRC Sri Lanka 2003, p. 12.

⁵⁶ CPA 2006a, p. 2.

⁵⁷ Pinto-Jayawardena and de Almeida Guneratne 2006; CPA 2006A, p. 8, 12 and 13.

⁵⁸ CPA 2006a, p. 3 and 4.

⁵⁹ In LTTE controlled areas a variety of entities are active regarding HLP rehabilitation and reconstruction such as the Planning and Development Secretariat (PDS), the Tamil Rehabilitation Organisation (TRO), the

North and East have suffered from severe neglect and damage during the conflict.⁶⁰ The accommodation of the courts has been damaged, documents have been destroyed and operations have been suspended.⁶¹ In addition, the judiciary is over-burdened, under-capacitated and inadequately trained.

2. Secondary occupation

Many returning refugees and IDPs find their lands and houses occupied by others. Secondary occupation is a significant obstacle regarding exercising the right of returnees and IDPs to return to their original homes and lands in Sri Lanka's de facto post-conflict situation. Seeking to evict secondary occupants is often difficult and may involve a lengthy legal battle. In principle, the original owner has the right to return. At the same time, secondary occupants have a right to be protected against becoming homeless or other human rights violations and to be compensated for substantial improvements made to the property. In addition, after ten years of undisturbed and uninterrupted possession of the property unauthorized secondary occupants may even claim statutory title to the property under the Prescription Ordinance.⁶² The Ordinance does provide an exhaustive list of exceptions that may delay the period of ten years. These exceptions are referred to as disabilities and include infancy, idiocy, unsoundness of mind, lunacy and absence beyond the seas.⁶³ As a consequence only when the owner is a returning refugee, and can claim 'absence beyond the seas', does he have a possibility of reclaiming his property. The Prescription Ordinance clearly does not take the situation of IDPs into account.

3. Discriminatory legislation limiting the rights of returnees

Existing laws in Sri Lanka may result in discrimination of returning IDPs and refugees. First, and this was already mentioned in paragraph II.B.2 above, the Prescription Ordinance may result in a legal title for unauthorized secondary occupants who have ten years of undisturbed and uninterrupted possession of immovable property adverse to or independent of that of the owner. In addition, secondary occupants will after a period of two months occupation regarding the dispute arising in relation to possession of the property, be allowed continued possession pending a final court order ending the dispute under the Primary Courts Procedure Act.

A second issue concerns the permits or licenses issued under the Land Development Ordinance, State Lands Ordinance and the Land Grants (Special Provisions) Act. Many IDPs who have been occupying state lands before the conflict by virtue of permits and licenses given under the above laws, especially under the Land Development Ordinance, have been forced to leave their lands and properties due to the conflict and now reside elsewhere in the country. The mere fact of abandoning the land due to displacement and resulting inability to develop the land often breaches the conditions stipulated in the permits,

Centre for Women's Development and Rehabilitation and the Economic Consultancy House, see CPA 2006a, p. 5.

⁶⁰ Sriskandarajah, Karunakaran and Sumanthiran 2004, p. 8.

⁶¹ Sriskandarajah, Karunakaran and Sumanthiran 2004, p. 8.

⁶² Section 3 of the Prescription Ordinance. Note that this section does not apply to tenants or other occupants who knew or ought to have known the ownership rests with someone else. Any occupying tenant is protected by the Rent Act No. 7 of 1972 as amended by Act No. 55 of 1980.

⁶³ Section 13 of the Prescription Ordinance.

rendering them liable for cancellation. On their return the IDPs may find that their permits have been cancelled or even without cancellations, others have been given permits to occupy the lands they held prior to their displacement. In other instances secondary occupants occupy the lands even without a permit or a license.

A third issue is the different systems of law that may apply and consequently result in discrimination. Even though laws enacted by Parliament have national application other systems of law exist. In certain situations so-called personal laws apply to different communities in Sri Lanka. For example, the 'Tésawalamai' applies to Tamils of the Northern Province, Kandyan Law applies to the Kandyan Sinhalese and Muslim law applies to Muslims.⁶⁴ This intermingling of systems of law has led to much confusion. Fortunately, in most cases the general law of the land applies. However in cases regarding co-ownership and succession of property in the Northern Province of Jaffna the Tésawalamai applies.⁶⁵ An example of a discriminatory law in this regard is the fact that according to the Tésawalamai applicable in Jaffna a married woman is incapable of dealing with immovable property without written consent of her husband.

4. The administration of state lands (or Crown lands)

The GoSL is allowed to alienate state lands or crown lands to encourage cultivation of land in unpopulated areas.⁶⁶ Under these regulations, settlements were established in the Eastern Province. These settlements were viewed by Tamils as a strategic military decision to disrupt settlement patterns from North to East and to establish a militarized Sinhalese settlement corridor.⁶⁷

A number of IDPs are former occupiers of state land, who did so with the agreement of permit holders. These people may also have encroached upon state land or sub-divided plots into smaller individual plots.

Furthermore, there are landless people, mostly poor Tamils of relatively recent Indian origin who fled from the South after unrests in 1977 and 1983, occupying state land without any authority.⁶⁸ The law does not deal with the issue of landlessness; it is a matter of government policy. In Sri Lanka, ownership of a house is a non-issue, since there is only a legal basis for ownership of the land on which a house is built.⁶⁹ As such, landlessness is in itself seen as a factor inhibiting exercise of HLP-rights for the landless persons concerned. For encroachers, it is mostly impossible to obtain legal title to the land on which their houses are built and as such it is difficult for them to obtain security of tenure. Although the GoSL has implemented several housing projects outside the conflict area, making state land available to formerly landless people, it has so far not developed any projects within the conflict affected areas.⁷⁰

⁶⁴ Sriskandarajah, Karunakaran and Sumanthiran 2004, p. 10.

⁶⁵ Sriskandarajah, Karunakaran and Sumanthiran 2004, p. 11.

⁶⁶ Land Development Ordinance No. 19 of 1935, the State Land Ordinance No. 8 of 1947 and the Land Grants (Special Provisions) Act No. 43 of 1979.

⁶⁷ UNHCR and HRC Sri Lanka 2003, p. 17.

⁶⁸ UNHCR and HRC Sri Lanka 2003, p. 18.

⁶⁹ See *De Silva v Haramanis* 3 N.L.R. 160, Lawrie J.; *Kanagaratnam v Suppiah* 61 N.L.R. 282, Sansoni J. and *Suppiah v Kanagaratnam* 61 N.L.R. 553, Lord Tucker.

⁷⁰ Sriskandarajah, Karunakaran and Sumanthiran, 2004, p. 46.

5. Unclear and forced land, housing and property transactions

There are many unclear property transactions. As a result, two, several or even many people may be placing claims on the same plot of land. In Sri Lanka, the most common forms of unclear transactions, resulting in multiple claims to land or property, are the following:

- Conditional transfers, whereby property is transferred under the condition that it will be repurchased within an agreed period for an agreed price. As a result of displacement, the original owner was not in a position to fulfil the condition.
- Transfer of property without adequate consideration, in which case the displaced persons sold their property for a price far below market value to people remaining behind. This can be described as sale under duress.

In addition, there are many instances of forced or fraudulent transfers. In certain cases, people were not allowed to flee until they surrendered their homes/property to those in control.⁷¹ Such property transfers were carried out under duress. Even though Sri Lankan law provides for the possibility of having these forced transactions be declared void⁷², the problem is the difficulty in proving and complaining about duress at the relevant time. Clearly, the law does not take into account the special circumstances displaced persons find themselves.

6. Loss and/or destruction of basic documents

Proof of ownership is a common problem for returning IDPs and refugees. Cadastres, registries and other official records containing proof of ownership and residence rights have, in many cases, been destroyed as a result of the conflict and in some cases by the December 2004 tsunami. Consequently, many land records, including land titles, have been lost. Nowadays, in a situation with secondary occupiers who at times possess written deeds (of varying legitimacy) and original owners having been away for extended periods of time, it is difficult to identify the real owner of a property. Furthermore, the unavailability of death certificates for people who have died during the conflict period or the tsunami has made it impossible for heirs to succeed to the property of the deceased.⁷³

7. Compensation

The amount of financial compensation per house proposed after the signing of the CFA was not considered sufficient to repair a portion of a damaged house, let alone to rebuild a completely destroyed house.⁷⁴ Furthermore, the compensation was not paid in a consistent manner and proof of ownership was a pre-condition to qualify for compensation, thereby excluding all persons without deeds. In addition, people have lost movable property such as machines, tools and livestock, without having received any compensation.

8. Women's enjoyment of HLP-rights in Sri Lanka

It is acknowledged that there is a significant gap between the position of men and women, in particular in the conflict affected areas in the North and East, with women being

⁷¹ This included the Sri Lanka armed forces, various political groups and the LTTE.

⁷² In accordance with the Trust Ordinance, see Sriskandarajah, Karunakaran and Sumanthiran, 2004, p. 37.

⁷³ Sriskandarajah, Karunakaran and Sumanthiran, 2004, p. 40.

⁷⁴ Under the GoSL Unified Assistance Scheme, comprising of Livelihood Assistance and Housing Assistance, as of 2002, returned refugees and IDPs received 75,000 Sri Lankan Rupees (approx US\$ 750) to construct a permanent house. For more details see: World Bank 2006.

considerably poorer than men⁷⁵ and women being less aware and able to enjoy HLP rights than men.⁷⁶ According to a study conducted by CPA in 2005 regarding the access of women to land and property in Batticaloa, Jaffna and the Vanni⁷⁷ women have little or no awareness as to the laws and mechanisms available regarding HLP rights.⁷⁸ They are often not aware that their name could be registered on a permit or deed and are under the impression that any title to property can only be registered in the husband's name, even where it was dowry property.⁷⁹ In addition, property ownership is intrinsically linked to household relations and given to the head of the household, which is often considered to be the man.⁸⁰ As a consequence, female-headed households often face problems obtaining ownership or assistance from the GoSL.⁸¹ And in cases where the husband is missing it is often difficult to obtain death certificates or to prove that the woman is entitled to assistance.⁸²

III. The impact of the December 2004 Tsunami on the HLP-environment in Sri Lanka

The Indian Ocean Tsunami struck Sri Lanka, and many other countries, on 26 December 2004. As a result Sri Lanka faced, amongst many other challenges, a completely new displacement crisis: with over 800,000 tsunami-displaced in addition to the conflict-displaced. By mid-March 2005, approximately 500,000 of them were still displaced, with an estimated 96,000 people living in camps.⁸³ In addition, 65,000 houses were completely destroyed, and 43,000 partially damaged.⁸⁴ Many conflict-IDPs were doubly affected: they were again displaced as a result of the tsunami. Although the HLP-issues of the tsunami-displaced were, at least partially, of a different nature than the issues facing the conflict-displaced, the aftermath of and responses to displacement-issues arising from the tsunami have affected the environment in which the authorities, the UN and others have dealt with conflict-displacement and HLP-rights of conflict-displaced. In that respect, it is relevant to consider the impact of the tsunami-response of HLP-rights of conflict-displaced, and the role of UN agencies in this regard.

A. The Buffer Zone

On 2 March 2005, the Government of Sri Lanka published two notices in the Daily News, declaring its Coastal Conservation Zone (CCZ) policy. This policy stipulated the establishment of a restricted buffer zone 100 meters from the sea in the southern districts and 200 meters for the northern and eastern districts. Approximately 60 % of the tsunami-displaced people resided in the buffer zone. Therefore, this policy was a major constraint in the construction of transitional shelters, due to the scarcity of available land especially in urban areas such as Colombo, Kalutara, Kalmunai or Trincomalee towns. This has resulted in delay in the provision of transitional shelters and in competition between permanent

⁷⁵ Norton 2004, p. 8.

⁷⁶ CPA 2005d, p. 4.

⁷⁷ The Vanni region of Sri Lanka covers mainland northern Sri Lanka, the main theatre of the war between the GoSL and the LTTE.

⁷⁸ CPA 2005d.

⁷⁹ CPA 2005d, p. 4.

⁸⁰ CPA 2005d, p. 4.

⁸¹ CPA 2005d, p. 5.

⁸² CPA 2005d, p. 5.

⁸³ UNHCR 2005b, p. 2.

⁸⁴ UNHCR 2005b, p.5.

housing and transitional shelters. Also, as a result of the scarcity of land, in some cases, land was accepted for transitional shelters that is unsuitable to live on.⁸⁵ After much debate the GoSL abandoned its buffer zone policy and reverted back to the zones specified in the Coastal Zone Management Plan of 1997.⁸⁶ According to this plan, the zones range from 35 meters to 125 meters depending on the area. In the Southern districts it will be reduced to 25 – 55 meters while in the districts of Ampara, Batticaloa and Jaffna, the zone is a minimum of 50 meters.

B. Equity issue

In his 'Discussion Paper on Housing, Land and Property Rights in Sri Lanka', finalized in April 2005, Leckie first raised the issue of a need for equitable treatment between tsunami-displaced and conflict-displaced after the tsunami. With large amounts of funding being made available for people affected by the tsunami, and the fast development of policies and practices in support of full rehabilitation of tsunami-affected populations, this issue became more and more pressing in the course of 2005, with real fears that conflict-displaced would be left behind. High-quality transitional shelter was made available to most tsunami-displaced within a short period of time, while many conflict-displaced have been living in bad-quality shelter in welfare centres for over a decade and no real efforts were made to improve their housing situation.⁸⁷ Even one and a half year after the tsunami (June 2006), tsunami-displaced receive as stipulated in the RADA Tsunami Housing Policy 5,000 USD for a fully destroyed house or in some areas even more, according to UN-OCHA, depending on the actual costs, whereas the conflict-displaced under the NEHRP of the World Bank continue to receive only a maximum of 2,500 USD. Also, land was made available to tsunami-displaced, while conflict-displaced have always been told that the allocation of alternative land was not an option.

The quick law reform after the tsunami can serve as another example of inequity. The Tsunami (Special Provisions) Act, No. 16 of 2005 was adopted within 6 months in order to ensure that people's rights would not be negatively affected as a result of having had to leave their land as a result of the tsunami. The Tsunami Special Provisions act addressed the issue of death certificates of persons missing after the tsunami in the absence of a dead body. Their prescription rights, tenancy and leasehold rights have also been safeguarded. In contrast, the circumstances under which conflict-IDPs have had to leave their land and houses have never been considered as special circumstances under the law and have not resulted in any special protection.

UNHCR addressed the equity issue, by initiating a discussion on equity in the IDP-working group (consisting of UN and NGO representatives, advising the UN Country Team on policy-issues affecting IDPs). The importance of the issue was recognized and an 'equity sub-group' came into existence. This sub-group drafted a discussion paper 'The Internally Displaced in Sri Lanka. Discussion Paper on Equity', with a summary of applicable legal principles, relevant case studies of inequitable treatment between different groups of IDPs in different parts of the country and recommendations. As a result of mainly UNHCR's lobbying on the issue, the equity issue got a lot of attention from foreign dignitaries such as

⁸⁵ UNHCR 2005a, p. 11 and 12.

⁸⁶ Pinto-Jayawardena and de Almeida Guneratne 2006; CPA 2006A, p. 16.

⁸⁷ CARE International et al 2005; CPA 2006a, p. 14.

Bill Clinton and Dennis McNamara, visiting Sri Lanka in their capacities as special coordinator for post-tsunami relief efforts, and Head of UN-OCHA's Internal Displacement Division respectively. Both were quoted in the press, drawing attention to the importance of equity for all groups of displaced. The discussion Paper serves as a tool for ongoing lobbying as and when required and makes recommendations to the GoSL, the UN Country Team and donors.⁸⁸ Recommendations to the GoSL include finding long-term solutions to end displacement, the allocation of land in an equal and fair manner and establishing redress mechanisms. Recommendations to the UN Country Team include raising the issue of inequity with the GoSL, extend its own programmes to all displaced persons, develop a coordinated area-based approach to find and implement durable solutions for IDPs and ensure that core, minimum standards for all sectors be extended to all existing Welfare Centres and temporary or transitional shelter sites. For donors it is recommended *inter alia* that they use their funds in an equitable and conflict-sensitive manner and find ways to extend their tsunami funding to cover all IDPs in tsunami affected areas, and to assist all IDPs equally, including 'hidden' IDPs living with host families.

It is noteworthy that the post-tsunami developments have had several positive consequences for conflict-IDPs not necessarily directly affected by the tsunami, by raising standards and opening up certain possibilities which the GoSL was not willing to consider before. Such developments include:

- Discussions on allocation of alternative land for conflict-displaced who cannot or do not want to return to their original homes are no longer a taboo for the GoSL. With a substantial amount of land having been made available to tsunami-displaced, discussions on making land available to conflict-displaced were initiated, especially in areas such as Puttalam and Vavuniya, where many conflict-IDPs (and almost no tsunami-IDPs) have been displaced to. In certain areas, such as Puttalam, the GoSL is now actively seeking funding for local integration projects that would require the authorities to make land available or regularize the status of land for certain categories of conflict-displaced (see for example the Puttalam Housing Project of the World Bank outlined in paragraph VI.E.2 below).
- Conflict-IDPs who were again displaced as a result of the tsunami, have been able to benefit from assistance made available to tsunami-IDPs. They were included in programmes for transitional shelter, often of higher quality compared to their previous conflict-IDP-shelter. For some, a permanent solution (return or relocation including a permanent house) has been implemented, while, if not affected by the tsunami, it would have been highly unlikely for them to have benefited so soon from any humanitarian programmes effectively ending their displacement.
- With the change of government in November 2005 Ministries were reorganized resulting in two new Ministries, the Ministry of Resettlement and the Ministry of Nation Building, and one government agency, the Reconstruction and Development Agency (RADA) taking over the functions and powers of several previous Ministries and agencies.⁸⁹ A positive effect of this restructuring is that both RADA and the

⁸⁸ CARE International et al 2005.

⁸⁹ These Ministries include: the Ministry of Relief, Rehabilitation and Reconciliation (MRRR), the Ministry of Vanni Rehabilitation and the Ministry of Eastern Development.

- Ministry of Nation Building deal with both conflict and tsunami displaced persons, thereby creating the possibility of a coherent and equal strategy.⁹⁰
- The financial compensation for a fully destroyed house was increased from LKR 75,000 (approximately US\$750) under the UAS, to 250,000 LKR (approximately US\$ 2,500) under the NEHRP, implemented as of early 2005. Although not the result of the impact of the tsunami on the humanitarian relief-environment, since the increase was implemented already before the tsunami, the large amounts of money made available for housing reconstruction for tsunami-affected people surely helped to justify the increase in housing compensation for returned conflict-IDPs from an equity perspective.
 - In case of 10 years uninterrupted possession of land, the person living on the land qualifies for Prescriptive title.⁹¹ The Tsunami Special Prescriptive Act which entered into force relatively soon after the tsunami⁹², ensured that the tsunami was not considered as interruption of possession, and therefore, individuals' prescriptive rights remained unaffected by the tsunami. This precedent opens the way for discussions on adjusting legislation to include a comparable exception for conflict IDPs. It also shows that, if the GoSL is willing to adjust its legislation, it is able to do so in a short time. In this respect, recently, positive developments have been observed at the local level: in Jaffna, practicing lawyers have agreed on an informal level not to apply the Prescription Act to the detriment of (former) IDPs in cases where IDPs possession of land was interrupted as a result of the conflict.

The Indian Ocean tsunami has brought enormous suffering to Sri Lanka. Apart from the loss of lives, many were displaced, lost all their possessions and were traumatized. However, the aftermath of the tsunami has also brought some positive developments, by opening up avenues to draw renewed attention to the plight of the conflict-displaced, many of whom had been displaced for some 16 years, living in very basic conditions without access to durable solutions. Important new initiatives towards durable solutions, new funding opportunities and several positive policy changes have been the results of this renewed focus.

C. The Reconstruction and Development Agency (RADA)

As already mentioned above, with the change of government in November 2005 Ministries and government agencies dealing with HLP rights were reorganized. Of particular importance is the Reconstruction and Development Agency (RADA), replacing several other Government agencies, which were all dealing with certain aspects of post-tsunami recovery. According to its website RADA is involved in post-tsunami and post-conflict reconstruction and combines all these previous existing institutions and other projects into one Agency.⁹³ The aim is for RADA to function as the single government focal point for reconstruction and development activities to all natural and man made disasters in post-tsunami and post-

⁹⁰ CPA 2006a, p. 4.

⁹¹ Section 3 of the Prescription Ordinance. Note that this section does not apply to tenants or other occupants who knew or ought to have known the ownership rests with someone else. Any occupying tenant is protected by the Rent Act No. 7 of 1972 as amended by Act No. 55 of 1980.

⁹² Tsunami (Special Provisions) Act No. 16 of 2005, certified by the Speaker on 13 June 2005.

⁹³ Website Reconstruction and Development Agency (RADA): www.rada.gov.lk, viewed on 20 June 2006.

conflict areas throughout the country.⁹⁴ It should be noted that although RADA was established after the November 2005 Presidential elections it took until June 2006 for a bill formally establishing the agency to be finalized and presented to Parliament. RADA's exact responsibilities, powers and accountability remain unclear. These issues do not seem to be adequately resolved in the proposed bill.⁹⁵ Concerns have been expressed that the bill vests broad powers with the President and RADA, including powers over land acquisition, controlling and monitoring foreign and local organizations as well as designating areas to be classified as being affected by natural or man made disasters.⁹⁶ As, according to the Constitution, the President's actions carry presidential immunity, there are no checks and balances in place to prevent abuse of power. In addition, it remains to be seen how RADA's role will develop in relation to the roles and responsibilities of the Ministry of Disaster Management and Human Rights, the Ministry of Nation Building and Development, and the Ministry of Resettlement. All these Ministries have a certain responsibility for issues related to HLP-rights of (conflict- and tsunami) IDPs, but it has not been clarified yet how these Ministries and RADA co-operate and co-ordinate their work.

D. Tsunami Housing Policy

On 3 May 2006 RADA adopted the Tsunami Housing Policy superseding all previous policies. The aim is to provide all tsunami affected people with a house by the end of 2006. According to its website RADA estimates that about 18,000 new houses are required in 2006 to fulfil original tsunami requirement of 98,000.⁹⁷ These numbers are however questionable as UN-HABITAT estimates that in June 2006 of a total of 121,000 damaged or destroyed houses only 42,500 were repaired or rebuilt.

According to the Policy the objective is to provide a "*house for a house, regardless of ownership*". This implies that every tsunami affected family including a large number of squatters will receive title to land and a cash grant to construct a house or a donor build house. Unfortunately, the policy does neither stipulate the nature of the title that will be provided nor the law on which the issuing of the title is based. Furthermore, it is unclear where the house will be built and if all displaced people need to return to their original plots of land, including squatters and people who are now afraid to return to an area too close to the sea. Cases have been reported where people are now forced to return to their original plots of land. Another problem is the discretion with which the District Secretaries have the power to implement the policy as the policy does not contain clear guidelines on issues such as consultation with the beneficiaries, the location of the house, the title to the land and the indiscriminate issuing of ownership of the house.

IV. The UN's response to key HLP-rights issues in post-conflict Sri Lanka

As already mentioned the UN has no formal role to play in the CFA or is directly involved in the peace process. In addition to humanitarian relief activities, the UN seems to restrict itself to a reconstruction and development role.⁹⁸ The various UN agencies working in Sri Lanka have not attempted to adopt a comprehensive plan of action to address the many

⁹⁴ CPA 2006a, p. 5.

⁹⁵ Fonseka 2006.

⁹⁶ Fonseka 2006. CPA 2006b

⁹⁷ Website Reconstruction and Development Agency (RADA): www.rada.gov.lk, viewed on 20 June 2006.

⁹⁸ Goodhand and Klem 2005, p.69.

practical and legal constraints mentioned in part II above. Through various projects, in accordance with their respective mandates, UN agencies have nevertheless, to some extent, been able to address some of problems. These are mainly projects developed by UNDP, UNHCR, UN-HABITAT, the World Bank and IOM and will be discussed below.

A. UNDP

UNDP has been active in response to a number HLP issues, including mine clearance, poverty alleviation, access to justice and livelihood programmes. In response to the HLP-rights constraints outlined in part II above; mine clearance projects have had the most visible and direct influence. Already before the conclusion of the CFA, since 1999, UNDP has acted as mine action focal point among the UN agencies. UNDP has been involved in survey, clearance and marking in affected areas to permit the maximum number of people to resettle and resume productive lives. The project aims to further assist Sri Lanka to develop the capacities and skills required to manage its own mine action programme. The National Steering Committee for Mine Action (NSCMA) and Mine Action Offices in Jaffna, Kilinochchi and Vavuniya have been set up with UNDP support, the number of operators on the ground have increased and vast acreage of land has been cleared of mines and UXO or declared free of contamination. Reportedly, there has been a significant reduction in the number of mine casualties – from 15 to 20 per month in the initial period after the ceasefire to between 4 and 7 per month at present – and hundreds of IDPs have returned home to previously mined land.⁹⁹

UNDP works closely with UNICEF in Mine Risk Education, towards the government's goal of focusing all mine action activities in support of resettlement and reconstruction. Local and international operators conduct mine clearance and surveys. Several other agencies complement the programme with Mine Risk Education, Survivor Assistance, Advocacy and capacity building.

B. UNHCR

UNHCR has been very active to study HLP issues affecting IDPs and returning refugees and was able to mobilize various actors in formulating resolutions, which responded to problems concerning the return and restitution of displaced persons, inequity and discrimination, ethnic tensions and institutional and legal problems. Effective implementation of these resolutions has proven to be difficult mainly as a result of political developments, the tsunami and the re-emerging conflict, with the exception of some notable successes.

An extensive property rights study, commissioned in 2002 by UNHCR Sri Lanka and the Human Rights Commission, was completed in 2003. The report outlines the state of affairs in Sri Lanka post-CFA, with respect to the key land, housing and property issues facing potential returnees and those now living on the land or in the homes of returnees. Not only were the key land and property issues identified, UNHCR and the Human Rights Commission of Sri Lanka also developed detailed proposals, meant to create a foundation upon which to ensure that voluntary repatriation and the return of the displaced to their original homes would take place in an orderly, fair, just and equitable manner. The core

⁹⁹ www.undp.lk/undp/lk/pages/mineac.html

element of the proposals was the establishment of a Commission on Land, Housing and Property Rights designed to resolve outstanding land disputes and overcome other obstacles preventing return. The proposals furthermore included drawing on international best practice, providing a clear basis on which to ensure that the return process would be fully consistent with international human rights law.

The report was made available in June 2003 as a conference document to delegates at the conference on reconstruction and development of Sri Lanka in Tokyo and was formally shared with the respective Peace Secretariats, the Prime Minister's office and relevant Ministries thereafter. It was also made available to other interested parties including heads of the Sri Lanka Multilateral Group agencies and the LTTE.

Unfortunately, the peace process, and the attempts to find a comprehensive approach to resolving the land issue, stalled in 2003. Consequently, progress on implementation of the proposals towards solving post-conflict HLP issues also stalled.

In 2004, UNHCR raised the issue of housing, land and property rights with President Chandrika Kumaratunga Bandaranaike of Sri Lanka. In August of that year, the President indicated her willingness to assist in finding durable solutions for IDPs by granting state land to those unable to return. The matter was also discussed with the LTTE, who requested UNHCR to provide information on restitution processes in other countries. Such information, including a paper on a human rights framework for land restitution, was provided to the LTTE and was also shared with the Secretary of the Ministry of Relief, Rehabilitation and Reconciliation (MRRR).

UNHCR's intention to get the parties in the peace process to agree on a general framework to solve land and property disputes has not been very successful as a result of the stalled peace process and the fact that attention was diverted after the December 2004 Indian Ocean tsunami.

In the weeks following the tsunami¹⁰⁰, UNHCR assisted the GoSL in drawing up a comprehensive list of those displaced, missing, injured or presumed dead. The survey was done by the Census Bureau, based on the 2001 census. A complaints procedure was introduced through the local government structures to ensure full coverage. The survey was completed in March 2005 and updated regularly. To date it remains the most authoritative and complete list of those affected by the tsunami. It forms the basis of the Government's tsunami response as well as that of the aid community.

In the month following the tsunami, UNHCR and UNICEF undertook a rapid assessment survey, which highlighted the perceptions, preferences and wishes of a small sample of tsunami survivors. This qualitative survey was conducted in Ampara, Galle and Jaffna Districts, covering displaced individuals in various locations including camps, temples and transitional accommodation sites. For many tsunami-IDPs this was the first opportunity to have their voices heard. Following this initiative several other agencies commenced public

¹⁰⁰ Information on UNHCR's post-tsunami activities is based on: UNHCR, 'Focus on protection. A publication of UNHCR Sri Lanka. UNHCR's tsunami response', Colombo, May 2005, Volume 7 [UNHCR 2005b].

hearings on issues of concern, including the delivery of aid and policy issues, such as the ‘no build buffer zone’ along the coast, which affected the right of return of the displaced communities.

Some 91,000 houses were completely destroyed as a result of the tsunami. UNHCR provided tents during the emergency phase. However, it was soon clear that transitional shelter was required to bridge the gap between emergency shelter (public buildings, schools, tents, etc.) and permanent housing, which would take years to build due to land issues (including the buffer zone policy) and the limited capacity of the construction industry (including the limited availability of skilled labour and building materials). Although the Transitional Accommodation Project (TAP) established by the Task Force for Relief (TAFOR) was in charge of the coordination and implementation of this transitional housing programme on the government side, UNHCR became the lead agency in relation to transitional shelter. UNHCR organized regular meetings with actors in the shelter sector at field level and Colombo level and acted as a liaison between TAP and the organizations providing shelter. UNHCR also formulated a Transitional Shelter Strategy which provided the basis for the government response to shelter needs and drafted the shelter standards which were to be followed by all agencies involved in the provision of transitional shelter. The building of transitional shelter, over 54,000 units in total¹⁰¹, was completed at the end of 2005. UNHCR also participated in discussions on putting into place a sustainable care and maintenance system for the transitional shelters, with special emphasis on protection concerns. UNHCR has not been involved in issues related to the provision of permanent shelter to the tsunami-displaced.

After the tsunami, UNHCR assisted beneficiaries in replacing or recovering lost documentation, such as ID cards, and birth, death and marriage certificates. Together with the GoSL and other agencies, UNHCR conducted more than 50 legal clinics in all affected districts, through its partners, the Human Rights Commission and the Legal Aid Commission. The focus on replacing lost documentation was vital in the initial stages of the emergency, as, without identity documents, people were unable to perform normal tasks such as access their bank accounts, receive assistance or claim compensation. After this initiative, UNHCR assisted the relevant government department to equip the district offices in the worst affected areas on the east coast to enable local officials to assist beneficiaries in the immediate and long term, ensuring sustainability. As a result of the combined efforts of UNHCR and other agencies, more than 120,000 people have received new documentation or certified copies of old documentation.

Tsunami-affected benefited along with conflict-displaced from UNHCR-funded legal aid centers, managed by the Norwegian Refugee Council (in Ampara, Batticaloa, Puttalam, Trincomalee, Jaffna, and Vavuniya). The cases brought to the attention of the legal aid centers include documentation issues and land disputes. In Kilinochchi and Mullativu, the Danish Refugee Council on behalf of UNHCR, addressed issues related to documentation and other legal matters.

UNHCR also cooperated with the Ministry of Justice and Constitutional Affairs to set up structures to assist tsunami victims with settling disputes outside of the over-burdened

¹⁰¹ UNHCR 2005a, p.3.

judicial system. As a result, a new law was passed in May 2005 under which Special Mediation Boards were set up in the tsunami affected districts. The mediation boards will assist survivors to resolve disputes without having to resort to what can be expensive and prolonged court procedures.

Scott Leckie's "Discussion Paper, Housing, Land and Property Rights in Sri Lanka", finalized in April 2005, was the result of a study commissioned by UNHCR.¹⁰² This study was one of the first to highlight issues of equity between all IDPs, both tsunami- and conflict-displaced. In addition, main recommendations for UNHCR included: to support a rights-based approach to the tsunami reconstruction process, to develop a new, refined proposal for resolving HLP disputes based on international law and best practice, to carry out local consultations, to convene a high-level meeting to develop a comprehensive strategy for securing HLP rights for all IDPs in Sri Lanka, and finally to establish the HLP Directorate and begin implementation of the comprehensive strategy.¹⁰³

Partly as a follow-up to the recommendations arising from this discussion paper, UNHCR supported the Foundation for Coexistence (FCE) in hosting a national land conference in November 2005 on conflict and tsunami-related land issues in the North-East, which brought together many local stakeholders. Before the conference, field-based consultations had taken place. The conference helped in clarifying policies and practices to many of the local authorities and resulted in a commitment to set up a Government-Civil Society working group to promote and actively lobby for the recommendations from the national land conference, and in particular, look into simplifying the existing procedures surrounding land issues in Sri Lanka. As part of the follow-up to the conference, efforts were to be made to continue involving the three peace secretariats (Government, LTTE and Muslim) in such regular meetings to identify durable solutions to land and property issues. However, as a result of the further deterioration in relations between the GoSL and the LTTE and the increase in violent incidents and cease fire violations, no meetings have been held since the FCE conference.

Apart from advocacy and lobby work in Colombo, UNHCR has contributed to solving HLP-issues in a more practical matter at a field level. In the last three years, UNHCR has supported, in close cooperation with the Srilankan authorities, 300,000 IDPs return to their original homes. UNHCR has, through implementing partners, contributed to the construction of many transitional shelters for returnees. In certain instances, UNHCR intervened in specific cases of HLP issues preventing return. For example, in Batticaloa and Ampara, UNHCR intervened in the case of 118 families of two villages who experienced difficulty in returning to their places of origin as the GoSL authorities had resettled some Sinhala families at the same location during the conflict and had provided them with land permits and deeds. Other common problems in the conflict affected areas preventing IDPs from returning or resettling are constantly addressed by UNHCR field staff¹⁰⁴ with the relevant authorities, but redress has proved to be extremely slow. In Kilinochchi for

¹⁰² Leckie 2005.

¹⁰³ Leckie 2005, p. 19-22.

¹⁰⁴ UNHCR has Field Offices working with conflict-IDPs in Vavuniya, Mannar, Kilinochchi, Jaffna, Trincomalee and Batticaloa. During 2005, UNHCR also had a Field Office in Ampara, mainly dealing with tsunami-affected IDPs.

instance, despite the overall lack of progress, UNHCR succeeded in addressing a small number of cases to contribute to the return of property to the rightful (formerly displaced) owners, who had been excluded due to the fact that they belonged to a minority (Muslims in a pre-dominantly Tamil area).

UNHCR has engaged several other organizations as implementing partners in its HLP-related work. By working closely with the respective offices of the Legal Aid Foundation, the Human Rights Commission and the Mediation Boards in each district many disputes were settled, although mostly in an informal manner. As of 2005, UNHCR has been funding the Norwegian Refugee Council (NRC) to provide legal advice to individual displaced persons through their legal aid centres, including land and property legal advice. Also as of 2005, UNHCR has supported the Centre for Housing Rights and Evictions (COHRE) to implement litigation strategies for improving IDP housing, economic, social and cultural rights and to prepare draft amendments to legislation with the objective of improving the rights of IDPs.

Recently, in the first half of 2006, UNHCR has completed a survey in the Welfare Centres Puttalam, seeking to revalidate the outcomes of a similar survey in 2004. An overwhelming majority of IDPs in Puttalam have indicated their wish to integrate locally in Puttalam. The World Bank will benefit from the data obtained, including data on land ownership and preferred durable solutions, in planning its Housing Programme for Puttalam. The Survey has also been completed in all Welfare Centres in Anuradhapura, Kurunegala and Colombo, but data still need to be analyzed. The outcomes will help UNHCR in seeking tailor-made solutions for IDPs living in Welfare Centres on a case-by-case basis.

One way of implementing such tailor-made durable solutions for conflict-IDPs is through UNHCR's 2006 shelter programme. By providing shelter for returning IDPs in their area of origin, UNHCR is seeking to close several Welfare Centers. In five districts (Jaffna, Vavuniya, Anuradhapura, Trincomalee and Batticaloa), UNHCR is constructing permanent shelters, designed in line with traditional characteristics of northern and eastern rural Sri Lanka, for IDPs returning to their places of origin. The construction consists of a 200 ft² shelter on a 500 ft² foundation, a permanent family latrine, common water supply and other infrastructure facilities. UNHCR is not funding the extension of this structure into a completed and fully enclosed 500 ft² house, but is seeking others donors to take on the responsibility for this second phase of the project¹⁰⁵. There is some concern that it may be difficult to find donors to take on the second phase of the project. If the second phase of the project is not completed, it could be argued that UNHCR is de facto acting in contradiction to the equity principles it promotes so vigorously. According to the new guidelines set by RADA, the minimum standard house should include 500 ft² floor area, bounded by walls and covered by slab or roof.¹⁰⁶ As long as the second phase of the project is not completed, UNHCR's 2006 housing project for conflict-affected IDPs does not meet these criteria.

¹⁰⁵ UNHCR 2006a, p.31.

¹⁰⁶ RADA, 'Revised tsunami housing policy', Colombo, April 2006, par. 5 'Technical Specifications of a house', p. 5.

In 2006, UNHCR has also engaged together with UNDP, in a Village Assessment exercise. Through this exercise, the infrastructure and public service needs of villages of return are being assessed, hopefully resulting in better targeted programme planning for development assistance programmes that will ensure the sustainability of returns. Some 5,000 villages are being assessed and data obtained include demographic profile, infrastructure, housing and food security and access to public services. To complement the Village Assessment, UNHCR and UNDP will also compile a comprehensive database of agencies working in the North-East and their activities.¹⁰⁷

Finally, UNHCR has scheduled a special IDP Working Group session dedicated to HLP-issues for IDPs, for June 2006, to determine and take forward a joint strategy on HLP-issues.

D. UN-HABITAT

Although UN-HABITAT has had a presence in Sri Lanka for many years, their current activities are largely focussed on tsunami-affected areas. UN-HABITAT is an implementing agency working primarily for government donors. UN-HABITAT is active in several tsunami-affected districts, including in four cities (Batticaloa, Mullaitivu, Killinochchi and Jaffna) in the conflict-affected North and East.¹⁰⁸ Community-involvement is an important feature of UN-HABITAT's programmes. Consequently, the beneficiaries of UN-HABITAT's activities have a significant input. In addition, UN-HABITAT aims to provide security of tenure to its beneficiaries. UN-HABITAT is involved in reconstruction and rehabilitation projects, resulting in construction or repair of houses, community centres, nurseries, playgrounds, roads, wells and drains as well as restoring livelihoods. The tsunami reconstruction and rehabilitation projects UN-HABITAT is involved in aims to reconstruct approximately 3,700 houses of which in June 2006 1,500 houses were completed.

In addition to its work in tsunami-affected areas UN-HABITAT is involved in a small housing project in the Jaffna peninsula regarding the reconstruction of damaged and destroyed houses (248 houses) by the conflict.

Furthermore UN-HABITAT has been approached by the World Bank to get involved in the Puttalam Housing Project outlined in paragraph IV.E.2 above. Its role would be to mobilise the beneficiaries and consult them on their needs and wishes. In addition, UN-HABITAT may be involved in providing technical support. The exact nature and extent of its involvement has yet to be decided.

UN-HABITAT has indicated it may seek a more active role in improving the housing situation in Sri Lanka, including for conflict IDPs, by taking on a more coordinating and leading role regarding the establishment of a national housing policy.

It should also be mentioned that UN-HABITAT focuses upon the urban environment. In line with its mandate and with the support of UNDP, UN-HABITAT's activities target urban poverty reduction, access to basic urban services and urban governance support.¹⁰⁹

¹⁰⁷ UNHCR 2006a, p.4.

¹⁰⁸ www.unhabitat.org, accessed on 15 June 2006.

¹⁰⁹ www.unhabitat.org, op.cit.

Since, we do not have conclusive data on the linkage between urban poverty, including the large amount of people living in slums in Colombo and other urban centres in Sri Lanka, and the conflict, it is difficult to place UN-HABITAT's work in the context of (post-)conflict HLP-issues. One can speculate that general (urban) poverty and underdevelopment are related to stalled economic development, which is at least partly resulting from the conflict. According to UN-HABITAT and Urban Resource Centre Sevanatha, the urban poor and in particular the slum population, however, do not represent a particular ethnic group and the number of conflict-displaced living in urban slums appears to be low. Urban poverty does not appear to be a direct consequence of the conflict or of discriminatory policies related to the ethnic dimension of the conflict. As such, UN-HABITAT's urban programmes are only of limited relevance for the specific HLP-issues arising in a post-conflict situation, although addressing urban poverty and HLP-issues in the urban context is, of course, important to stabilise the post-conflict situation and possibly prevent future conflict. UN-HABITAT has not yet been active in advocacy related to legal reform and institutional reform required to solve many individual cases of people whose HLP-rights have been affected by the conflict. UN-HABITAT has, however, expressed interest to become involved in those issues in the near future.

E. World Bank

1. North East Housing Reconstruction Programme (NEHRP)

The World Bank plays an important role in supporting the return of IDPs and restore housing that was damaged or destroyed as a result of the conflict.¹¹⁰ In order to rehabilitate the conflict affected areas and encourage the return of displaced persons, the World Bank in 2004 proposed the North East Housing Reconstruction Programme (NEHRP). The NEHRP is the only large scale housing programme for the conflict affected areas in Sri Lanka.¹¹¹ The NEHRP is a lending arrangement to the GoSL of approximately 75 million US dollars¹¹² to (re)construct 41,200 houses¹¹³ in the North-East of the country over a 4-year period by providing owner-driven housing support cash grants to selected beneficiaries. The NEHRP was approved on 10 December 2004 and began in early 2005. The closing date is set for 30 June 2009.

The selection of beneficiaries of the NEHRP is done in two stages. The first stage involves the selection of villages based on a ranking system taking into account the caseload of damaged housing stock, the caseload of returnees, the ethnic sensitivity while cognizant that certain villages suffered disproportionate damage, the extent of mine clearance and where available vulnerability and poverty maps. The second stage is the allocation of grants within each selected village.¹¹⁴ This is based on the caseload of returnees and the extent of damaged housing stock. In addition, the beneficiary should be permanently settled in the village, should possess only one house and should have a family income less than 2,500 Sri Lankan

¹¹⁰ World Bank 2004, p. 1 and 2.

¹¹¹ World Bank 2004, p. 2.

¹¹² As mentioned in paragraph II.A.1 above the World Bank estimated that 485 million USD is needed to address the total housing repair needs in the North East of Sri Lanka. In addition to the 75 million USD provided by the NEHRP, the EU has pledged another 25 million USD and the GoSL 2 million USD.

¹¹³ The original proposal mentioned a number of 46,000 houses to be reconstructed. This amount has been adjusted in 2006 due to inflation.

¹¹⁴ World Bank 2004, p. 4 and 34-35.

Rupees per month (approximately 2.50 USD).¹¹⁵ Moreover, no beneficiary will be selected if he or she does not possess a formal right to the land.¹¹⁶ Landless people or illegal occupants are not included in the programme. According to the World Bank this is to avoid disputes regarding secondary occupation and potential forced evictions in the future.

What has not been taken into account in selecting the beneficiaries is the fact that there is a variation in living conditions in urban areas and rural areas and in government-controlled and LTTE-controlled areas. The best conditions are to be found in urban and government-controlled areas such as Jaffna and the worst in rural LTTE-controlled areas such as in Batticaloa district.

The NEHRP provides for a land-related dispute resolution designed to address disputes in relation to the NEHRP.¹¹⁷ This so-called 'grievance redressal process' contains a complaint mechanism at three levels of government. First, a complaint can be lodged with the Divisional Secretary and resolved by the Divisional Grievance Redressal Committee. If dissatisfied with the outcome a further complaint can be lodged at the district level with the Grievance Redressal Committee. And finally a complaint can be lodged on a provincial level for a final ruling by the Chief Secretary of the North East Provincial Council. The mechanism is open for those people residing in a selected village, but may have a complaint regarding the list of beneficiaries within his/her village. The mechanism does not contain any procedural safeguards or provide for a remedy within the judicial system. The vast majority of the lands involved in the NEHRP are state lands. For state lands no further legal remedy is available in Sri Lankan law. When private land is involved a remedy may be provided by the Mediation Boards, whose ruling is not binding, or by the Sri Lankan courts. It is interesting to note that most grievances were dealt with verbally rather than submitted in writing and complemented with relevant documentation. There seems to be little tradition for the submission of written complaints and a certain hesitation to do so with local authorities given the dependency of the local population on these authorities. Moreover, grievances tend to differ dramatically between districts, indicating that different practices are followed in the various districts.

In order to pre-emptively address land disputes, the World Bank has designed eight mobile Land Task Forces (LTFs) for a limited period of time, operating on the district level. Originally the LTFs were established for a period of nine months, starting in March 2005. This period was later extended to May 2006. The aim of these LTFs is to pre-emptively resolve any land dispute in the context of the NEHRP and make the 'grievance redressal process' obsolete. Although the LTFs have been able to resolve many disputes, in particular regarding the loss of documentation, demarcation of property and inheritance disputes, they have not made the 'grievance redressal process' obsolete. Furthermore, many disputes relate to the question of private land ownership, for which neither the 'grievance redressal process'

¹¹⁵ Although the World Bank has acknowledged it has been difficult to verify a family's monthly income it is deemed not possible to substitute the income ceiling with more suitable indicators.

¹¹⁶ Such title may include a deed, lease, permit or grant based on a variety of Sri Lankan laws, World Bank 2004, p. 8 and 19.

¹¹⁷ Such disputes may include: issues of ownership, issues of classification of the beneficiaries, issues relating to the damage of the house, issues of encroachment and property boundary issues, World Bank 2004, p. 37.

has authority nor the LTFs. It is unclear to what extent the LTFs have been able to provide some form of harmonization in dealing with disputes, for which there is clearly a need.

The cash grants given to each beneficiary represents 2,500 USD for a completely destroyed house and 1,000 USD for a partially damaged house¹¹⁸. The grants are paid in five tranches for fully damaged houses and in two tranches for a partly damaged house. In 2005, 4,900 cash grants were given. For 2006 the number of cash grants to be provided is set at 13,400. When closing this research (30 June 2006) the World Bank estimated that the renewed violence in the North and East of the country would have some affect on the implementation of the NEHRP, but was unclear in as to how much. A full assessment will be made in July 2006.

When it comes to implementing the NEHRP the GoSL is responsible. Final oversight is provided by a Steering Committee chaired by the Ministry of Nation Building and Development.¹¹⁹ On a day-to-day basis the NEHRP is implemented by governmental entities organized on a village, divisional, district and provincial level. With the implementation of the NEHRP no (other) UN agency is directly involved. In the original Project Proposal mention is being made of UNDP planning to complement NEHRP through the provision of improved site services and livelihood opportunities in villages covered under the NEHRP.

2. Puttalam Housing Project

The GoSL's change in attitude towards local integration, partly perhaps as a result of the increased flexibility with regard to making land available to IDPs after the tsunami, has resulted in an explicit request from the GoSL to the World Bank to design a programme for IDPs residing in Puttalam district, in the west of Sri Lanka. Puttalam has 60,095 registered IDPs, of whom 32,501 live in 81 Welfare Centres in the District.¹²⁰ This makes Puttalam the District with the largest number of IDPs and the largest number of Welfare Centres within Sri Lanka. The IDPs in Puttalam are almost exclusively Muslims, who were expelled from Mannar in 1990, with a small percentage having come from Jaffna. According to a survey carried out in 2006, undertaken by UNHCR, has revealed that an overwhelming majority of the IDPs residing in Puttalam prefer to permanently settle in that district, instead of returning home at any future date.

Based on the GoSL's request, in September 2005 the World Bank initiated, in addition to the NEHRP, a second programme for assisting IDPs residing in Puttalam District. This programme involves an additional credit of 18 million USD to the GoSL and is meant to provide housing for the IDPs in Puttalam. Contrary to the NEHRP, this programme aims to support local integration in the area of displacement rather than the return of the IDPs to their original homes. The programme involves the construction and/or completion of 7,400 houses. The cash grants provided under the Puttalam programme are the same as the grants provided by the NEHRP. For a fully to construct house the beneficiary will receive (the approximate Sri Lankan Rupee equivalent of) 2,500 USD and for a partial to construct house 1,000 USD. The selection of beneficiaries for the Puttalam programme is somewhat similar

¹¹⁸ A substantially larger amount than the approximately US\$ 750, which was provided under the GoSL-run Unified Assistance Scheme. See World Bank 2006 for details.

¹¹⁹ Originally this was to be the Ministry of Relief, Rehabilitation and Reconciliation (MRRR). With the change of government in November 2005 this became the Ministry of Nation Building and Development.

¹²⁰ UNHCR 2006b.

to the selection done under the NEHRP. Instead of selecting villages under the Puttalam programme, Welfare Centres where the IDPs are residing are selected. Contrary to the NEHRP, a selection of individuals within each Welfare Centre is not done. The selection of Welfare Centres means that every family living in a selected location will obtain a cash grant, unless the family indicates it does not want to receive the grant, for example because they hope to receive the World Bank grant in their place of origin in the future, or the family already has a fully constructed house.¹²¹ The Welfare Centres that will take part in the programme are selected on four criteria. First, all families in the Welfare Centre must have a title to the land on which to build. If a family cannot provide a clear title to the land, but wants to reside permanently in Puttalam and will otherwise be landless, the GoSL has agreed to alienate state land with legal title to those IDPs. Note that such a title involves the legal use of the land rather than full ownership of the land or the house constructed on the land. Regarding state lands, in Sri Lanka ownership of the land will remain with the GoSL and includes all constructions on the land. A second criterion involves the existence of safe environmental conditions. Third, the land on which to build must have access to clean drinking water, and, fourth, the families must have no intention of returning to their original house or land from which they were displaced. The last requirement does not mean the World Bank does not acknowledge the IDPs right to return and the right to exercise ownership to property that may have been left behind, but means that when accepting the cash grant under the Puttalam programme they will not be eligible for any other future cash grant under a World Bank programme. In other words, potential beneficiaries will have to choose, based on adequate information made available to them, if they want to benefit from the Puttalam programme or benefit from the NEHRP and return to area of origin in the North or East of the country. Implementation of the programme will be done by the Ministry of Resettlement, through a Project Implementation Unit, in close cooperation with the Puttalam District Secretariat. Final oversight will be provided by the Steering Committee of the NEHRP chaired by the Ministry of Nation Building and Development. A form of complaint mechanism is provided for in the programme. Grievances can be presented to the Puttalam District Secretary, after which an appeal is possible with the Secretary of the Ministry of Nation Building and Development. Similar to the NEHRP, a Mobile Land Task Force will be operational to address potential grievances.

Other UN agencies will play a role in the implementation of the plan. UNHCR has provided critical data through its 2002 and 2004 surveys of the Welfare Centre population in Puttalam. UNICEF has been involved in assisting the GoSL with improving water and sanitation for Welfare Centres in Puttalam, and will likely continue to do so for several of the locations selected for World Bank housing assistance. Furthermore, UN-HABITAT may be approached to contribute through its experience in community based planning, regarding provision of water, roads and construction of housing.

F. IOM

The International Organization on Migration (IOM) works closely with the UN agencies on the ground and is closely associated with the UN family. IOM provides reintegration assistance to returning Sri Lankan refugees and returning Sri Lankan asylum seekers. According to IOM 80% of the land owned by returning refugees is privately owned land.

¹²¹ Approximately 28% of the IDP population in Puttalam has already constructed a permanent house.

Consequently, problems regarding secondary occupation or unclear property transactions can often be resolved through existing mechanisms such as the Mediation Boards and the judicial system. In the meantime most returnees stay with family. If a dispute over housing or land cannot be resolved the GoSL provides for alternative housing, according to IOM. Although the process is slow, in the end, according to IOM, returning refugees do seem to receive a full package, including title to the land, livelihood support, a cash grant, vocational training and access to drinking water, sanitation and health care. Returning refugees who find their homes being damaged or destroyed can have their homes renovated with the assistance of IOM.

In addition to assisting returning refugees and asylum seekers, IOM is building transitional shelters for tsunami IDPs.¹²²

V. Conclusions and recommendations

The situation in Sri Lanka is exceptional. First and foremost, it is important to note that, contrary to most other countries with large numbers of internally displaced persons as a result of an internal armed conflict, the country has a reasonably well-functioning, legitimate and structured State and central Government. Any interventions and strategies towards addressing the post-conflict HLP-issues in Sri Lanka have to take this into account and should focus upon the responsibility of Government actors.

Second, contrary to other countries covered by this research project, Sri Lanka does not have an International Peace Operation. There is no official Peace Agreement in place and the status of the CFA is unsteady, with the SLMM describing the current situation as “low-intensity war”¹²³. In short: there is no peace to keep. And even if there were a peace to keep, it is far from certain that the United Nations would be invited to take on that responsibility. However, despite the absence of a peace agreement and a UN or other peace operation, the UN agencies active in Sri Lanka have played a significant role in addressing conflict-related HLP issues, especially since the CFA was agreed. It remains to be seen how this UN role will develop if the security situation would deteriorate further and the “low-intensity war” would reach a higher intensity.

Different UN agencies have contributed significantly to solving some of the practical constraints described under II above. The World Bank has made funds of 75 million USD available to (re)construct 41,200 houses in the North and East, and will contribute to the construction or upgrading of some 7,400 houses in Puttalam district. This is just the tip of the iceberg as the World Bank has estimated that, ultimately, 485 million USD is needed to (re)construct a total of 326,000 damaged and destroyed houses.¹²⁴ In addition, the World Bank’s North East Housing Reconstruction Programme has increased livelihood options for returnees and has injected cash into the local economy. UNDP has contributed to the clearance of landmines and UXOs, although much remains to be done. UNDP has also played a role, together with IOM, in restoring livelihood options for returnees, whereas UNICEF has contributed to restoring water and sanitation in returnee areas. In addition,

¹²² Rajakaruna 2006, p. 5.

¹²³ Statement by Major General Ulf Henriksen, Head of Mission, Sri Lanka Monitoring Mission (SLMM) on 11 May 2006.

¹²⁴ World Bank 2004, Annex 1, p. 16 and Annex 4, p. 32.

UNICEF will be participating in the World Bank Puttalam programme by ensuring access to drinking water and sanitation to the (formerly) displaced in locations selected by the World Bank for building permanent houses. Other practical constraints, such as the renewed ethnic tensions, land grabbing, the particular situation of the Muslim displaced, and the impact of HSZs, have, unfortunately, been more difficult to address in a climate of renewed and intensified violence and distrust among the parties to the conflict and the different affected communities in Sri Lanka.

It has proven even more difficult to address the legal constraints. Although much has been done to analyze the legal constraints and draft recommendations to address required law reforms and institutional reforms, in particular by UNHCR, its implementing partners and several active civil society organizations such as the Consortium for Humanitarian Agencies (CHA), the Centre for Policy Alternatives (CPA) and the Foundation for Co-Existence (FCE), many of these efforts did not outgrow the drafting stage and have yet to be implemented. To a large extent, this has been the result of changes in the external environment, out of control of those actively engaged in seeking to address the legal constraints.

When there was progress in the peace process and the political environment appeared right for pushing the required legal and institutional reforms, the tsunami hit Sri Lanka, diverting the attention of UN agencies, civil society organizations and NGOs. Subsequently, at the end of 2005, actors active on HLP-issues were waiting for the new Government to take its shape and redistribute responsibilities to different government agencies. Now that most actors have refocused from tsunami-IDPs on conflict-IDPs and now that the responsibility structures of the new Government have been established, the deteriorating security situation, increased violence and fears of renewed conflict are paralyzing efforts to achieve progress on much-needed HLP-related legal and institutional reforms.

In taking forward the HLP issues in Sri Lanka, the international community, and the United Nations in particular, should avoid taking over any Government responsibilities. Instead, the international community should lobby and make targeted use of available funds towards making all relevant Government structures aware of their responsibilities for addressing HLP issues and act upon their responsibilities. As a former British colony, Sri Lanka has inherited a complicated, multi-layered bureaucracy. This bureaucracy has many different, frequently changing Government agencies, all having competing or overlapping responsibilities for addressing HLP-issues. With changing Governments, responsibilities have been shifted from one Ministry or Agency to others, while agencies were abolished and new agencies created. In this environment, the UN agencies present in Sri Lanka should lobby towards a clear demarcation of roles and responsibilities between the different Government actors, and clarify with the different Government actors involved which agency is responsible for what, how the different agencies co-ordinate their activities and which agency can serve as the focal point for HLP issues. National NGOs and Civil Society actors have argued that the National Land Commission, once established, would be the most appropriate central, coordinating body to take on this task, as the body responsible for formulating a national policy on land.¹²⁵

¹²⁵ CPA 2005a, p.11.

In working with the GoSL on HLP-issues, all actors should be fully sensitised to the fact that HLP-issues, in particular in relation to conflict-displacement, are part of an incredibly politicised environment in Sri Lanka. Both the LTTE and the GoSL use displacement figures in media and public relations efforts, seeking to gain sympathy for and to justify their military and political actions. For all agencies working on HLP-issues, strong awareness of the politicisation of displacement figures is required to avoid inadvertently being drawn into political, non-humanitarian debates. This requires a delicate balancing act, especially where agencies are extensively involved in trying to build the GoSL's capacities in resolving HLP-issues while having only very limited direct dealings with the LTTE.

Sri Lanka has very strong national NGOs, and an active civil society. Conflict-related HLP-issues have been on the agenda of these agencies for quite some time and high quality reports and studies have been published, describing the HLP issues and making recommendations towards addressing the issues. A further concerted effort should be made towards bringing all available resources on HLP issues together and coordinate a focused strategy to convince the GoSL to take action on many of the recommendations.

The stalling of the Peace Agreement has often been used as an excuse for delay and inaction. Although certain issues, such as the HLP-problems stemming from High Security Zones, are indeed difficult to address as long as there is no formal end to the conflict in sight, other avenues, such as law reform, can be pursued no matter what the status of the peace negotiations is. As the Tsunami Special Prescriptive Act has shown, the GoSL is able to implement law reform within a short period of time, if the political will and pressure to do so is there. In the current fluid security situation, it may be appropriate for all involved in HLP-issues to develop strategies together, targeting different scenarios (reflecting the options of a return to the negotiating table, a continuation of the current "low-intensity war", and a further deterioration towards a full-fledged war), with corresponding lobby and advocacy activities appropriate for each scenario. This would result in an integrated approach, with all actors working towards the same objectives.

In addition to the more general recommendations above, based on the study of the current state of affairs and the current UN involvement in addressing HLP issues in Sri Lanka's post-conflict environment, we would like to make the following specific recommendations for the United Nations Country Team:

- While acknowledging the risks related to the introduction of another body in an already overcrowded arena, we believe that a UN Task Force on Housing, Land and Property issues should be established to develop a more concerted and structured UN approach to address HLP issues. The above analysis shows that much is being done to address the many HLP issues, but in an un-coordinated and ad hoc fashion. HLP-relevant activities result from individual agencies' mandates, not from a strategy to address HLP-problems. The Task Force would add value in bringing all efforts together in a more strategic, joint UN approach, bound to be much more effective than the sum of individual agencies' efforts. We recommend that this HLP Task Force be lead by UN-HABITAT. It should include all relevant UN agencies and other organizations (International and National NGOs and Civil Society Groups) working on HLP-issues in Sri Lanka. So far, UN-HABITAT's role in advocacy for policy change and law reform has been limited, but the agency has expressed an

interest in becoming more involved. In addition, UNHCR should continue to take the lead on issues of restitution for refugees and IDPs. These issues can be addressed through the UNHCR-lead IDP protection working group and the thematic IDP working group on HLP-issues, which meets once a year. Although UNHCR is faced with financial constraints and is reviewing its operation in Sri Lanka, its large operational presence in the field, its experience in HLP-issues in Sri Lanka and its worldwide role as cluster lead on protection in new (conflict-) IDP situations according to the new Collaborative Approach on IDPs¹²⁶, make UNHCR the logical choice for leading efforts towards a comprehensive restitution policy.

- As soon as the parties resume the Peace Talks, the United Nations Country Team should lobby the parties to the Peace Process and the facilitator (Norway at this time) to include solutions to HLP-issues in a comprehensive manner in a final Peace Agreement. Establishment of a well-funded Commission on HLP rights, implementing a well-functioning mechanism, with a strong foundation in the law, to resolve all outstanding conflict-related HLP-disputes within an agreed timeframe is vital to the viability of any peace agreement, to avoid unresolved HLP-issues to serve as catalysts for further hostilities or renewed conflict. Under the CFA, several Sub-Committees were established. If in the future there is an opportunity to build on the CFA or to discuss the status and role of the existing Sub-Commissions under a Peace Arrangement, the United Nations should propose to have a Sub-Committee on HLP-rights. The UN Task Force (proposed above) could feed into this multi-party Sub-Committee. For peace to be sustainable, HLP issues have to be put firmly on the agenda, and establishment of a Sub-Committee on HLP-rights under a Peace Agreement would properly reflect the importance of solving HLP-issues.
- Apart from being clear on the responsibilities of the GoSL and not taking over any GoSL responsibilities, the UN Country Team should provide clarity on its engagement with the LTTE on HLP-issues. The LTTE has a responsibility for HLP issues in areas de facto under its control. The LTTE even has its own Land Act and a legal system dealing with individual cases. Whilst, for a variety of political and legal reasons, the UN Country Team may be reluctant to engage with the LTTE on their responsibilities to ensure HLP-rights in LTTE-controlled areas, the United Nations cannot ignore the parts of the country under de facto LTTE control. To avoid political fall-out, UN agencies may consider using partner NGOs to engage the LTTE on HLP issues and to train the LTTE administration and those involved in its legal system on the relevant international and national standards regarding HLP-rights.
- In addition, for peace to be sustainable, the international community, the GoSL and national civil society actors should pay particular attention to issues of equity and the specific HLP issues of vulnerable groups, in particular the Muslim population.
- The UN Principles on Housing and Property Restitution for Refugees and Displaced Persons (also known as the ‘Pinheiro Principles’) are to be disseminated broadly and should be the basis for a national housing policy.¹²⁷ All involved in HLP issues (GoSL, LTTE, UN organizations, International and National NGOs, Civil Society

¹²⁶ Morris 2005, p. 54.

¹²⁷ The UN Principles on Housing and Property Restitution for Refugees and Displaced Persons (also known as the ‘Pinheiro Principles’), UN doc. E/CN.4/Sub.2/2005/17.

Groups, Community Based Organizations) should be trained on how to use the 'Pinheiro Principles', to ensure that all actors in the Peace Process and all organizations monitoring the Peace Process are familiar with them. In light of the importance of the Principles in a post-conflict situation in preventing future conflicts, the UN Country Team should make funding available for this training effort. Furthermore, as long as the conflict-related displacement is not addressed within a comprehensive peace agreement, any proposed solution for individual IDPs or groups of IDPs, i.e. relocation, local integration including housing grant schemes, should be carefully analyzed to ensure compatibility with the 'Pinheiro Principles'.

The current instability in Sri Lanka, the upsurge in violence and the de facto resumption of the war is a severe setback for the housing, land and property rights situation, leading to amongst others, more destruction of houses and renewed displacement. At the end of the day, enhanced enjoyment of housing, land and property rights in Sri Lanka depends on finding the road to peace and sticking to it.

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2. UN-Habitat – Tim McNair, Housing Sector Co-ordinator - 22 June 2006
3. World Bank – Naresha Duraiswamy, Senior Operations Officer – 6 June 2006
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5. Urban Resource Centre, Sevanatha – K.A. Jayaratne, President – 3 April 2006

APPENDIX C

Conflict-Related Internal Displacement in Sri Lanka:

A study on Forced Displacement, Freedom of Movement, Return and Relocation

April 2006 – April 2007

and
Addendum covering April – July 2007

IASC Inter-Agency Standing Committee ¹²⁸

¹²⁸ COHRE Sri Lanka contributed information on the national legal framework to this study.

The Inter-Agency Standing Committee (IASC)

Established in June 1992 in response to United Nations General Assembly Resolution 46/182 on the strengthening of humanitarian assistance, the Inter-Agency Standing Committee (IASC) is an inter-agency forum for coordination, policy development and decision-making. The IASC consists of 8 agencies as full member (OCHA, UNHCR, UNICEF, WFP, UNDP, UNFPA, FAO, WHO) and an extensive number of standing invitees including UN agencies (OHCHR, Office of the Representative of the UN Secretary-General on the Human Rights of Internally Displaced Persons), international organizations and NGO consortia (ICRC, IFRC, IOM, ICVA, InterAction, SCHR) and the WorldBank.

Under the leadership of the Emergency Relief Coordinator, the IASC develops humanitarian policies, agrees on a clear division of responsibility for the various aspects of humanitarian assistance, identifies and addresses gaps in response, and advocates for effective application of humanitarian principles.

The IASC in Sri Lanka is chaired by the UN Resident and Humanitarian Coordinator and comprises the Executive Heads of the following organizations: OCHA, UNHCR, UNICEF, WFP, UNDP, UNFPA, FAO, WHO, IOM, OHCHR, CHA, FCE, Sarvodaya, Sewa Lanka, Oxfam, NRC, CARE, World Vision, ACF, ZOA, Solidar, Save the Children, Merlin. In addition the ICRC, IFRC, World Bank and ECHO attend as observers.

This study was commissioned by the IASC and prepared by a Taskforce comprised of members and invitees of the IASC Sri Lanka complemented by a number of civil society groups. The paper was adopted and is presented by the IASC in Sri Lanka, July 2007.

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1. Executive Summary

1.1 Introduction

As the conflict in Sri Lanka has escalated over the past year, there has been increasing concern about the rights and safety of civilian populations, including internally displaced persons (IDPs).¹²⁹ In response to this concern the IASC commissioned a report to analyse how certain rights of IDPs – the right to be protected against forced displacement, the right to freedom of movement, and the right to be protected against forced return and forced relocation - have been affected over the past year. In particular the report is intended to assist the Government of Sri Lanka – as the primary duty bearer – as well as other parties to the conflict, in adhering to internationally accepted protection standards. The report makes specific recommendations for the consideration of the Government of Sri Lanka, the LTTE, the international community and humanitarian agencies to improve the overall protection environment for IDPs.

The report was written using case studies gathered and verified by UN agencies and NGOs working in the field and it analyses how the actions of all parties to the conflict have affected population movements and displacement. In some cases, IDPs have fled their homes following warnings of imminent attacks; in other cases they have been prevented from seeking safety in other parts of the country. IDPs have been caught in the midst of hostilities and prevented by parties to the conflict from leaving displacement sites where they feel unsafe. In addition, there have been documented incidents where IDPs have been forced to either return to their places of origin, or relocate to alternative sites, against their will. IDPs' freedom of movement, like that of all civilians, has been curtailed by closure of the Forward Defence Lines (FDLs), road closures, security checks, curfews and travel restrictions.

The report initially covered the period of April 2006 to April 2007. In order to update the information because of delays in issuing the report and in order to reflect significant changes in Government policy towards the return process, an addendum covering the period April to July 2007 has been added to the report.

1.2 International Legal Framework

IDPs share the same rights and freedoms as other people in their country. In times of armed conflict, both international humanitarian law (IHL) and human rights law apply, and both bodies of law must be consulted. While not a binding instrument *per se*, the *Guiding Principles on Internal Displacement* reflect and are consistent with both human rights law and IHL. As such, they are an essential reference for all actors working with internally displaced persons.

IDPs enjoy fundamental rights to freedom of movement and freedom to choose their place of residence. International humanitarian law strictly prohibits the forced displacement of civilian populations during a conflict, unless it is necessary either to safeguard their security or for imperative military reasons. The *Guiding Principles* also stipulate that civilians should be protected from arbitrary displacement from their homes in situations of armed conflict, except where there are compelling security or military reasons.

IDPs enjoy the right to seek safety in other parts of the country. As civilians, they are entitled to protection under international humanitarian law at all times, so long as they do not directly participate in hostilities. This includes protection from direct attack, from the effects of indiscriminate attack, and from use as “human shields” to insulate military objectives or geographic areas from attack.

¹²⁹ An internally displaced person (IDP) is one who has “been forced or obliged to flee or leave their homes or places of habitual residence, in particular as a result of or in order to avoid the effects of armed conflict, situations of generalized violence, violations of human rights or natural or human-made disasters, and who have not crossed an internationally recognized state border.” *Guiding Principles on Internal Displacement*, UN Doc E/CN.4/1998/53/Add.2/Annex, introductory para. 2 (“*Guiding Principles*”).

IDPs also have a right to voluntary return, in safety and dignity, to their original places of residence, and it is the responsibility of the competent authorities to establish the conditions, and provide the means to enable such voluntary return. Under no circumstances may return be forced. In limited circumstances a party may have reasons to evacuate or resettle IDPs from an existing location, although it is never legitimate to return IDPs to their original communities where risks to health, safety, or security remain.

1.3 National Legal Framework

The fundamental rights to freedom of movement, as well as the freedom to choose one's place of residence, are safeguarded in the Constitution of Sri Lanka. The right to freedom of movement is not subject to any geographical limitations within Sri Lanka. Nevertheless, these rights can be restricted if such restriction is set forth in law and is in the interest of national security, public order and the protection of public health or morality.

Restrictions on freedom of movement can be invoked under the Public Security Ordinance (PSO), which empowers the President to declare a State of Emergency and adopt Emergency Regulations if s/he believes they are necessary "in the interests of public security and the preservation of public order". A State of Emergency was declared in Sri Lanka in August 2005 following the assassination of Foreign Minister Lakshman Kadirgamar. Emergency Regulations were brought into force at that time and have been renewed on a monthly basis ever since. Several provisions of the Emergency Regulations allow for restrictions on freedom of movement. The Supreme Court has ruled that although the Constitution allows for *permissible restrictions* to be imposed on the right to freedom of movement and freedom to choose one's place of residence they cannot be imposed with the result of *denying these rights*. Moreover, there is no express power in the law relating to public security, including Emergency Regulations, to control *group* freedom of movement, other than imposing curfews and the power to restrict access to areas where essential services are being carried out.

1.4 Definitions and Scope of Report

As indicated above, the present report focuses on three key violations of fundamental rights of civilians by all parties to the conflict, namely incidents of forced displacement, restrictions on freedom of movement, and forced return or relocation.

Consistent with the *Guiding Principles*, forced displacement includes instances where civilians have been forced or obliged to flee their homes due to the effects of hostilities or actions by parties to the conflict, including violations of human rights or international humanitarian law. Incidents have been documented where IDPs have been forced to flee from areas due to warnings of imminent attacks or threats to civilians' safety issued by parties to the conflict.¹³⁰

In relation to freedom of movement, the report discusses incidents where IDPs have been prevented from fleeing their place of origin to seek safety elsewhere in the country, as well as incidents where IDPs have been prevented from leaving areas of displacement where their lives and safety are threatened. However, it also considers the more general impact on freedom of movement as a result of the conflict, including the closure of FDLs, curfews and travel restrictions.

The concept of "forced returns" used in this report encompasses all forms of coercion intended to make IDPs return to their place of origin or relocate to alternative sites. Forced return is not limited to the actual use of physical force, but also includes threats to cut food, water, electricity and other essential assistance and services if IDPs fail to return; closing sites where IDPs are sheltering; preventing or deterring humanitarian agencies from providing assistance to IDPs beyond deadlines for return. The reduction, or withdrawal, of assistance and basic services may

¹³⁰ Incidents of displacement due to the indiscriminate effects of hostilities, while constituting forced displacement, are not generally included in the report due to limitations of space.

render living conditions in places of displacement so unacceptable or unsafe that IDPs feel forced to return.

Threats by Government authorities and security forces that they will no longer be responsible for IDPs' safety and security if they fail to return also constitute elements of a forced return. Furthermore, the heavy presence of armed police and security forces at IDP sites prior to and during return movements creates an environment where IDPs are unable to make free and informed choices about whether or not to return.

In addition to these threats, both direct and indirect, incidents have been documented where IDPs have decided to return, based on inaccurate or incomplete information about conditions in their places of origin or in relocation sites. Given the poor conditions in many displacement sites, IDPs have often consented to return, despite very real fears for their safety and security.

1.5 Trends and Analysis

The analysis of the case studies concludes that there has been a marked increase in incidents of forced displacement, restrictions on IDPs' freedom of movement, as well as forced return and relocation, over the past year.

a) Forced Displacement

A key trend over the reporting period has been the displacement of civilians by parties to the conflict. Most commonly, involuntary displacement has followed warnings, often issued by the LTTE, or groups claiming to be affiliated with the LTTE, telling civilians to flee an area due to an imminent attack. Such incidents occurred in Muttur Town, Trincomalee District, in May and September 2006; in Allaipiddy, Jaffna District, in May 2006; and in coastal areas southeast of Jaffna Town in August 2006. Whether such warnings were legitimate attempts to alert civilians of imminent attacks with a view to preventing civilian casualties, or whether they constituted prohibited forced displacement, is often hard to assess.

b) Restrictions on Freedom of Movement

Since the escalation of the hostilities, there have been restrictions by all parties to the conflict which have prevented IDPs from fleeing places of origin, or places of displacement, where they feel unsafe. In August, the Sri Lankan Navy (SLN), tried to prevent IDPs from fleeing Allaipiddy to Jaffna Town. The Sri Lankan Army (SLA) and the SLN also prevented IDPs from fleeing Muttur Town in late September, shortly after the mass returns, by erecting road and sea blockades.

In late 2006, the LTTE also reportedly prevented civilians, both residents and IDPs, from fleeing LTTE controlled parts of Vakarai. Some 31,900¹³¹ IDPs, most of them from Trincomalee District, were trapped for several months in LTTE controlled parts of Vakarai DS division between September and December 2006, and prevented from leaving the area by the LTTE, despite very poor humanitarian and security conditions. In one specific incident, 2,000 IDPs were reportedly prevented from fleeing by the LTTE following the shelling of Kathiravelly School by the SLA on 8 November, where over 6,000 IDPs were sheltering. In January 2007, the LTTE reportedly also prevented the first wave of IDPs from leaving LTTE-controlled parts of western Batticaloa District. Furthermore, in February and March 2007, families were prevented from seeking shelter in Madhu Church, Mannar District, despite fearing shelling and forced recruitment by the LTTE in their villages.

c) Forced Returns and Relocations

The case studies indicate that there has been an increasing disregard by all parties to the conflict for the rights of IDPs to choose their place of residence and to freedom of movement, and a failure to properly consult with IDPs about where they feel safe and where they wish to stay.

¹³¹ All statistics in this report are based on figures obtained from the various Government Agents responsible for the District.

The return of 35,000 Muslims to Muttur Town, Trincomalee District in early September 2006, marked the start of this trend. Although some of these returns were voluntary, others were not. The methods used to coerce IDPs to return included pressure from senior Government and military officials, heavy military presence at IDP sites, the issuance of deadlines beyond which public transport and assistance would no longer be provided, and threats to close down IDP sites and withdraw essential assistance and services. These methods were also used to force Muslim IDPs in Puttalam and Anuradhapura to return at the same time, and again later in September when a second wave of Muslim IDPs fled after a leaflet was distributed warning of imminent LTTE attacks to re-capture Muttur Town.

The same methods were used in September 2006, to persuade Tamil IDPs in Trincomalee Town & Gravets to return to Muttur DS Division. In December 2006, the security forces started to use more aggressive harassment and intimidation to coerce Tamil IDPs to leave. Armed military personnel visited IDP sites in the middle of the night, searched the premises, the IDPs and their belongings and took photographs of them. Despite this, relatively small numbers of Tamil IDPs in Trincomalee Town actually returned or relocated during this period.

Around the same time as IDPs were forced to return to Muttur, pressure was applied on IDPs in Jaffna Town to return to their coastal villages of origin in highly militarized areas southeast of Jaffna Town. The security forces forced the first group of over 5,000 IDPs at two displacement sites to return in September 2006. A second wave of forced returns occurred in October 2006, when the principals of schools and the priests at churches being used as IDP sites told IDPs that they had to leave or face repercussions from the SLA.

In Anuradhapura District, four hundred Sinhalese IDPs from "border villages" who had fled to displacement sites within the district following the bombing of a civilian bus in Kebithigollewa in June 2006, were also forced to return to their villages in September 2006, despite fears for their security in their villages.

In March 2007, an intensification of coercion in return movements, including in some cases the use of physical force, was witnessed in Batticaloa District. In February and March 2007, Government officials and the security forces started returning some 13,000 IDPs from government controlled areas of Batticaloa District to their places of origin in Vakarai (Koralai Pattu North DS division) and Trincomalee District. Although the initial returns to Vakarai were voluntary, nearly all the returns of IDPs to Trincomalee District, and some of the subsequent returns to Vakarai were forced. During all the return movements there was a very heavy presence of Sri Lankan Army (SLA), Special Task Force (STF), and in some cases armed and unarmed TMVP cadres, at IDP sites. Armed police and army personnel accompanied the IDPs on the return convoys, and in one instance a convoy was also accompanied by an armoured STF vehicle. Local officials told IDPs that their assistance would be withdrawn and said that they could no longer be responsible for IDPs' security if they remained in Batticaloa District. For the first time, there were documented reports of the security forces in the Chenkalady sites using physical force and issuing violent threats to force IDPs to leave.

The LTTE used similar methods to force IDPs to relocate. On 23 March, the LTTE started a campaign to remove IDPs from Madhu Church in Mannar District, where some 8,000 IDPs were sheltering, and move them to other parts of Manthai West DS division and Kilinochchi District. The LTTE organized buses to transport the IDPs and armed LTTE cadres used loudspeakers to issue deadlines to the IDPs to vacate the church, ordering them to leave their belongings behind. IDPs who were reluctant to leave were beaten with wooden sticks by LTTE cadres. By 7 April, there were only 38 families remaining in the church.

In preparation for the returns to Batticaloa West which started in May 2007, UNHCR held a series of consultations with the Minister for Disaster Management and Human Rights, the Minister for Resettlement and other high level Government Officials to improve the resettlement process. These discussions were fruitful and resulted in significant improvements in the resettlement to Vellavelly, Paddipalai and Vavunatheevu in Batticaloa West, and to Verugal in Trincomalee district. In particular, the movements were largely voluntary, the logistical process was much

better organized, information notices were distributed to IDPs during the return process, pre-return assessments were undertaken by the UN, return packages were enhanced, Ministry of Resettlement staff were deployed to oversee the process, and security screening was conducted in a more transparent and orderly manner, with the exception of the screening at the Verugal ferry crossing point which was conducted by masked men.

At the same time, the UN continues to work with the Government to strengthen other aspects of the return process including working towards further reducing the military's involvement in the resettlement process, ensuring that low-risk mine certificates are issued prior to return taking place, providing more timely information to the IDPs about the return process to allow them to make a truly informed choice about resettlement, ensuring the continued provision of assistance to those IDPs who do not wish to return, and enhancing the preparation of the resettlement areas particularly with regard to shelter and services before IDPs return. All these measures, including a Government recovery plan for the resettled areas and the implementation of Confidence Building and Stabilization Measures (CBSM) will further ensure the sustainability of these returns.¹³²

1.6 Advocacy Interventions and Government Response

The UN and other humanitarian agencies have made a number of advocacy interventions to both the Government and the LTTE on the issues contained in this report.¹³³ UNHCR has issued specific policy guidelines on return and relocation which it has shared with the Government, and has sought to engage with the Government on this issue on a number of occasions. In response to the returns from Batticaloa District in March 2007, the Inter-Agency Standing Committee also distributed a leaflet to IDPs in Batticaloa District informing them of their rights to voluntary return in safety and dignity and their right not to be forcibly returned.

The Government of Sri Lanka's main coordination function with regard to IDP issues lies with the Minister of Disaster Management and Human Rights. In early 2006 the Minister for Disaster Management and Human Rights established an IDP coordination forum which meets on a monthly basis and which provides an important mechanism for humanitarian agencies to raise issues, including protection concerns, with the Government. Many of the issues raised in this report have been reported at the IDP Coordination Meetings and the Hon. Minister Mahinda Samarasinghe has endeavoured to find solutions to these issues.

The Consultative Committee on Humanitarian Assistance (CCHA) which includes the Commissioner General of Essential Services, the Secretary to the Ministry of Foreign Affairs and the Secretary of Defense, as well as the UN and a number of key Ambassadors has proven to be a very useful mechanism to raise issues and ensure immediate follow up and commitments by Government. At the same time, it has been observed that there is often a significant time lag between commitments at the CCHA level and implementation of those decisions on the ground. The increased leadership of the Minister of Resettlement in improving the resettlement process in Eastern Sri Lanka since April 2007 has also allowed for more constructive dialogue on issues relating to the return process and there is continued scope for enhancing the process as well as ensuring the sustainability of the returns and the longer-term development of the resettlement areas.

1.7 Conclusion

The report makes a series of recommendations to the Government of Sri Lanka, the LTTE, humanitarian organizations and the international community for future action. In particular, it calls on both the Government and the LTTE to abide by their obligations under international

¹³² See the Addendum to this report for a summary of events from April to July 2007

¹³³ See Annex 5 for chronology of advocacy interventions

humanitarian law and to refrain from the forced displacement and forced return of IDPs, and from restricting IDPs' freedom of movement. It calls on all parties to refrain from indiscriminate attacks and deliberate targeting of civilians, which may result in mass forced displacement. It also calls on all parties to respect the strictly civilian and humanitarian character of IDP camps and settlements and to refrain from positioning armed military personnel in and around IDP sites.

Further recommendations are made to the Government on the establishment of conditions for voluntary and sustainable return in safety and dignity. Means of ensuring that IDPs can make free and informed decisions should be established, including objective information campaigns and "Go and See Visits". It is also recommended that IDPs are provided with effective return packages, including shelter and livelihood assistance.

As discussed in the report, the incidents documented indicate a trend for the disregard for the rights of IDPs, but also contravene fundamental principles of international humanitarian and human rights law. In addition, the report illustrates some of the challenges faced by the UN and other agencies working with IDPs in the North and East of Sri Lanka. Indeed, whilst interventions and advocacy efforts have been made with all parties, and some improvements have been noted over the past three months particularly with regard to the resettlement process in the East, further strengthening of the protection environment for displaced men, women and children in Sri Lanka is required.

The aim of this report is not only to document forced movements over the past year. As the report highlights, some 300,000 people have been internally displaced since the resurgence of the conflict in April 2006. A sustainable, durable solution must be found for these civilians, but one which respects their fundamental rights, including the right to be fully involved, and the right to make a free and informed decision. Within this context it is hoped that the recommendations will shape future action and ensure that the rights of those affected and displaced by the conflict are respected and upheld at all times.

2. Recommendations

a) To All Parties to the Conflict:

- Take all necessary measures to ensure that civilians are not forcibly displaced during the conflict, unless to safeguard their security or for imperative military reasons, as defined under international humanitarian law.
- Comply with all obligations under international humanitarian law. In particular refrain from putting civilians in harm's way by positioning military installations in populated areas, engaging in indiscriminate shelling and attacks, or deliberately targeting civilians in the course of the conflict.
- Respect the civilian and humanitarian character of IDP settlements.
- Where displacement/ evacuation during a conflict is unavoidable, ensure that it is carried out in conditions of safety and family members are not separated. Civilians should, where possible, be given advance notice and relocation should take place during reasonable hours of day. Evacuation should only continue as long as conditions require, and the basic needs of relocated civilians must be met.
- Ensure that IDPs are able to make free and fully informed decisions about return or relocation and can return voluntarily, in safety and dignity.
- Protect IDPs from forced return to areas where their life, safety, liberty and/ or health would be at risk.
- Consult fully with IDPs prior to any return or relocation movement to ascertain their views and concerns and to ensure that return is voluntary.
- Respect and uphold IDPs' rights to freedom of movement, in particular their rights to flee places where their lives or safety are in danger and to seek safety in other parts of the country.

b) To the Government of Sri Lanka:

- Comply with its obligations under international human rights law, in particular relating to freedom of movement, freedom to choose place of residence and voluntary return in safety and dignity.
- Uphold the fundamental right of all citizens to freedom of movement, as articulated in the Constitution of Sri Lanka. Ensure that emergency measures under the Public Security Ordinance are only applied on an individual, case-by-case basis and introduce tests of proportionality, necessity and reasonableness to ensure that measures taken to secure public security and public order do not deny civilians their fundamental rights to freedom of movement and freedom to choose place of residence.
- Ensure that all administrative measures imposing restrictions upon fundamental rights are subject to judicial review.
- Prevent armed groups from entering in or operating around IDPs settlements and from harassing, physically assaulting, abducting and forcibly recruiting IDPs, including minors, and threatening NGOs working in IDP sites. Ensure that those forcibly recruited by armed groups, including underage recruits, are released.
- Strengthen the capacity of the National Human Rights Commission to serve as a redress mechanism where IDPs can bring grievances about infringements of their freedom of movement and to investigate such grievances.
- Articulate and disseminate a clear and equitable policy on return packages and ensure that it is implemented in a prompt and transparent manner. Assist in the restitution of property

- and possessions of returnees, or provide appropriate forms of compensation or other forms of reparation, where IDPs so choose.
- Organize information campaigns in displacement sites to provide IDPs with information about conditions in places of return. This should include regular “Go and See Visits” to areas of origin once the security situation is deemed to be safe and basic infrastructure is in place to enable IDPs to visit their homes and help them reach decisions about return.
 - Respect IDPs’ decision not to return or relocate if they fear for their safety and continue to provide adequate food, shelter, assistance and security in places of displacement.
 - Allow UN agencies and NGOs free and unhindered access to monitor displacement sites and return areas and provide assistance and protection as necessary
 - Make necessary preparations to ensure that areas of return are safe, these include clearance of all mines and UXO; ensuring that return sites are not near military installations, high security zones, or areas of current or future shelling and fighting; or areas where armed groups are active. Take steps to prevent armed groups from operating in areas of return.
 - Make necessary preparations to ensure that basic infrastructure is in place to ensure a sustainable and dignified return. This includes provision/ restoration of basic shelter and housing reconstruction, food, water and sanitation, medical services, education facilities, public transport, places of worship and civil administration offices and access to viable livelihood activities.
 - Assist IDPs and returnees to replace lost personal identity documents which would facilitate their freedom of movement and provide them greater protection.
 - Ensure that security measures implemented under the State of Emergency, such as closure of the FDLs, road closures, curfews, security force registrations, “IDP cards”, security checks and travel restrictions, do not deny IDPs’ fundamental rights to freedom of movement or their rights to flee areas where their lives or safety are in danger.
 - Implement the Guidelines on Confidence Building and Stabilization Measures (CBSM) adopted by the Interministerial Committee on Human Rights in October 2006.
 - Continue to implement the decisions of the Consultative Committee on Humanitarian Assistance (CCHA) in a timely and effective manner on the ground.

c) To the LTTE:

- Allow civilians freedom of movement, including allowing them to leave areas under LTTE control without restrictions. Abolish the pass system which restricts civilians’ freedom of movement out of LTTE controlled areas.
- Do not hold IDPs in harm’s way by preventing them from leaving a place where their lives, safety and liberty is at risk.
- Refrain from forcible recruitment, including underage recruitment, of civilians including IDPs. Release all individuals forcibly recruited, including all individuals who were under 18 years of age at the time of recruitment.
- Refrain from positioning political and military personnel in and around IDP sites and from allowing armed cadres to enter IDP settlements, including to encourage return.
- Do not use threats of withdrawal, or actual withdrawal, of essential assistance, shelter, services and protection, as a means to encourage return or relocation to places where IDPs would be at risk.

- Respect IDPs' decision not to return or relocate if they fear for their safety and continue to provide adequate food, shelter, assistance and security in places of displacement.
- Facilitate free and unhindered access for UN agencies and INGOs to displacement sites and areas of return to monitor and provide assistance and protection as necessary
- Provide UN agencies and INGOs with detailed prior information regarding plans for the return, relocation or movement of IDPs.

d) To the International Community:

- Initiate bilateral interventions when violations of IDPs' freedom of movement and incidents of forced returns occur.
- Consider Government's respect for international human rights and humanitarian law, in particular in regards to IDPs' rights to freedom of movement, freedom to choose place of residence, and their right not to be forcibly returned when making policy decisions about bi- and multilateral cooperation.

e) To Humanitarian Agencies (UN agencies and NGOs):

- Issue information leaflets regarding rights to freedom of movement, freedom to choose place of residence and voluntary return to all IDPs
- Maintain protection through presence in IDP sites and continue to monitor and observe incidents of forced return and restrictions on IDPs' freedom of movement
- Continue to monitor and observe conditions in areas of return and provide assistance and protection as required
- Adopt a joint UN/NGO approach to monitoring, reporting, collation and dissemination of information
- Report all cases of restrictions of freedom of movement, forcible displacement and forced returns and relocations to UNHCR
- Inform the international community when violations of IDPs' rights occur and urge it to make prompt public and bilateral interventions
- Inform the international community when humanitarian agencies are denied access to IDPs.

f) To UNHCR:

- Raise all incidents of forced displacement, forced return and restrictions on IDPs' freedom of movement with the relevant local and central Government authorities, police and military and follow up as necessary.

3. Introduction

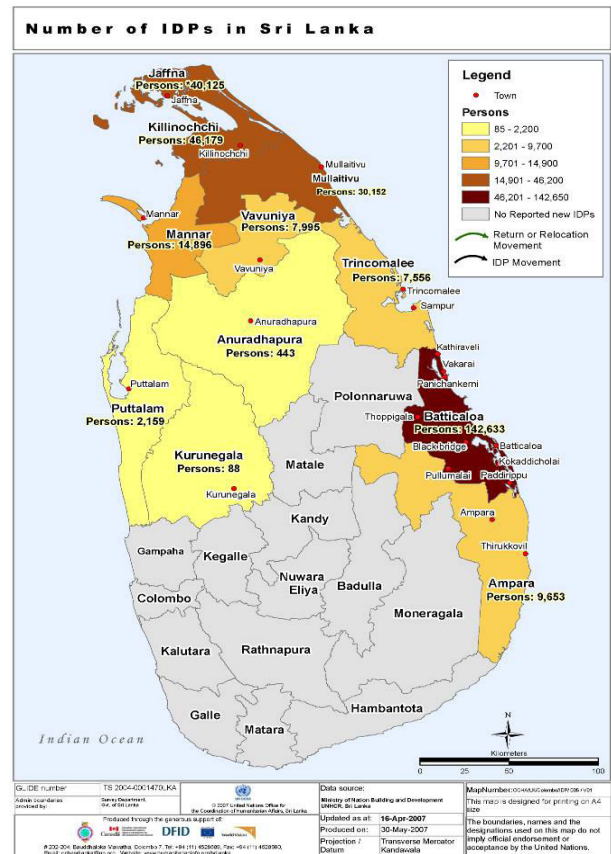
The security situation in Sri Lanka has deteriorated dramatically since April 2006, with the peace process effectively stalled and the resurgence of conflict and violence throughout the North and East of the country. The impact on civilians has been severe. Thousands civilians have been killed and many more have been wounded. Hundreds of thousands of people have been once again uprooted from their homes and forced to flee.

As of April 2007, more than half a million people are internally displaced in Sri Lanka. Of these, some 312,712 people were previously displaced as a result of armed conflict and violence and since April 2006 an estimated 301,879 people have been newly displaced.¹³⁴ Many people have been displaced multiple times, not only over the past decades of conflict, but also within the past year.

This report analyses how the conflict has affected the freedom of movement and safety of these internally displaced persons (IDPs). Drawing on specific case studies it documents how the actions of the parties to the conflict have affected population movements over the past year. On many occasions, IDPs' rights to freedom of movement and freedom to choose their place of residence have been violated. In some cases, IDPs have fled areas after receiving threats or warnings to leave. Elsewhere, IDPs have been caught in the midst of hostilities and prevented from leaving areas which the IDPs consider unsafe. Significant numbers of IDPs have been forced to either return to their places of origin, or relocate to alternative sites, against their will.

The report examines the case studies in the context of the national and international legal framework pertaining to IDPs. Specifically, it analyses the extent to which fundamental principles, particularly freedom of movement and freedom to choose one's place of residence, have been upheld. In this context, the report identifies a number of trends and patterns over the past year, of increased incidents of forced displacement of IDPs; forced returns and relocations; and restrictions on IDPs' freedom of movement, in particular preventing IDPs from seeking safety in another part of the country. The report also describes international organisations' public advocacy interventions to the Government and LTTE in an effort to stop such violations, and remedial actions taken by all parties.

The report makes a number of recommendations to all relevant actors to ensure that IDPs are protected against forced displacement, forced return and violations of freedom of movement; that IDPs' fundamental rights to freedom of movement and freedom to choose their place of residence are respected; and that principles of voluntary and sustainable return, in safety and dignity, are fully observed in practice.



¹³⁴ All statistics in this report are based on figures obtained from the various Government Agents responsible for the Districts. These statistics are consolidated in statistical reports issued by the Ministry for Nationbuilding and Estae Infrastructure and Development and UNHCR.

4. National and International Legal Framework

4.1 International Legal Framework

IDPs share the same rights and freedoms as other people in their country. In times of armed conflict, both international humanitarian law (IHL) and human rights law apply. Human rights law, which is binding on States, permits some limitation of movement-related rights under carefully prescribed circumstances.¹³⁵ IHL is binding upon all parties to the conflict and can not be subject to derogation or limitation. It provides more precise guidance on the application of certain human rights during times of armed conflict, and protects all civilians not directly participating in hostilities, including IDPs. While not a binding instrument *per se*, the *Guiding Principles on Internal Displacement* reflect and are consistent with both human rights law and IHL.¹³⁶ The *Guiding Principles* are the primary text identifying the rights and guarantees of international law as they relate to the specific protection and assistance needs of IDPs. As such, they are an essential reference for all actors working with internally displaced persons.

In particular, IDPs enjoy fundamental rights to freedom of movement¹³⁷ and freedom to choose their place of residence¹³⁸. International humanitarian law strictly prohibits the forced displacement of civilian populations during a conflict, unless it is necessary either to safeguard their security or for imperative military reasons.¹³⁹ The *Guiding Principles* also stipulate that civilians should be protected from arbitrary displacement from their homes in situations of armed conflict, unless there are compelling security or military reasons to do so.¹⁴⁰

IDPs also enjoy the right to seek safety in other parts of the country.¹⁴¹ As civilians, they are entitled to protection under international humanitarian law at all times, so long as they do not directly participate in hostilities. This includes protection from direct attack, from the effects of indiscriminate attack, and from use as “human shields” to insulate military objectives or geographic areas from attack.

IDPs also have a right to voluntary return, in safety and dignity, to their original places of residence, and it is the responsibility of competent authorities to establish the conditions and provide the means to enable such voluntary return.¹⁴² Under no circumstances may return be forced.¹⁴³ In limited circumstances a party may have reasons to evacuate or resettle IDPs from an existing location, although it is never legitimate to return IDPs to their original communities where risks to health, safety, or security remain.¹⁴⁴

4.2 National Legal Framework

¹³⁵ Limitations should be “provided by law, . . . necessary to protect national security, public order (*ordre public*), public health or morals or the rights and freedoms of others, and consistent with the other rights recognized in the present Covenant”. ICCPR, Art. 12(3). Limitations are provided for within the terms of the right itself, as opposed to derogations, which are made pursuant to Art. 4.

¹³⁶ *Guiding Principles on Internal Displacement*, UN Doc E/CN.4/1998/53/Add.2/Annex. The *Guiding Principles* are available in Tamil and Sinhala at www.brookings.edu/idp.

¹³⁷ ICCPR, Art. 12(1) (“Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence.”) See also Universal Declaration of Human Rights (UDHR), Art. 13(1) (“Everyone has the right to freedom of movement and residence within the borders of each State.”)

¹³⁸ ICCPR, Art. 12 (2)

¹³⁹ See Article 49 of the Fourth Geneva Convention and Article 13 of Additional Protocol II to the Geneva Conventions.

¹⁴⁰ Guiding Principle 6. GP 6.2 (b) is directly derived from International Humanitarian Law (see footnote 7 above).

¹⁴¹ See Guiding Principles 15 (a). Freedom of movement under international human rights law “means the right to move freely about the entire territory of a State Party” (Nowak, ICCPR Commentary, Article 12, para. 11). Thus if a person’s safety is at risk in one part of their country, the right to freedom of movement affords internally displaced persons the right to move and seek refuge in another part of the country. (See *Guiding Principles on Internal Displacement: Annotations*, Walter Kalin, Studies in Transnational Legal Policy, No. 32, American Society of International Law & Brookings Institution Project on Internal Displacement).

¹⁴² Guiding Principle 28 (1)

¹⁴³ Guiding Principle 15 (d) states that IDPs should be protected against “forcible return to or resettlement in any place where their life, safety, liberty and/ or health would be at risk.”

¹⁴⁴ See Annex for more detailed analysis of international legal standards.

Fundamental rights to freedom of movement and freedom to choose one's place of residence are safeguarded in the Constitution of Sri Lanka.¹⁴⁵ The right to freedom of movement is not subject to any geographical limitations within Sri Lanka. Nevertheless, these rights can be restricted if such restriction is set forth in law and is in the interest of national security, public order and the protection of public health or morality.¹⁴⁶

Restrictions on freedom of movement can be invoked under the Public Security Ordinance (PSO)¹⁴⁷, which empowers the President to declare a State of Emergency and adopt Emergency Regulations if s/he believes they are necessary "in the interests of public security and the preservation of public order".¹⁴⁸ A State of Emergency was declared in Sri Lanka in August 2005 following the assassination of Foreign Minister Lakshman Kadirgamar. Emergency Regulations were brought into force at that time and have been renewed on a monthly basis ever since. Several provisions of the Emergency Regulations allow for restrictions on freedom of movement. Emergency Regulation 18, for example, is broadly formulated and could be argued to fail the requirements of necessity and proportionality provided for under the ICCPR.¹⁴⁹ Section 7 of the PSO provides for the legal supremacy of the Emergency Regulations over any other law.

In addition to constitutionally prescribed restrictions that may be brought into force under the PSO, the Prevention of Terrorism Act (PTA), No. 48 of 1979 also allows for restrictions on freedom of movement. However, these restrictions apply to specific offences prescribed by this law and to individuals who commit these offences. Any further restrictions of freedom of movement, i.e. done through regulations under the Act would not fall within the definition of "law" relating to public security as envisaged by the Constitution, and as such do not constitute permissible restrictions on freedom of movement.¹⁵⁰

In clause 2.12 of the Ceasefire Agreement between the Government of Sri Lanka and the Liberation Tigers of Tamil Eelam signed on 22 February 2002, the parties agreed that search operations and arrests under the PTA should cease and that arrests should be conducted under due process of law in accordance with the Criminal Procedure Code. The Emergency Regulations introduced after the assassination of Lakshman Kadirgamar in August 2005 give wide powers to the armed forces to execute arrests and detentions outside the scope of the Criminal Procedure Code. In addition, both the President and the Prime Minister made statements in public that the PTA was to be reintroduced when the government introduced new Emergency Regulations in December 2006. The Sri Lanka Monitoring Mission no longer regularly receive complaints related to clause 2.12.

It is important to note, however, that although the Constitution allows for *permissible restrictions* to be imposed on the fundamental right to freedom of movement and freedom to choose place of residence, the Supreme Court has held that they can not be imposed with the result of *denying these rights*.¹⁵¹ Moreover, there is no express power in the law relating to public security, including Emergency Regulations, to control *group* freedom of movement, other than imposing curfews and the power to restrict access to areas where essential services are being carried out. Infringements of fundamental rights, including the right to freedom of movement, may only be challenged by application to the Supreme Court.¹⁵²

¹⁴⁵ The Constitution of the Democratic Socialist Republic of Sri Lanka (1978), Article 14 (1) (h) and (i),

¹⁴⁶ Article 15 (7) of the Constitution

¹⁴⁷ The Constitution identifies the PSO as the law dealing with public security in the event of a state of emergency or an imminent state of public emergency

¹⁴⁸ Public Security Ordinance No. 25 of 1947, Section 5 (1) states that the President may impose Emergency Regulations "as appear to him to be necessary or expedient in the interests of public security and the preservation of public order and the suppression of mutiny, riot or civil commotion, or for the maintenance of supplies and services essential to the life of community."

¹⁴⁹ Article 4 (1), International Covenant on Civil and Political Rights (ICCPR). See also ICCPR General Comment No. 29: States of Emergency (article 4), 31 August 2001, CCPR/C/21/Rev.1/Add.11,

¹⁵⁰ See *Thavaneethan v. Dayananda Dissanayake Commissioner of Elections and others*, SLR 2003 (1), pgs. 74 to 107, pgs 97 - 98

¹⁵¹ Sunil Kumara Rodrigo vs. R.K. Chandrananda de Silva, SC F.R. 478/97

¹⁵² See Annex for more detailed analysis on national legal standards.

5. Government Coordination and response mechanisms

The Government of Sri Lanka's main coordination function with regard to humanitarian and human rights issues relating to IDP lies with the Minister of Disaster Management and Human Rights. In early 2006 the Minister of Disaster Management and Human Rights established an IDP coordination forum which meets on a monthly basis and which provides an important mechanism for humanitarian agencies to raise issues, including protection concerns, with the Government. Many of the issues raised in this report have been reported at the IDP Coordination Meetings and the Hon. Minister Mahinda Samarasinghe has endeavoured to resolve these issues.

In response to a proposal by the Co-Chairs to set up a high-level coordinating and policy-making forum, the Minister of Disaster Management and Human Rights set up the Consultative Committee on Humanitarian Assistance (CCHA) which includes the Commissioner General of Essential Services, the Secretary to the Ministry of Foreign Affairs, the Secretary of Defense, the UN and a number of key Ambassadors. This forum, chaired by the Hon. Minister Mahinda Samarasinghe has proven to be a very useful mechanism to raise issues and ensure immediate follow up and commitments by Government. At the same time, it has been observed that there is often a significant time lag between commitments at the CCHA level and implementation of those decisions on the ground.

Most recently in April 2007, five sub-committees have been established in order to facilitate the work of the CCHA¹⁵³. The sub-committees, which are co-chaired by a representative of the Government and a UN agency, discuss and resolve operational issues that fall within their respective area and forward policy recommendations to the CCHA. The sub-committees have also been given the mandate to address post-resettlement challenges. The refinement of the coordination and decision-making mechanisms dealing with IDP issues has been an important development in the humanitarian agencies' interaction with the Government on protection issues. In April 2006, the Ministry of Disaster Management & Human Rights, with the support of UNHCR, drafted detailed guidelines on confidence building and stabilisation measures (CBSM) for IDPs in the North and East, which were approved by the Inter-Ministerial Committee on Human Rights in October 2006. Based on these guidelines three workshops were held out of which recommendations on five thematic issues were made: Civil-Military Liaison Committees, Human Rights, Community Involvement in Implementing the CBSM Guidelines, Reconstruction and Assistance, and Compensation and Effective Communication Policy. Most recently three independent consultants prepared an action plan for implementation of the CBSM guidelines. The activities in the action plan are intended to contribute to protection from displacement, protection during displacement, humanitarian assistance, and return, resettlement and reintegration of the displaced. Whilst the process has so far been limited to policy dialogue at Colombo level, it is hoped that the Government will implement the activities proposed under the action plan to address some of the concerns raised in this report.

The increased leadership of the Minister of Resettlement in improving the resettlement process in Eastern Sri Lanka since April 2007 has also allowed for more constructive dialogue on issues relating to the return process and there is continued scope for enhancing the process as well as ensuring the sustainability of the returns and the longer-term development of the resettlement areas.

¹⁵³ The five sub-committees address the areas of logistics and essential services, resettlement and welfare of IDPs, livelihoods, health, and education.

6. Trends and Analysis¹⁵⁴

Analysis of the case studies indicates that over the past year, a number of fundamental rights and freedoms pertaining to IDPs have been violated both by the Government and the LTTE. Whilst there are instances where remedial action has been taken, more needs to be done to ensure that the displaced's rights to be protected from forced displacement, to exercise their right to freedom of movement and to be protected from forced return and relocation are respected.

6.1 Forced Displacement of IDPs

6.1.1 International Legal Standards

International humanitarian law prohibits the forced displacement of civilian populations for reasons related to a conflict, unless such displacement is necessary to safeguard their security or for imperative military reasons.¹⁵⁵ Violation of this rule has been recognized as a war crime.¹⁵⁶ Indeed, pursuant to the *Guiding Principles* "Every human being shall have the right to be protected against being arbitrarily displaced from his or her home or place of habitual residence,"¹⁵⁷ including displacement in situations of armed conflict "unless the security of the civilians involved or imperative military reasons so demand."¹⁵⁸

International humanitarian law thus reflects the fact that there may be times during an armed conflict when displacement is unavoidable. Indeed, parties to a conflict have a duty to evacuate civilians from a combat zone and to take precautionary measures to spare civilians in the conduct of military operations.¹⁵⁹ When evacuation is required, however, it should continue only so long as conditions require. Displacement should be carried out in conditions of safety and family members should not be separated.¹⁶⁰ Where possible, civilians should be given advance notice, and the relocation should take place during reasonable hours of the day. The parties to the conflict must ensure that the basic needs of relocated civilians are fully met, including shelter, hygiene, health, safety and nutrition.

In order to assess the legality of forced displacement in situations of armed conflict, it is therefore necessary to determine whether or not there was a military imperative for such actions¹⁶¹ or whether such actions were necessary to safeguard civilians and evacuate them from areas of combat. In the absence of a military or humanitarian imperative, where displacement of civilians is part of a broader political or demographic strategy, for example, such actions would be a violation of international humanitarian law.

6.1.2 Incidents of forced displacement

There have been several incidents over the past year where IDPs have been forced to flee from areas due to warnings of imminent attacks or threats to civilians' safety issued by parties to the conflict. In some cases civilians have been given notice (of a matter of hours or days) to leave the area and warned that they will face repercussions if they do not leave. Many IDPs have indicated that they took such warnings seriously and heeded the direction to leave.¹⁶²

¹⁵⁴ See Annex for full case studies.

¹⁵⁵ See Article 49 of the Fourth Geneva Convention and Article 13 of Additional Protocol II to the Geneva Conventions.

¹⁵⁶ See *e.g.*, Rome Statute of the International Criminal Court, Art. 8 (2) (viii). Sri Lanka is not a party to this Treaty and therefore is not subject to the jurisdiction of the International Criminal Court.

¹⁵⁷ Guiding Principle 6.

¹⁵⁸ Guiding Principle 6.2 (b). This is directly derived from International Humanitarian Law (see footnote 21 above).

¹⁵⁹ Customary International Humanitarian Law, Rules 15, 22 & 24

¹⁶⁰ Guiding Principle 7(2); Customary International Humanitarian Law, Rule 131.

¹⁶¹ Under IHL the exception for "imperative military reasons" is strictly construed and requires a high burden of proof. The commentary of the International Committee of the Red Cross indicates that while the concept of "military necessity" as a ground for action requires "the most meticulous assessment," the addition of the qualifier "imperative" "reduces to a minimum [those] cases in which displacement may be ordered." It expressly prohibits political motivations, such as displacement "in order to exercise more effective control over a dissident ethnic group." This would equally preclude the use of a civilian population to consolidate control over a piece of land or territory.

¹⁶² Incidents of displacement due to the indiscriminate effects of hostilities, while constituting forced displacement, are not generally included in the report due to limitations of space.

a) Muttur, Trincomalee District: May 2006

On 29 May, handbills circulated in Muttur, Trincomalee District demanded that the Muslim community vacate the area within 72 hours.¹⁶³ The handbills were issued under the name of a group called *Tamil Eelam Motherland Retrieval Force*, and stated that Muslims should leave the area to enable the LTTE to regain Muttur. They condemned alleged collusion between the Muslim community and the security forces and paramilitary groups. The LTTE denied that it was responsible for issuing the handbills, but did not condemn the expulsion notice or take steps to avert an exodus. In the event, however, the Muslim community decided not to flee the area and there were no immediate hostilities.

b) Allaipiddy, Jaffna District: May 2006

On 19 May 2006, in Allaipiddy, Jaffna, following a series of serious security incidents, including the murder of 13 Tamil civilians on 13 May, a hand-written notice appeared telling villagers that this was the “last warning” to leave the area within three days. The notice implied that military offensives were imminent, and warned that “we are expecting heavy losses to the army in Allaipiddy”. The poster was supposedly distributed by a group called “*Makkal Padai*” (People’s Force), which was believed to be affiliated with the LTTE. Fearing violent consequences if they stayed, nearly all the villagers fled in the following days and most of them took refuge in churches in Jaffna Town.

c) Jaffna Coastal Areas: August 2006

On the evening of 11 August 2006, when hostilities resumed in the Jaffna peninsula, the Voice of Tigers (the official LTTE radio station) issued an announcement warning residents of Gurunagar, Passaiyoor, St Rocks and Columbuthurai, all highly militarized coastal areas south east of Jaffna Town, of imminent attacks and telling them to vacate the area immediately. Fearing that they may be caught in fighting between the SLA and LTTE, nearly all the villagers left the area the following morning (12 August) and sought refuge in schools and churches in Jaffna Town. The LTTE launched a seaborne attack on Allaipiddy on 11 August and there was exchange of fire between the LTTE and a SLA camp close to the areas from where residents had fled. There was, however, no direct LTTE attack on these coastal villages.

d) Muttur Town, Trincomalee District: September 2006

On 22 September 2006, following the mass return of Muslim IDPs after the fall of Sampoor to SLA forces in early September, a leaflet was distributed warning of imminent LTTE attacks to recapture Muttur Town from the SLA. The leaflet, entitled “A request to Muslims Living in Muttur” urged all Muslims to leave Muttur Town immediately to avoid being used as “human shields” by the security forces when the LTTE began its offensive. The leaflet was signed by an organization called *Liberation of Tamil Eelam Homeland*, and was initially attributed to the LTTE, although the LTTE subsequently denied any involvement. As a result, Muslim families began fleeing back to Kinniya, Kantale and Trincomalee Town. In the event, the LTTE did not launch a counter-attack and there was no resumption of hostilities in Muttur.

It is unclear whether these alerts were legitimate warnings to the civilian population to leave an area of potential hostilities, or part of a broader military, political or demographic strategy. The official Voice of Tigers announcement to residents of coastal areas of Jaffna on 11 August, for example, may have been a legitimate attempt by the LTTE to prevent civilian casualties by providing warnings of an imminent attack. At the same time, it could also have been part of the LTTE’s military strategy to clear civilians from the area in order to more freely attack SLA bases. In the case of the other three incidents in Allaipiddy and Muttur, there was no immediate resumption of hostilities after the warnings. Moreover, the source of the notices was disputed giving rise to questions about their legitimacy. These warnings may therefore have been attempts to instill fears in the population and induce displacement.

6.2 Restrictions on IDPs’ Freedom of Movement

¹⁶³ The population of central Muttur Town is more than 95% Muslim; although some outlying suburb GN divisions are predominantly Tamil.

6.2.1 National and International Legal Standards

All parties to the conflict have impeded and restricted IDPs' freedom of movement and freedom to choose their place of residence over the past year in violation of international human rights and humanitarian law. This is also a violation of civilians' fundamental rights to freedom of movement as safeguarded in the Constitution of Sri Lanka.¹⁶⁴

In particular, IDPs have been prevented from fleeing their place of origin to seek safety elsewhere in the country. The *Guiding Principles* uphold the right of IDPs to seek safety in another part of the country, a right that is implicitly guaranteed by international human rights law.¹⁶⁵ In addition, IDPs have been prevented from leaving areas of displacement where their lives and safety are in danger. This runs counter to provisions of International Humanitarian Law which protect civilians from direct attacks and the effects of hostilities.

More general conditions related to the security situation in the country have restricted IDPs' freedom of movement and at times impeded their ability to flee an area where their lives are in danger. These include closure of the FDLs, road blockades, security checkpoints and curfews.

6.2.2 Incidents of IDPs prevented from fleeing place of origin

Several examples have been documented whereby IDPs have been prevented from fleeing their places of origin even though they fear for their lives.

a) Allaipiddy, August 2006

On 11 August, when hostilities resumed in Jaffna, the LTTE engaged in a seaborne landing in Allaipiddy. Shelling into the area continued for 48 hours. The Philip Neri Church, where villagers were sheltering, was hit during the shelling and 33 civilians were killed and 10 civilians injured. As a result, villagers sought to flee Allaipiddy on 12 August, but were prevented from doing so by the SLN who were regrouped at the Allaipiddy – Kayts junction. Again, on 13 August, villagers tried to leave Allaipiddy but were stopped at the Allaipiddy/Kayts checkpoint and were prevented from going to Jaffna Town. The SLN, instead, allowed them to go to Kayts where they stayed until 23 August. On 23 August, the IDPs were allowed to move to IDP sites in Jaffna Town.

b) Muttur, September 2006

Following the distribution of a leaflet on 22 September warning of an imminent LTTE attack to recapture Muttur Town, Muslim families tried to flee back to Trincomalee Town, Kinniya and Kantale. The IDPs took the leaflet seriously and feared for their lives. The Muslim IDPs claimed that the fact that Tamil IDPs in Trincomalee Town had not returned to Muttur was evidence that the LTTE was planning a counter-attack. After the first groups of IDPs left by boat and bus, the Sri Lankan Army and Sri Lankan Navy prevented others from leaving, with road and sea blockades. These actions undermined IDPs' rights to freedom of movement and to seek safety in another part of the country, as stipulated in the *Guiding Principles*¹⁶⁶ and in the Constitution of Sri Lanka

Advocacy Interventions

UNHCR raised its concerns about security forces preventing IDPs from fleeing Muttur in a meeting with the Minister of Disaster Management and Human Rights, Hon. Mahinda Samarasinghe, on 3 October 2006.

c) Batticaloa District: January - March 2007

¹⁶⁴ The Constitution of the Democratic Socialist Republic of Sri Lanka (1978), Article 14 (1) (h) and (i).

¹⁶⁵ See *Guiding Principles* 15 (a). Freedom of movement under international human rights law "means the right to move freely about the entire territory of a State Party" (Nowak, ICCPR Commentary, Article 12, para.11). Thus if a person's safety is at risk in one part of their country, the right to freedom of movement affords internally displaced persons the right to move and seek refuge in another part of the country. (See *Guiding Principles on Internal Displacement: Annotations*, Walter Kalin, Studies in Transnational Legal Policy, No. 32, American Society of International Law & Brookings Institution Project on Internal Displacement

¹⁶⁶ See *Guiding Principles* 15 (a)

Between the end of January and the end of February, over 80,000 IDPs fled from LTTE controlled parts of Batticaloa District into Government controlled areas. The initial movements of IDPs on 26 January were from Vavunativu (Manmunai West), Kiran (Koralai Pattu South) and Chenkalady (Eravur Pattu) DS divisions, due to SLA shelling into these areas in the preceding days. Many people fled by boat across the lagoon, and were then either transported by IOM, or walked across the paddy fields to several different IDP sites. Although the IDPs reported that more people would be leaving on 27 January, this did not in fact materialize. There were reports that the SLA had blocked the main road from Vavunativu to Manmunai North and that the LTTE had prevented people from leaving by boat and with their belongings. Those who had fled had taken a sudden opportunity to come by boat, but others in their village had been stopped by the LTTE.

6.2.3 Incidents of IDPs prevented from fleeing places of displacement

Incidents have been documented over the past year where IDPs have been prevented from leaving their area of displacement, despite serious concerns for their safety and security.

a) Vakarai, September – December 2006

In LTTE controlled Vakarai (Koralai Pattu North DS division), Batticaloa District, more than 31,900¹⁶⁷ IDPs were trapped for several months, many of them prevented from leaving the area by the LTTE, despite very poor humanitarian and security conditions in the area. The IDPs were mostly originally from Trincomalee District,¹⁶⁸ and had fled their homes following military actions in April and August 2006. They had been pushed southwards as the lines of battle shifted, and had entered Vakarai in September 2006.

Many IDPs tried to flee the poor humanitarian and security conditions in Vakarai during October 2006, but were reportedly prevented from doing so by the LTTE. A small number managed to escape through the jungle at night and reach Government controlled areas, but the route was difficult and dangerous. On 8 November, the SLA shelled Vakarai, hitting Kathiraveli School where over 6,000 IDPs were sheltering. 49 people were killed and 125 injured. Some two thousand people reportedly tried to leave Vakarai via Panichchankerni following the shelling, but were prevented from doing so by the LTTE.

In December 2006, the security situation deteriorated further with regular shelling by the SLA into LTTE controlled areas of Vakarai. On 14 December, following a temporary lull in hostilities, large numbers of people left LTTE-controlled Vakarai via the jungle and arrived at Ridithena, a 12 hour walk. One group of IDPs explained that the LTTE had shot over their heads two days before to prevent them from leaving. While this group had managed to flee into the jungle, they said that the group of IDPs behind them did not follow. IDPs said that they believed that the LTTE was preventing them from leaving because their presence would deter the army from shelling the LTTE controlled areas. Other IDPs confirmed that the LTTE was trying to stop people from leaving.

By the end of December, a total of 25,000 IDPs had fled from LTTE controlled Vakarai into Government controlled areas of Batticaloa District. A further 10,000 IDPs arrived in early January 2007 and reported that everyone had left. The IDPs included previously displaced persons who had fled from Trincomalee District in August 2006, as well as residents of LTTE controlled Vakarai itself.

Advocacy Interventions

On 1 September 2006, UNHCR issued a formal *demarche* to the Government expressing its concerns about lack of humanitarian access to Vakarai and restrictions on civilians' freedom of movement due to cessation of public bus services and the closure of army checkpoints. On 12 December, the Office of the United Nations Resident and Humanitarian Coordinator in Colombo issued a public statement raising concerns about deteriorating conditions for civilians in Vakarai

¹⁶⁷ GA Batticaloa figures as at November 2006

¹⁶⁸ LTTE-controlled areas of eastern Muttur DS division and Eachchalamattai, as well as some from western Muttur DS division and Seruwila, and a few from Town & Gravets.

due to ongoing indiscriminate shelling into civilian residential areas. The statement called for civilian populations to be granted “full and unhindered freedom of movement away from military operations.” Throughout the months of September, October and November the SLA allowed sporadic, on average once a month access for UN and ICRC convoys to allow for essential humanitarian assistance to reach IDPs and residents in Vakarai.

6.2.4 General restrictions on freedom of movement due to conflict

Whilst freedom of movement across the whole of the North and East has been affected by, *inter alia*, curfews, security checks and road closures the situation in the North has been particularly severe. The closure of the FDLs following the escalation of hostilities in August 2006 has had a significant impact on the freedom of movement, as well as the livelihoods and general humanitarian situation of IDPs and the civilian population as a whole.

a) Jaffna

The permanent closure of the FDLs at Muhamalai since 11 August severely limited civilians' freedom of movement in and out of the district. The civilian population became increasingly desperate to leave the peninsula due to daily shelling, a grave increase in human rights violations including abductions, disappearances and killings, acute shortages of food, medicines and other supplies and the threat of a further escalation of the conflict. Travel out of Jaffna remains possible only by boat or air, however. The clearance procedure and the limited seats available have meant that people have sometimes had to wait for several weeks for completion of departure formalities. The imposition of a strict 24 hour curfew in Jaffna on 11 August severely restricted civilians' freedom of movement within the peninsula and prevented people from leaving dangerous areas. Residents of outlying islands, such as Kayts, Allaipiddy, Velanai, Karainagar and Mandaitivu, were particularly affected by such restrictions as the Government security forces feared LTTE infiltration amongst the civilian population. Residents of Mandaitivu Island, for example, were only permitted to leave the island on 23 August after hostilities began on 11 August, despite reports of massive displacement and heavy fighting between the LTTE and SLN on the island.¹⁶⁹

Advocacy Interventions

The UN and humanitarian agencies have made a number of interventions with the Sri Lankan Government regarding the situation in the Jaffna District. On 1 September 2006, UNHCR issued a formal *demarche* to the Sri Lankan Government expressing its concerns about the situation since the imposition of the 24 hour curfew. UNHCR requested the authorities to allow humanitarian access to Jaffna by road through LTTE controlled areas, as soon as the security situation permitted. It expressed concern that civilians were unable to leave potentially dangerous areas or carry out livelihood activities as a result of extended curfews and restrictions on freedom of movement.

b) Vanni

Movement into and out of the Vanni has also been restricted since August 2006. Limited access is permitted across the FDL at Omanthai for civilians, but is subject to a pass system implemented by the LTTE. This requires that when families are traveling, one family member always stays behind and stands surety that the others will return. The pass is issued only on the day of travel and consequently makes traveling out of Kilinochchi difficult and time-consuming for ordinary civilians.

Transportation of essential supplies across the FDL, including food, medicine and fuel has been severely restricted since August 2006, affecting the operation of many UN and other humanitarian agencies working in the Vanni. In a formal *demarche* to the Government on 1 September 2006, UNHCR expressed concerns about the closure of the FDL and the effects on the delivery of humanitarian assistance.

¹⁶⁹ A curfew remains in place in Jaffna, typically between the hours of 19:00 and 04:00.

6.2.5 Specific incidents of freedom of movement restricted by closure of FDLs

a) Jaffna

The sudden closure of the FDLs caused many civilians to be trapped. In Jaffna, a group of over 250 people from different parts of the country were stranded at Jaffna railway station after the Nallur Temple festival because of the closure of the A9 road. Although the pilgrims received security clearance from the SLA to leave Jaffna, in January 2007 they were still waiting to leave by boat. In mid-January, the SLA issued a deadline to vacate the railway station by 22 January 2007, but no alternative accommodation option was offered. On 24 January, the group was relocated to Tellipalai transit centre and they were able to leave on 30 January 2007.

b) Madhu Shrine, Mannar

In Mannar, hundreds of Catholic pilgrims who had traveled to Madhu Church for an annual religious festival in August became stranded when the LTTE refused to allow them to return to Jaffna due to the closure of the Madhu and Uyilankulam FDL checkpoints.¹⁷⁰ On 16 August, the ICRC negotiated for the checkpoint at Madhu to be opened for several hours to allow about 300 pilgrims, mainly from the south, to leave. However, the LTTE did not allow 750 pilgrims, most of them from Jaffna, to leave via the Madhu checkpoint as they had entered Madhu with passes from the Muhamalai checkpoint. The pilgrims were stranded until 10 November, despite the fact that the checkpoints at Uyilankulam and Omanthai had been opened intermittently for public movement. On 10 November, the pilgrims were able to cross the Uyilankulam FDL checkpoint and subsequently returned to Jaffna.

c) Vavuniya

Some 2,000 people, including separated children and unaccompanied minors, most of them from Jaffna and some from LTTE controlled areas, were stranded in Vavuniya due to the closure of the A9 road and the FDLs. At the end of September 2006, buses transported stranded Jaffna residents from Vavuniya to Trincomalee, where they were able to board two boats for Jaffna. A further 400 IDPs from Jaffna who were stranded in Vavuniya, 63 of whom were sheltered in Poonthoddam WC, returned to Jaffna by ship in October 2006.

6.3 Forced Returns and Relocations of IDPs

In the North and East of the country, IDPs have been exposed to varying levels of coercion or intimidation in order to encourage return, or relocation to alternative sites. In most cases, such coercion has been carried out by Government officials and security forces. However, the LTTE also forcibly relocated IDPs from Madhu Church, Mannar District in March 2007.

It is clear that the vast majority of IDPs do wish to return to their communities – the question they face is when to do so. Many IDPs forced to return or relocate fear for their safety and security. Some fear that the fighting, inter-communal violence and human rights abuses which they originally fled have not ceased. Others fear that they may be subject to retaliatory attacks by Government Security Forces if there is a security incident in the return areas. Still others fear forced recruitment by armed groups if they return. They are also concerned about the presence of landmines and unexploded ordnance (UXO). Moreover, in many areas, IDPs are concerned about the lack of public infrastructure and services to support their return. In some communities, homes, hospitals, schools and other facilities have been damaged or destroyed in the fighting. UNHCR has raised its concerns on numerous occasions with the Government of Sri Lanka, and more recently with the LTTE, regarding the forced return of IDPs. UNHCR has also issued several policies and guidelines on return to assist the Government in planning return and relocation movements. UNHCR has stressed that returns should be voluntary, in safety and with dignity, and must also be sustainable. IDPs should be fully involved in planning for return and protected against forced return to any place where their life, safety, liberty and/ or health would be at risk. UNHCR has also urged that adequate assistance should be provided in displacement

¹⁷⁰ Madhu is in an LTTE controlled part of Mannar District

sites for those IDPs who choose not to return. UNHCR and WFP have undertaken joint advocacy to raise the issue of non-provision of food as a way of coercing IDPs into premature or involuntary return. The non-provision of assistance should not be used as a method to encourage return, nor should threats to withhold assistance if IDPs choose to remain be used.

In preparation for the returns to Batticaloa West which started in May 2007, UNHCR held a series of consultations with the Minister of Disaster Management and Human Rights, the Minister of Resettlement and other high level Government Officials to learn lessons from the past and improve the resettlement process. These discussions were fruitful and resulted in significant improvements in the resettlement to Vellavelly, Paddipalai and Vavunatheevu in Batticaloa West, and to Verugal in Trincomalee district. In particular, the movements were largely voluntary, the logistical process was much better organized, information notices were distributed to IDPs during the return process, pre-return assessments were undertaken by the UN, return packages were enhanced, Ministry of Resettlement staff were deployed to oversee the process, and security screening was conducted in a more transparent and orderly manner, with the exception of the screening at the Verugal ferry crossing point which was conducted by masked men.¹⁷¹

At the same time, the UN continues to work with the Government to strengthen other aspects of the return process including working towards further reducing the military's involvement in the resettlement process, ensuring that low-risk mine certificates are issued prior to return taking place, providing more timely information to the IDPs about the return process to allow them to make a truly informed choice about resettlement, ensuring the continued provision of assistance to those IDPs who do not wish to return, and enhancing the preparation of the resettlement areas particularly with regard to shelter and services before IDPs return. All these measures, including a Government recovery plan for the resettled areas and the implementation of Confidence Building and Stabilization Measures (CBSM) will further ensure the sustainability of these returns.

6.3.1 International Legal Standards

The *Guiding Principles* provide that internally displaced persons have “the right to be protected against forced return to or resettlement in any place where their life, safety, liberty and/ or health would be at risk.”¹⁷² They also give specificity to the fundamental principles of voluntary return in safety and dignity, stating that “competent authorities have the primary duty and responsibility to establish conditions, as well as provide the means, which allow internally displaced persons to return voluntarily, in safety and with dignity, to their homes or places of habitual residence”.¹⁷³

As part of their obligation to facilitate *voluntary* return, authorities should provide IDPs with full and objective information to enable them to decide freely where they want to live. IDPs may choose to integrate locally at the site of displacement, to return to their original communities, or to resettle in a third part of the country. Should IDPs wish to return, the authorities should facilitate “Go and See Visits” by IDPs prior to their actual return.

To support *sustainable* return, the authorities should ensure that IDPs feel safe and secure and free from harassment and intimidation. IDPs should be able to repossess their homes and properties and return to their lives as normally as possible. Thus they should have access to basic services, schools and livelihoods without discrimination.¹⁷⁴

The right to return *in safety* imposes a duty on the Government to ensure the safety of a returning population, such as clearance of land mines and UXO. The right to return in *dignity* includes the provision of basic assistance such as shelter, food, water, medical care, agricultural tools, seeds and basic household items.

6.3.2 What is “forced return”?

¹⁷¹ Details of developments during the period April – July 2007 are included in the addendum to this report.

¹⁷² Guiding Principle 15 (d)

¹⁷³ Guiding Principle 28 (1)

¹⁷⁴ See the recently adopted United Nations IASC Operational Guidelines on Human Rights and Natural Disasters for a full discussion of “sustainable” conditions for return. Though developed in the context of disaster-induced displacement, these indicators would also apply to the return of IDPs displaced by conflict. IASC Operational Guidelines on Human Rights and Natural Disasters, June 2006, §D.2.2.

The concept of “forced returns” used in this report encompasses all forms of coercion intended to make IDPs return to their place of origin or relocate to alternative sites in the absence of a voluntary and informed choice. Forced return is not limited to the actual use of physical force, but covers a whole spectrum of coercive methods. These include threats to cut food, water, electricity and other essential assistance and services if IDPs fail to return; closing sites where IDPs are sheltering; preventing or deterring humanitarian agencies from providing assistance to IDPs beyond deadlines for return; refusing to register IDPs or issue Family Cards and issuing deadlines for return beyond which public transport and assistance are no longer provided. The reduction, or withdrawal, of assistance and basic services makes living conditions so substandard in places of displacement, that IDPs feel forced to return.

Threats by Government authorities and security forces that they will no longer be responsible for IDPs’ safety and security if they fail to return or relocate have also induced IDPs to leave. In the current climate of serious protection problems for IDPs, including risks of abduction and killings, the threat to withdraw protection is taken seriously by the IDPs.

At times IDPs have been required to sign lists prepared by local Government officials indicating their names and places of origin. These lists have been used by the Government as proof that returns are voluntary and the IDPs have given their written consent to return. However, many IDPs claimed that they were not informed that by signing the lists they were giving their consent to return home.

The heavy presence of armed police, security forces and other armed groups at IDP sites prior to and during return movements creates an environment where IDPs are unable to make free and informed choices about whether or not to return. It can also undermine the civilian and humanitarian character of IDP camps and settlements. The presence of senior Government and military officials at displacement sites prior to and during returns has also been used to pressure IDPs to return. IDPs have indicated that they fear the repercussions if they do not return.

At the same time, IDPs have been given misleading, inaccurate or incomplete information about conditions in their places of origin or in relocation sites which prevents them from making free and fully informed decisions about return. In some cases, IDPs have been encouraged to return or relocate with promises of assistance, shelter, livelihoods, security and full compensation for their property and livelihoods lost as a result of displacement. For many IDPs, conditions are so poor in displacement sites they agree to return if they are promised better living conditions, despite very real fears for their safety and security. However, in many instances such assistance, security and compensation fail to materialize and IDPs regret their decision to return. While the Government has a responsibility to establish the conditions for a safe and sustainable return, this should not mean it ceases to provide safe and habitable conditions at sites of displacement.

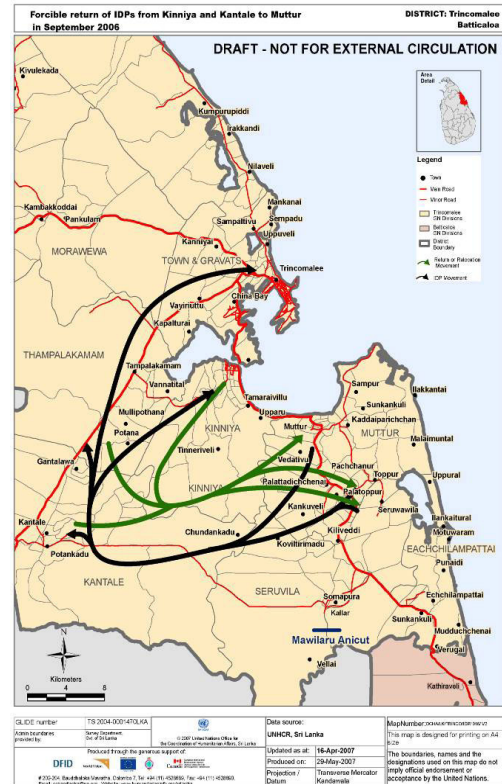
Between April 2006 and March 2007, there were no documented incidents of physical force being used to compel IDPs to return to their place of origin, or resettle elsewhere. In March 2007, however, security forces used physical force in several instances to return IDPs from Batticaloa District to Trincomalee District. During the forced evacuation of Madhu Church, Mannar District, in March 2007, the LTTE also used physical force and the threat of force to move IDPs out of the church.

6.3.3 Incidents of forced return

Eight main episodes of forced return have occurred over the past year across the North and East of the country.

a) IDPs from Muttur: September 2006

The forced return of some Muslim IDPs from Muttur in September 2006 set the trend for subsequent forced returns throughout the North and East. In July 2006, the LTTE closed the sluice gates at Maavil Aru, in Serunuwara area, Trincomalee District, thus cutting off access to water and preventing irrigation for tens of thousands of villagers from all ethnic communities (the majority of them Sinhalese), living downstream. The LTTE claimed that they were acting in response to government blockades on food and other supplies into the LTTE controlled areas of eastern Muttur following the LTTE suicide attack on the Army Commander, General Fonseka, in April 2006. The government launched an offensive against the LTTE to re-open the sluice gates and the LTTE launched a counter offensive, seizing control over parts of Muttur. As the fighting between the LTTE and Government forces for control over Muttur Town escalated into August, thousands of Muslims fled from Muttur Town to Kantale town, and then into Thampalakamam, Kinniya and Town & Gravets DS divisions in Trincomalee District. By the end of August, nearly 50,000 people were displaced in Trincomalee District. Smaller numbers fled to Batticaloa, Ampara, Anuradhapura and Puttalam Districts.



Forcible return of IDPs from Kinniya and Kantale to Muttur in September 2006

When Government forces captured Sampoor on 4 September 2006, local Muslim community leaders, Muslim politicians, central and local Government authorities and the security forces began to exert pressure on the Muslim IDPs to return to Muttur Town. This included, high profile visits to IDP sites by senior Government officials and Muslim leaders who made public announcements instructing IDPs to return; the issuance of deadlines for return and the provision of free transport only within those deadlines; threats of withdrawal of food, water, electricity and basic assistance and other services if IDPs failed to return; instructions to NGOs to discontinue assistance and services to IDPs; and heavy military and police presence at IDP sites.

The Government was keen to re-establish control and restore Muttur Town to a state of normalcy as quickly as possible. At the same time, Muslim leaders were keen to re-establish the Muslim community in Muttur Town and avoid prolonged long-term displacement as had occurred in other places, (such as Puttalam).

UN agencies and humanitarian organizations expressed serious concerns about such an early return as the frontlines remained unstable, the possibility of UXOs in and around Muttur Town, and concerns that many homes and properties had been damaged in the fighting.

The first group of returns from Kantale to Muttur, (4 – 7 September), were voluntary. IDPs were keen to leave the poor living conditions in Kantale and eager to return home before Ramadan started (24 September) and to allow their children to go back to school. But from 7 – 11 September, those IDPs who had not returned in the previous days came under increasing pressure from the authorities to return (as described above). On 12 September 2006, UNHCR issued a formal *demarche* to the Government of Sri Lanka expressing its concerns about the non-voluntary nature of some returns of Muslim IDPs to Muttur. However, by 12 September all the Muslim IDP sites in Kantale, Town & Gravets, Kinniya and Thampalakamam were empty and 35,000 IDPs had returned to Muttur.

When over a thousand returnees fled for the second time to Trincomalee Town, Kinniya and Kantale on 22 September 2006, in response to a leaflet warning of imminent LTTE attacks to re-capture Muttur Town (discussed above), the Government authorities and security forces again forced them to return. The Government refused to provide any assistance or shelter to the IDPs and denied NGOs access to the sites. The authorities maintained that it was safe for the IDPs to return to Muttur. The IDPs, however, took the warning of imminent LTTE attacks seriously and were afraid to go back. The authorities prevailed and by the end of September, most of the IDPs had returned to Muttur. As before, government buses were provided to transport the IDPs and the police and security forces maintained a heavy presence at IDP sites during the returns. IDPs claimed that due to the lack of assistance and pressure from the authorities, they had no real choice but to return, although many of them still had doubts and fears. In the event, however, there was no LTTE counter-attack on Muttur Town.

Similar methods were used to force Muslim IDPs in Anuradhapura and Puttalam Districts to return to Muttur Town during September.

by the fighting. They wanted assurances that assistance would be provided in formerly LTTE controlled areas if they returned.

At the end of November, UNHCR formally communicated its position on return and relocation to the Government. UNHCR stated that returns should be voluntary and directly to IDPs' homes, rather than to relocation sites. Moreover, UNHCR indicated that the relocation site in Killiveddi was not suitable due to the prevailing security situation (see below for more details).

Contrary not only to UNHCR's advice and the concerns expressed by other UN agencies and NGOs, but also to assurances from the Government itself that it would not forcibly return IDPs, the Government did relocate Tamil IDPs to Killiveddi in early December. From the end of November, security forces visited displacement sites in Trincomalee Town regularly at night, searching the premises, the IDPs themselves and their belongings. They checked the IDPs' identities and often photographed them. Military personnel told IDPs that they had to return to their villages and threatened an increase in round-ups, arrests and detentions, if the IDPs refused to return. The IDPs stated that they feared retaliation by the security forces if they failed to follow instructions and some IDPs claimed that the forces warned them against speaking to humanitarian agencies about these issues.

The largest return occurred on 2 December, when 66 families from the Cultural Hall site in Town & Gravets were returned on Government buses to Muttur. Some 50 security personnel and police accompanied their return. The majority of IDPs were from Killiveddi. Government authorities and security forces continued to put considerable pressure on IDPs in the other sites in Trincomalee Town to return, including coming to IDP sites at night and conducting searches and round-ups. As a result, by the end of December smaller numbers of IDPs had returned from these sites. Although pressure on IDPs in Town & Gravets to return eased somewhat in January 2007, it increased again in February and March at the same time as returns from Batticaloa District were taking place. Local government officials visited many of the Town & Gravets sites to persuade the IDPs to relocate to Killiveddi and threatened that their assistance would be withdrawn if they did not return. However, no deadlines for return were given and there were no direct threats of closing the IDPs sites. The IDPs did not want to be relocated to Killiveddi, for security reasons and because of reports that the transit site lacked basic facilities. They said they wanted to return directly to their homes in eastern Muttur as soon as possible.

Advocacy Interventions

In early November 2006, UNHCR met with the Governor of the Northern and Eastern Provinces and the Minister of Disaster Management and Human Rights to raise concerns about the planned relocation of 150 families to Killiveddi. At this meeting, the Governor and Minister agreed to postpone the relocation until December.

On 29 November 2006, UNHCR formally communicated its position on return and relocation and the proposed Killiveddi relocation site to the Minister of Disaster Management and Human Rights, the Hon. Mahinda Samarasinghe. UNHCR said that it would assist the Government in facilitating the return of IDPs in Trincomalee Town who were displaced from Killiveddi if it was assured that returns were truly voluntary. UNHCR said that it believed return should be directly to IDPs' homes, rather than to a relocation site. UNHCR's involvement in relocation would be dependent on voluntariness and considered on a case by case basis. UNHCR also said that the site identified by the Government in Killiveddi was unsuitable due to the prevailing security situation in the area. In addition to the letter, UNHCR also issued a note to the Government outlining the basis for its involvement in any return or relocation exercise.

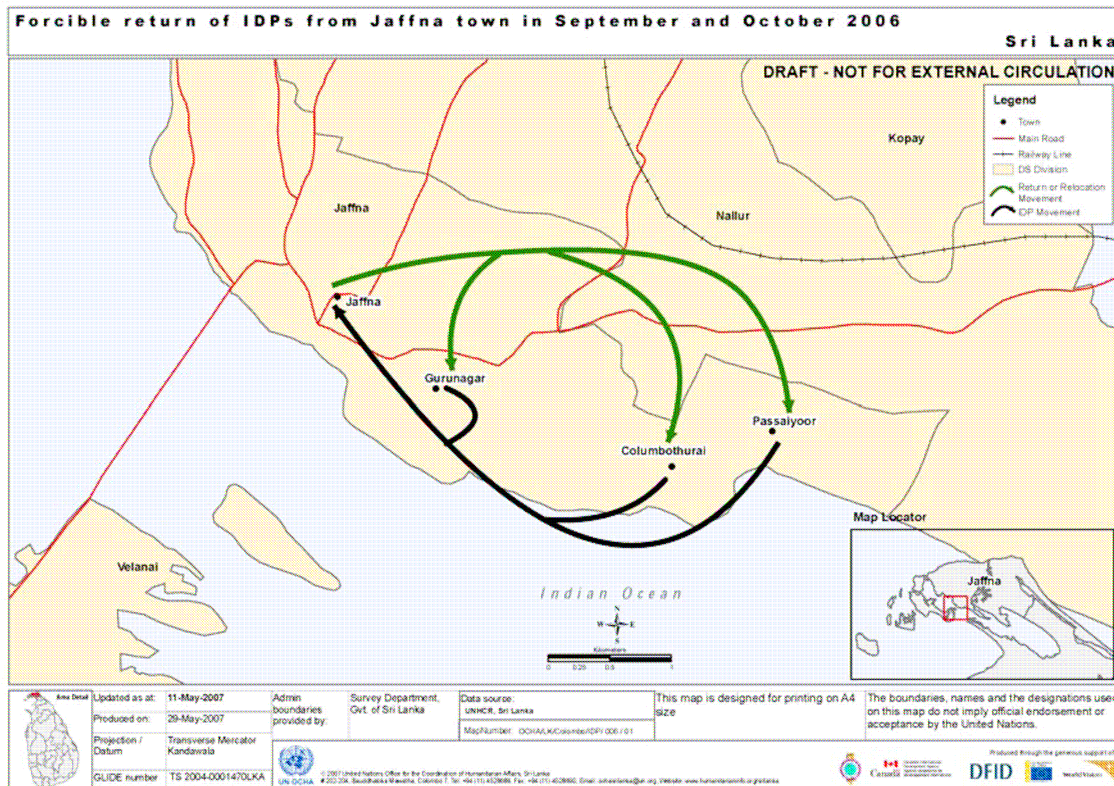
On 5 December 2006, UNHCR issued a formal *démarche* to the Government of Sri Lanka on the forced returns of five busloads of Tamil IDPs to western Muttur DS division on 2 December. UNHCR expressed concerns about the military and police entering displacement sites in Town & Gravets at night and threatening IDPs and reiterated that IDPs in these sites had consistently said they did not feel it was safe to return. There are still serious concerns relating to the conditions in the displacement sites and the non-provision of food to these IDPs.

c) Jaffna Town: September & October 2006

At the same time as IDPs were being forced to return to Muttur Division in September 2006, IDPs from militarized coastal areas bordering the high security zone (HSZ) south east of Jaffna Town, (such as Gurunagar, Passaiyoor, St Rocks and Columbuthurai) were also under pressure to return to their villages of origin.

The IDPs had fled their villages on 12 August after the Voice of Tigers issued a warning of imminent attacks in the area and told residents to leave. The IDPs sought refuge in Temporary Accommodation Centres (TACs) in schools, colleges and churches in Jaffna Town, but many of them returned to their homes during the day time to continue with daily livelihood activities.

The IDPs were afraid to remain in their homes during the nights because of the ongoing shelling and fighting between the SLA and LTTE. They feared that the night-time curfew throughout the Jaffna peninsula, which was imposed on 11 August, would prevent their escape if an attack took place at night. They were also afraid of the ongoing cordon and search operations and the high incidence of 'white van' abductions and disappearances during curfew hours. Some people had experienced harassment by the SLA when they had tried to return to their villages on previous occasions; others wanted guarantees from the LTTE that they would not attack the coastal areas after the Voice of Tigers warning on 11 August.



Forcible return of IDPs from Jaffna town in September and October 2006

Forced returns from Jaffna Town occurred in two stages. The first wave took place on 22 September when the SLA rounded up over 1,000 IDP families (5,440 individuals) at St. Patrick's College and St. Charles' College TACs and instructed them to return to their villages. The men were separated and taken outside into the school ground. Twelve men from both sites were arrested and released the following day without charges. The SLA maintained a heavy presence at both sites and prevented UN agencies and other humanitarian organizations from entering the premises. By the end of the month the TAC had closed and all the IDPs had returned to their homes, despite representations made by UN agencies to the local security forces.

The second wave of returns from took place in early October 2006. This time the principals of schools and the priests at churches in Jaffna Town being used as TACs issued an ultimatum to the IDPs to leave, on the grounds that school classes must resume. The school principals and priests indicated that they were under pressure from the authorities to persuade the IDPs to go home and told IDPs that they would face problems with the SLA if they remained.

During follow-up visits to the places of return, UN agencies found that most families were too afraid to stay in their homes at night and continued to stay elsewhere, either with host families or in empty houses. Those families who returned to their homes were living in fear, with their bags packed ready to leave quickly if necessary.

It is clear that there was a Government policy to return IDPs back to their homes in coastal areas. This may have been to “normalize” the situation in Jaffna Town. It may also been because of pressure on the schools for classes to resume and concern amongst school principals and priests about damage to public buildings caused by the IDPs. There have also been allegations that the SLA may have forced IDPs back to the highly militarized coastal zones to deter further LTTE attacks. Such actions could potentially have placed civilians in harm’s way.

Advocacy Interventions

Interventions were made on this issue by the UN, and in a meeting with the Minister of Disaster Management and Human Rights, Hon. Mahinda Samarasinghe, on 3 October 2006, UNHCR raised concerns about the forced returns of some 5,400 IDPs from Jaffna Town to their places of origin in coastal villages against their will. No further forced returns were witnessed in Jaffna but there are reports of pressure being exerted on IDPs from Allaipiddi to return prematurely.

d) Anuradhapura: September 2006

At the end of September 2006, some 400 Sinhalese IDPs from “border villages” in Kebithigollewa, Anuradhapura District, who had fled following the bus bomb in June 2006, were forced back to their villages. The authorities gave IDPs a week to vacate the camps before food, water and electricity supplies would be cut. IDPs were told by the authorities that if they left before 1 October buses would be provided, after that time they would have to find their own transport. Police, army personnel and home guards assisted the IDPs to dismantle their shelters and pack up their belongings. Many of the IDPs said that they did not feel safe returning to their places of origin, but they felt they had no option but to leave. By the end of September, the IDPs sites were empty.

Although the SLA had built bunkers for the returnees and fortified the area, many returnees said they did not feel safe returning to their homes and had found alternative places to live. They feared LTTE infiltration and were too afraid to go out to work or send their children to school. Many of them lacked viable livelihood opportunities and their food rations were cut once they returned.

The return of the IDPs to Kebithigollewa may have been part of a national effort to restore a semblance of normalcy. It may also have served to re-populate the Sinhalese border villages to prevent LTTE attacks.

Advocacy Interventions

In a meeting with the Minister of Disaster Management and Human Rights, Hon. Mahinda Samarasinghe, on 3 October 2006, UNHCR raised concerns about the forced return of Sinhalese IDPs to Kebithigollewa.

e) IDPs from Seruvila, Trincomalee District, January 2007

In early January 2007, over 4,000 Sinhalese IDPs, who had fled LTTE shelling in early December and were staying in IDPs sites in Kantale, came under pressure from the local Government authorities and police to return to their homes in Seruvila. Government buses were provided to take IDPs back and most of the IDPs seemed happy to return. A few IDPs, most of them from

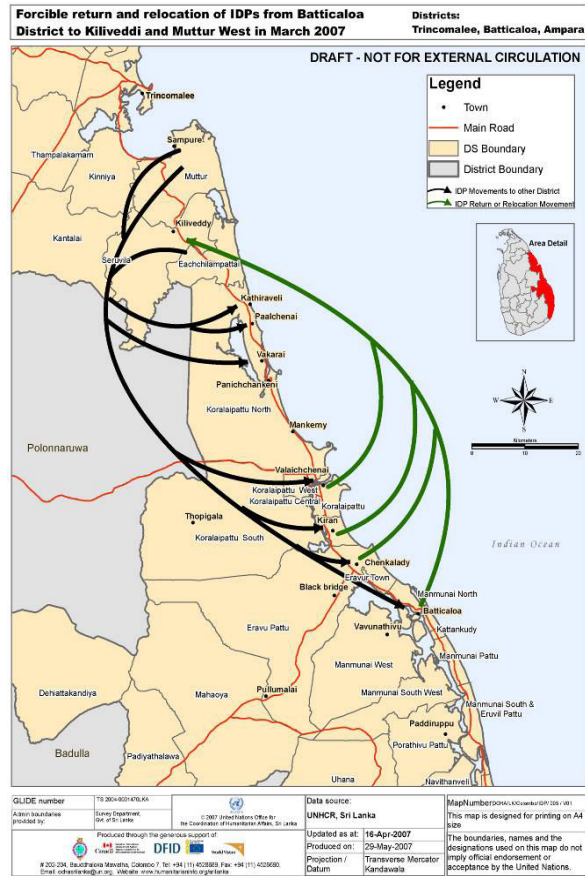
Kallar and Somapura where the shells had landed, remained behind as they had serious concerns about return and wanted better security assurances from the government.

On 6 and 9 January, however, following renewed heavy LTTE shelling into Seruvila, many of the people who had returned fled back to Kantale. IDPs confirmed that there had been intensive shelling and the SLA had told them to leave. Following the fall of Vakarai to Government forces on 19 January, the authorities started once again to plan for the return of the IDPs. Most of the IDPs said that they would be happy to return to Seruvila if the SLA said that it was safe to return. Some IDPs were still concerned about their safety, as well as damage to their homes and properties and the infrastructure due to shelling. By the end of January, UNHCR reported that all temporary IDP sites in Kantale were empty and the IDPs had returned.

f) Returns from Batticaloa District to Trincomalee District: March 2007

In February and March 2007, following the capture of Vakarai by Government forces, there was a further effort by the Government and security forces to remove IDPs from Government controlled areas of Batticaloa District and return them to their areas of origin in Trincomalee District and Vakarai DS division. These returns took place in the context of a mass influx of over 80,000 IDPs who fled from LTTE controlled parts of western Batticaloa District into government controlled areas from January onwards and put enormous pressure on services and resources in the district. The security situation in many of the IDP sites also deteriorated significantly during this period.

Over 25,000 IDPs in Batticaloa District were from Trincomalee District. They were mostly from formerly LTTE-controlled eastern Muttur and Eachchalampattai divisions, as well as from Government controlled western Muttur and Seruvila DS division. Many of the IDPs had initially fled to Vakarai following the escalation of hostilities in Trincomalee, but were displaced from Vakarai in December 2006 and January 2007 to other areas of Batticaloa District. Many of them had been displaced multiple times prior to this.



Forcible return and relocation of IDPs from Batticaloa District to killiveddi and Muttur West in March 2007

Go and See Visits

In February 2007, the Government Agents of Batticaloa and Trincomalee District organized “Go and See Visits” (GSVs) for IDPs from Trincomalee District staying in Batticaloa District to nine GN divisions in the western part of Muttur DS division. Out of over 2,800 IDPs whose homes were in Muttur West DS division, 23 participated in the GSVs. No other GSVs were organized and IDPs had very little information on which to base decisions about return.

Planned Return

The plan for the return of IDPs to Trincomalee District, agreed to by the Government, UNHCR and other UN agencies in February 2007, entailed an initial staggered return back to western parts of Muttur DS division. UNHCR had sought assurances from the Government that return would be voluntary, in safety and dignity, and based on free and informed decisions by the IDPs. UNHCR also sought assurances that the military would not be involved. It was agreed that return directly to IDPs’ homes and places of origin was preferable to relocation to an intermediate site.

Return to eastern Muttur DS division and Eachchalampattai was not envisaged until conditions were safe and conducive for return.

Forced Returns from Batticaloa

This plan was not adhered to when the return movements started on 12 March. Armed police, the SLA, STF, and on some occasions armed and unarmed TMVP members, were heavily involved in the returns and IDPs reported feeling considerable pressure to return.

By 21 March, 3,021 IDPs (938 families) had been returned to Trincomalee District from Batticaloa. Of these, 1,866 IDPs (588 families) were still at Killiveddi transit site on 21 March (the majority of them from eastern Muttur, as well as 517 persons (145 families) from Eachchalampattai and 112 persons from Seruvila¹⁷⁶) and the remainder had either returned to their homes or were staying with host families.

12 March Returns

Returns to the nine GN divisions in western Muttur and Seruvila DS division, where GSVs had taken place, were scheduled for 12 March from collection points in six DS divisions in Batticaloa Town. Notice was given to IDPs and humanitarian agencies that IDPs would return to their homes after spending several days at the Killiveddi transit sites.

On 12 March, 920 IDPs (out of the 2,800 IDPs included in the Government's resettlement plan) returned on approximately 21 buses to Killiveddi in Trincomalee District. Joint UN/NGO teams monitored the departures in Batticaloa and reported that virtually none of the returns were voluntary or based on free and informed decisions by the IDPs.

Government officials and security forces threatened IDPs that assistance would be cut if they refused to leave and that their Family Cards, which entitled them to free rations, would be confiscated. Local authorities told IDPs that they could no longer be responsible for their security if they remained in Batticaloa District. At the same time, the authorities promised IDPs assistance and compensation in full for lost or damaged property if they returned.

There were no Government surveys to ascertain IDPs' views about return and no proper system for collecting consent forms from IDPs indicating that their return was voluntary. On the contrary, many IDPs signed letters expressing their wish not to return and delivered them to their local DS offices.¹⁷⁷ Return lists were not systematic and did not include all the IDPs from one area. In some cases, extended family members were on different lists, adding further confusion, and exacerbating IDPs' fears about return.

STF and SLA security forces maintained a heavy presence around IDP sites in the days preceding and during returns. Furthermore, armed police and SLA personnel accompanied IDPs on buses. At Zahira College in Manmunai North DS division, for example, an armored STF vehicle, a busload of armed police officers, and a jeep carrying police officers were present at the IDP site and accompanied the convoy of buses on 12 March. Not only was the heavy presence of SLA and STF forces at IDP sites and on return convoys an intimidating factor, IDPs also feared for their physical security because they felt it increased the likelihood of the convoy becoming a potential target for attack.

15-17 March

On 15 March, a well planned operation to return IDPs from sites in Batticaloa District commenced. The returns were carried out primarily by armed police, the SLA and STF, as well as armed and unarmed TMVP cadres in some sites, and there were numerous accounts of intimidation, threats and coercion. No advance warning was given and IDPs were told to pack up their belongings immediately and leave. Several families were reported to have been separated as a result as children were at school and the men at work.

¹⁷⁶ While Seruvila DS division is almost entirely Government controlled, there is a small eastern area (Uppural) which was previously LTTE-controlled.

¹⁷⁷ 207 IDPs in Manmunai North signed letters saying that they did not want to return

In the Chenkalady sites, for the first time IDPs reported that the security forces were using physical force to make people return. In Palachcholai IDP site, on 15 March, IDPs said that the army had made serious threats of violence, including killings and beatings, if they did not return. There were also reports on 15 and 16 March of IDPs being beaten with sticks by SLA personnel to force them onto buses at Palachcholai IDP site. In Savukkody IDP site, on 15 March, STF personnel reportedly beat IDPs and members of the TMVP threatened IDPs with violence if they did not return.

IDPs' Views about Return

Virtually all of the IDPs with whom the joint UN/NGO monitoring teams spoke during this period said that they did not wish to return. In particular they said that they feared for their security in Trincomalee District, particularly for the safety of young men in their families. They were afraid of harassment, abductions, forced recruitment by armed groups, round-ups and arrests by the SLA and other armed groups and of reprisal killings by the SLA in the event of any security incidents. They were also afraid of inter-communal violence and reprisal attacks from neighbouring Muslim and Sinhalese communities. IDPs also had serious concerns about the state of their houses, many of which had suffered considerable damage from the conflict, weather and looting, and the lack of sustainable infrastructure and services in areas of return.

IASC Leaflet

In response to concerns that IDPs lacked information about their rights regarding return, the Inter-Agency Standing Committee in Sri Lanka drafted a leaflet to be distributed to IDPs in both Tamil and Sinhala. The leaflet informed IDPs that they had a choice whether to return or stay; that they should be able to return in safety and dignity; and that they should be protected against forced return. The leaflet was distributed in IDP sites across Batticaloa District from 20 March.

Conditions in Trincomalee: Killiveddi

Upon arrival in Killiveddi, the IDPs again faced pressure from the authorities to return directly to their homes or stay with host families. Despite a prior agreement with UNHCR and other humanitarian agencies, the local authorities failed to inform the first group of IDPs on 12 March that they could stay in the temporary shelters at the transit site in Killiveddi.¹⁷⁸ As a result, many IDPs spent the night sleeping in the open air or with host families.

Return to villages of origin

In subsequent days, IDPs at Killiveddi transit site were put under heavy pressure to return to their villages of origin in western parts of Muttur and Seruvila DS divisions. IDPs were told that assistance would *only* be provided in their villages of origin, which prompted them to return, although some IDPs subsequently claimed that they did not receive the one week dry food ration which they had been promised upon return. By 17 March, all IDPs from western Muttur DS division had returned to their places of origin.

In some cases, IDPs were moved to yet another temporary site as they were not allowed to return to their villages of origin. IDPs from Ariyamankerni, an area bordering LTTE controlled areas where the SLA now has a heavy presence and is occupying several houses, were moved from Killiveddi to Lingapura (a neighbouring village), for security reasons. The local authorities had no information about when IDPs would be able to return to their homes in Ariyamankerni.

Security Concerns

Several security incidents occurred after the IDPs returned, including the arrest of two men by the SLA in Mengamam (Muttur DS Division) on 15 March; the beating of one returnee by two soldiers in Lingapura on 16 March; and reports that a returnee was shot and killed, allegedly by SLA soldiers, on the evening of 18 March in Sivapuram. IDPs who returned to Barathipuram village in Muttur DS division reported that the military had visited the village several times a day since their return on 12 March and had threatened and harassed the women, searched the returnees' belongings, advised them "not to talk to anybody" and threatened that they would be shot if any

¹⁷⁸ UNHCR and partner agencies were in the process of constructing temporary transit shelters at Killiveddi for IDPs to stay for a maximum of two weeks while they assessed conditions in the villages and made preparations for return to their homes.

incident took place in the area. Overall, IDP returnees reported that they felt very insecure and often stayed together in one house at night because of fears for their safety.

Relocation of IDPs from eastern Muttur DS division and Eachchalampattai

Despite pledges by the Government that returns would only be to western Muttur DS division, from 15 March the authorities commenced the return of *all* IDPs from Trincomalee, including those from eastern Muttur and Eachchalampattai. IDPs from eastern Muttur and Eachchalampattai were relocated to the transit camps in Killiveddi, although some had been informed that they would be returned directly to their homes.

In the IDP sites in Chenkalady (Batticaloa District), the STA and STF threatened IDPs from Sampoor that they would be killed if they did not return to Sampoor. The IDPs were forced onto buses on 15 and 16 March and those who remained expressed serious fears for their safety.

Advocacy Interventions

On 14 March 2007, UNHCR wrote to the Minister of Disaster Management and Human Rights, the Hon. Mahinda Samarasinghe, expressing UNHCR's serious concerns about the forced return of IDPs from Batticaloa District to Trincomalee District on 12 March. UNHCR cited concerns that the local authorities had issued threats to withdraw assistance and protection from those IDPs who did not return. Moreover, the presence of armed police and SLA officers at displacement sites was perceived as an intimidating factor. UNHCR attached a short note on specific incidents of forced return. UNHCR also expressed concerns that the IDPs who arrived in Killiveddi on 12 March were not told that they could stay in the transit shelters and spent the night in the open.

On 14 and 16 March 2007, UNHCR issued public press statements expressing concerns about the forced returns of IDPs from Batticaloa District to their places of origin in Trincomalee District and Vakarai.¹⁷⁹ The Government subsequently halted all relocation to Killiveddi.

¹⁷⁹ See <http://www.unhcr.org/news/NEWS/45fa98254.html> and <http://www.unhcr.org/news/NEWS/45f6bb704.html>

g) Returns to Vakarai, Batticaloa District: March 2007

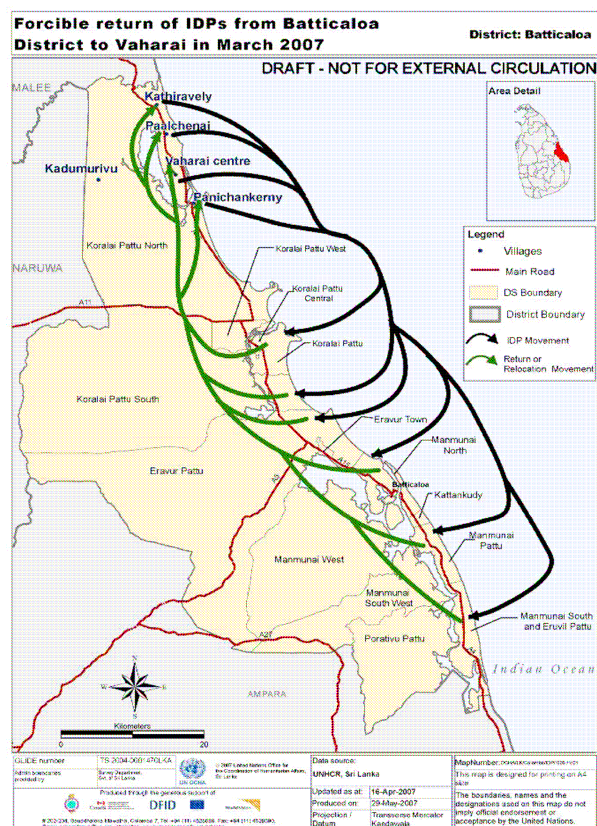
By February, pressure was growing on IDPs originally from Vakarai (some 16,000 IDPs) who had fled into the Government controlled areas of Batticaloa District in December 2006 and January 2007 to return to their homes. At the beginning of February, the Minister of Disaster Relief Services announced the Government's plan to resettle all Vakarai IDPs in a three-phased approach, dependent on the progress of the SLA's de-mining activities. Returns to 9 GN divisions, from where 80 – 90% of the IDP population originated, were due to begin by the end of February 2007.

In response to the Minister's statement, UNHCR presented a "Road Map" detailing a plan of action to prepare for and facilitate the return of the IDPs in safety and dignity (see below). Unfortunately, none of the conditions outlined in the Road Map had been fully met by the time returns to Vakarai started on 7 March. The UN had been unable to carry out a comprehensive security or humanitarian assessment of conditions in Vakarai due to the unstable security situation, mine and UXO clearance had not been completed, basic infrastructure was not in place and humanitarian agencies did not have full access to monitor return.

Only one "Go and See Visit" (GSV) to Uriyankadu was organized by the Government, on 6 March. Some 100 IDPs were reported to have participated in the GSV. The IDPs were informed by the DS Vakarai that return would start the following day and that those people whose houses were damaged would receive tents and food. IDPs who participated in the GSV said that the immediate needs in Vakarai included drinking water, reconstruction of some houses and a functioning school and hospital. No formal meeting with the other IDPs was organized after the GSV and there was little time for de-briefing before the returns to Vakarai commenced on 7 March.

During the first days of return (7 – 8 March), many IDPs indicated that they were happy to return. They were keen to return to their homes and properties and eager to leave the IDP sites in Batticaloa where conditions were poor. A joint UN humanitarian assessment mission to Vakarai on 12 March, however, found that some of the IDPs who had returned voluntarily regretted their decision. The IDPs said that if they had been properly informed about conditions in Vakarai they would not have returned. In particular, they were concerned about the considerable damage and destruction to their houses, many of which appeared to have been looted; the loss of household items from their houses; insufficient water, food and infrastructure (schools, medical services etc.) and lack of livelihoods; threats to their security due to the heavy presence of SLA and TMVP armed cadres; and fears of renewed fighting between the SLA and LTTE.

In the subsequent days, pressure on those IDPs from Vakarai who were remaining was increased considerably. There was a heavy presence of armed police, SLA and STF forces at the IDP sites both before and during return movements, as well as armed TMVP cadres at some of the sites. Some IDPs were threatened that their assistance and security would be withdrawn if they refused to return. At the same time, they were promised food and assistance in Vakarai.



Forcible return of IDPs from Batticaloa District to Vakarai in March 2007

Many IDPs did not have full access to accurate and objective information about conditions in Vakarai on which to base decisions about return. Some IDPs had heard that their houses were being looted and were keen to return to protect their property before others claimed it. Others, having witnessed what happened to the IDPs from Trincomalee District, feared repercussions from the security forces if they refused to return.

Some IDPs expressed a strong wish not to return to Vakarai as they feared for their safety and had heard that there had been widespread damage and destruction to their homes and the infrastructure. In one site, IDPs implored humanitarian agencies not to leave as they were afraid of being forced to return to Vakarai. One IDP threatened to douse himself with petrol and set himself alight if he was forced to return. Young women were particularly concerned about the threat of sexual assault by the armed forces after hearing unconfirmed reports of young girls in Kathiravelly being raped by the armed forces. IDPs were also concerned by rumours that the SLA was occupying houses amongst civilian dwellings in Vakarai and that the armed forces would prevent them from leaving again if fighting resumed or their security was threatened. By 25 March 2007, over 13,000 IDPs had returned to Vakarai.

Advocacy Interventions

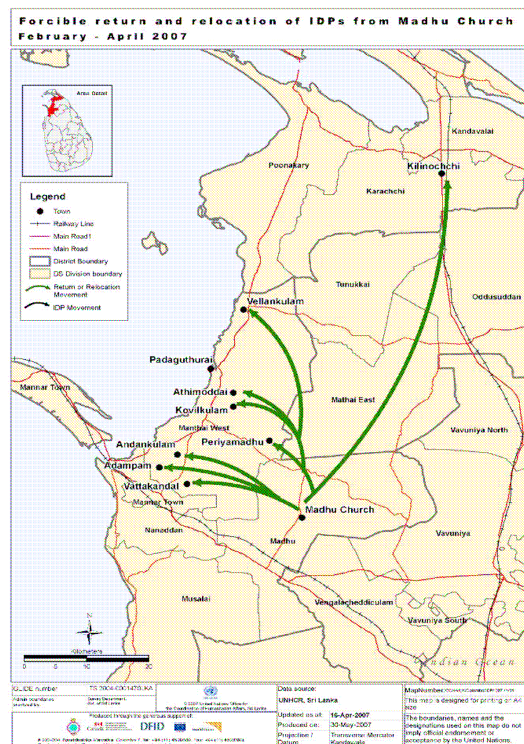
On 19 February 2007, UNHCR wrote to the Minister of Disaster Management and Human Rights, the Hon. Mahinda Samarasinghe, outlining some of its concerns regarding both the deteriorating security situation for IDPs in camps in Batticaloa District, as well as plans for the return of IDPs to Vakarai and Trincomalee District. UNHCR once again shared its position paper on return and relocation (of 29 November) and also a “Road Map” detailing a plan of action to prepare for and facilitate the voluntary return of IDPs in safety and dignity.¹⁸⁰

h) Forced returns from Madhu Church, Mannar: March – April 2007

The LTTE has also been responsible for the forced relocation of IDPs. Madhu Church in the LTTE controlled area of Madhu Division, Mannar District, has traditionally been a place of refuge for IDPs. IDPs from Manthai West and Madhu DS divisions started to move to Madhu church in late 2006 as a precautionary measure due to the deteriorating security situation. IDPs stayed at the church at night and returned to their homes during the daytime to carry out daily activities. They received food, water and other assistance from UN agencies and NGOs.

In January and February 2007, larger numbers of people started to take refuge in Madhu Church due to a series of security incidents, including the bombing of Padaghuthurai village and an intensification in forced, and often violent, recruitment by the LTTE. By the 19 March, there were 10,197 IDPs displaced in Madhu, over 8,000 of whom were staying in and around Madhu Church and a further 2,000 IDPs were displaced along the Palampitty Road.

The LTTE had a tacit agreement with the church authorities that they would not - recruit from within the church grounds. However, with over 1,000 men and women of “fighting age” amongst the IDPs sheltering at the church, the LTTE started to put increasing pressure on the church authorities to allow unarmed, plain clothes LTTE cadres access to the church to speak to the families about recruitment. By the beginning of March, LTTE cadres were entering the church premises on a regular basis for this purpose.



¹⁸⁰ There have been significant improvements in the return process in the East since April 2007 and these have been documented in the Addendum to this report.

At the same time, the LTTE announced that it would prevent any more displaced families from entering Madhu Church to seek temporary shelter and that it would ask IDP families currently inside Madhu Church to relocate to alternative displacement sites. The LTTE also claimed that it could not guarantee the safety of humanitarian agency staff traveling on the road to Madhu Church which meant that humanitarian organizations were unable to access the area.

On 23 March, reports were received that the LTTE had ordered IDPs to leave Madhu Church and head north towards Vellankulam, allegedly for security reasons. It was also alleged that the LTTE was using the movement of IDPs from the church as a recruitment opportunity. On the evening of 23 March, the LTTE brought trucks to the church and started to force the remaining IDPs to leave. The LTTE cadres were allegedly armed and they used wooden sticks to force the most reluctant IDPs to get into the trucks. By 25 March, more than 5,000 IDPs (75% of the IDP population) were forced to leave the church. The LTTE cadres told the IDPs that they would be able to return after three days to collect their belongings, but the IDPs were not allowed to do so and their belongings were taken by thieves. The IDPs moved to Andakulam, Adampan and Vaddakandal in LTTE controlled areas of Mannar District.

During the following days (25 – 28 March), the forced relocation of IDPs continued. Armed LTTE cadres entered the church and used loudspeakers announcing that all IDPs should leave Madhu Church by 16:00 hrs and warning that those that did not leave would be treated as traitors. Some 1,500 IDPs were still in the church on 28 March. However, the LTTE had stopped all supplies to the church and all shops in the vicinity were closed, which was perceived as a further tactic to pressurize remaining IDPs to leave.

On 2 April the LTTE informed UNHCR that all IDPs had left Madhu Church, and had moved to Manthai West Division (Periyamadhu, Aththimodda, Vellankulam and Kovilkulam), as well as to locations in Kilinochchi District (Jeyapuram, Mulankavil and Kilinochchi). At the same time, local officials reported that less than 100 IDP families (300-350 individuals) remained in Madhu Church, although they too were under pressure from the LTTE to move to Manthai West. By 7 April, there were only 38 families in the church.

On 4 April, UNHCR met with representatives from the LTTE in Mannar and raised its concerns about reports of forced movement of IDPs from Madhu Church to Manthai West.¹⁸¹ The LTTE representatives explained that the Madhu Church area had been under heavy shelling by the SLA and as a result the IDPs had spontaneously and voluntarily fled the area. The LTTE denied allegations that they had forced the IDPs to leave Madhu Church.

As UN agencies and NGOs had no access to Madhu Church in March and April 2007 due to the prevailing security situation, they were unable to verify the information provided by local sources. UNHCR is trying to organize a joint needs assessment in Madhu once the security situation permits. Such an assessment would provide an opportunity to verify the above information.

Advocacy Interventions

On 14 March 2007, UNHCR wrote to the Head of the LTTE Political Wing, Mr. Tamilselvan, outlining its concerns about the IDPs in Madhu Church. UNHCR stressed the urgent need for humanitarian assistance for IDPs and asked the LTTE to allow humanitarian agencies unimpeded access to the Church and to guarantee the safety of humanitarian agency staff on the access roads. UNHCR requested the LTTE to observe the strictly civilian and humanitarian character of the IDP site and not to enter the Church grounds. In addition, UNHCR requested the LTTE to refrain from forced and under-age recruitment of IDPs from displacement sites. These concerns were reiterated in a UNHCR press statement on 14 March.

The issue was also raised by the UN Resident Coordinator in a meeting with the LTTE Political Wing leader, Mr. Tamilchelvan, on 20 April.

¹⁸¹ UNHCR met with representatives from the LTTE Mannar Planning and Development Secretariat, the Political Wing and the Administrative Officer.

7. Conclusion

The deterioration in the security situation, and the dramatic escalation of the conflict in the North and East of Sri Lanka over the past year, has had a significant impact on the population across the region. Hundreds of thousands of civilians have been forced to flee their homes, and many have been displaced several times because of renewed violence.

As this report has highlighted, one of the most significant trends observed since the resurgence of the conflict has been an increasing disregard for the rights of civilians, particularly IDPs, by all parties to the conflict. As discussed, during times of armed conflict, whilst some restrictions on freedom of movement may be permissible in specific circumstances, IDPs have a fundamental right to be protected against forced displacement, forced return and forced relocation. However, the incidents observed and documented by UN and other agencies since April 2006 confirm that many violations of these rights have taken place in locations across the North and East.

The forced movements which have been analyzed in this report are contrary to both international human rights and humanitarian law. One significant trend has been the increase in forced returns and forced relocation of IDPs. The case studies have illustrated how coercive methods have been used both by the Government and the LTTE to force IDPs to return prematurely to their places of origin, or to relocate to alternative sites against their will. Direct threats, and on occasion, physical force, have been documented, as well as threats to withhold assistance, services and protection for IDPs refusing to leave. The heavy presence of armed security and law enforcement personnel has created an intimidating environment for IDPs, preventing them from making a free and informed decision about return. Furthermore, IDPs have often lacked information on their places of origin which would facilitate them to make such a decision.

In addition, the case studies and analysis illustrate some of the challenges faced by the UN and other agencies working with IDPs in the North and East of Sri Lanka. Indeed, whilst interventions and advocacy efforts have been made with all parties, and some improvements have been noted over the past three months particularly with regard to the resettlement process in the East¹⁸², further strengthening of the protection environment for displaced men, women and children in Sri Lanka is required.

It is within this context that the detailed recommendations to the parties have been made. These are based on fundamental legal principles applicable in the situation of internal conflict, and establish minimum standards for the treatment of civilians, particularly those in displacement. The recommendations urge the parties to respect the rights of the displaced to freedom of movement, and in particular to ensure that IDPs are able to make free and fully informed decisions about return and relocation.

As this report has highlighted, some 300,000 persons have been displaced since the escalation of hostilities in April 2006. As the conflict continues, these numbers may increase further. However, this should not mean that those in displacement are forced or encouraged to return prematurely to their places of origin. Solutions to the increased displacement must be found which are durable and sustainable, and it is hoped that the recommendations in this report will assist in shaping the future responses to internal displacement.

Overall, therefore, this report represents more than a documentation of forced movements over the past year. It is a request to all parties to work in collaboration with humanitarian agencies, and to translate the recommendations into concrete action, thus ensuring that the fundamental rights of those displaced by the conflict, are upheld.

¹⁸² Developments since April 2007 are covered in the addendum to this report.

ANNEX 1

CASE STUDIES

The following case studies were collated by humanitarian agencies operating in conflict areas of the North and East of Sri Lanka over a one year period from April 2006 to April 2007. The information included in the case studies is based on primary data collected by field staff during routine assistance and protection activities with IDPs, local government officials, the security forces and other humanitarian organizations assisting IDPs. Where secondary data is used, the reports have been verified by agency field staff. Secondary reports are well documented and based on at least two independent sources.

The case studies are presented geographically, rather than chronologically. They reflect the themes of the report, which include: the forcible displacement of IDPs (including secondary displacement); restrictions on IDPs' freedom of movement, and the forced return of IDPs. All names and identifying information of both the interviewees and the organizations responsible for collecting the information is withheld to protect the confidentiality of witnesses.

A. JAFFNA DISTRICT

1. Allaipiddy, Jaffna

a) Forced Displacement

A series of events resulted in the displacement of civilians in Allaipiddy. On 30 April, the Sri Lankan Navy (SLN) began conducting house-to-house searches following a claymore attack that allegedly targeted the SLN. A 74 year old man was shot by the SLN during the searches and he later died from his injuries. These incidents prompted more than 60 people to leave their homes and stay in Philip Neri Catholic Church overnight for their own safety.

On May 13, 2006, unidentified gunmen killed 13 Tamil civilians, including a four month old baby, a four year old boy and their parents, in their home in Allaipiddy. Following the massacre, more families took shelter at the Church, bringing the total number to about 200 families (out of 380 families in the town).

On 20 May, just one week after the massacre, unknown persons pasted a poster near the Allaipiddy junction. The poster warned villagers to vacate their homes and leave the area within three days or face the consequences. A group called "*Makkal Padai*" (People's Force), and known to be affiliated with the LTTE, claimed responsibility for the poster. A similar notice from this organization had been pasted a week earlier (on 11 May) instructing all shops to close for three days. The owners of two shops who ignored the instruction and kept their shops open were subsequently killed during the 13 May massacre.

Afraid of the consequences if they stayed, almost all the villagers left Allaipiddy after the second notice was posted and only 10 families stayed behind. Some of them fled to the Vanni and Mannar, but most of them went to Our Lady of Refuge (OLR) Church, St. Nicholas Church in Navanthurei and Jaffna Town. Some families returned to the village to check on their property during the day and returned to spend the night either in a camp in Jaffna town or with families living in Jaffna.

b) First Wave of Returns to Allaipiddy

By June 2006, the IDPs in Jaffna Town were coming under pressure from the local government authorities and security forces to return to Allaipiddy. The local authorities as well as the EPDP promised improved living conditions in the town if the IDPs returned immediately. These included supplying electricity to the town, repairs to old homes, dry rations and improving security for the people of Allaipiddy. IDPs also reported harassment by the SLA, and furthermore, they had been told that if they did not return government assistance would be cut.

After a series of community consultations between the IDPs and the government authorities and security forces, as well as UN agencies and NGOs, the IDPs who were staying at OLR Church and St. Nicholas Church in Navanthurai and in Jaffna Town, decided to return to Allaipiddy. The government and humanitarian agencies agreed to provide assistance and the SLA gave

assurances that the safety of the IDPs would be guaranteed. On 12 and 13 June, the government authorities organized lorries to take IDPs staying in the churches back to Allaipiddy.

In discussions with the IDPs they said that they had no option but to leave. They were already the victims of harassment and feared further violence and harsh consequences if they stayed. They also said that the harsh living conditions and the threat of reductions in assistance were key factors which influenced their return.

In discussions with the GA, he said that he was unwilling to provide alternative temporary solutions for Allaipiddy IDPs or improve conditions in the existing displacement site. He explained that the IDPs should return as soon as possible and said that they themselves had expressed this wish in writing.

c) Restrictions on freedom of movement during flight

On 11 August, two months after the return of the IDPs, the LTTE engaged in a seaborne landing in Allaipiddy. Shelling into the area continued for 48 hours. The Philip Neri Church, where villagers were sheltering, was hit during the shelling and 14 civilians were injured (four of whom later died from their injuries). A total of 29 civilians died during the shelling. As a result, the villagers decided once again to flee Allaipiddy. The villagers first tried to leave on 12 August, but were prevented from doing so by the SLN who were regrouped at the Allaipiddy – Kayts junction. Again, on 13 August, villagers started to leave Allaipiddy en masse. They were stopped again at the Allaipiddy/Kayts checkpoint and were prevented from going to Jaffna Town. The SLN, instead, allowed them to go to Kayts where they stayed until 23 August.

On 23 August, the IDPs were allowed to move to Jaffna Town to OLR Church and St. Nicholas and St. Anthony's Church in Navanthurai.

d) Second Wave of Returns

In mid January 2007, the authorities issued a deadline of just a few days for IDPs from Allaipiddy staying at OLR Church and St Nicholas Church and School, to return to their homes, despite the prevailing security situation and lack of basic services. While some IDPs expressed an interest in returning to their homes, UN agencies were concerned that the security and living conditions in Allaipiddy were not conducive for return. By February, 20 families had returned voluntarily to Allaipiddy, all of them to Ward 1. A letter dated 6 February was received from the DS in Velanai requesting UNHCR to assist with shelters for the relocation of 32 families from the three IDP sites in Jaffna town back to Allaipiddy. However, when UNHCR met with the IDPs in these sites, none of them were willing to return, mainly due to security reasons.

2. Coastal Areas South East of Jaffna Town

a) Forced Displacement

On 11 August 2006, when hostilities resumed in the Jaffna peninsula, the Voice of Tigers (official LTTE radio station) issued an announcement advising residents of Gurunagar, Passaiyoor, St Rocks and Columbuthurai to vacate the area.¹⁸³ Residents were warned of imminent attacks and told to move at least 1km away from the coastal areas and SLA checkpoints and facilities.

Residents took the LTTE's warnings seriously as similar warnings had been issued in 2000, and people who had returned to their villages then found themselves caught in the middle of fighting between the SLA and LTTE. Moreover, residents were fearful after the incident in Allaipiddy on 11 August 2006, where villagers had returned following assurances from the SLA/ SLN of their safety, but had then been caught in the middle of fierce fighting during which at least 20 civilians were killed.

As a result, most people left the coastal villages early the following day (12 August) and sought refuge in schools and churches in Jaffna Town. Many of them returned during the day time to continue with daily livelihood activities.

¹⁸³ These are all militarized coastal areas bordering the high security zone (HSZ) south east of Jaffna Town

b) Forced Returns

In mid-September 2006, the SLA started to put pressure on the IDPs to vacate the Temporary Accommodation Centres (TACs) in schools, colleges and churches in Jaffna Town and return to their villages. IDPs were reluctant to return, however, unless their safety could be guaranteed by both the SLA and LTTE. Many IDPs were fearful of returning to their homes at night due to the ongoing shelling and fighting, and there were concerns that the strictly enforced curfew would prevent them from fleeing if there was an attack during the night. They were also afraid of the ongoing cordon and search operations and the high occurrence of 'white van' disappearances at night. Some people had experienced harassment by the SLA when they had tried to return to their villages on previous occasions and had consequently returned to the TACs; others wanted guarantees from the LTTE that they would not attack the coastal areas after the warning issued on 11 August.

c) First wave of returns

The first wave of returns took place on 22 September 2006 from St. Patrick's College and St. Charles College TACs.¹⁸⁴ Security forces arrived early in the morning and used loudspeakers to instruct IDPs to leave. It was reported that in St Patrick's College, SLA forces took videos of IDPs inside the TAC, and patrolled the premises, preventing anyone from entering. The SLA remained on the premises until all IDPs had left. During the operation, nine men were arrested at St. Patrick's College, and three from St Charles' College; all men were released the following day without charge.

By the end of September, the TAC had closed and all the IDPs had returned to their homes, despite interventions by UN agencies at the nearby army camp protesting the returns.

d) Second Wave of Returns

In the second wave of returns IDPs were given an ultimatum to leave schools or churches which were being used as TACs. Government authorities and security forces had applied pressure on school authorities and religious leaders to encourage IDPs to leave their premises.

Documented incidents include the following:

Holy Family Convent (HFC): In mid-September, 120 IDP families remaining at the TAC were informed by school authorities that they should leave the premises; on 1 October, they were told that they would have to leave that same day. 70 – 80 families left without protest, but 40 – 50 families requested to stay at the school at least during the nights. This request was refused by school authorities, who advised that the IDPs would face problems if they stayed.

St. Mary's Cathedral: 37 IDP families, who were living in quarters at the back of St. Mary's Cathedral, were asked to leave by church leaders before an ordination ceremony on 4 October. These families told UNHCR that they decided to leave the church as they didn't want to disrupt the normal religious functioning of the Cathedral. They claimed that they did not feel forced to leave.

St. James' Church: 1,700 families were living at St. James' church, most of them were night-time displaced. Some of the families were staying in the school buildings in the Church compound. IDPs were asked to leave by religious leaders to enable the resumption of normal religious

activities. Some families left immediately after the request, while others stayed at the Church. However, on the evening of 29 September, the IDPs found the school building was locked upon their arrival; and again on 1 October, the IDPs found the church building locked and their belongings moved outside the church. IDPs were advised by the religious leaders that they would face problems with the SLA if they continued to stay at the Church.

e) Conditions in places of return

¹⁸⁴ 5000 individuals (1000 families) were staying in St Patrick's College, the largest TAC in Jaffna Town; 440 individuals (100 families) in St Charles' College.

UN staff subsequently visited the IDPs' villages of origin in Gurunagar, Passaiyoor and Columbuturai. Many families were afraid to stay in their homes at night and had moved elsewhere to empty houses or to stay with host families. With the closure of the TAC's, however, some families had no other options of places to stay at night. Those families living closest to the coastline, which is a restricted military area, were the most afraid. In addition, since leaving the TAC they had been stripped of their IDP benefits and were no longer eligible for free dry rations. Many lived in a state of fear with their bags packed and ready to leave if necessary.

3. Mandaitivu and Islands: Restrictions on Freedom of Movement

The imposition of a strict 24 hour curfew in Jaffna on 11 August severely restricted civilians' freedom of movement, preventing people from leaving areas where their security was threatened. Residents of Mandaitivu Island, for example, were only permitted to leave the island on 21 August, despite reports of massive displacement on the island and danger to their physical security due to heavy fighting between the LTTE and SLN. When civilians were eventually allowed to leave, the Government security forces only allowed them to take one piece of hand luggage, a policy which was strictly enforced, and which prompted many residents to remain on Mandaitivu as they were unwilling to leave behind their belongings. Movement out of the islands was restricted by the Government security forces due to their fear of LTTE infiltration. Similar restrictions on freedom of movement for residents of other outlying islands, including Kayts, Allaipiddy, Velani and Karainagar, applied.

In January 2007, a group of 23 IDP families from Mandaitivu were unable to return to their homes as they had not received clearance by the SLA/ SLN, possibly due to male family members having suspected affiliation with the LTTE. The rest of the IDPs returned voluntarily to Mandaitivu.

TRINCOMALEE DISTRICT

Muttur

In July 2006, the LTTE closed the sluice gates at Maavil Aru, in Serunuwara area, Trincomalee District, thus cutting off access to water, preventing irrigation of agricultural land and affecting the lives of tens of thousands of villagers from all ethnic communities (the majority were Sinhalese), living downstream. The LTTE claimed that they were acting in response to government blockades on supplies into the LTTE controlled areas of Muttur East since the suicide attack on the Army Commander, General Fonseka, in April 2006, which had resulted in severe food shortages. The government launched an offensive against the LTTE in response to the closure of the sluice gates and the LTTE launched a counter offensive, seizing control over parts of Muttur. As the fighting for control over Muttur Town escalated into August, thousands of Muslims fled from Muttur to Kantale town, (and from there some proceeded to sites in Thampalakamam, Kinniya and Town & Gravets divisions), and Tamils fled from western and eastern Muttur into Trincomalee town. By the end of August, nearly 50,000 people were displaced in Trincomalee District. Smaller numbers of Muslim and Tamil IDPs also fled from Muttur to Batticaloa, Ampara, Anurhadapura and Puttalam Districts.

1) Muslim IDPs

a) Forced Displacement of Muslims, May 2006

Handbills were circulated in Muttur, Trincomalee District, on 29 May, demanding that the Muslim community vacate the area within 72 hours. The handbills were issued under the name of a group called *Tamil Eela Tayaham Meetpu Padai (Tamil Eelam Motherland Retrieval Force)*. They stated that Muslims should leave the area to enable the LTTE to regain Muttur in the first phase of the fourth Eelam War. The handbills condemned what they claimed to be the Muslim community's collusion with the security forces and paramilitary groups. The handbills were not seen as a precautionary measure to warn Muslim civilians of an impending attack, but rather were interpreted as part of a broader ethno-political strategy to expel Muslims from the area. Although the LTTE claimed that it was not responsible for issuing the handbills, it did not condemn the expulsion notice or take steps to avert a crisis. In the event, however, increased police and

military presence allayed the fears of the Muslim community and few people decided to flee the area.

b) Restrictions on Freedom of Movement: Muslim IDPs prevented from fleeing by LTTE, August 2006

On 3 August, about 45,000 civilians, Muslims and Tamils, fled the shelling in the Muttur area and headed by foot towards Killiveddi town. On the way (between the 3rd milepost and Iruthayapuram), they were stopped by the LTTE who claimed that the road ahead was mined, and were directed east towards Kiranthmunai in LTTE-controlled territory. At a point where the path narrowed and created a bottleneck, LTTE cadres separated the men from the women and children and forced them to walk past two masked informants. At least 32 mostly young men, virtually all of them Muslims, were taken aside, tied up with their hands behind their backs and pushed to the ground. After an altercation, during which an LTTE cadre shot and killed one of the civilians, the army was alerted to the LTTE presence and immediately began to shell the area, killing civilians as well as LTTE cadres, and causing everyone to flee. In the panic that ensued, families were separated, including children from their parents. Most of the displaced persons eventually reached camps in Kantale. The fate of the men taken away by the LTTE is unknown.¹⁸⁵

c) Forced Returns of Muslim IDPs to Muttur from Trincomalee, September 2006

Following fierce fighting between the Government and LTTE forces in August, the Government forces took control of Sampoor on 4 September 2006. This triggered pressure by Government officials, security forces and Muslim politicians and community leaders to return IDPs within days, despite the fact that shelling had just stopped.

A joint UN fact finding mission to Muttur on 25 August had concluded that conditions were not safe for return to Muttur. The mission found that the front lines were not stable and there were high risks of fighting resuming and a LTTE counter-attack. Moreover, the presence of landmines and UXOs in some areas was a major threat to IDPs' physical security. In addition, the homes and properties of IDPs had been damaged or destroyed during the fighting and many returnees would have to stay in temporary sites without adequate water, sanitation, food and other basic assistance. This was not considered to be a sustainable return.

In the first days after the fall of Sampoor (4 – 7 September) significant numbers of Muslim IDPs returned voluntarily from Kantale to Muttur. They cited poor living conditions in Kantale, recent heavy rains, the desire to return to their homes before the start of Ramadan (24 September), and the wish to resume their children's education at schools in Muttur as reasons for their return.

In the following days, 7 – 11 September, the remaining IDPs in Kantale, Kinniya and Thampalakamam came under heavy pressure from government officials, the security forces and community leaders to return to Muttur. A major repatriation drive was launched on 7 September, after a group of Muslim Ministers came from Colombo to visit the displacement sites and encourage the mass return of IDPs. By 11 September, most displacement sites in Kantale, Kinniya and Thampalakamam were empty and by 12 September, 38,000 IDPs (out of a total of 41,985) had returned.

Government officials, the police and security forces, and Muslim leaders maintained a heavy presence at IDP sites over these days. Loudspeaker announcements gave deadlines for return and the provision of government buses. IDPs were warned that food and assistance would be stopped and water and electricity supplies cut if they remained. In some cases, NGOs were instructed to discontinue assistance to IDP sites. Although many IDPs returned voluntarily, others felt coerced into leaving due to such threats and expressed fears for their safety in their places of origin. Many IDPs felt that they were unable to make free and informed decisions and had no choice but to return.

¹⁸⁵ Sources: University Teachers for Human Rights (Jaffna): *Hubris and Humanitarian Catastrophe*, Special Report No. 222, 23 August 2006; Amnesty International *Sri Lanka: Call for urgent action to protect civilians, and investigation into human rights violations*, 18 August 2006; Human Rights Watch *Improving Civilian Protection in Sri Lanka: Recommendations for the Government and the LTTE*, September 19 2006; INFORM/IMADR *Report on Field Visit to Kantalai and Serunuwara: Trincomalee District, Eastern Province, Sri Lanka* 25 August 2006

Documented incidents of forced return of Muslim IDPs to Muttur include:

Kantale

Peace Refugee Site – 7 September

Only 45 families remained at this site. Police, home guards and army officers were present to witness the departure of IDPs. IDPs said they felt coerced to leave as they were informed that water and food would not be provided.

Al Rauf Camp – 7 September

170 families (out of 214) remained at this site. Those families remaining were from Thoppur and were afraid to return due to the security situation. Some IDPs mentioned that the SLA was occupying people's homes and had set up their artillery in their village. A group of local Government officials came to the site and asked 60 IDPs to sign forms – they did not know what they were signing. The next day (7 September), these 60 families were asked to leave – and 40 left. Instructions were given to cease food distribution on Friday 8 September.

Ikram Camp – 7 September

Police and local authorities visited the site and told people to leave before Friday 8 September when food rations would be stopped.

Watukachchi Camp – 8 September

60 IDP families remained at this site. Many of them were from Thoppur and were afraid to return. On 8 September, Government officials visited the site to inform IDPs that assistance would not be provided if they remain. The police also came to the site and told IDPs they should leave. As a result, most of the IDPs felt coerced to leave.

Pottan Kadu Camp – 8 September: 320 Muslim families remained in this site. The remaining IDPs were mainly from Thoppur and refused to return due to security concerns. Some IDPs had returned to Thoppur and found that the army was occupying their homes. On Friday 8 September, the IDPs were informed by Government officials that assistance and transportation would not be provided if they remained. They were told that they would have to pay for own food and water if they did not return before 9 September.

Kandala Camp – 8 - 9 September: At the end of August/ beginning of September, SLA, police and local Government officials repeatedly visited Kandala camp instructing IDPs to leave the camp and return to their homes in Muttur Division. The IDPs were told that they could not stay in Kantale and would no longer receive any assistance. They were promised, however, that if they returned they would receive food rations for six months, and Rs. 25,000 as resettlement assistance. IDPs were eventually returned to Muttur Town on 9 September, after being informed the evening before by local authorities that they could no longer stay in the site and that transport had been arranged for their departure. The promised aid was never provided apart from 20 kg of spoilt flour.

Kinniya

On 8 September international organizations were informed by local authorities that 10 buses would be provided to transport IDPs back to Muttur from 7 – 8 September, after which IDPs would have to arrange their own transport. No assistance would be provided after Tuesday 12 September, including food and water, but two weeks ration would be provided to IDPs who returned.

Thampalakamam

Al Hiqma M.V (Camp 98) – 7 & 8 September: On Thursday 8 September, 72 families at *Al Hikma* site, run by Rural Development Foundation, were told to leave for Muttur on the following morning and that access to food, water and other relief would otherwise be stopped. On Friday, 8 September, 24 families decided to return to Muttur in buses provided by the government. The remaining 48 families stayed behind, reluctant to leave because of the security situation in their

villages. Later that day, police and Government officials entered the site and ordered the IDPs to leave. There were reports that families who refused to leave were physically dragged onto buses and their possessions thrown onto the street. Three families stayed behind and sought shelter with host families.

H4: Siraj Nagar: Water to the camp was cut on Thursday 7 September. A police officer came to the camp on Friday 8 September and informed IDPs they had to leave by Monday and if they did not, they would get no government compensation for their losses and no free transport.

e) Forced Displacement of Muslim IDPs, September 2006

Following the mass return of Muslim IDPs to Muttur in early September 2006, after the fall of Sampoor to SLA forces, a leaflet was distributed on 22 September warning of imminent LTTE attacks to re-capture Muttur from the SLA. The leaflet urged all Muslims to leave Muttur immediately and not risk being held as human shields by the security forces. It warned that those Muslims who stayed would have to face the consequences. The leaflet was reportedly signed by an organization called *Liberation of Tamil Eelam Homeland*, and was initially attributed to the LTTE, although the LTTE subsequently denied any involvement.

f) Restrictions on freedom of movement: Muslim IDPs prevented from fleeing by SLA/SLN, September 2006

As a result of the leaflet, Muslim families began leaving Muttur for Trincomalee Town, Kinniya and Kantale. However, many were prevented from leaving by the Sri Lankan Army and Sri Lankan Navy, who imposed road and sea blockades.

The first batch of some 200 IDPs arrived by boat at Town & Gravets in Trincomalee early in the morning on 23 September. 21 boats managed to depart from Muttur that morning, but Navy gun ships prevented any more from leaving. The authorities subsequently checked all passengers trying to leave Muttur and only allowed those coming to Trincomalee for work or medical treatment to leave.

A further batch of IDPs arrived in Kinniya on 30 boats the same day. Following their arrival, the Navy prevented any more boats from reaching Kinniya and boats that had brought IDPs to Kinniya were prevented from returning.

The third group of some 200 families came by bus to Kantale on 23 September. After their departure, the army started to prevent people from leaving at the military checkpoint at 58th – 59th mile post.

g) Second Wave of Forced Returns: 22 – 30 September:

Out of those Muslims who managed to leave Muttur Town on 23 September, around 200 families were reported to be staying with host families in Kantale and roughly 1,400 IDPs stayed at two displacement sites – Al Aksha and Al Hijram schools – in Kinniya. No Government assistance was provided to new arrivals and conditions in the sites were extremely poor, with no food or water. Furthermore, NGOs were prevented from providing essential assistance. The local authorities held the position that conditions were safe in Muttur and the IDPs should return.

The IDPs, however, were adamant that they did not want to return, and that they took the leaflets about imminent LTTE attacks very seriously, given past experience. They claimed that the SLA had occupied houses in residential areas of Muttur town, thus creating additional security risks for themselves. They also claimed that they would not return unless Tamil IDPs did too, and felt that the Tamil IDPs might have some knowledge about the LTTE's intentions.

By 25 September, police were maintaining a heavy presence at both sites. Over the next few days the IDPs came under increasing pressure from the police, security forces and government authorities to return to Muttur. Buses were provided for IDPs to return, but IDPs refused to board them. At Al Aksha police became aggressive and threatened to fire on IDPs if they were attacked. Fearing arrest or possible injury, most of the IDPs (250 families) had dispersed to host families.

By the end of September most of the IDPs had returned to Muttur, although an estimated 250 families remained with host families in Kinniya and Kantale. Those who returned claimed that

they had no other option due to lack of assistance, very difficult living conditions, especially as most of them were observing Ramadan, and pressure from the authorities.

2) Tamil IDPs in Muttur

a) Forced returns of Tamil IDPs in Trincomalee to Muttur: September – December 2006

Following the July 2006 offensive in Muttur, several thousand Tamils from Muttur West (government controlled) and Muttur East (previously LTTE controlled) fled into Trincomalee town (Town & Gravets Division), which still contained some Tamil IDPs from the April 2006 displacement. At the same time as pressure was being exerted on Muslim IDPs to return to Muttur in September 2006, Tamil IDPs were also under increasing pressure from the authorities to return to their places of origin in western and eastern Muttur.

Tamil IDPs were extremely fearful of returning to their homes, however, due to continued shelling between government and LTTE forces and the high military presence in their villages. They feared harassment by the security forces and possible retaliation from the majority Muslim population. In some instances, Tamils who returned voluntarily to their villages came back to displacement sites in Trincomalee because of security concerns.

b) First Wave of Forced Returns, September 2006

St Mary's College: 9 - 11 September: From the end of August, Tamil IDP families from Muttur came under increasing pressure from local authorities to return to Muttur. They were repeatedly told they could no longer stay at the site. As a result, on 9 September 2006, 15 families finally agreed to go back and a bus was sent to take them to Muttur. The IDPs confirmed that they were very concerned about their security once back in Muttur. On the same day, there was a killing in Muttur town and most of the 15 families decided to return to Trincomalee Town immediately. Some of these families went to Alles Garden IDP Camp, others found shelter with friends.

Cultural Hall – 8 September: 25 armed SLA soldiers, 4 body guards in civilian clothing and a Government official were present at the site to oversee return. The official told IDPs that they would all have to return from Town and Gravets that day, and stated that 80 families had registered to return to Muttur from this site. However, the IDPs protested that they had been forced to register and they did not want to go. They said they felt they had no option but to leave. The officials said they would return later that morning to check that all the IDPs had left. UN observers at the site found the atmosphere intimidating and threatening and chose to leave.

St. Joseph's College – 8 September: Local Government officials came to the site and told people to register and return to Muttur. Many of the Tamil IDPs were not willing to return. Those IDPs

from Lingupuram village in Muttur Division decided it was safe to return and 30 families registered for return.

Konalingam MV – Linganagar (T-3) – 8 September: Local Government officials visited the site to tell IDPs to return according to instructions from central authorities. Some of the IDPs were from Kanguveli, where two days previously someone had been shot in the arm after returning. The SLA came to this site on 6 September to check the background of young Tamil males. Two young men were questioned.

c) Relocation to Killiveddi, October – November 2006

On 17 October, UNHCR was requested by local Government authorities to assist in the relocation of 3,000 – 4,000 Tamil IDPs in Town & Gravets to land in Killiveddi, Muttur Division. UNHCR was requested to provide semi-permanent shelters and latrines in Killiveddi where relocated IDPs could stay before returning to their homes. According to the authorities many of the IDPs were traveling to Killiveddi during the day and returning to spend nights in Trincomalee. The Government hoped that repairs to their houses could take place while they were staying in the temporary site to enable them to move back to their homes. There were some assurances that IDPs who did not wish to relocate could remain in Trincomalee Town, although the camps would be consolidated and IDP sites in public buildings would be closed down.

On 2 November, UNHCR learnt that the Government proposed to move 150 families on 4 November to Killiveddi. IDPs had expressed concerns about relocation due to security reasons. Some IDPs explained that they were not willing to return to Muttur as the security forces would prevent them from displacing if the security situation deteriorated (as was the case for the Muslim IDPs who tried to leave Muttur in September following the distribution of the leaflet (described above)). They feared becoming trapped if they returned. IDPs from LTTE controlled areas said that they were only willing to return if the government blockade on humanitarian assistance was lifted. Some IDPs had carried out “go-and-see visits” and found that looting of their houses was widespread and some houses had been damaged by the fighting. In some areas the security forces were preventing “go-and-see visits”, and in one instance a woman was threatened in Muttur Town by an armed civilian.

Many IDPs were afraid that if there were any attacks on the security forces, there would be severe reprisals against civilians. In this regard they cited an incident which had occurred in February 1996 in Kumarapuram (a village in Killiveddi), when two soldiers had been killed and 24 civilians were killed in reprisal attacks. Furthermore, after a young homeguard was killed in Dehiwatte, soldiers had reportedly visited the neighbouring village of Menkamam and threatened people with a repeat of the Kumarapuram massacre should there be any further security incidents. On 5 August, a man was dragged from the IDP camp at Killiveddi school and executed on the road in front of the school. The army then refused to allow the villagers to take the body. As a result, there was considerable fear of the SLA amongst the Tamil population.

Following interventions from UNHCR on 3 November, the Government agreed that the proposed relocation of IDPs from Trincomalee Town would be postponed until December, in order to give due consideration to arrangements that would instill confidence in such a move.

On 29 November, following a review of the relocation proposal, UNHCR formally communicated its position on return and relocation and the Killiveddi site to the Government. UNHCR confirmed that it would be prepared to assist the Government in facilitating the voluntary return of persons in Trincomalee Town who were displaced from Killiveddi and who expressed a desire to return to their homes. This would be contingent on having free and unhindered access to ascertain the voluntary nature of the decision. UNHCR strongly believed that return should be directly to their homes in Killiveddi and not to a relocation site. Moreover, UNHCR felt that the particular relocation site selected by the Government in Killiveddi was not advisable given the security and protection concerns of the IDPs and the prevailing security situation in the area, particularly recent incidents of killings and abductions of civilians in Seruvila and Muttur Divisions and fears of inter-communal conflict.

d) Second Wave of Forced Returns, November/ December 2006:

Despite UNHCR's intervention and assurances from the Government that it would not forcibly return Tamil IDPs to Killiveddi and other parts of Muttur, IDPs in Town & Gravets, Trincomalee Town, came under increasing pressure from Government authorities to return. At the end of November, security forces and TMVP members visited displacement sites in Trincomalee Town at night, searched the premises, checked the identities of IDPs against a list and put pressure on IDPs from certain areas of Muttur to return.

In a typical operation, military personnel would ask IDPs to gather their belongings in the middle of their sleeping quarters and then would proceed to search them thoroughly. They demanded that the IDPs returned to their villages of origin and asserted that they would be harmed if they refused. Military personnel threatened IDPs that members of the TMVP would "handle" them if they refused to follow these orders. IDPs were often photographed by the military during these visits and threats were made that young men would be targeted if they remained or that the military would plant weapons and explosives in IDPs' so that they would be arrested and removed from the site.

IDPs feared retaliation by the security forces if they failed to do as they were told; some IDPs claimed that the forces had told them not to speak to agencies about these issues. Most of the IDPs stated that they were not willing to return because of the security situation in their villages of origin.

On 2 December, 66 families from the Cultural Hall site in Town & Gravets were returned on government buses to Muttur. The majority of IDPs were from Killiveddi, with others from Thanga Nagar, Maligiathivu, Iruthayapuram and Manalchenai. Considerable pressure continued to be put on IDPs in the other sites in Trincomalee Town to return and by the end of December smaller numbers of IDPs had returned from these sites. The site identified by the Government in Killiveddi was not ready when the returns took place in early December, so instead IDPs were moved to Killiveddi school.

During monitoring visits to Killiveddi in early December, several returnees from Town & Gravets maintained that pressure had been exerted on them to return by the security forces. Many families, particularly those with young male members, reported that they felt much safer in Trincomalee Town than in Killiveddi, and some confirmed that they were considering returning to Trincomalee and renting accommodation. Widespread looting of homes had taken place in the IDPs' absence, and assistance for house repair was identified by returnees as a priority. Returnees also lacked food, as only one week's dry ration had been supplied upon their return.

Documented incidents of forced return of Tamil IDPs during this period include:

Cultural Hall, Trincomalee Town

Security forces visited the Cultural Hall site, with an IDP population of 296 IDPs (107 families), on several occasions between 16 and 25 November. On 25 November, about 50 security forces entered the Cultural Hall IDP site in Trincomalee Town at 1am and checked IDPs' distribution cards as well as searching their belongings. The forces had reportedly informed the IDPs that it was safe to return to Malligathivu, Killiveddi and Thanga Nagar and that if IDPs failed to return then they would intensify the round ups and would arrest and/or detain those who remained without good reason. IDPs were informed that buses would be provided for up to 160 persons on 3 December (or 1 December) and that dry rations for 6 days would be provided.

The majority of IDPs maintained that they were not willing to return, but that they feared reprisals, including arrest by the security forces, if they remained in Trincomalee..

On 2 December, 66 families from the Cultural Hall site were returned on government buses to Muttur. Some 50 security force personnel and police accompanied their return. The majority of IDPs were from Killiveddi, with others from Thanga Nagar, Maligiathivu, Iruthayapuram and Manalchenai. UNHCR decided not to monitor the return of IDPs from Cultural Hall and was not present at the site on 2 December. In response to subsequent concerns raised by UNHCR about the returns, Government officials maintained that Killiveddi was safe, and that all returns had been voluntary. Officials highlighted the fact that IDPs had signed a "form" confirming they were

returning of their own free will. In most cases, however, the IDPs were required to tick on a list against their names indicating whether or not they wished to return – there were no standard “forms” as such.

St Joseph's College, Trincomalee Town

This site housed 255 IDPs (98 families). Security forces came to the site at 11pm on 26 November and told IDPs from Kanguveli, Kumarapuram, Killiveddi, Palathidichenai, Palatoppur and Lingapuram (around 43 families in total) that they would be transported back on 1 December. They were further informed that if they refused there would be further round-ups and arrests. IDPs expressed their unwillingness to return and cited recent shooting incidents in Muttur as evidence that it was not safe.

A second round-up of IDPs occurred during the night of 6 December when the police and armed security forces entered the camp, rounded up the IDPs and told them that they should leave by 10 December or face problems if they stayed. Following the round-ups a list was drawn up of 29 families who signed an agreement to go back to their villages.

On 23 December, 38 individuals (18 families) moved from St Joseph's College, Town & Gravets, to Killiveddi School. The return was organized by local authorities and observed by UNHCR. IDPs maintained that they were returning voluntarily, and that no pressure had been exerted on them to return. Persons remaining at the site had chosen not to return for security reasons and/or concerns over lack of shelter/livelihoods, as they had not visited places of origin since August.

Vigneswaran School

178 IDPs (64 families) were staying at this site. Security forces came to the site on 18 November at around 9pm. They separated male IDPs from females and searched their luggage. IDPs from Killiveddi, Thanga Nagar, LB3, Manalchenai and Menkamam (seven families in total) were told that they had to leave on 1 December. IDPs informed local authorities that they were unwilling to return, but were told to comply with the security forces.

Shanmugam School

193 IDPs (63 families) were staying at this site. Security forces visited the site on 23 November and told IDPs from various areas of Muttur West (Pachanur, Menkamam, Manachenai, Palatidichenai, Killiveddi, Kanguveli, Barathipuram and Malligathivu) that they would be returning on 1 December. IDPs indicated that there were no direct threats. They were told that one month's dry ration would apparently be provided.

Loorthu Matha Church, Palayutu

In early November 2006, two groups of IDPs were staying at Loorthu Matha (Our Lady of Lourdes) Church IDP site, Palayutu, Trincomalee Town. One group from the Muttur area received food rations, while the other group from Sangaman received no support. They were not registered by the authorities as IDPs and according to one INGO, local Government officials had prohibited supported to this group. In early September, an SLA official had visited the camp and spoke to the IDPs. He informed them that it was safe to go back and that it was not an option to stay at the camp.

Thanga Nagar, Seruvila Division

In August 2006, 130 Tamil IDPs (41 families) from Thanga Nagar fled their homes following skirmishes between the SLA and LTTE, and sought refuge at the Thanga Nagar primary school¹⁸⁶ The IDPs received assistance from the Government and an INGO.

¹⁸⁶ On 31 May 1985, 37 people were killed by the SLA in Thanganagar village.

On 20 November 2006 IDPs local authorities informed IDPs that it was safe for them to return, as Thanga Nagar was inhabited and surrounded by safe villages. The supply of dry rations was subsequently reduced, and authorities refused to repair the school's leaking roof.

From the beginning of December, IDPs reported a frequent presence of the SLA in the camps, particularly at night, who repeatedly informed IDPs that they should return. On 25 December, IDPs were told by the SLA that they had to leave the same day, and that there would be repercussions for those who refused. One of the reasons given was that the school had to be re-opened soon as the new term was about to begin. Consequently, all IDPs returned that day.

e) Third wave of forced returns: January – March 2007

Although pressure on IDPs in Town & Gravets to return eased somewhat in January 2007, it was stepped up again in February and March. Most of the IDPs remaining in Town & Gravets in March 2007 were from Muttur East. As IDP numbers reduced, the authorities attempted to consolidate sites and many IDPs were moved to Cultural Hall site where conditions were poor. IDPs faced food shortages as some humanitarian agencies cut assistance due to lack of funds, or were instructed by the Government to cease providing assistance to sites. An increase in the number of cordon and search operations in Tamil residential areas also put pressure on the IDPs. As returns from Batticaloa District to Trincomalee District took place in March 2007 (see below), local authorities visited the Town & Gravets sites to persuade the IDPs to return to Killiveddi and threatened that their assistance would be withdrawn. No deadlines for return were given and no direct threats of closing the IDPs sites. The IDPs were reluctant to return to Killiveddi because they feared for their security, many of them had heard about the killing of a returnee on 18 March (see account below), and they had heard about water shortages and lack of facilities at the transit sites. The IDPs did not want to be relocated to Killiveddi but expressed a desire to return to their homes in Muttur East as soon as possible.

Documented incidents of forced returns during this period include:

Konalingam School

IDPs, mainly from Muttur East (31 families), were informed in mid March by local authorities that they should move to either Palaiyutu IDP site, Cultural Hall IDPs site, or return to Killiveddi. However, they were reluctant to move as their children were enrolled at school in Konalingham school. They also feared round-ups at Palaiyutu and security checks at Cultural Hall sites; and were afraid to return to Killiveddi as they had heard of a shooting there on 18 March and of water shortages. The NGO providing food assistance was reportedly instructed to cease providing assistance to the IDPs at this site.

Cultural Hall

IDPs (all from Muttur East; 61 families) were also informed by local authorities in mid March that they should volunteer to return to Killiveddi or their assistance would be withdrawn. However, they were not specifically told that the site would be closed or that buses would be sent on a given date. IDPs informed agencies that they feared being forcibly returned, as had occurred from Batticaloa District to Killiveddi transit sites, and had also heard about the killing and water shortages at Killiveddi transit sites and were reluctant to be relocated there.

f) Forced returns of Tamil IDPs from Batticaloa District to Trincomalee District: March 2007

In February and March 2007, the Government and security forces undertook a significant effort to remove IDPs from Government controlled areas of Batticaloa District and return them to their areas of origin in Trincomalee District and Vakarai. Over 30,000 IDPs in Batticaloa District were from Trincomalee District, most of them from formerly LTTE controlled Muttur East and Eachchilampattai divisions, as well as Government controlled Muttur West and Seruvila divisions. The IDPs had fled to other areas of Batticaloa District after they were displaced from Vakarai in December 2006 and January 2007. Many of them had been displaced multiple times prior to this.

Returns to Trincomalee occurred in two phases. The first group of returns took place on 12 March. IDPs, who were mainly from Muttur West and Seruvila, were notified on Saturday 10 March by lists posted in the camps that they were to return to their places of origin. However,

agencies monitoring the returns observed that many were not voluntary, or in conditions of safety and dignity, and IDPs had not been able to make a free and informed decision on whether to return. Armed police, the SLA and STF were present in many of the sites, pressurizing IDPs to return. From 15 March, however, the returns were even more problematic, and many IDPs were subjected to severe intimidation, threats, harassment and, in some cases, physical force, to persuade them to return. The Government also abandoned plans to return IDPs only to Muttur West and started to return IDPs from Trincomalee regardless of their place of origin. Most of the IDPs from Muttur East and Eachchilampattai were relocated to the transit camps in Killiveddi, although some of them had been told they would be returned directly to their homes.

By 21 March, 3,021 IDPs (938 families) had been returned to Trincomalee District from Batticaloa. Of these, 1,866 IDPs (588 families) were still at Killiveddi transit site on 21 March (the majority of them from Muttur East, as well as 517 persons (145 families) from Eachchilampattai and 112 persons from Seruvila), and the remainder had either returned to their homes or were staying with host families.

12 March Returns

Returns to the nine GN divisions where Go and See Visits had taken place were scheduled for 12 March from collection points in six DS divisions in Batticaloa Town. On 12 March, 920 IDPs (out of the 2,800 IDPs included in the Government's resettlement plan) returned on approximately 21 buses to Killiveddi in Trincomalee District. Joint UN/NGO teams monitored the departures in Batticaloa and reported that very few of the returns were voluntary or based on free and informed decisions by the IDPs.

Some documented incidents of forced returns during this period include:

Valachchenai Collection Points: Vinayagapuram & CPM Church IDP Sites

304 families were due to return from this collection point, out of whom only 91 families ultimately boarded the buses.

Two armed SLA soldiers were present at CPM Church site, together with local Government officials, obtaining numbers of returnees and persons over 18 years of age. The IDPs informed agencies that they did not wish to return to Trincomalee at this time due to security concerns. People from Thanga Nagar were particularly concerned about the proximity of their village to Sinhalese and Muslim villages and feared they would be killed in retaliatory attacks. The IDPs had informed the local authorities that they did not want to return, but were told that if they did not their Family Cards would be withdrawn and they would not be assisted if they faced security problems. IDPs from Killiveddi told agencies that although they were concerned for their safety in their home villages, fearing SLA round-ups and retaliatory attacks by Sinhalese and Muslim communities, they wanted to return for livelihood/ income reasons.

Chenkalady Collection Point

82 families were due to return, of whom 16 families boarded two buses. One family from Iyankerny Camp was observed disembarking from the bus at this collection point, citing security concerns and fears for the safety of young adolescent family members. There was some confusion at the site, as not all the IDPs from the return locations were on the list provided to the local authorities. This led to cases of extended families being split up.

According to IDPs at Arumukathan Kudiyiruppu Kalimahl Vidyalayam they had been informed by local Government authorities in a meeting two days earlier that their assistance would be cut if they did not board the buses and that the authorities would not assist if they faced security problems. The IDPs were very reluctant to return due to security fears and concerns about the state of their property.

Kiran Collection Points

65 families were due to return, of whom 45 families boarded 3 buses. Agencies reported that one family from Muttur East was included on the list. IDPs at the Fuel Station site maintained that they were unwilling to return due to the lack of security, fears for the safety of their adolescent children, and fears of round-ups by the SLA. The IDPs had also been informed of the return two

days earlier, and had been told that their assistance would be cut and their Family Cards seized if they remained in Kiran. Several armed police officers arrived at the site and the IDPs then boarded the bus. No physical force was used and the armed police remained on the bus as it left the site.

Manmunai North Collection Points

Out of 297 families due to return, only 38 families returned. At Zahira College, an armored STF vehicle, a busload of armed police officers (approximately 20), and a jeep carrying five police officers were present at the IDP site and accompanied the convoy of buses. IDPs again informed agencies that they were unwilling to return, but were afraid that their assistance would be cut and they would be unable to stay at the site. After intervention by some of the agencies, a meeting was held with the IDPs and local authorities, who explained to the IDPs that they were free to decide whether or not to return. However, they indicated that assistance might be cut if the IDPs did not return. Some of the IDPs disembarked from the buses after the meeting. IDPs were extremely concerned about the presence of armoured vehicles in the convoy of buses and feared it could make the convoy a potential military target.

207 families in Manmunai North signed letters stating their refusal to return which they delivered to local Government officials.

Kaluwanchikudy Collection Points: Kurukal madam Kalaivani

After being informed that they had been selected to return, a group of IDPs approached the local authorities to voice their protest. During the meeting, however, they were informed that if they did not return to their homes, their Family Cards would be taken away, their assistance would be withdrawn and they would not be assisted by the authorities if there were any security problems. They were also told that they would receive assistance in their places of origin. Some of the IDPs returning to Trincomalee from this site were from Muttur East, they did not know if they would be taken directly to their homes or to Killiveddi as it was still not safe for them to return to their villages. IDPs at the site said that they were very afraid to return to their homes and feared for their security, including SLA round-ups and forced recruitment by the LTTE.

15 – 17 March Returns

Pressure on the IDPs to return intensified after 12 March, with reports of the security forces using physical force to coerce IDPs to leave. On 15 March, there was a major, well planned operation to return IDPs from sites in Batticaloa District. The returns were carried out primarily by armed police, the SLA and STF, and also armed and unarmed TMVP cadres in some sites. Dozens of buses departed with IDPs and there were numerous accounts of intimidation, threats and coercion. No advance warning was given and IDPs were told to pack up their belongings immediately and leave.

Documented incidents of forced returns during this period include:

Chenkalady Sites

In the Chenkalady sites, for the first time, IDPs reported that the security forces were using physical force to make people return.

Palacholai Site

There was a heavy armed police and SLA presence at Palacholai IDP site on 15 March. IDPs told the joint UN/NGO monitoring team that they were not given advance information about the return. The SLA soldiers told the IDPs to get in the buses or they would set their tents on fire, throw a grenade in their midst and kill them. As no advance warning had been given, several families were reported to have been separated as the children were at school and the men were at work. All the IDPs spoken to said that they did not want to return as they feared they would be used as human shields in their places of origin. Some IDPs who did not want to return were prevented from getting off the buses by the SLA officers. Agencies received reports that the SLA had beaten two IDPs with sticks at Palacholai to force them onto buses.

Iyankerny Site

There was a heavy armed SLA presence at Iyankerny site. The IDPs reported that 96 families were forced to return to Sampoor against their will on 15 March. The families had protested, but the authorities told them that their assistance would be withdrawn if they stayed. The remaining families were due to leave for Sampoor on 16 March and the joint UN/NGO monitoring teams witnessed this return. One busload of IDPs was ready to depart and there was a heavy presence of armed SLA personnel next to a second bus and surrounding a group of IDPs. The monitoring team was approached by a group of young men who were visibly distressed and claimed that armed SLA personnel had forced the IDPs onto the first bus against their will, threatening to kill them if they did not leave. The IDPs onboard the first bus confirmed that they did not want to leave but had been threatened and intimidated by the SLA. The monitoring team spoke again to the group of young men who had not boarded the bus. They were extremely afraid of the repercussions if they stayed behind, but were also afraid for their safety if they returned to Sampoor.

Kaluwankerny

On 15 March, SLA forces arrived in various vehicles, including an armoured personnel vehicle, and surrounded the IDP site. The IDPs had been given no prior information, but they were told to pack their bags and leave immediately. The IDPs were not told where they were being taken. Although no physical force was used, the security forces were aggressive and shouted at the IDPs in an intimidating manner.

On 16 March, two buses were at the site and IDPs were seen boarding with their possessions. There was a heavy SLA presence checking the names of IDPs against a list. The IDPs were all from Sampoor. The SLA Major at the site confirmed that all the returns would be directly to people's homes, not to Killiveddi. The IDPs spoken to said that they wanted to return directly to their homes, but they did not want to go to Killiveddi. They were also worried that Sampoor was not safe.

Savukady Site

There was a heavy armed SLF and TMVP group presence at Savukady site on 15 and 16 March. The STF reportedly beat people with canes and members of the TMVP group threatened IDPs with violence if they did not return. One IDP from Sampoor had been told that if he stayed behind in the site and was stopped by the SLA or STF carrying an ID card from Trincomalee he would be shot on sight. A middle-aged woman reported that she had been chased around the camp by armed personnel.

Conditions in Trincomalee

Upon arrival in Killiveddi, the IDPs again faced pressure from the authorities to return directly to their homes or stay with host families. The local authorities failed to inform the first group of IDPs on 12 March that they could stay in the temporary shelters at the transit site in Killiveddi. As a result, many IDPs spent the night sleeping in the open air or with host families.

In subsequent days, IDPs at Killiveddi transit site were put under heavy pressure to return to their villages of origin in Muttur West and Seruvila divisions. By 17 March, all IDPs from these areas had been returned to their places of origin. Most of the IDPs were reluctant to go back to their homes as they feared for their safety and had concerns about their houses and the levels of assistance available. However, IDPs were told that assistance would *only* be provided in their villages of origin, which prompted them to return. Some IDPs claim that they did not receive the one week dry food ration to which they were entitled. In some cases, IDPs were moved to yet another temporary site as they were not allowed to return to their villages of origin.

Documented incidents of IDPs being pressured to return to their villages of origin, being relocated to another temporary site, and facing security problem after their return include:

Lingapuram

27 families were moved from Killiveddi IDP site to Lingapuram on 14 March. These families were from Ariyamankerny, an area bordering LTTE controlled areas, with a history of LTTE infiltration, where the SLA now has a heavy presence and is occupying several houses. The SLA and local Government authorities told the IDPs that they could return to their village due to security reasons. However, they had no information about when IDPs would be able to return to their

homes in Ariyamankerny. The IDPs said that they did not want to move to Lingapuram as they felt Killiveddi was safer, but they had been told by the authorities that they must relocate as the Killiveddi site was only for people from Muttur, not for those from Seruvila. The IDPs were also told that assistance would be provided in Lingapuram. However, it was reported that the pre-school site in Lingapuram lacked sufficient shelter, water and sanitation.

On the morning of 16 March, one young returnee in Lingapuram was stopped by two persons whom he identified as SLA soldiers, and questioned about the whereabouts of another individual. When the young man replied that he did not know, the soldiers dragged him in front of the pre-school and beat him on the back with their guns. The other returnees ran to the scene screaming, and the soldiers stopped beating him. The young man sustained minor injuries as a result of the beating.

Kanguveli

16 families were brought to Kanguveli from Killiveddi on 13 March. Some returned to their houses and others were staying with relatives. None of the IDPs felt safe to stay at their homes during the night and reported that they would often sleep in the local school or together in one house. The IDPs cited the location of their village next to the Niapola army base, between neighbouring Sinhalese villages and next to two new check points as the main reason for their security concerns. There have been several shooting incidents in the area.

Thanga Nagar

IDPs from Thanga Nagar, in Seruvila Division, just south of Killiveddi, reported that they were particularly afraid to return to their homes. They feared retaliatory attacks and killings due to the proximity of their village to Sinhalese and Muslim communities and cited a large number of killings in their village since April 2006. UN monitoring teams spoke with IDPs from Thanga Nagar on 15 March who had been told that they had to leave Killiveddi that day and return to Thanga Nagar. The IDPs said that they were unable to return to their homes as the houses had been damaged by the weather and looting, and that they feared for their security. According to IDPs the authorities had been forcing them to return by threatening to withdraw humanitarian assistance, threatening to call the military into the camp, and informing them that the shelters in Killiveddi were not built for them. Some people said they had been asked to sign a "letter" stating that they were going home voluntarily; however, they were not sure about the content of the letter as it was written in Sinhala.

Barathipuram, Muttur DS Division

48 families returned to Barathipuram on 12 March. The families were registered at Killiveddi and then moved directly to their home village. A UN monitoring team which met with some of the returnees on 15 March reported that the returnees were extremely concerned for their security in Barathipuram. The villagers reported that the military had visited the village one to three times a day over the past three days. Women in the village were harassed and threatened by the military. The military searched their belongings and threatened that they would be shot if any incident took place in the area.

On 16 March, the returnees reported that the previous day the SLA had driven through the village announcing over a loudspeaker that "if anything happens, they would all be killed".

Aalimchenai (Alimnager)

15 families returned to this isolated village which is surrounded by Muslim villages. They all reported that they felt unsafe in their village, especially at night when gangs from neighbouring Muslim villages harassed them verbally, particularly the women. The returnees were too afraid to sleep in their own homes at night, and instead would gather in one house in the village.

BATTICALOA DISTRICT

Vakarai

By November 2006, there were some 31,900 IDPs in Vakarai, Batticaloa District, most of which is in LTTE controlled area. The majority of the IDPs were Tamils from LTTE-controlled areas of

Muttur East and Eachchalampattai in Trincomalee District, as well as some from Seruvila and Muttur West and a few from Town & Gravets. The IDPs fled southwards in April 2006 following the aerial and artillery attacks on these areas by Government forces after the suicide attack on the Army Commandr, Sarath Fonseka, in Colombo. They fled further south again in August 2006 when fighting resumed following the Maavil Aru incident. Eventually, nearly all the IDPs arrived in Vakarai in the north of Batticaloa district.

Humanitarian access to Vakarai between September and November 2006 was extremely restricted and limited only to ICRC and UN agencies. During this time, all convoys to Vakarai had to seek endorsement from local Government authorities and security clearance from the SLA. A joint UN humanitarian convoy into Vakarai was able to enter the area on 29 November 2006. Following this, however, no humanitarian agencies were able to access to the area, apart from very limited access for the ICRC to evacuate the wounded and sick and bring in some basic medical equipment.

a) Restrictions on Freedom of Movement by the LTTE and SLA

More than 31,900 IDPs were trapped in Vakarai while heavy fighting and shelling between the LTTE and SLA continued throughout September to December 2006. It was reported that IDPs who tried to leave LTTE controlled areas were prevented from doing so by the LTTE. A few families managed to escape through the jungle into government controlled parts of Batticaloa District, but most remained in Vakarai. Similarly, IDPs who managed to escape from LTTE controlled areas were intercepted by the SLA and taken to IDP camps in Valachchenai. Some IDPs were unable to move to their place of choice, and some expressed fears about moving to Valachchenai due to the heavy TMVP and SLA presence in this area. Some IDPs were relocated to areas close to the front lines in Mankerni where they also did not feel safe.

3 November: Thirty IDPs from camps in Vakarai, Kathiraveli and Panichchankerni areas who were originally displaced from Muttur Division came to Valachchenai to buy food and were prevented by the Sri Lankan Army (SLA) from returning to the Vakarai IDP camps on 3 November. The SLA claimed that fighting and continuous shelling was ongoing in the Vakarai area and as a result access to the area was restricted. The IDPs were forced to remain in Valachchenai against their will. Some of them had left their children and elderly relatives behind in Vakarai. They were accommodated in the Vinayagapuram School IDP camp in Valachchenai.

8 November: On 8 November, the SLA shelled Vakarai, hitting Kathiraveli School where over 6,000 IDPs were sheltering. 49 people were killed and 125 injured. 2,000 people reportedly tried to leave Vakarai via Panichchankerni following the shelling, but were prevented from doing so by the LTTE. The ICRC assisted in bringing out wounded from the area to the hospital in Valachchenai and Batticaloa.

28 November: As a result of shelling by the SLA and fighting between the LTTE and the TMVP, villagers from Akuranai and Mimunathaveli villages, Kiran Division, decided that they could no longer remain where they were living. They left early in the morning on 28 November 2006 and walked for over four hours to reach Government controlled areas. The first group was stopped by the SLA at Ridithena and taken to a school, from where they were transported in buses organized by the SLA, to Vinayagapuram IDP site in Valachchenai. The IDPs expressed concerns for their security as the camp is located in an area known to be a heavy presence of TMVP cadres. Nevertheless, they reported that they were relieved to have escaped the shelling and to be in camps where they could receive regular assistance and where they were relatively free to move around.

29 November: On 29 November, a group of families (approximately 75 people) attempted to leave Vakarai. Approximately 50 people managed reach the government controlled areas by walking through the jungle at night. These IDPs stated that the others were prevented from leaving by the LTTE. The IDPs came with very few personal belongings and left most of their possessions behind. They arrived in government controlled areas the next morning where they were met by the SLA. The families in the groups wanted to go to different locations including Trincomalee, Batticaloa and Valachchenai, but they were all transported by the SLA to an IDP camp in Valachchenai.

14 December 2006: Shelling and exchange of fire between the LTTE and SLA on the northern, southern and western fronts of Vakarai intensified significantly from the beginning of December. In several incidents, SLA artillery shelling hit IDP camps (some of them in schools), killing and wounding IDP civilians.

On 14 December, following a temporary lull in hostilities, large numbers of people left LTTE-controlled Vakarai via the jungle at Ridithena, a 12 hour walk. Some IDPs reported having to cross a deep river on the way. Several IDPs reported paying a “broker” to show groups of them the way through the forest. One group of IDPs explained that the LTTE had shot over their heads two days before to prevent them from leaving and they had fled into the jungle, the group behind them did not follow. They said that they believed that the LTTE was preventing them from leaving because their presence would deter the army from shelling the LTTE controlled areas. Other IDPs confirmed that the LTTE was trying to stop people from leaving.

At Ridithena, the SLA recorded the basic details of all those arriving and their possessions were searched thoroughly. IDPs were also questioned by military intelligence. From Ridithena the IDPs were transported by the SLA to a transit site at Vinyagapuram (Valachchenai), and then onwards to emergency sites identified by the GA Batticaloa.

An estimated 90% of IDPs were reported to have lost their NICs when fleeing Vakarai, contributing to restrictions on freedom of movement as IDPs did not feel safe to leave sites without documentation. Following interventions by UNHCR it was agreed by the Minister of Disaster Relief Services on 23 December that the SLA would issue IDPs with identity cards, to enable them to freely leave the sites.

By the end of December, a total of 25,000 IDPs had fled from Vakarai into Government controlled areas of Batticaloa District. A further 10,000 IDPs fled into Government controlled areas in mid January 2007 and reported that everyone had left. The IDPs included those people who had fled from Trincomalee District in August 2006, as well as residents of LTTE controlled Vakarai itself. IDPs leaving during the final departure on 19 and 20 January reported that as they were leaving Vakarai the SLA directed those driving tractors towards Welikanda and pedestrians towards Mankerny.

b) Returns to Vakarai, Batticaloa District: March 2007

By February, pressure was growing on IDPs originally from Vakarai (some 16,000 IDPs) who had fled into the Government controlled areas of Batticaloa District in December 2006 and January 2007 to return to their homes. At the beginning of February, the Minister of Disaster Relief Services announced the Government's plan to resettle all Vakarai IDPs in a three-phased approach, dependent on the progress of the SLA's de-mining activities. Returns to 9 GN divisions, from where 80 – 90% of the IDP population originated, started on 7 March.

The initial returns, on 7 – 8 March, were largely voluntary. Although the IDPs had not been given much information about conditions in Vakarai, or sufficient time to prepare to leave, many IDPs indicated that they were keen to return to their homes. They were eager to leave the IDP sites in Batticaloa where conditions were very poor.

In the subsequent days, however, pressure on the IDPs to return to Vakarai was increased and although some IDPs were still eager to return, there were also some incidents of forced returns.

Kaluwanchikudy: Kurukalmadam Kalaivani

On 12 March, a joint UN/NGO monitoring team met with IDPs from Vakarai at this site. The IDPs reported that authorities from Vakarai had visited the previous week and told them they would be returning on 28/ 29 March. They had been informed that if they did not return their assistance would be stopped and their security would not be guaranteed. The IDPs were concerned about their security in Vakarai and mass round-ups and arrests which they had experienced in the past. On 17 March, a joint UN/NGO team visited Kurukalmadam site again. The IDPs reported that Vakarai officials had visited the site the day before and told them that 600 IDP families from three other IDP sites had already returned to Vakarai, and if they did not return themselves they would

find that the others had taken their belongings. Many of the IDPs had relatives at other sites and were confused about whether they should return. They had received no information about conditions in Vakaraï upon which to base their decisions. The IDPs told the official that they were not ready and the men were out working and told the bus to come back an hour later. However, when the bus came back the IDPs were eating lunch and the official left and did not return. The IDPs told the agencies that a group of them would be willing to go back to Vakaraï on a Go and See Visit so they could make an informed decision about whether or not to return. Local authorities later arrived at the site and expressed concern about the safety of those IDPs who had not agreed to return to Vakaraï, both once they did eventually return and if the STF came to forcibly return them.

Kaluwanchikudy: Cheddipalayam

23 families from Kathiraveli and Palchenai in Vakaraï DS division staying at this site were informed on the morning of 16 March that they would be transported back to Vakaraï by bus that day. Of the 23 families, only five families registered their willingness to return. The IDPs told the joint UN/NGO monitoring team that they had been told their assistance would be cut if they did not leave. The five families who had agreed to return said that the only reason they wanted to go back was to retrieve their belongings. One O-Level student said that she had been prevented from sitting her exams that day.

Valachchenai: Vinayagapuram

Armed SLA personnel were present at this site on 14 March. Two buses were present to take IDPs back to Vakaraï. Most of the IDPs spoken to said that they wanted to return to their homes, but they were apprehensive about the situation in their areas of origin, both in terms of security and the state of their houses, which they had heard had been badly damaged and looted. They had only been informed about the return the day before.

Valachchenai: CPM Church Site

60 families were due to return to Vakaraï from this site on 15 March. Although the families were keen to return, they all lacked information about conditions in their home villages and the state of their houses. They felt compelled to leave as they lacked livelihood opportunities in the IDP camps and felt they had no long-term future there.

Kiran: Kirimuddi Farm Site

During a site visit on 15 March, the joint UN/NGO monitoring team spoke to IDPs onboard buses ready to depart for Vakaraï. The IDPs were only informed the previous night about the return movement. The IDPs confirmed that they were willing to return but said that they had little or no information about their home villages and the condition of their houses. Many of the IDPs felt they should return to protect their properties from others who had already returned or were planning to return.

Kiran: Parankiyamadu Site

IDPs in this site had also only been told the night before (14 March) that they would be departing the next day. Although they were willing to return, they lacked sufficient information about conditions in their home villages.

Arayampathy: Vedarkudiyirupu – Thalankadu

20 families from Kathiraveli, Vakaraï, were informed by local authorities on the evening of 15 March that they should leave the site the following day. The joint UN/NGO monitoring team spoke to the IDPs on 16 March when they were waiting to leave. None of the IDPs from Vakaraï at this site wanted to return, and some were visibly distressed. However, the authorities had told them that their assistance would be cut if they did not agree to leave, and that if they did not return at this point they would not find their houses intact at a later date.

A local government official who arrived at the site informed IDPs that they could not stay in the camp if they refused to go back to Vakaraï, and the camp would be closed down. The IDPs would be taken to Mankerny in ordinary buses and handed over to the SLA. If the IDPs refused, STF

buses would come later and take them by force. The official said that the army would take photos of all the IDPs when they arrived at Mankerny and ensure that the same people arrived in their home villages.

The local government official also informed the IDPs that conditions were very bad in Kathiraveli and the armed forces were pushing IDPs to return to there. According to unconfirmed reports, some young girls had been raped by the armed forces and the armed forces were occupying every fifth civilian house. The official also warned that once IDPs returned they wouldn't be able to leave again, either by land or sea, as the army would stop them.

IDPs at this site implored agencies not to leave as they were scared of being forced to return to Vakaraï. One IDP threatened to douse himself with petrol and set himself alight if he was forced to return. A group of young women begged the agencies not to leave as they were afraid of being forced to return to Vakaraï where they believed they would be subjected to sexual assault by the armed forces. A number of other people said they would prefer to die at the site, rather than be forced to return.

UN Joint Humanitarian Assessment Mission to Vakaraï

A joint UN humanitarian assessment mission to Vakaraï on 12 March found that some of the IDPs who had returned voluntarily in the first days of return regretted their decision. The IDPs said that if they had been properly informed about conditions in Vakaraï they would not have returned. In particular, they were concerned about the considerable damage and destruction to their houses, many of which appeared to have been looted; the loss of household items from their houses; insufficient water, food and infrastructure (schools, medical services etc.) and lack of livelihoods; threats to their security due to the heavy presence of SLA and TMVP armed cadres; and fears of renewed fighting between the SLA and LTTE.

ANURADHAPURA DISTRICT

a) Return of Muslim IDPs to Muttur, September 2006:

As in Trincomalee District, during September 2006 there was a trend of returns of Muslim IDPs to Muttur from Anuradhapura District. The IDPs had fled Muttur in April 2006, and were staying in Muslim communities including Kekirawa and Medawachchiya. On 19 September, 56 families were returned on to Muttur on government buses. Twenty-eight families refused to return out of fears for their security and remained with host families.

Thirty-nine of the families left from Madatugama where they had been staying in tents erected in the playground of a local Muslim school, without any basic facilities. Although it appeared that these IDPs had left voluntarily as they wanted to return to safeguard their homes and properties in Muttur, it was also clear that the lack of basic assistance, food, shelter, water and sanitation in the displacement site had been a major push factor in encouraging the IDPs to return. No incidents of physical force were reported, but instead threats of withdrawal of food rations, cutting water and electricity supply and deadlines for government transportation back to areas of origin, all put considerable pressure on IDPs to return.

The remaining families were housed by host families in Madatugama. All families, apart from one, returned to Muttur peacefully in early November.

b) Returns of IDPs in Kebithigollewa, Anuradhapura

At the end of September 2006, some 400 Sinhalese IDPs from "border villages" in Kebithigollewa, Anuradhapura District, who had fled following the bus bomb in June 2006, were forced to return to their villages. IDPs were given a week by the authorities to vacate camps before their food, water and electricity would be cut. During this time, the Government agreed to provide labourers to help with their move.

During a monitoring visit to the sites on 29 September, police, army personnel and home guards were observed assisting IDPs to dismantle the shelters. Nearly all of the IDPs informed monitors that they did not feel safe enough to return to their places of origin, but that they felt they had no alternative but to leave. A Government official had informed them the previous day that their place of origin was safe and that they would be assisted with their departure only if they left

before 1 October. After this time they would have to organise their own transport. They were also told that the electricity in the camp would be turned off and those who refused to return would not be given dry rations or water. Both sites visited were vacant a few days later.

Local Government authorities later informed claimed that the return was voluntary, and that assistance would not be denied to those IDPs who remained. However, they informed that the places of origin were safe for return and that it was better for people to return, despite their fears. Many returnees subsequently reported that they were afraid to return to their homes and had found alternative places to live, citing fears of LTTE infiltration. They informed that they were afraid to go to work or to send their children to school. Many lacked viable livelihood opportunities and had not received food rations.

PUTTALAM DISTRICT

a) Tamil IDPs from Muttur, May 2006

On 26 May 2006, all recently displaced families (29 families, 117 persons) in Selvapuram/Udappu were invited to a meeting by local authorities and instructed to return to their place of origin in Trincomalee District. The IDPs were told that Government buses and trucks were scheduled to come to Selvapuram the following day to transport them to Trincomalee. However, the IDPs had serious misgivings about returning to their homes due to the security situation and were worried that the authorities would force them to go back. Following interventions by UNHCR with central Government the orders were reversed.

On 27 May 2006 IDPs were informed by local police that the Government had decided to suspend the returns temporarily. However, they were told that the Government was concerned about the security situation in Selvapuram/Udappu, and that it was suspected that there were LTTE infiltrators among the IDPs. IDPs were told that they would be observed very closely by the security forces. The police maintained that the security situation in Trincomalee was satisfactory and that the government would protect the IDPs when they returned. Despite these assurances, the IDPs were still unwilling to return due to fear for their physical security in Trincomalee.

However, between September and November, a lack of Government food assistance gradually compelled IDPs (321 persons, 74 families) residing in villages in Puttalam¹⁸⁷ to return. Aside from one month's supply of emergency rations in May 2006, plus one small distribution by the SLA in November, the Government provided no other assistance to the IDPs.

b) Muslim IDPs from Muttur, September 2006:

Following the offensive in Muttur in April 2006, 74 Muslim families fled to Muslim communities in parts of Puttalam District, including, Sembukulam (37 families), Thiladiya (15 families), Rahmath Nagar (12 families), Kandakuliya (6 families), Vepamadu (2 families), Manal Kundu (1 family) and Palavi (1 family) in Puttalam District. Most of the IDPs were from Muttur and Thoppor.

As in Trincomalee District, a similar trend of forced returns of Muslim IDPs back to Muttur occurred in Puttalam District in September 2006. Although no known physical force was used, threats of withdrawal of food rations, cutting water and electricity supply and deadlines for government transportation back to areas of origin, all put considerable pressure on IDPs to return.

MANNAR DISTRICT

a) Restrictions on Freedom of Movement by LTTE

The FDL checkpoints at Uyilankulam and Madhu were closed on the 11 August 2006 following the resumption of hostilities on the Jaffna peninsula. Prior to the closing of the FDL, thousands of Catholic pilgrims had travelled to Madhu Church, situated in the LTTE controlled area of Mannar, to attend the annual religious festival. When the festival was over, the pilgrims were not allowed to cross the checkpoints at Uyilankulam or Madhu.

¹⁸⁷ Sembukulam (37 Families), in Thilady (15 Families), in Rahmath nagar (12 Families), in Kandakuli (6 Families), in Vepamadu (2 Families), in Manal kundru (1 Family), in Palavi (1 Family).

On 16 August the checkpoint at Madhu was opened for about two hours to allow about 300 pilgrims, mainly from the south, to leave. The crossing was negotiated by ICRC. However, some 750 pilgrims, mainly from Jaffna, were not allowed to leave via the Madhu checkpoint. The pilgrims from Jaffna had entered Madhu after obtaining a pass from the Muhamalai checkpoint, but the LTTE would not allow them to exit via the Madhu checkpoint with a Muhamalai pass. The pilgrims were trapped as IDPs within the Madhu Shrine area until 10 November, despite the fact that the checkpoints at Uyilankulam and Omanthai had been opened for public movement intermittently.

The IDPs made various attempts to obtain permission from the LTTE to exit the LTTE controlled area. During the third week of November, about 100 of the IDPs from Jaffna went to Kilinochchi to request the LTTE administration to grant permission to exit the LTTE controlled area. The LTTE initially indicated that they would provide a reply to the IDPs after 10 days, but failed to do so. The LTTE also informed the IDPs that they would make a decision once they had screened the IDPs and registered all those between the ages of 16-30.

The LTTE claimed that they would not allow the pilgrims to leave in case they encountered problems with the SLA on reaching Jaffna, having spent a considerable period of time in an LTTE controlled area.

On 10 November 666 IDPs, were able to cross the Uyilankulam FDL checkpoint. 440 of these IDPs were registered initially at St. Sebastian's church, Mannar and 339 were accommodated in Pesalai. On 18 November 300 of those accommodated in Pesalai were transported by bus to Trincomalee and on 19 November by ship to Jaffna. On 21 November a further group of 287 IDPs were transported to Trincomalee and on 22 November onwards to Jaffna.

b) IDPs from Pesalai, Mannar Island

During the months of April and May, several thousand people moved from Trincomalee to Talaimannar and Pesalai in Mannar district in an attempt to leave to India. The IDPs feared for their safety in Trincomalee and did not believe that they could find safety anywhere in Sri Lanka, they claimed that they were fleeing to India as a last resort.

By 22 May, a total of 297 IDPs had been identified by Mannar authorities, with 41 staying at St. Laurens Church in Thalaimannar Church and 256 at Our Lady of Victories Church in Pesalai. Smaller numbers were staying with friends and relatives in the villages around Mannar. The number of IDPs fluctuated due to the untraceable arrivals and secretive departures. On 31 May, there were a total of 546 people stranded in Mannar.

The SLN intensified its presence on the beaches around the church grounds and used helicopters to force outgoing boats in Sri Lankan waters back to shore. Those on board were detained at the navy camp during the night and handed over to the Talaimannar police station the next morning.

The Talaimannar police station was not equipped to keep such large numbers of "detainees", and women and children especially suffered from the lack of toilets and shelter. After formal registration at the police station, the "detainees" were produced before the courts without charges. Most were released after paying a fine of Rs 500.

Clashes between the SLN and the Sea Tigers and an increase in tensions in May, resulted in larger numbers of local people seeking sanctuary in the Church of Our Lady of Victories in Pesalai during the nights. By the end of May the church authorities in both Talaimannar and Pesalai indicated that they did not have the capacity to host such large numbers of IDPs. The churches requested the Government to provide an alternative location for the IDPs as tensions were heightening between the host community and the IDP population.

The Government indicated that they wanted to avoid turning Pesalai and Talaimannar into unofficial transit camps to India. As an interim measure, the IDPs were placed in schools in the surrounding areas. Patrolling by the navy and army around the school buildings intensified during this period, in an effort to control the exodus to India.

On 26 May, local authorities were instructed by the SLA that all IDPs from Trincomalee should be sent home. When requested to assist with the return of IDPs to Trincomalee, UNHCR Mannar reiterated its position that IDPs should not be compelled to return if they do not feel it is safe and that any return should be voluntary and in safety and dignity. In the end, the plan to return all the IDPs to Trincomalee was halted and no returns took place.

During the first two weeks of June 2006 confrontations between the LTTE and SLA/ SLN intensified, with a number of attacks on civilians and civilian properties. A significant portion of the host population displaced at night, either at the church or at friends' and relatives' homes. On the 15 June 2006 several houses were burned and damaged by the SLN after a confrontation with the LTTE.

On 17 June, in the early morning, there was a clash between the Sea Tigers and the SLN. Fishermen, who returned from sea, brought the news to the shore and around 3,000 individuals, mostly from Pesalai village, sought refuge in Our Lady of Victories Church in Pesalai. The same day, eyewitnesses reported that a number of men whom they thought to be Navy personnel, began firing at the side of the wall of the church, and also threw grenades. One grenade hit a window and fell back, while the second one rolled in the church killing a 75 year old women and injuring 5 children. Reportedly 42 members of the community received injuries, either as result of the firing inside and/or outside the church or due to the grenade. After the incident the attackers burned houses as they fled. Following the incident, it was reported that IDPs either managed to travel to India or returned to Trincomalee on their own initiative.

c) Forced returns from Madhu Church, Mannar: February – April 2007

The LTTE has also been responsible for the forced relocation of IDPs. Madhu Church in the LTTE controlled area of Madhu Division, Mannar District, has traditionally been a place of refuge for IDPs. IDPs from Manthai West and Madhu DS divisions started to move to Madhu church in late 2006 as a precautionary measure due to the deteriorating security situation. IDPs moved freely, staying at the church at night and returning to their homes during the daytime to carry out daily activities. IDPs received food, water and other assistance from UN agencies and NGOs.

In January and February 2007, larger numbers of people started to take refuge in Madhu Church due to a series of security incidents, including the bombing of Padaghuthurai village and an intensification in forced, and often violent, recruitment by the LTTE. By 19 March, 10,197 persons were displaced in Madhu, over 8,000 of whom were staying in and around Madhu Church and a further 2,000 IDPs (some 375 families) were displaced along the Palampitty Road.

The LTTE had a tacit agreement with the church authorities that they would not recruit from within the church grounds. However, the LTTE's lack of access to the church was proving a barrier to its recruitment activities, especially given the presence of over 1,000 men and women of "fighting age" amongst the IDPs sheltering at the church by the end of February.

As a result, the LTTE started to put increasing pressure on the church authorities to allow unarmed, plain clothes LTTE cadres access to the church to speak to the families about recruitment. By the beginning of March, LTTE cadres were entering the church premises on a regular basis for this purpose. At the same time, the LTTE announced that it would prevent any more displaced families from entering Madhu Church to seek temporary shelter and that it would ask IDP families currently inside Madhu Church to relocate to alternative displacement sites. The LTTE also said that it would not allow any international agencies to provide assistance inside the church grounds. In March, the LTTE claimed that it could not guarantee the safety of humanitarian agency staff traveling on the road to Madhu Church, and humanitarian organizations were thus unable to access the area.

On 23 March, reports were received that the LTTE had ordered IDPs to leave Madhu Church and head north towards Vellankulam, allegedly for security reasons. It was also alleged that the LTTE was using the movement of IDPs from the church as a recruitment opportunity. On the evening of 23 March the LTTE brought trucks to the church and started to force the remaining IDPs to leave. The LTTE cadres were allegedly armed and used wooden sticks to force the most resistant IDPs to get into the trucks. By 25 March, more than 5,000 IDPs (75% of the IDP population) had been forced to leave the church and were not allowed to take any of their belongings with them. The

LTTE cadres told the IDPs that they would be able to return after three days to collect their belongings, but the IDPs were not allowed to do so and all their belongings were stolen by thieves. The IDPs moved to Andankulam, Adampan and Vattakandal in LTTE controlled areas of Mannar District.

During the following days (25 – 28 March), the forced relocation of IDPs continued. Armed LTTE cadres entered the church and used loudspeakers announcing that all IDPs should leave, warning that those that did not leave would be treated as traitors. IDPs that left during these days were allowed to take all their belongings. Some 1,500 IDPs were still in the church on 28 March. However, the LTTE had stopped all supplies to the church and all shops in the vicinity were closed, which was perceived as a further tactic to pressurize remaining IDPs to leave.

On 2 April the LTTE informed UNHCR that all IDPs had left Madhu Church, and had moved to Manthai West Division (Periyamadhu, Athimodai, Vellankulam and Kovilkulani), as well as to locations in Kilinochchi District (Jeyapuram, Mulankavil and Kilinochchi). At the same time, local officials reported that less than 100 IDP families (300-350 individuals) remained in Madhu Church, although they too were under pressure from the LTTE to move to Manthai West. By 7 April, there were only 38 families in the church.

As UN agencies and NGOs had no access to Madhu Church in March and April 2007 due to the prevailing security situation, they were unable to verify the information provided by local sources. The information can only be verified when humanitarian agencies are able to speak to the IDPs themselves directly.

ANNEX 2

The International Legal Framework on Forced Displacement, Freedom of Movement and Voluntary Return

More than half a million people are internally displaced in Sri Lanka today.¹⁸⁸ The internationally accepted definition of an internally displaced person (IDP) is one who has “been forced or obliged to flee or leave their homes or places of habitual residence, in particular as a result of or in order to avoid the effects of armed conflict, situations of generalized violence, violations of human rights or natural or human-made disasters, and who has not crossed an internationally recognized state border.”¹⁸⁹ Since the escalation of hostilities in 2006 IDPs have been (1) caught in the midst of hostilities and unable to move, (2) prevented by parties to the conflict from leaving areas they consider unsafe, and (3) coerced in various ways to return to their places of origin. In addition, there have been allegations that groups of IDPs have been used as “human shields” in the conduct of hostilities. These actions all violate international law, under which IDPs retain in full equality the same rights and freedoms as other people in their country.¹⁹⁰

In particular, IDPs retain their right to freedom of movement, including the right to seek safety elsewhere. As civilians, they are entitled at all times to protection under international humanitarian law if they are not directly participating in hostilities. This includes protection from direct attack, from the effects of indiscriminate attack, and from use as “human shields” to insulate military objectives or geographic areas from further attack. IDPs also have a right to voluntary return, in safety and dignity, to their original places of residence. Under no circumstances may return be coerced: where possible, it should be carried out only after IDPs have full information about prevailing conditions, such as through “go and see” visits *before* they make a decision to return. In limited circumstances a party may have reasons to move (resettle) IDPs from an existing location, although it is never legitimate to return IDPs to their original communities where risks to health, safety, or security remain. The basis of these rights and the duties they impose upon authorities and other actors are discussed below.

I. Sources of International Law Applicable in Sri Lanka

In times of armed conflict, both international humanitarian law (IHL) and human rights law apply, and both bodies of law must be consulted. Two differences in their application and limitation must be borne in mind. First, human rights law traditionally binds only States, and generally only those States that have ratified the relevant treaties from which the rights are derived. Non-State armed groups have occasionally made unilateral and voluntary obligations to observe human rights law. In contrast, IHL is binding upon all parties to a conflict, and customary international humanitarian law applies regardless of the status of treaty ratification (namely, the Geneva Conventions and their two Additional Protocols).

Second, human rights law permits limitation of or derogation from certain rights, including movement-related rights, under limited and carefully prescribed circumstances.¹⁹¹ Derogation may occur only in times of a formally declared public emergency, such as Sri Lanka has observed since August 2005, and it must be “of an exceptional and temporary nature.”¹⁹² In addition, limitations or derogations from movement-related rights are subject to strict procedural protections. Measures of derogation are limited “to the extent strictly required by the exigencies of the situation.”¹⁹³ These limitations relate to the duration, geographical coverage and substantive scope of the derogation. Under the principle of proportionality, measures of derogation must be

¹⁸⁸ Refer to main report; 312,712 people were previously displaced by the conflict; since April 2006 some 301,879 people have been newly displaced (as at 16 April 2007).

¹⁸⁹ Guiding Principles on Internal Displacement, UN Doc E/CN.4/1998/53/Add.2/Annex, introductory para. 2 (“*Guiding Principles*”). The Guiding Principles are available in Tamil and Sinhala at www.brookings.edu/idp.

¹⁹⁰ Guiding Principle 1(1).

¹⁹¹ International Covenant on Civil and Political Rights (ICCPR), Art. 4. The Covenant also specifies a list of rights that remain non-derogable at all times.

¹⁹² General Comment No. 29, States of Emergency (Article 4), CCPR/C/21/Rev.1/Add.11 (2001) ¶ 2. Moreover, the “public emergency” must reach the level that it “constitutes a threat to the life of the nation.” *Id.*

¹⁹³ ICCPR, Art. 4(1).

carefully tailored to meet the exigencies of the emergency, and they must not be broader than necessary. Moreover, the derogation may not be inconsistent with other obligations of international law (such as international humanitarian law). Nor may it discriminate by rule (*de jure*) or in application (*de facto*).¹⁹⁴ Finally, the fact of the derogation itself must be formally notified and justified to other States Parties to the Covenant through the Secretary-General of the United Nations.¹⁹⁵

IHL provides more precise guidance concerning the application of certain human rights during armed conflict, and it addresses some issues not covered by human rights law. It allows neither derogation nor limitation, and it further protects all civilians not directly participating in hostilities, including IDPs, vis-à-vis both the State and armed groups. During their displacement, IDPs receive the same protections from the effects of hostilities and the same entitlements to relief as the rest of the civilian population. Although Sri Lanka is not party to Additional Protocol II to the Geneva Conventions (concerning non-international armed conflicts), the rules discussed here are part of customary international law and thus are binding upon all parties to the conflict in Sri Lanka.

The rules of IHL which aim to spare civilians from the effects of hostilities play an important role in the *prevention* of displacement. These rules include:

- the prohibition on attacking civilians or civilian property, and of indiscriminate attacks;
- the prohibition on the starvation of the civilian population as a method of warfare, and of the destruction of objects indispensable to its survival;
- the prohibition on reprisals against the civilian population;
- the rules requiring parties to a conflict to allow the unhindered passage of relief supplies and assistance necessary for the survival of the civilian population.

While not a binding instrument *per se*, the *Guiding Principles* reflect and are consistent with both human rights and IHL. As mentioned above, IDPs do not lose, as a consequence of their displacement, the rights of the population at large. Yet they have specific needs that are distinct from the population at large and which must be addressed by specific measures of protection and assistance. The *Guiding Principles* is the primary text identifying the rights and guarantees of international law as they pertain in the context of internal displacement.¹⁹⁶ As such, the *Guiding Principles* are an essential reference for all actors working with the internally displaced, and many governments have either incorporated the *Guiding Principles* into domestic law or adopted national policies based upon them.

II. International Law Governing Displacement, Freedom of Movement and Return Civilians have the right not to be arbitrarily displaced.

The *Guiding Principles* provide that “Every human being shall have the right to be protected against being arbitrarily displaced from his or her home or place of habitual residence.”¹⁹⁷ This right carries a corresponding duty: “All authorities and international actors shall respect and ensure respect for their obligations under international law, including human rights and humanitarian law, in all circumstances, so as to prevent and avoid conditions that might lead to

¹⁹⁴ General Comment No. 29 ¶8.

¹⁹⁵ ICCPR, Art. 4(2). Proclamation of a state of emergency prior to the derogation is essential to satisfy the principles of legality and rule of law. In addition, it must be consistent with the constitutional and statutory authority which governs the exercise of emergency powers. Sri Lanka has not notified the United Nations of any existing derogation.

¹⁹⁶ The *Guiding Principles* are recognized globally and have been endorsed by regional organizations, United Nations bodies, and humanitarian actors. Recently, the Heads of State and Government, gathered at the sixtieth session of the General Assembly, resolved to “recognize the Guiding Principles as an important normative framework for the protection of internally displaced persons and . . . to take effective measures to increase the protection of internally displaced persons.” UN Doc. A/60/1.

¹⁹⁷ Guiding Principle 6.

displacement of persons.”¹⁹⁸ This restatement of the right to be protected against arbitrary displacement is based in the right to liberty of movement,¹⁹⁹ the freedom to choose one’s residence,²⁰⁰ and the right to protection from arbitrary or unlawful interference with one’s home.²⁰¹ The primary source of these rights is the International Covenant on Civil and Political Rights (ICCPR), which Sri Lanka ratified in 1980.

Importantly, the existence of an armed conflict does not abrogate the prohibition of forced displacement. Customary international humanitarian law provides that “Parties to a non-international armed conflict may not order the displacement of the civilian population, in whole or in part, for reasons related to the conflict, unless the security of the civilians involved or imperative military reasons so demand.”²⁰² Violation of this rule has been recognized as a war crime.²⁰³ Importantly, those who have already been displaced retain this right against further (secondary) displacement.

The *Guiding Principles* reflect the fact that under both IHL and human rights law, the prohibition of forced displacement is not absolute. Guiding Principle 6.2(b) provides: “The prohibition of arbitrary displacement includes displacement: . . . (b) In situations of armed conflict, *unless the security of the civilians involved or imperative military reasons so demand.*” This language is drawn directly from international humanitarian law. In human rights law, the prohibition of forced displacement is based in the right to liberty of movement,²⁰⁴ the freedom to choose one’s residence,²⁰⁵ and the right to protection from arbitrary or unlawful interference with one’s home.²⁰⁶ Yet the rights to liberty of movement and to freely choose one’s residence may be limited if such limitation is “provided in law, . . . [is] necessary to protect national security, public order (*ordre public*), public health or morals or the rights and freedoms of others, and [is] consistent with the other rights recognized in the present Covenant.”²⁰⁷

This wording leaves no doubt that restrictions upon freedom of movement and choice of residence are to be used cautiously, and only in exceptional circumstances. Under human rights law, restrictions cannot be applied on a general basis; rather, their legitimacy must be assessed in each instance. Moreover, it is not sufficient that the restrictions serve the permissible purposes identified above -- they must be *necessary* in order to protect these purposes. In other words, restrictive measures should be appropriate to achieve their protective function; use the least intrusive or restrictive means of achieving their purpose; and be proportionate to the interest to be protected.²⁰⁸

Under IHL, the exception to the prohibition of forced displacement for “imperative military reasons” is even more strictly construed. The formulation “imperative military reasons” – and not simply “military necessity” -- indicates a high burden of proof. The commentary of the

¹⁹⁸ Guiding Principle 5. This language establishes that a duty to undertake measures to prevent and avoid conditions that might lead to displacement of civilians is inherent in the prohibition of arbitrary displacement.

¹⁹⁹ ICCPR, Art. 12(1) (“Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence.”) *See also* Universal Declaration of Human Rights (UDHR), Art. 13(1) (“Everyone has the right to freedom of movement and residence within the borders of each State.”)

²⁰⁰ ICCPR, Art. 12(1).

²⁰¹ ICCPR, Art. 17(1) (“No one shall be subjected to arbitrary or unlawful interference with his . . . home”); ICCPR, Art. 17(2) (“Everyone has the right to protection of the law against such interference [with one’s home]”). *See also* UDHR, Art. 12.

²⁰² Henckaerts, Jean-Marie, and Louise Doswald-Beck, *Customary International Humanitarian Law*, (International Committee of the Red Cross and Cambridge University Press, Cambridge 2005) (customary international humanitarian law), Vol. 1, Rule 128. This rule is derived from Article 49 of the Fourth Geneva Convention and Article 17 of Additional Protocol II to the Geneva Conventions.

²⁰³ *See, e.g.*, Rome Statute of the International Criminal Court, Art. 8(2)(e)(viii). Sri Lanka is not a party to this treaty, and is therefore not subject to the jurisdiction of the International Criminal Court.

²⁰⁴ ICCPR, Art. 12(1) (“Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence.”) *See also* Universal Declaration of Human Rights (UDHR), Art. 13(1) (“Everyone has the right to freedom of movement and residence within the borders of each State.”)

²⁰⁵ ICCPR, Art. 12(1).

²⁰⁶ ICCPR, Art. 17(1) (“No one shall be subjected to arbitrary or unlawful interference with his . . . home”); ICCPR, Art. 17(2) (“Everyone has the right to protection of the law against such interference [with one’s home]”). *See also* UDHR, Art. 12.

²⁰⁷ ICCPR, Art. 12(3). Limitations are provided for within the terms of the right itself, as opposed to derogations, which are made pursuant to Art. 4.

²⁰⁸ Human Rights Committee, General Comment No. 27: Freedom of movement, 2 November 1999. UN doc. CCPR/C/21/Rev. 1/Add 9, ¶ 14.

International Committee of the Red Cross indicates that while the concept of “military necessity” as a ground for action requires “the most meticulous assessment,” the addition of the qualifier “imperative” “reduces to a minimum [those] cases in which displacement may be ordered.”²⁰⁹ It expressly prohibits political motivations, such as displacement “in order to exercise more effective control over a dissident ethnic group.”²¹⁰ This would equally preclude the use of a civilian population to consolidate control over a piece of land or territory.²¹¹

Nonetheless, international law reflects the reality that there may be times during armed conflict when displacement is unavoidable. Accordingly, the second exception to the general prohibition is when “the security of the civilians involved . . . so demand[s].” The operative principle here is that the decision to evacuate the population is taken in the interests of the civilians themselves. Customary international humanitarian law requires that in the conduct of their military operations, parties must take constant care to spare the civilian population, including the taking of “[a]ll feasible precautions . . . to avoid . . . incidental loss of civilian life [or] injury to civilians.”²¹² Evacuation (or forced displacement) of the population for its own safety may be one such precautionary measure.²¹³ Thus, the commentary to the conventional prohibition of forced displacement indicates: “If . . . an area is in danger as a result of military operations or is liable to be subjected to intense bombing, the [relevant party to the conflict] has the right and . . . [possible] duty of evacuating [the population] partially or wholly, by placing the inhabitants in places of refuge.”²¹⁴ Evacuation or forced displacement of the population under the “security” exception, however, should not be undertaken for mere convenience of the parties. As with the exception for “military necessity”, displacement should be both exceptional and imperative. “[I]f it is not imperative, evacuation ceases to be legitimate.”²¹⁵

Thus, for example, it may be necessary to evacuate a civilian population from a combat zone where hostilities are already underway or when a conflict has unavoidably spilled into a civilian area. Equally, an offensive military operation directed against a military objective that is in the vicinity of a civilian village might justify an evacuation. On the other hand, the targeting of civilians -- including segments of populations, such as ethnic or religious minorities -- remains prohibited and can never justify evacuation or displacement.²¹⁶ By respecting and ensuring respect of both human rights and international humanitarian law, parties may avoid the illegal creation of conditions that would result in the displacement of civilian populations.²¹⁷

Under these exceptions, when evacuation is required, it should continue only so long as conditions require. To ensure the safety of the civilians during armed conflict, the authorities undertaking the displacement must make all practicable efforts to ensure that the displacement is carried out in conditions of safety and that family members are not separated.²¹⁸ For example, civilians should, if possible, be given advance notice, and the relocation should be carried out during reasonable hours of the day. Further, the parties to the conflict must take all possible measures in order that the civilians concerned are received under satisfactory conditions of shelter, hygiene, health, safety and nutrition.²¹⁹

Independent of the prohibition of forced displacement, international humanitarian law imposes a distinct duty on all parties to “give effective advance warning of attacks which may affect the

²⁰⁹ ICRC Commentary to Additional Protocol II, Art. 17, 1473 (para. 4853). This article is one basis for the formulation of the customary rule; hence, its interpretation provides useful guidance.

²¹⁰ *Id.* At 1473 (para. 4853).

²¹¹ See discussion below on prohibition of use of human shields.

²¹² Customary International Humanitarian Law, Rule 15.

²¹³ Customary International Humanitarian Law, Rule 24 (“Each party to the conflict must, to the extent feasible, remove civilian persons and objects under its control from the vicinity of military objectives.”)

²¹⁴ ICRC Commentary to Geneva Convention IV, Art. 49, 280.

²¹⁵ ICRC Commentary to Geneva Convention IV, Art. 49, 280.

²¹⁶ Indeed, Article 17 to additional Protocol II was developed as a response to “the forced movement of ethnic and national groups opposed to the central government” during World War II. ICRC Commentary to Additional Protocol II, Art. 17, 1471 (para. 4849).

²¹⁷ Guiding Principle 5.

²¹⁸ Guiding Principle 7(2); Customary International Humanitarian Law, Rule 131.

²¹⁹ Customary International Humanitarian Law, Rule 131.

civilian population, unless circumstances do not permit.”²²⁰ Importantly, the provision of advance warning cannot be used to excuse the subsequent specific targeting of a civilian population. The duty to distinguish between civilians and combatants still applies. Likewise, given the prohibition of forced displacement, it follows that the requirement of advance notice cannot itself be used to justify clearing an area of all civilians.

IDPs should not be returned to their places of origin absent an informed and voluntary choice.

The right to voluntary return and to protection against involuntary return.

A natural corollary of the right of IDPs to voluntary return, in safety and dignity,²²¹ is the right of IDPs *not* to be forcibly returned or resettled in any place where their lives or health would be in danger.²²² The *Guiding Principles* addressing voluntary and forced return are derived from the rights to freedom of movement²²³ and to choose one’s place of residence.²²⁴ The prohibition on forced return to conditions of danger was originally drawn by analogy to the principle of *non-refoulement* existing within refugee law.

With regard to return, responsible authorities have two primary duties: first, to establish the conditions and means allowing for voluntary and sustainable return,²²⁵ and second, to protect IDPs against forced return. As part of their obligation to facilitate *voluntary* return, authorities should provide the necessary information to allow IDPs to exercise their right to decide freely where they want to live. That decision may be to return home, although it equally may be to integrate locally or to resettle to another part of the country. With regard to *sustainability*, the recently adopted United Nations Inter-Agency Standing Committee Operational Guidelines on Human Rights and Natural Disasters indicates that conditions will be considered “sustainable” if:

- (i) people feel safe and secure, free from harassment and intimidation;
- (ii) people have been able to repossess their properties or homes, and these have been adequately reconstructed or rehabilitated;
- (iii) people can return to their lives as normally as possible, with access to services, schools, livelihoods, employment, markets, etc. without discrimination.²²⁶

Though developed in the context of disaster-induced displacement, these indicators equally apply to the return of IDPs displaced by conflict.

The right to return *in safety* imposes a duty on the government to take affirmative measures to ensure the safety of a returning population, such as clearance of land mines and unexploded ordnance. Other measures might include the provision of basic assistance relating to shelter, food and water; resumption of medical services; and the provision of agricultural tools, seeds and basic household items. To satisfy their responsibility to establish conditions conducive for return – voluntariness, sustainability, and safety – authorities should facilitate and support assessment visits (“go and see” visits) by IDPs prior to actual return.

Under international humanitarian law, the forced return of IDPs to their places of origin is contrary to the customary rule that “displaced persons have a right to *voluntary* return in safety . . . as soon as the reasons for their displacement cease to exist.”²²⁷ Thus, a violation of this right occurs

²²⁰ Customary International Humanitarian Law, Rule 20.

²²¹ Guiding Principle 28.

²²² Principle 15(d) (“Internally displaced persons have . . . the right to be protected against forcible return to or resettlement in any place where their life, safety, liberty and/or health would be at risk.”)

²²³ ICCPR, Art. 12(1). *See also* UDHR, Art. 13(1).

²²⁴ ICCPR, Art. 12(1).

²²⁵ Guiding Principle 28(1).

²²⁶ Inter-Agency Standing Committee, IASC Operational Guidelines on Human Rights and Natural Disasters, June 2006, §D.2.2.

²²⁷ Customary International Humanitarian Law, Rule 132 (emphasis added).

when IDPs are unreasonably *prevented* from returning, when that is their choice, as well as when IDPs are *forced* to return against their will. Consistent with the discussion above, however, civilians might be prevented from voluntary return when “security of the civilians or imperative military reasons so demand.” The prohibition on forced return, however, is absolute. Return to areas where civilians fear for their safety, or to an area that is known to contain anti-personnel mines or unexploded ordnance, would clearly violate this rule as it runs directly counter to the exception allowing for displacement when “security of the civilians” so requires.

It should be noted that the concept of “forced return” encompasses all forms of coercion intended to make IDPs return in the absence of a voluntary and informed choice. A clear example of forced return would involve the use of physical force or the presence of armed military to escort IDPs onto transport buses. Coercion can also result from violations of other rights, such as the right to liberty and security of person (*e.g.*, failure to ensure the humanitarian and civilian character of camps, whether by posting intimidating or hostile military forces near or in IDP settlements or by failing to secure the camp from intrusion by armed groups). Alternatively, coercion may result from denial of the right to food and humanitarian assistance²²⁸ (*e.g.*, through an indication that assistance will be terminated as of a certain date and provided only in the place of return).

IDPs must not be used to “shield” areas from attack or to favor or impede military operations.²²⁹

A fundamental tenant of international humanitarian law requires all parties to (1) distinguish between civilians and combatants (and between military objectives and civilian objects), and (2) protect all civilians from direct attack, as well as from the consequences of hostilities. In this regard, it is prohibited to use any civilians, including IDPs, as a “human shield” to deter an attack against a military objective.²³⁰ Similarly, it is prohibited to restrict IDPs’ freedom of movement in a particular area in order to prevent military operations there. Guiding Principle 10(2)(c) provides in relevant part: “Attacks or other acts of violence against internally displaced persons are prohibited . . . in all circumstances. Internally displaced persons shall be protected, in particular, against: their use to shield military objectives from attack or to shield, favor or impede military operations.” The prohibition on the use of human shields is recognized as customary law. Use of civilian shields involves the “intentional co-location of military objectives and civilians . . . with the specific intent of trying to prevent the targeting of those military objectives.” Military objectives have been defined as “objects which, by their nature, location, purpose or use make an effective contribution to military action or whose total or partial destruction, capture or neutralization . . . offers a definite military advantage.”²³¹ Because combatants have the right to attack military objectives, international humanitarian law defines them precisely and narrowly. Classic examples cited are

munitions bunkers, radar sites, communications centres, military units, strategic sites (a bridge or sole mountain pass) and military defense points.

As discussed above, the forced return of IDPs to their original communities in order to insulate the area from attack by an adverse party could never be justified as an “imperative military reason.” Rather, it would be an attempt to exploit the principle of distinction and the duty to take precautionary measures. Given that the principle of distinction, which is customary, provides that attacks may only be directed against combatants and must never be directed against civilians, a party enforcing return for these purposes would be misusing the principles and intentionally putting civilians in harms way. Such actions on the part of the State also would violate the non-derogable human right not to be arbitrarily deprived of one’s life.

IDPs retain their right to liberty of movement.

²²⁸ See Guiding Principles 18(1) & (2) and 24, in conjunction with Guiding Principle 15.

²²⁹ Guiding Principle 10(2)(c).

²³⁰ Regardless of where they are, IDPs must always be protected against attacks or acts of violence. This includes being protected against use as shields intended to forestall military operations for control of their home areas. Guiding Principle 10(2)(a) & (c).

²³¹ Additional Protocol I, Art. 52(2).

The *Guiding Principles* reflect that IDPs retain their right to liberty and security of person,²³² their right to liberty of movement,²³³ and their right to seek safety in another part of the country.²³⁴ Under human rights law, the right to liberty of movement may be limited if such limitation is “provided in law, . . . [is] necessary to protect national security, public order (*ordre public*), public health or morals or the rights and freedoms of others, and [is] consistent with the other rights recognized in the present Covenant.”²³⁵ As discussed above, this limitations clause is to be narrowly construed and exceptionally applied.²³⁶ Moreover, any restriction upon liberty of movement must satisfy the principles of necessity and proportionality, and must not be so restrictive as to effectively negate the right.²³⁷ Finally, the application of restrictions on liberty of movement must be based on strict criteria and “may not confer unfettered discretion on those charged with their execution.”²³⁸

The Human Rights Committee of the United Nations has indicated that administrative and bureaucratic measures affecting liberty of movement – such as the requirement to obtain a travel permit -- also must satisfy the principle of proportionality.²³⁹ Nor should liberty of movement be denied to an IDP due to the loss of his or her identity card. Indeed, the *Guiding Principles* specify that authorities shall issue to IDPs “all documents necessary for the enjoyment and exercise of their legal rights,”²⁴⁰ including the issuance of replacements for documents lost in the course of displacement.

Like the prohibition of forced displacement, the right to liberty of movement under international humanitarian law is subject to exception for imperative military reasons and security of the civilian population. The commentary to the conventional rule advises that in the case of either exception, “real necessity must exist; the measures taken must not be merely an arbitrary infliction or intended simply to serve in some way the interests [of the relevant authority].”²⁴¹

²³² Guiding Principle 12(1).

²³³ Guiding Principle 14.

²³⁴ Guiding Principle 15(1)

²³⁵ ICCPR, Art. 12(3).

²³⁶ Human Rights Committee, General Comment No. 27: Freedom of movement, 2 November 1999. UN doc. CCPR/C/21/Rev. 1/Add 9, para. 11.

²³⁷ *Id.*, ¶¶ 2, 13.

²³⁸ *Id.*, ¶ 13

²³⁹ *Id.*, ¶ 15.

²⁴⁰ Guiding Principle 20(2).

²⁴¹ ICRC Commentary to Geneva Convention IV, Art. 49, 283.

ANNEX 3

The national legal framework relating to the right to freedom of movement in Sri Lanka and restrictions on the freedom of movement

1. Introduction

The right to freedom of movement and the freedom to choose one's residence are fundamental rights endorsed by the Constitution of Sri Lanka. These fundamental rights are central to other rights that are recognised as relevant to IDPs. They include the right to return (to one's original place of residence) in safety and in dignity, the right to be protected from forced displacement, and the right to housing and property restitution. The ongoing conflict in Sri Lanka has resulted in the forced displacement of thousands of persons in the North and East and the imposition of restrictions on their movement within the country. More recently IDPs have been forced to return to their homes despite security concerns of return and the unsustainability of conditions of return. All these instances have implications for the realization of the right to freedom of movement within Sri Lanka. Outlined below is the national legal framework which is relevant to issues affecting freedom of movement.

2. The Constitution of Sri Lanka 1978

2.1 The right to freedom of movement as expressed in the Constitution of Sri Lanka

Freedom of movement is protected by the Constitution of 1978 as a fundamental right. According to Article 14 (1) (h) and (i), every citizen is entitled to *"the freedom of movement and of choosing his residence within Sri Lanka; and²⁴² the freedom to return to Sri Lanka."²⁴³*

The right to freedom of movement is not subject to any geographical limitations. It is the right of every citizen to be able to travel anywhere and establish residence in any location of one's choosing within Sri Lanka. There has been a tendency in litigation to subsume this right in cases that deal with other fundamental rights articulated in the Constitution, such as the right to freedom from arbitrary arrest, detention and punishment. The right to movement however, must be understood as an independent right which is violated by the arbitrary and unlawful denial of movement or undue coercion or duress resulting in movement, or similar actions affecting the ability of a citizen to travel freely within the country and to choose his/her residence.

This right may not be subject to any restriction other than to those which are prescribed by the Constitution itself. These are referred to as 'permissible restrictions'.

2.2 Permissible restrictions

Article 15 of the Constitution lays down the conditions under which restrictions on fundamental rights may be made by other laws. Article 15 (6) allows for restrictions of Article 14 (1) (h) in the interests of national economy, whereas Article 15 (7) states that

"The exercise and operation of all the fundamental rights declared and recognized by Articles 12, 13 (1), 13(2) and 14 shall be subject to such restrictions as may be prescribed by law in the interests of national security, public order and the protection of public health or morality, or for the purpose of securing due recognition and respect for the rights and freedoms of others, or of meeting the just requirements of the general welfare of a democratic society. For the purposes of this paragraph "law" includes regulations made under the law for the time being relating to public security."

The Constitution thus allows for restrictions on the freedom of movement on condition that such restrictions are prescribed by law and that their purpose is to protect one of the interests mentioned in article 15(7).²⁴⁴ The term restrictions *as may be prescribed by law* include

²⁴² The Constitution of the Democratic Socialist Republic of Sri Lanka (1978), Article 14(1)(h)

²⁴³ Ibid, Article 14(1)(i)

²⁴⁴ In the case of *Thavaneethan v. Dayananda Dissanayake Commissioner of Elections and others*, SLR 2003 (1), pgs. 74 to 107 at pg. 97, the Supreme Court emphasized that when article 15 (7) authorizes restrictions prescribed by "law", in accordance with article 170 this

restrictions on the freedom of movement as prescribed by *regulations* made under the law relating to *public security*.

2.3 The Public Security Ordinance 1947 and emergency regulations

2.3.1 The Public Securities Ordinance 1947

Chapter XVIII of the Constitution deals with public security and draws attention to the Public Security Ordinance (the PSO),²⁴⁵ as the law dealing with public security in the event of a state of emergency or an imminent state of public emergency. The PSO enables the President to adopt emergency regulations or other measures “*in the interest of the public security and the preservation of public order*”. Part I of the PSO empowers the President to declare a state of emergency and thereby making Part II of the ordinance, which governs the nature of the emergency regulations, effective.

According to section 5 (1) of the PSO, the President may make such regulations

“...as appear to him to be necessary or expedient in the interests of public security and the preservation of public order and the suppression of mutiny, riot or civil commotion, or for the maintenance of supplies and services essential to the life of community.”

Article 155 of the Constitution specifies that regulations enacted under Part II of this Ordinance have the legal effect of ‘*over – riding, amending or suspending the operation of any law, except for the provisions of the Constitution*’ (emphasis added).

Thus the capacity of Government representatives to override, amend or suspend the operation of any law on the basis of permissible restrictions enacted by public security laws and emergency regulations, cannot amount to a violation of the Constitutionally endorsed fundamental right to freedom of movement. Emergency regulations do not have the effect of obscuring the fundamental rights contained in the Constitution. While they may override, amend or suspend a particular law, they can only impose certain *restrictions* on fundamental rights. *Restrictions on the operation and exercise of fundamental rights cannot be imposed to a point of denying these rights.*²⁴⁶

2.3.2 Emergency regulations and the ‘test of reasonableness’

The PSO does not in itself include any provisions limiting the freedom of movement. However, when read together with the provisions of the Constitution, the powers given to the President are far-reaching, as they enable the President to bypass the normal legislative process and restrict the fundamental rights protected by the Constitution, under a state of emergency for reasons related to national security. However, such powers are subject to constitutional controls and limitations as referred to in the case of *Thavaneethan v. Dayananda Dissanayake Commissioner of Elections and Others*.²⁴⁷

A state of emergency was declared following the assassination of Foreign Minister Lakshman Kadirgamar. The emergency regulations that were brought into force thereafter in August 2005²⁴⁸ contain several provisions impacting on the freedom of movement of persons, such as regulation 12 (1) which enables the authorities prohibit the entry of unauthorized persons into “*any area, place or premises wholly or mainly occupied or used for the maintenance of essential services*”. Regulation 14 (1) gives the President the power to impose curfews. These regulations authorize restrictions which are limited and appear to satisfy the criteria both of the Constitution, article 15 (7) and of the ICCPR, article 12 (3).

means Acts of Parliament and laws enacted by any previous legislature and Orders-in-Council, and held that “Article 15 does not permit restrictions on fundamental rights other than by plenary legislation - which is subject to pre-enactment review for constitutionality. It does not permit restrictions by executive action (i.e. by regulations), the sole exception permitted by Article 15(1) and 15(7) being emergency regulations under the Public Security Ordinance because those are subject to constitutional controls and limitations, in particular because the power to make such regulations arise only upon a Proclamation of emergency, because such Proclamations are subject to almost immediate Parliamentary review, and because Article 43 provides that the President shall be responsible to Parliament for the due exercise of powers under the law relating to public security.”

²⁴⁵ Public Security Ordinance No. 25 of 1947, *Legislative Enactments Vol. III* pg.107

²⁴⁶ *Sunil Kumara Rodrigo vs. R.K. Chandrananda de Silva*, SC F.R. 478/97

²⁴⁷ *Supra* note 3

²⁴⁸ Gazette Notification of the Democratic Socialist Republic of Sri Lanka, No. 1405/14, Saturday, August 13, 2005

However, it is pertinent to note that regulation 18, which empowers the Secretary of Defence to restrict the movement or activities of any particular person as a preventive measure, has much in common with section 11 of the Prevention of Terrorism Act (see below). Incorporating the provisions of another law into emergency regulations in effect makes these provisions permissible restrictions that may be applied to curtail one's fundamental rights in times of emergency.

The grounds on which orders may be issued under Regulation 18 are broadly formulated, and to this extent at least, extend beyond legitimate security concerns. There is no requirement that the person is suspected of having committed an unlawful act, it is enough that the Defence Secretary "*is of the opinion that [...] it is necessary*" to restrict a person's freedom of movement in order to prevent him or her from acting in a manner prejudicial to national security or the maintenance of essential services.

For instance, where it is necessary, the Secretary may by order prohibit a person from –

"...leaving his residence without the permission of such authority or person as may be specified in that order, and prohibiting any other person from entering or leaving such residence except in such circumstances as may be specified in that order or be determined by such authority or person as may be specified in that order..."

All this leaves a wide discretion to the Defence Secretary, which brings into question the means by which such discretion may be tested. The Sri Lankan Constitution does not contain a 'test of reasonableness' as does the many other Constitutions of South Asia, including the Indian Constitution.²⁴⁹ While public security laws and especially emergency regulations may be applied to a broad range of subjects – including persons, property and land – they need to be reasonably applied in proportion to the purposes of maintaining public security. The formulation of emergency regulations in broad terminology that allows for a wide discretion lacks specificity, in terms of whether these provisions are 'reasonable and necessary' for security concerns at a given time.

Another concern is that the regulation sets no time limit for the period that such an order may remain in effect, which implies that it can last indefinitely. There is also no possibility of judicial review by the courts or any other independent body, apart from a fundamental rights application to the Supreme Court²⁵⁰ (see below in remedies).

3. Remedies for any undue restriction on the right to freedom of movement

It follows from Article 17 of the Constitution that a person who claims to be the victim of an infringement of a fundamental right by executive or administrative action, can apply to the Supreme Court for remedy. Article 126 (1) sets out a very strict time limit for filing such action, as the application must be addressed to the Supreme Court within one month after the alleged infringement.

Given this time limit, instituting a fundamental rights action may not be practically feasible for many of those aggrieved by restrictions on their freedom of movement in the context of the conflict. Application is by way of a petition made in writing and instituted within one month of its breach.²⁵¹ Thus potential claimants must be able to establish a clear link between the breach of their rights and an entity with executive and administrative authority; and have the resources and the capacity to file a petition in the Supreme Court situated in the capital, within a short duration of one month.

²⁴⁹ The Constitution of India, Article 19(2)

²⁵⁰ Section 7 of the Public Security Ordinance provides for the legal supremacy of the emergency regulations over any other law. Under section 8 "no emergency regulation, and no order, rule or direction made or given there under shall be called in question in any court." Section 9 protects any person acting under an emergency regulation from criminal and civil prosecution, subject to revocation by the Attorney General. Case law, however, holds that the PSO does not affect the jurisdiction of the Supreme Court. The power to make Emergency Regulations does not include the power to make regulations overriding the provisions of the Constitution [see, Wickremebandu v Herath and others, SLR (1990) Vol.2, p348; Siriwardena and others v Liyanage and others, SLR (1983) Vol.2, p164 and Visuvalingam and others v Liyanage and others SLR (1984) Vol.2, p123]

²⁵¹ Supra note 1, Article 126(2)

While not offering an effective remedy to violations of fundamental rights, The Human Rights Commission Act²⁵² provides a more flexible approach to safeguarding against the infringement or the imminent infringement of fundamental rights. The Human Rights Commission of Sri Lanka is vested with the authority to investigate alleged violations of fundamental rights. However, the authority of the Commission is limited to advise and assist the government in formulating legislation and administrative directives and procedures, to make recommendations to the Government regarding measures which should be taken to ensure that national laws and administrative practices are in accordance with international human rights norms and standards and to make recommendations to the Government on the need to subscribe or accede to treaties and other International instruments in the field of human rights. In individual cases, the Commission may, after a process of mediation between the parties, only make recommendations regarding monetary compensation for violations of fundamental rights and cannot recommend or order reinstatement to prior status, for instance in land and property matters.

4. Conclusion

There is a substantial recognition by the fundamental rights jurisprudence of Sri Lanka of the inviolability of constitutionally recognised fundamental rights, which includes the right to freedom of movement and the right to choose one's residence. This right may not be curtailed other than by permissible restrictions prescribed by the Constitution for reasons of national security. On an analysis of relevant case law, restrictions on fundamental rights are not legitimate unless there is a clear link, between a restriction imposed by a law relating to public security (including emergency regulations) and an incident of restricted or forced movement. Ad hoc administrative or executive decisions that induce forced movement or unduly restrict the movement of persons may amount to a violation of this right.

As noted above, the Sri Lankan Constitution does not contain any proportionality requirement, and in this respects it differs from most international human rights instruments as well as other SAARC country constitutions, except for the cases of the Maldives and Afghanistan, which similarly do not require limitations on freedom of movement to be reasonable. The Indian Constitution in this regard requires that all restraints on free movement must satisfy a test of reasonableness²⁵³ in order to safeguard the fundamental character of the right to freedom of movement.²⁵⁴ In the Sri Lankan context such a test would require, among other things, the formulation of standards to assess whether measures taken to secure public security and public order have the effect of restricting the liberty and movement of persons to an unreasonable degree. That is, standards to assess whether methods of restraint and coercion employed go beyond the purposes of public security and violate the right to freedom of movement and one's choice of residence.²⁵⁵

The mechanism outlined in the Constitution for redressing violations of the right to freedom of movement however, is often not accessible within the stipulated time frame. Accessibility may be further denied by resource constraints and the lack of capacity on the part of many of the IDPs. An effective legal mechanism at the grassroot level that can implement the thinking of the Supreme Court is necessary for the effective realization of this right. Such a mechanism needs to take into account access for vulnerable populations and have the capacity to address violations of this right in the immediate term, as they occur.

²⁵² Human Rights Commission Act of Sri Lanka, Act No. 21 of 1996, section 14

²⁵³ The Constitution of India, Article 19(2)

²⁵⁴ Similarly, the Constitutions of Pakistan, Bangladesh and Nepal recognize that every restriction of the freedom of movement must be reasonable.

²⁵⁵ There is no explicit provision that allows such a test however, there is implicit recognition by the Supreme Court of the requirement for proportionality and reasonableness in the imposition of restrictions on the freedom of movement (e.g. case of *Vadivelu v. the Sithambarapuram Regional Camp Police Post*, SLR 2003(3)).

ANNEX 4

Chronology of displacement events: April 2006 – April 2007

April 2006

- Suicide bomb attack on Army Commander Lt. General Fonseka in Colombo (25 April)
- Retaliatory air and artillery attacks in the North and East
- Air strikes on Sampur cause mass displacement. About 20,000 people flee south towards Eachchilampattai in Trincomalee District.

May 2006

- Allaipiddy Jaffna District: posters distributed by a group called *Makkal Padai* warning villages to leave the area or face the consequences (20 May) cause displacement of nearly entire village to Jaffna Town.
- Muttur Town, Trincomalee District: handbills distributed by group called *Tamil Eelam Motherland Retrieval Force* warning Muslims to leave the area (29 May)

June 2006

- Bomb explodes on civilian bus in Kebitigollewa, Anuradhapura District, killing 64 Sinhalese passengers, including many children (15 June)
- 400 Sinhalese villagers in volatile “border” villages flee to IDP sites in Anuradhapura District
- The GoSL launches retaliatory land, air and sea attacks in the North and East, resulting in dozens of deaths and more displacement.
- 12 & 13 June, government authorities organize buses to take IDPs staying in churches in Jaffna Town back to Allaipiddy.

July 2006

- LTTE closes sluice gates at Maavil Aru, Serunuwara area, Trincomalee District
- GoSL launches an offensive against LTTE positions in Trincomalee District.
- Fierce fighting between the GoSL and LTTE over control of Muttur Town.

August 2006

- Fighting in Muttur escalates and tens of thousands of Muslims and Tamils flee from Muttur Town and surrounding areas to Kantale, Thampalakam, Kinniya and Town & Gravets divisions, Trincomalee District. By end of August, 50,000 IDPs displaced in Trincomalee District.
- On 11 August, LTTE launches an artillery and seaborne attack on Jaffna Peninsula. The GoSL immediately orders a 24 hour curfew, which continues for several weeks, and the closure of the A9 Road into Jaffna District. Civilians’ freedom of movement, both within and in and out of Jaffna, is severely restricted.
- The LTTE launches a seaborne invasion on Allaipiddy on 11 August. Shelling into the area causes hundreds of families to flee and results in the deaths of 29 civilians and injury to 14 others. More than 11,000 civilians displaced due to both incidents.

- Hundreds of civilians attending annual religious festival at Madhu Church, Mannar District, are trapped due to closure of FDLs at Uylankulam and Madhu and refusal of LTTE to let them leave.

September 2006

- GoSL forces capture Sampoor town, triggering pressure from high level Government officials, the security forces and Muslim community leaders to return the Muslim IDPs to Muttur Town (4 September)
- Although initially Muslim IDPs return voluntarily (4 – 7 September), subsequent returns (7 – 11 September) are not voluntary and IDPs are forced to return.
- By 12 September, 35,000 Muslim IDPs have returned to Muttur and the Muslim IDP sites are empty.
- From 8 September, Tamil IDPs in Town & Gravets also come under pressure to return to villages of origin in eastern and western Muttur.
- Leaflet distributed in Muttur Town by group called *Liberation of Tamil Eelam Homeland* telling Muslim residents to leave immediately and warning of imminent LTTE attacks to re-capture Muttur Town. LTTE denies responsibility (22 September).
- Over 5,000 IDPs rounded up in Jaffna Town and forced back to their villages in militarized coastal areas south east of Jaffna Town against their will (Gurunagar, Pasiyoor, St. Rocks, Columbothurai) (22 September)
- 400 Sinhalese IDPs who fled Kebutigollewa following June bus bomb attack are forced back to their villages against their will.

November 2006

- GoSL forces shell Vakarai hitting Kathiraveli School, where over 6,000 IDPs are sheltering. 49 civilians killed and 125 injured. 2,000 IDPs try to flee Vakarai and are prevented from doing so by the LTTE (8 November).
- IDPs from Jaffna trapped at Madhu Church since August, are finally allowed by the LTTE to cross the Uylankulam FDL checkpoint. IDPs are then transported to Trincomalee by bus and on to Jaffna by boat (10 November & 21 November).

December 2006

- Government authorities and security forces launch a campaign of intimidation to force Tamil IDPs in Town & Gravets to return to Muttur. On 2 December, 66 families from Cultural Hall site, Town & Gravets, are forced to return to Muttur.
- Large numbers of IDPs start to flee LTTE controlled Vakarai via the jungle and walk into government controlled areas. By end of December, 30,000 IDPS had fled LTTE controlled Vakarai.
- Large numbers of Sinhalese IDPs flee to Kantale following LTTE shelling in Seruwila. By 12 December, over 4,000 IDPs are staying in 8 temporary IDPs sites in schools and temples in Kantale.

January 2007

- The GoSL announces that it has seized control of formerly LTTE controlled parts of Vakarai. The remaining IDPs and residents flee Vakarai in early January and report that no civilian residents are left.
- IDPs start to flee LTTE controlled parts of western Batticaloa District into government controlled areas to escape fierce fighting and shelling between the GoSL and LTTE forces. By end of February, over 80,000 IDPs have fled from LTTE controlled areas.
- In early January, Government authorities start to put pressure on over 4,000 Sinhalese IDPs in Kantale to return to their homes in Seruwila. Many of the IDPs who returned have to flee back to Kantale on 6 & 9 January following heavy shelling by the LTTE into Seruwila. The IDPs finally return to their homes on 19 January after the fall of Vakarai to Government forces.

February 2007

- Security conditions in IDP camps in Batticaloa District deteriorate dramatically with armed TMVP cadres maintaining a highly visible presence in IDP sites. IDPs are subjected to harassment, abductions, theft and physical assault.
- Government authorities in Batticaloa and Trincomalee Districts organize “Go and See Visits” (GSV) for IDPs in Batticaloa District to visit their homes in nine GN divisions of western Muttur DS division (20 – 22 February). 23 IDPs participate in the GSV.
- Large numbers of IDPs start to flee their homes in Madhu DS division, Mannar District, and seek refuge in Madhu Church. The IDPs are escaping a deterioration in the security situation and an intensification in forced recruitment by the LTTE.

March 2007

- A “Go and See Visit” is organized for IDPs in Batticaloa District to visit Uriyankadu, Vakarai DS division on 6 March. Over 100 IDPs participated in the GSV.
- Returns to Vakarai start on 7 March. The initial returns are voluntary and IDPs seem happy to return.
- Returns of IDPs in Batticaloa District to Trincomalee District start.
- 920 IDPs return in the first group to Muttur West on 12 March. Although this return has been planned, IDPs are subjected to high levels of coercion and intimidation by local authorities and security forces to return.
- Pressure on IDPs to return increases from 15 - 17 March. No advance warning is given and few returns are voluntary. There are several incidents of the security forces using physical to coerce IDPs to leave.
- By 21 March, over 3,000 IDPs have returned to Trincomalee District from Batticaloa.
- Pressure is also stepped up on returns to Vakarai. By 25 March, over 13,000 IDPs have returned to Vakarai. IDPs say that they lack proper information about conditions in areas of return. Some IDPs are subjected to threats and intimidation and there are some incidents of forced return.
- The IASC issues a leaflet on 20 March informing IDPs about their right to return voluntarily and in safety and dignity. The leaflets are distributed in IDPs sites in Batticaloa District.

ANNEX 5

Chronology of Advocacy Interventions: April 2006 – April 2007

2006

- 26 May: UN agencies and NGOs successfully intervene to prevent forced return of IDPs from Selvapuram, Puttalam District to Trincomalee District
- May: Successful intervention by UN agencies prevents the forced return of IDPs from Mannar District to Trincomalee District
- 1 September: UNHCR *demarche* to GoSL regarding humanitarian access to civilians in Jaffna and restrictions on freedom of movement
- 12 September: UNHCR *demarche* to GoSL regarding non-voluntary return of some Muslim IDPs to Muttur
- 3 October: In a meeting with the Minister of Disaster Management and Human Rights, Hon. Mahinda Samarasinghe, UNHCR raises concerns about the forced returns of IDPs from Jaffna Town to coastal villages; the forced return of Sinhalese IDPs of Sinhalese IDPs to Kebitigollewa; and restrictions on the freedom of movement of Muslim IDPs trying to flee Muttur
- 29 November: UNHCR communicates its position on return and relocation to Minister of Human Rights and Disaster Management in a letter and accompanying policy note
- 5 December: UNHCR *demarche* to GoSL regarding forced returns of Tamil IDPs from Town & Gravets to Muttur West
- 12 December: UN Sri Lanka statement on the protection of civilians in Vakaraï, expressing concern about indiscriminate shelling of civilians residential areas and calling for humanitarian access and freedom of movement for civilians.

2007

- 19 February: UNHCR writes to Minister of Human Rights and Disaster Management regarding security conditions in IDP camps in Batticaloa District and plans for return of IDPs to Vakaraï and Trincomalee District. UNHCR shares a “Road Map” detailing a plan of action for voluntary return of IDPs in safety and dignity, as well as a joint UN note on security incidents in IDP sites
- 14 March: UNHCR writes to Minister of Human Rights expressing concerns about forced returns of IDPs from Batticaloa District to Trincomalee District on 12 March
- 14 March: UNHCR writes to the Head of the LTTE Political Wing, Mr. Tamilselvan, outlining its concerns about the IDPs in Madhu Church
- 14 March: UNHCR issues press statements on the forced returns of IDPs from Batticaloa District to Trincomalee District and Vakaraï and on the situation in Madhu Church
- 16 March: UNHCR issues press statements on the forced returns of IDPs from Batticaloa District to Trincomalee District and Vakaraï
- 20 March: Statement by Walter Kälin, Representative of the Secretary General on the Human Rights of Internally Displaced Persons at the 4th session of the Human Rights Council, Geneva

ADDENDUM

Events from April 2007 to July 2007

Following advocacy interventions (refer to Annex 5 in particular) and regular coordination with the central and local government authorities, some positive developments in the return process as well as in the protection of IDPs' freedom of movement have been observed since April 2007. Continued forced displacements and limited IDP participation in the return process however remain serious concerns.

1. Forced Displacement

On 01 June 2007, the Deputy Inspector General of Police (DIG) for Colombo, Mr. Rohan Abeywardene, stated that Tamil people cannot remain in Colombo without a valid reason. His statement was followed on 07 June 2007 by removal of some Tamils from the capital. The operation reportedly commenced in the early hours of the morning when police and army officers visited various lodges occupied predominantly by Tamils in Colombo and forcibly removed Tamils from these guesthouses. It was reported that people were given less than half an hour to pack and board buses, resulting in many of those detained not being able to bring all their belongings. A total of 376 Tamils, including 85 women, deemed 'without valid reasons' to be in the capital were forced into buses which then proceeded to Vavuniya, Batticaloa and Trincomalee.

The DIG said the Tamils were being sent back to their villages for their own safety so that they would not be abducted, arrested or detained in Colombo but also to stop insurgents infiltrating the capital. These evictions of Tamils from Colombo constitute violations of the fundamental rights of those persons who were evicted, as guaranteed by Article 12 (1), 12(2), 13(1), 13(2) and 14(1)(h) of the Constitution. Article 12 provides that all persons are equal before the law and ensures that no citizen shall be discriminated against on grounds specified in the Constitution. Article 14(h) provides freedom of movement and the right to choose one's residence to citizens in Sri Lanka. Amidst multiple protests, the Supreme Court of Sri Lanka issued an interim order on 8 June 2007 directed at the Inspector General of Police (IGP), Defense Secretary Gotabaya Rajapakse and eight other respondents preventing them from ordering the eviction of Tamil persons from Colombo. The interim order further stops the respondents from preventing Tamil persons from entering and/or staying in any part of Colombo.

The Supreme Court ruling has been welcomed by all international observers and human rights groups estimating that the evictions were discriminatory and an arbitrary restriction on the freedom of movement. The next court hearing is scheduled for July 26.

Among those removed from Colombo on June 07 were not only individuals recently arrived in the capital, but the group also included persons that had been living in Colombo for 15 years. Some of those removed were not staying in lodges, but in privately rented apartments or in accommodation provided by employers. Some individuals, who had lived in Colombo for more than 5 years, were registered as voters in Colombo.

While many of those removed on June 07 were returned to Colombo on the following day, agencies report that there was clear trepidation amongst the deported people about going back to Colombo, and that many expressed a fear of retribution should they return.

2. Restrictions on Freedom of Movement

a. Restrictions on People Leaving the Vanni

There are continued protection concerns related to violations of freedom of movement for the population in the Vanni. As of early July 2007 movements through the Forward Defense Line (FDL) at Omanthai has been reduced 3 times a week (Mondays, Wednesdays and Fridays).

These restrictions continue to psychologically impact on travelers who have to endure hours of intensive searches of their luggage, body and vehicles. In addition, there are frequent and unpredictable changes in LTTE and SLA requirements from travelers through the FDL.

b. Muttur (East) / Sampoor High Security Zone, Trincomalee

The designation of large parts of Muttur division (around 90 square kilometers) in the Eastern district of Trincomalee as a High Security Zone (HSZ)²⁵⁶, by the Sri Lankan government has severely affected return prospects for more than 15,000 persons who are currently displaced in Batticaloa and Trincomalee districts. The new HSZ covers a vast area including Sampoor, Foul Point, Illankanthai, Uppural, Thoppur, Kattaiparichchan and Chenaiyour.

The gazette notification specifies that "No person shall enter the area comprising Muttur (East)/Sampoor High Security Zone in any boat or vessel or in any other manner, or having entered, remain within or ply any boat or vessel within the Muttur (East)/Sampoor High Security Zone except under the written authority of the Competent Authority"²⁵⁷.

On 29 June 2007, the Centre for Policy Alternatives (CPA) filed a fundamental rights petition challenging the establishment of the High Security Zone (HSZ) and the subsequent prohibition on entering and residing there. In its petition, the CPA contended that Article 12 and Article 14 of the Constitution had been violated. Article 12 states that all persons are equal before the law and ensures that no citizen shall be discriminated against on grounds specified in the Constitution and Article 14 provides for the freedom of movement and the right to choose one's residence. On 17 July, the Chief Justice, sitting in the Supreme Court, dismissed the petition. Counsel for the Government reportedly indicated that resettlement of some areas affected by the HSZ would be permitted once de-mining has been completed.

IDPs affected by the declaration of the Muttur (East)/Sampoor High Security Zone consistently report that there has been no communication from national authorities regarding what concrete measures will be taken to compensate those losing their homes and livelihood through the creation of the HSZ. On a positive note, several GNs from the areas affected by the HSZ traveled to IDP sites in Batticaloa district on 20 June 2007, talking to their constituents and discussing the situation created by the declaration of the HSZ and what alternative solutions that could be viable.

3. Returns and Relocations

Efforts made by government authorities to ensure voluntary and informed returns have been observed since April 2007. Some steps were taken by the Government to strengthen and improve the process and to meet international protection standards. In preparation for the returns to Batticaloa West which started in May 2007, UNHCR held a series of consultations with the Minister of Disaster Management and Human Rights, the Minister of Resettlement and other high level Government Officials to learn lessons from the past and improve the resettlement process. These discussions were fruitful and resulted in significant improvements in the resettlement to Vellavelly, Paddipalai and Vavunatheevu in Batticaloa West, and to Verugal in Trincomalee district. In particular, the movements were largely voluntary, the logistical process was much better organized, information notices were distributed to IDPs during the return process except to those who returned to Eachchilampattu, pre-return assessments were undertaken by the UN, return packages were enhanced, Ministry of Resettlement staff were deployed to oversee the process, and security screening was conducted in a more transparent and orderly manner, with the exception of the screening at the Verugal ferry crossing point which was conducted by masked men.

At the same time, the UN continues to work with the Government to strengthen other aspects of the return process including working towards further reducing the military's involvement in the resettlement process, ensuring that low-risk mine certificates are issued prior to return taking

²⁵⁶ The HSZ was established by emergency regulations issued by President Mahinda Rajapaksa under Section 5 of the Public Security Ordinance published in the official gazette 1499/25 on May 30 2007.

²⁵⁷ The Gazette identifies Major General Parakrama Pannipitiya, Commander of the Security Forces in the East as Competent Authority.

place, providing more timely information to the IDPs about the return process to allow them to make a truly informed choice about resettlement, ensuring the continued provision of assistance to those IDPs who do not wish to return, and enhancing the preparation of the resettlement areas particularly with regard to shelter and services before IDPs return. All these measures, including a Government recovery plan for the resettled areas and the implementation of Confidence Building and Stabilization Measures (CBSM) will further ensure the sustainability of these returns. Nevertheless a number of incidents where IDPs were or felt coerced to return have been reported as indicated below.

In terms of sustainability of the returns, steps are being taken to improve the post-resettlement programme. It was agreed at the 10th meeting of the Consultative Committee on Humanitarian Assistance (CCHA) held on 7th June 2007 and chaired by Hon. Mahinda Samarasinghe, Minister of Disaster Management and Human Rights, that, with the concurrence of Gotabhaya Rajapaksa, the Defence Secretary, I/NGOs will be given access to areas of return in Batticaloa to carry out livelihood and infrastructure development programmes. The Government of Sri Lanka through the GA of Batticaloa will facilitate access, a decision that has been welcomed by the humanitarian community. This decision, however, does not appear to have been communicated to the relevant authorities in the ground because as of mid July 2007 NGOs report that they have been granted little or no access to the areas of return in Batticaloa West.

In April 2007 a coordination mechanism at the national and district level for the CCHA Sub Committee on IDPs Resettlement and Welfare was established. Its goal is to improve coordination of the various government and non-government agencies involved in the distribution of assistance at the field level and to support the Government in fulfilling its responsibility to protect and provide humanitarian assistance to IDPs. Under this new coordination framework, the appointment and deployment of Resettlement Field Coordinators in June was a distinctly positive step.

a. Batticaloa West

On 14 May 2007, the Government began the resettlement in 3 phases of displaced persons from Porativu Pattu²⁵⁸ and Manmunai South West²⁵⁹ (phase I), Manmunai West²⁶⁰ (phase II) and Eravur Pattu and Koralai Pattu South (Valachchenai) (phase III) DS Divisions in Batticaloa West. As at 09 July 2007, phases 1 and 2 of the resettlement were completed and phase 3 was still being planned for. Some 98,605 individuals / 30,381 families have been resettled within Batticaloa District and to Trincomalee District between May and early July 2007.

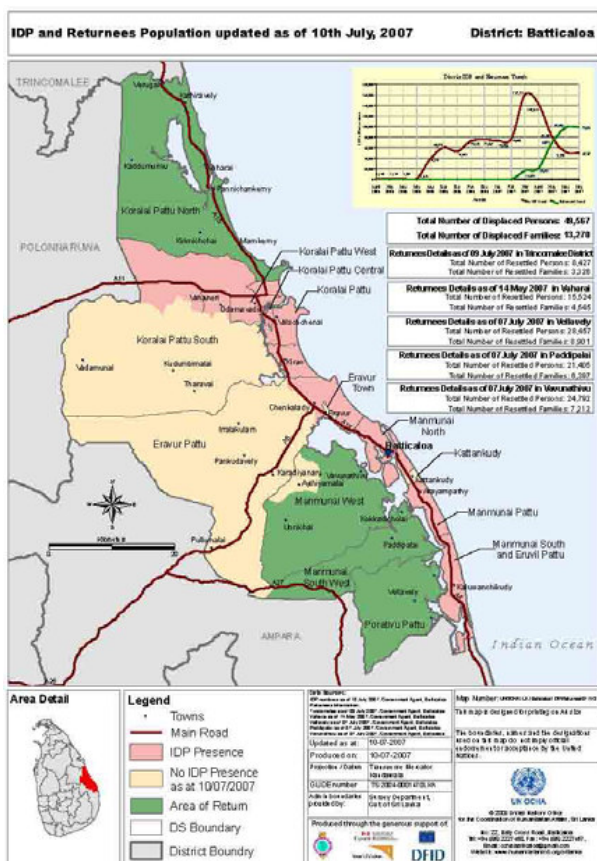
At the beginning of phase I, the majority of the people were eager to return home. UNHCR staff had access to the areas of return and monitored the process. They generally observed that conditions were conducive for return. No security incidents or arrests had been reported, IDPs and returnees' freedom of movement was respected, and consequently UNHCR found that the return process was in line with international protection standards.²⁶¹ In the first two weeks following the launch of the government's resettlement programme in West Batticaloa, some 30,000 displaced people had returned to their homes in the Porativu Pattu DS division.

²⁵⁸ To and around Vellavelly.

²⁵⁹ To and around Paddipalai.

²⁶⁰ To and around Vavunathivu.

²⁶¹ See <http://www.unhcr.org/news/NEWS/4649ce3e4.html>



As phase II of the return process was about to start and building on observations made during the first phase of movement, UNHCR made some suggestions to the government on strengthening the process during the second phase²⁶². Among the recommendations made was that IDPs receive advance information about the return process (dates and return locations, procedure for return including registration and photographs, conditions in places of return, the principle of voluntariness and assistance to be provided to returnees). The issue was discussed with the Minister of Resettlement and Disaster Relief Services and the Minister of Disaster Management and Human Rights. The benefit of an information notice for IDPs was recognised by all, and the Ministry for Resettlement prepared a document which contained information about the scheduling of returns, the procedure at the transiting site and some basic information about assistance to be provided to returnees. The Ministry of Resettlement and local government officials started distributing the notice in IDP sites on 17 May. Another suggestion was for more, clearly identifiable, personnel from the Ministry of Resettlement to be involved in

the return process and the involvement of the military be reduced as far as possible. UNHCR also urged the government to provide clearance for a UN advance assessment team to have access to areas of return before the return takes place. Most of UNHCR's recommendations were taken into account and the government implemented changes that resulted in an overall improvement of the resettlement process.

During phase II, while many IDPs were happy to be returning, monitoring teams found that the majority of IDPs felt that they did not have a choice about return. Some IDPs also indicated that they did not feel empowered or safe to express unwillingness to return, particularly in those sites where the STF was involved in providing information about return schedules. At the beginning of the process very few IDPs had seen the Ministry of Resettlement information note, either in the camps or in the transit site but this improved over time. IDPs who had received it found the note quite helpful as it answered some of their questions. The involvement of the military in all aspects of the return process remained an issue of concern.

A number of returnees interviewed at transit sites and in IDP camps indicated that they were not happy to return at present and would prefer to remain in displacement sites for a longer period (particularly with increasing reports from returnees from 15-17 June, who had reported that many houses had been damaged and/or destroyed, either by shelling or by wild elephants), but feared that they would be targeted or forced to return by the STF or SLA if they decided to remain. They felt they had no choice but to comply with the instruction to go. At the same time, most IDPs were both happy and resigned to going home, particularly given the conditions in the camps.

There also appeared to be a collective decision to go back. The IDPs consistently asked whether the UN and the NGOs would be in the areas of return. They said they would feel more confident if there were international presence in their villages. Those individuals who expressed an unwillingness to return were unsure about what to do. If they had the courage to inform their GN,

²⁶² See <http://www.unhcr.org/news/NEWS/465bf6452.html>

he/she was generally not supportive, telling them that they had no choice that their assistance would be cut, and in some instances they were told they would have to write a letter to explain why they did not wish to return. There were complaints from IDPs and GNs that the STF had come to the camps at the end of the Vellavelly return process looking for those IDPs who had not returned. During Phase I and II, there was a welcome absence of armed TMVP cadres at the staging points.

On 19 June, UNHCR staff observed 4 SLA soldiers boarding a returnee bus at Palacholai I camp in Chenkalady in order to search their belongings and register the returnees. A similar incident reportedly took place in Kaluwankerny camp as well. Following intervention from UNHCR staff (explaining that the returnees would be searched, registered, photographed and screened by the STF at the transit site and that this additional registration would only delay the process), the SLA agreed to collect the returnee information from the GN. On 20 June, UNHCR's monitoring team observed that the SLA collected the information from the GN and did not board the buses.

Another major protection concern also relates to reports, recently received from agencies in Manmunai North including WFP, that IDPs who refused to return on their scheduled dates are no longer registered as IDPs and will therefore cease receiving assistance such as WFP-funded dry rations. This was confirmed by the DS Manmunai North, who indicated that these persons no longer qualified as IDPs. This effective de-registration is contrary to the Government's repeated assurances that those who elected not to return at present could remain in IDP sites and continue to receive assistance, and that withholding of assistance would not be used to influence IDPs' decision whether to return. When asked, on 25 June 07, the GA indicated that IDPs who elected not to return due to fear should be entitled to remain in sites and continue to receive dry rations. He agreed that the Government had given assurances that people should be able to decide for themselves whether to return and that assistance should not be used to influence them. These assurances were recently reaffirmed by the Minister of Resettlement and Disaster Relief Services during the CCHA's 4th Sub-Committee Meeting held on 10 July 2007. The Minister stated that IDPs who have decided not to return yet should not be de-registered and should continue to be assisted. He added that cases where IDPs were crossed off food aid lists or otherwise de-registered should be brought to the attention of the GA's office.

During the first two weeks of July, agencies in Batticaloa have increasingly come across IDPs who have re-displaced from the areas of return in the western parts of Batticaloa. Reasons given for re-displacement ranged from security and safety concerns, including numerous allegations of rape of young women, murder and abduction to lack of livelihoods and problems relating to education. While it is too early to say whether this trend will continue the fact that these individuals seem to be excluded from any Government or I/NGO assistance, and not considered as IDPs by the authorities is of concern to protection agencies.

b. Eachchilampattu Division, Trincomalee

The return process of IDPs from Batticaloa to Verugal and Eachchilampattu GS divisions appeared to be broadly voluntary and people were happy to be returning home although it was apparent that the returnees had received very little information prior to their return. It is clear that a main contributing factor to the willingness to return was that the returnees were taken directly to Eachchalampattu rather than through the transit sites in Killiveddy. Some IDPs indicated that they had elected to return due to fear that their homes would be looted by other returnees if they did not return; others reported that they believed they would be pressured into returning by the STF at a later date or accused of being LTTE supporters if they elected to remain in the IDP sites rather than returning. On the first day of return, none of the returnees indicated that they had received information notices explaining the return process and some indicated that they had received very little notice of the scheduled return. However, the process has improved over time and returnees interviewed on 09 July indicated that they had received more notice about movement dates.

On 28 June excessive and intimidating screening of the returnees by masked men in civilian clothes was reportedly taking place at the transit site on the south side of the Verugal ferry

crossing and the matter was raised with the authorities by UNHCR. On 9 July masked “screeners” were again very active and it appeared that many of the male returnees were pointed out, registered and photographed separately and interviewed about LTTE involvement. Some women and, in one case, a whole family were also taken for screening. Although no detentions occurred, these additional screening practices left returnees feeling anxious about conditions in their place of return and fearful that it is only a matter of time before they are rounded up from their homes as a result of being on the “LTTE suspect” list.

c. Muttur Division, Trincomalee

In Muttur where the security situation continues to be volatile with reported clashes between the LTTE and SLA, killings and abductions, the authorities are promoting returns to a number of areas, including Ralkuli village and Muttur Town, where IDPs have expressed security concerns in relation to returns. Similarly, a UNHCR field visit to Seruwila recently found that IDPs in Lingapuram have been facing pressure to return to the neighboring village of Ariyamankerny. On July 12th, around 200 IDPs were returned to Ralkuli from Kinniya, despite the fact that the IDPs had consistently expressed security concerns. Their decision to return seems to have been substantially influenced by the authorities’ refusal from November 2006 onwards to provide WFP dry ration to the Kinniya IDP sites. On the other hand the government authorities, the Ministry of Resettlement and Disaster Relief Services in particular, have somewhat improved the overall resettlement operation within the western part of the Muttur Division by organizing some limited go-and-see visits and meetings with IDPs. However, IDPs from Muttur East are expressing considerable frustration over the almost complete absence of information and communications from the authorities in relation to the likely timescale for return and/or possible alternative land.

d. Chavakachcheri, Jaffna

Noteworthy in Jaffna is the fact that both military and civilian authorities have revealed their wish to see the number of IDPs reduced and this has resulted in the coerced relocation of some IDPs in Temporary Accommodation Centres, to areas deemed unsafe and lacking in provision of basic services. For instance, there have been concerns over the closure of the Allarai Temporary Accommodation Centre (TAC) which originally hosted 50 IDP families since the 11th of August 2006. Following the spontaneous voluntary return of 42 families in the past few months, the Pradeshiya Saba (local municipal authority) with the support of the GS and DS, had discontinued water supply and food distribution to the remaining 8 IDP families in April and May respectively.

On 23 May, the GS threatened the remaining IDP families in writing to leave, simultaneously promising them dry rations upon their compliance. Due to this coercion and the halting of water supplies, the IDPs felt compelled to leave the TAC the same day and to relocate to a vacant pre-school in Vellampokkaddy. The GA later agreed that decision was wrong and instructed the GS to solve the problem. The closure of Allarai TAC nevertheless resulted in the coerced relocation of 4 IDP families to an area which is barely accessible to humanitarian agencies, not deemed to be safe, and which does not ensure the provision of basic services to the population. Met after their forced relocation, these families did not report any issues/problems related to SLA but expressed their wish to relocate to the newly vacated TAC in Sri Murugan due to fear of shelling in Vellampokkaddy. Their relocation was expected to be facilitated by the GS.

The closure of two other TACs in Chavakachcheri, in Kadduvalavu Kanthasamy Kovil and in Paththiniyarvalavu respectively compelled 29 IDPs families to leave and to return to their areas of origin in Vellampokkaddy, Allarai and Kodikamam but there are concerns that these returns were premature and not voluntary.

e. Allaipiddy, Jaffna

On 20 June, the GA encouraged NGOs and UN agencies to facilitate the return of 23 IDP families to Allaipiddy by providing them with assistance. However, no organization has agreed to facilitate the return due to safety, security, lack of basic services, as well as concerns about the presence of mines/UXOs in the places of origin. Protection monitoring agencies advocated for a pre-return

assessment to be conducted by various stakeholders to evaluate all aspects related to the physical, legal and material safety of the returnees including issues such as the risk of shelling and the presence of mines and UXOs in the area as well as a multisectoral assessment of the existence of basic services (water, sanitation, school and health facilities), access to land and livelihood opportunities. To date no go-and-see visit has been carried out and demining NGOs have so far been denied access to Allaipiddy to conduct a mine-survey of the area. On a positive note, the IDPs from Allaipiddy in OLR TAC are being relocated to alternative sites in Jaffna town after the Church administration requested that IDPs vacate the Church premises. This has lessened the pressure on people to return prematurely.

APPENDIX D

DRAFT

**Plan for Emergency Assistance and Early Recovery
For Resettled Areas in
Batticaloa District**

**Consultative Committee on Humanitarian Assistance
And
Ministry of Resettlement and Disaster Relief Services**

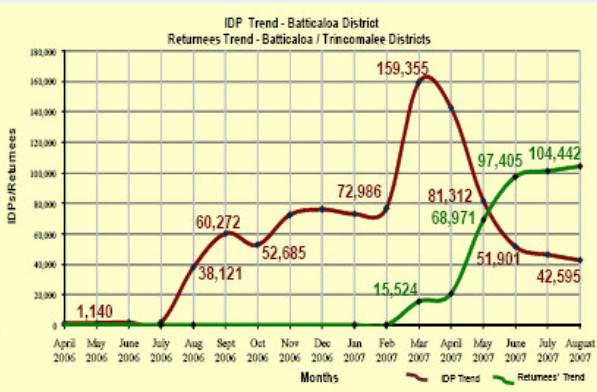
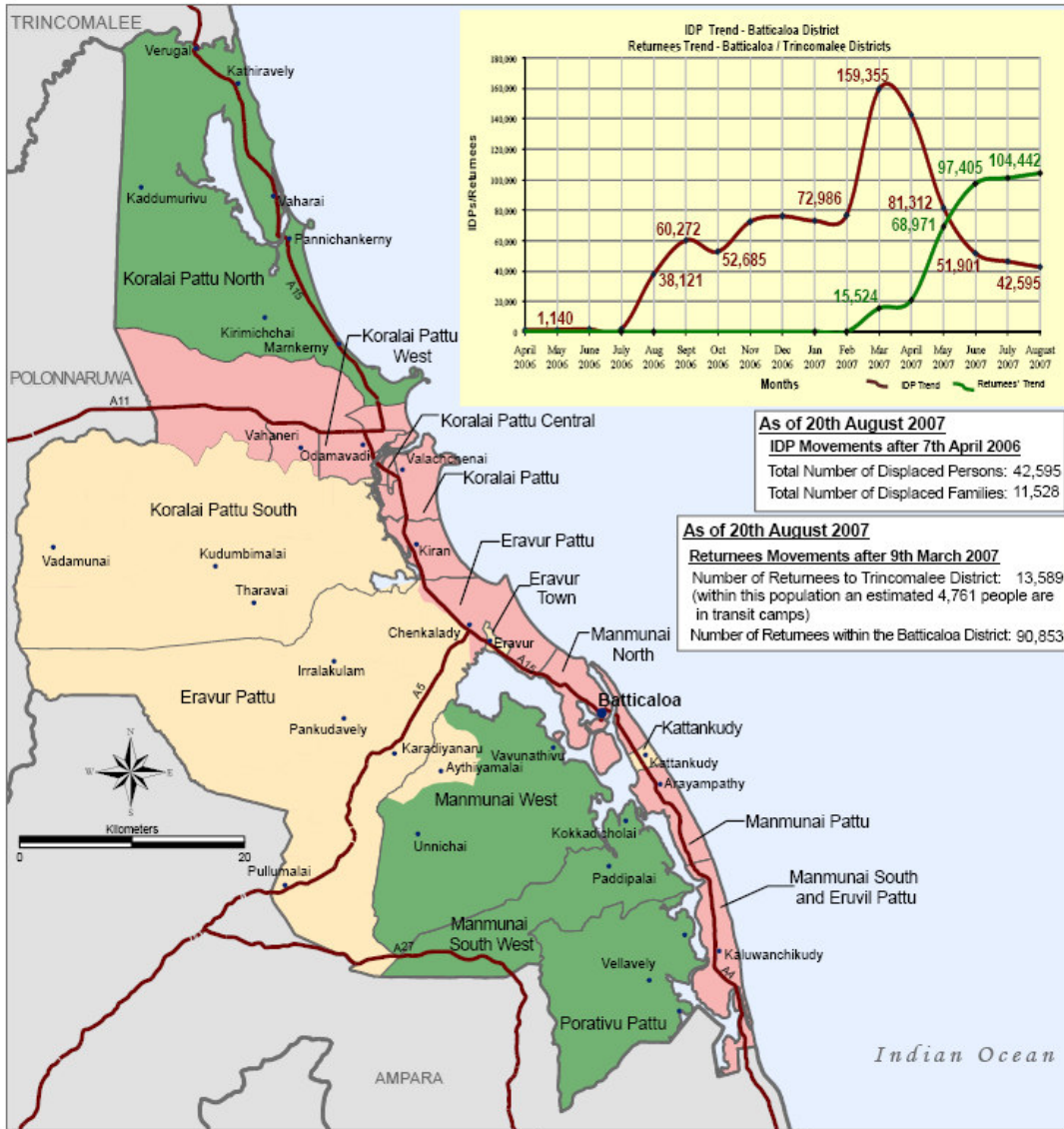
September 2007

ABBREVIATIONS

MR&DRS	- Ministry of Resettlement and Disaster Relief Services
MoNB	- Ministry of Nation Building
GA	- Government Agent/ District Secretary
DS	- Divisional Secretary
PC	- Provincial Council
CLG	- Commissioner for Local Government
ACLG	- Assistant Commissioner for Local Government
PS	- Pradeshiya Sabha
RDHS	- Regional Director of Health Services
NHDA	- National Housing Development Authority
APDE	- Assistant Provincial Director of Education
ZDE	- Zonal Directors of Education
RDA	- Road Development Authority
RDD	- Road Development Department
DAD	- Department for Agrarian Development
MPCS	- Multi-Purpose Cooperative Societies
SLCTB	- Sri Lanka Central Transport Board
DOF	- Department of Fisheries
NEHRP	- North East Housing Reconstruction Project
NECORD	- North East Community Restoration and Development Project
NECCDEP	- North East Coastal Community Development Project
TAARP	- Tsunami Affected Area Reconstruction Project
CAARP	- Conflict Affected Area Reconstruction Project

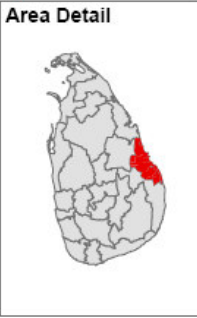
IDP and Returnees Population updated as of 20th August, 2007

District: Batticaloa



As of 20th August 2007
IDP Movements after 7th April 2006
 Total Number of Displaced Persons: 42,595
 Total Number of Displaced Families: 11,528

As of 20th August 2007
Returnees Movements after 9th March 2007
 Number of Returnees to Trincomalee District: 13,589
 (within this population an estimated 4,761 people are in transit camps)
 Number of Returnees within the Batticaloa District: 90,853



- Legend**
- Towns
 - Main Road
 - Red Area: IDP Presence
 - Yellow Area: No IDP Presence as at 20/08/2007
 - Green Area: Area of Return
 - White Line: DS Boundary
 - Grey Line: District Boundry

Data sources:
 IDP numbers as of 20 August 2007: Government Agent, Batticaloa
 Returnees Information: Trincomalee as of 20 August 2007: Government Agent, Batticaloa
 Transit camp population as of 20 August 2007: UNHCR, Trincomalee
 Batticaloa as of 20 August 2007: Government Agent, Batticaloa

Updated as at: 20-08-2007
Produced on: 22-08-2007

Projection / Datum: Transverse Mercator Kandawala

GLIDE number: TS 2004-0001470LKA
Admin boundaries provided by: Survey Department, Govt. of Sri Lanka

Produced through the generous support of:

Map Number: UNOCHA/LK/Batticaloa/IDP/Returnees/01/1/4
 This map is designed for printing on A4 size

The boundaries, names and the designations used on this map do not imply official endorsement or acceptance by the United Nations.

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 No: 22, Bally Cross Road, Batticaloa
 Tel: +94 (85) 2327458, Fax: +94 (85) 2327457,
 Email: ocha.batticaloa@gmail.com
 Website: www.humanitarianinfo.org/srilanka

Introduction

The 10th CCHA (Consultative Committee on Humanitarian Assistance) meeting in June 2007, chaired by Minister for Disaster Management and Human Rights, Hon. Mahinda Samarasinghe discussed the need for a systematic approach to post resettlement humanitarian assistance in terms of a detailed plan for resettled areas. The CCHA is a policy forum that coordinates humanitarian interventions and issues at the Centre (Colombo) and has limited membership of agencies and ministries. It has five sub-committees; Logistics and Essential Services, IDPs: Resettlement and Welfare, Livelihoods, Education and Health.

In early July, the Ministry of Resettlement and Disaster Relief Services submitted an emergency assistance plan *Emergency Assistance Programme to the Resettled Displaced People in Batticaloa* to the CCHA. This plan was submitted and approved by Cabinet in late July.

The CCHA sub-committees submitted detailed comments to the plan- emphasizing the need to deepen the plan in terms of activity, and taking in to consideration the present interventions by UN/INGO and government and establishing links with the longer term development programmes for the Eastern Province. It was suggested that a detailed resettlement plan be prepared for Vaharai which can be used as a model divisional plan for other areas as well.

The United Nations Development Programme (UNDP) assistance was sought to engage a consultant to work on the plan, based in the district and engaging different government, UN and INGO actors.

The Ministry of Resettlement and Disaster Relief Services, the line ministry for resettlement services and coordination, was assigned as the CCHA focal point for developing a model plan for Vaharai and action plans for the other divisions, based on their initial plan.

The Consultant was engaged in the preparation of these Action Plans between August 13 and September 7th. During this time meetings were held with the District Secretary, District Planning Secretariat, Provincial Authorities, Divisional Secretaries of resettled areas, Key Departments and Line Ministries (represented in the district), donor funded projects in the district, UN and other humanitarian actors.

On September 18th, the final draft and operational matrices for all resettled divisions of Batticaloa District were discussed at a meeting at the District Secretariat and endorsement was received from the district on the content- especially the identified priority activities.

This final draft has incorporated all the recommendations of that meeting.

Acknowledgements

On behalf of the Ministry of Resettlement and Disaster Relief Services and the Consultative Committee on Humanitarian Assistance, I wish to thank the following for supporting by way of information, logistics and funding the successful drafting of this Action Plan in the shortest possible period.

- District Secretary, Batticaloa
 - Advisor, Ministry of Resettlement and Disaster Relief Services
 - The Governor of the East and Eastern Provincial Council
 - District Planning Director
 - Additional District Secretary
 - Project Director, District Secretariat
 - Divisional Secretaries of Vaharai, Vellavelly, Paddipalai and Vavunativu
 - Departments of Health, Roads and Education in the District
 - Departments of Agrarian Services and Fisheries in the District
 - National Housing Development Authority in the District
 - Assistant Commissioner of Local Government, Batticaloa
 - District Directors of donor-funded projects
 - UN Agencies working in resettlement areas
 - Other NGOs/ INGOs working in resettlement areas
-
- UNDP RC / HC Office for Coordination
 - UNDP Disaster Management Programme for funding the preparation of the plan

Tharuka Dissanaïke
Consultant

September 2007

Background of Resettlement in Batticaloa

By April 1, 2007 the number of displaced people living in welfare centres and with relatives (host families) in Batticaloa District climaxed at 171,695 (44,275 families). Of these, 5692 families were from Trincomalee District. These IDPs (internally displaced people) from Trincomalee suffered the longest period of displacement and over a third of this number still remains in Batticaloa, pending relocation to their original villages.

Resettlement began in March 2007 when displaced from Vaharai were encouraged to return. Since then, four out of six divisional secretary divisions in Batticaloa which reported mass displacement have been resettled.

The resettlement details are as follows;

Division	No of Families	No of Persons
Koralaipattu North (Vaharai)	4545	15524
Manmunaipattu SW (Paddipalai)	6431	29122
Manmunai West (Vavunathivu)	7212 (+ 810 ²⁶³)	21583
Porativu Pattu (Vellaveli)	9050	24792

As of end August, there were 11,476 displaced families in the district; living with relatives (4864 families) or welfare camps (6612 families). Of these 2973 families are from Trincomalee district.

Resettlement in parts of Eravurpattu (Chenkaladi) and Koralaipattu South (Kiran) are to begin later in September with the completion of demining activities in these areas.

As the displaced returned to their original villages, the government promised to provide food rations, permanent housing and a livelihood grant. Resettled people in Vaharai received rations for 10 weeks from government, and around two weeks from other INGOs, after which the British Red Cross came in with a cash-for-food programme covering the entire DS division. In other divisions, people received an initial ration for two weeks upon leaving the welfare camps and then onwards the WFP distribution kicked in through cooperative societies in Pattipalai, Vellaveli and Vavunativu.

Since resettlement, many actors (state, local government, UN, I/NGOs) have been working in the field meeting the needs of people in food, non-food relief, water supply, temporary housing and livelihood development. These efforts are being coordinated at several levels, especially by Divisional Secretaries, and at District Level coordination meetings led by the Government Agent (District Secretary), department heads and facilitated by UN agencies.

²⁶³ These families from 2 GN divisions of Vavunathivu (Aithiyamalai north and south) were resettled in the first week of September since mine clearance was completed by end August.

From Relief to Recovery

In resettled areas, the foremost priority is to provide people with adequate shelter, food, water, sanitation to meet immediate needs and provide a sense of stability and instill confidence in the administration. Relief and humanitarian interventions take centre stage at a time when people are returning after prolonged displacement to the towns and villages that have been damaged/ neglected in the conflict period.

As the people settle-in, however, different phases of the process of resettlement and economic/ social recovery can be identified. These may necessarily overlap each other and could be ongoing simultaneously.

1. **Relief:** This is a period where people are totally dependent on external support for food, water, clothing, shelter. Humanitarian interventions are predominant. Protection measures are necessary to safeguard the interests of the entire resettled community and particularly specific vulnerable groups (women and children). In newly resettled areas the Military takes on some aspects of civil administration while enforcing security-related regulations upon the resettled community. At this stage it is necessary to have a civil-military interface such as a liaison committee so that issues could be resolved quickly. Ideally however, access to the resettled communities must be unrestricted for widespread coverage by humanitarian actors.
2. **Early Recovery:** This involves a partial return to normalcy by providing for temporary shelter and damage repairs to housing, resumption of education and health services, reverting back to traditional water sources such as dug wells, deep bore wells etc, some livelihood/ economic activity resumed, shops and markets are opened, repairs to roads and transport facilities resumed, civil administration resumes. Compensation claims should be processed for loss of housing, livelihood assets and crop loss. Importantly, the Military establishment which assumes a major role during relief must phase out their direct involvement in civilian affairs and allow space for regular administration and law enforcement (Police).
3. **Recovery and medium term development:** In this stage civil administration and local government services are fully resumed. Permanent housing construction has begun or is fully committed. Livelihoods such as fisheries, agriculture have resumed/ or else being supported. Livelihood infrastructure such as markets, mills, ice plants, irrigation channels, small tanks are being constructed/ repaired. Banks and retail outlets are operational. Communities' should be weaned out of dependency upon external support with the gradual resumption of livelihood activities. Interventions at this phase must enable communities to get back on their own feet, and reduce their specific vulnerabilities.
4. **Development phase:** In the long term, stability must return. The district needs to take stock of its key development sectors and allocate financial resources in to these sectors. The main livelihood areas of agriculture, fisheries and tourism need to be developed. More industry and services (Banking, insurance, health, transport) encouraged and employment opportunities generated through private sector investment. This phase should see a decline in relief and humanitarian interventions correlating to an increased presence of development actors, private sector investment, industrial growth and good governance.

Resettlement Ministry Role and Assistance Programme

In order to draw up an urgent assistance programme to the resettled populations in the Batticaloa district, a team of officers from the Ministry of Resettlement and Disaster Relief Services visited these areas in early July. A first draft of this plan identified eight priority areas which need urgent intervention during the first six months of relief and recovery. The plan was prepared for the four DS divisions that had completed resettlement by end June- *Vaharai, Pattipalai, Vellavelly and Vavunativu*.

These priority areas were; **food and nutrition, water supply, housing, livelihood support, road and transport, health and education, public services and religious activities.**

The plan identified the problems in each sector, some key interventions in each area with cost estimates that totaled to Rs. 3464 million. The plan was further submitted to the Cabinet of Ministers and Cabinet approval obtained by end of July.

Overall Objective: To strengthen and accelerate the resettlement process in the affected Divisional Secretariat Divisions in Batticaloa District.

Specific Objectives:

- To provide immediate assistance required by the resettled population
- To coordinate the immediate assistance provided by various government, UN and non-governmental organizations to prevent overlapping and duplication
- To instill and build confidence among the resettled population and thereby strengthen the process and improve overall stability

Developing an Action Plan

Many humanitarian agencies and line departments (central and provincial governments) were already providing assistance on the ground for relief components such as housing, water and food supply and the early recovery of health, education and reconstruction of roads.

This and comments to the Plan made by the CCHA Sub-Groups coordinating the resettlement process necessitated the development of an Action Plan that would expand the sectoral plans and incorporate current interventions and commitments made by other development/ humanitarian actors already active on the ground.

The CCHA suggested that the Plan for Vaharai DS division be developed as a 'Model Plan' for resettlement with clear sectoral matrices that could be replicated in other emergency situations and post conflict resettlement of other districts/ divisions.

The following sectoral plans have been developed through discussions with different stakeholders, central and provincial authorities, district secretariat and district planning

secretariat, divisional secretaries and department heads and different stakeholders (UN/INGO) working in resettled areas of Batticaloa District.

Later in this report some priority interventions have been listed against timeline and necessary interventions (for Ministry of Resettlement and Disaster Relief Services and Ministry of Nation Building) for a six month period which should lead the resettled divisions past the stages of relief and early recovery.

Long term development is not considered part of this emergency/ recovery plan but some development interventions that could be initiated during recovery phase have been identified (such as water source/ irrigation/ livelihood development).

Funding

Government funding is envisaged for the major activities of the key sectors such as livelihood, housing, health, education and public services. This funding could be sourced through the central government via the Ministries of Resettlement, Nation Building; through line ministries and departments; from provincial authorities or from donor-assisted projects.

UN and INGO commitment to various aspects of the Assistance Programme and Action Plan is also envisaged. Already some major components such as food relief, emergency shelter and water supply are being carried by UN/INGO actors in the district.

Coordination Mechanism

The Plan envisages setting up of a District Level Project Management Unit (PMU) which will implement and monitor component of the different projects and report to the Ministry of Resettlement and Disaster Relief Services. The PMU will coordinate with line agencies, departments and provincial ministries to implement the different sectoral components of the Action Plan. The initial Plan suggested the creation of a district level steering committee with GA (District Secretary) as chairman to liaise with the national level steering committee with Secretary, MR&DRS as chairman.²⁶⁴

However the idea is to use existing coordination mechanisms at district and national level than to impose new systems upon an already burdened district secretariat.

Divisional and District level resettlement (sectoral) coordination meetings, such as the livelihood coordination mechanism that is being currently established under ILO/UNDP facilitation, can link with the CCHA as the National Level as Steering Committee. This is considered a more pragmatic approach given the current situation.

²⁶⁴ The recent instruction from MoNB to District Secretaries of Batticaloa, Ampara and Trincomalee however spell out the composition of two steering committees. One at District level and the other at Provincial level to coordinate the engagement of NGOs/ INGOs to accelerate the development process in resettled areas.

There are some issues that the coordinating mechanism must address at the early stages of relief and recovery:

- Access to some of the newly resettled areas of western Batticaloa is still restricted and this has prevented resettled people from receiving the full benefit of humanitarian assistance. Although MoNB has issued guidelines to the Districts, many humanitarian agencies are not aware of the selection criteria for obtaining access; humanitarian assistance should be facilitated through dialogue/ open communication with INGO actors on the needs of the people of these areas.
- The continued presence of armed military personnel in the resettled areas necessitates a mechanism for civil-military liaison (as in Vaharai), and this is urgently needed in the western divisions
- Many public buildings such as health centres, libraries, pradeshiya sabha building, and private properties such as wells and houses have been occupied by the military, presumably in the short term- but these buildings have not been vacated. It is necessary to vacate these buildings and allow for the efficient functioning of public services in order to bring resettled areas back to normalcy.
- Government commitment towards resettled areas in terms of housing, compensation and livelihood assistance need to be spelt out clearly in order allow other actors to step in to meet gaps.
- The lack of a grievance redress mechanism for civilians in the resettled areas.
- Issues of registering persons and families who have re-entered the western divisions after the official STF registration. These people continue to live without official registration and are sometimes left out of food aid, shelter provision and other benefits coordinated through the district secretariat.

Beyond Recovery: The Development Phase

This Action Plan, with a six month timeline, is essentially a planning tool for relief and recovery phases of resettlement. But it is important to draw clear parallels to the development process and identify linkages as well as early interventions that could benefit long term development.

While during the recovery phase the onus is on ‘getting back to square one’; the development phase should look at future needs and opportunities for the entire district. Planners here should take a longer term view of each sector –health, education, water supply, food security, transport, livelihood- and allow the people to benefit from technological advancement and modern systems in manner that is ecologically and socially sustainable.

It is necessary to take a holistic view of each sector’s future development and integrate these different components into district development plan which reflects the aspirations of all communities in Batticaloa. Already there are several major initiatives for the

development of the entire eastern province²⁶⁵ which looks at major infrastructure (roads, bridges, water supply).

Certain activities in this recovery plan show clear linkages to long-term development initiatives. Especially in the sectors of water supply, housing and livelihood there are clear medium term objectives which lead to the longer term development phase. Housing as a sector is which is especially challenging to address in the short term. In Vaharai there is a clear mix of emergency, short term and long term initiatives are being simultaneously carried out, while in the western Batticaloa there is only emergency shelter being provided. The need for a housing policy in resettlement areas has been realized and a team of experts are now working with the ministry to come up with a mix of solutions that are viable in the short term recovery period but has longer term development association.

Stability brought on by the absence of conflict should create an environment for enhanced investment in the district and encourage private sector to provide better services such as banking, credit, insurance, medical etc to the community. Employment generation for educated youth is very important in a district predominantly dependant upon traditional fisheries and agriculture with very little opportunity for the higher educated groups except in government service or in non-governmental aid agencies.

Economic growth and development would exert positive pressure on managing simmering conflicts between urban/ rural areas; tsunami affected coastal populations (that received comparatively high degree of support) and rural farming areas in the hinterland (which are largely neglected) and tensions between different ethnic groups on sharing land, water and other resources.

Reviving earlier drafted integrated district/ provincial development plans and re-orienting them to the resent context and needs would be a step forward. Large-scale donor-funded projects –such as those developing irrigation, housing and infrastructure- must complement an overall development plan. There has to be strong emphasis on longer term sustainability of interventions, on reducing people’s vulnerability to natural hazards and conflict, and putting in to place safeguards to protect human life and dignity; and the natural and social environment.

²⁶⁵ 180-day development plan of the Ministry of Nation Building and plan for Eastern Revival of the government

APPENDIX E

Gender Sensitive Guidelines on Implementing the Tsunami Housing Policy

Instructions to Divisional Secretaries and District Secretaries²⁶⁶

1. Introduction

The Constitution contains no impediment to women holding and dealing with property. Article 12(1) of the Constitution provides that all persons are equal before the law and are entitled to the equal protection of the law. Article 12(2) prohibits discrimination on the basis of sex.

Grants of state land to those affected by the tsunami are being allocated under the State Lands Ordinance. The common perception is that the State Lands Ordinance does not permit the granting of state land to joint owners. Discussions have been held with the Land Commissioner's Department on clarifying the position as regards the conferring of joint ownership of state land under this law. **The discussions have revealed that there is no express prohibition in the law on the conferring of joint ownership of property. It has emerged as a practice merely for administrative convenience.**

The following are some general gender sensitive guidelines to be followed when allocating land and cash grants to those affected by the tsunami under the RADA Tsunami Housing Policy (THP) April 2006. They have been formulated on the basis that joint ownership of land can be granted under the law.

Divisional Secretaries and District Secretaries should be instructed to look carefully at previous ownership in every case to ensure that women are not discriminated against. It is also important to engage in a consultative process with the community and other interest groups in order to ensure transparency and non arbitrary decision making.

Three principles should guide the allocation of property to those affected by the tsunami:

- (a) Where the title to land previously owned is not at issue- new land title should be given to the previous land owner/s;**
- (b) Where the land was encroached upon- new land title should be given in joint ownership to both spouses, unless there are compelling reasons to do otherwise;**
- (c) Where previous ownership is disputed or unclear or where both spouses have contributed to the previous property the DS must have the discretion to give new land title in joint ownership to both spouses.**

²⁶⁶ COHRE Publication July 2006. For more information contact COHRE Sri Lanka at cohresrilanka@cohre.org or visit www.cohre.org/srilanka.

2. Consultations

It is important when implementing the Tsunami Housing Policy consultations with various stakeholders is made.

(1) Consultations with affected families

It is imperative that affected families are given a hearing by the authorities (Divisional Secretaries and District Secretaries) prior to allocation of land and housing. It is only through consultation that specific needs can be identified and met.

(2) Consultations with other interest groups

The objectives of the Tsunami Housing Policy stress community participation (See Revised Objectives, THP). This should be expanded to ensure that the District Secretaries and Divisional Secretaries consult with more than one local person, including Community Based Organisations (CBOs), local clergy, social workers and other interest groups, when implementing the housing policy.

The decision making process should ideally not involve only a single person but, at least five persons representing different sectors and interest groups.

3. Rejection of Head of the Household Concept

It is not the policy of the government to hand over houses under the 'Head of the Household' concept. It is merely an administrative practice that has been followed without question. There should be an explicit rejection of the 'Head of the Household' concept. Households and families should be seen as being 'run' or 'administered' jointly. There should be no single head of the household.

Each family unit has its own unique way of distributing family responsibilities and this should be taken into account in distributing houses. Housing should be given to the legal owner or jointly where there is evidence of previous joint ownership.

It is imperative that where damaged property was owned by women, that new housing titles be given in the women's names. Injustice has occurred in some situations where mother to daughter land and property inheritance has been negated as a result of the 'head of the household' concept being adopted.

Where women have owned the land or property previously, new allocations should be given in their name. Similarly, where property was owned jointly, then new allocations of land and housing should be given in both their names.

4. Issue of gift certificates

The entitlement to land grants comes in two stages. The first is a Gift Certificate for the land, issued by the Divisional Secretary (DS) and the second is a Land Grant signed by the President under the State Lands Ordinance. At present only the first step is underway.

The DS must verify who owned the land/house previously before issuing the gift certificate. There have been cases where even though the woman owned the land/house previously the

new housing certificates had been given in the man's name. This has led to women losing land rights which they had previously.

If the Gift Certificate has been given in the name of another- The gift certificate is only a semi-legal document and is an announcement of eligibility to receive the Land Grant. Amendments to this can be made on specific issues such as ownership. It should be possible for a person who is entitled to the land to get the gift certificate amended by the Divisional Secretary.

If the house/land was jointly owned before- Some gift certificates have been given in both spouses' names. The DS must ensure that those who had joint ownership of previous property are given gift certificates in both their names.

If the occupants were encroachers- the gift certificate should be given in joint ownership as there is no issue as regards previous ownership.

5. Encroachers

The policy of the state is the allocation of a house for a house regardless of ownership. This means that encroachers too have a right to a house.

When allocating land and property to encroachers, the head of the household concept should be rejected as it results in discriminating against women.

Where both spouses are living - the general rule should be joint ownership.

Where it can clearly be established that joint ownership is not equitable or feasible in certain circumstances- the exception should be single ownership

6. Dowry property

If the property was dowry property and it was in the name of the woman, the resettlement land should be given in the name of the woman.

If the dowry property was in other family member's (husband's/ woman's father's) name and they are now deceased, then the new land title should be given in the woman's name as it is her dowry property.

7. Cash Grants

Although the Tsunami Housing Policy states that cash grants are supposed to go to the owner of the previous land/house, in practice the cash allocations have been deposited into ***existing*** bank accounts which were used earlier to deposit tsunami assistance grants of 5000/-.

In most cases these bank accounts are in the name of the male head of the household. Although the banks were instructed to make these accounts joint accounts, often this did not happen.

The DSs or the relevant authorities should make sure that the housing cash grants go into bank accounts owned by the previous land/house owner, especially when the previous owner was the woman of the household, or go into joint accounts.

8. Special Cases

The housing policy applies broadly. Special situations require different interventions. These situations can be identified only by consultation with the communities and other interest groups.

'District Secretaries are also requested to ensure proper prioritization of beneficiaries, so that vulnerable groups such as single women, elderly, multi child households etc. receive assistance first' (Housing Policy Section 2.3.4)

District Secretaries have been given discretion in all situations in the section on 'Special Cases' in the Housing Policy.

In General, District Secretaries may accord case by case treatment to special cases at their discretion.

6.2 Extended families will be allowed to pool entitlements to construct a larger house. (Housing Policy Section 6.2)

The following situations (not exhaustive) require the discretion of the DS which should be exercised in consultation with other interest groups:

(1) Cluster housing

When resettlement plots are allocated, special attention must be given to families (especially vulnerable families such as single women households, women headed households) who will want to live close to their relatives and other support groups.

The state could consider allocating clusters of houses to families who would prefer to be in close proximity to their relatives.

(2) Informal cohabitation arrangements

The Sri Lankan law recognizes customary marriages. It also recognizes marriages by habit and repute. Very often, these types of marriages have not been registered and men and women live together as spouses.

The Tsunami Housing Policy only refers to 'married couples'. The DSs should take into consideration situations in which men and women cohabit as husband and wife in informal arrangements in allocating housing and cash grants.

(3) Muslim Traditions and Customs

Muslims in the East of the country follow the practice of conferring ownership of the parental home on the daughter on her marriage. The parents and other siblings would live in the same compound in another house. Unless separate assessment numbers have been allocated to both houses, there is a danger of non recognition of entitlements of both families in cash and land allocations by the state. This results in Muslim women losing their

property rights. DSs need to be instructed that such situations need to be carefully examined prior to allocation of land and cash grants and to ensure that Muslim women are not discriminated against.

9. Grievance Handling

'The RADA District Representative will supervise a Village level Grievance handling mechanism that can communicate in parallel to Division, District and Centre'. (Section 7, Housing Policy)

1. The grievance handling mechanisms to be established under the supervision of RADA should include at least half the number of women representatives.
2. Two tiers of grievance handling should be established with the possibility of appeal. Grievances should initially be handled at District Level with an appeal to an authority at central level at the RADA Head Office.

(Ideally these should not be lawyers but at the same time they should be independent and command some credibility.)

APPENDIX F

Revisiting the Concept of the Head of the Household²⁶⁷

The objective of this paper is to question the use of the “head of the household” concept, whether it is by the State or by non-State actors. It will be highlighted that the terminology i.e. “the head of the household” and its implications are discriminatory and does not reflect the practical realities of family life. Recommendations will be made in the future as to how alternatives to the term could be developed.

1. The Concept of the Head of the Household in Sri Lanka

According to the Department of Census and Statistics a head of the household is “the person who usually resides in the household and is acknowledged by the other members of the household as the head.”²⁶⁸ This is a gender neutral definition which focuses on the perception of the rest of the family. However, the general social perception in Sri Lanka is that the husband failing which the eldest son should be considered to be the head of a household. Research has revealed that this perception has permeated public life as well. There are instances where the father/husband of a family is given the authority to represent the family on the assumption that he is the head of the household.

According to the department of Census and Statistics, about 70% of the households in Sri Lanka are headed by males while about 30% are headed by females. Field research has revealed that women generally become heads of a household only by default, in the absence of a suitable adult male. Moreover, due to the conflict, natural disasters and migration of workers, many households are being headed by females.²⁶⁹ In recognition of this increasing number of female heads of the household, in the Concluding Observations by the Committee on the Elimination of Discrimination Against Women in 2002, the committee urged the Government to develop policies and programmes to improve the condition of female headed households and stated that it was necessary to recognize female headed households “as equal recipients and beneficiaries of development programmes.”²⁷⁰ However as illustrated below, the use of the concept of the Head of the Household, is continued in Sri Lanka and the practices in private and public life implies that the male headed households are the norm and that females head a household only in exceptional situations where a suitable male who could take leadership is absent.

²⁶⁷ COHRE Report October 2007. For more information contact COHRE Sri Lanka at cohresrilanka@cohre.org or visit www.cohre.org/srilanka.

²⁶⁸ Concepts and definitions of key items used in the Census of Population and Housing 2001, Sri Lanka, available at, www.statistics.gov.lk/PopHouSat/PDF/p2%20Organization%20and%20Procedures.pdf

²⁶⁹ *Armed violence and poverty in Sri Lanka*, a report by Miranda Alison, 2004, available at, www.smallarmssurvey.org/files/portal/spotlight/country/asia_pdf/asia-srilanka-2004.pdf

²⁷⁰ Concluding Comments of the Committee on Elimination of Discrimination Against Women, 2002, para 44 and 45.

2. Use of the Concept

The concept of the head of the household has been found to be in used in many areas of civil life such as,

- in day to day dealings with the State administration;
- in exceptional situations such as natural disasters; and
- in official documentation.

Day-to-day dealings with the State Administration

Research has revealed that certain aspects of State administration are reliant on the concept of the head of the household either directly or indirectly. For instance, the form used by the *Grama Niladhari* to prepare the voters list, explicitly requires that each household identifies its head. The objective of requiring such classification however is not clear.

The indirect use of the concept of the head of the household is evidenced for example in the issuing of birth certificates and certificates of marriage. With regard to birth certificates, the certificate itself states the genealogy of the father of the child, whereas only the name of the mother is stated. Further, the form requires the father's occupation to be mentioned but the mother's occupation is not required. Similarly with regard to the form to be filled for the notice of marriage, the occupation details of the fathers of the couple to be married are required and no mention is made of the mother's occupation.

In the above mentioned examples, the underlying assumption in requesting certain information only from the father is that, the father is the head of the family and that only his "status" reflects the "status" of the family.

Exceptional Situations

In exceptional situations such as a conflict or a natural disaster – the Sri Lankan experience suggest that there is an increase in the number of female headed households. For instance, in a study done by the Suriya Women's Development Centre in the district of Batticaloa in January 2005²⁷¹, it was revealed that there was an increase in the number of female headed households in the aftermath of the tsunami.²⁷² According to the report "some women have become the head of household due to the tsunami, others due to the war and the fact that their men had gone to the Middle Eastern countries as migrant workers, or left the communities due to death threats related to the war, or had abandoned them."²⁷³

The issue that such heads of households face is that they have to counter the socially and officially established norm that a male is the head of the household. For instance, land grants in this country are to the male head of the household and in intestate succession to such land grants preference is given to the male child.²⁷⁴ Therefore, in such cases, in addition to dealing with the emotional trauma of loosing a loved one or of having to cope with the impact of a

²⁷¹ *Sri Lankan Women's Small but Significant Gains in the Post Tsunami Reconstruction Process* by Sarala Emmanuel, Surya Women's Development Centre, available at, www.apwld.org/tsunami_reconstruction.htm

²⁷² According to this report, out of the 146 widows who had been interviewed, 15% had identified themselves as heads of their households.

²⁷³ *Ibid.*

²⁷⁴ See the Land Development Ordinance of 1935.

conflict- female heads of household will face the additional burden of not having the recognition that is due to them as the head of a household.

Official Documentation

It has been evidenced that statistical assessments of households are based on the concept of the head of the household. For instance in the report *Poverty in Sri Lanka – Issues and Options*²⁷⁵ some of the standards used for measuring poverty are,

- by the income of the head of the household;²⁷⁶
- by the level of education of the head of the household;²⁷⁷ and
- the poorest and the least poorest GS districts are identified on the basis of the characteristics of the head of the household.²⁷⁸

Further, in the Sri Lanka Labour Force Survey²⁷⁹ - under personal information of a household, the details of the head of household have to be stated first. However, as in the case of the voters list the rationale for requiring this classification is not clear.

3. Impact of the Use of the Concept

The use of the concept of the Head of the Household, as evidenced above amounts to discriminatory practice on several grounds. Firstly, assessment on the basis of the personal attributes of the head of the household completely overlooks and undermines the contribution of the other members of the household to the wellbeing of that family unit.

Secondly, it reinforces the idea that only a head of the household (usually a male) provides for the family. In practice however, the contribution of a housewife and her level of education go a long way in determining the quality of life in a family unit.

Thirdly, where the head of the household concept is used in policy making and programme design, the other members of the household can be either sidelined or even ignored. The policies for instance will be drafted with the head of the household as the focal point. In addition to being discriminatory, such policies will not be effective as it will not be giving full consideration to the contribution to decision making, for example, by the other members of the family.

Fourthly, in the event that a family decides that the senior female should be the head of the household in spite of other senior males in the family unit – she would have to counter the general presumption in her social dealings, in dealing with the State administration in general affairs, and especially in exceptional situations such as conflict or natural disaster. Even where the female takes on the role of the head of the household by default, she too will be faced with this general assumption that it is the male that should head the household. This in itself is an obstacle to effective realization of gender equality.

²⁷⁵ *Poverty in Sri Lanka, Issues and Options*, 2006, Department of Census and Statistics, Sri Lanka, available at, www.statistics.gov.lk/poverty/POVERTY%20DOC%20BY%20AGWN.pdf

²⁷⁶ P. 16, *ibid.*

²⁷⁷ P. 16, *ibid.*

²⁷⁸ P.20, *ibid.*

²⁷⁹ Available at, <http://www.statistics.gov.lk/samplesurvey/Labour%20Force%20Schedule.pdf>

Fifthly, identifying one “head” of a household amounts to stereotyping. Such an assumption ignores the reality that there are a range of family types. For instance, in Sri Lanka, while most urban families consist of two generations in a household, rural areas are known for households which consist of three generations and can also include members of the extended family. The dynamics of such family types cannot be the same. Therefore, the practice of nominating one person as the head of a household has to be reviewed. It is discriminatory and does not reflect the realities of family life.

The domestic law in Sri Lanka clearly states that women are to be given equal treatment before the law and that there shall be no discrimination based on gender except for purposes of affirmative action. This constitutional principle is violated where only males are given recognition as heads of their households in the interactions of the family unit with the State or even with non-State actors.²⁸⁰

Furthermore, Sri Lanka has undertaken at the international level to protect and promote the equality of women in areas of family and public life.²⁸¹ This obligation too is violated by the use of the concept of the head of the household.

4. Alternatives to using the concept of the Head of the Household

The above discussion has highlighted the discriminatory impact of the use of the concept of the Head of the Household. It is submitted that the best alternative to addressing this problem would be to abolish the concept and to reject the terminology. In its place a new concept and a new term should be introduced. The new concept and terminology should reflect the realities of family life such as:

- the contribution of the females and children to the economic stability of the family;
- the contribution of all members of the family to decision making; and
- the different family types in existence today.

Making this change is critical to establishing equality within a family unit and also for promoting a balanced view of family life. This in turn will reduce any spaces for discrimination within the family.

Along with such change it is imperative that measures be adopted to change the perception of both society and the State to see the leadership of a household from a gender neutral perspective. It must be accepted that a family consists of a unit and that each member of that unit has a role to play. If the State is to formulate effective policies and design effective programmes, this reality must be taken into account.

Establishing an alternative to the concept of the head of the household must be considered to be a matter of priority. Wider consultation is required in deciding as to the nature and scope of an alternative to the concept. COHRE welcomes all stakeholders to discuss effective approaches to abolishing the head of the household concept.

²⁸⁰ Article 12 of the Constitution of Sri Lanka

²⁸¹ Sri Lanka is signatory to the CEDAW – the Convention on the Elimination of Discrimination Against Women.

APPENDIX G

Post Tsunami: Women and their Right to Own Property: Report of 100 Case Studies from the Southern and Eastern Provinces in Sri Lanka²⁸²

Introduction

The RADA Tsunami Housing Policy of April 2006 provides guidelines to allocate a house for a house, irrespective of ownership, to those affected by the tsunami catastrophe.

In practice most often it is the male 'heads of households' who have received the gift certificate or the title to the property, even in instances where the property was owned by women members of the family prior to the tsunami. Unfortunately some of the private land had also been given in the name of the male 'head of the household' irrespective of previous ownership of property.

In this context, a research study was commissioned by the Centre on Housing Rights and Evictions (COHRE) to identify the situation of women and their rights over property in the post-tsunami context and understand women's perceptions on the women's right to ownership of property.

It is hoped that this study will provide guidance to effective policy formulation and implementation which is gender sensitive and non discriminatory towards women.

Methodology of the Research

Initially, data for a model sample was gathered from women headed households in two resettled villages in the Hambantota and Batticaloa Districts. Based on this data, a team from the Nirmana Sansadaya (Galle), student groups involved in youth activities in the Ruhunu University and an identified group from the Community Development Diploma students of the Ruhunu University were directed to a training programme on the study.

Based on the consensus arrived at this training programme, a study was conducted on the land and housing rights of two hundred women headed families in the resettled villages in the Hambantota, Matara and Galle Districts in the Southern Province and the Batticaloa and Ampara Districts in the Eastern Province.

Based on the information revealed in the study of these two hundred families, one hundred women headed households with land and housing issues were identified for the research study.

A notable limitation that could be observed from the survey results however is that a considerable proportion of the answers provided were obscure, thus making it difficult to ascertain the exact views of those interviewed.

²⁸² COHRE Publication September 2007. For more information contact COHRE Sri Lanka at cohresrilanka@cohre.org or visit www.cohre.orr/srilanka.

Demographic Overview of the Survey

Age Group

The study was conducted on a sample of women aged 20 years and over with 21% being in the 20 – 29 age group, 31% in the 30 – 39 group and 25% in the 40 – 49 group. Women in the 50 -59 age group amounted to 20% of the sample with 1% each in the 60 - 69 age group and 80 years and above group (Table 1).

Civil Status

Eighty nine percent (89%) of the women interviewed were married while only 1% were unmarried. Of the total sample, 6% of the women were widowed whereas 4% were divorced (Table 2).

Ethnicity

The ethnicity breakdown of the women interviewed was, 70% Sinhalese, 10% Tamil and 20% Muslim (Table 3).

Number of Dependents

Of the women interviewed, 8% reported as having a single dependent while 19% had 2 dependents and 21% had 3 dependents. Twenty three percent (23%) stated as having 4 dependents whereas a significant proportion of 24% of the women interviewed claimed to have 5 or more dependents (Table 4).

Table 1 – Age Group

Age Group	%
20 - 29 years	21
30 - 39 years	31
40 - 49 years	25
50 - 59 years	20
60 - 69 years	1
70 - 79 years	-
80 years or above	1
Not answered	1

Table 2 – Civil Status

Civil Status	%
Married	89
Unmarried	1
Widowed	6

Divorced	4
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Table 3 – Ethnicity

Ethnicity	%
Sinhala	70
Tamil	10
Muslim	20

Table 4 – Number of Dependents

Number of Dependents	%
0	-
1	8
2	19
3	21
4	23
5 or more	24
Not answered	5

Analysis of the Property Owned before the Tsunami

The survey was conducted on a sample of 5% women who owned land prior to the tsunami in Ampara, 20% who owned land in Hambantota, 8% in Batticaloa, 26% in Galle and 41% in Matara (Table 5).

Of this sample, 70% of the land had been owned by the women interviewed whereas 26% had been encroached upon (Table 6). With regard to the land encroached upon, 22% had been by married women whilst 3% by widows and 1% by divorcees. All those who had encroached upon the land claimed to have more than one dependant.

Forty four percent (44%) of the women stated that they had inherited the property and 8% said the land was received as a gift. Twenty percent (20%) claimed to have had purchased the land while 28% of the women said the land was acquired by other means (Table 7).

With regard to these lands, a remarkable 64% said that they had clear title to the land as opposed to the 34% of respondents who had other types of title (Table 8).

As regards the duration of ownership of property, 25% of those interviewed said they had owned the property for a period between 1 – 10 years, 31% for 11 – 20 years, 24% for 21 – 30 years and 10% for 31 – 50 years. Of the women interviewed, 5% claimed that they had owned their property for 50 years or more prior to the tsunami (Table 9).

Table 5 – Location of the Land owned prior to the Tsunami

District	%
Ampara	5
Batticaloa	20
Galle	8
Hambantota	26
Matara	41

Table 6 – Type of Ownership of Land owned prior to the Tsunami

Type of Ownership	%
Encroached	26
Owned	70
Not answered	4

Table 7 – Method of Acquisition of Property owned prior to the Tsunami

Method of Acquisition	%
Inheritance	44
Gift	8
Purchase	20
Other	28

Table 8 – Type of Title to the Property owned prior to the Tsunami

Type of Title	%
Clear Title	64
Other	34
Not answered	2

Table 9 – Duration of Ownership of Property prior to the Tsunami

Duration of Ownership	%
1 – 10 years	25
11 – 20 years	31
21 – 30 years	24
31 – 50 years	10
51 years or more	5
Not answered	5

Analysis of the Findings of the Survey

The survey revealed that when taking the total sample into consideration only 44% of those interviewed had been given land by the government after the tsunami for the property destroyed in the disaster. Even though 54% of the women claimed that they did not receive any land or property from the government after the tsunami, it was revealed that some of them had received land or property from private institutions or individuals (Annexure 2 - Table 10).

Of those who received property after the tsunami from either the government or the private sector, a staggering 85% said that the new property was given in their husbands' names even though the property was in the wives' names prior to the tsunami. Only 3% of the women said that the property was received in their name while 3% said it was received in the name of a third party. Nine percent (9%) of the women interviewed did not answer this question (Annexure 2 - Table 11). It is pertinent to note that none of the women mentioned that joint ownership of property was given even in cases where the damaged property was encroached upon.

In 86% of the cases the husband had signed the form given by the government to receive land or property, whereas in only 3% of the situations the woman had signed such form (Annexure 2 - Table 12). Of the total sample, there was only one instance where the husband had signed the form given by the government and had stated in it that the new land should be given in the wife's name. In every other situation where the husband had signed the form, he had received the land in his name regardless of the fact that the property had been previously owned by the woman.

A disturbing revelation brought forth by the survey was that 85% of the respondents stated that the form given by the government in order to grant land / property had specified that the 'head of the household' should sign the same whereas only 3% said that such form did not contain any such specific instructions (Annexure 2 - Table 13).

Seventy four percent (74%) of those interviewed said that they received aid from the government where their property was situated within the 100 metre limit, while 25% claimed not to have received such aid (Annexure 2 - Table 14).

Of the women who said that they received such aid from the government, 60% said the aid was given in their husbands' names even though it was granted with regard to property owned by the women. Only 5% of the women interviewed said such aid was given in their names while 2% said it was given in the name of a third party (Annexure 2 - Table 15).

It is pertinent to note that 30% of the women said that they have taken legal action to claim the property or title given by the government for the damaged property which was in their names prior to the tsunami, while 31% said they have made complaints and 10% had taken other action. However 17% of the women said that they have not taken any action to claim the new property or title which could mean that they have accepted or resolved to the fact that the new property given for the damaged property, which was previously in their names, would now be under their husbands' names (Annexure 2 - Table 16).

Women's Perceptions on Women's Right to Own Property

A staggering 83% of the women interviewed were of the firm view that women should have the right to own property while only 4% were of the express view that women need not have such a right (Annexure 2 - Table 17).

A 22 year old woman from Mirissa was of the firm view that women should get equal rights as men.

The respondents who endorsed the women's right to own property recognized the following reasons for such a need.

- In order to take independent decisions regarding property
- The importance of ownership of property for marriage purposes. This was especially emphasized by Muslim women.

A 33 year old Muslim woman from Hambantota took the view that women should have the right to own property as land is essential in a Muslim woman's marriage.

- To have the ability to secure their children's future
- To reduce vulnerability and for security in the future through economic empowerment
- To have equal rights as men with regard to ownership of property
- In order to secure a fall-back position if the husband remarries another

A 23 year old woman from Mirissa voiced the concern that as a result of the property not being given in her name she could be rendered helpless if her husband remarries another.

- To have ownership and control over land derived through inheritance

Forty eight percent (48%) of the women were of the view that they would face problems in the future as a result of the property not being given in their names. The following are some of the problems that were identified in this regard (Annexure 2 -Table 18).

- Inability to take independent decisions regarding property
- Difficulties that would be faced if the children do not provide financial assistance, security and care in the future

A woman from Mirissa aged 36 years expressed the concern that when her husband's title to the property is given to the children, she would not have a place to live if the children do not look after her.

- The likelihood of having to depend on others
- Concerns that the husband would sell the property mainly as a result of addiction to alcohol

A woman from Balapitiya, aged 53 years, was of the view that if her husband got ownership of the land he might sell it due to his addiction to alcohol.

- Insecurity due to the fear of losing a place to live at any time

A 42 year old woman from Hikkaduwa who had owned the property for 20 years prior to the tsunami expressed the fear that her husband could sell the property at any time as the property was now in his name. She said that therefore she prefers the new house to be in her name as before.

However, 18% of those interviewed were of the view that they would not have to face any problems in the future as a result of not being given property in their name as they had absolute faith in their husbands and were confident that their consent would be sought by the husbands when taking decisions regarding the property.

General Observations and Conclusions

Despite the limitation in the field survey of focusing on a small sample, the findings of the study provide valuable insight to the situations of a cross section of women affected by the tsunami with regard to ownership of land and their perceptions on the right of women to own property.

The study brought to light the predicaments of women who lost land as a result of the adoption of the 'head of the household' concept which is followed merely for administrative convenience and not as a legal requirement. It was revealed that some women even lost title to property they had inherited from their families while many lost ownership of property to which they had clear title. The majority of the women have had to file legal action or complaints or take other action to claim what was originally theirs. What is more disturbing however, is that some have not taken any action in this regard and seem to have simply resolved to accept the consequences. Further, even in instances where the land had been

encroached upon prior to the tsunami, the new property had been given to the male 'head of the household' without regard to the eligibility for joint ownership.

The study further revealed that in majority of the situations subjected to review the cash grants given by the government for property situated within the 100 metre limit had been awarded in the name of the male 'head of the household' even where the owner of the damaged property was a woman.

One of the most distressing dilemmas brought to light through the survey was that many women have to endure their husbands' cruelty and violence, mainly stemming from addiction to alcohol, and also adultery due to the dependence on the husbands for a place to live.

A 56 year old Sinhalese woman from Balapitiya said that she has to face problems as a result of the property not being given in her name as her husband assaults her under the influence of alcohol.

A 55 year old woman from Galle who had owned the property for 20 years before the tsunami said that she will have to face difficulties in the future as a result of the property not being given in her name since she is unable to rely on her husband who is an alcoholic and is living in adultery. She also took the view that women should have the right to own property since there is a possibility that men would waste it if they got ownership.

A majority of the women interviewed were of the view that ownership of property by women would help to secure their future, enhance their independence and strengthen their bargaining power against domestic violence from their husbands and children.

Annexure 1

Questionnaire

1. Name
2. Age
3. Address
4. Civil Status (Married/ Unmarried/ Widowed/ Divorced)
5. Husband's Name (if any)
6. Ethnicity (Tamil/ Sinhala/ Muslim)
7. Number of Dependents
8. Location of land owned prior to tsunami (district/ area)
9. Are you an encroacher or an owner of the property?
10. How did you acquire the property (Inheritance/ gift/ purchase/ other)
11. What title did you have to the property? (clear title/ other)

12. For how long have you owned the property?
13. Did the government give you land/property after the tsunami?
14. In whose name did they give the land? (you/ your husband/ other)
15. Who signed the form given by the government for the purpose of receiving land/ property? (you/ your husband/ other)
16. Did the form specify that the head of the household should sign the form?
17. If your property was situated within the 100m limit, did you receive aid from the government?
If yes, in whose name was the aid given?
18. Have you taken any action to claim the property/ title given by the government?
19. What problems do you have to face/ will face in the future as a result of the property not being given in your name?
20. Do you believe that women should have the right to own property?
21. Any other relevant information regarding ownership of property?

Annexure 2

Table 10- Whether Land/Property was Given by the Government after the Tsunami

Response	%
Yes	44
No	54
Not answered	2

Table 11 – Name in which Land was Given

Name	%
Woman's name	3
Husband's name	85
Other	3
Not answered	9

Table 12 – Signatory of the Form Given by the Government to Receive Land / Property

Signatory	%
Woman	3

Husband	86
Other	3
Not answered	8

Table 13 – Whether the Form specified that the Head of the Household should Sign the Form

Response	%
Yes	85
No	3
Not answered	12

Table 14 – Whether Aid was Received from the Government if the Property was Situated within the 100 Meter Limit

Response	%
Yes	74
No	25
Not answered	1

Table 15 – If Aid was received from the Government for Property Situated within the 100 Metre Limit, the Name in which the Aid was given

Name	%
Woman	5
Husband	60
Other	2
Not answered	8
Not applicable	25

Table 16 – Action Taken to Claim the Property / Title given by the Government

Type of Action	%
Legal action	30
Complaint	31
Other action	10
None	17
Not applicable	12

Table 17 – Whether of the Belief that Women should have the Right to Own Property

Response	%
Yes	83
No	4
Not answered	13

Table 18 – Whether of the View that Women would have to face Problems in the Future as a Result of Property not being given in their Names

Response	%
Yes	48
No	18
Not answered	34

APPENDIX H

Sri Lanka Law and Policy Reform²⁸³

1. About COHRE

The Centre on Housing Rights and Evictions (COHRE) is an independent, non-governmental, not-for-profit human rights organisation established in 1994 in the Netherlands and now based in Geneva, Switzerland. We are one of the principal agencies focusing on the human right to housing and on forced evictions at the international level. We work closely with an extensive network of partner organisations and community activists around the world, without whose involvement and support COHRE's work would not be possible.

COHRE works at all levels – from grassroots assistance to communities fighting forced eviction or slum conditions, to standard-setting at international institutions such as the United Nations – to resist and prevent forced evictions, strengthen the protection and promotion of housing rights and increase awareness of these fundamental rights as key components of international human rights law.

COHRE's work is carried out in part by eight regional and thematic programmes. Regional programmes currently exist in Africa, the Americas and the Asia-Pacific region. Thematic programmes focus on women and housing rights, housing and property restitution, housing rights litigation, the right to water and monitoring and preventing forced evictions. COHRE's work also includes a busy training and education programme and extensive research and publications activity. We regularly undertake fact-finding missions to investigate and seek remedies for housing rights violations around the world and provide legal advice and advocacy in a range of forums for organisations and communities fighting for their right to adequate housing.

COHRE's main office and International Secretariat is located in Geneva (Switzerland). COHRE also has offices in Porto Alegre (Brazil), Duluth (US), Accra (Ghana), Melbourne (Australia) and Colombo (Sri Lanka)²⁸⁴.

COHRE established an office in Sri Lanka in June 2005 and focuses its work on providing legal services for victims of economic, social and cultural rights violations and in particular victims of housing rights violations. COHRE also works in the areas of return and restitution, women's housing rights and the right to water. One of COHRE's aims is to facilitate the achievement of the right to adequate housing through law and policy reform.

²⁸³ COHRE Report September 2007. For more information contact COHRE Sri Lanka at cohresrilanka@cohre.org or visit www.cohre.orr/srilanka

²⁸⁴ www.cohre.org

To this end, COHRE has initiated a research project on three main laws affecting land rights and has come up with recommendations for amendment to the laws. This research project was carried out by Ms. Ruwanthi Herat – Gunaratne.

2. Introduction

The Sri Lankan legal system has been found to be wanting in many aspects of remedies for property issues faced by Internally Displaced Persons and those displaced by the Tsunami. The numbers that have been forwarded in respect of this equation include over 700,000 IDP's and 600,000 as a result of the Tsunami²⁸⁵. Whilst most aspects of those displaced by the tsunami have been looked into and alternate housing including both temporary and permanent have been provided by the government and non-governmental organisations, the situation with the IDP's has not been properly addressed. This is due partly to the fact that most IDP's are no longer in a position to return home as a result of various legal forces that deny them ownership as a consequence of absence. It is further seen that the archaic nature of the law fails to satisfy requirements of equality that is entrenched in the constitution.

States are under a legal duty to perform their treaty obligations in good faith. Sri Lanka being a signatory to the International Convention on Economic Social and Cultural Rights is bound to implement the rights contained in the Covenant. The legal obligations of States Parties concerning the right to adequate housing consist primarily of the duties found in Article 2(1) of the Covenant and, more specifically, obligations to recognise, respect, protect and fulfil the right to adequate housing in accordance with Article 11 ICESCR. The attempts to include the right to property in the Sri Lankan constitution can be traced as far back as to the 1950's. An attempt to include the provision was blocked by the left wing parties in 1972 and subsequently even in 1978. The right was also included in the Constitution Bill which failed to warrant support in 2000²⁸⁶.

Governments are cast with four important obligations with respect to housing rights and there is a duty cast upon the government to create an environment where communities will be able to develop themselves even if the Government cannot provide housing due to monetary inadequacies. The obligations are as follows;

- a. The duty of non discrimination,
- b. The duty to respect,
- c. The duty to protect and
- d. The duty to fulfill²⁸⁷.

In South Africa and India, the courts have played an important role in setting standards on forced evictions when applying the human rights contained to situations in which municipalities have wanted to evict residents from informal settlements²⁸⁸.

²⁸⁵ Wickremaratne, P. *Litigation and Legal Strategies for addressing housing, land and property rights violations* COHRE April 2006

²⁸⁶ Wickremaratne, P. *Briefing Paper on the Inclusion of the Right to Adequate Housing in the Constitution of Sri Lanka* COHRE May 2006

²⁸⁷ *The Right to Adequate Housing in Sri Lanka* including the Right to Return and the Right to Housing and Land Restitution for Displaced Persons – COHRE at page 5

²⁸⁸ *Ibid* at page 9

Women's groups made available documentation on the issues of gender based discrimination *vis a vis* land and its allocation when the CEDAW Committee considered Sri Lanka's 3rd and 4th report on the CEDAW Convention in New York in January 2001. The Committee in its concluding comments referred to the discriminatory aspects of the Land Development Ordinance and recommended that the government consider including urgent reforms in conformity with its commitments under CEDAW.

Though new Citizenship and Domestic Violence Legislation had been enacted in conformity with the Concluding Comments of the CEDAW committee, to date State land legislation has not been reformed. Sri Lanka is due to submit its 5th and 6th report in 2007 or 2008²⁸⁹.

This research will attempt to delve into three pieces of legislation which merit change at the given time and analyse both the requirement for reform and probable alternatives. The legislation in contention includes;

- The Land Development Ordinance
- Prescription Ordinance *and*
- State Lands Ordinance

3. Legislation

The three pieces of legislation to be considered in this paper will be taken up for discussion on an individual basis as set out below.

3.1 The Prescription Ordinance No: 22 of 1871(as amended by Ordinance Number 2 of 1889)

The Prescription Ordinance provides for the acquisition of private property through proof of undisturbed and uninterrupted possession for ten years by title adverse to or independent of that of the owner/claimant. Adverse Possession would mean the absence of any right accruing to the owner/claimant including obviously the payment of rent²⁹⁰. This will be discussed in greater detail below.

3.2 The Land Development Ordinance No: 19 of 1935

The Land Development Ordinance provides for the grant of state land vested in the Land Commissioner to develop the land. Permits must first be obtained for the occupation of the said land subject to strict conditions including a prohibition of the disposal of land and erection of structures only as specified in the permit with additional structures needing the approval of the Government Agent. The Permit Holder can also mortgage the land only with the prior consent of the Government Agent and is liable to have his permit cancelled if the conditions are not met. Upon further conditions being met, including residing on the land (for three years if its farmland and one year if it is housing) and developing the land in a satisfactory manner, the permit may be converted into a grant. However, even after such a conversion, the grantee cannot subdivide the land and cannot transfer the ownership thus converted²⁹¹.

²⁸⁹ Draft Proposals on State Land Reform and Policy COHRE

²⁹⁰ Pinto Jayawardene, K. & de Almeida Guneratne PC, J. *Discussion Paper on Issues Relating to Land* 31/10/05

²⁹¹ *Supra*

3.3 *The State Lands Ordinance No: 8 of 1947*

The State Lands Ordinance provides for grants, leases and other dispositions of state lands as well as management and control of such lands. The President is empowered to make absolute or provisional grants of land/sell or dispose of state land. The Ordinance allows permits to be issued in addition to the above²⁹².

4. **The Present Situation**

The last two decades of internal armed conflict in Sri Lanka have been characterised by widespread displacement of the civilian population. The majority of those displaced are those in the north and the east where most of the fighting has taken place²⁹³.

While many people were displaced by fighting, displacement was also the result of other factors. These factors have been taken to include that of disappearances, communal violence and decisions on the part of individual to leave area of LTTE control²⁹⁴. There are several reasons as to why IDP's are no longer in a position to return to their homes. Many of the remaining IDP's original homes are now being occupied by the Sri Lankan forces as high security zones and those that are not are either in a dilapidated state of repair or have been encroached upon by squatters. Many of the IDP's do not have the necessary documentation required to stake their claim on the land and other people have settled into their property. This in turn brings up a range of issues as even though in principle the original owner has the right to return, ten years of uninterrupted and undisturbed possession also guarantees a right over the land to the second occupier. Further s/he may require compensation for any improvements etc that have been made on their behalf²⁹⁵.

The primary duty and the responsibility to protect the rights of IDP's lies with the national state which is in turn obliged to provide assistance and protection for all IDP's. As a state party to the various international conventions guaranteeing these rights Sri Lanka too is bound to facilitate a system by which IDP's will have a means of going home. The well funded and relatively swift response to the tsunami stands in stark contrast to the inadequate support that conflict IDP's have received during the last couple of years. This is blatantly obvious in the way in which conflict displaced persons have returned to their land and are still waiting for permanent housing in very poor conditions whilst those who were displaced as a result of the tsunami were granted immediate temporary relief prior to permanent housing being set up²⁹⁶.

One of the key obstacles in vindicating their rights is the fact of lack of legal documentation. Many internally displaced persons do not own the land to which they can return. This is even if cessation of armed conflict means that physical safety is no longer a factor impeding their return to their area of origin. The following categories have been identified;

²⁹² *Supra*

²⁹³ Amnesty International *Sri Lanka – the Plight of the Internally Displaced* 26th June 2006 www.amnesty.org at page 2

²⁹⁴ *Ibid* at page 3

²⁹⁵ S. 3 of the Prescription Ordinance. Note that this section does not apply to tenants or other occupants who knew or ought to have known that the ownership rests with someone else.

²⁹⁶ *Ibid* at page 13

- a. Those who reach adulthood during displacement
- b. Illegally or temporarily relocated landless persons
- c. Those who were in the process of regularising their occupation of state land at the time of displacement
- d. Those whose lands are occupied as High Security Zones²⁹⁷.

To add to the present state of affairs is the fact of confusion when it comes to methods to settling disputes. No national policy has been adopted addressing the needs of conflict IDP's and mediation boards and civil courts are not equipped to deal with all property disputes that have arisen and will arise in the future. Further the existing governmental dispute resolution methods are not accepted in LTTE controlled areas.²⁹⁸

Research completed for the Nairobi World Conference on women, on gender discrimination in Sri Lankan law identifies the 3rd schedule of the Land Development Ordinance 1935, for reform since it was based on a principle of primogeniture (preference for the eldest male among heirs) derived from Colonial land policy and early English law. Almost 50 years ago, the Land Commission (1958) referred to this anomaly and also recommended repealing the third schedule which gave an absolute preference to male heirs, contrary to the General law on inheritance which does not discriminate between male and female heirs²⁹⁹.

These anomalies are at variance with the thinking of the modern world and Sri Lanka is required to both under treaty obligations and the need to address new situations and consideration to consider reform of the same. Further to such, there has been a general consensus amongst those advocating the rights of women that the third schedule to the LDO should be repealed together with similar provisions in other statutes (e.g. Land Grants Special Provision Act 1979). Here it has been seen that Government policy so far has given priority to land allocated under the LDO being inherited or held by one permit holder to prevent fragmentation of agricultural land. If this policy is to continue, the eldest in a category of heirs can be identified in a new 3rd schedule, which adopts a table of inheritance based on the egalitarian principles of the General Law of Sri Lanka on inheritance.

Public Administration guidelines on allocation of relief/benefits to families should be reviewed and sent to the Land Commissioner so as to prevent the "head of household" concept being interpreted in such a manner as to discriminate against women who are able and willing to cultivate lands granted under the LDO. Women often share or assume sole responsibilities in care giving and family support and maintenance³⁰⁰.

5. Problems faced

The Prescription Ordinance does provide an exhaustive list of exceptions that may delay the period of ten years. These exceptions referred to as disabilities and include infancy, idiocy,

²⁹⁷ *Landlessness and Land Rights in Post Tsunami Sri Lanka* Centre for Policy Alternatives Commissioned by the IFRC 16th November 2005

²⁹⁸ Tax, B. & Wouters, K. *Sri Lanka: an Uneasy Ceasefire*

²⁹⁹ *Ibid* at footnote 289

³⁰⁰ *Ibid* at footnote 289

unsoundness of mind, lunacy and absence beyond the seas³⁰¹. The Ordinance may prove to be discriminatory as well. It may result in a legal title for unauthorised secondary occupants who have ten years of undisturbed and uninterrupted possession of immovable property adverse to or independent of that of the owner. Further, secondary occupants will after a period of two months occupation regarding the dispute arising in relation to possession of the property be allowed continued possession pending a final court order under the Primary Courts Procedure Act.

Contrast the above with the situation that arose with the enactment of the Tsunami Special Prescriptive Act which ensured that the tsunami was not considered as interruption of possession and therefore, individuals' prescriptive rights remained unaffected. This precedent shows that the government may be open for a similar adjustment in the case of conflict IDP's.

In a situation created as above the owner or permit holder would then have to file a *rei vindicatio* action in the civil courts. It would constitute to being a very lengthy and costly process which cannot in most instances be done by the IDP's in question. A *possesory action* may be brought by the IDP disposed from his/her property, whether or not s/he has title to the property within one year of dispossession and would then be entitled to have possession returned to him/her without proof of title. However IDP's cannot benefit from this provision in a majority of cases as they have been disposed from their lands for well over one year.

Under the Land Development Ordinance and the State Land Ordinance (referred to above) the Government of Sri Lanka is allowed to alienate state lands to encourage cultivation in unpopulated areas. A number of IDP's are former occupiers of state land, who did so with the agreement of permit holders. These persons may also have encroached upon state land or sub divided plots into smaller plots³⁰². But the problems faced with regard to both pieces of legislation is not limited to IDP's. The archaic laws are also in need of change on a very general basis.

Many IDP's who have been occupying state lands before the conflict by virtue of permits and licenses given under the Land Development Ordinance for example have been forced to leave their lands and properties due to the conflict and now reside elsewhere in the country. Abandoning the land due to displacement and the resulting inability to develop the said land breaches most of the conditions stipulated by the permit and render them capable of being cancelled. IDP's now find that on their return these permits have been cancelled or handed over to others without their knowledge and concurrence. This in most cases is due to the fact that such knowledge and concurrence is not of necessity as the permits are granted by the state and as permit holders have rights and duties only as far as the land is being developed by them.

³⁰¹ S. 13 of the Prescription Ordinance.

³⁰² Ibid at footnote 298

Women face further problems in obtaining assistance and/or ownership from the Government. This is as,

- a. They are often unaware that their name could be registered on a permit or deed and are under the impression that any title to property can only be registered in the husbands name even if it is dowry property,
- b. Property ownership is intrinsically linked to household relations given to the head of the household, which is often considered to be the man,
- c. Further where the husband is missing it is often difficult to obtain death certificates or to prove that the woman is entitled to assistance³⁰³.

Grants of state land to those affected by the tsunami were being allocated under the State Lands Ordinance. The common perception is that the State Lands Ordinance does not permit the granting of state land to joint owners. Discussions have been held with the Land Commissioner's Department on clarifying the position as regards the conferring of joint ownership of state land under this law. The discussions have revealed that there is no express prohibition in the law on the conferring of joint ownership of property. It has emerged as a practice merely for administrative convenience³⁰⁴.

6. Specific Provisions

Section 3 of the Prescription Ordinance deals with the term of prescription for property and states that proof of undisturbed and uninterrupted possession by a defendant in any action, or by those under whom he claims, of lands or immovable property... for ten years previous to the action, shall entitle the defendant to a decree in his favour with costs. This provision though ideal for a non-conflict situation creates an issue for IDP's trying to re-settle. Studies have shown that most often persons falling into the categories of the displaced and refugee status do not have the opportunity or capability to return to their homes within the ten year period to begin proceedings against squatters and any other person who may claim adverse possession.

Further a plaintiff or intervenient in the matter is only entitled to a decree in his favour on proof of undisturbed and uninterrupted possession.

Section 19 of the State Lands Ordinance sets out the manner of alienation of State Land. When alienation takes place under the auspices of the Ordinance a permit holder shall pay the purchase amount as determined by the Land Commissioner in full annual instalments within a period of ten years, together with the interest falling due thereon calculated at a rate not exceeding 4% of the balance of the purchase amount outstanding each year after payment of the annual instalment due for that year.

Provided, however that where the permit holder fails to make such full payment within the specified period, the Government Agent may extend such period for a further period of two years if the permit holder satisfies the Government Agent that such failure was due to sickness, crop failure or other unavoidable cause.

³⁰³ Centre for Policy Alternatives (CPA) *Women's access to and Ownership of Land and Property in Batticaloa, Jaffna and the Vanni [DRAFT]* April 2005 www.cpalanka.org

³⁰⁴ *Gender Sensitive Guidelines on Implementing the Tsunami Housing Policy* COHRE July 2006

This provision presents a problem to IDP's who in most instances would have been unable to satisfy the requirement of continuous payments due to the conflict situation. The proviso which would have solved the problem in a non conflict situation is not capable of doing the same as in most instances the problems faced do not fall within the exceptions to the section.

Further it is submitted that the successors to the permit must of necessity be the Spouse or any other lawful descendants as enumerated in Chapter VII of the Ordinance. The conflict situation has resulted in most persons losing their Birth, Death and Marriage Certificates leaving IDP's with an inability to prove their interest in land obtained by their spouses/parents through the means of a land permit.

Chapter VIII deals with the cancellation of Grants and Permits and **section 117** states no appeal shall lie against an order of cancellation made by the Government Agent in any proceedings taken or inquiry held under the Ordinance. The position taken above is further reiterated to state that such provisions will be ideal in the case of a non-conflict situation. They are unable to address the present situation as it was not within the contemplation of the legislature at the time of the enactment. This cancellation is within the powers of the Divisional Secretariat leaving much regulation to be desired.

Section 51 of the Land Development Ordinance states that except with the prior written consent of the Government Agent, no person shall be nominated by the owner of a protected holding either as successor to or as the life-holder of such holding unless that person is the spouse of that owner or belongs to one of the groups of relatives enumerated in rule 1 of the Third Schedule. This provision is seen to be discriminatory as there is a distinction drawn between male and female descendents as is evidenced below. Rule 1(a) under the Third Schedule states that the groups of relatives from which a successor may be nominated for the purposes of section 51 are set out in the following table and Rule 1(b) states that the aforementioned title shall devolve on one only of the relatives of the permit holder or owner in the order of priority under which they have been mentioned. The aforementioned table is as follows:

- i. Sons
- ii. daughters
- iii. grandsons
- iv. granddaughters
- v. father
- vi. mother
- vii. brother
- viii. sister
- ix. uncle
- x. aunt
- xi. nephews
- xii. nieces

Section 16 of the State Lands Ordinance states that permits and licenses granted under the auspices of the Ordinance are personal and the land in respect of which such permit or

license was issued and all improvements effected thereon shall on the death of the grantee, be the property of the State and no person claiming through, from or under the grantee shall have any interest in such land or be entitled to any compensation for any such improvements.

This above stipulation denies once again any rights that would accrue onto the dependants of an IDP in the case of death as a result of the conflict situation.

However, it must be noted that real issue that has arisen for the purposes of this paper is due to an administrative practice that is seen to be utilised³⁰⁵.

7. Advocacy

It is noted that there is very little work being done by Non-Governmental Organisations with regards to the specific problems faced by the IDP's. The question pertaining to land ownership and its validity arise mainly as a resultant wave of the Tsunami but ended with the Tsunami specific issues being addressed.

Though the legislative provisions in the State Lands Ordinance and the Prescription Ordinance are yet to be considered for advocacy purposes The Centre for Women's Research (CENWOR) has been instrumental in promoting reforms to the Land Commission with regards to the gender discriminatory provisions in the Land Development Ordinance³⁰⁶.

8. Reform

The Parliament of the Democratic Socialist Republic of Sri Lanka certified the **Resettlement Authority Act, No: 9 of 2007** on the 23rd of March 2007. The Act aims to provide for the establishment of a Resettlement Authority which would be vested with the power to formulate a national policy and plan, implement, monitor and co-ordinate the resettlement of Internally Displaced Persons and Refugees.

Under Section 3 of the Act the management of the affairs of the authority shall be vested in the Board of Directors consisting of two *ex-officio* members namely, the Secretary to the Treasury or his representative and the Secretary to the Minister in charge of the subject of Plan Implementation or his Representative and seven other Directors.

Part II deals with the objectives of the Authority. **Section 13** states, that these objectives shall be to;

- (a) ensure resettlement or relocation in a safe and signified manner of internally displaced persons and refugees
- (b) facilitate the resettlement or relocation of the internally displaced persons and refugees in order to rehabilitate and assist them by facilitating their entry into the development process

³⁰⁵ See pg 12 above, *ibid* footnote 304

³⁰⁶ Dealt with in this paper under Section 8 – Reform

Section 14 sets out the functions of the authority;

- (a) to formulate and implement a resettlement policy in consultation with the Ministry of Resettlement for the internally displaced persons and refugees,
- (b) to co-ordinate the efforts of Government, donors, international non-governmental organisations, civil society agencies and others possessing the required mandates and resources in order to end displacement of persons,
- (c)
- (d) to assist the internally displaced persons and refugees to obtain lost documents such as Birth, Death and Marriage Certificates, Identity Cards, Deeds relating to property and other documents which they may require from any government department. ,
- (e) ...
- (f) ...
- (g) ...
- (h) to facilitate in solving problems relating to ownership and possession right of movable and immovable assets

Section 15 sets out the powers of the Authority,

- (a) acquire and hold, take, give on lease or hire, mortgage, sell or otherwise dispose of any movable property,
- (b) clear and re-develop the land acquired either from the State or from private individuals.
- (c) ...
- (d) ...

Further to the above specific action has been taken by the Land Commissioners Department with regard to reform of the Land Development Ordinance. Though yet to be finalised the Amendments to the Act include,

- (a) The provisions pertaining to succession under the Ordinance are to be made more gender friendly,
- (b) Cancellation of Grants: “Grants” are to be removed and replaced entirely with “Permits”, (A Grant with the President’s seal unlike a Permit cannot be cancelled under any grounds and is therefore detrimental in view of the ongoing violence.)
- (c) Fragmentation: The new reforms propose to make changes to partition under the State Lands Ordinance and allow for the owner to divide and dispose of the land,
- (d) Sanction: The present suggestions also consider the possibility of creating private ownership under the Ordinance.

In view of the State Lands Ordinance and its application it may be prudent to consider the following general guidelines that were to be followed when allocating land and cash grants to those affected by the tsunami under the RADA Tsunami Housing Policy (IHP) April 2006. They have been formulated on the basis that joint ownership of state land can be granted under the law.

In this instance it was found that Divisional Secretaries and District Secretaries should be instructed to look carefully at previous ownership in every case to ensure that women are not discriminated against. The importance of a consultative process with the community

and other interest groups was seen in order to ensure transparency and non arbitrary decision making. Here three principles should guide the allocation of property to those affected by the tsunami:

- (d) Where the title to land previously owned is not at issue- new land title should be given to the previous land owner/s;
- (e) Where the land was encroached upon- new land title should be given in joint ownership to both spouses, unless there are compelling reasons to do otherwise;
- (f) Where previous ownership is disputed or unclear or where both spouses have contributed to the previous property the DS must have the discretion to give new land title in joint ownership to both spouses³⁰⁷.

A system such as that enumerated above would prove to be an almost ideal solution to the problem faced with Joint Ownership under the State Lands Ordinance. It has also been considered that it is not the policy of the government to hand over houses under the 'Head of the Household' concept. This is a mere administrative practice that has been followed without question and explicit rejection of the 'Head of the Household' concept is of importance as households and families should be seen as being 'run' or 'administered' jointly. The paper further suggests that it is imperative that where damaged property was owned by women, that new housing titles be given in the women's names. Injustice has occurred in some situations where mother to daughter property inheritance has been negated as a result of the 'head of the household' concept being adopted. Where women have owned the land or property previously, new allocations should be given in their name. Similarly, where property was owned jointly, then new allocations of land and housing should be given in both their names. Here it is emphasised that importance should also be given to the probability that dowry property is given in the woman's name and thereby grant her a benefit from the same³⁰⁸.

In response to the intra family problems that have arisen post Tsunami and in resettlement in conflict areas, the State Lands Ordinance should be amended to permit joint grants in allocations made to spouses, or siblings who are orphans or widow/widowers with minor children.

Guidelines should be developed, to ensure that women's interests are not prejudiced when State land/houses are allocated to victims of the Tsunami. Here the following guidelines are proposed for consideration;

1. If a woman can establish sole ownership of land/houses that have been destroyed and cannot be reoccupied, by deeds or prescriptive possession she should be granted sole ownership of land/housing allocated by the state.
2. If she had joint ownership this should be the basis for allocating state land/houses.
3. If neither spouse had any land, new land/housing should be allocated on the basis of joint ownership.

³⁰⁷ *Gender Sensitive Guidelines on Implementing the Tsunami Housing Policy* COHRE July 2006

³⁰⁸ *Supra*

4. If a cash grant is given for building a house on land belonging to another member of the family, the money should be deposited in a joint account. A beneficial interest in the land/house should be recognized, representing her share of the cash grant³⁰⁹.

9. Conclusion

The situation that has arisen as has been enumerated above is conflict based. Conflict based because it has been created by a specific intervening act not contemplated at the drafting of the three acts in question. It is for this reason that the legislative provisions that are and have been in place for the last century need to be re-worked to meet the needs of both the Internally Displaced and Refugees. Though a Resettlement Authority has now been established only time will be in a position to gauge its effectiveness. What is fast required is amendment to the existing laws so that IDP's are in a position to combat squatters and revoked land grants/permits/licenses.

Whilst the reforms put forward by the Land Commissioner General's Department are commendable and are seen as a step forward they are unable to fully answer the pressing problems faced by the Internally Displaced and women.

Another recommendation of this study is the establishment of a separate legal method to solve problems faced by IDP's. This would ideally be somewhat similar to a Mediation Board and be devoid of court formalities. It should be in a position to pass judgment within a very short period of time.

As there is a dispute between which legal system whether it would be that of the LTTE or the Government that would apply it is recommended that the Land Registry system as opposed to the Title Registry system be implemented in the conflict areas of the country. It is the submission of this paper, that persons who are already possessed of their Title Deeds and or documentation proving ownership of a particular piece of land should be granted priority when considering a claim. The Land Commissioner General's Office has been using this mechanism to consider such claims with much success. However it is the submission of this paper that the priority basis attached to the year of granting the permit may not always be the most equitable solution.

The Government should respect the principle of voluntary relocation as stated in the Guiding Principles on Internal Displacement³¹⁰. But this should be considered in the light that secondary house owners also require are should be protected against homelessness and eviction due to a lacuna in the law and no fault of their own. There has also been a call for the adoption of a rights based approach to re-settlement, allow for joint ownership of land and the adoption of a Special Land Committee in conflict affected areas for the speedy solution of problems³¹¹. There is also a requirement of working within a specific time, reduce

³⁰⁹ *Ibid* footnote 289

³¹⁰ Memorandum submitted by the Centre for Policy Alternatives (CPA) on 'Land Issues Arising from the Ethnic Conflict and the Tsunami Disaster'. An Executive Summary of the memorandum and the Summary of CPA Recommendations available on

http://www.cpalanka.org/research_papers/CPA_Summary_Land_Issues.pdf

³¹¹ *Law and Property Rights of Internally Displaced Persons* CPA February 2003 – page 86 – 93 available on http://www.cpalanka.org/research_papers/Land_and_Property_Rights_of_IDPs.pdf

the burden of proof when proving ownership in land and disseminate information on the present situation to all those affected.

Though much is to be expected with the next report to be submitted to the CEDAW in 2007 and 2008 basic issues surrounding women are yet to be addressed. Archaic laws and an inability to consider and amend the same has resulted in an unenviable position being granted to women. It needs to be considered and conceded that unlike at the time when these provisions were initially drafted; many norms of society have changed. In present times, in view of both the conflict and modern education the concept of “Head of Household” is redundant. It cannot be utilised to refuse ownership in this most blatant fashion as was enumerated above.

10. Appendix

List of Interviewees

Oxfam

Centre for Policy Alternatives

CENWOR

Land Commissioner General’s Office

Legal Draftsman’s Department

Law and Society Trust

Consortium of Humanitarian Agencies

APPENDIX I

Litigation and Legal Strategies for Addressing Housing, Land and Property Rights Violations³¹²

It is estimated that in Sri Lanka, over 700,000 people have been internally displaced due to the conflict and almost 600,000 due to the Tsunami. Since the signing of the Cease Fire Agreement a large number of IDPs have been able to return. Unfortunately, the remaining displaced persons encounter numerous problems regarding their housing, land and property rights.

The Sri Lankan legal system is not designed to properly address many of the housing, land and property issues faced by the IDPs. A majority of our laws dealing with housing, land and property related matters were enacted well before the conflict began and as such do not address the issues created as a result of the conflict. Amendments to the laws which would address these issues have been hard to come by. With regard to the Tsunami IDPs however, new laws have been enacted and existing laws have been amended to provide some relief.

Before looking into the main issues relating to housing, land and property rights of IDPs, a brief look at the laws dealing with land issues should be looked at. The Sri Lankan Constitution does not recognize the right to housing and property. It only recognizes the freedom of all citizens to choose one's residence within Sri Lanka. The Directive Principles of State Policy recognize that the State should ensure the realization by all citizens of an adequate standard of living for themselves and their families, including adequate food, clothing and housing. But the Directive Principles are not legally enforceable and only guide the State. However, Sri Lanka is a signatory to many international instruments which protect the rights of displaced persons.

Over 80% of the lands in Sri Lanka are owned by the State while only 16% is privately owned. There are three main laws which deal with alienating state land to individuals:

- The Land Development Ordinance No. 19 of 1935,
- the State Lands Ordinance No. 8 of 1947, and
- the Land Grants (Special Provisions) Act No. 43 of 1979.

IDPs who occupied state land on permits given under these laws face considerable difficulty as the laws are not designed to address the complex issues raised as a result of the conflict and subsequent displacement. In addition, the Prescription Ordinance and the Primary Courts Procedure Act have caused difficulties to the IDPs.

Out of the numerous problems faced by IDPs, I will highlight four of the most pressing issues below.

³¹² COHRE Report April 2006. For more information contact COHRE Sri Lanka at cobresrilanka@cohre.org or visit www.cohre.org/srilanka .

Issue 1

One of the main issues faced by the conflict IDPs concern the permits or licenses issued under the Land Development Ordinance, State Lands Ordinance and the Land Grants (Special Provisions) Act. Many IDPs who have been occupying state lands by virtue of permits and licenses given under the above laws, especially under the Land Development Ordinance, have been forced to leave their lands and properties due to the conflict and now reside elsewhere in the country. The mere fact of abandoning the land due to displacement and resulting inability to develop the land often breach the conditions stipulated in the permits, rendering them liable for cancellation. On their return the IDPs may find that their permits have been cancelled or even without cancellations, others have been given permits to occupy the lands they held prior to their displacement. In other instances secondary occupants occupy the lands even without a permit or a license.

Strategy 1

Our laws do not take into account the special circumstances of these permit holders. No special account is taken of the reasons for abandoning the lands, whether such abandonment was voluntary or forceful, reasons for the failure to develop the land or non fulfillment of the conditions stipulated in the permit. Legislative reform is urgently needed in this area to provide relief to the IDPs. The provisions relating to cancellation of permits should be relaxed when displaced persons are affected. Similarly, even where the internally displaced permit holder has failed to fulfill the conditions stipulated in the permit, the Commissioner of Lands should be empowered to make special concessions and settle the matter.

The issue of secondary occupation is more complicated. In principle, the original occupants have a right to return. It should however be ensured that secondary occupants are protected against arbitrary and unlawful forced evictions and that adequate alternative housing is provided if they are lawfully evicted. Where the secondary occupants have been occupying the land for a considerable period of time and have made substantial improvements to the land, they should be compensated for the improvements made to the land and/or house.

Issue 2

Another legal issue that affects the IDPs arises with the operation of the Prescription Ordinance. According to the Ordinance, a person who has ten years of undisturbed and uninterrupted possession of immovable property adverse to or independent of that of the owner can claim a statutory title to the property by prescription. Conflict IDPs who have been living in welfare centres for well over ten years, on return find that their lands are occupied by others for over ten years, who now are able to claim prescriptive title. To get their original property returned the IDPs then have to go through a lengthy legal battle to regain possession.

Strategy 2

The Prescription Ordinance provides for an exception: if the owner of the land is under a disability specified in the Ordinance, for example: infancy, idiocy, absence beyond seas, the prescriptive period is extended to 30 years. It is desirable that the Prescription Ordinance be amended to exempt property of IDPs from the Prescription Ordinance. Internally displaced

persons have a distinct right to return to and restitution of their property from which they were forced or obliged to flee. In principle, there are no time-limits attached to these rights.

The Government was swift in bringing amendments to the law with regard to those affected by the Tsunami, by granting a grace period of one year in calculating the prescriptive period. Concurrent protection can be extended to conflict IDPs as well.

Issue 3

Another issue which is tied up with the previous issue is where a displaced owner of property or permit holder, on his/her return, claims his/her property from the secondary occupant. In reclaiming the property if a dispute arises, the provisions the Primary Courts Procedure Act come into effect and provide that any person who has been in possession for two months preceding the filing of the application or who has been dispossessed within two months is entitled to possession until an order is made by the District Court in a regular action. Therefore secondary occupants who have been in occupation of the lands for over two months prior to the filing of the case, become entitled to an order that they are entitled to possession of the land.

In order to vindicate his/her title and eject the secondary occupant, the owner or permit holder would then have to file a *rei vindicatio* action in the civil courts. It would be a lengthy litigation process and most often the IDPs cannot afford the costs involved.

An IDP disposed from his/her property, whether or not he or she has title to the property, can bring a possessory action within one year of dispossession and would then be entitled to have possession return to him/her without proof of title. However the IDPs cannot benefit from this provision as in a majority of cases, they have been dispossessed from their lands for well over one year. Due to their displacement, they would not be able to file action in court within one year of dispossession.

Strategy 3

It is thus recommended that the law be amended to extend the time limitation of one year or the time limitation be suspended to enable returning IDPs to regain their lands. It is also recommended that IDPs desiring to regain their property through litigation, be given legal aid facilities in order to ensure that financial costs are not a barrier to the realization of their rights.

While protecting the rights of landowners, it is also important to protect the rights of secondary occupants. Coping with secondary occupation can be particularly difficult when temporary occupation of empty properties may be a legitimate humanitarian undertaking especially when housing shortages are most acute during the conflict. Considering the length of the conflict, the secondary occupants may have been in secondary occupation for a considerable period of time and may have developed the lands or made improvements and in some cases written deeds of declaration in their favour. It is thus important that they be given viable, affordable and habitable alternative accommodation and compensation is paid for the improvements they have made on the lands.

Issue 4

Another pressing issue is with regard to the High Security Zones. IDPs are unable to return to their lands and houses because they are located within the HSZs or are situated outside HSZs but are being used by the military. Those displaced are paid no or a minimal amount of rent for the occupation of their properties and are not given compensation to find alternate accommodation.

Strategy 4

Last year several fundamental rights applications were filed in the Supreme Court regarding evictions from the High Security Zones. The Supreme Court has responded positively in cases where proper Gazetting had not been done and the evictions had taken place using HSZs as a cover. However, challenging the declaration of HSZs itself would be complicated, given the legitimate defense of national security that the Government would put forward.

Based on international law and best practice, these properties should either be vacated, enabling the displaced to return to their lands or adequate compensation or substantial rent should be paid which would enable them to find alternate accommodation elsewhere. It is recommended that compensation schemes and relocation programmes be formulated to assist the IDPs affected by the establishment of HSZs. The remedy of compensation should be used when restitution is not factually possible or when the IDP knowingly and voluntarily accepts compensation in lieu of restitution.

Finally, it should be noted that COHRE is undertaking a study on the human rights and humanitarian law implications of the HSZs in Sri Lanka.

Other Strategies

The issues highlighted above ultimately affects the right of the IDPs to return to their lands and their right to restitution. All refugees and displaced persons have the right to return voluntarily to their former homes, lands or places of habitual residence in safety and dignity. They also have a right to have restored to them any housing land or property of which they were arbitrarily deprived, or to be compensated if such restoration is factually impossible. These rights have been affirmed in many international instruments including the United Nations Principles on Housing and Property Restitution for Refugees and Displaced Persons ("Pinheiro Principles") and the United Nations Guiding Principles on Internal Displacement. The Sri Lankan legal system however does not contain any laws dealing with the aspects of the right to return and restitution. It is recommended that either existing laws be amended or new legislation be brought in to ensure that the right of IDPs to return to their original lands is protected and comprehensive schemes of compensation be designed and implemented in cases where restitution is impossible.

Sri Lanka lacks an overall comprehensive policy on land, property and housing. As a first step a national policy on housing, land and property must be formulated and specific policies should be based on that. A specific policy regarding the IDPs must be formulated based on the national policy. This however, must be a rights based and equitable policy and given the circumstances, should not be too legalistic.

Adopting new laws and amending existing laws although a time consuming process, is a necessity. The Government was swift to bring in new laws to provide relief to those affected by the Tsunami and similar protection can be given to conflict IDPs. In certain situations, litigation would be a more effective option. It is important to make advocacy a continuing strategy and this would enable the speeding up of the legislative reform process. At the same time, educating policy makers, civil servants, the judiciary, practicing lawyers and the civil society is also significant. Of most significance is the capacity building and creating awareness among the IDPs about their rights and the reliefs to which they are entitled.

APPENDIX J

Briefing Paper on the Inclusion of the Right to Adequate Housing in the Constitution of Sri Lanka³¹³

1. Introduction

It is estimated that throughout the world over 1 billion people live in inadequate housing, with in excess of 100 million people living in conditions classified as homelessness³¹⁴.

The right to adequate housing denotes more than shelter provided by merely having a roof over one's head. Instead, it is a right to live with dignity, security and peace. The right to adequate housing is essentially linked with other human rights³¹⁵ and serves as a premise upon which the realization of other rights³¹⁶ is made possible. Most importantly, it enhances the inherent dignity of the human person, the fundamental principle upon which the International Covenant on Economic, Social and Cultural Rights (ICESCR) and many other international human rights instruments are based.

2. The right to adequate housing in international law

The right to adequate housing entered international human rights law with the adoption of the Universal Declaration of Human Rights (UDHR) in 1948.

Article 25 of the UDHR provides that:

Everyone has the right to a standard of living adequate for the health and well being of himself and of his family, including food, clothing, housing and medical care and necessary social services and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.

In addition, Article 17 UDHR recognizes the right to property and provides that:

- (1) Everyone has the right to own property alone as well as in association with others.*
- (2) No one shall be arbitrarily deprived of his property.*

³¹³ COHRE Report May 2006. For more information contact COHRE Sri Lanka at cohresrilanka@cohre.org or visit www.cohre.org/srilanka

³¹⁴ *The Right to Adequate Housing*, Fact Sheet No. 21, Office of the High Commissioner for Human Rights.

³¹⁵ Such as the right to adequate standard of living, freedom to choose one's residence and the right not to be subjected to arbitrary interference with one's privacy, family, home or correspondence

³¹⁶ Such as the right to enjoy highest attainable level of mental and physical health and the right to an adequate standard of living

Since the Universal Declaration of Human Rights, the right to adequate housing has been reaffirmed in numerous human rights instruments, including the International Convention on the Elimination of All Forms of Racial Discrimination (Article 5 (e)), the International Convention on the Elimination of All Forms of Discrimination Against Women (Article 14 (2)), the Convention on the Rights of the Child (Article 27 (3)) and the International Convention on the Protection of Rights of Migrant Workers and Members of Their Families (Article 21). Sri Lanka is a State party to all of the above instruments. The most comprehensive provision is found in the International Covenant on Economic, Social and Cultural Rights (ICESCR), to which Sri Lanka is equally a party. Article 11 (1) of the ICESCR provides that:

The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing and to the continuous improvement of living conditions. The States Parties will take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international co-operation based on free consent.

2.1 The Nature of State Obligations to provide adequate housing

Under the legal principle *pacta sunt servanda*, as enumerated in Article 26 of the Vienna Convention on the Law of Treaties³¹⁷, States are under a legal obligation to perform their treaty obligations in good faith.

Sri Lanka, being a signatory to the ICESCR³¹⁸, is bound to implement the rights contained in the Covenant. The legal obligations of States Parties concerning the right to adequate housing consist primarily of the duties found in Article 2 (1) of the Covenant and, more specifically, obligations to recognize, respect, protect and fulfill the right to adequate housing in accordance with Article 11 ICESCR.

Under the ICESCR, Sri Lanka is bound to take steps ‘to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized’ in the Covenant ‘by all appropriate means, including particularly the adoption of legislative measures’³¹⁹. The norms of the Covenant must be recognized in appropriate ways within the domestic legal order and appropriate means of redress, or remedies, must be available to the aggrieved parties and appropriate means of ensuring governmental accountability must be put in place³²⁰.

The rights enunciated by the ICESCR should be ‘guaranteed without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion or social origin, property, birth or other status’³²¹.

³¹⁷ Article 26 of the Vienna Convention on the Law of Treaties: “Every treaty in force is binding upon the parties to it and must be performed in good faith”.

³¹⁸ Sri Lanka acceded to the ICESCR on 11 September 1980.

³¹⁹ Article 2 (1) of the ICESCR

³²⁰ Committee on Economic, Social and Cultural Rights, General Comment No. 9 on the Domestic Application of the Covenant, 1998, UN doc. E/1999/22, paragraph 2.

³²¹ Article 2 (2) of the ICESCR

In its General Comment No. 9, the UN Committee on Economic Social and Cultural Rights (the Committee on ESC-Rights) has identified several aspects of the duty to give effect to the Covenant.³²² The mode of implementation must be adequate to ensure fulfillment of the obligations under the Covenant. Similarly, account should be taken of the means which have proved to be the most effective in the country in ensuring the protection of human rights. Justiciability of the rights is also a relevant consideration. The Covenant rights can be given effect to by States by supplementing or amending existing domestic legislation or by formally incorporating them into domestic law. The Committee has highlighted the desirability of formal incorporation of the Covenant into domestic law. One of the ways in which this could be done is by means of constitutional provisions³²³.

One of the main arguments against the inclusion of socio economic rights in a Constitution is the so called ‘positive rights’ argument. Proponents of this argument view socio economic rights as positive rights, requiring a State’s intervention or positive action in ensuring these rights, contrary to civil and political rights which merely requires the State to abstain from certain activities. However, economic, social and cultural rights entail both ‘negative’ and ‘positive’ legal obligations. Legal human rights obligations include the obligation to respect the right, protect the right, and fulfill the rights. The obligation to respect the right to adequate housing means that States can not take action, such as implementing a forced eviction that interferes with currently enjoyed housing standards. The obligation to protect the right means that States must protect persons from non-State actors, for example by adopted tenant protections or protecting communities from forced eviction by corporations. Finally, while the obligation to fulfill does entail positive obligations, this obligation clearly has justiciable components such as States adopting a reasonable plan of action for providing housing and devoting reasonable resources towards implementing that plan.

Indeed, the argument that economic, social and cultural rights should not be enshrined in Constitutions as they are solely of a positive nature was well countered by the South African Constitutional Court in the *First Certification Judgment*³²⁴. In its Judgment the Court stated:

“It is true that the inclusion of socio economic rights may result in courts making orders which have direct implications for budgetary matters. However, even when a court enforces civil and political rights such as equality, freedom of speech and the right to a fair trial, the order it makes will often have such implications. A court may require the provision of legal aid, or the extension of state benefits to a class of people who formerly were not beneficiaries of such benefits.....[M]any of the civil and political rights entrenched in the New Constitution will give rise to similar budgetary implications without compromising their justiciability. The fact that socio economic rights will almost inevitably give rise to such implications does not seem to us to be a bar to their justiciability. At the very minimum, socio economic rights can be negatively protected from improper invasion.”

Thus at the very minimum, negative protection of socio economic rights must be guaranteed. In that, States should refrain from engaging in ‘deliberately retrogressive

³²² *Supra* n. 9.

³²³ *Supra* n. 9, paragraphs 6, 7.

³²⁴ *Ex parte Chairperson of the Constitutional Assembly : in re Certification of the Constitution of the Republic of South Africa*, 1996 (4) SA 744 (CC)

measures³²⁵ which have the effect of denying individuals their existing access to these rights. Thus, laws and administrative practices which lead to a decline in the enjoyment of these rights breach the obligations of the State³²⁶.

The obligations of the State are however, not limited to the duty to refrain from interfering with the enjoyment of socio economic rights. They extend to taking positive steps to protect these rights, one of the key steps being the adoption of legislative measures. In the *Grootboom Case*³²⁷, the Constitutional Court of South Africa held that the “[p]recise contours and content of the measures to be adopted are primarily a matter for the legislature and the executive. They must, however, ensure that the measures they adopt are reasonable”. The Court was also of the view that socio economic rights expressly included in a Bill of Rights cannot be said to exist on paper only. Instead, Courts are constitutionally bound to ensure that they are protected and fulfilled.

Highlighting the responsibility of the State in implementing these rights, the Constitutional Court held that “A right of access to adequate housing also suggests that it is not only the State who is responsible for the provision of houses, but that other agents within our society, including individuals themselves, must be enabled by legislative and other measures to provide housing. The State must create the conditions for access to adequate housing for people at all economic levels of our society. State policy dealing with housing must therefore take account of different economic levels in our society”³²⁸.

2.2 The scope of the right to adequate housing

The right enunciated in the ICESCR is not merely the right to ‘housing’ but the right to ‘adequate housing’³²⁹. While adequacy is determined in part by social, economic, cultural, climatic, ecological and other factors, it is nevertheless possible to identify certain aspects of the right that must be taken into account for this purpose in any particular context. In General Comment 4³³⁰, the Committee on ESC-Rights has identified the following aspects to form part of ‘adequate housing’:

(a) Legal security of tenure

All persons should possess a degree of security of tenure³³¹ which guarantees legal protection against forced eviction, harassment and other threats. States parties should take immediate

³²⁵ Committee on Economic, Social and Cultural Rights, General Comment 3 on The Nature of States Parties Obligations, 1990, UN doc. E/1191/23, paragraph 9

³²⁶ The Committee in its General Comment 4 on the Right to Adequate Housing stated that ‘a general decline in living and housing conditions, directly attributable to policy and legislative decisions by States parties, in the absence of accompanying compensatory measures, would be inconsistent with the obligations’ under the ICESCR.

³²⁷ *Government of the Republic of South Africa v. Grootboom*, 2001 (1) SA 46 (CC)

³²⁸ *Ibid.*

³²⁹ As both the Commission on Human Settlements and the Global Strategy for Shelter to the Year 2000 have stated: “Adequate shelter means ... adequate privacy, adequate space, adequate security, adequate lighting and ventilation, adequate basic infrastructure and adequate location with regard to work and basic facilities - all at a reasonable cost”.

³³⁰ Committee on Economic, Social and Cultural Rights, General Comment No. 4 on the Right to Adequate Housing, 1991, UN doc. E/1992/23

³³¹ Tenure can take the form of rental (public and private) accommodation, cooperative housing, lease, owner-occupation, emergency housing and informal settlements, including occupation of land or property.

measures to confer legal security of tenure upon those persons and households currently lacking such protection.

(b) Availability of services, materials, facilities and infrastructure

An adequate house must contain certain facilities essential for health, security, comfort and nutrition. All beneficiaries of the right to adequate housing should have sustainable access to natural and common resources, safe drinking water, energy for cooking, heating and lighting, sanitation and washing facilities, means of food storage, refuse disposal, site drainage and emergency services.

(c) Affordability

Personal or household financial costs associated with housing should be at such a level that the attainment and satisfaction of other basic needs are not threatened or compromised. Steps should be taken by States parties to ensure that the percentage of housing-related costs is, in general, commensurate with income levels.

(d) Habitability

Adequate housing must be habitable, in terms of providing the inhabitants with adequate space and protecting them from cold, damp, heat, rain, wind or other threats to health, structural hazards, and disease vectors. The physical safety of occupants must be guaranteed as well.

(e) Accessibility

Adequate housing must be accessible to those entitled to it. Disadvantaged groups must be accorded full and sustainable access to adequate housing resources. Thus, such disadvantaged groups as the elderly, children, the physically disabled, the terminally ill, HIV-positive individuals, persons with persistent medical problems, the mentally ill, victims of natural disasters, people living in disaster-prone areas and other groups should be ensured some degree of priority consideration in the housing sphere.

(f) Location

Adequate housing must be in a location which allows access to employment options, health-care services, schools, child-care centres and other social facilities. Housing should not be built on polluted sites nor in immediate proximity to pollution sources that threaten the right to health of the inhabitants.

(g) Cultural adequacy

The way housing is constructed, the building materials used and the policies supporting these must appropriately enable the expression of cultural identity and diversity of housing. Activities geared towards development or modernization in the housing sphere should

ensure that the cultural dimensions of housing are not sacrificed, and that, *inter alia*, modern technological facilities, as appropriate are also ensured.

2.3 The prohibition on forced eviction

The right to adequate housing carries with it, the right not to be forcefully evicted from one's home. It has been reiterated by the international community that forced evictions constitute 'a gross violation of human rights, in particular the right to adequate housing'³³². Forced evictions have been defined as "the permanent or temporary removal against their will of individuals, families and/or communities from the homes and/or land which they occupy, without the provision of, and access to, appropriate forms of legal or other protection"³³³.

International law lays down a three tier test to determine the legality of evictions³³⁴:

1. Evictions can only be justified in the most exceptional circumstances and in accordance with the relevant principles of international law.
2. Governments must ensure that all feasible alternatives to eviction are explored in consultation with affected persons.
3. The following procedural protections shall be granted to those evicted:
 - a) an opportunity for genuine consultation with those affected;
 - b) adequate and reasonable notice for all affected persons prior to the scheduled date of eviction;
 - c) information on the proposed evictions and where applicable, on the alternative purpose for which the land or housing is to be used, to be made available in reasonable time to all those affected;
 - d) especially where groups of people are involved, government officials or their representatives to be present during an eviction;
 - e) all persons carrying out the eviction to be properly identified;
 - f) evictions not to take place in particularly bad weather or at night unless the affected persons consent otherwise;
 - g) provision of legal remedies;
 - h) provision, where possible, of legal aid to persons who are in need of it to seek redress from the courts.

Forced evictions should, however, not result in individuals becoming homeless or vulnerable to the violation of other human rights. Where the affected persons are unable to provide for themselves, the State must take all appropriate measures to the maximum of its available resources, to ensure that adequate alternative housing, resettlement or access to productive land, is available.

³³² Commission on Human Rights Resolution 1993/77, UN Doc. E/CN.4/1997/RES/77; Commission on Human Rights Resolution 2004/28, UN Doc. E/CN.4/2004/RES/28

³³³ Committee on Economic, Social and Cultural Rights, General Comment No. 7 on the Right to Adequate Housing: Forced Evictions, 1997, UN doc. E/1998/22, Annex IV, paragraph 3.

³³⁴ *Ibid.*

3. Experiences of South Africa

The right to adequate housing is included in Constitutions of over thirty countries. The South African Constitution recognizes the right to adequate housing and also gives protection against forced evictions without the due process of the law.

Article 26 of the South African Constitution provides that:

- (1) Everyone has the right to have access to adequate housing.*
- (2) The state must take reasonable legislative and other measures, within its available resources, to achieve the progressive realisation of this right.*
- (3) No one may be evicted from their home, or have their home demolished, without an order of court made after considering all the relevant circumstances. No legislation may permit arbitrary evictions.*

Article 25 of the South African Constitution which recognizes the right to hold property, reads as follows:

- (1) No one may be deprived of property except in terms of law of general application, and no law may permit arbitrary deprivation of property.*
- (2) Property may be expropriated only in terms of law of general application for a public purpose or in the public interest; and subject to compensation, the amount of which and the time and manner of payment of which have either been agreed to by those affected or decided or approved by a court.*
- (3) The amount of the compensation and the time and manner of payment must be just and equitable, reflecting an equitable balance between the public interest and the interests of those affected, having regard to all relevant circumstances, including the current use of the property; the history of the acquisition and use of the property; the market value of the property; the extent of direct state investment and subsidy in the acquisition and beneficial capital improvement of the property; and the purpose of the expropriation.*
- (4) For the purposes of this section the public interest includes the nation's commitment to land reform, and to reforms to bring about equitable access to all South Africa's natural resources; and property is not limited to land.*
- (5) The state must take reasonable legislative and other measures, within its available resources, to foster conditions which enable citizens to gain access to land on an equitable basis.*
- (6) A person or community whose tenure of land is legally insecure as a result of past racially discriminatory laws or practices is entitled, to the extent provided by an Act of Parliament, either to tenure which is legally secure or to comparable redress.*
- (7) A person or community dispossessed of property after 19 June 1913 as a result of past racially discriminatory laws or practices is entitled, to the extent provided by an Act of Parliament, either to restitution of that property or to equitable redress.*

(8) No provision of this section may impede the state from taking legislative and other measures to achieve land, water and related reform, in order to redress the results of past racial discrimination, provided that any departure from the provisions of this section is in accordance with the provisions of section 36(1).

(9) Parliament must enact the legislation referred to in subsection (6).

It is noteworthy that the South African Constitution guarantees a right of ‘access to’ adequate housing as opposed to a ‘right to adequate housing’ enunciated in the ICESCR. The Constitutional Court in the *Grootboom case* was of the view that this ‘difference’ ‘is significant’. The Court stated that:

“It recognizes that housing entails more than bricks and mortar. It requires available land, appropriate services such as the provision of water and the removal of sewage and the financing of all of these, including the building of the house itself. For a person to have access to adequate housing all of these conditions need to be met: there must be land, there must be services, there must be a dwelling. Access to land for the purpose of housing is therefore included in the right of access to adequate housing in Section 26”³³⁵.

It is also important to note that the enjoyment of this right is not limited to the ‘citizens’ but to ‘everyone’. In the *Grootboom case*, the Constitutional Court was of the view that the right guaranteed in Article 26 is ‘a right of everyone including children’.

Article 26(2) of the South African Constitution provides that the State must take ‘reasonable’ legislative and other measures within its available resources, to achieve the progressive realization of this right. The Constitutional Court of South Africa has correctly pointed out that a reasonableness standard is indeed justiciable.

The right to have access to adequate housing articulated in the Constitution has had legislative impact in South Africa. Several laws have been enacted giving effect to the right to housing and property. For example the Housing Act (1997) is drafted to ensure non discriminatory access to housing, security of tenure, equal access to all and affordable housing and provides for the monitoring and evaluation of homelessness and inadequate housing. The right to housing is further protected by the Protection Against Illegal Eviction Act (1999), the Interim Protection of Informal Land Rights Act (1996), the Housing Consumer Protection Measures Act (1999) and the Rental Housing Act (2000).

The South African Human Rights Commission monitors and assesses the observance of human rights and publishes an annual report on the realization of the fundamental rights enshrined in the Constitution including right to adequate housing.

The South African courts have been progressive in protecting socio economic rights and in particular the right to housing. In 2001, the Constitutional Court of South Africa delivered a landmark judgment in the case of *Grootboom Case*³³⁶ protecting the housing rights of people living in deplorable conditions while waiting to be allocated other housing. In this case a

³³⁵ *Supra* n.14 at paragraph 35

³³⁶ 2001 (1) SA 46 (CC)

local authority evicted a group of squatters who had moved to a private land that had been earmarked for low cost housing. The eviction took place a day early and the homes of the squatters were bulldozed and their building material and many other possessions were deliberately destroyed. The Court held that this is a violation of the negative obligation of the State in Article 26(1) of the Constitution.

4. Attempts to include the right to adequate housing in the Sri Lankan Constitution

The attempts made to include the right to property in the Sri Lankan Constitution can be traced as far back as to the 1950s. In 1959, a Parliamentary Select Committee³³⁷ has approved the inclusion in the Constitution, of “the right to acquire, own and dispose of property according to law and the right not to be dispossessed of property save by the authority of law”. However, this proposal had been rejected. In the 1970s, the United National Party proposed that the right to property be included in the 1972 Constitution. Mr. J.R. Jayawardene proposed the inclusion of the following in the fundamental rights chapter: “no person shall be deprived of his property save by law”³³⁸. However, this attempt was blocked by the left wing parties³³⁹. The right to property failed to make it even to the 1978 Constitution, even though Mr. J.R. Jayawardene, who proposed its inclusion in the 1972 Constitution, was the President at that time.

The Constitution Bill of 2000 which was presented to Parliament but failed to obtain the necessary support, contains several socio economic rights including the right to property and freedom from forced evictions.

Article 21 of the Constitution Bill provides that:

- (1) Every citizen is entitled to own property alone or in association with others subject to the preservation and protection of the environment and the rights of the community.*
- (2) Any person shall not be deprived of the person’s property except as permitted by law.*
- (3) Any property shall not be compulsorily acquired or requisitioned save for a clearly described public purpose or for reasons of public utility or public order and save by authority of law which provides for the payment of fair compensation.*

Article 25 of the Bill guarantees certain social rights including access to health-care, sufficient food and water and appropriate social assistance. Article 25 (3) provides that “A person shall not be evicted from the person’s home or have the home demolished, except as permitted by law”.

The Constitution Bill does not include a general right to adequate housing. Nevertheless, it guarantees every child “the right to basic nutrition, shelter, basic healthcare services and

³³⁷ Mr. S.W.R.D. Bandaranaike, the founder of the Sri Lanka Freedom Party was a member of this Select Committee.

³³⁸ *Constituent Assembly Debates*, Vol. 1, 1087, 1134, 1137 quoted by Jayampathy Wickramaratne, *Fundamental Rights in Sri Lanka*, (Stamford Lake Publication, Colombo, 2006) at 34

³³⁹ *Ibid.*

social services”³⁴⁰. The drafting history of other Constitutions shows that no attempt has been made to include the right to adequate housing as a fundamental right.

5. Recommendations

The inclusion of the right to adequate housing in Sri Lanka’s Constitution is important in many respects.

At present the Constitution guarantees only civil and political rights.³⁴¹ The proposal to include socio economic rights in the Constitution is a welcome development towards further ameliorating the conditions of the people. The right to adequate housing in particular, enhances human dignity, freedom and equality enabling the evolution of a just and peaceful society.

It is a first step in the fulfillment of Sri Lanka’s obligations under many international conventions such as the ICESCR. These international instruments oblige States Parties to implement their provisions by, inter alia, adopting legislative measures. Many new Constitutions such as that of South Africa, Ukraine, Haiti and Slovakia have included in their Bill of Rights, socio economic rights including the right to adequate housing. The economies of some of such countries are not as developed as in Sri Lanka. Yet, they have pledged their determination to protect socio economic rights by the inclusion of socio economic rights in the Constitution.

The right to adequate housing cannot be taken in isolation and is closely linked to many other socio economic as well and civil and political rights. Ensuring the right to housing enables people to better enjoy other rights, whether socio economic or civil and political rights, guaranteed to them by the Constitution. Further it serves as a premise upon which such other rights can be realized. For instance the right to adequate standard of living, freedom to choose one’s residence, right to non-interference with privacy can be realized with ease if the right to adequate housing is guaranteed.

It is thus recommended that the right to adequate housing and property be included in the Sri Lankan Constitution.

COHRE proposes the following to be included in the Sri Lankan Constitution:

Right to Housing

- 1) Everyone has the right to adequate housing.
- 2) The State must take appropriate and reasonable legislative and other measures, within its available resources, to achieve the progressive realization of this right.
- 3) No person shall be evicted from the person’s home or have the home demolished, except as by permitted by law. No legislation may

³⁴⁰ Article 22 (2) (b)

³⁴¹ The Sri Lankan Supreme Court has indirectly given some recognition to some socio-economic rights particularly through Directive Principles of State Policy. Also, in *Sanjeewa, Attorney-at-Law (on behalf of Gerald Mervin Perera) v. O. I. C. Wattala* (2003) 1 SLR 317, the Court, in granting relief, took into account, expenses borne by the petitioner in seeking treatment at a private hospital consequent to torture, stating that “*citizens have the right to choose between State and private medical care in order to save (a) patient’s life.*” It referred to Article 12 of the ICESCR, which recognises the right of everyone “to the enjoyment of the highest attainable standard of physical and mental health.”

permit arbitrary evictions or evictions contrary to international human rights law.

Special Rights of Children

Every child shall have the right to basic nutrition, housing, health care services and social services.

Right to Property

- 1) Every citizen has a right to own property alone or in association with others. Everyone has the right to own property alone as well as in association with others.
- 2) Any person shall not be arbitrarily deprived of the person's property except as permitted by law for a public purpose or in public interest and subject to the payment of fair compensation.