

# **LST REVIEW**

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## **REMEMBERING THE TSUNAMI; OUTSTANDING PROBLEMS AFFECTING THE VICTIMS**

**LAW & SOCIETY TRUST**

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Law & Society Trust,  
3, Kynsey Terrace, Colombo 8  
Sri Lanka.  
Tel: 2691228, 2684845 Telefax: 2686843  
e-mail: [lst@eureka.lk](mailto:lst@eureka.lk)  
Website: <http://www.lawandsocietytrust.org>

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

December 2005 marks a tragic remembering of a natural disaster that engulfed coastal areas in this country as well as other countries in the region with devastating force.

Twelve months later, we have much to lament despite the spontaneous outpouring of aid and assistance both domestically and overseas. Thousands of tsunami victims still lack food and permanent shelter. During 2005, protests in relation to the inequitable distribution of tsunami aid were evidenced from every part of the country. We saw documented instances of aid being delivered to unscrupulous middlemen who took the supplies for their own use or sold them for profit.

Reams were written not only about the inadequacies of the government machinery utilised purportedly in the aid of tsunami victims and the corruption manifested in the process but also in regard to the equally corrupt interventions made by international aid actors as well as newly sprung community groups and non governmental organisations.

This was, of course, not an unusual phenomenon. Disaster experts have long examined similar phenomena in other countries stricken by natural disasters. Unfortunately, solutions proposed for the mitigation of such obscenely unprincipled processes have been confined to theory rather than manifested in practical terms. In the default thereof, ordinary people continue to suffer manifold miseries.

From a general perspective, data emerging from the tsunami affected regions in both India and Sri Lanka suggest that continuing problems faced by the enormous numbers of displaced persons in both countries are remarkably similar.

In both countries, adherence to the full implementation of the UN Guiding Principles on Internal Displacement (which apply not only to individuals displaced by armed conflict but also by natural disasters) was not adequately manifested. These principles stipulate a number of standards, including the provision of internally displaced persons with an adequate standard of living which would mean a minimal ensuring of safe access to essential food and potable water, basic shelter and housing, appropriate clothing and essential medical services and sanitation.

The Guiding Principles also mandate governments to provide aid on a non-discriminatory basis and to take "special efforts ... to ensure the full participation of women in the planning and distribution of these basic supplies." They specify that "internally displaced persons, such as children, especially unaccompanied minors, expectant mothers, mothers with young children, female heads of household, persons with disabilities and elderly persons, shall be entitled to protection and assistance required by their condition and to treatment which takes into account their special conditions."

Importantly, the Principles impose the condition that displaced persons must be able to make free and informed individual decisions about where they are required to settle permanently. Affected persons should therefore receive accurate, timely information regarding this choice.

Measured from this standpoint, recovery efforts in the South Asian sub-continent have not been trouble free. Insofar as India is concerned, as the New York based Human Rights Watch (HRW) pointed out in a recent report 'After the Deluge: India's Reconstruction Following the 2004 Tsunami', several systemic and potentially enduring failures have plagued recovery efforts in the affected Indian states.

While HRW applauded the Indian government's overall response to the tsunami, it found that government recovery efforts did not adequately take into account the needs of different vulnerable segments of the affected population, particularly women, children, the disabled, Dalits (so-called untouchables) and tribal groups.

The research highlighted severe defects in design and management of the temporary settlements and the shelters being provided to the displaced persons. Many displaced persons interviewed during the study had complained that the settlements, whether built by the government or NGOs, were uncomfortable, overcrowded and without adequate privacy. Some complained that there were not enough toilet facilities. Many of them left homeless by the tsunami had chosen to forego the offer of government shelter.

Other conclusions in the HRW report are also relevant for Sri Lanka. The report pointed to the problems manifested in the recovery effort in protecting the livelihood of people without assets such as wage labourers or tenant farmers, inadequate transparency and consultation with community groups, which will be crucial to successful long-term relocation of displaced people and development of coastal land and problems in compensating people who had either lost title to their property or who lacked proper title because they resided on unused government land.

The Indian government has also stated that it will strictly implement the Coastal Zone Regulations, the principal legislation governing land use along India's coasts, which mandate that there should be no new human habitation within 500 meters of the coast.

The objective, like in the case of Sri Lanka, was to create a buffer zone along the coast to protect the environment. This has had a predictable negative impact on thousands of families in those areas now in danger of eviction and of not obtaining inadequate compensation, as they do not possess titles to their damaged properties. These persons are now in danger of being coerced to leave their properties. Alternately, they may not be provided with financial support for reconstruction.

All these are problems evidenced in Sri Lanka as well. Indian public interest litigation groups are now taking matters of resettlement, land and housing to court

in efforts to obtain some justice for the victims. The sharing of experiences and the forging of common bonds among committed Indian and Sri Lankan lawyers and activists, may afford one way to bring both governments to account for the implementation of a recovery plan that takes the rights of the displaced persons far more substantively to account than what is evidenced now.

The Review publishes three comprehensive papers outlining outstanding concerns in Sri Lanka in the post-tsunami period. The first paper contains a series of proposals emerging from a people's planning process initiated by grassroots activist networks with the objective of taking into account, people's concerns in the post tsunami planning processes.

The second paper by two senior staffers of an internationally reputed advocacy group on housing and land rights, discusses international human rights standards in the context of displacement. The concluding paper which is an academic publication, is re-published in the Review due to requests by readers to have its incisive critique of the concerns facing the tsunami displaced in Sri Lanka made accessible to them.

It is hoped that serious discussions towards initiating a rights-related recovery process may be spurred to greater vigour by the perspectives offered in these papers.

*Kishali Pinto-Jayawardena*



# **Report of the People's Planning Commission (PPC) for Recovery after the Tsunami<sup>1</sup>**

## **Introduction - Background to the People's Planning Commission (PPC)**

The tsunami was the biggest natural disaster in the history of Sri Lanka, taking 40,000 lives, displacing over 500,000 people and destroying their livelihoods/possessions. The solidarity and support offered by individuals and groups both locally and internationally to the affected persons enabling them to recover and rebuild the destroyed lives, was also the most extensive effort that the world had seen in recent years.

However, the manner in which the Government of Sri Lanka dealt with the rehabilitation of the affected areas raised issues of crucial importance for the people here and in other affected countries. These concerns were studied and discussed by people's organisations, both at international conferences within and outside Sri Lanka and highlighted in several people's campaigns and protest actions in Sri Lanka. The concerns have also been shared among people of Sri Lanka and in other countries with those individuals and organisations that generously contributed to the recovery effort.

These issues are now being taken up in several countries such as UK, Belgium, Germany, Netherlands, Canada and New Zealand. Actions for justice for tsunami victims have taken place in several such countries.

Some of these concerns are summarised below.

### ***Who should be planning the recovery process?***

The Government handed over control of the design and implementation of the post-tsunami recovery process to the Task Force to Rebuild the Nation (TAFREN) comprising solely of major business leaders and major operators in the tourism industry, with no representation of the expertise of the affected people and sectors of society and economy such as the small-scale coastal fishing communities.

Meanwhile, International Financial Institutions (IFI) such as the World Bank (WB) and Asian Development Bank (ADB), and 'donor' agencies from countries such as the US, Japan and EU, retained their influence in setting the overall agenda through their parallel 'needs assessment' processes and at 'donor meetings' such as the Development Forum in Kandy in May where funding decisions were made.

As usual, there was only extremely limited and very selective participation of 'civil society organisations' in these processes. News reports at one point that the World Bank will be put in charge of the Tsunami Trust Fund were also alarming.

### ***What were the intentions and objectives of the planners?***

The plans prepared in these donor driven processes include the document 'Rebuilding the Tsunami Affected Area' with an estimated cost of \$1.5 billion, completed by 13<sup>th</sup> January 2005 or within 10

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<sup>1</sup>Extracts of the PPC Report dated 29<sup>th</sup> December 2005. Presented to the Government of Sri Lanka in January, 2006

days of the appointment, 'Rebuilding Sri Lanka' of \$1.8 billion completed in March, 'Post-Tsunami Recovery and Reconstruction Strategy' of \$2.1 billion submitted to the 'donor meetings' in Geneva in early May and at the Sri Lanka Development Forum in Kandy in mid-May. It was announced after these meetings that the planners were by then intending to spend over \$3 billion.

However, some questions are pertinent at this point. Do these donor driven recovery efforts really intend to help the recovery of the affected people and to rebuild their lives and livelihoods? Are they actually attempting to make use of the opportunity afforded by the most calamitous natural disaster to strike our shores in decades and the generous donations of the people across the world to build a 'nation that would meet the aspirations and dreams of a 21<sup>st</sup> century, modernised society' as mentioned in the TAFREN documents?

These questions have drawn the attention of all concerned people since what is already manifested on the ground in these disaster stricken areas show that the efforts are intended to benefit only a few rich individuals and businesses. Further, such a goal will only be achieved through a process of further marginalisation and displacement of the affected coastal fisher population and a massive process of destruction of their livelihoods. In these circumstances, women will continue to bear the brunt of meeting survival needs.

The Tourism Master Plan now announced says 'in a cruel twist of fate, [tsunami] has presented Sri Lanka with a unique opportunity [to become] a world class tourism destination'. As a result, these proposals for post-tsunami rebuilding have been referred to in many places as 'another tsunami' or 'another disaster'.

Eminent researchers into present trends of utilising reconstruction after disaster, whether natural such as tsunami or man-made like the war in Iraq, for capitalist expansion have described this process as 'Disaster Capitalism'.

### *What is the ideology behind the plans?*

International financial institutions, the 'donor' agencies, the government and businesses strongly believe that building the economy of the nation, reducing poverty and also recovering from disasters such as the war and those created by previous policy decisions is only possible by first achieving faster economic growth that would then 'trickle down' to ordinary people.

But it is undisputed that emergencies need urgent responses. The after effects of the tsunami were responded to on an emergency footing by all parties concerned as seen by the massive contributions raised in various countries by individuals and organisations that were delivered to the country on condition that they be utilised rapidly. These resources were meant to relieve and rebuild the affected people. Although the short term targets have created certain problems in handling the delivery of assistance, the principle of directly addressing the urgent and recovery needs of the affected people remains extremely valid.

This approach is in direct conflict with the 'growth strategy' which, in any event, has not worked in Sri Lanka for twenty eight years. It is well known and proven through long experience that this theory leads to further worsening of the situation of the poor. Even the proponents of the strategy admit that this would be the case in the short term. But in Sri Lanka this process of increasing poverty for greater accumulation of profit has been the case for twenty eight long years and no "trickle down" effect or poverty reduction result has so far been achieved.



in the official needs assessment for tsunami rebuilding, it has been clearly stated that the poor were the most affected. However, the post-tsunami rebuilding plans have been formulated exactly to achieve greater and faster economic growth by assisting the process of profit accumulation by the rich businesses. A major share of the resources has been allocated for this purpose, pushing out the requirements of the people affected by tsunami and those still victims of previous disasters such as the war. This becomes very clear when looking at the proposals that have been included in the plans, such as:

- Pushing the fisher people inland to make the beaches available for the expansion of tourism (real purpose of the 'buffer zone').
- Proposed construction of 15 new large-scale tourism development zones, making the revival of the livelihoods of small-scale fisher people almost impossible and even their relocation uncertain.
- Revival of the strategy of introducing large-scale industrial fishing and its encouragement through the development of fisheries harbours. Proposed acceptance of decommissioned fishing vessels from the EU (which would have been destroyed to get over the problem of over-capacity in the EU industry) to be donated as 'tsunami aid'.
- Resurgence of the proposed building of motorways, including a new highway from Matara to Batticaloa (to be funded by the EU), in addition to the 4 motorways proposed earlier. The claim that these highways are to benefit the small fishers and rural farmers is questionable.
- Proposed building of modernised townships along the entire west, south and eastern districts could lead to a further displacement of the poor, small scale fisher communities. This is clear in the plans where rebuilding of 80,000 fisher people's houses to replace their destroyed houses have been included separately from the planned 62 townships (12 large, 20 medium sized and 30 smaller townships, all with modern facilities) targeting a separate group of 200,000 beneficiaries, who are not likely to be the affected poor.

#### *What other elements of the previous economic policy have been included?*

This approach of integrating the post-tsunami process with the previous development policies becomes even clearer when it is seen that the entire package of the 'Regaining Sri Lanka' strategy of 2003 has now been revived, even after it had been summarily rejected by the people in the 2004 elections.

The formulation of the National Water Resources Policy for the privatisation of water has been expedited (a new draft was presented in the Cabinet on 30<sup>th</sup> December 2004, just four days after the tsunami; a condition and time target set by the ADB) and the building of infrastructure to attract water companies has been included as reconstruction of tsunami-affected water supply systems. These water infrastructure development projects are an expansion of the proposals in the 'Regaining Sri Lanka' plans, where it was clearly stated that this infrastructure development would result in attracting foreign water companies. An earlier attempt to introduce a 'Water Services Reform Bill' to invite private sector water marketing in urban and rural areas had been defeated and withdrawn due to public protest.

The selling of the Eppawela Phosphate Deposit to foreign companies, a plan that had been withdrawn under huge public protests over four years and after a decision of the Supreme Court, was announced shortly after tsunami. Similarly, the other privatisation proposals such as that of the Electricity Board and Petroleum Corporation have been expedited. Other proposals that have been revived include the building of thermal and hydro power plants.

A Land Titling Policy to create a 'free land market' designed to expedite the rural small-scale farmers selling their land and migrating into urban areas is still being pursued and it is a central element in the overall policy package. 'Regaining Sri Lanka' makes an assessment that this rural to urban migration would result in a massive increase in the urban population from 30 to 50 % and a parallel reduction in the rural population from the present 70% to 50 % by the year 2015.

### *The Concept of a People's Process*

The above situation indicates an essential and urgent need to devise an effective strategy for ensuring that the process of recovery is designed and carried out to genuinely meet the pressing and long-term needs of the affected people.

Since the tsunami has generated such large amounts of assistance, it could also contribute towards better disaster preparedness and the prevention of disasters such as droughts, cyclones and so on through the improvement of coastal conservation and ecological improvement, improvement of the livelihoods of people affected by the tsunami and those prone to suffer other disasters.

The opportunity if utilised for the proper purposes should be for improving fishing livelihoods, access to and quality of food, health, sanitation, education and social life. This should be accomplished by adhering to the principle that resources generated for victims should belong to them and should benefit them based on their wishes and plans.

### *Monitoring implementation is insufficient*

Although it is widely recognised that the process of implementation at the ground level should involve and be monitored by civil society, it is clear from what has already been said that this is not enough, and that what is needed is participation at the very highest levels of policy and planning.

What generally happens in a disaster situation and what has happened after the tsunami is that the affected people are treated as and therefore see themselves as helpless recipients. The agencies involved in raising funds, as well as the agencies at the implementation or delivery level, tend to have the same understanding, with the same image of the affected people as victims and themselves as benevolent helpers.

### *Using local potential is essential*

These agencies may also tend to look at how best to achieve 'efficiency' in the delivery of their relief, which often obliges them to work according to the plans made by the official authorities. Governments as well as the private sector, profit motivated agencies, look at the benefits they could get from the situation and from their involvement. For instance large constructions are given to private builders, even where local people, including the affected communities could undertake some of these tasks such as repairing and building boats, houses and other facilities. Local raw material could also be utilised in some cases. Some Non Governmental Organizations (NGO) have already started housing construction programmes using labour and even materials from outside the district. This will certainly give rise to further tensions when there is already a reserve labour force locally that is waiting to start their livelihoods.

Meeting the food relief needs is another area where local potential could have been utilised very effectively. This is an area where serious attention should be given even in the mid- and long-term rebuilding approaches, as it would benefit the poorer sections of society such as the small-scale

domestic food producers and consumers who would be encouraged to have culturally acceptable, more nutritious food, possibly with lower expenditure.

### *Task of raising awareness and organising*

A strategy of building a People's Process must first work towards giving the affected people the understanding that it is their 'right' to have not only immediate relief but also a process of rehabilitation that is appropriate and would lead to a meaningful rebuilding of their lives and livelihoods. The resources that have been generated through the generosity of the people or by utilising taxpayers' money in various countries or through loans obtained by the government have been raised in their name and therefore belong to them. They have a right to know the extent of these resources. They also have a right to decide and plan how these resources have to be utilised.

The work of the People's Planning Commission must therefore ensure that the people are made aware and also sufficiently organised to both demand their rights and to work out their own proposals meaningfully and systematically. In some cases, women who have had traditional rights to land are being forced to forfeit their traditional land rights to male members - 'head of household'.

### *Task of building alliances*

There is a need to build alliances between the affected people and organisations that genuinely represent them, the organisations in the country that work as intermediaries and the people who generously contributed towards the recovery and well being of the affected people. This includes the people's organisations and movements in the country as well as the very large group of people outside Sri Lanka.

The process of building these alliances should be based on sound analysis of the situation and a critical understanding of the attempts made by the 'powers' that have vested interests and other agenda, such as those that have been explained so far. In order to do this in the countries that are 'donors' there need to be organisations and agencies that work with the people who contributed to the recovery effort and also inform and influence decisions in the respective countries. Such organisations with credibility have to be carefully identified. Agencies in such countries should be invited and challenged to play this role.

This role is a responsibility of all agencies that raise people's contributions. It is an important aspect of the responsibility of being answerable and accountable.

It is very important to break the present monopoly that has been acquired by the international financial institutions as the only informers and guides of the 'donor' governments. Direct access by the organisations of the affected people to the contributors and lending agencies has to be established through such networks.

### *Task of research and information gathering*

The task of research and information gathering to understand and analyse the present processes and situation as well as to gather and bring together alternatives that are emerging is also extremely important. Information gathering and research should be guided by the right perspectives and should ultimately play the role of assisting the affected people, (the rightful 'owners' of the process and therefore, those who have the final right to decide on the plans). It is important to actively engage

with women from the affected communities in this process. Suitable organisations and groups that can undertake the tasks of research and information have to be identified.

A list of research areas has to be elaborated further once the process is running, but initial ideas are as follows.

*a) Official processes*

It has been announced by TAFREN and the Government that the post-tsunami rebuilding processes would be integrated with the previous plans that existed for 'development of the country'. The name 'Task Force to Rebuild the Nation' itself indicates this intention. It is therefore essential to study whether these previous plans meet the requirements and interests of rebuilding the lives and livelihoods of the affected people or whether they would go against such interests.

In this connection, some questions are outstanding: Who formulated the plans? Were they competent to do so? Who appointed them and how? Was sufficient consultation evidenced in the process? These questions should also be raised publicly from the relevant authorities, in the name of openness, transparency and the right of people to know.

It would be useful to study the similarities or differences between the post-tsunami rebuilding strategies and plans and the 'Regaining Sri Lanka' plans particularly since the present government was elected on the promise that it would not continue the same plans and strategies.

What was the involvement of the World Bank, International Monetary Fund (IMF) and Asian Development Bank in the formulation of the post-tsunami rebuilding strategy and plans? This is important since the 'Regaining Sri Lanka' plans approved and adopted by the previous donors meeting in Tokyo in June 2003 was the basis of commitment of loans (of \$4.5 billion). There was unhappiness and concern of the IFIs and the donors that the new Government was not fully committed to carry out those previous plans.

Are the construction of expressways and other infrastructure such as new townships, water and power schemes etc really related to meeting the needs of affected people or the needs of poverty reduction as claimed by the planners?

It is very important to compare the recommendations made in the recently completed study of the WB and ADB about 'Improving the Investment climate in urban and rural areas in Sri Lanka' with proposals in the post-tsunami rebuilding strategy and the strategy for economic development in the country. Who benefits and what are their implications in regard to the tsunami affected people and the rest of the poor in the country?

The fact that TAFREN comprised of the most powerful agents of tourism was already referred to earlier. The World Tourism Organisation (WTO) was invited to provide expert advice on the issue of the buffer zone. Their recommendation was to establish a 'Green Belt' to be used by the tourists for their leisure and pleasure. Is this the best way to use the beaches from the point of view of the needs of the coastal population and their livelihoods?

What are the implications of the proposed development of tourism zones? The Tourism Master Plan is something that had existed before the tsunami. What were the decision-making processes that resulted in the inclusion of these plans in the post-tsunami plans? To what extent would this lead to

subsidising the big tourist industry and diverting the resources generated in the name of tsunami victims?

It would be a useful exercise to study how much more could be provided to improve the tsunami victims if the resources allocated for these massive tourist facilities such as \$80 million for **the** Arugam Bay zone alone are used for this purpose. The fisher people, still in temporary shelters and suffering poor conditions of the quality of life, have a right to know these facts.

The employment generating potential of tourism should be compared with the potential for improving new livelihoods, quality of life and also potential for alternative livelihood generation if these resources are used.

#### *b) Alternative strategies*

It is necessary to study alternatives in land, livelihoods, housing, disaster prevention or preparedness and ecology. The questions to be studied in the above areas must be elaborated and the expertise available in the country and outside to do this work from a people's perspective as against a private business perspective, identified.

An issue of urgent and serious concern is the trends that are already existing to encourage the poor, small fishers and other coastal people to give up or sell out extremely valuable beach and coastal land, some times in exchange for alternative much less valued land. There could also be moves to give people loans taking this land as collateral by banks or by individual lenders.

The inherent right of coastal people to the coastal land and their traditional livelihood resources of the sea should be protected. This area should be studied.

#### *c) Conflict issues*

The Post-Tsunami Operational Management System (P-TOMS) agreed in June 2005 between the Government and the LTTE was, in some ways, seen as a positive step. First, it was a move towards ensuring the equitable distribution of official aid between affected people in Government- and LTTE-controlled areas, particularly important given that many affected people have suffered the effects not only of tsunami but also of over twenty years of war. Secondly, it strengthened acceptance of the principle that affected people themselves must decide on the use of official aid in their own areas, although the agreement as it stands does not assure that this would happen in practice, with indications to the contrary, for example the marginalisation of the Muslim community in the process, and the dominance of the World Bank in the structure. Thirdly, it was a continuation of the necessary efforts to bringing the LTTE into mainstream politics that began with the signing of the Cease Fire Agreement (CFA) in 2002, by bringing them into an administrative arrangement with the Government.

However, the actual plans to be carried out as well as the structures set up both in the North and East as well as in the South need to be studied much more carefully to see if they would lead to a process of conflict resolution or would actually further aggravate the conflicts and create new potentials for conflicts both in the North and East and in the South, for example if they aggravate the present form of lack of access of affected people to resources, livelihoods and land.

It must be recognised that the basis for social and political conflict in the North and East as well as those that arose in the South was largely in the deprivation of the people of their right to access and

decide on the use of their resources and in the large socio-economic and political disparities created by such suppression of rights.

### **Formation of the Peoples Planning Commission (PPC)**

The People's Planning Commission for Recovery after the Tsunami (PPC) was set up in October 2005, after an intense process of study and dialogue. It comprised a group of respected scientists, scholars and professionals in diverse fields working in a volunteer capacity.<sup>2</sup>

For the purpose of consultations, most of the tsunami affected areas were visited by various Commissioners, in addition to areas where people had been long displaced by the war and areas where people affected by the war were again hit by the tsunami. The PPC included a number of international observers who volunteered to assist. The PPC also studied several reports of the situation and proposals made by diverse organisations that are working with the affected people. These reports cover both the tsunami affected people along the Western and Southern coasts as well as those affected by the war and the tsunami on the Eastern and Northern coasts.

The main objective of the PPC was to establish that the plans for recovery and rebuilding after the disaster needed to have the input of the affected people, and that these plans should be worked out to meet their interests primarily. The people affected by the disaster should be the "owners" of the process and the decision makers. The PPC critically studied the consequences of not having applied this principle, and on the basis of its findings, tried to make recommendations and develop guidelines regarding the processes that must be followed in order to work out such a "People's Plan." It is hoped that the findings and recommendations of this Commission would assist the government to rethink and reformulate strategies and structures that would remedy the weaknesses in the previous plans.

It is also hoped that the PPC process would assist those who so generously contributed towards the recovery process, those people and organisations within the country as well as the international agencies (INGOs), governments and civil organisations, to fulfil their expectations and responsibilities by helping the affected people justly and effectively.

During the last three months the PPC engaged itself in the initial steps towards setting up a genuine "People's Plan." Certainly, the process has not yet been completed. What is presented here is a summary of the essential elements of this report for consideration by the "Jaya Lanka" programme that was officially inaugurated by the government on December 26, 2005.

Accordingly, the PPC recommends that the following key principles should guide the process of recovery and rebuilding.

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<sup>2</sup>Academics Prof. Sriyananda, Prof. Ms. Sitralega Maunaguru, Prof. Navaratnarajah, Dr. Lionel Weerakoon, Dr. Gamini Kulatunga, Prof. Soosai Anandan, engineer Mr. D.L.O. Mendis, health sector professional Dr. Balasubramaniam, lawyer/media columnist Kishali Pinto-Jayawardena, lawyer Basil Fernando and President's Counsel and law academic Dr. Jayantha de Almeida Guneratne. The Commissioners worked on a vounteer basis between September-December 2005. The PPC was aided by foreign resource personnel Ms. Jean Lambert (UK - Member of the European Parliament representing London for the Green Party), Mr. Thomas Kocherry (India - Permanent Representative at the World Forum of Fisher People, Executive Committee, Member of the India National Fishworkers' Forum and Convenor of the India National Alliance of People's Movements), Prof. Francois Houtart (Belgium - Director of Centre Tricontinental), Prof. Shanmugaratnam (Norway - Head of Research at the Department of International Environment and Development Studies of the Norwegian University of Life Sciences) and Ms. Stefania Bianchi (Belgium - media columnist)

## Key principles and policies

1. The right to plan and make decisions regarding the process of recovery and rebuilding lives, living conditions and livelihoods of people affected by disaster (both the tsunami and the war), lies with the affected people themselves.
2. The affected people are the “rightful owners” of all resources that were donated or raised as loans, allocated by various agencies such as INGOs or international institutions, for the purpose of recovery.
3. Therefore, they have the right to know how much money (donations or loans) was received, by whom, how and under what conditionalities. What proposals exist for the use of such resources? This concerns not only the lower levels of plan implementation and relief delivery but also higher levels such as “Planning for Rebuilding the Nation.”
4. Arrangements and structures have to be set up to ensure that such information is available, and that affected people and representatives of their organisations participate in decision-making at all levels.
5. Among those affected by the tsunami were people in the North and East, who were displaced by war and were living in temporary shelters and camps for as long as 20 years. Thus they were victims of two serious disasters. It was clearly the desire of the generous donors within as well as outside the country, to contribute to the recovery and rebuilding of lives of these people who were affected by the natural disaster and the “man-made” disaster. Therefore it is essential that these people be treated equally or even given higher priority and greater attention.
6. The structures set up for planning, recovery and rebuilding should be carefully designed to ensure that they would facilitate a “people-planned process,” and should not be bodies that assume that the victims / affected people are merely “helpless receivers” of anything given from “above.”
7. The resources received for relief and rebuilding after the tsunami were much greater than relief received for any previous disaster. Some of it was given to be used in government programmes, and some to be used in addition to governmental programmes. Some were loans obtained by the government and some were resources raised by non-governmental agencies. These resources should be used for improvement of lives and living conditions of those affected. Who decides on the use of these resources is a question of crucial importance. The biggest mistakes have been made in deciding who should decide on the allocation and use of these resources. We see this as the most important error to be corrected. This mistake is being made both at higher levels of decision making and at district and community levels.

Some examples of such mistakes are listed below to illustrate that the only way to correct them and to avoid further mistakes is by setting up structures that include “organised representation” of affected people.

- i. In some areas there are complaints about the way relief assistance is distributed, the way beneficiaries have been chosen.
- ii. There are problems regarding resettlement, locations, land allocations, distribution of assistance for restarting livelihoods, etc.
- iii. There is a need to rethink the relief packages decided on by the government (such as the Rs. 375 worth of food per week per person, Rs 5,000 per family for household expenditure for the first three months only, amount to be allocated for a housing unit, who should receive these grants - is it the owner of the house or should not the tenants also receive these allocations?) What is the basis of decisions regarding the quantities of relief and periods for granting these?

- iv. There are serious discrepancies between the relief allocations given to tsunami-displaced people and war-displaced people, who have lived in camps for very long periods:
- v. The bigger questions regarding plans arise from the major decisions that have been taken by TAFREN and the government:

The major problematic decisions can be summarized as follows:

- Declaration of the Buffer Zone, which prevented coastal people from going back to their former locations while permitting and even encouraging the tourism industry to repair and restart business. There was a decision to relax the buffer zone in some areas when it was seen that this decision would have implications for the outcome of the presidential election. There is a lot of uncertainty and lack of clarity on this issue even now (after one year).
- As a result of this decision a large number of people are threatened with long term displacement in what are described as “transitory houses.”
- These decisions have resulted in the people losing some of their very important rights about deciding where the families and communities want to resettle, what kind of arrangements they would like to have to ensure security and protection from future disasters, where the fisher communities would want to arrange and rebuild their settlements to suit their livelihoods, their inherent right to use the beaches and the resources of the sea.
- The main reason for these mistakes is the assumption that disaster-affected people are just “helpless recipients” who will depend on what ever assistance is given. They are not looked upon as those who can decide on what is needed or as capable of planning and deciding on how rebuilding should be done.  
This error is very clearly visible in the government and TAFREN plans and structures at both national and local levels. It is also seen in the international aid agencies, INGOs and local NGOs. While such an approach may have been unavoidable during the first few days or weeks of emergency, it is certainly not acceptable for as long a period as one year.

This “top-down” approach is a flaw in the structures of decision making and planning. Therefore it is not enough to merely present a statement of principles such as “participatory processes” and “consultation with people” in the documents. It is necessary to work out different structures that would permit the actual application of these principles at local, district and national levels.

### **An integrated holistic vision of rebuilding**

It is essential to rethink the overall approach for recovery and rebuilding. Some major decisions and the way these decisions were made have to be reconsidered.

For instance, the decisions taken by TAFREN and the government and subsequently endorsed by the aid agencies, the multilateral financial institutions and other large scale donors have to be reconsidered. TAFREN stated that the “tsunami has provided an opportunity for rebuilding the nation to meet the 21<sup>st</sup> century dreams of a modernised society.” It is true that any rebuilding after a disaster should be designed to meet the present and future needs. But whose dreams are we trying to achieve? What are the consequences of a process that realises the dreams of a limited group of elite? Are the dreams of the tsunami-affected people the same as the dreams of a small group of already privileged people?



The Sri Lanka Tourist Board, when it incorporated the Master Plan for Tourism Development that had been formulated many years ago (in 1993) into the new rebuilding plans after the tsunami, said that “in a cruel turn of fate, Sri Lanka has been provided an opportunity to become a world class tourist destination.” It is very clear that what this statement means, is that over 500,000 fisher people who have been engaged in beach-based fishing will be pushed out of their livelihoods.

The vision of development assumed by TAFREN has resulted in including many existing plans such as those for modernised townships, highways, large industrial fishing harbours, infrastructure development for tourism etc. These proposals are part of an overall strategy of “reducing poverty through faster growth and trickle down.” In Sri Lanka this strategy has been attempted for two decades without success and has come up against a lot of resistance from people, particularly the poor, including tsunami-affected fisher people, since the experience of this strategy has been very painful to them.

The adoption of such a strategy for recovery and rebuilding is a decision taken at the top, by proponents of neo-liberal economic reforms without any consultation with the people, particularly the “rightful decision makers” in the recovery process.

It is irrational to apply a “growth trickle down” model of development for a process of recovery in an emergency. This “growth trickle down” strategy is based on the assumption that the short term and direct benefits go to the rich, who are seen as the “engine of growth.” In Sri Lanka this is even less acceptable since this “growth” with no “trickle down” has taken place over the last twenty seven years. No “trickle down” effect can be expected in the short-term either.

### **Summary**

1. Structures have to be set up at community, district or sub-district level, for affected communities to undertake organised planning and decision-making.
2. Modalities need to be worked out to ensure that there is majority representation of affected people’s organisations in the bodies that make decisions, particularly planning decisions taken at higher levels – to ensure that major decisions are not taken without consultation.
3. The PPC process should be extended and strengthened by formation of a network of grassroots organisations, beginning with groups that have already participated in the PPC process. To be effectively representative this network should be much wider.
4. At present the bigger NGOs and INGOs are invited to participate in decision making by the regional / district level government structures. The NGOs must therefore facilitate the formation of community and higher level planning committees of the people.
5. Such organisations should have access to all relevant information as discussed so far.

Proposals on issues such as those given below are discussed in more detail in the annexed documents. It is important to note that the Commission did not have the time or opportunity to go into detail on location-specific proposals. The organisational structures suggested above need to be adopted as a mechanism for such detailed planning, making the distinction between short, middle and long term reconstruction.

## Conclusions and Proposals

### *Short and middle range reconstruction*

The difference between short and middle range reconstruction can only be established on a case-by-case basis in each region, through a process of consultation with the people concerned. The following proposals are the result of the hearings of the PPC.

#### 1. Land allocation and resettlement

In view of the existing difficulties, definitive limits of the buffer zone have to be established taking into account the particular situation in each area. Exceptional measures will have to be taken for reconstruction within the buffer zone. A clear definition of land ownership is necessary for the zones of resettlement, with clear principles for compensation. The fitness for construction must be well assured. The rights of renters should also be taken into account.

#### 2. Housing

Because of the urgency, the acceleration of permanent houses is a priority, together with the improvement of the still provisional shelters. Special attention has to be given to adequate facilities for water, electricity, sewage, etc. People's participation in the planning and in the construction of houses is central to success. Cooperatives and social housing schemes should be encouraged.

#### 3. Livelihood

For the fishing communities, the most affected by the tsunami, compensation for lost material should be given where such compensation has not yet been given. The reorganization of fishing activities, already well advanced, will be complete with a revision of the adequacy of the boats, of the various types of equipment and of the anchorage. The protection of fishing gear in the buffer zones is also envisaged. Ice plants and sales centres should be established in adequate number and locations. Training for new technology and credit facilities will be organized.

For small business and self-employment, training, credit and marketing requirements should be taken into account. With regard to peasant farmers' paddy fields, special attention should be given to land destroyed by salt water.

#### 4. Services

Adequate water, electricity and sewage systems have not yet been provided. Accessibility to health clinics needs to be improved. Psychological assistance to children should be a priority. Accessibility to schools has to be improved. Banks' demands for repayment of loans, and taxes on the purchase of boats are issues that need attention. Public service institutions need to pay attention to loss of documents, corruption and discrimination and also encourage better coordination with NGOs.

#### 5. Coastal conservation and flood control

Even in the short term, measures can be taken to plant trees, restore mangroves, protect corals and sand dunes and fill potholes.

## 6. People's participation

All these measures should be taken with organized people's participation, along the lines of existing experiences and associations.

### *Long term reconstruction*

The PPC agrees with the necessity for a long term reconstruction plan for the people's benefit. This means that development should not be simply equated with economic growth calculated on the basis of GNP. It requires poverty eradication and not alleviation, decrease of inequalities and creation of activities for all. It means also that the wellbeing of every person has to be assured by collective action of society, and that improved economic activity has to be achieved primarily through a people's approach and not a predominantly technocratic approach (not to speak of an exclusive preoccupation with producing exchange value). With this in mind the PPC proposes the following orientations.

### **Economic activities**

- 1) Improvement of small fisheries through adequate harbours, boats, equipment, shelters, ice plants, training, credit facilities and marketing. This should be organized by local boards with fishermen's participation and governmental agencies to regulate the market, first for local consumption first and second for export.
- 2) Improvement of small scale agriculture for the benefit of peasants, by the development of ecologically sound agricultural practices, the selection of seeds, the rational use of irrigation water, training, credit facilities and marketing. This should be organised by boards with peasant participation and governmental agencies, to regulate the market primarily in favour of local consumption.
- 3) Improvement of small business, handicrafts and self-employment through training, credit facilities, marketing, creation of cooperatives, promotion of local market and of export of products specific to the country.
- 4) Increasing the role of worker's organizations in regulatory bodies of the State.

### **Housing and land allocation**

- 1) To develop a long term perspective, adequate land has to be identified outside the buffer zones for the construction of houses that meet required standards with good collective facilities (water, electricity, draining systems).
- 2) This should be done with local participation in order to develop small and middle-size towns, based on cooperative ownership of property and with public housing policies.

### **Services**

- 1) Improved mobility through improvement of existing highways and local roads and streets; modernization and expansion of railways and creation of a national bus system.
- 2) Public services should be improved, keeping in mind the national character of forests, natural resources, water and electricity and revising the privatization of communications, petroleum, etc.
- 3) National budgets for health and education to be increased, leaving only a subsidiary and state-controlled function for the non-profit private sector.

- 4) Improvement of facilities for local tourism through training and credit facilities; improvement of existing international tourist resorts as point of departure for further expansion, according to international demand, using local resources as much as possible.

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#### **List of Organizations Endorsing the Objectives of the PPC**

List of Organisation involved in the setting up of the PPC involved Paradise Community Development Organization, Kegalle, Savistri Women's Organization, Athulkotte, Gemi Sarana Maha Sangamaya, Hingurakgoda, Uva Wellassa Farmer Women Organization, Monaragala, South Fisheries Organization, Galle, South Fisheries Organization, Matara, Rajarata Jana Prabodini Foundation, Kekirawa, Madiyugam Organization, Nuwaraeliya, United Negambo Lagoon Fisherman's Organization, Negambo, Central Board of Disabled Persons, Bandarawela, Arunodaya Maha Sangamaya, Medirigiriya, Sri Vimukthi Women's Organization, Negambo, Kalutara District Fisherman's Solidarity, Kalutara, Potuvil District Fisherman's Solidarity, Potuvil, Puttalam District Fisherman's Solidarity, Puttalam, Praja Shakthi Foundation, Kaluwaragaswewa, Kurunegala Community Liberation Group, Kurunegala, Future in Our Hand Organization, Badulla, Uva Podujana Movement, Bandarawela, Government Factories Employee Union, Kollonnawa, Women's Bank, Borella, Association against the Outer Colombo Circular Highway, Colombo, Pesale Fisheries Cooperative Union, Pesale, Shramabhimani Kendraya, Seeduwa, Arunodaye Parisarikayo, Mabodale, Saviya Development Foundation, Galle, Uva Human Development Foundation, Badulla, Uva Shakthi Foundation, Passara, Praja Shakthi Development Foundation, Peliyagoda, Migrant Service Foundation, Dehiwala, Anti Imperialist People's Organization, Hatton, Cultural Science Training and Research Institute, Hatton, Praja Diriya Foundation, Puttalam, Center for the protection of Community Resources, Monaragala, Center for Family Relief Services, Kurunegala, Udarata Community Action Center, Dikoya, Research Action for the Community Development, Puttalam, Bakthi Prabodanaya, Colombo 10, Uva Farmers' Development Foundation, Monaragala, Uva Forum for the Building of Sustainable Peace and Prosperity, Monaragala, Janawaboda Kendraya, Negambo, Sathyodaya, Kandy, Women's Development Foundation, Kurunegala, Alternative People's Health Action, Kandy, People's Health Forum, Colombo, Trade Union Center for Rebuilding the Country, Colombo, Organization for the Human Development, Polpithigama, Peasant Information Center, Kurunegala, Organization of Parents and Family Members of Disappeared, Hambantota, Organization for the Protection of Human Rights of Tsunami Victims, Hambantota, Devesarana Development Center, Kurunegala, Government Nursing Officers' Association, Colombo 10, Community Development Center, Mulleriyawa, Child Rehabilitation Center, Ampara, United Community Development Foundation, Kalutara North, Organization against the Colombo – Kandy Highway, Women's Development Center, Kandy, Cooperative Women's Society, Dewanagala, Eastern United Women's Organization, Kantale, Sri Lanka Human Resources Development Foundation, Badulla, Organization of the victims of Colombo – Kandy Highway, Fisheries Cooperatives Society, Nachchaduwa, National Farmers' Assembly, Alliance for the Protection of National Resources and Human Rights, Movement for the Protection of Indigenous Seeds, Anuradhapura, Nachchaduwa Fisheries' Cooperative Society, Nachchaduwa, Plantation Women Development Foundation, Watthegama, All Ceylon United Labor Congress, Lanka Samasamaja Party, Matara District Samurdi Officers' Association, Nature Team, Trincomalee, Association of path Finders, Batticloa, Consotium Humantation Forum, Jaffna, Pulse Sri Lanka, Ragama, Hearts -Social Welfare Development Source, Social Institute for Development of Plantation sector ( SIDPS), United Plantation Action – Hatton, Workers Development Center – Maskeliya, Ceylon Plantation Worker's Red Flag Union, Migrant Collective – Nugegoda, Civil Forum Plantation Sector – Hatton, Institute of Social Development, United Welfare Organization – Nawalapitiya, Community Development Foundation - Vantharumoolai, Rural & community Development Co-operation, Centre for Housing Rights and Evictions, (COHRE), Colombo

# The Right to Return, Resettlement and Restitution after the Tsunami Disaster

*Malcolm Langford & Bret Thiele*<sup>1</sup>

*“The provision of relief to the victims of natural disasters is an essential role of government in a democratic state, and government would have failed in its duty to the victims of the floods, if it had done nothing.”*

Constitutional Court of South Africa<sup>2</sup>

## Introduction

The Tsunami disaster dealt a double blow to the housing rights of poor coastal dwellers in South and Southeast Asia. Not only did it complicate or render impossible their return to affected areas where livelihoods, housing and infrastructure had been destroyed, the poor security of tenure for those residents wishing to return has left them vulnerable to *constructive* forced eviction.

One may find constructive eviction in numerous situations: in armed conflict where armed forces and groups prevent return; where the previous site was an informal settlement; where the area has been declared uninhabitable by local authorities or land owners allegedly for safety reasons; or where discriminatory laws and practices obstruct certain groups, for example women, ethnic minorities or indigenous peoples, from claiming their legal rights to housing and land. Reports of groups being prevented from returning to their previous homes emerged remarkably quickly after the Tsunami had struck. This has continued despite reports of villagers returning home.

The poverty and vulnerability of those affected makes it difficult for them to assert their right to return where it is legally possible. Likewise, the right to adequate settlement will not be realised by simple pledges and delivery of aid and assistance but will require an active respect for the rights of community participation and a transparent and accountable process.<sup>3</sup> This legal note analyses the relevant human rights, with a particular focus on jurisprudence, contained in international human rights treaties ratified by the affected countries as well as by many donor countries, and by extension international financial institutions.<sup>4</sup> The principles may also be relevant to non-state actors such as humanitarian organizations

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<sup>1</sup> Malcolm Langford is Senior Legal Officer and Bret Thiele is Coordinator, ESC Rights Litigation Programme for the Center on Housing Rights and Evictions (COHRE). COHRE has offices in several countries including Geneva, USA and Colombo.

<sup>2</sup> *Minister of Public Works and Others v Kyalami Ridge Environmental Association and Others* 2001 (7) BCLR 652 (CC).

<sup>3</sup> See *Tsunami Recovery – a 15-point plan for meeting the immediate and longer-term needs of the communities affected*, IDN Statement by UK Professionals, 28 January 2005 and Centre on Housing Rights & Evictions, *Protecting Housing Rights after the Tsunami*, Statement, 31 January 2005.

<sup>4</sup> The International Law Commission, in the provisionally adopted articles on the Responsibility of International Organizations, states in Article 1 that the said articles do indeed apply to the international responsibility of States for the internationally wrongful act of an international organization. Furthermore, the provisionally adopted Article 3 states, *inter alia*, that an internationally wrongful act has occurred “when conduct consisting of an action or omission: (a) is attributable to the international organizations under international law; and (b) constitutes a breach of an international obligation.” For additional arguments that the World Bank and the International Monetary Fund are indirectly bound by the human rights obligations of its members see Bret Thiele and Mayra Gómez, ‘Suing the World Bank: The Chixoy Dam Case,’ in John Squires, Malcolm Langford and Bret Thiele (eds.) *The Road to a Remedy: Current Issues in the Litigation of Economic, Social and Cultural Rights*, Sydney: University of NSW Press, 2005; see also Mac Darrow, *Between Light and Shadow: The World Bank, The International Monetary Fund and International Human Rights Law* (Hart Publishing, 2003). It is also arguable that some human rights have passed into the corpus of international customary law which binds the international financial institutions due to their international personality.

operating in the areas. International humanitarian law, particularly Additional Protocol II to the Geneva Conventions, which is relevant to the conflicts in Sri Lanka and Aceh Province is relevant but will not be considered.

## Right to Return

### *Pinheiro Principles*<sup>5</sup>

Everyone has the right to be protected against being arbitrarily displaced from her or his home, land or place of habitual residence.<sup>6</sup> States shall allow refugees and displaced persons who wish to return voluntarily to their former homes, lands or places of habitual residence to do so.<sup>7</sup>

All refugees and displaced persons have the right to return voluntarily to their former homes, lands or places of habitual residence - in safety and dignity.<sup>8</sup> Voluntary return in safety and dignity must be based on a free, informed, individual choice.<sup>9</sup> Refugees and displaced persons should be provided with complete, objective, up-to-date and accurate information, including on physical, material and legal safety issues in countries or places of origin.<sup>10</sup>

However, refugees and displaced persons shall not be forced, or otherwise coerced, either directly or indirectly, to return to their former homes, lands or places of habitual residence.<sup>11</sup> Refugees and displaced persons should be able to effectively pursue durable solutions to displacement other than return, if they so wish, without prejudicing their right to the restitution of their housing, land and property.<sup>12</sup>

### *Freedom to choose a residence*

Prevention of return may in some circumstances violate the freedom to choose a residence within the territory of a state. Sri Lanka, Thailand and India have ratified the International Covenant on Civil and Political Rights (ICCPR), which protects this right in Article 12. Indonesia has ratified the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) that prohibits discriminatory interference with the right, and is therefore potentially relevant in Aceh.<sup>13</sup>

The Human Rights Committee has commented on the right to freely choose one's residence as follows:

*Subject to the provisions of article 12, paragraph 3, the right to reside in a place of one's choice within the territory includes protection against all forms of forced internal displacement. It also precludes preventing the entry or stay of persons in a defined part of the territory.*<sup>14</sup>

Therefore, any restriction on the right of persons to choose a place to reside is a *prima facie* violation of the ICCPR. A State must turn to paragraph 3 of the article and prove that the restriction is contained in

<sup>5</sup> The *Pinheiro Principles* are formally known as the United Nations Principles on Housing and Property Restitution for Refugees and Other Displaced Persons, UN Doc. E/CN.4/Sub.2/2005/17 (28 June 2005).

<sup>6</sup> *Id.*, Principle 5(1).

<sup>7</sup> *Id.*, Principle 10(2).

<sup>8</sup> *Id.*, Principle 10(1).

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*, Principle 10(3).

<sup>12</sup> *Id.*

<sup>13</sup> Indonesia subsequently ratified the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights in 2005.

<sup>14</sup> Human Rights Committee, *General Comment No. 27: Freedom of movement, (Article 12)* (1999) at para. 7.

law and is justified, for example to protect public order or public health.<sup>15</sup> Restrictive measures must conform to the principle of proportionality; they must be appropriate to achieve their protective function; they must be the least intrusive instrument amongst those which might achieve the desired result; and they must be proportionate to the interest to be protected.<sup>16</sup>

This test of proportionality means that the State would have to take into account the right and the need for housing (see below) before imposing restrictions on the right to return to an affected area. Therefore, before a government imposes safety measures that prevent residents from returning to near the beachfront – for example the buffer zones imposed in some areas – there must be justification that such a system is the least restrictive means of achieving a pressing social need. In other words, that other safety measures are not available – for example warning systems, dykes, platforms – and that residents will be free to reside elsewhere, and in the case of the rights discussed below, that any relocation provides for adequate resettlement and is planned and implemented in genuine consultation with affected persons.

This right was successfully invoked in a number of cases, although these do not concern post-disaster situations. A Berlin Administrative Court struck down an order by the Commissioner of Police that a Turkish national, with a work permit dating back 15 years, was prohibited from specifically living in the districts of Kreuzberg, Tiergarten or Wedding.<sup>17</sup> The Constitutional Courts of Belarus<sup>18</sup> and Russia<sup>19</sup> have ruled that temporary absences from a home do not justify a denial of the right to maintain the dwelling, even if such denial is provided for in legislation.

### *Respect for the home*

The right to respect for the home is likewise contained in the ICCPR<sup>20</sup> and its content has been the subject of significant jurisprudence by the European Court of Human Rights. Home has been defined on the basis of occupancy rather than proprietary interest. A home is the place in which a person lives on a settled basis, which implies a degree of stability and continuity.<sup>21</sup> A structure constructed informally, but for residential purposes, would therefore fall within the reach of this right. The Court has ruled that informal structures do constitute homes – for example, caravans on land without planning permission – and that any interference with such a home must be proportional and pursue a legitimate aim in accordance with the European Convention on Human Rights. Any interruption with occupancy – even for a long period – will not necessarily affect this right.<sup>22</sup> Moreover, the right extends beyond the principal resident to all occupiers, including partners, children, relatives and lodgers, which may be important if the principal resident died in the disaster or refuses to return.<sup>23</sup>

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<sup>15</sup> The full text of Article 12(3) reads ‘The above-mentioned rights shall not be subject to any restrictions except those which are provided by law, are necessary to protect national security, public order (ordre public), public health or morals or the rights and freedoms of others, and are consistent with the other rights recognized in the present Covenant.’

<sup>16</sup> General Comment No. 27, *supra* note 4 at para.14.

<sup>17</sup> Berlin Administrative Court (VwG Berlin), Decision of 26 August 1977, (1978) *Neue Juristische Wochenschrift* 68; (1977) *Yearbook* 747.

<sup>18</sup> Decision No. J-38/96 of the Constitutional Court of Belarus, 25 June 1996, (1996) *Bulletin on Constitutional Court Case-Law* 191.

<sup>19</sup> Decision of the Constitutional Court of Russia, 23 June 1995, *Rossiyskaya Gazeta*, 04.07.95, (1995) 2 *Bulletin on Constitutional Case-Law* 191.

<sup>20</sup> Article 17(1) reads ‘No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation.’ [Emphasis added].

<sup>21</sup> *Wiggins v U.K.* (1978) 13 DR 40.

<sup>22</sup> *Gillow v United Kingdom* (1986) Series A no 109; 11 EHRR 335.

<sup>23</sup> (1998) 26 EHRR CD 212.

### *Right to secure tenure*

The right to housing under the International Covenant on Economic, Social and Cultural Rights (ICESCR) has been interpreted by the monitoring Committee to ground an immediate right to secure tenure and a corresponding protection against forced eviction.<sup>24</sup> The Covenant has been ratified by Sri Lanka, India and Thailand while Indonesia<sup>25</sup> and Maldives have ratified the Convention on the Rights of the Child, which contains a similar protection with respect to children. Security of tenure has been interpreted by the Committee to include all forms of tenure, including informal settlements and tenancies.

Where the right to housing is justiciable, this interpretation has been confirmed in case law. The South African Constitutional Court has stated:

*The indignity suffered as a result of evictions from homes, forced removals and the relocation to land often wholly inadequate for housing needs has to be replaced with a system in which the state must strive to provide access to adequate housing for all and, where that exists, refrain from permitting people to be removed unless it can be justified.*<sup>26</sup>

Therefore, any removal of residents from informal settlements that are occupied – even if disturbed temporarily for other reasons – must be fully justified. Moreover, there is a State obligation to protect residents from other actors interfering with security of tenure as *SERAC v Nigeria* makes clear.<sup>27</sup>

### *Right to non-discrimination*

Some residents may be prevented from returning for reasons of discrimination, for example on the basis of ethnicity or sex. This is clearly proscribed under various conventions including ICCPR, ICERD and Convention on the Elimination of all forms of Discrimination Against Women (CEDAW). If property laws, or practices, are biased against women, for example, then surviving spouses may find it more difficult to secure the former property on which they lived. For instance, in *Daniels v Campbell NO & Ors*<sup>28</sup> the Constitutional Court of South Africa found that it was unreasonable to exclude Muslim marriages from inheritance laws and thereby deny surviving spouses the right to property.

### **Right to adequate resettlement**

In many coastal areas, return may not be feasible. In many cases, residents may not wish to return for socio-economic reasons, for example the loss of livelihoods and the salinisation of groundwater supplies, or fear of another tsunami. In other cases, the decision may have been imposed on them by others as described above. In such circumstances, what are the human rights obligations of States, particularly when resources are limited although heavily supplemented by local and international support?

<sup>24</sup> See United Nations Committee on Economic, Social and Cultural Rights, *General Comment No. 4, The right to adequate housing (Art. 11 (1) of the Covenant)* (1991); United Nations Committee on Economic, Social and Cultural Rights, *General Comment No. 7 on the Right to adequate housing: forced evictions* (1997).

<sup>25</sup> Indonesia subsequently ratified the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights in 2005.

<sup>26</sup> *Jaftha v Schoeman and others; Van Rooyen v Stoltz and others* Case CCT 74/03, judgment delivered 8 October 2004.

<sup>27</sup> African Commission on Human and Peoples' Rights, Decision 155/96. The Commission stated: '[Nigeria's] obligations to protect obliges it to prevent the violation of any individual's right to housing by any other individual or non-state actors like landlords, property developers, and land owners, and where such infringements occur, it should act to preclude further deprivations as well as guaranteeing access to legal remedies.'

<sup>28</sup> Case No. CCT40/03, 11 March 2004.



### *Cases of Forced Evictions*

In circumstances where the government prevents the return of residents to affected areas, it is arguable that a constructive eviction has taken place. As Budlender has noted, 'Once eviction is the issue, the legal landscape changes quite dramatically.'<sup>29</sup> In order for the eviction not to be 'forced' under international law, the government would need, *inter alia*, to provide adequate resettlement. The Committee on Economic, Social and Cultural Rights has defined this duty as follows:

*Evictions should not result in individuals being rendered homeless or vulnerable to the violation of other human rights. Where those affected are unable to provide for themselves, the State party must take all appropriate measures, to the maximum of its available resources, to ensure that adequate alternative housing, resettlement or access to productive land, as the case may be, is available.*<sup>30</sup>

Recent South African jurisprudence on evictions in informal settlements has rendered similar findings:

*There is ... no unqualified constitutional duty on local authorities to ensure that in no circumstances should a home be destroyed unless alternative accommodation or land is made available. In general terms, however, a court should be reluctant to grant an eviction against relatively settled occupiers unless it is satisfied that a reasonable alternative is available, even if only as an interim measure pending ultimate access to housing in the formal housing programme.*<sup>31</sup>

In terms of the actual resettlement, it is important that it is continually monitored as the Argentinean case of *Villa Dulce*<sup>32</sup> demonstrates. In that case, court orders were necessary to ensure the eventual completion of the resettlement plan.

### *Temporary and Permanent Resettlement*

The absence of a 'human hand' in the displacement reduces, perhaps perversely, the catalogue of rights that can be relied upon. Nonetheless, the right to housing is relevant, as is the right to life. The Committee on Economic, Social and Cultural Rights has stated:

*Thus, such disadvantaged groups ... victims of natural disasters, people living in disaster-prone areas and other groups should be ensured some degree of priority consideration in the housing sphere.*<sup>33</sup>

The right to emergency assistance in post-disaster situations has been tested in two ways in the South African courts. In *Grootboom*,<sup>34</sup> the 'community' of 900 in the outskirts of Cape Town had initially moved from their informal settlement due to flooding. After an eviction from the second plot of land on which they settled, they settled on the edge of a sports field. Their claim related not to assistance on the grounds of an illegal eviction, but was based simply on the right to housing contained in the constitution.

<sup>29</sup> See Geoff Budlender, 'Right to Alternative Accommodation,' in John Squires, Malcolm Langford and Bret Thiele (eds.) *Current Issues in the Litigation of Economic, Social and Cultural Rights*, Sydney: University of NSW Press, 2005.

<sup>30</sup> *General Comment No 7*, *supra* note 14 at para. 16.

<sup>31</sup> *Port Elizabeth Municipality v Various Occupiers* Case CCT 53/03, judgment delivered 1 October 2004 at para. 28

<sup>32</sup> Discussed by Julietta Rossi and Sebastian Tedeschi, 'The "Villa La Dulce" Case - Including the Excluded in Social Housing Plans', 1 Housing and ESC Rights Quarterly 1 (2004) at p.1.

<sup>33</sup> *General Comment No. 4*, *supra* note 14 at para. 8(e).

<sup>34</sup> *Grootboom v Oostenberg Municipality (South Africa)* 2001 (1) SA 46 (CC).

While the Constitutional Court dismissed the claim for immediate relief, three important points can be derived from the case. First, the Court found there must be a reasonable policy that provides emergency assistance for the homeless, and that would address in a reasonable time address the needs of the claimants. Second, the community was provided with basic assistance as a part of a settlement during the litigation process, encouraged by lower court findings. Third, the refusal to order immediate relief was partly premised on the state's lack of resources, an obstacle that was deemed less important in a later case on access to medicines when resources more clearly available to meet the claim.<sup>35</sup>

In *Minister of Public Works and Others v Kyalami Ridge Environmental Association and Others*,<sup>36</sup> the situation was slightly different. Victims of a flood were temporarily settled in a wealthy suburb while awaiting resettlement. Local property owners objected, due to an apparent decline in property values from the presence of the flood victims, and took legal action. But 'All the parties are agreed that the Alexandra flood victims have a constitutional right to be provided with access to housing' and the Court went on to hold:

*The provision of relief to the victims of natural disasters is an essential role of government in a democratic state, and government would have failed in its duty to the victims of the floods, if it had done nothing. There was no legislation that made adequate provision for such a situation, and it cannot be said that in acting as it did, government was avoiding a legislative framework prescribed by parliament for such purposes. Nor can it be said that government was acting arbitrarily or otherwise contrary to the rule of law. If regard is had to its constitutional obligations, to its rights as owner of the land, and to its executive power to implement policy decisions, its decision to establish a temporary transit camp for the victims of the flooding was lawful. The contentions to the contrary advanced by the Kyalami residents must therefore be rejected.*

Therefore, while the factual circumstances of the case are different from that of the tsunami disaster – although such a situation is not unimaginable, the observations of the Constitutional Court make clear the obligation of the State to provide housing relief to victims of natural disasters, and it is worth noting that the level of economic development in South Africa is not significantly dissimilar to that in any of the affected countries.

### ***Process of resettlement***

The most important aspect of post-tsunami resettlement may not be the broader question of the right to resettlement, and the necessary resources, but the process of implementation. The right to housing has been interpreted to have a strong qualitative content as evidenced by the following statement in the context of development of housing strategies: [The] strategy should reflect extensive genuine consultation with, and participation by, all of those affected, including the homeless, the inadequately housed and their representatives.<sup>37</sup> The proper targeting of the beneficiaries will likewise be important since the incentive for corruption in the reconstruction process is enormously high.

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<sup>35</sup> *TAC v Ministers of Health*, 2002 (10) BCLR 1033 (CC).

<sup>36</sup> 2001 (7) BCLR 652 (CC).

<sup>37</sup> General Comment No. 4, *supra* note 14 at para.12.

## Housing, Land and Property Restitution

### *Pinheiro Principles*<sup>38</sup>

All refugees and displaced persons have the right to have restored to them any housing, land and/or property of which they were arbitrarily or unlawfully deprived, or to be compensated for any housing, land and/or property that is factually impossible to restore as determined by an independent, impartial tribunal.<sup>39</sup> For example, if a government arbitrarily or unlawfully prevents persons displaced by a natural disaster or conflict from having access to their original housing, land or property, that government is in violation of its legal obligations under international human rights law.

States shall demonstrably prioritise the right to restitution as the preferred remedy for displacement and as a key element of restorative justice.<sup>40</sup> The right to restitution exists as a distinct right, and is prejudiced neither by the actual return nor non-return of refugees and displaced persons entitled to housing, land and property restitution.<sup>41</sup>

States shall ensure the equal right of men and women, and the equal right of boys and girls, to housing, land and property restitution.<sup>42</sup> States shall also ensure the equal right of men and women, and the equal right of boys and girls, among other things, to voluntary return in safety and dignity, legal security of tenure, property ownership, equal access to inheritance, as well as the use, control of and access to housing, land and property.<sup>43</sup> Indeed, States shall ensure that housing, land and property restitution programmes, policies and practices do not disadvantage women and girls.<sup>44</sup> States should adopt positive measures to ensure gender equality in this regard.<sup>45</sup>

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<sup>38</sup> The *Pinheiro Principles* are formally known as the United Nations Principles on Housing and Property Restitution for Refugees and Other Displaced Persons, UN Doc. E/CN.4/Sub.2/2005/17 (28 June 2005).

<sup>39</sup> *Id.*, Principle 2(1).

<sup>40</sup> *Id.*, Principle 2(2).

<sup>41</sup> *Id.*

<sup>42</sup> *Id.*, Principle 4(1).

<sup>43</sup> *Id.*

<sup>44</sup> *Id.*, Principle 4(3).

<sup>45</sup> *Id.*

# “After the Tsunami; Human Rights of Vulnerable Populations” A Case Study of Sri Lanka\*

*Harvey M. Weinstein<sup>\*1</sup>*

## **Introduction**

### **Effects of the Tsunami**

For the last two decades of the twentieth century, Sri Lanka endured war, massive displacement, and human rights violations ranging from torture to extrajudicial executions, disappearances, and child abductions. The 2002 agreement to cease hostilities brought a significant measure of relief. On December 26, 2004, that peace ended abruptly with fifteen minutes of terror as the tsunami lashed the coasts of the island nation. While the disaster primarily affected the north, east, and south coasts, more than half of the country's provinces and districts were affected. The waves affected about a quarter of a million families and displaced hundreds of thousands.<sup>2</sup> At the beginning of March 2005, more than a half million people remain displaced, many in temporary or transitional housing where infrastructure can be precarious and where the level of displeasure with the pace of repair has been increasing. The immediate aftereffects of the tsunami have been well documented.<sup>3</sup>

A critical perspective on how the human rights of the vulnerable populations impacted by the tsunami have been addressed is missing in recent analyses of the effects of this natural disaster. Some reports have paid particular attention to issues facing women and children, although these data are sparse and limited primarily to anecdotal evidence. However, there is relatively little focus on monitoring the rights of the internally displaced people, whether they are being treated with dignity, how national governments as the duty bearers are fulfilling their obligations, and whether the massive amounts of aid that have flowed into the region from around the world are reaching those so desperately in need. The tsunami brought to the surface long-standing human rights concerns that have made the vulnerability of certain groups even more apparent. In this report, we describe the issues as they surfaced in a trip to the country from April 4 to April 13, 2005.

### **Methodology**

During the nine-day visit, the investigator met with representatives of government at the district and national level, local non governmental organizations (NGOs), international nongovernmental organizations (INGOs), United Nations organizations, and members of the police and military forces. In addition, the researcher spoke with human rights officials and activists, and most critically, with

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<sup>\*1</sup> Human Rights Center and School of Public Health, University of California, Berkeley. The author gratefully acknowledges the invaluable assistance of Muthiah Duraisamy for his help collecting the data on which this report is based, and the International Centre for Ethnic Studies in Kandy, especially Professor Stanley Samarsinghe, and Palitha Elkaduwa for arranging the interviews and planning the itinerary. Kalyananda Tiraganama provided an exceptionally helpful review of the initial report.

<sup>2</sup> Hiranthi Wijemanne, "The Tsunami in Sri Lanka and Women," UNU Public Forum to Commemorate International Women's Day, March 8, 2005, Tokyo, Japan.

<sup>3</sup> INFORM Human Rights Documentation Centre, "Human Rights Issues in the Post-Tsunami Context," February 2005.

men and women who have been internally displaced (IDPs) and are living in transitional housing or tents in camp-like environments.

Interviews with IDPs took place in groups of three to thirty, usually in a tent or cabin or outside when it was too hot. These meetings lasted anywhere from twenty minutes to sixty minutes. Where possible, we addressed questions to women as well as to men. However, a limitation of this preliminary study was that the interviewer and interpreter were males, males tended to dominate discussion (with some exceptions), and the issues facing women were downplayed except by representatives of NGOs.

### **Sites of the Fieldwork**

The investigator conducted interviews in the Northeastern, Southern, and Western provinces - in Batticaloa and Ampara in the east, Galle and Matara in the south, and Colombo, the capital, in the west. We talked with displaced persons at Methodist College Refugee Camp in Batticaloa (Tamil), Maruthamunai Mass Grave site (Muslim), Wesley College Refugee Camp (Tamil) and M.H.M Ashroff Refugee Camp (Muslim) in Kalmunai, Reggipura and Paraliya Camps in Galle, and Ahungalla Camp in Matara.

### **Background and History**

#### **Political Conflict**

Several aspects of the turbulent history of Sri Lanka are pertinent to the findings of this study. Sri Lanka has been at the nexus of multiple influences - Sinhalese, Portuguese, Dutch, British, and Indian. Emergence from colonialism led to political developments that have produced a potent brew of suspicion, conflict, ethnic nationalism, and war among the country's Sinhalese, Tamil, and Muslim populations.<sup>4</sup> From the time of independence in 1948 and the disenfranchisement of the tea plantation Tamils,<sup>5</sup> seeds of unrest were sown. During the 1950s, the government made Sinhala the national language, which led to increasing unhappiness and, in 1958, rioting between the Tamil minority and the Sinhalese majority. Periodic conflict between Tamil Muslims and Tamils who were both Christian and Hindu, as well as between Tamils and Sinhalese, along with language disputes, continued to influence the course of politics over the subsequent fifty years. As Rogers et al.<sup>6</sup> point out, "public discourse increasingly equated Sinhala identity with national identity, which accentuated the political alienation of non-Sinhala." The Official Language Act of 1956 was not anti-Tamil as such; rather, it focused on displacing the use of English. But the Tamil population remained the major opponents to it. A new constitution in 1972 made Sinhala the only official language, and Buddhism was made the foremost of Sri Lanka's religions. Further, changes were made to university admissions policies that had the effect of decreasing the number of students from Jaffna, a majority Tamil area,

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<sup>4</sup> Richard Plunkett, Brigitte Ellemor, and Victoria Campbell, "Introduction," *Sri Lanka* (Melbourne: Lonely Planet, 2003); Human Rights Watch, *Living in Fear: Child Soldiers and the Tamil Tigers in Sri Lanka* (New York: Human Rights Watch, November 2004); University Teachers for Human Rights (Jaffna), *Political Killings and Sri Lanka's Stalled Peace*, Special Report #18, March 28, 2005, available at <http://www.uthr.org/SpecialReports/spreport18.htm>.

<sup>5</sup> During the British period, thousands of Tamils were imported from India beginning in the mid-19th century to work on the tea estates as cheap labor. Their descendants constitute one of the two main population groups of Tamils in Sri Lanka, many of whom still work on these estates. While similar in many respects to the Sri Lankan Tamils, they are seen as two distinct populations. They were not granted Sri Lankan citizenship at the time of independence and many thousands repatriated to India. Over the years, citizenship rights have been extended to most of the remaining population.

<sup>6</sup> John D. Rogers, Jonathan Spencer, and Jayadeva Uyangoda, "Sri Lanka: Political Violence and Ethnic Conflict," *American Psychologist* 53:7 (1998), pp. 771-777.

and placing Tamil youth at a disadvantage in many fields as they were less able to obtain higher degrees. All of these changes inevitably influenced Tamil perceptions of discrimination by the majority population.

The economy seesawed due to socialist policies that included nationalisation of industry and rejection of a market-oriented economy; this led to soaring unemployment. Lack of opportunity for work culminated in a Marxist rebellion in 1971 by a Sinhalese youth group known as the Janatha Vimukthi Peramuna (JVP) or People's Liberation Front. The Sri Lanka police killed many thousands of people, setting the stage for ruthless policies that led to a climate of fear and mistrust. This furthered unrest and led to states of emergency being imposed in the north, where the Tamils were the majority, and in the East, which, while multiethnic, had a population that was about one-third Tamil.

As Senadhira indicates,<sup>7</sup> "The accumulated sense of grievance and discrimination was exacerbated by the inability and/or unwillingness of successive governments to address this and by their determined pursuit of majoritarianism." By the mid 1970s, a new group known as the Liberation Tigers of Tamil Eelam (LTTE) or the Tamil Tigers formed to fight for an independent Tamil state in the North and the East. During the 1980s, the government tried to reach out to the Tamil minority by making Tamil a national language. At the same time, the government promoted constitutional changes that increased both presidential power and the power of the dominant political party.

Accusations of electoral irregularities were made. In 1983, following an ambush of army soldiers by Tamils in the North, massive Sinhalese mob violence erupted, leading to destruction of Tamil property and the death of hundreds, perhaps thousands, of Tamils all over the country, including Colombo. The government did not protect Tamil citizens. Thousands of Tamils were displaced; Sinhalese left Tamil areas; Tamils emigrated to India and elsewhere. Funding from the Tamil Diaspora, covertly from the Indian state of Tamil Nadu, and then the government of India, fueled ongoing conflict. By the mid-1980s, with increased support from the Tamil people, militant groups went on the attack in the North, leading to ethnic cleansing of the civilian Sinhalese population. By 1984, the government of Sri Lanka had lost the city of Jaffna. And soon, Tamil Muslim-Tamil Hindu violence ensued as well.

In the midst of this unrest, the Marxist JVP returned and in 1987, launched a new revolt. Over the next three years, terror erupted. The army used brutal tactics to quell the rebellion. Assassinations, torture, disappearances, and fear became the norm. An estimated 60,000 people died in the next three years. This period, coupled with the state's failure to protect its civilian population during the second JVP uprising, has laid a foundation of mistrust in government, a fear that civil liberties will be tampered with, and a legacy of displaced peoples that has yet to be resolved.<sup>8</sup> Informants suggest that undiscovered mass graves dot the country, especially in the north, and that thousands remain missing.

Because of the considerable support for Sri Lanka's Tamil population in Tamil Nadu and because there had been threats of Tamil Nadu's secession, India had covertly supported the militant groups in the North and East. In 1986, India and Sri Lanka began to discuss possibilities for settlement of the

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<sup>7</sup> Sugeeswara Senadhira, "Peace Process in Sri Lanka," Asian Affairs, available at <http://www.asian-affairs.com/Sri-Lanka/sugeeswara.html>.

<sup>8</sup> The vast majority of the people killed during the second JVP uprising - more than 90 percent - were Sinhalese. Both the JVP and the Army killed the Sinhalese. While the JVP rebels were Sinhalese, they also were Marxists and attacked members of their own ethnic group in order to achieve their ideal of a Marxist state. There was no protection provided to Sinhalese, Tamils, or Muslims by the government. During the period July 1987-February 1990, Indian Peace Keeping Forces were occupying the north and the east. The Sri Lanka government under President Premadasa conducted peace talks and provided arms and money to LTTE to fight the Indian Army. Personal communication, staff member, Lawyers for Human Rights and Development.

conflict between Tamil and Sinhalese in Sri Lanka, but violence intensified in the next months. In July 1987 the two countries signed an accord that went some distance toward meeting the demands of the militant groups. Sinhalese opposition to this accord erupted in violence.

As part of that agreement, the government of Sri Lanka allowed an Indian Peace Keeping Force (IPKF) into the country; but this had little positive effect. In fact, the LTTE turned on the IPKF with a vengeance. By 1990, after losing hundreds of soldiers, India withdrew and violence intensified. The LTTE took control of Jaffna and most of the north. War continued into the 1990s, fuelled by extremists, and assassinations and attempts on the lives of many highly placed political figures in India and Sri Lanka occurred. The army was at its highest strength but could hold the LTTE only to a standstill in the North despite massive attacks. By 1998, the LTTE controlled most of the North (except Jaffna), parts of the east, and the major highway between Colombo and Jaffna. During this period, both sides to the conflict committed arbitrary arrests, unlawful detentions, extrajudicial killings, murder, torture, extortion, assault, forced conscription, and other violations of human rights. The LTTE launched a campaign to control Tamil civilians, and dissent was not tolerated. Censorship of news and intimidation of journalists became the norm.

In 2000, the government invited a Norwegian peace mission to facilitate peace talks between the state and the LTTE. Proceeding at a desultory pace, the talks did not end the violence. An attack on the international airport at Colombo destroyed most of Sri Lanka Airline's planes and much of the State's air force. After the events of September 11, 2001, the United States and other western countries declared the LTTE to be a terrorist organization and it faced a cutoff of overseas funding. In December of that year, the parties announced a ceasefire and in February 2002 they signed a ceasefire agreement. For the most part, violence was kept to a minimum, but in 2003 the LTTE pulled out of the agreement when their demands that the government of Sri Lanka (GSL) give them interim authority to govern all eight districts of the North and East were not met. While no overt fighting has resumed, and the highway to Jaffna has been opened, murders and intimidation continue, especially by the LTTE against non-LTTE Tamils.

Most recently, splits within the LTTE have surfaced. One year ago, the eastern commander of the LTTE, known as Colonel Karuna, defected with his troops. Colonel Karuna alleged that the LTTE favored the Tamil population in the North over those living in the East. Intra-Tamil fighting erupted, causing many deaths. Recently, murders have increased in the East as well as in Colombo, the most recent being the murder of a pro-LTTE journalist, Dharmaretnam Sivaram, in Colombo on April 28, 2005. This latest attack on a journalist reflects a long-standing history of suppression of dissent on both sides of the conflict. Rumors have circulated blaming both the GSL and the Tigers.<sup>9</sup>

Overt expressions of discontent within the Tamil community itself have surfaced. University Teachers for Human Rights in Jaffna have documented resistance to LTTE leaders' "perceived monopoly of power." The group suggests that the murders and intimidation have cowed the Tamil population. The Scandinavian-staffed Sri Lanka Monitoring Mission, established as part of the ceasefire agreement between the government of Sri Lanka and the LTTE, is kept busy with the ongoing spiral of violence and human rights violations.

### **Human Rights In Sri Lanka—A Legacy of Violations**

Despite Sri Lanka's support for international treaties that enforce human rights, the abuses that have occurred in the years since independence suggest that ongoing vigilance is essential if civil liberties

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<sup>9</sup> The violence continues. A state of emergency was declared following the assassination of the foreign minister, Lakshman Kadirgamar, on August 12, 2005.

are to be protected in the country. It is critical to consider the history of Sri Lanka in assessing how a natural disaster such as a tsunami can increase the danger of human rights violations. Ethnic rivalries and violence, the war between the LTTE and the government of Sri Lanka, a long history of government repression and human rights abuses such as torture, murder, and unlawful detentions against civilians of all ethnic groups, the totalitarian methods of the LTTE, the abduction of children by the LTTE to serve as child soldiers, all lead to vulnerabilities that can intensify in the face of a catastrophic disaster. Further, the centralization of power in Colombo despite government efforts at devolution, combined with allegations of election fraud, have eroded any trust in the State. Consequently, individuals affected by the tsunami may have little faith that the government will be responsive to their needs. The existence of laws protecting rights does not guarantee these rights will be protected in practice. Despite the establishment of a national Human Rights Commission and a National Child Protection Authority, human rights violations are many. Analysis of whether the tsunami has elicited further rights violations must begin against the backdrop of a beleaguered country where the rule of law is inconsistent and transparency only a dream.

### **Findings**

In 1998, the United Nations adopted a set of principles to guide state treatment of internally displaced people. These guidelines sought to address the gap in the international standards for protection of this vulnerable population. The vast majority of those displaced by war do not cross international boundaries and therefore do not enjoy the protections accorded to refugees in international law.<sup>10</sup> The security and protection of the internally displaced are therefore the responsibility of their own states. These principles protect “persons ... who have been forced to leave their homes ... as a result of or in order to avoid the effects of armed conflict, situations of generalized violence, violations of human rights or *natural or human-made disasters*, and who have not crossed an internationally recognized State border” (*emphasis added*). The principles enshrine protections for women and children, establish standards of nondiscrimination, and encourage states to include IDPs in decisions about relocation, return, and reintegration.

With the UN’s Guiding Principles on Internal Displacement as a framework, several human rights concerns emerged from these interviews.

### **Disempowerment of the IDPs and Camp Life**

There was a marked discrepancy between the reports of great progress in reconstruction and supporting data offered by the government agents and their deputies, and the experience of the displaced persons in the camps that we visited. In every camp visited, virtually all IDPs reported that they had no idea for how long they would be in temporary housing or shelters. They complained about lack of communication from authorities regarding maintenance of the camp facilities and lack of information about where they would be going and when. They said that government representatives collected information but provided them no follow-up on relocation plans. Although the Guiding Principles encourage community participation, we saw no evidence of IDP input into the choice of relocation sites, timing of moves, aid priorities, and the planning of housing. When the state acquires land for permanent housing, people from the area who know the geography have no input into its selection. One NGO expressed concern that some of the best land (forested land) is being reserved for the LTTE in the east as part of the negotiations between the government of Sri Lanka and the LTTE.

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<sup>10</sup> UN Office for the Coordination of Humanitarian Affairs, *Guiding Principles on Internal Displacement*, available at [http://www.reliefweb.int/ocha\\_ol/pub/idp\\_gp/idp.html](http://www.reliefweb.int/ocha_ol/pub/idp_gp/idp.html).



In a situation where NGOs provide some services and the government provides cash, food coupons, and other services, IDPs complain that it is sometimes unclear who has responsibility for camp maintenance, e.g., sanitation or protection against flooding. Many complain that there is insufficient food or money to purchase food. In some situations, people are cooking with wood stoves inside their houses, which will contribute to acute respiratory disease. Infrastructure is still a significant problem. Wells remain contaminated by salt water; there is a lack of water delivery to holding tanks; and temporary housing is poorly sited in flood zones. In one camp, there was no water for drinking or sanitation and no government or NGO representatives had visited the camp. Even where the government has developed mechanisms for providing cash and other goods, IDPs (and the village headmen) are uninformed and complain that they have no idea from day to day what will happen next.

Problems exist with the temporary housing that has been constructed. While tents may be the only option initially and may meet acute needs, the transitional housing in which people may need to remain for eighteen to twenty-four months is problematic. Each NGO appears to have followed its own design. However, most transitional housing consists of shell structures with metal roofs and poor ventilation. In the tropical climate, these shelters heat up to such a degree that people must spend the daylight hours outside. With a number of people residing in each house - at times, two families per structure - privacy is at a minimum and there is little respect for human dignity. The transitional housing projects vary in quality, especially where people were moved in without adequate infrastructure in place or where planners selected sites without regard to geographic factors.

After an NGO constructs housing, the responsibility for site maintenance is unclear and IDPs are caught between local government officials and the NGO. In one camp, we observed that the camp coordinator could not find any volunteers to clean the toilets when the army came to pump them out. The army stayed five minutes and left without pumping the toilets. The prolonged uncertainty and lack of jobs or other meaningful tasks leads to passivity and anger. The perceived lack of coordination and support coupled with lack of paid employment is fertile ground for the development of problems of domestic violence, alcohol abuse, child abuse, and social unrest.

In the area of security, virtually every camp (there are exceptions) has a military (Special Task Force, Navy) or police presence. For the most part, residents welcome this protection. However, there are reports of problems with the police, e.g., a stabbing that was not investigated. Camp residents in one location thought that police had been instructed not to press charges because people were under stress (the police deny this). Camp incursions do occur, from individuals selling liquor, to attempts at child abductions by the LTTE, to occasional reports of attempts at sexual violence.

It is unclear whether the protection officers have received specific training to work with IDPs and to address camp management issues. As the state has an obligation to protect the IDPs, especially women and children, this is an area of concern. Both in shelters and in camp-like situations, conditions are far from ideal. In the crowded shelters, drunkenness among the men is a problem with implications for violence. We saw one man stagger along the main courtyard and then fall. Four to five residents then dragged him to a quiet place. Survivors informed us that he had lost all the members of his family and his response to this loss was to drink to oblivion. In another camp, rumors of an impending attack by the LTTE against the camp guards led to great concern, but no such attack occurred. However, such rumors fuel the fires of discontent and fear.

The role of the police and the military needs to be spelled out and more closely monitored. One NGO expressed concerns about the "militarization" of camps, particularly in the northeast on both sides of the conflict. While there were no incidents reported of guards abusing their position, including with respect to women, we did hear concerns about police not responding to IDP complaints, as we have

noted above. Early on, camp residents complained about guards pilfering supplies. Whether these were police or military was not specified. A major implication of all of this is the need for training in disaster management with regard to the human rights of those affected.

Many of these families have moved two or three times since the tsunami - from shelters to relatives to transitional houses. They do not have enough information to understand who is available to help them. Some local NGOs, INGOs, and other foreigners appear who help some and not others; rumors abound, leading to ill feeling. IDPs feel a lack of response from the government and complain that they are either ignored or treated poorly by local authorities when they try to seek assistance. There is a large gap between stated government intention and IDP perceptions of help and efficiency. We heard in several interviews that the IDPs are unaware that they have both options about where they live and rights to demand state protection that upholds their dignity. Finally, some IDPs report that there have been no visits by health personnel, and specifically no attention to childhood immunizations. This may vary with geography and accessibility but needs careful attention if disease is to be avoided.

### **Mal-distribution of Aid and Questions of Corruption**

In the North-East, we heard both from NGO personnel and from IDPs that the services and the pace of reconstruction were farther along in the south. Repeatedly we heard allegations that, since there are more members of parliament from the south and because the prime minister has a home on the south coast in Hambatota, land acquisition was more advanced and more permanent homes were being constructed in the south than in the equally hard-hit areas of the east and north. These allegations should be further investigated to ascertain whether international aid is being distributed fairly without discrimination and with transparency. There is profound distrust of the government based on Sri Lanka's history of violence, electoral irregularities, and ethnic division. The old allegations that Sinhalese are treated better than Tamils have surfaced based on a lack of parliamentary representation for the eastern Tamil population.

Statistics and government reports do bear out the allegations regarding the disparate pace of reconstruction in the South compared to the north. In Batticaloa, on the eastern coast, the authorities had not yet completed the development plan. Yet the Tsunami Disaster Information Unit of the District Secretariat in Batticaloa reported as of April 1, 2005, that 12,232 homes were completely destroyed and 5,376 homes partially destroyed; 20,888 people were in welfare centers. In Ampara, we learned that land acquisition is occurring in rice paddy areas but the process is slow. However, from the government agent in Hambatota in the south, we learned that transitional housing began five weeks after the tsunami and in the week before our visit, all those displaced had been removed from shelters. The state had selected 1,200 acres of government land and one hundred acres of private land for acquisition. Land surveys had been done and donor agencies selected. The authorities had completed eighty to one hundred houses and on the day of our visit, an additional twenty-five houses were ready for new occupants. Authorities projected to have 200 more permanent houses by the end of April. They expect that everyone will be in permanent housing by the end of December—a sharp contrast to what we heard in the Northeast.

The Assistant Land Commissioner for Matara also in the South, reported the destruction of 1,810 homes with partial damage to an additional 1,892 homes. Land has been identified and they plan to build 1,500 houses in three months with 1,810 completed by the end of December. If this information is accurate, then there does appear to be a discrepancy in the pace of reconstruction between the geographic areas. Such a discrepancy could be explained by multiple factors; but if it were based on discrimination or political influence, then it would constitute a human rights violation.

## **Permanent Housing and Rebuilding**

The Guiding Principles on Internal Displacement emphasize that full information should be made available to IDPs and that they should be involved in the planning and management of return, resettlement and reintegration. One area in which the Government of Sri Lanka has apparently failed to live up to this principle is in its plans to establish a buffer zone in which new housing and reconstruction would be discouraged. Those who do not wish to accept newly constructed permanent housing inland but who choose to build their own homes elsewhere outside the buffer zone will receive 250,000 rupees (US\$2,500). It is not clear how the government arrived at the buffer zone decision. No information had been published on whether the decision was based on the probability of a tsunami recurring or on other scientific data or whether scientific experts had explored alternatives to the buffer zone such as coastline protection, for example enhancing vegetation. Support options offered by the government clearly influence people's decisions on relocation. However, if fishers are not given all the options, and do not have information about other alternatives, can they truly give informed consent? Without such information, flight inland appears to be the only reasonable option and fear becomes the determining factor in people's decisions to relocate.

In the Hambatota district, thirty-three families have chosen the option to rebuild inland thus far. They will not receive any government funds if they choose to rebuild on their pre-tsunami land. As noted, while this decision may be reasonable from a prevention perspective, it does not fit within the framework of voluntary choice. In one camp, we were told that some had received the 250,000 rupees and nevertheless had rebuilt within the buffer zone. Whether these rumors are true or not, there appear to be inconsistencies in how the new regulations are put into practice by various officials. Such variation invariably will lead to comparison and elaboration.

We did note that along the highway, particularly in the South, residents are rebuilding commercial establishments, such as small guesthouses, as well as private homes. Thus, those with their own funds are making a decision to remain close to the beaches. Both government officials and police informed us that there is no policy of forcing people off the land or of destroying rebuilt homes. However, we did hear from a local NGO that rebuilt boutiques (small shops) had been destroyed.

Of the IDPs with whom we spoke, the vast majority are open to removal inland although they want to maintain ownership of their coastal land. One government official in Matara informed us that 188 of 1,563 families preferred to rebuild on the beach. The fishermen with whom we spoke indicated that they would build sheds on the beach for their equipment. There are rumors of building marinas where boats would be secure and there was support for this. In other cases, survivors indicated that they would use their old land for cultivation.

There is no question that there is great fear of another tsunami among those we interviewed and that safety is a primary concern, given the loss of life, especially among children. The second major earthquake off the coast of Indonesia, on March 28, 2005, reinforced the fears of the survivors. However, from a human rights perspective, these people have lived for generations along the water, and it is essential that they have the information and support they need to make voluntary relocation decisions.

The Government of Sri Lanka has decided that for hotels and resorts within the buffer zone, if the damage is less than 40 percent, the owners can rebuild. However, one government official suggested that there is flexibility in this. For example, there are many unregistered small businesses along the coast and it is likely that they will be permitted to rebuild. For the large resorts, if the damage is more than 40 percent, the decision on whether to approve rebuilding will be made on a case-by-case basis.

The amount of rebuilding of resorts that we saw on the south coast suggests that owners are moving ahead. Whether these decisions are being adjudicated fairly without political influence or bribery needs close attention.

A major problem for the government has been the identification of land for permanent housing. Much of the land selected is already in government hands; some are private, and purchase prices must be negotiated. Land surveys are necessary to complete these transactions. Once surveyors have completed their assessments, the district governments will sign memorandums of understanding with NGOs for the construction of homes. The homes offered will be 50 square meters and for the most part are single-family dwellings. In some cases, the land is relatively close to pre-tsunami dwellings. In others, homes are four to five kilometers away and for fishers this may be problematic depending upon what the government decides about beach reconstruction for boats and fishing equipment.

A common complaint that we heard in the camps was that the IDPs have not been consulted about where they thought appropriate land for relocation could be found. Some noted that, as they lived in the area, they knew the geography, the flood plains, and other important features of the land. They expressed their concern that some choices, e.g.- building in rice paddy areas, were very problematic while other, forested areas seemed to be off-limits. There is no question that the land acquisition and planning process has systematically excluded the IDPs. Even the village headmen, who are supposed to be the conduits of information, either do not know or do not share information with the displaced. Often they do not reside in the camps and may not even visit them. This lack of communication and disempowerment is leading to street demonstrations.

Government officials assured us that land titles and property documents are being taken care of but this is an area to monitor closely. In one camp, the IDPs reported that they had completed applications for new documents some weeks earlier but had received no word on when they would have them. Other than this report, we did not hear from the IDPs that this was a significant problem.

### **Livelihoods**

The destruction of boats, hotels, and ancillary tourist businesses has affected vast numbers of families. While some INGOs have developed work projects, most of the men remain unemployed and disaffected. Rumors about which group received what assistance from which agency has led to anger and resentment among survivors. Not only are there rumors about preferential treatment of the South compared to the North-East, but also stories circulate about differential treatment within these regions. In one shelter, residents reported that those outside the camp received help but not those within the shelters. They noted that authorities had delegated the Fishermen's Union to provide assistance but only for those who are members.

Survivors report unexplained variation in who among them receives financial assistance. Of 350 members of the Fishermen's Development Society in one area, only eighteen received money for new boats or equipment. In another area, there was one new boat for the three hundred fishers. This group felt cheated and one member exclaimed: "Why is it that foreign aid came but not to us?" One man complained that he did not know where to go to obtain help to buy new nets. At one camp in Matara, the fishermen complained that they did not know where to turn to get boats but that they knew that fishermen in Hambatota had obtained them because that was where the prime minister had a home. Some fishermen and their wives noted that they have never been able to depend on the government-only on their own effort, with their work, could they live. In this group, some of the widows talked about the possibility of self-empowerment projects that might offer them an income and a sustainable

future. The overall sense of residents in this shelter was that they needed homes and tools to rebuild their lives; they were not looking to be cared for.

The IDPs offered examples of bureaucratic difficulties. They cannot obtain bank loans without a guarantor or deeds. In one case, a man reported a bank manager refused to extend him a loan until the United Nations High Commission for Refugees (UNHCR) intervened. If there are any mistakes in the application form, the banks send survivors away and this is a hardship for those living at some distance. The district governments have prepared lists of survivors for the banks; any mistakes, however slight, in those lists can result in banks turning away applicants or demanding documents that have been lost.

Once again, rumors are rife. Bureaucracy and rudeness destroy dignity. The inconsistent responses of government and NGO representatives lead to a sense of helplessness and simmering rage. While NGOs report that they are initiating livelihood projects, there is a question of inconsistency in their actual implementation.

### **Protection of Women and Children**

The Commissioner for Probation and Child Care Services reported that as of April 11, 2005, 1,080 children had lost both parents as a result of the tsunami and 3,739 had lost one parent. In the Northeastern Province alone, there were 740 orphans. The Government of Sri Lanka, and this department in particular, are to be commended for the rapidity and scope with which they documented the number and whereabouts of child survivors and assured that they were appropriately cared for. Their emphasis on keeping children within their home communities and not removing them to institutions was carefully considered, as was the emphasis on preventing illegal adoptions. Only sixteen children were placed in government homes. Selection of appropriate guardians was efficiently organized and monitored. The agency made further psychological and emotional support to these children readily available, helped them to secure their birth documents and re-enroll in school, and provided them with uniforms and school supplies.

Reports of child abduction have been extremely rare. In one instance an NGO attempted without permission to remove six children to a separate house to provide them education. In another recently reported case, a man from the United States who worked in an orphanage in the South in the guise of helping tsunami-affected children was found to have a history of sexual offenses against children and young women. After careful surveillance, the National Child Protection Authority police apprehended him and his partner. They had a Website and were collecting funds for their ostensible charity, another example of the scams perpetrated on unsuspecting donors. There was the unusual situation of seven mothers claiming the same newborn, who had been separated from family during the tsunami, a dispute finally settled by DNA identification. The United Nations Children's Fund (UNICEF) reports that there may be five to ten reported cases of trafficking post-tsunami. The figures are unreliable and range widely but suggest small numbers. There may be examples of trafficking within families; the South Asia Women's Fund described one case of a grandfather trying to sell his grandchild, but again, this information is anecdotal and, in terms of numbers, rare.

However, there have been reports of attempted child abduction from shelters and camps in the Northeastern Province. These reports suggest that the problem of child abduction for recruitment as child soldiers by the LTTE continues. Both UNHCR and the local NGO Sarvodaya reported attempts at child abduction. A police official in the east described an abduction attempt from a large camp on about March 29, 2005. More than one child was involved and the attempt led to a confrontation between the LTTE and the Special Tsunami Force. No shooting was involved and the raid was

unsuccessful. According to the Sri Lanka Monitoring Mission (SLMM), there have been few reported cases of child abduction but the problem has not stopped altogether.

The Tamil Relief Organization told us that they had to open four additional children's homes after the tsunami. However, the state officials whom we interviewed suggested that there were few orphans. This raises questions about who these children were and whether they were tsunami survivors. From the Human Rights Commission (HRC), we heard that in the East, unknown men had brought in twenty-four boys unaccompanied by family for haircuts preparatory to recruitment as soldiers; their parents were called and they were brought home. While the facts of the story remain vague, such reports and the discrepancies in numbers of orphans raise red flags and suggest the need for further investigation. A senior government official in the East denies that there have been any problems with child abductions or trafficking.

As education has traditionally been a high priority in Sri Lanka, it is not surprising that many schools have been reopened. Support for orphaned children to attend school has been forthcoming.

At this point, there appears to be little evidence of any increase in violence against women as a result of the tsunami. There were two reported cases of rape immediately after the tsunami; one of the rape of a woman who had gone to a guesthouse with her boyfriend after the tsunami hit and was attacked by three strangers, another of two women raped by six men after being abducted from a beach a week after the tsunami. Other reports are unofficial (and perhaps only rumor), such as a woman having been raped while being rescued from the waves. However, the Coalition for Assisting Tsunami-Affected Women released a briefing note that suggested specific gender-related concerns such as insensitive male camp officials who subjected women to indignities when they needed sanitary napkins or undergarments, women being groped in the dark, and women having no say in camp management.<sup>11</sup> We noted that in all the camps (with the exception of one), men were the spokespersons while the women remained in the background. While we were able to engage the women in discussion, it is likely that certain topic areas such as gender-based violence were off limits.

We did hear of a woman whose drunken husband had poured kerosene on her in preparation for setting her on fire, and another incident where a woman had been stabbed but police did not respond. UNHCR reports increases in domestic violence and alcohol abuse. While the police suggest that alcohol and domestic violence are problems, the police official with whom we spoke indicated that no rapes or incidents of human trafficking had been reported. The South Asia Women's Fund suggests that domestic violence is hidden in Sri Lanka and rarely reported, as the barriers to reporting are significant. Displacement, shelter and camp life have the potential of heightening risk, but the data are sparse.<sup>12</sup> While NGOs are aware of instances of domestic abuse, there are minimal data and few women will report abuse. An active network of NGOs supports the protection of women and women's development. However, domestic abuse is a pre-existing vulnerability in Sri Lankan society that the tsunami with its even more massive displacement, the shelters, crowded transitional housing, and increased alcohol abuse is likely to exacerbate. The natural disaster makes protection of women and children in Sri Lanka even more of an urgent concern.

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<sup>11</sup> Coalition for Assisting Tsunami Affected Women, *Gender Specific Issues Relating to Post Tsunami Displacement*, Nawala: Briefing Note 2, January 15, 2005. Also at [http://www.womeninlondon.org.uk/download/tsunami\\_women\\_press\\_release2.doc](http://www.womeninlondon.org.uk/download/tsunami_women_press_release2.doc).

<sup>12</sup> South Asia Women's Fund, *The Tsunami Disaster in Sri Lanka: Promoting and Implementing Gender Sensitive and Child Friendly Community Based Approaches to Rehabilitation* (Colombo: South Asia Women's Fund, 2005).

Our meetings with UNICEF and the South Asia Women's Forum, and material that we obtained from Lawyers for Human Rights and Development (LHRD), suggest that trafficking in boys and girls is a major problem in Sri Lanka, with movement of girls primarily from rural to urban areas and of boys to Colombo and the beach areas of the West and South. Estimates of children in commercial sex exploitation range from 1,500 to 30,000 with four times as many boys as girls being exploited.<sup>13</sup> The underlying factors appear to be poverty and the growth of the tourist industry.

While Sri Lanka has signed and ratified relevant international treaties related to child protection and has several laws that could protect children, there has been a distinct lack of enforcement of these laws.<sup>14</sup> Further, trafficked children and women are treated not as victims but as criminals. The report from LHRD reveals a distinct lack of response from police and from the judiciary. Young girls are abused not only through sex trafficking but also as domestic workers. Further, chains of trafficking have been traced to Singapore and this appears to involve international criminal networks. With Sri Lanka's liberal visa rules allowing thirty-day visits, it now serves as a transit stop for the sex trafficking of women from such areas as Eastern Europe. There have been some flagrant cases of abuse such as attempted adoption of children, pedophilia resulting in deportation of a foreigner, and the forced labor of children both within and outside the country.

Finally, a report from the LHRD<sup>15</sup> suggests that exploitation of Sri Lankan women, as domestics in the Middle East, may be a severe problem. The South Asia Women's Forum reports that abuse of domestic workers within Sri Lanka is rampant with little protection or legal representation for those who complain. The international NGO Solidarity reports that there may be as many as two hundred thousand migrant workers moving from rural areas of Sri Lanka to factory zones and to other jobs with little protection. Solidarity expressed concern that the tsunami may heighten the problem, as vulnerable people may be enticed to work as domestic or factory workers as an escape from poverty. This too is an area that will require close monitoring, legislation, and training of law enforcement.

### **Effects of the Years of War**

Despite the ceasefire agreement, tensions between the GSL and the LTTE are apparent in the Northeastern Province. While we did not enter the LTTE-controlled areas, we were in the LTTE-active areas along the coast near Batticaloa and inland at Ampara. From NGOs we heard that there have been upwards of fifty killings in the East in the last two months. In none of the cases have the authorities filed charges. The recent murder of a Tamil journalist in Colombo at the end of April reflects an ongoing campaign of intimidation and murder. Our informants suggest that these incidents reflect a continuing split in the LTTE since the defection of Colonel Karuna, the eastern commander, in March 2004 and the disbanding of his militia. In addition to these murders, ongoing child recruitment may be a problem as it was prior to the tsunami, and we heard of attempted abductions of children from IDP camps for military duties in the LTTE. One of our informants suggested that if the tsunami had not intervened, civil war would have broken out again.

One of the aftereffects of the twenty-year war is the massive and ongoing displacement of several hundred thousand people who have never been permanently resettled. In one camp that we visited, the Tamil-Muslim conflict had displaced people in 1986 and then again in 1990. The UNHCR reports that

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<sup>13</sup> Sarath W. Amarasinghe, *The Commercial Sexual Exploitation of Children: A Rapid Assessment* (Geneva: International Labor Organization, 2002).

<sup>14</sup> Prof. Harendra de Silva, *Power Games in War and Peace: The Tragic Impact of Corruption, Violence and Impunity on the Sri Lankan Child* (Colombo, 2003). Lawyers for Human Rights and Development, *Violations of Child Rights in the Implementation of the Law Relating to Statutory Rape* (Colombo, 2003).

<sup>15</sup> Lawyers for Human Rights and Development, *A Study on the Law and the Enforcement of the Law Relating to Trafficking in Sri Lanka* (Colombo, 2004).

an important problem is the mix of conflict-displaced IDPs and tsunami-displaced IDPs. These two groups have both similar and different problems that require attention. The International Committee of the Red Cross (ICRC) has worked in Sri Lanka for years addressing violations of international humanitarian law. As of the middle of January 2005, they had established field offices to address the issues of tsunami displacement along with various Red Cross federations.

The well-publicized disagreements about aid to the LTTE to assist those in the area it controls reflect the political tension that exists. It is important that those IDPs in the LTTE-controlled areas receive support but also that an assessment be made of whether their human rights are being observed in their shelter situations.

Along with these concerns, Sri Lanka is facing the problem of locating mass graves and exhuming and identifying the missing from this quarter century of war. Estimates suggest that some 5,500 soldiers and an additional 6,000 civilians went missing in action. There has been resistance to locating the missing, especially on the part of the government. Superimposed on war-related missing are those who disappeared as a result of the tsunami. How far to pursue the missing from the past, and how to assess the desires of those who survived the recent disaster to locate and identify the missing, remains a challenging task. The tsunami revealed the need for upgrading forensic capacity in Sri Lanka and this should be pursued.

### **Psychosocial Assistance**

The buzzword of “psychosocial assistance” is reflected in the work of many INGOs and some NGOs as well. What the term means is not clear. There is a dearth of information on its definition, its implementation, and its effectiveness. Yet, if the health and well-being of survivors is to be attended to, this is an important area to understand. The World Health Organization (WHO) has defined the issue as a “hidden psycho-traumatic epidemic.” Whether such definitions are helpful to survivors is an open question. In our visits to the camps, psychosocial support was not high on the residents’ list of what was needed. How to assess what survivors do need in the way of emotional support and how and by whom it could be provided remains a challenge for humanitarian aid agencies. The contribution of psychosocial programs in long-term social reconstruction is an uncharted area.

### **Nongovernmental Organizations**

The government and IDPs recognize that foreign NGOs have offered an enormous amount of assistance to Sri Lanka, but there are problems that may affect the human rights of survivors. IDPs in camps complained that transitional housing had been built in locations that were subject to severe flooding during the monsoons and that they had not been consulted about the geography of the areas. Further, survivors reported that they were moved into housing where the infrastructure was not complete. In one camp, there was no water delivery and no water for sanitation. In other camps, women complained of lack of sufficient food especially for their children. When maintenance problems arose, no one claimed responsibility. IDPs were stuck in the middle between the government and the NGO, each placing responsibility on the other. Once NGOs left, it was not always clear to IDPs to whom they could turn for help.

One complaint that surfaced particularly from the government and from major NGOs was the question of motivation of some organizations that arrived on the scene in the wake of the disaster. Sometimes, these new groups were religiously based and their proselytizing goals were inappropriate to the needs of the people. In other cases, the motivations were political—one NGO accused another that had an ethnic political agenda of taking its supplies and putting its own label on them. Some “fly-



by-night” NGOs appeared to be newly constituted with very little experience. An experienced government planner described these groups as interfering with the government’s reconstruction strategies. At times, NGOs built too many temporary homes or built homes where they were not needed. The same local official described the difficulty in determining who were the “good” NGOs and said with frustration that they would not coordinate with local government, leading to gaps in assistance. While this official expressed the most frustration, we heard the same concern reiterated in other meetings.

The Guiding Principles on Internal Displacement place the responsibility for providing assistance with national authorities, not the humanitarian aid agencies. Further, the principles instruct these agencies to “respect relevant international standards and codes of conduct.” It is apparent that guidelines for disaster relief need to spell out more clearly how to mobilize, screen, and coordinate massive aid from multiple organizations without impeding the provision of aid.

### **Government Response**

The Government of Sri Lanka responded quickly to the disaster by establishing a Center for National Operations (CNO) through the Presidential Secretariat. The Human Rights Documentation Center report of February 2005 lays out in detail the issues that were raised about its legal standing, the lack of consultation with organizations outside Colombo, the lack of specification of the roles of the military and police, and the lack of transparency. Establishment of the CNO was quickly followed by enactment of the Public Security Ordinance (Emergency Regulation No. 01), which granted the president and the government great powers. After six weeks, the CNO was dissolved and replaced by the Task Force on the Rebuilding of the Nation (TAFREN) and the Task Force on Relief (TAFOR).

In our interviews, we heard questions about the composition of TAFREN with suspicions raised that the rebuilding of the country had been turned over to a small group of businessmen. The state of emergency in the country heightened concerns about human rights protections as well. At the beginning of February, the government announced that it would provide Rs. 15,000 (US\$150) for a death, Rs. 2,500 (US\$25) for utensils and kitchen supplies, Rs. 5,000 (US\$50) for sustenance, and Rs. 200 (US\$2) for purchase of food plus a daily ration offered by the state. As well, it will offer loans of Rs. 250,000 (US\$2,500) for rebuilding homes, to be paid off over twenty years, and Rs. 100,000 (US\$1,000) for repairs. We were told that civil servants would be given a special loan program at favorable terms.

In our interviews, however, even with government officials, there was confusion over what survivors were entitled to receive. For example, local authorities appeared to lack guidance regarding how often survivors were to receive Rs. 5,000 - once or twice, or monthly? This confusion about what entitlements existed and the processes by which people were to receive them marred good intentions. The ignorance that we observed was surprising as we were told that all the government agents met twice a week in Colombo.

After visiting a government official who had a clear understanding of the bureaucratic process and who complained that the IDPs tried to cheat and were ungrateful, we saw IDPs in camp settings who had no idea what they could expect. While he placed the blame on them as people out to scam the government, their precarious existence belied his claims of government largesse and efficiency. The impatience of the IDPs would build as they felt a lack of response from government agents, their representatives, bank bureaucrats, and NGOs who seemed to them to favor some and not others. This had led to street demonstrations in the East but there was still little response to the IDPs’ concerns. The principal source of information at the local level is supposed to be the village headman, who

receives his information from the government agent. In many cases, the village headman was absent, visited the camps rarely or not at all, or pleaded ignorance. Thus, the flow of information was impeded, leading to increasing dissatisfaction. This system lacks the flexibility that such a catastrophe requires and in fact, may reflect vulnerability in government service delivery. While the district offices could produce mounds of computer-generated data, relevant information was hard to come by on the ground.

Another problem in the government's response was the lack of consultation with those affected by the tsunami. Planning processes basically excluded IDPs and local civil society. One district government official told us that he would inform people where they would resettle when the foundations for the houses were poured. This lack of respect for the right of IDPs to help direct their own recovery coupled with a lack of transparency on the government's part pervaded all aspects of the planning process. IDPs were left in the dark with little sense that they could influence anything having to do with their well-being.

We heard complaints of hunger, lack of infrastructure, lack of water in some cases, and lack of health care in others. In some areas, it seemed as though the government had lost its ability to coordinate and monitor the aid process that was carried out by INGOs. One lesson from the tsunami is the need to screen more carefully those organizations or helpers who come into the country and to assure that coordination at the government level is maintained.

Through the National Child Protection Authority and the Department of Probation and Childcare Services, the GSL acted quickly to ensure protection for children who had lost one or both parents. This response was organized and effective and likely forestalled abductions or trafficking in children. While the response to child protection needs was excellent, the needs of women were ignored despite the bureaus for women and children in the police department and the attention to gender throughout the government. A gendered response to natural disasters is important especially as the risks to women and children increase. As noted above, the collusion in the society to ignore domestic abuse must be addressed and be seen as a risk factor for IDP women.

The GSL announced on April 29 that 90 percent of the permanent housing would be completed by the end of the year. Land had been demarcated for up to 34,000 permanent homes and seventy-one memorandums of understanding had been signed with donors. Further, the government stated that the total requirement of 30,000 transitional houses would be completed by May 2006. Authorities also announced that the Rs. 5,000 monthly would be paid to survivors through June. While this appears to be an impressive record, our findings in the North-East suggest that this will be an ambitious undertaking. The downsides of the government housing program have been outlined above.

On May 4, the BBC reported that the president of Sri Lanka was committed to working with the LTTE to provide aid to tsunami victims and would press for a joint mechanism to provide that assistance. This is likely to be seen as controversial in an environment where the LTTE are seen as terrorists.

### **Areas for Future Research, Monitoring, and Training**

While the Government of Sri Lanka has made a Herculean effort to respond to a major calamity, problems do exist that go beyond the technical difficulties that might be expected. There are significant gaps in our understanding of the extent of human trafficking (internal and external) in Sri Lanka. If this process is driven by poverty, the tsunami may have additional impact on it. Other dimensions of forced labor also may increase.

The hidden problems of domestic violence and alcohol abuse need further investigation and monitoring. The potential for human rights abuses related to equitable distribution of aid, lack of transparency, and structural problems in delivery of government services will require ongoing monitoring. The problems of child abduction and recruitment of child soldiers remain unresolved and require additional data and monitoring. IDPs, women and children in particular, have not received sufficient protection.

The impact of the tsunami on the survivors can be assessed in a systematic way and will result in programs designed to meet the identified needs of survivors. The preservation of property rights or appropriate compensation, along with the provision of identity documents, must be monitored to assure that no one is deprived of their basic rights. Livelihoods must be restored based on what people want, not on what NGOs or the government prefer - this is an area in which monitoring is essential with indicators of progress clearly defined. Finally, the problem of finding mass graves and identifying the missing remains an ongoing legacy of years of war, a legacy compounded by the addition of those who lost their lives in the tsunami.

### **Conclusions and Recommendations**

Given the magnitude of the catastrophe, the GSL responded in an admirable fashion. In retrospect, it is always easy to point out errors and to suggest alternate pathways. However, it also is important to focus on the problems that emerged after the acute phase of the humanitarian relief process ended so that we can prepare for and mitigate the consequences of the inevitable next natural disaster. With this in mind, we recommend the following:

1. Two major concerns are the lack of transparency in decision-making and the lack of communication to internally displaced people. This is leading to mounting frustration and demonstrations as impatience grows. We suggest that the Government of Sri Lanka develop a more consultative process of decision-making that would include representatives of those living in shelters and in transitional housing. We also suggest that a more effective mechanism of communication be established since depending on village headmen to deliver information does not appear to be working. District liaisons with specific constituencies might be one option.
2. Basic questions exist about the extent to which political influence determines the pace of reconstruction and the geographic area where it occurs. One option is to appoint a commission to investigate these allegations, which might include international members from the donor community.
3. The involvement and participation of IDPs in decision-making about location of housing and other important dimensions of daily life is minimal to nonexistent, and this should be rectified. This is in line with recommendations made above. It requires that district secretaries and planning departments establish community-based consultation mechanisms that are legitimate and transparent and that have some power over outcomes.
4. The provision of services to camps is spotty and responsibility for different tasks is not always well defined. This places people at risk for disease and particularly threatens children's wellbeing. A mapping of all shelters and temporary housing should be done to assess the adequacy and quality of infrastructure and services. Remediation mechanisms must be in place and operational.

5. There is insufficient attention paid to issues of violence within shelters, especially the role of alcohol in promoting domestic violence. Little attention is paid to the specific needs of women and children. The export of Sri Lankan women as domestics and their abuse at the hands of their employers must be controlled. States in which the abuse occurs must take responsibility. The National Child Protection Authority and gender-related government programs must take the lead in holding police and the judiciary accountable for enforcing the laws that are on the books, and they need to lobby Parliament for the promotion of mechanisms that will protect domestic workers.
6. In the East, protection of IDPs from intimidation by LTTE and from child abduction is an urgent need. The longstanding issues of child sexual exploitation and trafficking of women and children may worsen with the economic fallout of the tsunami. Monitoring mechanisms are essential; education of the population, and particularly the parliamentarians, about these abuses should be expanded. The issue of trafficking (both domestic and international) and the importation of foreign sex workers must be more closely followed and appropriate sanctions put into place for the traffickers as well as enhanced support for those who are trafficked.
7. The question of the buffer zone and reconstruction requires more thought and consultation, not only with the IDPs themselves, but also with those who possess appropriate scientific expertise. Government policy that excludes support for rebuilding on the buffer zone should be re-examined.
8. Urgent attention to restoration of livelihoods based on what the IDPs want is critical. As many IDPs pointed out, shelter and an ability to return to work will allow them to rebuild their lives much faster than government handouts. This is especially true with respect to the provision of boats and equipment for the fishermen.
9. Guidelines for NGO cooperation with national authorities should be developed and ongoing monitoring of their work is essential.
10. The ongoing problem of child abduction and recruitment of child soldiers must be addressed. This should be an extremely high priority for the GSL, the LTTE, the Sri Lankan Monitoring Mission, and UNICEF.

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