

# **LST REVIEW**

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**THE HUMAN RIGHTS SITUATION IN THE  
EASTERN PROVINCE - AN UPDATE BY THE  
NATIONAL HUMAN RIGHTS COMMISSION**

**ADVOCACY JOURNALISM -  
ENGAGING THE MEDIA IN HUMAN RIGHTS  
PROTECTION**

**LAW & SOCIETY TRUST**

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## *Editor's Note ... ..*

The Update on the Human Rights Situation in the Eastern Province (emerging from a fact finding mission undertaken by the National Human Rights Commission (NHRC in April 2005) published in this Issue, highlights a number of critical questions relevant thereto.

The manner in which the 'uncertainty and feelings of insecurity' on the part of the peoples of the East has been exacerbated by the split in the ranks of the Liberation Tigers of Tamil Eelam (LTTE) after the defection of 'Colonel' Karuna in March 2004 and the destruction caused by the December 26<sup>th</sup> tsunami, forms a highly disturbing background to the analysis.

Certain observations emerging from the Report carry their own vital import. The ineffectiveness of the monitoring capacity of the Norwegian led Sri Lanka Monitoring Mission (SLMM) in respect of the adherence of both the Government of Sri Lanka (GOSL) and the LTTE to Article 2 of the Ceasefire Agreement which prohibits assassinations, abductions and hostile acts against the civilian population comes as no surprise. As the SLMM itself has observed, while 'in some cases, their requests (to investigate the allegations) are complied with but in many instances, there has been no follow up to their recommendations."

Importantly, the SLMM has been of the view that, in the alternative, an alternative mechanism must exist for the protection of human rights, which has full powers of investigation and inquiry. This is in tandem with a recommendation made by the NHRC itself (in 2003 as well as currently) that a human rights agreement between all armed parties is imperative. The agreement should include effective monitoring and implementation of human rights standards through an independent monitoring mechanism.

It is emphasized that this will be the only effective means of monitoring human rights violations of the ceasefire. It should be complemented by efforts taken by the political leadership on all sides of the ethnic divide to devise creative political and administrative arrangements that will protect the security of all the communities living in the North and the East. This constitutes, indeed, the first and most crucial point of the NHRC's recommendations.

It is again, no surprise that the Commission had, since March 2004, received reports of several LTTE inspired killings in the East, a number of them relating to abductions and killings of Muslim civilians. The Report points out thus;

“The impunity for these crimes following the ceasefire has serious human rights implications. The right to life is the most fundamental of all human rights and if that right is taken away arbitrarily and violently without due process of law, the most basic of all rights is violated. Both the LTTE and the GOSL have a responsibility to ensure that no future political killings take place and that those who committed these crimes be identified, prosecuted and punished.”

A significant focus of the study also concerns the issue of child recruitment by the LTTE and its blatant disregard of the commitment given by it to international monitoring agencies including Olara Otunno, the Special Representative of the United Nations Secretary General as well as the commitment in an Action Plan for Children Affected by War which the GOSL and the LTTE both signed in June 2003. The continued use of underage recruits, it is observed, violates both *jus cogens* norms as well as the Convention on the Rights of the Child.

The Report contains a number of other recommendations that warrant public attention. Among these is the reminder to the GOSL that the arbitrary deprivation of property through the establishment of high security zones and the use of private buildings is a violation of human rights. If land is to be acquired, individuals should be paid compensation or alternative housing should be given to those deprived of the use of their property.

It is stressed that Muslim representation in decision-making is absolutely crucial to human rights protection in the Eastern Province. Thus, the Report calls upon Muslim concerns in regard to the protection of life and liberty of all those living in the East to be given the highest priority

In so far as the post Tsunami situation is concerned, the fact finding mission remarks that discrimination between Tsunami affected populations and war affected communities remains a source of conflict and discontent. Consequently, it is recommended that policies aimed at ameliorating the conditions of the internally displaced who are Tsunami affected should be extended to war affected IDPs. Government agencies and international non-governmental organisations (INGO's) should ensure the protection of the right to property (including land and housing) without discrimination based on ethnicity, religion, or gender.

The concluding recommendation directed towards INGO's to establish a transparent monitoring mechanism as a means of self regulation so as to ensure that rights violations at the ground level do not take place, has its own relevance meanwhile. It is observed that such a mechanism can also provide for a complaints procedure so that individual complaints can be attended to.

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From quite a different perspective, the Review also publishes a lively contribution from *Evans W. Wafula*, a Kenyan writer and human rights worker on how new strategies of ‘advocacy journalism’ have improved the human rights situation in his home country. The tactics that he writes about are, in a sense, nothing very new. For example, they have been invoked for years in India’s path breaking public interest litigation endeavours where journalists have been a key component (along with lawyers and academics) in the struggle to bring justice closer to home for that vast country’s marginalised peoples.

However, his description of the manner in which this process has evolved in Kenya brings us fresh perspectives in regard to this empowering process. In Sri Lanka, where examples of rights activists acting in conjunction with the journalists to aid and empower human rights victims are evidenced only in a somewhat *ad hoc* manner, the article offers valuable insights. In particular, concerted efforts by domestic journalism training schools to include training on human rights protection in their curricula may be a welcome development.

*Kishali Pinto-Jayawardena*



# THE HUMAN RIGHTS SITUATION IN THE EASTERN PROVINCE

## UPDATE\*

### INTRODUCTION

The Eastern Province of Sri Lanka consists of the three administrative districts, Batticaloa, Ampara and Trincomalee. It remains difficult to paint an accurate picture of the population living in the Eastern Province, as due to the political climate there, the Census of 2001<sup>1</sup> could not be effectively conducted in the East. In the Batticaloa district five divisions were enumerated completely, but six divisions were only partially enumerated. In Ampara all districts were enumerated. According to the census, the estimated population for Batticaloa was 486,447 with a growth rate of 1.9%. In Ampara the estimated population is 388,970 with a 2% growth rate. In Trincomalee, the population is 340,000 with a 1.4% growth rate. This must be contrasted with the Jaffna peninsula where the estimated population fell dramatically to 490,000 with a negative 2% growth rate. The war has greatly affected the Eastern Province but the population statistics do not show the dramatic displacement that is evident in the Northern Province.

In addition, the ethnic composition of the eastern province has not been comprehensively enumerated by the Census and Statistics department since the 1981 census, which is now out of date. There was insufficient data collected for the 2001 Census regarding the ethnic composition of the population, and due to the exigencies of the armed conflict, officials of the census department were unable to carry out their survey in parts of the East. Again, in Batticaloa, only five divisions were enumerated completely, six partially, and one not at all.<sup>2</sup> Of those enumerated, a majority Tamil population is evident. The population survey for Trincomalee was also incomplete, but indicates a large Muslim majority. In Ampara district, the 2001 census also points to a majority Muslim population. Due to gaps in the census-taking, it is impossible to accurately enumerate the ethnic diversity of the Eastern Province as a whole. The 1981 census, points to 243,701 Sinhalese living in the Eastern Province, 399,299 Tamils and 315,436 Muslims. The 2001 census provides provisional numbers of 311,522 Sinhalese, 324,446 Tamil, and points to a Muslim population of 452,911. Although the 1981 and 2001 figures are not comparable, and the latest 2001 figures are not fully accurate, they do highlight the Eastern Province as a multi ethnic, multi religious province with a different social composition from the rest of the country. The heterogeneous mix of communities also gives rise to a cultural distinctiveness in the East. The majority of the population is in fact both Tamil and Muslim, or Mukkuwa, and has formed its own legal system and matrilineal form of inheritance.<sup>3</sup> This varied

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\* The report of a fact finding mission undertaken by The Human Rights Commission, April 2005

<sup>1</sup> The Department of Census and Statistics conducts a nationwide census every 10 years. The figures presented in this report are therefore the same as those in the Human Rights Commission Report on the Human Rights Situation in the Eastern Province, 2003.

<sup>2</sup> There are no statistics available on the ethnic composition of Manmunai West

<sup>3</sup> Anthropologists such as Bryan Rice and Dennis McGilvray have written about the rituals and practices of the Mukkuwa people. Organized into matrilineal groups called Kudis, they are still recognised in Temples and Mosques and each Kudi has a leader called Thalaivar for the Tamils and Maraikayar for the Muslims. Cattle registers, village leadership, and many other practices relied on the Kudi system. Marriage customs and other rituals are also governed by the Kudi system though under increasing challenge from more dominant ideologies such as a pan Tamil nationalism and growing Islamic awareness. This shared Mukkuwa history among both Tamils and Muslims of the eastern province is rarely mentioned in the current crisis and now there are many efforts to erase this commonality between the communities. The eastern province also has a special place in Sinhalese history as "Vellassa" the Sinhalese territory that resisted the colonisers. (For a comprehensive description see McGilvray, Dennis,(19882) "Mukkuvar Vannimai: Tamil Caste and Matriclan Ideology in Batticaloa, Sri Lanka" in Dennis B. McGilvray Ed Caste Ideology and Interaction, Cambridge, Cambridge University Press.) – Human Rights Commission: Report on the Human Rights Situation in the Eastern Province 2003

social composition has increased the complexity of the ethnic conflict and must therefore be taken into account in any assessment of the human rights situation in the Eastern Province.

In addition to a variegated social composition, the Eastern Province has remained an area with some of the lowest physical quality of life figures and some of the worst social and economic indicators for the whole country. For example though the national maternal mortality indicator is 2.3/10,000births the maternal mortality rates for Batticaloa are 5.1, for Ampara 9.8 and for Trincomalee 4.1.<sup>4</sup> Though the national female literacy rate is 83.2%, the female literacy rate is 61.9% in Batticaloa, 66.7% in Ampara and 73.1% in Trincomalee, the lowest in the country.<sup>5</sup>

The complex political history of the Eastern Province continues to unfold, with the third anniversary of the Cease Fire Agreement (CFA), signed between the Government of Sri Lanka (GoSL) and the Liberation Tigers of Tamil Eelam (LTTE) in February 2002, presenting unforeseen challenges. The political groupings continuing to share political power in the East are the following. The first are the parties that claim to represent the Tamil community: the Tamil National Alliance (TNA), and its present day allies, the LTTE with some of the other militant groups also having a limited following. 2004 also saw a separatist faction of the LTTE emerge under Colonel Karuna. The second are the parties that claim to represent the Muslim community, the Sri Lanka Muslim Congress (SLMC) and National Unity Alliance (NUA) as well as more militant formations that have emerged in recent times. The two major national political parties the United National Party (UNP) and the Sri Lanka Freedom Party (SLFP) also have a presence in the area.

In December 2003, the Commission found the situation in the Eastern Province to have changed dramatically since the signing of the ceasefire agreement. The majority of people the Commission met with were happy that the ceasefire had been signed. They pointed to the resumption of normalcy in economic and social life, the halt to the destruction that had taken place and the decline in the number of deaths since February 2002. However a significant number were of the opinion that the situation was actually worse, that there was greater insecurity, uncertainty and abuse after the signing of the ceasefire agreement. Many of the people who were of this view were from the Muslim community and Tamils living in the so called "cleared areas."

This uncertainty and feeling of insecurity has continued through 2004 and the beginning of 2005, and has been exacerbated by two main events. These are the divide manifested within the LTTE in March 2004, and the Tsunami of 26 December 2004. Thus, the third anniversary of the CFA has seen both successes and failures. There have been no clashes between the two military forces in Sri Lanka since the signing of the agreement, showing that the ceasefire agreement has withstood the test of time. However, assassinations and killings have continued throughout the past three years, and many groups were of the view that Article 2 of the agreement, which prohibits assassinations, abductions and hostile acts against the civilian population, was often observed in the breach. The Sri Lanka Monitoring Mission (SLMM) that monitors the ceasefire agreement informed us that all allegations relating to Article 2 are recorded but they had limited capacity to investigate the crimes independently. However, where they are certain of the facts, they do approach the military and political leadership of the LTTE and where relevant, the GOSL. In some cases their requests are complied with but in many instances, there has been no follow-up to their recommendations. They were of the view that if the police are unable to be effective, then some alternative mechanism must exist for the protection of human rights which has full powers of investigation and inquiry.

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<sup>4</sup> Registrar General Department, Annual Health Bulletin-2000

<sup>5</sup> Department of Census and Statistic, Statistical Abstract, 1999



Since December 2003, the political situation in the Eastern Province has been marked by the defection of Colonel Karuna, the former LTTE eastern commander, who broke away from the LTTE in March 2004. His denunciation of Prabhakaran and the northern (or Vanni) dominated LTTE leadership, was based on claims of LTTE discrimination against the eastern Tamils in relation to the northern Tamils. In April, shortly after national parliamentary elections, the LTTE attacked the approximately 6,000 soldiers under Karuna deployed in the East. Defeated, Karuna disbanded his forces, going into hiding. From mid-2004 until the present there has been a surge in political killings of Tamils, not just in the North and East, but also in Colombo. Attacks have been directed at members of the LTTE, supporters of Karuna, and politicians and journalists deemed to be opponents of the LTTE. The attacks and killings have mostly been attributed to the Vanni LTTE, and persons believed associated with the Karuna faction. In addition, human rights workers who criticize the LTTE are increasingly at risk.

These events have had major repercussions on the human rights situation in the East. Any general improvements in the situation since the cease-fire agreement (for example freedom of movement and general stability) in the Eastern Province have been somewhat erased by Karuna's defection. Since April 2004, the Military has been setting up camps and fortifying checkpoints. Civilians are being stopped and checked again and Government machinery is essentially non-operational in the un-cleared areas. Freedom of movement is therefore lessening, and people are afraid of another war breaking out. Child re-recruitment by the LTTE also boomed after Karuna released the child soldiers under his command. The increase in factional fighting has also affected the livelihoods of fishermen (as it is difficult to market their catch) and has prevented children from attending school (as parents are reluctant to let them go in case they are recruited into the LTTE). In addition, the lack of security has meant that there is limited NGO activity, and the government has not implemented any development projects.<sup>6</sup>

All three areas of Batticaloa, Ampara, and Trincomalee, have seen an emergence of low-intensity conflict in the last few months. The Tsunami brought a brief respite to the political tensions in the area; however, the sympathetic and cooperative spirit inspired by the natural disaster has waned, and political killings have resumed. This is demonstrated by the marked rise in killings since the beginning of 2005. January saw no killings take place, whereas the number rose to 9 in March and then to 23 in March.<sup>7</sup> Amongst those killed were 9 civilians, caught in the crossfire of warring factions of the LTTE. Those civilians killed included 5 Muslims and 1 Sinhalese. The killings continued throughout April and into May, although numbers waned at the end of April. Ethnically, most of those killed have been Tamils, and the killings have been attributed to the LTTE and the Karuna faction.

The numbers of violent acts in the region such as abductions and injuries that do not result in death have also risen from none in January, to 29 in March. These political killings are not only a violation of international human rights standards, but are also a violation of the 2001 CFA. The high incidence of political killings and other violations<sup>8</sup> of the CFA has prompted the government of Sri Lanka to bring these acts to the attention of the international community. Acting Defence Minister Ratnasiri Wickremenayake pronounced on 17 April 2005 that despite the CFA, the LTTE had been engaged in killings, abductions, assaults and other violent acts, and that the government of Sri Lanka was accordingly under an obligation to inform the international community.

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<sup>6</sup> The Sunday Times, 3 October 2004, p11

<sup>7</sup> Courtesy of the Foundation for Co-Existence Information Centre. Presentation on "Emerging Facets of Human Security in the Eastern Province"

<sup>8</sup> The Daily Mirror Reports on 19 April 2005 that the LTTE has continued to fire rounds of ammunition over Army roadblocks for a fourth day, action amounting to a clear violation of the CFA.

Tensions between ethnic communities have also resurfaced, following a change in attitude post-Tsunami. Tamil and Muslim communities are protesting discriminatory action on the part of the Government, staging some large protests outside the DS offices in Ampara in March 2005. These communities are also increasingly worried that ethnic divides that have been established and solidified via the homogenous geographical distribution of populations in the region throughout the war years will disappear, as Tsunami displaced populations encroach upon unaffected land to resettle. Moderate LTTE leader E. Kaushalyan (the political head of the LTTE in the eastern Batticaloa-Amparai region) had started a process of dialogue with the Muslim community leaders and the LTTE, in an attempt to better relations between the two communities. However, he was killed on 8 February 2005, in an ambush in a government-controlled area while returning from discussions in Kilinochchi on post-tsunami relief and recovery work. Five members of his convoy were also killed, including Chandranehr Ariyanayagam, a former parliamentarian and a member of the LTTE human rights body, the North East Secretariat on Human Rights (NESOHR).<sup>9</sup> The GoSL condemned this act in a welcome move; however, this has not affected the negative repercussions the killing has had.

Recent developments have included a spate of killings in March and April 2005 mainly in and around Batticaloa. Targets have included LTTE cadres, and persons believed to be associated with Karuna. Tension thus remains high in the East as this fighting between Karuna loyalists and the LTTE escalates.<sup>10</sup> The Tsunami has also generated a certain amount of political strain in the area, with opinions diverging as to whether or not Tsunami aid is being fairly distributed across the Island. Perceptions seem to be that the North and East are being neglected at both national and local levels, leading to events such as the shooting and subsequent death of the Thirukkovil Divisional Secretary (DS), allegedly threatened by the LTTE and accused of the unfair distribution of Tsunami aid.<sup>11</sup> In addition, the Eastern Province has been affected by several hartals during 2004 and into 2005 held to protest events from the arbitrary arrest and detention of individuals, the putting up of Buddhist religious iconography in predominantly Tamil and Muslim areas,<sup>12</sup> and perceived discrimination.

Added to these tensions is the question of Muslim participation in both the peace talks, and in the establishment of a Joint Mechanism to address the Tsunami affected areas. Thus far, there has been some agreement to include Muslims in the peace process. However, there has been no commitment to the inclusion of a separate Muslim delegation.

Regarding the joint mechanism to address Tsunami affected areas; The President held talks in May with the relevant parties, however, the Muslim parties were not invited and therefore did not participate in the actual negotiations for the Post-Tsunami Operational management Structure (P-TOMS). This lack of involvement has resulted in disquiet among the Muslim community, as this joint mechanism may well serve as a template for the interim authority for the North and East, and will therefore have far-reaching consequences for the Muslims.

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<sup>9</sup> The presence of a NESOHR representative may or may not be indicative of the independence this body holds from the LTTE.

<sup>10</sup> Reported in the Daily Mirror, "Violence Escalates in East", 7.3.05 pg 1

<sup>11</sup> Two special teams are investigating this death. Daily Mirror, Front Page on 18 April 2005

<sup>12</sup> One such incident took place on 17 May 2005, when one youth was killed and four others were injured when LTTE supporters threw a hand grenade this evening at Marathady junction in Trincomalee. A hartal was subsequently launched by the LTTE-backed group, 'Tamil People's Alliance', in order to protest the replacement of a Buddha statue with a larger replica near the clock tower in Trincomalee town. There is a danger that both the act and the hartal will serve to fuel both religious and ethnic tension in the East.

A new phase began in the Tamil and Muslim relationship, with the LTTE (under the leadership of the late Kaushalyan) commencing meetings with the Muslim leadership in the area, and post-Tsunami, Tamils and Muslims were working together in the relief effort. However, the killing of a Muslim on 8 March was attributed to the LTTE, led to protests, and has had negative repercussions on Tamil-Muslim relations. In a recent development, the Supreme Court issued an interim order preventing the P-TOMS from being implemented. In response to a fundamental rights petition submitted by the Janatha Vimukthi Peramuna (JVP), the Court issued an Interim Court Order on 15 July 2005 against four clauses of the agreement signed by the GoSL and the LTTE. It was stressed that the whole agreement was not suspended, but that the injunction would apply only to specific clauses.<sup>13</sup> The Court upheld the right of the President to enter into such agreements but wanted stricter scrutiny on issues related to finance, planning and the location of the Committee so as to ensure non discrimination. The rising tensions in the East have been aggravated by this development and are exacerbating the possibilities for human rights abuses to take place.

In addition to the present political situation, the Tsunami has brought even more strain to an already struggling region. There are now IDPs displaced by both the war and the Tsunami in the area, all with concerns for their security, their livelihoods, health, education and resettlement. With the Tsunami, the amount of donor money flooding into the area has increased, as well as the number of NGOs that are present. This has led to high expectations among local communities, and a splintering of efforts to ameliorate the situation.

The large amount of money and donor presence in the area has not sped up any processes of relief, rehabilitation or reconstruction, and has caused competition between agencies. In addition, it must be noted that the border areas between cleared and un-cleared areas are also the most susceptible to violence due to the lack of scrutiny by outside actors. The Tsunami has directed NGOs and INGO attention elsewhere, thus leaving these populations more vulnerable to violence. Border populations are under pressure to align themselves with either the LTTE or Karuna, and suffer consequences for either decision.<sup>14</sup> In addition, with increase of conflict between the LTTE and the Karuna faction and resultant killings, there is an increasing danger of civilians being caught in the crossfire. There has been a general escalation of violence following Kaushalyan's death, with attacks against PLOTE cadres and Karuna group camps. In January, February and March 2005, there have been 32 incidents of violence, (29 in government-controlled areas, and 3 in LTTE controlled areas), and 18 persons injured. There has been an increase in the number of checkpoints (8 new checkpoints established on 11 main roads), which has also contributed to an increase in tension and suspicion among the population.<sup>15</sup>

Given the tension between the communities, it is absolutely necessary that the political leadership on all sides of the ethnic divide come up with creative political and administrative arrangements that will protect the security of all the communities living in the North and the East.<sup>16</sup> This security is paramount if there is to be human rights protection in these areas. In addition to security

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<sup>13</sup> The Court's ruling provides that the Tsunami Regional Committee (RC) should not be based in Kilinochchi; provides for the powers vested upon the RC of the Tsunami Relief Council (TRC) (i.e. financial management, drafting and authorizing projects) to be suspended; disallows the transfer of powers of financial management and policy planning by the government to any other committee; and recommends that monies received for the TRC be held in a separate account under the purview of Sri Lankan law. (Sourced from UNICEF Sri Lanka Situation Report, 26.7.05)

<sup>14</sup> Observations communicated by local organisations working in the area.

<sup>15</sup> Provincial Situation Report: Ampara. Courtesy of Foundation for Co-Existence presentation given on 29 March 2005

<sup>16</sup> For a discussion of these issues please see S. Nanthikesan, *lines-magazine.org* (Nov 2002)

arrangements, a human rights agreement between the combatants, to be monitored by an independent monitoring mechanism is a major requirement of the moment. The resumption of peace talks should focus on such a discussion.

Many of the problems highlighted below, the lack of a rule of law, impunity, abuse and harassment take place because of a lack of an adequate security arrangement that truly reflects the concerns of all parties living in the North and the East. They also result from a lack of commitment to human rights protection by combatants, especially those related to the LTTE and the Karuna faction. Any final or interim solution must ensure that appropriate political and or administrative arrangements must be creatively imagined and implemented so that all communities can live without fear, in safety and security.

The recent assassination of the foreign minister Lakshman Kadirgamar, the latest high profile victim in the cycle of political killings again raised tension and heightened fears that the ceasefire will not be adhered to. Kadirgamar was a major player and advisor on the peace process and his assassination will have a major impact on the government's policy with regard to peace. In this context, the recent moves to begin talks on the implementation of the ceasefire agreement will provide an opportunity to deal with the violations of the ceasefire, often with impunity, by the LTTE and the Karuna faction. In this context, the Commission would like to draw attention to its first recommendation, the need for a human rights agreement between the parties with international monitoring as the only effective means of monitoring human rights violations of the ceasefire.

## **THE TSUNAMI**

On 26 December 2004, an earthquake about 150 kilometres off of Northern Sumatra in Indonesia generated a disastrous tsunami that caused destruction in 11 countries bordering the Indian Ocean, including Sri Lanka. As of 3 January 2005, Sri Lankan authorities report 30,196 confirmed deaths<sup>17</sup> The Southern and Eastern coasts were worst hit. One and a half million people have been displaced from their homes. Destruction in some places was total, with schools, hospitals, and homes completely washed away. The result is that the country is in the process of engaging in the massive task of rebuilding infrastructure and lives. Batticaloa and Ampara were two of the Districts worst affected by the Tsunami. In Batticaloa alone, 14 Divisions were severely affected. 2,837 people died, 2,375 were injured, and 340 recorded still missing by April 2005. As of April 55,935 persons remain displaced in welfare centres or with relatives and friends. Ampara was the worst hit, with 6,007 deaths, 6,706 injured, and 159 missing as of April. A total of 99,551 persons still displaced and living with relatives or in camps. As of April 2005, 17,343 persons remain in the 65 Welfare Centres in Ampara District. In Trincomalee, 6 of 11 Divisions were affected. The Tsunami left 969 people dead, and as of March 2005, 45 were still missing. The District has 30,547 families that were directly affected, 126,676 internally displaced persons (including 22,265 displaced children below the age of 12).<sup>18</sup>

In affected areas, there are several areas of concern arising from the devastation and subsequent relief and reconstruction efforts, of which a number have human rights implications. While reconstruction of both temporary shelter and permanent housing is pending, camps for internally displaced persons (IDPs) continue to function. The rights of these IDPs is thus of critical concern. In this context, protection of vulnerable groups such as women and children is particularly relevant. In addition to protection of vulnerable groups from abuse, concerns have emerged in regard to the implementation

<sup>17</sup> At: <http://news.bbc.co.uk/1/hi/world/asia-pacific/4143459.stm#map>

<sup>18</sup> Statistics for these areas were provided by the relevant Government Agent Offices.

of the right to education in the wake of the Tsunami. Despite schools having reopened, the rate of attendance has dropped in some instances due to lack of transport and in the Eastern Province, fear for children's security.

It is impossible to determine the actual percentage of school-going children before versus after the Tsunami, with the available statistics. UNICEF undertook a survey in the East, for which all the collected data was lost in the Tsunami. It is important to ensure the return of children to schools and a life with some normalcy, in addition to ensuring that their rights under the UN Convention on the Rights of the Child are protected. With the destruction of hospitals and the communal circumstances of living in welfare centres, it is also important to protect the right to health of all those affected by the Tsunami. Additionally, civil and political rights must be protected, such as the right to property. There are several concerns raised in the Eastern Province regarding land rights and the non-discriminatory redistribution of land, post-Tsunami.

### **FACT-FINDING MISSION OF THE HUMAN RIGHTS COMMISSION**

The Human Rights Commission conducted a fact finding mission into the Tsunami affected areas of the eastern province, The terms of reference of the Visit were as follows:-

#### **Terms of Reference**

- I. To establish the state of human rights in the Eastern Province from December 2003 to the present day.
- II. To establish whether there has been discrimination in the distribution of aid in the form of both immediate relief and in addressing long-term needs
- III. To establish the needs of Tsunami victims and whether their human rights were being protected in the aftermath of the Tsunami.

### **CIVIL AND POLITICAL RIGHTS: - ALLEGATIONS AGAINST THE GoSL**

Most of the complaints regarding human rights violations by the GoSL in 2004 are to do with harassment, and the abduction of adults. In 2004, the SLMM recorded 183 complaints against the GoSL for violations against the CFA, including regarding measures taken to restore normalcy.<sup>19</sup> Since the Tsunami, the LTTE has also lodged complaints against the GoSL, alleging that the Government has not allowed the LTTE to move freely in order to deliver relief to Tsunami victims, and alleging that the Special Task Forces (STF) have not allowed relief to come into LTTE controlled areas.

The Human Rights Commission has received allegations that the number and use of checkpoints in the Eastern Province has increased over the period of the last year, in response to Karuna's defection and the resulting decrease in stability throughout the Province. What is of concern to the Commission regarding this increase is the incidence of harassment by security forces at these checkpoints. Harassment can include security forces not allowing people through checkpoints, or simply stalling individuals, limiting their freedom of movement.

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<sup>19</sup> Figures are from the SLMM website as well as hard copies of recorded complaints not yet on the site. Measures to restore normalcy include: Hostile acts against the civilian population; Intimidation; Abduction of Adults; Abduction of children; Extortion; Harassment; Child recruitment; Other measures to restore normalcy; Forced recruitment of adults; Provocative acts by the Parties; Confiscations; and Fishing restrictions.

The arbitrary deprivation of property is also a human rights violation. Security forces and the Sri Lankan Army (SLA) have, however, been reported to occupy private property in order to establish high security zones. In relation to already existing high security zones that are on private property, persons are denied access to their lands.

Another complaint was of discrimination on the part of the Government of Sri Lanka. The general perception among members of the public is that the eastern province receives far fewer resources and facilities than other provinces. A cursory glance of some of the indicators seems to confirm this allegation. The Commission is unable to ascertain all the figures to make a judgment accordingly but there is no doubt that the Eastern Province has some of the worst social and economic indicators in the country. There is a shortage of teachers, doctors and all manner of skilled personnel.

There are other reasons for these shortages than active discrimination. The Eastern Province was a theatre of conflict and very few skilled personnel wished to be stationed there. In addition, there is a fear that their salaries may be "taxed" or their children recruited into an armed group. However, there is a widespread belief in the eastern province that they are discriminated against not only by the Sinhalese majority governments of the south but also the Tamil dominated political groups of the north. This continuing sense of discrimination is pervasive and needs to be addressed if the Eastern Province is to be brought back into the mainstream of Sri Lankan economic and social life. This sense of discrimination has not been assuaged by the Tsunami, but has continued and expanded to include a perception of discrimination in the distribution of relief and services to Tsunami victims in the East.

#### **CIVIL AND POLITICAL RIGHTS: - ALLEGATIONS AGAINST THE LTTE**

Since the conclusion of the ceasefire agreement, the Commission has received many allegations of human rights violations by the LTTE. In keeping with the ceasefire agreement and in particular article 2, the Commission has referred such matters to the Sri Lankan Monitoring Mission (SLMM). The Commission realizes that the powers assigned to it under the Human Rights Commission Act cannot be effectively applied with regard to the LTTE. However, since December 2003 the Human Rights Commission (HRC) has continued a process of dialogue with the LTTE through their regional coordinators. The Commission hopes to maintain this channel of dialogue with the leadership of the LTTE on matters of human rights.

#### **Political Killings**

Since March 2004, the incidence of political killings has increased, with Colonel Karuna's defection from the LTTE. There have been several killings of politically involved individuals, including of the LTTE political wing chief for Ampara, Vasu Bawa, and the regional rehabilitation chief. The political wing chief of Batticaloa, Senathiraja was also shot in July. The surge of killings in mid-2004 saw the deaths of politicians and journalists deemed to be opponents of the LTTE, notably –

*"The LTTE has claimed responsibility for the public executions of Balasuntaram Sritharan and Thillaiampalam Sutararajan on July 8 at Illupadichai junction. Their dead bodies were found by the side of a road, blindfolded, with manacles around their ankles. The LTTE publicly stated that the two men had been sentenced to death as pro-Karuna "traitors" and called on all Sri Lankan Tamils to identify any other such "traitors." Aiyathurai Nadesan, a Tamil journalist, was shot in Batticaloa on May 31. On May 24, Eastern University lecturer Kumaravel Thambaiah was shot*

*and killed at his home in Batticaloa. The Karuna group is suspected in both killings".<sup>20</sup>*

A democratic society depends on a vibrant press that is free from harassment and intimidation. The government must therefore move swiftly to find, arrest, and prosecute those responsible. As aforementioned, there was a lull in these political killings post-Tsunami, but that has ceased with the death of Kaushalyan, and the numbers killed has risen from zero in January, nine in February, and twenty-three in March 2005.<sup>21</sup> These numbers are those that have been reported, however, there is the sense in the Eastern Province that the actual number of killings may be higher than this.

The added danger these political killings have is that civilians may be caught in the cross-fire. For example, in October, the *Sunday Times* reported that Karuna's wing of the LTTE launched a rocket propelled grenade, killing a 55 year-old woman 42 km north of Batticaloa. This followed a claim by the LTTE that they had killed Karuna's brother Reggie (reported to have led the rival group). In March 2005, there were reports of abductions and killings of Muslim civilians (6 Muslims were killed, one of whom was abducted). The Tamil community continues to be the most affected community, with 16 deaths of Tamils in March as compared to 6 Muslims and 1 Sinhalese.<sup>22</sup>

The police and the SLMM have pointed out that they cannot do their investigations in areas that are not under their control. The impunity for these crimes following the ceasefire has serious human rights implications. The right to life is the most fundamental of all human rights and if that right is taken away arbitrarily and violently without due process of law, the most basic of all rights is violated. Both the LTTE and the GOSL have a responsibility to ensure that no future political killings take place and that those who committed these crimes be identified, prosecuted and punished.

The killing of Lakshman Kadirgamar, the foreign minister, has been attributed to the LTTE though they have denied any involvement. He was a staunch critic of the LTTE and was a major player in the peace process. His assassination calls into question the viability of the ceasefire agreement and the need for concerted action. Killing with impunity remains the major challenge for the interim phase of the peace process.

### **Underage Recruitment**

A main complaint against the LTTE in 2004 has been the continuing recruitment (both voluntary and forced) of child soldiers. The recruitment of underage cadets by the LTTE is first and foremost a human rights and child rights issue, despite its politicization. The Convention on the Rights of the Child as well as jus cogens norms prohibits such action. Under international law, eighteen is set as the minimum age for all participation in hostilities, and any recruitment or use of children under the age of fifteen is considered a war crime. Nevertheless, the LTTE has continued to forcibly abduct and recruit children, and continues to accept 'voluntary' child recruits into its ranks after the signing of the cease-fire agreement (CFA). Despite LTTE statements' attesting to the voluntary nature of recruitment, according to Harendra de Silva (NCPA), in 2004, only one in nineteen children is a volunteer.<sup>23</sup> The Commission is unaware as to whether these recruitments are sanctioned by the political leadership of the LTTE situated in the Vanni or whether these are local operations by local

<sup>20</sup> *Sri Lanka: New Killings Threaten Cease Fire*, Press Release, Human Rights Watch, July 28, 2004

<sup>21</sup> Courtesy of the Foundation for Co-Existence Information Centre. Presentation on "Emerging Facets of Human Security in the Eastern Province"

<sup>22</sup> *Ibid.*

<sup>23</sup> Human Rights Watch, *LIVING IN FEAR: Child Soldiers and the Tamil Tigers in Sri Lanka*, November 2004, p16

members of the LTTE. Nevertheless, the LTTE leadership remains responsible for the actions of its cadres at all levels.

In addition, the CFA allows the LTTE to establish political offices in government-controlled areas. In July 2004, the LTTE had opened four or five such offices, and it has come to the attention of the Commission that these offices are being used for recruitment in some instances.<sup>24</sup>

In June 2003, the GoSL and the LTTE both signed an Action Plan for Children Affected by War (the Action Plan included a commitment by the LTTE to end child recruitment). Under the Action Plan, three transit centres were established to receive children released by the LTTE. The transit centres have not been used to their full potential, and there were times in 2004, when they stood empty. There are now talks of their being used for purposes other than transitional spaces for children returned home until such time as they may be realistically needed again.

With the defection of Karuna in 2004, the LTTE has initiated a recruitment drive. It has specifically targeted the 1,800 underage recruits released by Karuna.<sup>25</sup> Between April and August, The United Nations Children's Fund (UNICEF), had documented nearly 100 cases of child recruitment, mostly from Batticaloa district, and anecdotal evidence collected by Human Rights Watch (HRW) indicates that the actual number is much higher than this.<sup>26</sup> UNICEF is also aware that the actual numbers of recruitment cases may not be reported to them for reasons including fear on the part of parents that they may face repercussions from the LTTE. The existence of child recruitment thus becomes not only a breach of the Convention on the Rights of the Child and jus cogens norms, but also a breach of international safeguards on rights to freedom of expression as provided for in the International Covenant on Civil and Political Rights.

UNICEF, as of October 31, 2004, had documented 3,516 new cases of underage recruitment since the signing of the cease-fire agreement. The LTTE formally released only 1,206 children during this time. Of the cases registered by UNICEF, 1,395 were outstanding as of November 2004.<sup>27</sup> The total number of cases documented by UNICEF for the year 2004 is 1,138. Of these, 696 were released. Following the Karuna split, 2,437 underage recruits were returned, and there were 297 cases of runaways recorded. It must be noted that these figures are simply an indication that child recruitment by the LTTE is continuing. They cannot be used to establish an accurate idea of any percentage increase or decrease in the number of children recruited over the past year. Figures provided by UNICEF post-Tsunami indicate that the incidence of recruitment has decreased, although it remains a grave problem. From 26 December 2004 to 16 May 2005, there have been a total of 137 recorded cases of child recruitment, 18 of who were re-recruited (all from the Eastern Province). Of the 137 recruited since the Tsunami, 24 ran away, and 28 have since been released.

Since the Tsunami and there has been a marked decrease in the numbers of children recruited as compared to 2004, where one month alone would see more than 100 cases of recruitment. The reasons for this are not known, although there is speculation that the LTTE lost many during the Tsunami and therefore had to regroup. The Human Rights Watch report, as well as the clear condemnation of child recruitment by the Canadian Prime Minister Paul Martin,<sup>28</sup> and the present talks between the EU and the LTTE may have also had an impact on the decrease in child recruitment. There has also been

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<sup>24</sup> As told to Human Rights Watch by the senior superintendent of police in Trincomalee. *Ibid.*

<sup>25</sup> Human Rights Watch, Sri Lanka Country Page

<sup>26</sup> Human Rights Watch, LIVING IN FEAR: Child Soldiers and the Tamil Tigers in Sri Lanka, November 2004.

<sup>27</sup> *Ibid.*, p38

<sup>28</sup> Paul Martin made a public statement prior to his visit to Sri Lanka on 16-17 January 2005 that LTTE recruitment of children "is the kind of thing that requires universal condemnation".



speculation that due to the large number of IDPs post-Tsunami, the collective presence of large groups of people in Welfare centres as well as STF presence has deterred the LTTE from recruiting in these spaces. On 28 March 2005, clashes between the LTTE and STF ensued at a camp in Thirukkivil, Ampara after the LTTE attempted to abduct a child who then ran away and sought protection with the STF. This has, however, been a rare occurrence, and as of April 2005, UNICEF has documented only 9 cases of child recruitment from Tsunami welfare centres.<sup>29</sup> However, it is important to note that recent reports from the East, after the fact finding mission and in the months of May, June and July show a dramatic increase in child recruitment especially during the temple festivals in the east. UNICEF reports that as of 24 July, there has been more than double the number of reports of underage recruitment than there were in the month of June.<sup>30</sup> Batticaloa in particular has seen a dramatic increase in the number of reported cases, with 43 cases reported, as compared with 18 in June.<sup>31</sup> The end of the respite after the Tsunami and the decline in international agitation in recent months may have led to this sudden increase.

It is important to note that with the establishment of NESOHR, the LTTE has begun to release underage recruits to their officers rather than to UNICEF. NESOHR is reportedly reluctant to immediately release the names and addresses of the children discharged to them, although UNICEF has been able to verify (once the lists have been released to them), that the large majority of children released to NESOHR have been returned home.

It is clear that the LTTE has not fully honoured its commitment made to either Mr. Olara Otunno, the Special Representative of the Secretary General or to UNICEF under the Action Plan that it would release child soldiers. It is imperative that the LTTE leadership take firm and decisive measures to stop this practice and to uphold its agreement with UNICEF to have these children released and reoriented so as to be absorbed into the mainstream of society.

### **Other Allegations**

The abduction of children is also augmented by the abduction of adults, either for ransom or punitive treatment. These abductions do not necessarily take place solely in the East. In April 2005, the government was called to account for failing to protect against the abduction of a police inspector in Colombo, allegedly abducted by the LTTE. The SLMM records around 314 such complaints of adult abductions for the year 2004, a marked increase in the number recorded for 2003, of around 130 abductions. The Batticaloa office of the HRC received complaints of 35 adult abductions for the year 2004, with half of the cases reported in the third quarter. In addition, the SLMM records 56 cases of adult abductions from the beginning of February 2005 to the end of April 2005.<sup>32</sup> The brief respite from some of these activities post-Tsunami has not changed the general situation in the East. The abductions of adults are also a serious cause of concern and point to the ineffectiveness of the rule of law in the Eastern Province. As a result there is a great deal of insecurity and fear among the people living their daily lives. Adult abductions and other rule of law issues are slowly chasing away the skilled professionals, businessmen and people with means who may have a great deal to contribute in rebuilding the society. In addition, adult abductions do not solely impinge on the rights of the individual, but also on the rights of family members. When abducted individuals are held in the custody of the LTTE, it has been reported to the Commission that family members are often prevented from seeing the individual in question violating the right to family life.

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<sup>29</sup> All figures on child recruitment provided to the Human Rights Commission by UNICEF.

<sup>30</sup> 76 cases have been reported as of 24 July, as compared with 36 in June.

<sup>31</sup> These numbers include reported cases of re-recruitment as well as recruitment.

<sup>32</sup> Figures provided by the SLMM.

The other persistent complaints the Commission received from the Eastern Province during the year 2003 related to the issue of extortion or “taxation” by the LTTE. The year 2004 saw the end of ‘official extortion’ due to, perhaps, the split between the Vanni LTTE and Karuna’s group. Nevertheless, it is apparent that extortion is still occurring in the rare instance. Post-Tsunami, the LTTE has been threatening contractors unless an agreement is made to pay 10% of the contractors’ profits to them. Very few complaints have been made with regard to extortion during the year 2004 (only seven were recorded by the SLMM). The decrease in the number of complaints may reflect the reality on the ground. Equally, it may only reflect a reality that has seen an increase in the climate of fear and uncertainty following Karuna’s defection, where opposing forces are threatening repercussions on those who do not comply with demands from either side. The Commission was unable to ascertain which of these realities exists in the Eastern Province.

#### **CIVIL AND POLITICAL RIGHTS: - ALLEGATIONS AGAINST THE KARUNA FACTION**

Allegations of human rights abuses by the Karuna faction are more limited in scope than those against the main body of the LTTE. For instance, there have been no specific allegations of the Karuna faction either recruiting child soldiers or re-recruiting those it had released, due to difficulties in establishing who the actors are. In addition, the infighting between the Vanni LTTE and the Karuna faction, as well as international pressure and presence in the area, has meant that both incidences of extortion and child abduction are generally fewer. However, the defection of Karuna has led to the significant increase in political killings (see above) and has contributed to the continuing breakdown of the rule of law and culture of impunity that exists in the Eastern Province. As aforementioned, the Ceasefire Agreement had as its aim, the end of hostilities between the GoSL and the LTTE. Since Karuna’s defection, the political killings taking place bring an additional dimension to the Ceasefire Agreement. Technically, they are not a direct violation of the CFA, as they are attributed to either the Vanni LTTE or the breakaway Karuna faction, and are an expression of hostilities between these two groups – not the GoSL. The killings do, however, remain a crime as well as a violation of international human rights laws and norms.

An added dimension to these political killings is the popular perception that the Armed Forces are involved – if only by standing by without reacting to them. Commissions of Inquiry (such as that set up to inquire into the death of Kaushalyan) have been set up to look into these killings, but face the difficulty that nobody will go before them to testify. It is however necessary that the perpetrators of these crimes be brought to justice. There are two possible ways of ensuring the rule of law is upheld in the East. One is to request an international inquiry into these political killings, the other, to push for the establishment of a human rights agreement between the parties. In this context the Commission welcomes the decision of the government to invite the UN Special Rapporteur on extra judicial killings to make a visit to Sri Lanka at the end of the year.

#### **RELATIONS WITH THE MUSLIM COMMUNITY**

In looking at the human rights situation in the Eastern Province, the effect of the relationship between the Tamil and Muslim communities must also be understood, as tensions between the two communities reinforce the climate of fear and uncertainty in the East. The signing of the CFA initially saw a general decline in relations. This decline has reversed somewhat, with the agreements made in 2003 between the LTTE leaders of the East and the North East Muslim People’s Assembly on 20<sup>th</sup> September 2003. It was agreed that the LTTE would

1. Waive all hitherto prevailing restrictions on paddy cultivation, fishing and movements in LTTE controlled areas in the East
2. Form Zonal Committees in all villages consisting of Muslim civil society leaders and LTTE representatives.
3. Do away with taxes on traders, both Tamil and Muslim, when its various economic ventures in fishing and agriculture begin to yield profits.
4. Restore paddy lands to the Muslims in time for the Maha season, 30,000 acres to be handed over immediately.

The Zonal Committees have been in operation and reflect the efforts the LTTE has made to assure the Muslim community that they have nothing to fear, however, are not sufficient to stop the deep-rooted distrust and uncertainty. The promises to hand back land to the Muslim community have not been kept, with a failure to resolve the land question leading to indefinite delays in its return.

Nevertheless, relations remain uneasy due to the ongoing battle over access to land, as well as the non-contiguous nature of the geographic distribution of the communities. For example in the Batticaloa district, the Muslim areas of Kathankudy, Eravur and Valaichenai are not contiguous and there is no collective representation at the political level. On a very practical level, fear from each community that the other will encroach upon and slowly take over their lands and homes has been exacerbated with the Tsunami, as the Government struggles to identify land for resettlement. The ethnicisation of DS divisions has led to increased difficulties when allocating land for resettlement of Tsunami-affected peoples. In some cases, communities will prefer not to move to allocated lands due to the ethnic composition of the neighbouring villages. This adds to the mutually suspicious perceptions that the average member of the community entertains toward the other, in terms of each asserting their dominance over the other.

Tensions between the Tamil and Muslim community temporarily subsided immediately after the Tsunami, as both communities were affected, and helped one another to deal with the loss and destruction. However, four months after the Tsunami sees some of the old tension revived and causing uncertainty mainly in terms of resettlement and land allocation.

One of the biggest problems regarding the Muslim question with land allocation both pre and post Tsunami. Although they are the majority ethnic group in the East, the Muslim population enjoys ownership and access to a very small percentage of the available land. It has been pointed out that in Batticaloa district, Muslims represent a  $\frac{1}{4}$  of the population, yet have access to only 40 square kilometres out of 1400 square kilometres. In Ampara district, state and Sinhala settlements are allotted 76% of the land, while Muslims and Tamils are correspondingly allotted 15% and 9%.<sup>33</sup>

Although a majority in the East, Muslims remain a minority, and do not have full representation in the peace process. The arguments surrounding Muslim inclusion in the peace process centre on whether or not the Muslim politic was unified enough for their inclusion (with the emergence of several Muslim splinter groups of the main Sri Lanka Muslim Congress (SLMC), the divisiveness of Muslim leadership was acknowledged). A promising development has been the establishment of the Muslim Peace Secretariat (MPS). A result of a memorandum of understanding signed by the two main Muslim parties (the SLMC and the National Unity Alliance (NUA)), the MPS plans to provide a forum to which all Muslim perspectives can be brought. Post- Tsunami, it has been mentioned that Muslim participation in the talks for and final composition of the Joint Mechanism has caused an increase in

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<sup>33</sup> CPA Draft Paper on "Post-Tsunami Reconstruction and the Eastern Muslim Question."

uncertainty as to the Muslim community's involvement in the peace process and participation in a possible interim authority for the North and East.

Despite the Muslim community being politically removed from the LTTE, the split between the Vanni group and the Karuna faction has left Muslims in the middle of this conflict. They remain victims of killings, abductions, threats, and harassment, and have been in fact targeted in this factional war. There is no way of establishing the exact identity of the perpetrators, however, both the mainstream LTTE group and the Karuna faction have been implicated in these acts. Association (whether real or attributed) of Muslims with one or the other group has led to the opposing group taking severe action, such as killing or abducting the individuals in question. This violence has had severe repercussions on the security of Muslims living in the East, as well as on Muslim-LTTE and Muslim Tamil relations. The failure of the LTTE to protect the Muslim community against this violence has increased the perception that they are responsible for that violence.

Experience from every conflict-ridden country in the world suggests that continued suppression of minority rights eventually ends up in violent conflicts. Thus, both the Government and the LTTE must recognise and respond to the concerns put forward by the Muslim community in order that a just and permanent peace and a solution encompassing the rights and security of all communities are reached. An effective framework for security must reflect the realities on the ground as well as entrench the rights of minorities to representation, participation and non-discrimination.

## **ECONOMIC AND SOCIAL RIGHTS**

The tsunami has only worsened the already fragile state of social and economic rights in the districts of Batticaloa, Ampara, and Trincomalee.

The Annual Report 2004 by the Ministry of Health and Indigenous Medicine of the North-East Province reports that the morbidity and mortality rates among the most vulnerable groups of the population have increased compared to national figures. Additionally, approximately one in five newborns has a low birth weight (below 2.5 kg). Of these children, on average 15% suffer from acute under nourishment (underweight for height), 25% from stunting (low height for age) and 40% under weight (low weight for age).<sup>34</sup> Such figures clearly demonstrate the effect that the war has had on the infrastructure of the health system in these districts. The main complaints received by the Commission pointed to the lack of human resources in the East, particularly with regard to the lack of capacity to deal with mental health and trauma – areas particularly relevant to upholding the right to health in a region ravaged by both conflict and natural disaster. Post-Tsunami there have been efforts on the part of both the Ministry of Mental Health as well as local and international actors to train and provide counsellors. Despite these efforts, there remains a grave deficit of resources allocated to this area.

There are also notable economic disparities between these districts and the rest of Sri Lanka. For districts in the Eastern province, the mean household income in 2002/2003 was Rs.7,640 per month with fifty percent of households receiving less than Rs.5,500 per month. In comparison, Kegalle district, which has a mean household income of Rs. 8,342, has the lowest household income for the

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<sup>34</sup> Annual Report 2004, Ministry of Health and Indigenous Medicine, NEPC ([www.nepc.lk](http://www.nepc.lk))

rest of Sri Lanka.<sup>35</sup> Furthermore, the poorest 40 percent of the households in the remainder of Sri Lanka receive less than Rs. 7,050 per month.<sup>36</sup>

The general literacy rates in Batticaloa, Ampara and Trincomalee remain low.<sup>37</sup> In comparison to the rest of the country, however, Ampara has a relatively high level of computer awareness. Batticaloa was among those districts that had the lowest percentage of computer awareness.<sup>38</sup>

These social and economic indicators suggest that substantial and accelerated efforts must be made to improve the social and economic conditions of the population in the eastern province. The Tsunami, and the consequent influx of international aid provides an ideal opportunity to dramatically improve the lives of the people in all the eastern districts. This requires that all agencies entrusted with relief, reconstruction and rehabilitation earmark programmes and projects that will have a direct bearing on improving the long-term social and economic conditions of people living in the province. The central government and donors must give social and economic rights such as the right to health, education, housing and food their immediate attention, not only in the present processes of relief and rehabilitation in the province post conflict and post-Tsunami, but longer term as well.

### **TSUNAMI-RELATED HUMAN RIGHTS ISSUES**

Following the Tsunami, the Eastern Province has seen a massive increase in the number of IDPs. The latest figures reported by the UNHCR show that in Ampara and Batticaloa Conflict IDPs number 24,397; Returnee IDPs number 7,286; and Tsunami IDPs number 156,550. The latter are now either in one of the 96 welfare centres across Batticaloa and Ampara districts, or with friends or relatives. Prior to the Tsunami, there was only 1 welfare centre in Batticaloa district.

In addition, the BBC Reports that “Tsunami victims were demonstrating in front of the Arayampathy District Secretariat on Sunday protesting the dumping of relief stocks by officials.”<sup>39</sup> Journalists had found relief goods meant for IDPs buried in the area, including rice, lentils, milk powder, paracetamol, pain relief balm and canned fish.

There have been allegations that some of the population displaced from the cleared areas are being relocated to un-cleared areas. This may be due to the fact that most of the Tsunami-affected areas are cleared areas, however, in the context of political and civil strife and tension between communities, differences in socio-economic conditions between the cleared and un-cleared areas may make involuntary movement between the two areas another source of tension in the Province.<sup>40</sup>

In the East, government agents and district secretaries are not taking the lead with regard to rehabilitation – rather handing that role to INGOs, leaving (purportedly limited) local knowledge and skill out of the picture. It is reported also that there is considerable pressure on persons displaced by the Tsunami to leave the schools and public buildings where they are housed, resulting in their

<sup>35</sup> **The Household income and expenditure survey**, Conducted in Northern and Eastern Province - 2002/03 Department of Census and Statistics Sri Lanka ([http://www.statistics.gov.lk/poverty/HIES2002-03N\\_EPro.pdf](http://www.statistics.gov.lk/poverty/HIES2002-03N_EPro.pdf))

<sup>36</sup> **Household Income and Expenditure Survey 2002**, Department of Census and Statistics Sri Lanka ([http://www.statistics.gov.lk/poverty/HIES2002\\_DistrictLevel.pdf](http://www.statistics.gov.lk/poverty/HIES2002_DistrictLevel.pdf))

<sup>37</sup> This data was also cited in the 2003 Human Rights Report for the region. The literacy rates are respectively 75%, 68.3% and 79.5%. The Department of Census and Statistics has not conducted a review of the literacy rates since 2001.

<sup>38</sup> Computer Literacy of Sri Lanka, 2004, Department of Census and Statistics (<http://www.statistics.gov.lk/cls2004/>)

<sup>39</sup> BBC Sinhala, 13 March, 2005 - Published 18:58 GMT, *Police attack tsunami protest in East*

<sup>40</sup> Interview: Regional Head of CARE International, Batticaloa.

returning to the sites of their homes pre-Tsunami and rebuilding temporary shelter there. Another major concern raised is that the needs of the population affected by war have been sidelined in the wake of the Tsunami.<sup>41</sup> The human rights concerns related to the aftermath of the Tsunami largely relate to the situation of Internally Displaced Persons (IDPs). It must also be noted that the needs of conflict IDPs have been sidelined through the prioritizing of Tsunami victims. The land question and the tensions between ethnic communities are also exacerbated by the Tsunami.

The Tsunami has also given rise to concerns regarding the civil and political rights of the affected people. In IDP camps, the right to privacy is completely undermined. There is a total lack of privacy, as in several camps men women and children must cohabit in single rooms. This increases the likelihood of violence against women occurring, including domestic violence, sexual harassment and rape. The reissuing of identity cards, birth and death certificates is imperative in order to establish who is entitled to relief as well as to allow IDPs to participate in the political life of the nation. Tsunami-affected communities are still facing difficulties in obtaining their lost documents such as National Identity Cards as well as educational certificates. The Human Rights Commission (as well as the Department for the Registration of Persons and various other government agencies) has been conducting mobile services in the tsunami affected Districts trying to place the process of obtaining these documents on the fast track. Allegations of discrimination in the distribution of relief continue to the present day. The LTTE alleges that although the North and East bore the brunt of the Tsunami, they are not receiving sufficient international aid and relief from the Government. The Muslim community has also expressed strong concerns in this regard. There is a perception that they are being ignored by the central government and the delays in rebuilding and resettlement have added to that sensitivity. With regard to property rights, the 200m buffer zone policy being implemented by the Government in the East raises concerns that the livelihoods of IDPs will be negatively affected.<sup>42</sup> Fishermen in particular, need to be located close to the source of their livelihood in order to sustain it. In addition, there are difficulties with establishing land ownership and with the relocation of IDPs. Several villages are located within the 200m buffer zone, therefore preventing IDPs from returning to them.

### **IDP Camps/Welfare Centres**

The Human Rights Commission visited several camps/welfare centres in Batticaloa and Ampara. There were differences in their size, location, access to amenities, and general comfort levels for those IDPs living there. There was a marked difference between the camps set up in areas near villages, and those in urban areas. Those in villages were smaller, with usually only one community living there, increasing security as everyone present would be familiar. In addition, the smaller camps were run by specific NGOs or INGOs that saw to water and sanitation as well as some psychosocial needs. In contrast, the camps in urban areas were larger, with several communities living in the same space. For example, the Government run Paddy Marketing Board in Batticaloa town has been turned into a large camp hosting 616 people. 157 families live in close proximity to one another, with their cramped living spaces separated by a wooden frame covered with black plastic sheeting. Having been built as a paddy storage warehouse, the inhabited space suffered from poor ventilation and no light. Only 6 toilets for approximately 600 people have been provided causing sanitation to be well under minimum standards of health and hygiene. It is clear that as an urban camp, the Paddy Marketing Board is in

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<sup>41</sup> Tissainayagam, J.S., *Tsunami shows up poverty of northeastern academics and NGO games.*, The Northeastern Monthly (March 2005)

<sup>42</sup> For a detailed account of the problems associated with this, the Centre for Policy Alternatives (CPA) has put out an issues paper on the proposed Coastal Conservation Zone.

abysmal condition. However, not all urban camps are in such a state and the conditions in camps set up in schools as well as more open areas are somewhat better.

The Government of Sri Lanka has allocated subsistence allowances to Tsunami IDPs. These are 175 Rs. a week in dry rations (flour, rice, dahl, sugar, oil), 200 Rs. a week cash allowance. In addition, a monthly payment of 2,500 Rs. is made to individuals, and a monthly payment of 5,000 Rs. made to families of two or more. Along with the subsistence allowances, the Government has provided a one-time payment of 15,000 Rs. for funeral expenses, and a one-time payment of 2,500 Rs. for the purchase of kitchen utensils. The Government is to be commended for the provisions that it has made. There are however some concerns that were brought to the attention of the Commission. In all of the camps visited, the common complaints were that the 2,500/5,000 rupee allowance had only been paid out for two months (January and February). This was a cause of grave concern to many of the IDPs the Commission spoke to, as they still had no livelihood and therefore no alternate form of subsistence. In addition, all of the women expressed concern that the dry rations were always the same, and were not distributed according to need. Rice and flour are distributed in bulk, leading to excess in many instances (which is then sold in some cases), and items such as milk and sugar are not provided in sufficient quantities. There is also a worry that children are not receiving the necessary nutritional foods.

### **Shelter**

A good many months into the post-Tsunami reconstruction process, there are still tens of thousands of Tsunami affected people living as internally displaced in welfare centres and camps. In the Eastern Province, the move from emergency shelters set up in the immediate aftermath of the Tsunami, to transitional shelters and to permanent shelters has been delayed. As aforementioned, there is a large discrepancy between conditions in each camp. The lack of uniformity is due to the *ad hoc* way in which responsibility for camp welfare has been devolved to NGOs and INGOs, each working within their respective means and mandate. On one hand, some agencies have constructed sturdy structures with some provisions for privacy (i.e. a partition will separate a structure into two rooms), and will have toilets and bathing areas a good distance from the shelters. On the other hand, some agencies have constructed cramped structures that do not allow the IDP to live in privacy or dignity. IDPs are therefore still living in accommodation that is well below the standards set by UNHCR. There is thus a need for greater uniformity and the setting of minimum standards in these camps that take into account the inevitable delay in locating land in the East on which to build permanent shelters. The needs of women and children must also be taken into account in the drafting of guidelines. For example, setting up perimeter fencing, insisting on an unlimited power supply in order to maintain a well-lit camp, as well as ensuring privacy within the shelters are all essential criteria in ensuring the security and safety of women.

The delay in locating land for the resettlement of Tsunami IDPs is inevitable when the question of land ownership remains one of the main sources of conflict and tension in the Eastern Province post-Tsunami. All of the inter-ethnic tensions that existed pre-Tsunami in relation to land have been exacerbated by the Tsunami in that the number of displaced has sky-rocketed and the amount of land available for resettlement has decreased partly due to the implementation of the buffer zone, and partly due to what is seen as a reluctance on the part of the central government to allocate build-able land to the Muslim communities. The government is reportedly allocating paddy land for the resettlement of some Muslim communities. This land must be filled in order to be built upon, and if filled, will affect the livelihoods of farmers who have been using it for cultivation. Resettlement of Tsunami IDPs is also complicated by the clear ethnic divides existing in the East. Villages are mostly

ethnically homogenous and it has been expressed that there is unwillingness to upset the ethnic balance of existing communities.

The implementation of the Buffer Zone policy stems from an already existing law. The Coastal Conservation Act 1981 prohibits construction within specified distances from the beach. Despite this, the legality of the blanket implementation of the 100 metre buffer zone in the western and southern provinces and the 200 metre buffer zone in the north and east is questionable.<sup>43</sup> In this regard, the Commission welcomes the establishment of a Buffer Zone Committee under the auspices of TAFREN, which is in the process of reviewing possibilities for exceptions to the policy. Exceptions may include waiving the prohibition to construct within 200 metres of the beach in cases where there is no possibility of building inland due to other natural features such as lagoons.<sup>44</sup>

Well into the reconstruction process, complaints regarding the information gap between what policies are being implemented, and what the internally displaced are notified of, are of grave concern to the Commission. The right to participate in decision-making processes as well as the right of the displaced to be consulted throughout the process of relocation and resettlement are clearly outlined in documents such as the International Covenant on Civil and Political Rights, the Guiding Principles on Internal Displacement, and the UN Comprehensive Guidelines on Development-Based Displacement. The Commission has, however, received consistent complaints that IDPs are not being informed or consulted on when or where they will be relocated and resettled.

## Health

The Ministry of Health is to be commended for its response to the Tsunami disaster. Quick action on its part prevented any major outbreaks of disease, a common occurrence following large natural disasters. Nevertheless, hospitals in the Eastern Province were badly affected by the Tsunami, and are not functioning to their full capacity. In Trincomalee, 3 hospitals were completely destroyed and several other facilities affected. Health services in Ampara have also been significantly disrupted with 6 Hospitals and associated infrastructure including ambulances reported destroyed. The central drug store for the coastal region was also destroyed, therefore drugs have had to be shipped from other regions but remain in short supply. District medical staff is in short supply with only approximately 20% of personnel reporting to work from affected areas. The health services are not likely to be able to meet the short, medium or long-term primary health care needs of those displaced to collective centres. In Batticaloa, the Commission received reports of medical supplies donated and shipped from various sources having already expired by the time they were opened for use. In addition, the Medical Officer of Health (MOH) in Batticaloa has not been making regular visits to camps. This is in contrast to Matara district, where the MOH makes weekly visits to all camps.

A healthy environment and access to clean potable water is necessary for the fulfilment of the right to health. Post-Tsunami, all of the wells in the affected areas have been contaminated with sea water, and must be desalinated. Until that time, relief must include the provision of water. In most cases,

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<sup>43</sup> See publication by INFORM: *Human Rights Issues in the Post-Tsunami Context, Feb 2005* for further analysis.

<sup>44</sup> This is the case in Kalmunai, Ampara District.

Editorial note; In late 2005, the Government announced a revision of the buffer zone, stating that, in the Southern Districts, it will be reduced to 25 - 55 metres while the 200 metre buffer zones introduced in the districts of Ampara, Batticaloa and Jaffna would be reduced up to a minimum of 50 metres. The translation of this government policy into the necessary administrative circulars and regulations thereafter is still unclear.



potable water has been provided by NGOs and INGOs. However, there are some camps that are still suffering from a shortage of water. It should also be noted that there were complaints regarding water contamination in Batticaloa pre-Tsunami as well. In April 2004, the Northeastern Monthly reports that the area's Municipal Council (MC) has done nothing regarding the seepage of seawater into pipelines and domestic wells, contaminating water used for domestic purposes with salt water. The MC is also purportedly responsible for collecting garbage, and has not done so, causing refuse to encroach into water sources.

In Batticaloa, the Commission also came across camps that had been set up on abandoned land where squatters had set up cottage industries making white powder from shells. The fumes created from burning the shells to make the powder are toxic and a health hazard to those IDPs living close by. Should transitional and temporary housing be set up on this same land, the cottage industries must be relocated.

### **Education**

Schools officially resumed classes on January 25. Again, accurate statistics are unavailable for the Eastern Province; however, it appears that attendance has been low in many tsunami-affected areas due to difficulties with the unavailability of transport as well as fear some parents have of losing their children to another Tsunami. Schools also remain ill-equipped to provide the psychological support needed by students and teachers who are survivors of the Tsunami. The Ministry of Education has handed over the reconstruction of schools entirely to the private sector (NGOs and the business community, local and international), and has set up a special unit to monitor the processes of their reconstruction and relocation (in instances where schools must be moved outside of the buffer zone). Despite schools now functioning in affected areas, throughout the East, schools remain occupied by displaced persons, and are therefore functioning simultaneously as schools and homes, leading to student protests. In Ampara District, 12 schools remained occupied by displaced persons in April. In February, in Kinniya (Trincomalee, EP) angry families re-occupied the public school that they had vacated since the resettlement location they were taken to was barren ground with no facilities whatsoever. In Batticaloa, three large schools (Hindu College, Central College and Janaraja Vidyalaya) among others, continued to be occupied by displaced persons. The decision to hold the A Level examinations in August continues to create high levels of anxiety among adults and children. Persons living in Welfare Centres have commonly complained that the environment in the centres is hardly conducive to intensive study and preparation for major public examinations. As in Mandane Camp, Ampara, many of the shelters are close together, causing neighbourhood activities to be a disturbance. In addition, the lack of electricity, the increase in alcohol use and consequent noisy activity, the loss of books and other materials, and the lack of school equipment also makes it difficult for students to manage.

### **Women**

The Tsunami was a natural discriminator in that it claimed the lives of more women and children than of men. Reasons given for why more women died range from cultural to gender specific, and show the lack of protection women face. Many have pointed out that women were unable to run away from the Tsunami because of their long hair and saris getting caught in fences, or because they were trying to cover their nakedness when the Tsunami ripped their clothes from them. Others say that culturally prevalent modesty had nothing to do with why women were not running away, but that women's natural response was to return to a site in order to try and help whoever was still there to escape. Thus, after the first wave, women returned, and were caught unawares by the second wave. Regardless of the reasons, it is clear that more women died. Ampara district is the only one that has produced gender

disaggregated data on deaths and the displaced. According to this one district, 3,677 women died within the Division as compared with 1,926 men.

In the aftermath of the Tsunami, there remain concerns regarding the right to be free from discrimination. In the East, there has been discrimination between war-affected and tsunami-affected IDPs in the allocation of land and relief. Concerns specific to women include discrepancies in the allocation of relief. Women will often collect the food rations allocated on a weekly basis, however, allocation of cash relief is designated for the "head of household" who is defined as the person "who earned income". In practice it is usually the husband who collects this relief, causing problems in some cases where the money may be spent on alcohol, or in the case of separated husbands. In addition, special measures are required for certain groups of women. Muslim widows who practice 'Ida' and are in isolation for four months and ten days have in some cases had difficulties accessing relief. Single women households also require that special measures be taken to ensure that they have access to materials and labour, through for example, six-month loan programs.

It has been observed that in the aftermath of a disaster, there is a tendency for violence against women to increase. In the context of the Tsunami, there were reports of rape in the early days, but no continuing reports. The Commission has heard some complaints of sexual harassment due to the lack of privacy in some camps, with the limited space sometimes leading to touching and teasing at night, or verbal harassment. It has been generally observed that there has been an increase in domestic violence, however, women are generally silent on this issue, and do not want to raise it as a problem. The Commission has nevertheless noted that it does exist, and some cases have been recorded, such as the suicide of a woman in Ampara following regular abuse by her husband. The Commission would like to ensure that a police post be established close to every camp in order that there is some mechanism for these violations to be reported and prevented. In the East, there are potential security problems due to the different political interests in the area. On the one hand, IDPs living in the camps want to have protection from the STF, the army or the police. On the other hand, there has been this dynamic war fought in Sri Lanka that has left tension between the LTTE and the security forces. Camps have in several instances become sites where this tension is played out, with confrontations sometimes taking place between the STF and LTTE. Security therefore becomes a complex operation. For example, the Paddy Marketing Board in Batticaloa had a police post that was removed after an altercation with the LTTE. The camp is now negotiating for a return of the police post.

## **Children**

The biggest problem faced in the East of the Country is that of child recruitment by the LTTE. As outlined above, the incidence of child recruitment continues to be documented by UNICEF. Initial reports stated that IDP populations are more at risk because they have fewer social structures in place to protect them. The cases documented by UNICEF show that there have been only 9 recorded cases of recruitment from the Tsunami welfare centres. However, these are only the recorded number of cases.

The right to education has been severely undermined in the case of IDP children. Often, schools are geographically inaccessible and are too far away for children to attend. In addition, following the Tsunami, those schools that are close enough for children are often still not functioning in a manner conducive to study. As aforementioned, there are concerns regarding the timing of A-levels, and with the continuing occupation of some schools by IDPs.

It must be noted that UNICEF and its partners put emphasis on the need to avoid the institutionalisation of children affected by the Tsunami, and has largely been successful. However,

once resettlement of Tsunami IDPs is underway, the resettlement of Tsunami orphans must be monitored, as the option of institutionalising a child is often given priority over placing the child with relatives or with foster care. Although the intentions behind placing children in institutions may be good, it may not be in the best interests of the child. UNICEF has documented 1019 cases of minors that are unaccompanied, separated, or with one parent. Placement of an orphaned minor (aged 6 to 16) with relatives, or in foster care entitles the caregiver to receive a 'fit person's allowance' under the *Fit Person Ordinance Act*. Following the Tsunami, the criteria for being eligible for the allowance have been relaxed, so that a caregiver can receive the allowance for children under 18 as well. In addition, if the child has lost one parent and the other parent is unable to support the child or is affected mentally, then the caregiver is eligible to take the allowance to support the child. This provision by the government is a positive step towards ensuring the care of orphaned children, but has not been sufficient. The Commission has received reports of children placed with relatives who receive the allowance, but who do not spend the money on the child. This leaves these children in an increasingly vulnerable position where those whom they are dependent upon do not give them the support they are entitled to.

### **ALLEGATIONS AGAINST INGOS**

The Commission would like to recognise Non-Governmental Organisations (NGOs), International Non-Governmental Organisations (INGOs), and International Organisations (IOs) for their vital role in the process of relief, rehabilitation and reconstruction. The Commission had the opportunity to visit and see first hand, the benefits accrued through the work of these organisations. In several camps, these organisations have provided crucial resources such as shelter, water and sanitation to the Tsunami affected IDPs. In addition, recreational activities, nursery schools and community committees among other things have been organised by these organisations, adding to the quality of life of those still living in camps. Keeping in mind the enormous task of these organisations in handling the emergency situation presented to Sri Lanka on 26 December 2004, it is important that support is given to them in their acquisition of large numbers of staff, and increases in responsibility.

The delegation of responsibility is necessary to the proper functioning of and implementation of relief and rehabilitation programmes. With this delegation of responsibility, there is however a danger that the responsibility is misused in some ways that may violate the human rights of individuals. The vulnerability of these individuals means they are dependant on support from aid workers to a large extent. It is imperative that the support given by aid workers at the ground level is appropriate to the social and cultural context, and that the responsibility given to these said workers is not abused in any way. The Commission is aware of a few unfortunate instances where there have been aid workers or volunteers using their access to the welfare centres in order to call in favours from affected persons in return for relief.

The Commission is also aware that the government is delegating a great deal of its functions to international NGOs with regard to housing, health, sanitation and education. In this context there is a need for a monitoring process that ensures equity and the meeting of standards. In order to ensure that all levels of work are carried out in a humane and professional manner, the Commission would like to recommend that a transparent monitoring mechanism be established by the INGOs themselves as a means of self regulation so as to ensure that rights violations at the ground level do not take place. Such a mechanism can also provide for a complaints procedure so that individual complaints can be attended to.

## CONCLUSIONS AND RECOMMENDATIONS

The human rights situation in the Eastern Province has steadily worsened during the course of 2004 and into 2005, with the decrease in stability in the area following Colonel Karuna's defection. The marked increase in political killings and low intensity conflict has negated many of the positive developments following the cease-fire. Factional fighting between the LTTE and Karuna's group has meant that the human security situation is now tenuous. In addition, the advent of the Tsunami has meant that already sub-standard social and economic conditions are now worsened, with thousands of homes and livelihoods destroyed. In this context, pursuing the recommendations made by the Human Rights Commission in 2003 and those outlined below, is a vital factor in restoring peace and stability, as well as minimum social and economic standards to the region.

### *General Recommendations*

1. A human rights agreement between all armed parties given the re-emergence of low-intensity conflict. The agreement should include effective monitoring and implementation of human rights standards through an independent monitoring mechanism. The 2003 report states:

*"The human rights situation in the eastern province involves serious issues of human rights awareness, compliance and enforcement. Given the fact that it is a militarised theatre for armed groups, the framework and enforcement mechanism for human rights must be reconstructed to suit the realities of the eastern as well as northern provinces. It is the Commission's belief that no national or regional human rights entity will be able to effectively monitor and implement human rights standards in the north and the east. No organisation or individual enjoys that kind of universal authority and legitimacy. If a national organization is entrusted with this task it must be with substantial international aid and assistance. The Commission believes that the following course of action should be agreed to by the parties to the peace process.*

- A Human Rights Agreement or Memorandum of Understanding must be agreed to by all parties to the conflict as soon as possible. It must be recalled that many peace processes and agreements have such human rights frameworks and that Ian Martin, human rights advisor, has been entrusted with this task with regard to the Sri Lankan peace process. According to the Hakone Agreement "The parties (to the peace process) asked their international advisor... to develop...the drafting of a Declaration of Human rights and Humanitarian Principles. This would reflect aspects of fundamental international human rights and humanitarian standards, which both parties would undertake to ensure, are respected by their personnel..." This Declaration must be finalized sooner rather than later.
- A monitoring mechanism must be set up which involves substantial international assistance. The monitoring mechanism must have strong and independent investigating wing which is fully trained and competent. Witness protection schemes and victim protection schemes should also be in operation.
- The parties should agree to abide by the Declaration and the decision of the monitoring mechanism. Some punitive or compensation element could be added so that there is a sense that sanctions will operate.
- Any such Declaration should also make provision for human rights training"

These recommendations remain valid in the present context.

1. The Commission also believes that other measures should be taken to ensure security and participation at the provincial level.
  - a. All communities should be involved in discussions aimed at developing administrative arrangements that would strengthen security at the local level. These talks should be facilitated by the SLMM.
  - b. All communities should be involved in discussions relating to security and political participation. The Muslim community feels particularly aggrieved by the lack of involvement in the important decisions that deeply affect the community. The P-TOMS agreement is a case in point. The principle of representation should include all communities and diverse political voices at every level.

### ***Tsunami: - General Recommendations***

#### **Civil and Political Rights**

1. Discrimination between Tsunami affected populations and war affected communities remains a source of conflict and discontent. It is necessary that policies aimed at ameliorating the conditions of the internally displaced who are Tsunami affected should be extended to war affected IDPs.
2. Government agencies and INGOs should ensure the protection of the right to property (including land and housing) without discrimination based on ethnicity, religion, or gender. This includes the provision of temporary shelters and permanent shelters that meet minimum standards provided by UNHCR and the Sphere Guidelines.
3. Measures should be taken to protect women against violence as the Tsunami has seen an increase in alcohol consumption and other factors that have led to an increase in violence against women.
4. Decisions with regard to future plans of reconstruction and rehabilitation should be done in consultation with the affected communities and should not rely on top-down directives.

#### **Social and Economic Rights**

5. The Eastern Province has some of the worst social and economic indicators in the country. The Tsunami provides an opportunity to ameliorate social and economic conditions, given the donor presence and support in the area.
6. Government agencies and NGOs should ensure the right to housing of affected populations. Shelter is an essential right that must be upheld and meet minimum standards. Now that most IDPs are housed in temporary shelters, the government must expedite its process of land identification and allocation for permanent shelters to be built.
7. It is also important to ensure equal enjoyment of the right to education in environments that are conducive to education (for example, some schools have been occupied by IDPs, disrupting children's schooling).

8. The government and donors should give priority to re-establishing the health systems in the Eastern Province in order to protect the right to health and the right to health care. This includes ensuring that IDPs are not placed in areas that are environmentally harmful. The opportunity provided by the reconstruction effort should lead to strengthening hospitals, local level health care and access to pharmaceuticals.
9. The relief provided by the Tsunami has led to what may be termed a “dependency” syndrome on part of some of the recipients. It is important to pursue right to livelihood programmes to ensure that people can take control of their lives and be self sufficient and independent.

#### ***Civil and Political Rights: - Recommendations to the Sri Lankan Government***

1. The increase in the number of checkpoints in the East to meet the present security crisis has led to many allegations of harassment. It is important that those manning the checkpoints are properly trained and speak the language of the people to ensure security with dignity for people of that area.
2. Tamil speaking officers should be present in large numbers in police stations and government offices. This remains a major grievance and it is linked to the deteriorating security situation.
3. The arbitrary deprivation of property through the establishment of high security zones and the use of private buildings is a violation of human rights. If land is to be acquired, individuals should be paid compensation or alternative housing should be given to those deprived of the use of their property.
4. There is a perception of discrimination on the part of the government in its allocation of and distribution of resources to the Eastern Province. This perception is vindicated by the social and economic statistics of the area. It is important that in the context of the Tsunami resource allocation to the eastern province should increase substantially.

#### ***Civil and Political Rights: - Recommendations to the LTTE***

The LTTE has stated on many occasions both nationally and internationally that it is ready to abide by international human rights and humanitarian standards. It is essential that it implement these commitments in the areas under its control.

1. Political killings must come to an end. The right to life is a paramount right and the ceasefire agreement must put an end to all killings that are extra-judicial. Impunity for these crimes must also be put to an end. In this context the Commission welcomes the proposed visit of the UN Special Rapporteur on Extra- Judicial Killings.
2. Child recruitment, re-recruitment (following the defection of Karuna) and child abductions must stop. The recruitment and use of children under the age of fifteen is a war crime. The LTTE should work with UNICEF to end child recruitment, release children, and ensure that they are educated and trained in skills so that they can be absorbed into society. In this regard the

Commission calls for the visit of the Special Representative of the Secretary General on children and armed conflict to ensure that the LTTE complies with its commitments to Mr. Olara Otunno.

3. Adult abductions violate both the right to liberty and security of the person, and the right to family life. These abductions must also cease.
4. Although “official extortion” has seemingly ended, it is apparent that it still occurs in the rare instance. The LTTE should ensure that its cadres do not extort at the local level.

#### ***Civil and Political Rights: - Recommendations to the Karuna Faction***

Although allegations against the Karuna faction are more limited, perhaps due to the difficulties in establishing who the actors are, the split in the LTTE has greatly contributed to the increase in political killings and the general culture of impunity in the Eastern Province. The Karuna faction, in pursuing a strategy of assassination has only heightened tension and increased insecurity, providing an environment where civil and political rights are denied with impunity. It is important that political killings by all parties come to an end.

#### ***Recommendations Regarding Relations with the Muslim Community***

1. Muslim representation in decision-making is absolutely crucial to human rights protection in the Eastern Province. It is important that Muslim concerns be given the highest priority and that the community participate in all political decisions affecting the eastern province.
2. It is important to strengthen Zonal Committees designed to address the distrust and uncertainty existing between different ethnic groups
3. Identification of land for resettlement of Muslims affected by war and/or Tsunami. Within this comes the larger problem of limited Muslim landownership in the East despite their being the majority ethnic group. This is an issue that should come before a Land Commission set up to deal with land issues in the Eastern Province.
4. There is a need to protect Muslim civilians from killings, abductions, threats and harassment.

#### ***Social and Economic Rights:- Recommendations***

As the report indicates, the eastern province has some of the worst social and economic indicators for the whole country. Post-Tsunami, plans for reconstruction and rehabilitation provide an important opportunity to better this situation, and should prioritise the amelioration of social and economic conditions in the province. There should be concerted, well thought out plans in the health, education and housing sectors. Without these comprehensive plans and the resources to carry them through, development in the East under the reconstruction programmes may only exacerbate the situation.

### *Recommendations to INGOs*

Recognising the vital role that INGOs have to play in the relief, rehabilitation and reconstruction process, the Commission would like to recommend that a transparent monitoring mechanism be established by the INGOs themselves as a means of self regulation so as to ensure that rights violations at the ground level do not take place. Such a mechanism can also provide for a complaints procedure so that individual complaints can be attended to.

Dr. Radhika Coomaraswamy  
(Chairperson)

Dr. Deepika Udagama - **Commissioner**

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# ADVOCACY JOURNALISM; ENGAGING THE MEDIA IN HUMAN RIGHTS PROTECTION

*Evans W. Wafula\**

## **Introduction**

Human rights advocacy in Kenya is increasingly benefiting from “advocacy journalism”: a strategy of consciously engaging the media in human rights advocacy to end impunity and help hold perpetrators accountable.

The media is often ignored by organizations championing human rights due to a variety of reasons, including a cultural setting which determines the conduct, performance and language used by such organisations. In contrast, advocacy journalism facilitates advocacy and monitoring of human rights through a constructive engagement with the media. This tactic appreciates that human rights advocacy includes the mobilising of social organizations including the media which, in turn, contributes to the development of a sustainable human rights culture.

Specifically, in Kenya the process has involved sensitizing the media and raising awareness of media and research organizations to understand as to what are human rights; investigate, monitor and report on human rights as their primary role; enable journalists to campaign, advocate and lobby for respect for human rights and democratic decision making; lead and manage effective advocacy journalism and actively sensitize and educate audiences on the processes of democracy.

The strategy involves championing the participation of the people in the democratization process and the preservation of human rights, using successfully field-tested practical approaches such as the utilisation of documentaries, newsletters, weekly media reports, media visits, radio and television debates.

## **Historical Background of Human Rights Protection in Kenya**

Kenya’s political history is replete with violations of human rights and widespread repression. During the colonial period, the administration integrated and institutionalized ‘torture’ as an instrument of disciplining and punishing those opposed to its rule. The post-colonial period witnessed little or no changes in dismantling the institution of torture and violation of human rights. During the period between 1963 and 1991, torture and related violations in the Kenya took many forms. The state directed torture at its critics. Most of the critics were arrested and detained without trial while others were physically eliminated. Many were traumatized and psychologically injured.

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Civil Society Organizations evolved as important and critical agents of change in the 1990s. Many CSOs emerged in order to increase people's knowledge of rights and to articulate grievances of victims of torture.

From the outset, therefore, relations between the government and the civil society was tense. The government saw the civil society and the opposition political parties as synonymous. Civil society, on the other hand, saw the then ruling party (KANU) and the government as representing a vicious continuity rather than democratic change. Accordingly, civil society organizations became more vigilant in their monitoring of the human rights situation while the government became increasingly opposed to the work of human rights organizations. This virtual stalemate continued until December 2002 when a grand coalition of opposition political parties defeated KANU in the general election.

However, the prevalent government which was more open to public policy advocacy and more tolerant to different opinions at the start, is growing insensitive by the day. Indeed, like its predecessor, the administration has become eager to use the oppressive tools of the state including the curtailing of civil liberties and muzzling the press freedom and opposing opinions. The recent attempt by the administration to censor the press through the introduction of new media bills and recent violent attacks on journalists by police needs to be interpreted in this light.

Since the transition period in the early 90s, an increasing number of persons have been subjected to state terrorism. The right to be free from torture is enshrined in chapter V of the Constitution of Kenya Section 74(1) provides that no one shall be subjected to torture or to cruel, inhuman, or degrading treatment and punishment. The Police Act Section 14A (2) provides that no police officer shall subject any person to torture or any other cruel, inhuman or degrading treatment. Section 14A (3) of the Act makes it an offence for any police officer to contravene the provisions of section 14A. However, though such barbaric practices are prohibited in theory, they are resorted to very frequently by police officers in the exercise of their powers.

From another perspective, the country entered a new media dispensation with the entry into power of a new democratic coalition government charged with a historic responsibility. This, in turn, led to a liberalised media culture (particularly the liberalization of the airwaves) which has seen many newcomers, among them broadcasting stations and a proliferation of newsheets and magazines, which provide an alternative source of news in Kenya. The purveying of news has become a more active process, involving therein the very future of democracy, human rights and the rule of law.

Liberalization also changed the terrain formerly enjoyed by the government-owned media. The rapid emergence of privately owned media, particularly, the rural press, which is mostly in the vernacular, was an important part of this transformation. By this, rural communities were, at least, granted a wider choice of what they want to listen or read. The new vernacular press scenario provided an exciting and sometimes a legitimately confusing scenario to its readers hitherto accustomed to the staid conservatism of the state propaganda machinery that was rabidly critical of views opposing their line of thought.

### **Training the Media in Human Rights Advocacy through a Participatory Approach - Organisations involved in Advocacy Journalism in Kenya**

One organisation using the tactic of advocacy journalism in the country is the Africa Journalist Commission on Human Rights (CHRJ) which was founded in 2003 at a workshop facilitated by the Independent Medico-Legal Unit (IMLU) to encourage the participation of the media in human rights advocacy. The CHRJ seeks to document the many cases of torture and related human rights violations

that continue to face inaccurate reporting in the mainstream media and often suffers from the absence of public policy advocacy.

The CHRJ has been involved with documenting cases of human rights violation, including monitoring places of detention through regular media visits and documenting the victims or eye witness accounts that is often used as a form of direct evidence necessary for prosecuting perpetrators of human rights abuses. It uses the media to document first hand evidence extracted from the victims and other eye-witnesses which is then used to advocate for policy change

Another such organisation is the Independent Medico-Legal Unit (IMLU). For the past two years, the IMLU has conducted a total of 52 press interviews, issued 21 press releases and published 110 articles on a range of torture related-issues to enhance and promote the grasping and understanding of the environment under which the country operated from. The articles inspired and generated public opinion and debate on the subject of torture and related human rights violations.

In July 2004, a journalist from the British Broadcasting Corporation (BBC) visited the IMLU and in November 2004, the Mail and Guardian of South Africa also covered the launched of IMLU's bi-annual torture report in 2003 and the Inter Press Services (IPS) also covered IMLU in its round of Africa features. IMLU also received media prominence in the All Africa News.Com, a pan African online news agency. The local Nation and KTN TVs conducted interviews on torture for their news bulletins. Kameme FM, Shoro FM and Family Media both hosted IMLU on talk shows that were aired live and included call-in audiences.

IMLU also designed, packaged and produced numerous professional informative, educative, communication and promotional materials. The *2003 and 2004 IMLU's Annual Reports* published and distributed to readers in more than 70 countries and a number of torture-treatment-centers globally. In the region, these reports have become extremely important in the documentation of the prevalence of torture and related human rights violations and how advocacy journalism impacts on human rights practice.

The capacity of the media to investigate, monitor and report torture and related human rights violations as critical to advocacy journalism was realized: the use of the media in human rights advocacy using practical approaches were used to the extent that the role of the media became critical to the realization of a human rights culture and partnership. Advocacy journalism was hence developed and strengthened towards providing a base from which progress towards establishing a mechanism for informed change can be measured.<sup>1</sup>

### **Using the Private Media for Advocacy Journalism**

The privately owned media includes the likes of *Kameme fm* (a privately-owned vernacular radio station with a predominately Kikuyu audience), *Shoro fm* (a state-owned vernacular radio station also

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<sup>1</sup> Two media training workshops were organised for selected journalists by the IMLU together with the Kenya Union of Journalists in 2003 and 2004 respectively. The themes of these workshops were "Media in Transition and its role in upholding Human Rights." A media human rights committee was established during one media workshop organized by IMLU at Machakos on 31<sup>st</sup> January 2004.

Currently the African Journalist Commission on Human Rights (CHRJ) has been registered as a trust by a group of journalists who wish to promote advocacy journalism against human rights violations. CHRJ continues to offer technical advice to a number of NGOs working in the entire East and Central Africa regions. Mainstream professional journalists representing reputed correspondents in the region head this vibrant group.

broadcasting in Kikuyu), *Radio Ramogi* (a privately-owned vernacular radio station broadcasting in Luo) and *Murembe fm* (a privately-owned vernacular radio station broadcasting in Luhya). Using such media, CHRJ organized a series of vernacular 'Talk Shows' to educate the rural communities on human rights. The alternative print media; i.e. *Citizens Weekly*, *Kenya Confidential*, *Faith Daily*, *The Independent*, and *The Post* among others, was also used for this purpose.

The process involved the following sequence of events. First, an advocacy officer arranges a series of meetings with various news reporters and editors and shares with them the concept of advocacy journalism as a participatory strategy and introduces them to the various case studies and findings being investigated by groups and networks working on civil and political rights issues. He/she provides the media with available information in regard to the alleged violations (the victims names, addresses, telephone numbers, and the circumstantial report-usually a signed statement of account).

The news reporter/editor prepares a questionnaire which is then discussed with the government official or custodial official who has direct or vicarious authority in regard to the alleged violation. The case is then put for discussion before the people, through the visual and/or broadcast and/print media. The reporter writes a newspaper article or airs a television documentary or runs a radio commentary, making it imperative for the allegations to be investigated and the perpetrator to be prosecuted or released from all charges after adequate investigation.

However, some of the main obstacles impeding this strategy have been inadequate circulation of the rural press, financial shortfalls, manpower shortages, failure to meet deadlines, overworked reporters, a hostile political environment and inadequate training. Despite these constraints, the rural press has now become an important part of the process in encouraging civic awareness and participation in civic engagement.

The advocacy strategy applied may vary from case to case and from one situation to the other. Once a case is reported to CHRJ, it is looked into by the concerned programme officers who will analyze the intervention strategies depending on a needs assessment and then refer it to the relevant officer for action. For those cases that represent urgent advocacy intervention, all possible circumstantial evidence on the situation of the case is collected and a response is formulated. At times, CHRJ may be forced to launch formal complains on behalf of the victim or his relatives to the Kenya National Commission on Human Rights (KNCHR) which is a statutory body with powers to independently investigate complaints and make the necessary recommendations.

When it is absolutely necessary that a case require advocacy intervention for possible litigation, the advocacy strategy will usually determine the impact of the case and influence the outcome in the case. For example, if the police fail to act on a complaint brought before them, advocacy journalism may be a practical and effective strategy. Once willful obstruction on the part of the police is proven, journalists then engage in following-up on the case. They contact interviews and record all circumstantial details from witnesses and question the perpetrator. Such findings would be made public: usually this triggers public debate which impacts positively on policy change.

### **The case of Kimani Njoroge**

Kimani Njoroge, a 17-year old street boy was shot and arrested by police reservists from the dreaded crimes prevention squad commonly known as the flying squad on allegations that he had violently robbed him of watch, leather jacket while armed with a pocketknife. He was taken into custody and was repeatedly tortured. For five days, his friends and relatives looked for him in vain and were often subjected to harassment and intimidation by police officers at the Central police station. After five

days of torture and negligence, the case was reported to IMLU and we made an appeal through the media to trace his whereabouts.

## **Investigations**

The media later published Kimani's ordeal in the newspapers calling for the police to release Kimani. The Nairobi Provincial Police Officer (PPO) replied and affirmed that Kimani Njoroge was in the custody of the police despite an earlier denial by the police at the Central police station that Kimani Njoroge was in their custody.

IMLU responded by visiting the police station in the company of journalists and doctors and were denied access. Together with a team of journalists, we camped outside the entrance of the police station thereby witnessing the police sneaking Kimani Njoroge out of the station and thereafter taking him to the Kenyatta National Hospital. We followed the police convoy to the hospital and managed to get an interview with Kimani Njoroge at the hospital. He complained of blindness. This was confirmed by the doctors who treated him, who stated that he had been shot through his left eye. However, the pathetic condition of his health and his tender years did not deter the police from charging him the following day for violent robbery, a crime that incurs severe penalties in Kenya.

## **Using Advocacy journalism to unveil the case**

Advocacy journalism was critical since the case had attracted the attention of the media and we maintained a linkage with particular court reporters who followed up the court proceedings and continued adding pressure on the police through consistent news coverage and analysis. After eighteen months of the court case, Kimani was acquitted for lack of sufficient evidence to warrant a conviction. In his ruling, the trial judge accused the police of fabricating evidence against Kimani Njoroge.

The outcome of the case warranted IMLU to make a formal complain on behalf of Kimani Njoroge for arbitrary shooting and for torture while in custody. We applied for the issuance of a P3 form which is the basic form required to make a complaint of this nature. When he went to the police, he was denied the P3 form making it difficult for us to launch complaints against the police reservists responsible for his ill treatment. The police denied Kimani the right to record a statement on the alleged torture while in police custody

IMLU wrote a formal complaint letter to the Commissioner of Police and to the Attorney General demanding the arrest and prosecution of the reservists who shot and tortured Kimani. In his reply, the Attorney General, through the Director of Public Prosecution (DPP), referred the case to the Director of Criminal Investigations (CID). IMLU and CHRJ decided to engage the media again to follow-up the case. A team of journalists accompanied Kimani again to the Central Police station without identifying themselves. However, they were turned away again. This prompted the journalists to publish a newspaper report on the plight of obtaining a P3 form from the police which, in turn, sparked a public debate in regard to the conduct of the police. This forced the Commissioner of Police to order the disbandment of the Kenya Police Reserve and direct the commencement of an investigation into the incident at the Central Police Station. Kimani Njoroge was eventually issued with a P3 form and has commenced the journey for legal justice.

## **Advocacy Journalism as part of Mass Communications**

Journalism is a most loosely defined concept in advocacy and communication. It is sometimes restricted to newspaper staff, sometimes broadcasting staff in newsrooms and current affairs departments while, at other times, it also encompasses a variety of persons who write in as 'stringers' or 'freelancers'. It is proper to define its scope at the outset while also defining other key concepts that propel the media and its argument for effective policy engagement.

Its important to note that public policy advocacy includes all efforts to influence public policy through various forms of persuasive communication. Public policy includes statements, policies or prevailing practices imposed by those in authority to guide or control institutional, community and sometimes-individual behavior.

Advocacy as a concept can apply to mass media. Journalism is defined as a work of writing, editing or publishing daily newspapers and other periodicals. The liberalised media scene in Kenya has transformed a hitherto stagnant media paradigm. Indeed with new developments where print media establishments have expanded into the radio and television scene, the latter has upstaged the former in terms of prominence and recognition. The speed of electronic media in Kenya has robbed the print media of its attention-catching, story-breaking monopoly. Hence, it has proven to be the most attention-catching medium of mass communication suitable for advocacy journalism.

Advocacy Journalism must therefore be located in its broader definition and content as encompassing all mass media, as well as the work of communications practitioners, human rights organizations, political parties and community based organizations. It has engaged the 'silent ones' and facilitated their utterance so that all others shall hear.

Advocacy journalism, in this context, becomes larger than journalism. Other media activities are involved. Leaflets, newsletters, photo stories, cartoon series, talk shows, hand posters; the community media news paper or magazine, the documentary-drama on film or on video, the poster, the audio feature, the advocacy advert recorded and played back on public address systems, the news bulletins in community radio have all become useful tools in this context. Decentralized mass media (part of community group and arena media) has been successfully used for this purpose.

The use of e-mail and Internet has also been vital in this process. Different groups involved in advocacy journalism have been able to relay information collected by each other and thus facilitate lobbying, picketing, reaction press conferences and other desirable advocacy techniques.

### **Practical Approach and Training**

In Kenya, apart from routine reporting on general issues in the media, there had never been any concreted or deliberate effort by media professionals and media houses to incorporate the human rights discourse as part of their main agenda. The media ought to train, equip and sensitize professionals particularly those in the rural areas on matters relating to the same.

Through regular media trainings that we organized; mainly targeting the rural correspondents who work in the rural areas where financial constraints and lack of access to information hinders participation of the community making it most vulnerable, we strove to overcome these obstacles.

## **Tested Results**

If advocacy journalism is a matter of need then it is also a matter of want; whichever may be the case, it remains a fundamental right of individuals to enjoy access to the media as well as their right to know, often through communication channels that champion their course.

There are, of course, strongly opposed economic, cultural and political or ideological interests, which the mass media addresses. For this reason, no print or electronic media can enjoy the total support of all in a society. What pleases one may necessarily displease the other. However, the collective public interest in the function of advocacy journalism is benefited due to the key roles played by the media in advocacy. The public in turn, is the collective beneficiaries of advocacy journalism.

This new tactic projects the various dimensions of advocacy journalism in Kenya. It is intended to stand out as a professional assessment undertaken by professional media and advocacy groups actively involved in human rights advocacy and monitoring.

Why then, this focus on media and advocacy journalism, research and monitoring, one may ask? Professional advocacy journalism operates within a cultural setting, which determines professional accountability, conduct, ethics and performance. The norms and values of a society impact on the operation of the media in different ways. It is also acknowledged that a cultural setting includes social organizations and processes, which strengthen or even weaken societal cohesion. The dependence of the human rights movement on mass media advocacy to secure their political status and influence public policy advocacy is strategic in seeking visibility for their campaigns.

For all, including the state, the society, various audiences and professionals, quality performance of the media is vital. This new tactic seeks to address the quality and performance of human rights advocacy in this regard.

## **Conclusion**

Engaging the media in advocacy journalism ('to advocate for human rights') is a relatively new concept in professional media communication in Kenya.

As discussed above, the specific objective of this process has been to raise awareness among media organizations to understand as to what are human rights, to investigate, monitor and report on human rights violations, to enable media to campaign, advocate and lobby for respect of human rights and foster development or enhance democratic consciousness, to promote constitutional jurisprudence and accountable administration of justice, raise media awareness concerning its role and purpose in transition democratic in Kenya and to confront impunity and public apathy about the prevalence of human rights abuse.

The results of this strategy have been remarkable. Using this tactic has significantly transformed the country's media culture and improved media performance and perceptions on democracy and human rights. The media has commenced researching, monitoring and reporting on human rights violations as part of its editorial agenda, encouraged public participation in campaigning, advocacy and lobbying, engaged the media fraternity to advance advocacy journalism and monitoring of human rights. The tactic of advocacy journalism has contributed to the development of a sustainable media culture which fosters respect for human rights, human dignity and enhances democratic consciousness in Kenya.

If basic concerns of human rights and democracy are ignored in the new emerging democratic dispensation witnessed in Kenya, it will undoubtedly be injurious to the country. The articulation of new methods of advocacy journalism, values and ends in monitoring, investigation and reporting human rights abuses should be at the core of new advocacy strategies.

As the human rights movement continues, it is important for activists to keep identifying and defining their tactics. Media that is sensitive to change offers a critical service to the people. Advocacy journalism should aim at a genuine and strategic participatory approach in this regard rather than offering token homage to human rights.



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