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## **THE RIGHT TO ADEQUATE HOUSING IN THE VANNI: A QUESTION OF RELEVANT POLICY?**

**LAW & SOCIETY TRUST**

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

The *LST Review* publishes in this Issue, excerpts from a report researched and written by **Rasika Mendis** for the *Law & Society Trust* which asks the vital question as to whether, despite large scale post-war development in the *Vanni*, a 'comprehensive and targeted programme' (emphasis in the original) has been put in place by the government 'to meet the humanitarian and recovery needs of persons who have been subject to displacement (and at times to recurrent displacement) in the short and medium term?'

The tension, as perceived in this paper, arises from distinct but, (as it may be interpolated), not necessarily conflicting policy questions, namely should policy approaches in regard to post-war housing be determined through the lens of development or through wider concerns of political reconciliation and communal re-integration?

Her paper looks at the relevant issues through the concept of restitution, taking into account a rights based approach to displacement of thousands as a result of the conflict in the formerly war affected areas. The methodology employed by her combines a literature review with consultations with a wide range of individuals and groups working in the government and non-government sector on housing as well as *ad hoc* interviews with community members including internally displaced persons. Several questions of concern emerge from the research; predominant among these is the fact that though many displaced persons have been recorded as having been 'resettled', there is a marked absence of a 'clear policy and plan of action to meet the outstanding housing need' (observation made in particular to the Divisional Secretariat Division of Maritimpattu under Section 2.2.1. of the paper).

Regularizing claims to land in a fair manner, the maintaining of an equitable state policy in regard to the claims and vulnerabilities of displaced persons and the need to ensure that government institutions dealing with displacement have clearly defined roles, mandates and responsibilities have also become imperative in this regard.

Sri Lanka's constitutional and legal framework in regard to housing restitution is summarized along with applicable international standards. Relevantly it is observed by her that;

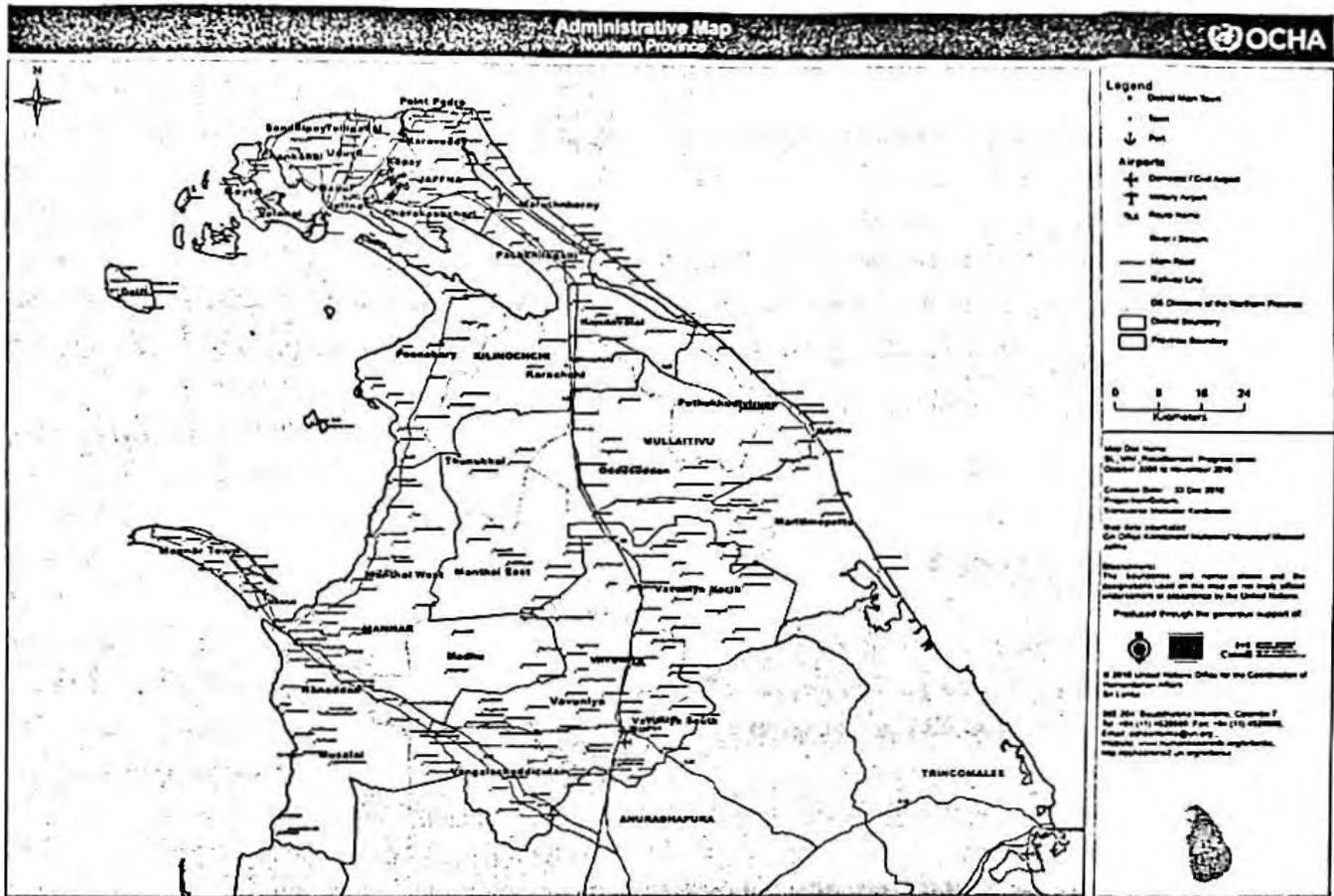
*While the right to adequate housing is not explicitly articulated, it is a natural feature of all human rights, that they are inter-dependent and indivisible. The 'fundamental right to equality' articulated in article 12 of the Constitution for instance, would not be possible if all persons are not given the opportunity to access housing, health care, and all other human rights which are essential to secure basic human dignity.*

The paper concludes with several recommendations in regard to the formulation of an appropriate housing restitution policy for the Vanni specifically but also for all areas affected by conflict in Sri Lanka.

*Kishali Pinto-Jayawardena*

# THE RIGHT TO ADEQUATE HOUSING IN THE VANNI: A QUESTION OF RELEVANT POLICY?

Rasika Mendis \*



## 1. Background and Scope of the Report

The 30 year long civil conflict in Sri Lanka ended in May 2009, with a decisive military defeat of the Liberation Tamil Tigers of Eelam (LTTE). Almost 3 years hence, there is still much to be done towards effective rehabilitation and reconciliation, in the affected areas of both the North and East. Rehabilitation and reconciliation necessarily envisages a multi-pronged programme of action touching on, among other things, the socio-economic, cultural, political and developmental dimensions of the post-war context. The effects of a 30 year war, it is understood, is wide ranging and far reaching. Some of them include, – large scale displacement, recurrent displacement, the loss of housing, livelihoods, moveable and immovable assets, land documentation, also the loss of family and social cohesion, marginalisation and vulnerability. No doubt, the scope for a process of rehabilitation and reconciliation is long term. However, certain basic

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needs and rights require the immediate implementation of relevant policy for their effective and progressive realisation. This report will examine the scope of a housing restitution policy, based on policy issues identified in the area of the *Vanni*, in the Northern Province of Sri Lanka.<sup>1</sup>

The districts of the *Vanni* are distinct from the District of Jaffna and comprise mostly of state land. The history of the conflict and its impact within these districts are variable, but they share a common experience of extensive devastation and destruction. Housing restoration in this context is essentially linked to the fact of displacement, the loss of housing infrastructure, and the return of Internally Displaced Persons (IDPs) to their lands. Housing programmes in the *Vanni* will therefore differ in scope to housing programmes that are implemented at the national level,<sup>2</sup> as will the policy issues that influence and impact them. Whether the return process is sustainable and affords a durable solution to returning IDPs<sup>3</sup> is more than just a matter of returning IDPs to their original lands, and is dependent on the process of restoration following return.

The internal displacement of persons has been a frequent and recurrent phenomenon in both the North and East throughout the 30 year civil conflict. The total number of persons subject to displacement during the civil war approximates to 900,000 persons. Following the cessation of hostilities however, humanitarian and other aid was primarily targeted towards those who had been displaced during the final war effort in the *Vanni* and were hence 'politically visible'. It is in the *Vanni* that the last stages of the civil war took place. Following the 'liberation of the East' from the LTTE between July 2006 and early 2007, the Government of Sri Lanka (GOSL) continued its offensive in the Northern districts of the *Vanni*. Large numbers, approximating to 300,000 persons were displaced from areas within the *Vanni* to government controlled territory in Vavuniya, Mannar, Jaffna and Trincomalee districts. Many of them were held in military-run camps amid much controversy as to whether the manner in which they were held violated their fundamental right to the freedom of movement. The release of Internally Displaced Persons (IDP) displaced between April 2008 and June 2009, referred to as the "new IDPs" commenced with the release of the elderly and vulnerable towards the latter part of 2009. Prior to the Presidential elections in January 2010, large numbers of persons were returned to their districts of origin. Many of them however, were unable to access their lands due to mine-clearance operations and took residence with host families, comprising relatives and others who were agreeable to host them, and in transit camps.

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<sup>1</sup> *Vanni*: comprises the Districts of Mannar, Mullaitivu, Vavuniya North in the District of Vavuniya and most of the District of Killinochchi (see map of the Northern Province given in this report); see section 2 for a detailed outline of 4 selected areas in the *Vanni*.

<sup>2</sup> The Ministry of Construction, Engineering Services, Housing & Common Amenities launched the *Jana Sevana* Housing Programme in 2010 with the aim of building one million houses in Sri Lanka. The programme will be implemented by the National Housing Development Authority (NHDA).

<sup>3</sup> Among the durable solutions available to IDPs, return (to their original homes and lands) is by far the preferred option; however IDPs must also be allowed the freedom to locally integrate in their places of displacement (especially in the case of protracted displacements) or to relocate (and resettle) in a completely new environment and location

Prior to the displacement of the 'new IDPs' in April 2008, 44,000 persons had been displaced from the *Vanni* between 2006 and April 2008<sup>4</sup> (2006 marks the time when the final offensive against the LTTE commenced in the East.). Those displaced from the North prior to the 2006 (pre-2006 IDPs) include persons displaced from High Security Zones (HSZ) in excess of 70,000 persons, and Muslim persons forced out of their homes by the LTTE in 1990, comprising at least 60,000 persons.<sup>5</sup> These IDPs are referred to as the "Old IDPs," some of whom have now returned to their original lands.

The liberation of the East, between July 2006 and July 2007 displaced around 300,000 persons who at the time were referred to as 'new IDPs' for purposes of humanitarian assistance, including shelter assistance.<sup>6</sup> Many of these persons had been subject to recurrent displacement since the late 1980's, but were eligible for the new assistance following their last displacement. As at August 2008, the number of 'Old IDPs' (pre-2006 IDPs), who had not yet returned to their original homes and lands in the Eastern districts of Batticaloa and Trincomalee, amounted to approximately 20,000 persons.<sup>7</sup> As at the end of 2011, 255,401 of the persons displaced in the Eastern districts of Ampara, Batticaloa and Trincomalee had been returned to their places of origin. It is to be noted that there is a significant need for shelter and permanent housing in the East, which has not been addressed as yet, and which has been 'side-lined' to accommodate the needs of the post-2009 New IDPs.<sup>8</sup> The majority of the IDPs has been returned to their places of origin and has been registered by government as 'resettled', though this term is misleading of the conditions to which the IDPs have returned. Many of the IDPs have not been restored to normalised conditions of living and continue to struggle to recover from their displacement. The Eastern Province ceased to be the focus of many humanitarian agencies, which were compelled to channel scarce resources to the larger humanitarian needs of the post-2009 New-IDPs in the *Vanni*.

Hence, the *Vanni* being the predominant focus of post-war humanitarian and development initiative, it is expected that the learning and experience of rehabilitation and restitution during the conflict will culminate and consolidate in the *Vanni*. There have been substantial donor funded programmes, government led initiatives, legislative, institutional and policy developments to provide precedent for the formulation of a streamlined and effective policy for housing restitution in the *Vanni*. The outstanding question is whether we are making an adequate effort to progressively build upon the experience and learning of the past to finally overcome the ill-effects of a prolonged war, including internal displacement.

As at the end of January 2012, 432,566 persons comprising 129,479 families had returned to the Northern Province (including the *Vanni*). These numbers include 206,778 persons displaced prior to April 2008.<sup>9</sup>

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<sup>4</sup> IDMC (2011) SRI LANKA: *IDPs and returnees remain in need of protection and assistance - A profile of the internal displacement situation*, p. 6.

<sup>5</sup> *Ibid.*

<sup>6</sup> COHRE (2009) *Recommendations for a National Policy on Housing, Land and Property Restitution in Sri Lanka*, p. 17.

<sup>7</sup> Ministry of National Building and Estate Infrastructure Development, Summary of the Island Wide Survey Report on Internally Displaced Persons, August 15, 2008 in *ibid*

<sup>8</sup> Indian Housing Provision for the East.

<sup>9</sup> UNOCHA (2012) "Join Humanitarian and Early Recovery Update," Report # 39, p.1.

The latter returns were predominantly to the districts of Killinochchi and Mullaitivu and Vavuniya North division. It is also to be noted that a number of New IDPs (6,567 individuals) remain in camps, until they are able to access their places of origin. In addition, a number of Old IDPs (7,503 individuals) remain in welfare centers in the Jaffna and Vavuniya districts.<sup>10</sup> While much of the humanitarian and developmental aid, including shelter assistance, is being channeled towards the return of New IDPs, it cannot be said with any certainty that the Older IDPs (who are now returning to their lands) are in anyway better off than the recently displaced. The general justification for this prioritisation seems to be that the older IDPs have been entitled to some form of assistance in the past.

The government formulated a Joint Plan of Assistance (JPA) in January 2012, which outlined priority areas to be jointly addressed by the donor community and the GOSL. The JPA outlines the current outstanding financial needs for the 'recovery of the Northern Province and for the sustenance of livelihoods'. It is currently under-funded by 65% of the overall estimate.<sup>11</sup> Where funding for the post-2009 humanitarian effort is scarce, with decreasing donor commitment towards Sri Lanka, the extent and manner in which humanitarian and post-humanitarian relief is made available is determined predominantly by the availability of committed donor funding. This is true with respect to shelter<sup>12</sup> and permanent housing<sup>13</sup> sector included. While the housing and shelter sectors are also underfunded in terms of the overall need, the current available capacity to build houses under the JPA is being fully utilised. Hence, there are both funding and capacity constraints to meet the outstanding housing need in an efficient and timely manner.

There is still a large requirement for temporary shelters in the Northern Province, though there is no longer a humanitarian crisis three years following the cessation of war in 2009. While it is timely to progress from a humanitarian phase to early recovery and medium term development, there is still a parallel and continuous requirement for displacement related humanitarian assistance. Temporary shelters are predominantly provided by humanitarian agencies that are decreasing in number. Agencies situated in the district of Jaffna are to relocate to the districts of Killinochchi and Mullaitivu due to lack of funding. Commitment<sup>14</sup> by agencies for temporary shelters is less than 9,000, which is hardly sufficient to meet the current need for shelter among returnees.

The overall requirement for permanent housing in the North is estimated at 160,000 houses in 2010.<sup>15</sup> A working figure of 100,000 houses is used, based on a rough estimation of those families and individuals

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<sup>10</sup> *Ibid.*

<sup>11</sup> *Ibid.*

<sup>12</sup> Shelter: temporary structures which are used in situations of emergency, as a humanitarian measure to temporarily house displaced families, for a duration of approximately 6 - 12 months.

<sup>13</sup> Permanent Housing: a structure that is built to last in the long term; for approximately 25 years or more.

<sup>14</sup> Commitment: implementing agencies who receive donor funds for the building of temporary shelters and permanent houses, commit to a certain number of shelters or houses under the JPA (this number is flexible and may be increased if the funding allows).

<sup>15</sup> This is based on the number of partially and fully damaged housing in the Northern Province of both the Old IDPs and New IDPs; it also includes an approximate number for houses damaged within the HSZs.

who are not able to build-back by themselves. The current commitment for permanent housing by both government and donor funded housing programmes are 34, 500 houses, of which fully damaged houses comprise 26, 313. As at February 2012, 16, 400 houses have been completely restored. This comprises 10.25% of the overall housing restoration requirement in the Northern Province (see chart 1 below).<sup>16</sup> A commitment for another 8,000 houses, it is expected will be forthcoming in 2012 (though the source of this housing is somewhat unclear). In 2010 the Government of India pledged US \$ 212 million (or SLR 24.13 billion) towards the building of 50,000 permanent houses. While the Indian housing project has not yet materialised, it will certainly ease the shortfall. There has been some initiative to commence the project in 2012, with clearer detail of how the programme is to be implemented.<sup>17</sup> The outstanding need against the 100,000 priority houses would still stand at approximately 17,000 houses.<sup>18</sup>

Following the cessation of hostilities both in the East and the North, the GOSL wasted no time in implementing large scale development projects for the rehabilitation and reconstruction of the respective provinces; namely the *Nagenehira Navodhaya* (Reawakening of the East) in the Eastern Province and the *Uthuru Wasanthaya* (or the 'Vadakkinn Vasantham') development programme in the North. It is commendable that The Government of Sri Lanka (GOSL) has achieved much in the North, since the ending of the war. This is most notably, in the building of roads, other large scale infrastructure for power and irrigation, and improving conditions of health care and education. It is probable that the full dividends of the development envisaged for these provinces will be realised in the long term. The outstanding question however, is whether there is sufficient planning for a comprehensive and targeted programme, to meet the humanitarian and recovery needs of persons who have been subject to displacement (and at times to recurrent displacement) in the short and medium term. While it is accepted that the financial outlays for housing are large, and the restoration of housing is necessarily a long-term development goal, it is also a basic human right towards which a concerted policy planning is required in the immediate term. An apparent drawback to long term planning is that there is no clear policy regarding some of the larger issues impacting the restoration of conflict affected housing. The pertinent question is what the policy position of the government should be, with regards to post-war housing restitution in the North and East? Are policy issues to be determined through a lens of development? Should vulnerability be a key determinant in housing restoration? Should policy be directed by wider concerns of political reconciliation and communal re-integration? A viable policy position is key, not just to resolve the larger outstanding policy issues, but to also negotiate for much needed donor buy-in and support.

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<sup>16</sup> UNOCHA, *supra* note 9, p.11.

<sup>17</sup> The Indian Housing Programme: between the writing of this report and its publication, it was announced that the Indian Housing Programme was to be commenced and implemented through four selected 'implementing agencies', namely the UN-HABITAT, International Federation of Red Cross and Red Crescent Societies (IFRC) in partnership with Sri Lanka Red Cross, The National Housing Development Authority (NHDA) of the Government of Sri Lanka, and Habitat for Humanity, Sri Lanka office. Information of the housing standard (the physical standard) to be implemented, and the beneficiary selection criteria that is to be used is not accessible at this point in time. The number of houses to be constructed totals 50,000 distributed among the districts of the Northern Province and with an allocation for the Eastern Province.

<sup>18</sup> Estimation arrived at by UNHABITAT, Sri Lanka.

Policy issues impacting housing restoration will be appraised from a lens of the concept of 'restitution', in this report.<sup>19</sup> In general law, restitution is a 'legal remedy' for 'loss' that has been suffered by an individual or a group of individuals. In international law, there is an increasing recognition of the human right to restitution, based on the premise that the fact of displacement violates a number of established human rights that need to be restored in the aftermath of conflict or natural disaster. This includes the human right to adequate housing. Hence, this report will adopt a rights based perspective to its discussion and analysis. A rights based approach to policy analysis is necessary, to identify the requirements of a policy process that recognises the provision of housing, not just as a basic human need but also as a human right.<sup>20</sup> The discussions of the report will also draw on the significant knowledge and experience of other housing programmes implemented throughout the period of conflict, notably the North East Housing Rehabilitation Project (NEHRP) and the Tsunami Housing Programme.

The rehabilitation and reconciliation process in the *Vanni* will no doubt be molded by larger socio-economic and political issues. It is not possible to disassociate housing provision or a policy for housing reconstruction from these larger issues. The report will not discuss these issues in great detail. However, the *Vanni* witnessed the culmination of a 30 year war, its cessation and the aftermath. The test of whether Sri Lanka can effectively draw upon the learning of those troubled times, must resolve itself in the workings of rehabilitation and reconciliation in the *Vanni*.

Chart 1: Total Number of Permanent Houses - Full-Reconstruction

District	Committed	Progress	Completed	To be started	Agencies
Vavuniya	3,585	773	1,009	1,803	ASB, SEED, UN-HABITAT, UNDP, Indian Proj, NHDA
Killinochchi	8,529	2,504	5,488	537	UN-HABITAT, SLRCs/IFRC, NEHRP, Caritas, Indian Proj, Swiss Labour Assistance, SDC, NHDA, NRC, Shanthi Community
Mullaitivu	4,558	1,538	2,817	203	NEHRP, SLRCs/GRC, UN-HABITAT, SLRCs/JRC, SDC, Indian Proj, UNDP, NHDA
Mannar	2,737	760	1,627	350	NEHRP, SLRCs/NRC, Caritas, CTF, Muslim Aid, UNDP, Family Health Programme, Indian Proj, People's Bank, NHDA, UN-HABITAT, MWDF

<sup>19</sup> See section 4.3 for further discussion.

<sup>20</sup> See section 4.2.

Jaffna	6,904	1,151	5,459	294	NEHRP, UN-HABITAT, SDC, Caritas, Indian, UNDP, NHDA
<b>Total</b>	<b>26,313</b>	<b>6,726</b>	<b>16,400</b>	<b>3,187</b>	

Source: District Secretariats, Planning Divisions, Agencies, Deputy Programme Directors – NEHRP.

Complied by: UN-HABITAT

## 2. Methodology and the Geographical Area of Investigation

### 2.1 Methodology and Scope:

The formulation of the report followed a three-fold methodology. This would ensure a fairly comprehensive overview of the opportunities and obstacles associated with implementing the human right to adequate housing; it would also help to understand the central importance of this right in post conflict restitution in the *Vanni*.

The three-fold approach is as follows:

- Review of reports, articles and updates that provide insight into the scope of the issues impacting the right to adequate housing in the North, including the *Vanni*, and which outline past policies and practices that are currently relevant to the restitution of housing, land and property of those who have been displacement;
- Consultations with International Non-Governmental Organisations (INGOs), civil society groups, United Nations (UN) agencies, and government institutions and offices working in relation to the implementation of housing programmes;
- Interviews with community members affected by the last stages of the conflict and who have had no access to housing restitution in their places of origin, at the time of the interview.

The methodology was conducted in four different locations (outlined below). It is to be noted that the interviews conducted among the communities were *ad hoc*, and not in any sense a comprehensive survey of a sample group. It was not intended for a statistical analysis of the several responses, but only to obtain an understanding, in a general sense, of the particular concerns of returning families regarding their conditions of shelter and housing.<sup>21</sup>

The rationale for the methodology may be explained, in brief, as follows:

<sup>21</sup> A summary of a few case studies are given in section 3.

There is extensive literature dealing with past policies, practices and programmes for the reconstruction and management of housing for displaced persons. Commencing from the late 1980's the GOSL has implemented housing programmes to address the ongoing displacement resulting from the war, and the displacement that resulted from the tsunami natural disaster in December 2004. Notably, literature on the North East Housing Reconstruction Programme (NEHRP), implemented with the aid of the World Bank and the Tsunami Housing Policy. There is much insight to be gained from this literature regarding the issues and obstacles inherent in housing reconstruction in post displacement contexts. It is probable that many of these issues are common to those in the *Vanni*. Hence, reference to previous policies and programmes, is important to inform a progressive process of policy making and practice that is relevant to the particular challenges of the context at hand.

Non- governmental entities implement housing programmes in consultation with local government offices at the district and divisional levels. Agencies commit to the building of shelters and permanent housing under the JPA, according to available funds, which is negotiated with the government at the central level. Housing construction programmes approved under the JPA fall under the purview of the Presidential Task Force for the Rehabilitation of the Northern Province (the PTF).<sup>22</sup> Hence, these interviews were aimed at understanding the dynamics between the different entities at the central and local levels and the programmatic detail pertaining to housing restitution and reconstruction.

Interviews with communities are vitally important to understand the particular circumstances and challenges of returning to the *Vanni*, which may warrant the implementation of specific policy and programmatic responses.

## 2.2 The Geographical Areas of Investigation

Four localities in the *Vanni* were chosen, based on their housing needs, difference in demographics, and the numbers of vulnerable persons. The overall need for permanent housing in the North, estimated at 160,000 houses, comprises all the houses destroyed in the period 1983 – 2009. Hence, the damage to the houses of both the Old IDPs and New IDPs has been counted in this estimate, including those situated in the High Security Zones in the North.<sup>23</sup> Housing damage in the *Vanni* was particularly extensive during the last stages of the war. Newly damaged houses are situated predominantly in the districts of Killinochchi, Mullaitivu, Vavuniya North in the district of Vavuniya, and Manthai West in the district of Mannar. Persons resident in these areas were displaced in their entirety, Manthai West in 2007 and in the other areas between April 2008 and May 2009.

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<sup>22</sup> The PTF is a Presidential Commission appointed in 2009 to coordinate security, post-war development and 'resettlement' programming in the Northern Province. Senior Presidential Advisor and Minister for Economic Development, Basil Rajapaksa was appointed as the Chairman of the Task Force, and Essential Services Commissioner General S.B.Divarathne was appointed as the Secretary.

<sup>23</sup> Some sources however, estimate the overall housing need to be in the region of 200,000 houses.

While there is a substantial housing need in other parts of the North (as well as the East), the predominant focus at present among shelter and housing agencies are the areas of the *Vanni* outlined above.

Outlined below are the locations selected for investigation:

### 2.2.1 Maritimepattu DS Division, District of Mullaitivu<sup>24</sup>

Maritimepattu is one of the more severely affected District Secretariat (DS) divisions of the Mullaitivu district, comprising 46 GN divisions. The overall housing need in the district of Mullaitivu is estimated at around 73%. Out of a total of 29,479 houses that need reconstruction and repair, there is a current commitment for around 7,965 houses.

The division of Maritimepattu comprises mainly of two ethnic communities – the Tamils and the Muslims. From a total of 11,014 families, 2040 families are Muslim. A few Sinhala families, approximately 74, also reside in this division. Fully damaged houses<sup>25</sup> in the division have been counted by the divisional secretariat to be 8,555 houses. This is the largest number for housing damage in the divisions of the Mullaitivu district. The requirement for new houses however is slightly less at 8,343 houses (it is assumed that some of the returnees have re-built their own houses). The number of houses committed towards this requirement is 1,364 new houses and 170 core houses.<sup>26</sup> Houses that require repair number 2,545, of which agencies have committed towards 1,781. In the meantime, the commitment for temporary shelters in Maritimenpattu remains low at 2724 shelters. The overall commitment for permanent housing in the division at present amounts to 30%.

Return of displaced persons to Mullaitivu from camps and other locations commenced in the latter part of 2009. A 100% of persons displaced from this division had returned as at the beginning of 2012. However, the general opinion is that there is no clear policy and plan of action to meet the outstanding housing need. The bottom line is that many people still have no place to live, though they have been allowed to return and are listed in government statistics as having 'resettled.'<sup>27</sup> The numbers have been submitted to the Indian Housing Programme, and much hope has been placed on this programme. Except for the INEHRP housing programme (which has now been finalised) there is no knowledge of a government led programme to meet the outstanding need. The Rehabilitation of Persons Properties and Industries

<sup>24</sup> All information in this section is from official government sources in the relevant district (and division), unless otherwise specified.

<sup>25</sup> Fully damaged houses: houses which are assessed for structural damage that require complete re-building; these houses cannot be repaired and must be re-built. In contrast, houses with a lesser extent of damage and are structurally stable are assessed for repairs only.

<sup>26</sup> Core house: see section 3.1.

<sup>27</sup> Resettlement: the term used by the government to refer to the process of bringing back and settling displaced persons in their original lands. This process is referred to as 'return' in international terminology.

Authority (REPPIA) however, had assisted with 222 low budget houses in 2011<sup>28</sup> under its United Assistance Scheme (UAS). This scheme grants a total of rupees 100,000/- for both livelihood and housing restitution. The houses were for low income single member households.

Out of the 46 GN divisions in Maritimé pattu, 6 GN divisions contain 536 families totaling 1,542 persons who were displaced in 1983.<sup>29</sup> They are not eligible for assistance, as priority is given to the New IDPs displaced post – 2009. This means that they are not eligible to receive the standard rupees 25,000/- given to returning IDP families by the UNHCR, towards shelter assistance. Two agencies however, have built a total of 120 houses in these GN divisions. This assistance is given at the discretion of the agencies however, and does not fall under a targeted plan to address the needs of protracted IDPs.

There are 1395 widows (and possibly female headed households), 80 orphans and 508 disabled persons in this division. Priority is given to female headed households with respect to assistance, including for permanent housing. However, this is at times a matter for contention in certain communities.

Many persons in this division have lost their land documentation. In addition, Muslim families displaced some 20 years are in the process of reintegrating into their original lands together with their extended families (second and third generations) This has led to a problem of landlessness, which is a barrier to return for communities that value community and social cohesion.

The majority of persons in the Martimepattu division are farmers and fisherman. The general feeling among the people is that there needs to be greater community mobilisation if things are to return to any degree of normalcy. Women headed households feel they are unable to fully participate in the reintegration process and other social activity as a result of certain societal and cultural taboos associated with widows and single women.<sup>30</sup>

Maritimé pattu has been 'fully resettled', but is the division in Mullaitivu with the largest shortfall in housing (in numbers) and livelihood support. The progressive improvement of restitution in this division will reflect much on the overall rehabilitation process in the district, as well as on the formulation and implementation of overall policy and programmatic detail for the realisation of adequate housing in the *Vanni*.

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<sup>28</sup> Of the total 222 houses, 100 was assisted through full payment and 122 through part payment of the rupees 100,000/- grant.

<sup>29</sup> 6 GN Divisions: Kokulai East, Kokulai West, Kokuthoduwai South, Kokuthoduwai North, Kokuthoduwai Centre, Karunaddukkeny.

<sup>30</sup> See case studies of returnees to Maritimé pattu DS division in section 3 – case-study boxes 1 and 5.

### 2.2.2 Kandawalai DS Division, District of Killinochchi<sup>31</sup>

The Kandawalai DS division in the Killinochchi district was severely affected during the last phase of the war. The entire population is Tamil and belongs to the Hindu religion. Livelihood activities consist mainly of day-pay labour jobs and farming. The entirety of persons displaced from the division (its entire population) has now returned to their original lands.

The overall housing need in the district of Killinochchi is 41,990 houses. A total of 12,210 houses had been committed to by agencies as at December 2011. Hence the overall housing gap amounts to approximately 71% of the overall need. The overall gap in the Kandawalai division is at 76%, with a total commitment of 2534 houses against the overall need of 10,405 new houses. A majority of the houses committed to the division have now been completed. The breakdown for these houses comprises – 1,658 new houses, 200 core houses, and 676 houses needing repair. The urgent requirement for housing in the division has been raised at the district, provincial and national levels. It is hoped that the Indian Housing Programme will be able to assist with the 3,000 of the housing shortfall. In the meantime, some of the returnees have been provided with temporary shelters, while others have built shelters of their own. Other returnees occupy semi-permanent structures. The UNHCR's post return shelter assistance of rupees 25,000/- has been received by 6,000 of the 10,405 returned families. Prior to their displacement, the population in the division occupied a variety of housing, including bricks houses, clay and cajun houses and houses made of tin sheets. Kandawalai is a low lying area and gets flooded during the windy season. The suggestion is to build houses that are 'hazard proof' structures.<sup>32</sup>

Disadvantaged groups within the division are identified as follows:

1. Two member families, where one member is disabled (due to the conflict). The total number of families with disabled members amounts to 529 families. There is currently no specific programme to address the needs of disabled persons among the returnees.
2. Female headed households in the division amount to as much as 1,500 families. Many of them are 'war widows', who have either lost their husbands during the war or have not seen them due to their detention. There is little additional support available to them. They are often unable to contribute by way of labour and finances to the construction of their houses, as required by owner driven housing programmes. The only available solution seems to be for the DS office to negotiate with agencies

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<sup>31</sup> All information in this section is from official government sources in the relevant district (and division), unless otherwise specified.

<sup>32</sup> This is a housing standard developed by the Inter-agency Technical Working Group working with permanent housing; however, it is not clear whether it is practicable to implement this standard at the current time.

to complete the construction, where it is not possible for these households to contribute labour and supplementary finances.<sup>33</sup>

3. Cases where both parents have been lost in the war, and only the children have returned to the division.

Almost 25% of the housing allocations are for vulnerable groups who are not able to contribute to the completion of their houses under the owner driven housing approach.

Land and land documentation problems in Kandawalai are as pervasive as in most other conflict affected areas. Many persons have lost their land documentation. Where the documentation is available, it is most often in the name of a missing family member (most often a missing male spouse).

### 2.2.3 Manthai West and Musali DS divisions, District of Mannar<sup>34</sup>

Many of the factors affecting land and housing in the Vanni are common to the district of Mannar. In addition there is the challenge of accommodating the large Muslim population who has been in protracted displacement since 1990. Prior to 1990, the Mannar district was home to the largest Muslim population in the *Vanni* (and the whole of the North).<sup>35</sup> Of the total population in Mannar as at January 2012, comprising 41,870 families and 157,752 individuals, the Muslim population is recorded as – 17,190 families (70,764) individuals. The transition from being displaced for over 20 years in the Puttalam district to resettling in Mannar has been fraught with problems for most of the returning Muslim population. These problems include that there was little assistance upon return, in contrast to the assistance received by the post 2009 IDPs. Their original lands had turned into secondary forests making land boundaries difficult to demarcate, conflicting claims to land arising from the illegal transfer of land during the war, impoverishment arising from displacement resulting in the loss of land and property, the lack of shelter and housing, and issues of landlessness associated with extended families.<sup>36</sup> In instances where Muslim families have received post return shelter assistance and housing (largely through the involvement of local politics), it has proved to be a ‘sensitive’ issue. This may be attributed to the assumption that these communities are receiving something in ‘addition’ to the assistance they have already received in their places of displacement (especially in the District of Puttalam).

The return of displaced persons following the cessation of hostilities in 2009 commenced in the district of Mannar in the middle of 2009. A total of 17,659 families (and 63,977 individuals) had been returned prior to May 2009, and in addition a total of 24,211 families (93,776 individuals) returned post May 2009. The

<sup>33</sup> See case studies from this division section 3.0 – case-study box 3.

<sup>34</sup> All information in this section is from official government sources in the relevant district (and division), unless otherwise specified.

<sup>35</sup> Law and Society Trust (2011) *The Quest for Redemption: The Story of the Northern Muslims*, Final Report of the Citizens’ Commission on the Expulsion of Muslims from the Northern Province by the LTTE in 1990.

<sup>36</sup> *Ibid* pp. 162 - 175.

overall gap in housing requirements however remains at 88% of the overall requirement of 25,071 houses (both for full reconstruction and repair).

The populations of Manthia West and Musali are recorded as having returned post 2009 in their entirety, indicating that both these divisions was severely affected by the last stages of the war that commenced in 2007.

### *Manthai West*

Manthai West is a DS division adjoining the district of Kilinochchi. Returns to this division took place between October and December 2009. The division comprises both Tamil communities and Muslim communities displaced in 1990. Some of the latter community returned prior to 2009. Numbers for each of the respective communities that have returned to this division in the latter part of 2009 are 4302 Tamil families (14,747 individuals) and 2,328 Muslim families (9,548 individuals) respectively,<sup>37</sup> comprising a total of 6,630 families (24,295 individuals).

The permanent housing programme in Manthai West is relatively small compared with those being implemented in Mullaitivu and Killinochchi. The overall housing requirement in the division is 7,513 houses (including 230 houses needing renovation). A commitment for 1,022 houses has been made towards this housing, with an outstanding need amounting to 86% of the overall housing requirement. The NEHRP housing programme had built houses for all communities, prior to their displacement in September 2007. Approximately 70 core houses have been built by non-governmental agencies for returning Muslims in the division.

Many of the returning Muslims possess documentation and the government has allocated lands to 'new families' (the extended family of the original inhabitants). The stipulated policy position concerning permanent housing for those who have been in protracted displacement in Puttalam is that, if any person has received housing assistance in Puttalam, then he/she is not entitled to permanent housing in Manthai West. Many of them live in temporary shelters, and it cannot be said with any certainty that they have permanently re-established themselves in Manthai West, given the challenges of making this transition. However, they are registered as having returned in government statistics.

Inevitably, there is contention and dispute over certain lands to which Muslim communities have returned to after more than 20 years. According to government sources, the land department is attempting to resolve these disputes as best as possible. There are no such land issues in GN divisions which are inhabited entirely by the Muslim community.<sup>38</sup> From an assessment of 32 GN divisions, of the 36 GN divisions in Manthai West, approximately 1020 families are landless. This makes them ineligible for

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<sup>37</sup> There are in addition, 238 Sinhala families (792 individuals) in the Mathai west DS division.

<sup>38</sup> Muslim GN divisions in Manthai West include – Periyamadu Pasikulam, Palivasalkuti, and Udathalthivu.

housing assistance until this status is resolved. Under the Indian Cluster Housing Programme,<sup>39</sup> 72 houses were built in this division for landless persons. An outstanding need to regularise claims to land have contributed to the delays in the construction of houses.

The Social Services Department implements projects to help disadvantaged groups in Manthai West (with an officer located in the office of the Divisional Secretary). These groups are identified as – elders, the disabled, widows, abandoned women, detainees, and orphans (the latter group falls under the purview of the probation officer). There are currently 587 widows (and female headed households) in Manthai West, of which 141 are war widows. Single member families are not included in these schemes (including widows and elders above 60 years), as they do not fall within the priority scheme for vulnerable families, where families with larger numbers are considered more vulnerable.

A Public Assistance Monthly Allowance (PAMA) of rupees 250/- is given to vulnerable persons, which may be increased to rupees 500/- per month depending on the person's needs. The minimum budget allocation for disadvantaged groups in Manthai West is rupees 250,000/- per month, with the total budget approximating to rupees 500,000/- per month.

The main source of income in the division is agriculture activity. Livelihood actors (both government and non-governmental) have provided support for livelihoods for those who have returned permanently.

### *Musali*

The Musali DS division is the only Muslim majority division in the Northern Province.<sup>40</sup> The division has been affected by the conflict throughout its duration. The process of return following the cessation of hostilities in the Musali DS division commenced with the return of those families and individuals displaced within the district of Mannar. There was some uncertainty as to when those who were hopeful of returning after 20 years from the Puttalam district, would be integrated into the return process.

The current population recorded in January 2012, is 6,655 families comprising 27,892 individuals in contrast to the 1981 figure of 8,705 individuals.<sup>41</sup> The ethnic breakdown is as follows – 946 Tamil families (3,703 individuals), 5,687 Muslim families (24, 131 individuals), and 22 Sinhalese families (58 individuals). Those forcibly evicted by the LTTE in 1990 and who have now returned to Musali, amount to 3044 families (13, 215 individuals), comprising 53% of the total Muslim population.

The above figures indicate that the population in Musali has grown by three-fold, with the Muslim population comprising 86% of the current population. This is in contrast to the 62% Muslim population

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<sup>39</sup> The Indian Cluster Housing Programme: The pilot programme of the Indian Housing Programme to be launched in 2012, which built 1000 houses in the districts of the Northern Province; houses built in the Vanni are to be allocated towards landless persons, while the allocation for the District of Jaffna was built on private land.

<sup>40</sup> Law and Society Trust, *supra* note 35, p. 59.

<sup>41</sup> *Ibid.*

that inhabited the Musali division at the time of their expulsion in 1990.<sup>42</sup> The majority of the population engages in agricultural activities for their livelihood, as they did at the time of their expulsion in 1990.

The overall housing need in Musali stands at 88% of the overall housing requirement of 5594 houses (of which 68 houses require renovation only). The current commitment stands at 638 houses only (593 new houses and 45 core houses). There is currently no commitment to build temporary shelters in Musali. The requirement for permanent housing for those expelled in 1990 is estimated at 2612 houses.<sup>43</sup> This amounts to approximately 46% of the total Muslim households, currently registered as resident in the Musali division.

However, not all the returning Muslim population has in reality returned permanently to the division. The lack of shelter and housing assistance being one of the several problems associated with returning to their original lands. The disparity between the total number of registered Muslim returnees in the division and the requirement for permanent housing among them can perhaps be attributed to the fact that not all of them were present at the time of this data collection. Also, much of the Muslim villages have now been reduced to secondary forests, where even the boundaries between individual lands and houses are not apparent.<sup>44</sup> Hence, it may not be an easy task to make an assessment of the damage.

The NEHRP programme had built houses in the division during the conflict, and the UN- HABITAT had recently commenced the building of 150 permanent new houses in this division to be allocated for Muslim communities. The Indian Cluster Housing Programme built 56 houses. No other agencies are currently working with permanent housing in the division.

The division has some political importance however, as the largest returning Muslim population is from Musali. Approximately 500 families remain landless.

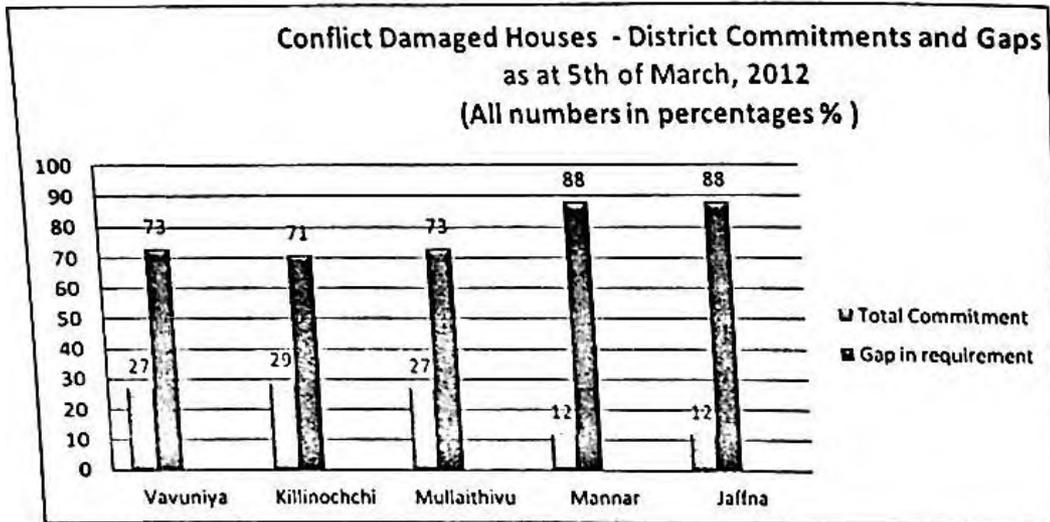
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<sup>42</sup> *Ibid.*

<sup>43</sup> Musali Division (2012), Details of Long Term Internally Displaced People (IDPs) in the Northern Province, Village level Data Collection.

<sup>44</sup> Law and Society Trust, *supra* note 35, p. 163.

**Chart 2: Commitment for Permanent Housing and the Outstanding Need for Permanent Housing**



*Based on data received from district based government sources*

### 3. Policy Issues Impacting the Human Right to Adequate Housing in the *Vanni*

This section will outline some issues that are identifiable as impeding the progressive realisation of the right to adequate housing in the *Vanni*. It is proposed that a sufficient understanding of these issues is a prerequisite to the formulation of a relevant and effective policy framework for housing reconstruction and rehabilitation. Further, it is reasonable to suggest that these issues have the potential to negatively impact on long term reconciliation and peace-building in the context of the *Vanni*, and by extension in the entire North and East.

Housing is a basic human need and has received universal articulation as a human right.<sup>45</sup> Policy issues that potentially impede the realisation of this right in the context of the *Vanni* must necessarily be identified in light of certain overarching considerations. These include – whether the post-war conditions in the *Vanni* have achieved any level of normalcy and the extent to which the socio-economic constraints and challenges of returning communities must be factored in to a process of housing restitution. Whether policies that apply to the *Vanni* (and the North), the allocation of funds, and relevant decision making should be decentralised and the scope of this decentralisation. The extent to which a process for housing provision must adopt a ‘bottom-up’ approach, and whether the available institutional structures are adequate to meet the particular challenges of post-war *Vanni*.

#### 3.1 The Lack of a Progressive Policy for Conflict Affected Housing

Following the cessation of hostilities in May 2009, 3 years hence, the central challenge to housing rehabilitation and reconstruction in the *Vanni*, is the large shortfall in funds to meet the outstanding housing requirement. The financial outlay to rebuild and renovate 160,000 houses (the estimated need for

<sup>45</sup> See section 4.2.

the entire North) will inevitably be large, even for basic permanent structures. Much of the existing commitments towards the building of permanent housing are with donor funds. However, a lack of funding does not justify the absence of a concerted policy and plan to meet the housing shortfall. Most of those who wait in anticipation of housing assistance have pinned their hopes on the Indian Government's housing programme.<sup>46</sup> The allocation per district under this programme, of course, is less than the numbers of housing for which there is a need. This programme, when it commences, will ease the shortfall but not meet the estimated loss. The policy position regarding the unmet need for housing restoration both in the North and East remains unclear. The implicit policy position for the restoration of conflict affected housing seems to be defined and directed predominantly by the availability of funds. Existing funds are channeled towards priority housing for vulnerable families and those with priority needs.<sup>47</sup> A related policy issue concerns whether those who have suffered loss and are not prioritised for housing are entitled to have their loss restituted or compensated.<sup>48</sup>

This discussion does not negate that fact that the GOSL has throughout the duration of the conflict, attempted to restore permanent housing. A number of programmes and institutions have contributed to progressively develop and better define criteria and standards for the reconstruction of conflict affected permanent housing. The Emergency Rehabilitation and Reconstruction Programme was implemented in 1998 and 1996 in two stages, with an outlay of US \$ 388 million, for both the Northern and Eastern provinces. This programme included among other things, allocations for compensation and housing grants. Much of the funds were channeled into infrastructure as the return of displaced persons was compromised by the ongoing hostility. The REPPIA was established in 1987 to assist persons affected by 'riot or civil unrest'. It implemented the UAS, which included both temporary housing assistance and permanent housing assistance. The UAS assistance was for 'low income housing', with a maximum grant of rupees 75,000/- to effect either repairs or to re-build a permanent structure (paid in a total sum of rupees 100,000/-, comprising an additional rupees 25,000 livelihood allowance). The UAS scheme, as outlined by a handbook issued by the Ministry of Resettlement, defines the criteria by which the scheme would be implemented. Eligibility for the scheme was dependent on – income of the potential beneficiary, type of employment and the type of assistance required, and the permanent return to the original land of the beneficiary. Hence, eligibility for the scheme was contingent upon the return of the displaced persons to their lands. The scheme provided for both grants and loans, based on the family's income. Housing grants were given to families earning less than a stipulated amount per month, for 'low income families', initially in the form of vouchers for building materials with which the beneficiaries themselves would build the house (the 'owner driven housing' scheme).<sup>49</sup> Hence, commencing from the late 1980's the government implemented a policy of addressing low income conflict affected housing, with loan grants for those who fell outside the scope of low income households. The scheme was essentially an owner driven housing programme within the purview of a government institution established by legislation, and was not associated with donor funding.

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<sup>46</sup> See section 1.0: Introduction; and section 2.2.

<sup>47</sup> See section 3.4 for prioritisation of beneficiaries.

<sup>48</sup> See section 4.3 for a discussion on the right to restitution.

<sup>49</sup> Also see, COHRE (2009), *supra* note 6, pp. 73 - 75.

The North East Housing Rehabilitation Programme (NEHRP) initiated in 2005 was funded by the World Bank. It was implemented by the relevant central ministry under the direction of the provincial council and hence used national institutions for its implementation. Also implemented for low income households, the programme adopted an owner driven approach to the building of houses. It introduced, for the first time, a specific standard for housing reconstruction, namely the 'core house'.<sup>50</sup> The core house is a basic permanent structure with one completed room and an additional room that is roofed, which the beneficiary must complete (plaster and build additions to) with his/her own resources. The money allocated per house under the programme was in reference to a specific pre-determined standard of the core house, which was determined to be an adequate standard for the restitution of low income families following displacement. The cost of a NEHRP house, originally estimated at rupees 150,000/- was increased to rupees 250,000/- following the tsunami natural disaster (hereinafter referred to as the 'tsunami') in December 2004. The aftermath of the tsunami consolidated the criteria and standards by which the restoration of housing for displaced persons would be effected. The core house, originally defined as a 400 square foot house, was later understood to be a 500 square foot house of the same description, referred to as the 'NEHRP standard'. The permanent housing grant (corresponding to the NEHRP standard) was subsequently increased to rupees 325,000/- by the Mahinda Chinthana Development Plan of 2006. Implementing agencies currently estimate the cost of a NEHRP house to be in the region of rupees 500,000/-.

The aftermath of the tsunami saw the formulation of the first ever explicit policy for the housing restitution of displaced persons. While prior initiatives comprised implicit policy for the restoration of low income housing, the Tsunami Housing Policy established the 500 square foot house as the basic minimum standard for tsunami affected housing restoration in all affected areas. It also established the policy position of 'building back better' - keeping to the basic minimum standard irrespective of whether the original house was of a lesser standard; and the 'house for a house' policy - to replace every house damaged or destroyed by the tsunami with a new house.

The policy priorities of the tsunami housing policy have been carried over to conflict affected housing and have shaped the programmatic detail of housing restitution. However, the tsunami brought in its wake a vast amount of donor funding and the 'donor driven housing' approach (to be differentiated from the 'owner driven housing' approach), which is not available to the restitution of conflict affected housing. Many of the implementing agencies constructed donor driven housing; a completed house without the input of the beneficiaries, in contrast to the owner driven approach, which envisages the input of the beneficiary to complete the housing restoration process. Donor funded projects used varying housing standards, according to their own agency standards and specifications. They were reluctant to commit to the NEHRP standard, which they felt did not fall within their definition of a 'permanent house', and often referred to the NEHRP core house as 'transitional' or 'semi-permanent' shelter. This definitional problem was primarily based on the reasoning that there was little guarantee that the beneficiary would be in a

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<sup>50</sup> Defined in Circular No. NEHRP/I (2004) as - "a house with a minimum area of 400square feet, a secured room, and an additional room, subject to beneficiary input on the design and any extension to be supplemented with the beneficiary's own funds."

position to complete the core house. Funding allocation per donor driven house varied among the different projects and in certain instances would amount to as much as rupees one million. However, the NEHRP core house was deemed an 'adequate' option, where there is no extensive donor funding, to provide beneficiaries with some level of permanent accommodation and housing restitution. Much insight into housing restitution was gained through the Tsunami experience. The precepts of the tsunami housing policy however, may need some revision in its application to conflict affected housing. The concept of 'building back better' may need to envisage different standards of housing that are adequate to meet different needs instead of one standard for all returnees.<sup>51</sup> The 'house for a house' policy may not be relevant where the return of families in protracted displacement may require some flexibility to accommodate extended families.<sup>52</sup>

It is necessary to develop a post conflict housing restitution policy that can absorb the learning of the past in a 'relevant' manner. There has been little national discussion and dialogue on the key issues of the post conflict context that require a clear policy position. Policy issues affecting housing restitution in the *Vanni* are significant, as highlighted before, given the current emphasis on "resettlement" in the *Vanni* and for the complexity of its context.<sup>53</sup>

### Case study 1: Maritimpattu DS Division

The family returned to their own lands in this DS Division from the Ramanadan Hall in Menik Farm (Vavuniya). The mother and two daughters live in a little hut beside their fully damaged house, which they received following the tsunami (a 500 square foot house). The father of the two girls is currently in hospital after a stroke. They said they had delayed to return to the land due to his illness. Hence they were not listed for permanent housing assistance, which all their neighbors have received. Families are listed for resettlement in batches hence this family has been left out though they have documents to prove entitlement to their lands. But due to their desperate circumstances the GN has promised that they will be a priority case for the Indian housing project. The father/husband was engaged in fishing activity prior to their displacement in 2009. The family's current means of livelihood is by helping with fishing nets and other such work. They are hopeful of a proper permanent house, given their circumstances, but are not sure how they will be able to contribute to an owner driven housing scheme.

### 3.2 Housing Standards in the 'Vanni' and the One-Size-Fits-All Approach

The discussion regarding post conflict housing restitution standards took on a different turn following the cessation of hostilities in May 2009. Where funding was limited, the debate on housing standards centered on whether to build cost-effective houses of a smaller dimension,<sup>54</sup> in contrast to the NEHRP

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<sup>51</sup> See discussion in section 3.2.

<sup>52</sup> See discussion in section 3.3.

<sup>53</sup> See section 2.2 for geographical areas of investigation.

<sup>54</sup> COHRE (2009), *supra* note 6, pp. 93 - 94.

standard. Implementing agencies argued that this was the best way forward to reach a larger population with a permanent solution. A 250 square foot structure with a 500 square foot foundation was formulated by the inter-agency group for permanent housing,<sup>55</sup> referred to as a 'core house'. The rationale for the implementation of this structure is that the beneficiary can expand the house at a later stage when he/she is more financially secure. Currently, several agencies are committed to building core housing.

Issues arising from funding constraints extend to the building of humanitarian shelter (sometimes referred to as 'semi permanent shelter'). The demand for shelters continues to exceed the number of shelters to which implementing agencies are able to commit to. The most vulnerable are identified and chosen to benefit from the limited amount of available humanitarian shelters. The problem thereafter is whether they should then continue to benefit from a permanent housing programme, in view they have already received some form of assistance while there are so many others who still require shelter/housing assistance. This debate has been ongoing since the conclusion of the conflict, and very little has been resolved since. The PTF in the meantime would prefer implementing agencies to build permanent houses instead of temporary shelters to the specification of the NEHRP standard. However, where funding for permanent housing is limited, there is a real need for temporary shelters of an adequate standard in the immediate term. Given the uncertainty of the time-frame for the implementation of permanent housing programmes, agencies attempt to build transitional shelters of a longer durability.

All of the above requires a re-visitation of the basic standard of permanent housing that is used, and the viability of the 'one size fits all' approach, where funding is limited. The REPPIA recently assisted in the construction of 222 houses,<sup>56</sup> in the Maritemepattu DS division in Mullaitivu. These low-budget permanent houses were meant mostly for single member families. The available information is insufficient to conclude whether the building of these 222 houses at a cost even lower than that of the cost-efficient standard of core housing, has caused any 'equity' issues in the division. However, the individuals (who, it is assumed, may have been vulnerable due to their single circumstances) have been given access to permanent and secure housing. Hence, it may be the prudent option to explore the implementation of more cost-effective but 'adequate' alternatives to the NEHRP standard, where it matches the need. The 250 core house may be adequate or sufficient if it is built for a family of just one or two members, but may not be sufficient as the standard minimum for all post conflict restoration. Similarly, it may be necessary to re-consider the NEHRP standard as the maximum standard for families with larger numbers, or who return with extended families. They may require access to other assistance such as low interest loan schemes in view of their changed circumstances.

Whether or not these several options may be used to meet the demands of post conflict restitution require the clear formulation of policy and programmatic guidelines, and most importantly criteria to define and

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<sup>55</sup> The Early Recovery Group on Permanent Housing – an inter-agency committee for the coordination of activities with the UN system (while recognizing that the overall responsibility for coordinating early recovery for the North rests with the Government of Sri Lanka).

<sup>56</sup> The construction of 222 houses was with full payment of rupees 75,000 for 100 houses, and a part payment for 122 houses.

determine what 'adequacy' entails for the different needs of returning families. It has been a prudent policy approach thus far to prioritise and benefit low income households for purposes of post-displacement restitution; but these policies may have little value in the long-term if they do not address the needs of returning communities in a timely and efficient manner.<sup>57</sup>

The majority of housing restoration in Sri Lanka has been for the benefit of low-income households. Housing standards and corresponding levels of compensation (for owner driven housing schemes) have been determined according to what may be categorised as low income housing. This is a relevant policy for the *Vanni* where the majority of the returnees fall within the low income category. However, the definition of a low income household, those earning less than rupees 2,500/- a month, is notably unrealistic in today's context and will have the effect of excluding a large number of families who may yet be impoverished and vulnerable though they fall outside the scope of a low income family. Also, it is not always easy to determine a family's exact levels of income. Hence, it is prudent and necessary to explore other means of assistance, such as low interest loan schemes or state subsidies for building materials, in addition to the established minimum compensation for low income housing, as it has been done in the past.<sup>58</sup> An overarching policy needs to target the holistic restitution of all affected persons, including the restitution of persons into socio-economic conditions that they considered 'normal' prior to their displacement.

### 3.3 Protracted Displacement and Return

Other policy gaps pertaining to post conflict housing restitution include the problem of 'old IDPs' and their return following protracted displacement. Protracted displacement, for as much as 20 or more years has the potential for vast changes in one's socio-economic, political and cultural status. Some may benefit from prolonged displacement, while others inevitably lose out. The cessation of hostilities in May 2009 provided the Old IDPs with the real possibility of returning and claiming their original lands. An easy transition cannot be envisaged where IDPs return to conditions that are less than normal after having established a life elsewhere. Return will inevitably be a process, and it may not be possible to conclude that the persons in question have returned permanently to their places of origin during this period of transition. Shelter assistance is based on whether the returns are 'permanent' and is currently available for new IDPs. In Maritimé pattu, for instance, the 536 families comprising 1542 individuals displaced in 1983 from 6 GN divisions have now returned,<sup>59</sup> but are not eligible for shelter assistance as they fall into the category of Old IDPs. However, many of these persons are not in a position to reintegrate themselves in their places of origin without adequate assistance, including shelter assistance. However, they may be eligible for a permanent housing if they are able to establish a claim to their original lands.

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<sup>57</sup> There has been very little public discussion (at the time of writing this report) of the housing standard that will be used for the Indian Housing Programme and of the beneficiary selection process for this programme. It is hoped that the standard used will be in keeping with a uniform plan for housing restoration that can accommodate different levels of need and vulnerability, and will not be disproportionate to other standards that are used to address the same levels of need, income status and vulnerability.

<sup>58</sup> See discussion on REPPA in section 3.1 and 3.6.

<sup>59</sup> See section 2.2.1.

Prominent among the protracted IDPs returning to the *Vanni*, are the Muslim communities forcibly displaced in 1990 by the LTTE.<sup>60</sup> Housing restitution rights of those returning from the District of Puttalam, are made somewhat complicated by the fact that a vast number of these persons were entitled to housing in Puttalam. This was by extension of the World Bank housing project, under whose purview the NEHRP programme was implemented. The extension was made possible in July 2005, almost 16 years following their forcible displacement. There was still very little hope at the time of returning to the Northern districts where the conflict was ongoing. UNHCR's report on the 'welfare centre survey in Puttalam' conducted in 2004 shortly before the extension of the project to Puttalam, records an IDP population of 14,494 families and 61,763 individuals of whom 98.8% were Muslims displaced from the North.<sup>61</sup> The percentage of children among this population who have never lived in another district amounted to as much as 43%. A survey done earlier in 2002 by the UNHCR revealed a breakdown of the types of shelter that was inhabited by the IDPs at the time (more than 10 years following their displacement); 60% of the structures were temporary thatched structures, 12% semi-permanent/ semi-completed structures and 28% permanent houses. The housing project was to build 6150 permanent houses and 1,240 half built houses, roughly corresponding to the percentage living in temporary and semi-permanent shelters.

The above survey also revealed that a majority of the IDPs in Puttalam, were willing to locally integrate, given the uncertainty of return to their original homes. Those who wanted to return amounted to a mere 2%, while as much as 40% indicated a firm preference to remain in Puttalam. Of the latter group, as many as 72%, amounting to 4,175 families had purchased land in Puttalam, while others were attempting to resolve their land titles (to state land). Hence, the extension of the housing project to Puttalam seemed a prudent decision where the housing conditions of the IDPs were less than adequate for a majority of the families and local integration seemed the only viable option. However, the manner in which this project was implemented would present problems for those who would seek housing restitution in their original lands, once they are able to return to the North. The decision to locally integrate would not exclude any of the IDPs from exercising the right to return to their original lands; however, whether they will be able to claim entitlements to housing restitution, would be defined by the implementation of the housing project in 2006, three years prior to the cessation of hostilities in the North.

Beneficiary selection for the housing project in Puttalam was by identifying welfare camps that were economically deprived. This was in contrast to the NEHRP project, which gave priority to the most destitute and vulnerable households within its purview. The selection of welfare camps would depend on the extent of the IDPs in the camp who had indicated a preference to remain in Puttalam. The welfare camp approach was aimed at maintaining social cohesion among the displaced. The families within the chosen camps would however have to demonstrate that they have land title (secure land tenure) to be eligible for housing under the project. Hence eligibility for housing assistance necessitated investing in land and proof of land title. Many of the IDPs purchased land on their own initiative, while some were assisted by

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<sup>60</sup> See section 2.2.3 for a discussion of the Muslim population in both Manthai West and Musali DS divisions in Mannar.

<sup>61</sup> UNHCR (2004) *Welfare Centre Survey in Puttalam District*, 14 October 2004.

the UAS scheme.<sup>62</sup> Hence, the decision to locally integrate in Puttalam and receive housing assistance, involved a cost that many of the IDPs would not have envisaged at the point of their expulsion from the North. Some of the purchases involved the illegitimate transfer of state land, without the required procedures needed to transfer state land. Whether the state administration would in-fact consent to subsequently legitimise the transfer of *Swarnbhumi* and *Jayabumi* lands, resulting from the inevitable 'land boom', was in doubt.<sup>63</sup>

The Puttalam housing project was not completed; it did not achieve its stated target. A number of the houses were not built. The stated objective in the project plan was for the government to regularise and grant land title in time for project implementation, for all those who had opted to remain in Puttalam; it is assumed that this plan did not fully materialise. It is also possible that the beneficiaries did not have sufficient resources to complete their houses (as is required by the owner driven housing schemes; see section 3.4 below).

### **Case Study 2: Musali DS Division, Mannar**

The returnee resides in the village of Karadikuli, which is predominantly a Muslim village 25 Kilometers from Musali town and located on the Puttalam main road. He is 52 years old and has four children. He was born and grew up in Karadikulli but was evicted to Puttalam by the LTTE, and has now returned to his village. ACTED has provided him with transitional shelter and ZOA has supported him with livelihood restoration. He knows no other livelihood other than fishing. There are at present 150 families who have returned and it is expected that the others will also return, if they have proper access to schools, electricity and housing. He says he returned because while he did not have these problems in Puttalam, he has no proper house; he had not received a permanent house in Puttalam. He is able to engage in fishing in the village to which he has returned. In consideration that agencies construct houses for those who have returned permanently, he decided to make his return permanent; but his problem is that he does not possess documentation to prove entitlement to his land. He says he urgently needs a proper house as the small hut he is living in is not sufficient for his family. The land was originally in his father-in-law's name, but they have lost the document. They have now plotted and divided the land into two, which must be registered separately. The DS has offered to do the needful, but nothing has happened as yet. In the meantime, the DS offered to give a letter certifying his title to the land.

Government policy for current housing restitution is that those who have benefited from housing assistance elsewhere in the island are not eligible to receive permanent housing assistance in their places of return. Data collected for the *Vanni* include estimates for permanent houses for those expelled in 1990. In Musali, this is 46% of the total number of Muslim households.<sup>64</sup> It is not clear whether this is an estimate for the total number of damaged houses, or reflects only those who had not received assistance in their places of displacement. In light of the above, the current government policy position would amount to something 'inequitable' if it does not allow for some flexibility. Considerations that warrant a flexible

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<sup>62</sup> See section 3.1.

<sup>63</sup> Law and Society Trust (2011), *supra* note 35, p. 21.

<sup>64</sup> See section 2.2.3.

approach include (but may not be limited to) the following: whether the land titles of those who purchased state land have been regularised; whether the displaced persons compromised their option to return to their original lands in anyway (for instance by selling their land in the North to purchase property in Puttalam); whether the inherent difficulties of returning after a protracted displacement exceeding 20 years require specific attention and assistance; whether the nature of the loss as a result of sudden expulsion and protracted displacement warrants compensation for displacement related losses (loss of opportunity, loss of moveable property and the cost of starting a new life, including the necessity to purchase new land).<sup>65</sup>

### **Case study 3: Kandawalai DS Division, Killinochchi**

The female headed household comprises a mother and 3 daughters. They say the father died of natural causes. One daughter has a leg injury (dislocation of the ankle bone) due to a shell that fell into her sister's house while she was visiting. All the children are of a school-going age. They currently live in a temporary house made of Cajun and tin sheets and raise chickens (donated by agencies) as a means of livelihood. The house is on a land, which the GN has certified as being their original land. However, the permit for the land is in the name of the father of the current principal occupier of the land (the mother). She hopes to get the permit re-issued in her name, but does not have the resources or the time to attend to it. In the meantime, agencies are reluctant to build on the land due to the 'irregular' permit. The land would have to be recommended by the GN (or land officer, of the Land Commissioner's Department) and counter signed by the DS in order for agencies to consider building. They have been given priority listing for permanent housing by the GN (in view that this is a 4 member household comprising 3 children), but no news of any housing has been forthcoming as yet. The female head says that it would be difficult for them to contribute to an owner-driven housing scheme, so they are hopeful for a house through the donor-driven housing scheme, which they believe is to be implemented by the Indian Government.

### **3.4 Vulnerability and the Owner-Driven Approach to Housing Reconstruction**

As discussed above, all housing policies and programmes have focused almost exclusively on poverty stricken, vulnerable and destitute families, all falling within the 'low income' category. At the village selection level, priority is given to villages with a higher percentage of vulnerable families. Beneficiaries are selected and prioritised from among the low income households in the village, based on vulnerability criteria. They include – women headed households, the number of disabled members in the family, number of family members who have been lost by the war, through death or detention, and the number of orphaned children who live with the family.

A significant issue concerning vulnerable groups, where housing restitution is concerned, is their inability to contribute to home owner driven programmes for the reconstruction of houses. The home owner driven approach envisages that the beneficiary will contribute by way of labour and materials in order to

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<sup>65</sup> See also; COHRE (2009), *supra* note 6.

complete the house. The implementation agency's role is to procure the building materials, assist with technical guidance and to monitor the progress. Following the tsunami in December 2004, the home owner driven approach was seen as a positive way forward for housing restitution as it addressed the 'dependency syndrome' that had been created by the donor driven housing schemes. With the owner driven approach, beneficiaries were required to take ownership and responsibility for their own restitution, creating in them a renewed sense of purpose and determination, to overcome their loss and help themselves.

In attempting to resolve this problem, it is necessary to identify the nature and scope of vulnerability in a post conflict context. In addition to the loss of their homes, and possibly their loved ones, those defined as vulnerable may have not been in a position to engage in any employment activity while in displacement; their opportunities for employment upon return may be limited; their ability to contribute to the construction of a house may be constrained by the lack of resources or the necessity to look after dependents (children, disabled family members, the elderly). Their potential for further impoverishment and marginalisation among these groups are large. While due attention is given to vulnerability in the beneficiary selection criteria, the inability to contribute is, at times, a deterrent to their selection. Hence, the lack of a proper solution is counter-productive to the selection criteria and renders them irrelevant. In certain instances, arrangements are made among the community to assist in the building of these homes, but this falls far short of being a systematic solution to dealing with the problem. Other claims concerning this approach include that it deters family members from engaging in employment activity, and that it leads women to prostitute themselves in exchange for assistance with building the house. These claims however, maybe case specific; the investigations of this report did not find evidence to suggest that they are pervasive problems associated with the home owner driven approach.

Existing initiatives to address vulnerability, associated with housing restitution, are insufficient to say the least. The assistance scheme implemented for persons identified as vulnerable, in Manthai West, is limited to rupees 250/- per month.<sup>66</sup> This sum can hardly be sufficient to even address basic subsistence requirements of a vulnerable family, and it is highly unlikely that it would in anyway ameliorate conditions of vulnerability. It was not possible to discover other means of social support that is currently available and which may be utilised towards housing restitution. Implementing agencies can only do so much to assist individuals/families made vulnerable by their circumstances. They operate on a fixed budget per house and must rely on the effort of local authorities to take measures towards assisting vulnerable families. This may be done by mobilising joint community action on behalf of vulnerable families, or by implementing agency specific policy whereby money instalments are held back until all houses in a community have reached a required level of completion. These measures however, are not always effective and the issue of vulnerability in the context of owner driven housing schemes require clear institutional intervention and policy guidance.

Among those identified as vulnerable, there is a further prioritisation based on the number of family members. The likelihood of being prioritised is greater where there are a larger number of family

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<sup>66</sup> See section 2.2.3.

members. Hence, the two member family (identified in Kandawali) has a lesser chance of being selected, though they are no less vulnerable, or may even be more so.<sup>67</sup> Other problems relate to the lack of understanding among community members as to why some groups should be given priority.<sup>68</sup> This may relate to the cultural perception of single women in Hindu communities, especially of widows; the latter are perceived as 'unfortunate' and sidelined to the periphery of societal functions.

#### Case study 4: Kandawalai DS Division, Killinochchi

A female headed household comprising a mother and a daughter. The parents of the principal live in a mud-hut on the same land built by the army. She lives in a temporary shelter made of tin-sheets. The husband had left her for another woman. They have returned to their own land after displacement. They maintain chickens and goats for a livelihood, which had been donated by an INGO. They say they manage but things are difficult, as they have had no income opportunities for awhile. They have had no news of permanent housing; but have heard of Indian housing. Agencies have not yet committed to building houses in the area. While this is female-headed household, it is unlikely that they will be given priority as the household comprise only two members. She has valid documents for the land. Given that her parents are elderly, it would be very difficult for any of them to contribute to an owner driven housing scheme.

### 3.5 Land Issues Impacting Housing Restitution

Land issues affecting housing restitution are extensive in the *Vanni*. The issues range from the loss of documentation to the demarcation of security or military zones, illegal occupation of land, issues affecting security of tenure,<sup>69</sup> the destruction of land boundaries, issues pertaining to changing landscapes and demographic transitions, and also issues relating to legal provisions and regulations that perpetuate gender discrimination and vulnerability in post conflict land restitution. These issues have dominated the discourse on displacement and return throughout the duration of the war and continue to do so, 3 years after the cessation of hostilities. A number of investigative and research studies have dealt extensively with land issues in conflict affected Sri Lanka.<sup>70</sup> The scope of this report does not allow for the extensive discussion of land issues, but will outline their impact on housing restitution.

Much of the land in the *Vanni* (in contrast to the District of Jaffna) is state land. The *Kachcheri* (containing proof of permitted state land) in Mullaitivu was destroyed by the tsunami. While some of the

<sup>67</sup> See section 2.2.2.

<sup>68</sup> See section 2.2.1.

<sup>69</sup> Security of Tenure: tenure takes a wide variety of forms, including rental (public and private) accommodation, cooperative housing, lease, owner-occupation, emergency housing, and informal settlements, including occupation of land or property; see General Comment No. 4 to the ICESR, The Right to Adequate Housing, December 13, 1991. In essence, it means that the individual/family in possession or occupation of a land and/or house has some form of security against forcible or arbitrary expulsion or displacement.

<sup>70</sup> See; Centre for Policy Alternatives website; [www.cpa.org](http://www.cpa.org), and Fonseka B., Raheem M. (2011) *Land in the Northern Province – Post-war Politics, Policy and Practices*, Centre for Policy Alternatives.

official land documentation from Killinochchi was brought to Vavuniya for safekeeping, it is uncertain how much of the documents were saved from destruction. The burden of regularising land falls under the purview of state institutions at the district, provincial and central levels. The efficacy with which land claims are heard, investigated and regularised has a bearing on a claimant's eligibility for housing restitution. Despite a continued confrontation with the loss of land documentation, illegal transfers, secondary occupation and other such problems, the system is still unable to cope with the particular demands and urgency of addressing land issues in post conflict *Vanni*.

Much of the discussion in the aftermath of the war, in 2009 and 2010, centered on the pervasive problems of establishing 'security of tenure' for the implementation of housing restitution schemes in the *Vanni*. Security of tenure issues arises primarily from the loss of documentation and from the inability to demarcate boundaries of original lands after protracted periods of displacement. This would render the affected persons ineligible to receive shelter and housing assistance, as most agencies require proof of tenure as a matter of policy. The standard practice therefore, has been for the Divisional Secretary (DS) to issue a temporary 'authorisation letter', which is issued on the advice of the GN, on the basis of which a returnee may benefit from a shelter or housing programme. Two main problems inherent in this arrangement is that - there is no pre-determined measure or standard of proof that the local authorities exercise before the letter of authorisation is issued; and there is always the danger that the beneficiary who is selected (on the basis of vulnerability of otherwise) may not ultimately benefit from the house. The common law position in Sri Lanka is that 'whatever accrues to the land belongs to the land'; hence, there is the real potential for a beneficiary to lose the house, in the event another party is able to successfully claim the land.

It seems to be widely accepted fact however, that the regularisation of entitlement to land is a cumbersome and time-consuming process involving multiple layers of institutional involvement and bureaucratic procedure. Concerted efforts have been made in the past however, to regularise state land before housing projects are implemented; the NEHRP pilot project being a case in point. A 'pilot land titling project' was facilitated by the World Bank at the cost of US\$ 5 million. The pilot project was implemented in 5 locations, with the aim of 'developing an institutional framework and capacity to undertake an extended land titling project'.<sup>71</sup> The project employed existing staff of key institutions dealing with land – The Land Settlements Department and the Survey Department, and also employed additional staff on a contract basis. The Land Commissioner's Department was identified as the government institutions for future projects of this nature. The project was successful in regularising the titles of the envisaged beneficiaries of the NEHRP housing project in the selected areas. The project brought to focus the nature of the institutional changes and resource input that would be required for a concerted and systematic approach to addressing land issues in the North and East of Sri Lanka.

Recent developments concerning post conflict land administration demonstrates the sensitivity with which land restitution must be approached in this context. A circular issued by the Ministry of Land and

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<sup>71</sup> North East Housing Reconstruction Project (2005), Report on the Land Survey East, North East Provincial Council.

Land Development,<sup>72</sup> added much confusion to the complexities inherent in administering land in the post conflict North and East of Sri Lanka. All Divisional Secretaries were required to temporarily suspend the distribution of lands in the North and East. It is possible to contend that the intention of the circular was to allow all displaced persons time to return and claim their lands before other claims are made for the same land by persons who feel they are in some way entitled to the land. This position is especially favourable to those who had fled the conflict areas at an early stage, who may now wish to reclaim their lands. However, a significant objection is that this position does not allow adequate recognition of the dynamics of land control and ownership during the period of conflict, especially of state land.<sup>73</sup> Further, the circular introduced military involvement in 'committees of inquiry' to settle competing land claims. This was seen as taking the administration of land outside the purview of the civil administration and the courts of law. The circular is currently (at the time of writing this report) under suspension, following its challenge in courts. However, it has had the effect of causing much confusion among local authorities in the *Vanni* who are reluctant to move in matters affecting documentation, as they are unsure whether they are to comply with the provisions of the circular or not. Hence, it is possible that security of tenure over their lands, for many of those hoping to benefit from housing programmes, will not be likely anytime in the near future unless a concerted and systematic land programme is set in place.

A pervasive problem that gets highlighted in the *Vanni* is the problem of 'landlessness.'<sup>74</sup> The potential for landlessness are many and multi-faceted. Associations with the term include, the unavailability of land to accommodate extended families who return after protracted periods of displacement, the return of displaced persons without formal claims to land, the loss of documentation, take-over of land for military and high security zones, loss of land resulting from arbitrary distribution of land by the LTTE and other militant groups during the conflict, and the uncertainty of whether land titles transferred and acquired during the conflict, especially in areas controlled by the LTTE, are recognised as legally valid.<sup>75</sup> Hence, the current use of the word 'landless' encapsulates a wide variety of circumstances and situations. The issue of landlessness is intrinsically linked to housing restitution; there is little chance that those who are unable to establish some level of land tenure will be eligible to receive permanent housing. It is vitally important therefore, for the GOSL to define as a matter of policy, those categories of people who would fall within a status of 'landless'. It is then possible to identify those persons whose claims to land may be regularised and others who may require access to new land entitlements.

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<sup>72</sup> Ministry of Land and Land Development (2011), *Regulating the Activities Regarding Management of Lands in the Northern and Eastern Provinces*, Circular No: 2011/04 (3/Dev/1/Policy).

<sup>73</sup> See; Fonseka B., Raheem M., *supra* note 70, for a detailed discussion of the circular.

<sup>74</sup> See sections 2.2.1 and 2.2.3.

<sup>75</sup> See for a comprehensive outline of circumstances leading to landlessness: Government of Sri Lanka (2011), *The Report of the Commission of Inquiry on Lessons Learnt and Reconciliation*, Chapter 6.

### 3.6 Institutional Capacity and Greater Access to Redress

The issue of institutional capacity links closely to the policy issues highlighted above. An overarching issue is whether the current institutional structure has the capacity, skills and resources required to address the challenges and conditions of post conflict rehabilitation and reconstruction. A plethora of institutions have dealt with displacement, return and post return rehabilitation throughout the duration of the conflict and post tsunami recovery. There are currently a number of central ministries in charge of returning and reintegrating IDPs into their lands. Notably among them is the Ministry of Resettlement, within whose purview the coordination of shelter and permanent housing falls. The Land Commissioner General's Department, an institution established by statute has a wide mandate for the control and administration of state land, which also includes the formulation of land policy. In addition, there is at the district and decentralised levels of governance, a well networked system of local government offices and offices of the provincial councils, who in turn are mandated to administer different aspects of the return process. However, it is apparent that a number of outstanding issues and challenges still lack a systematic and consistent approach to their amelioration. A fundamental concern is whether the linkages among these institutions and between centralised institutions and the grassroots, are strong enough to generate effective solutions and responses to the policy issues outlined in this report. Pertinent questions in this regard are – what nature of understanding does the centre have of the issues on the ground? How much of the policy decisions and practices at the centre are shaped by dialogue at the field level?

Local government offices are called upon to provide key institutional input to the return and reintegration process. They are the first point of contact for returning populations, the GN offices in particular. Some of the returnees in the *Vanni* indicate certain shortcomings in dealing with local authorities. In *Maritimepattu* for instance, a family who occupies a land that gets flooded (see case-box number 5) indicate that though they have referred their problem to the DS, it is then referred back again to the GN who was not able to help them in the first instance. The GN has very little authority to act outside certain programmatic parameters, and the best he/she can do is to perhaps request an INGO to 'assist' with addressing the problem of flooding. While local government offices engage in a singular service throughout the island, whether they are equipped to deal with the challenges of post displacement return needs to be re-visited. A certain amount of independence and flexibility is needed on the part of these agencies, together with the necessary resources and capacity to execute an effective programme of restitution.

The fact of internal displacement in Sri Lanka has led to a number of institutional entities, established for the specific task of addressing post displacement return and rehabilitation. Tsunami rehabilitation was in charge of successive number of such entities who were dissolved once their mandate was accomplished. The Presidential Task Force<sup>76</sup> was established for the coordination of resettlement, security and development of the Northern Province. Its mandate was initially established by gazette for a period of one year at the end of which it was to submit a report with a review of its output and achievements. The coordination envisaged was primarily with respect to government security in support of resettlement, rehabilitation and development and to liaise with all organisations in the public and private sectors and

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<sup>76</sup> See *supra* note 22.

civil society organisations for the proper implementation of programs and projects. While it is not clear whether the mandate of the PTF has been extended, it is apparent that much of the return and rehabilitation work in the North and in the *Vanni* is mandatorily subject to the approval and sanction of the PTF. Hence, a majority of the decision making at the ministerial and district levels must first have the authority of the PTF. This effectively reduces the role of these institutions to that of executing agencies, while eroding their expertise and independent decision making authority.

It is pertinent, in light of the above, to question the manner in which the scope of institutional mandates for post conflict rehabilitation are determined, especially where their purview of responsibility are extensive. The Rehabilitation of Persons, Properties and Industries Authority Act, No. 29 of 1987 provides a useful precedent for an institutional mandate that was specifically established to address the specific needs of post conflict rehabilitation and restitution.<sup>77</sup> The REPPIA mandate was established by statute and provides a clear point of reference for persons (and other institutions) to hold the REPPIA accountable to its mandate.<sup>78</sup> Hence, the scope for either exceeding or undermining its mandate is limited. The REPPIA Act, established by law, a clear process and financial procedure to be adopted in addressing the rehabilitation needs of affected properties (including housing) and industries affected by conflict. It is noteworthy that the recent Lessons Learnt and Reconciliation Commission Report identifies the REPPIA as the “specialised institution responsible for implementing the Government’s policy on compensatory relief for the person/s who suffered loss/damage due to terrorist violence and operations of the Government Security Forces...”<sup>79</sup> The scope of REPPIA’s operations have reduced over time, though there is a significant need to build the capacity, expertise and skill of such an institution, given the long-term rehabilitation and restitution needs of the *Vanni*.

The overt reliance on the NGO sector is also a matter of concern for the long term. Currently, the majority of housing programmes are implemented by the INGO sector. They have links to the donor community who in turn have faith in their implementation capacity. National institutions such as the National Housing Development Authority (NHDA), with considerable experience in housing construction implementation, have a limited role in post conflict housing reconstruction.<sup>80</sup> This is not to negate the usefulness of INGOs in meeting the current outstanding demand for housing restitution. However, given that housing restitution is potentially a long term problem, it is necessary to promote and develop national

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<sup>77</sup> See section 3.1 for a discussion of REPPIA’s previous activities and operations.

<sup>78</sup> The functions of the REPPIA included: “(a) to assist in the rehabilitation of affected persons by way of an outright grant or any such other means as REPPIA may deem necessary; (b) to assist the owner of any affected property to repair and restore such property either by way of an outright grant or subject to such reasonable conditions as may be agreed upon by REPPIA and such owner for securing the repayment of any expenditure incurred out of the Fund for the purpose of such repair and restoration;...”

See section 4 of The Rehabilitation of Persons, Properties and Industries Authority Act, No. 29 of 1987.

<sup>79</sup> See *supra* note 75, Chapter 7, p. 244.

<sup>80</sup> In addition to the conflict affected housing that is being implemented by the NHDA, the Jana Sevana Programme (see note 2) has been extended to the *Vanni*; In the District of Killinochchi for instance, houses under this programme have been built on land allocations of 40 perches each, with a rupees 350,000 interest free loan given to each of the beneficiaries. The NHDA provides technical support for the construction of these houses.

institutions as being able to systematically and professionally execute the demands of post conflict restitution.<sup>81</sup> An over-reliance on the NGO sector can potentially erode the development of national institutions and the sustainability of national level policy.

#### **Case study 5: Maritimepattu DS division, Mullaitivu**

The family of 3, a young father, mother and son, has returned to Mullaitivu from Menik farm. The infant was born in Menik farm. They have returned to their own land, which they moved to after marriage (prior to displacement). They fled Mullaitivu in the last stages of the war in 2009 and returned in May of 2011. Their neighbors have received permanent housing, built by Caritas. However, they were not listed for permanent housing as their land gets flooded when it rains. The land would first have to be filled at an extra cost before it can be built on. The husband engages in craft work for a livelihood. They would find it difficult to contribute to an owner-driven housing scheme, let alone raise funds to fill their land. However, they are hopeful that they will receive an Indian house, for which they say, their GN has given them priority listing. They have a valid permit for their land, which they took with them to Menik farm. They have made an appeal to the Divisional Secretary concerning their situation, but have been referred back to the GN. They say the DS offices are over-worked and are unable to look into specific cases such as theirs.

### **4. Legal Framework**

The legal framework for housing restitution may be found in both national law and in international conventions. A brief framework of the applicable provisions is outlined below. Much of the legal rationale for the implementation of housing restitution is found in fundamental rights and human rights jurisprudence. There is currently very little national legislation to outline specific legal provision for the implementation of the right to adequate housing. However, the following rights-based framework encapsulates principles and standards that are able to guide a process of policy making, for the realisation of the human right to adequate housing in the post conflict restitution and reconciliation.

#### **4.1 National Fundamental Rights Jurisprudence**

The fundamental rights chapter in the Constitution of Sri Lanka<sup>82</sup> outlines those rights which are considered intrinsic to the well-being and dignity of the peoples of Sri Lanka. The chapter does not give explicit articulation to many of the rights embodied in international human rights conventions (see below). It nevertheless gives importance to human rights jurisprudence as an essential component of national law. It also provides for a judicial mechanism by which the infringement or the imminent

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<sup>81</sup> Interviews with officers of the NHDA indicate that they have the required expertise and experience to execute large scale housing projects, if they are granted the funding.

<sup>82</sup> Department of Government Printing (1991), *The Constitution of the Democratic Socialist Republic of Sri Lanka*, Certified on August 31, 1978, Chapter III, p. 6.

infringement of the fundamental rights contained therein may be vindicated in the Supreme Court of Sri Lanka.

While the right to adequate housing is not explicitly articulated, it is a natural feature of all human rights, that they are inter-dependent and indivisible. The 'fundamental right to equality' articulated in article 12 of the Constitution for instance, would not be possible if all persons are not given the opportunity to access housing, health care, and all other human rights which are essential to secure basic human dignity.

Other fundamental rights which are especially relevant to this report, include – 'the freedom of movement and of choosing his residence within Sri Lanka', found in Article 14 (h) of the Constitution. While an individual may live in any part of the country, as of his/her right to do so, it is the obligation and duty of the Government of Sri Lanka (GOSL) to ensure that this right may be realised without undue difficulty to the individual in question.

National governments have the primary responsibility to ensure the realisation and implementation of all human rights that it has endorsed, either in national legislation or by ratifying international treaty law. Hence, the GOSL is under obligation to take all necessary measures to safeguard the well-being and dignity of its peoples. This obligation extends to contexts of displacement and post war return and rehabilitation. The government is duty-bound to understand the particular challenges of these contexts, and to take appropriate measure to realise and fulfill its human rights obligations.

#### 4.2 The Human Right to Adequate Housing

The human right to adequate housing is articulated in Article 11 of the International Covenant on Economic, Social and Cultural Rights (ICESCR),<sup>83</sup> to which Sri Lanka is a signatory. Article 11 reads as follows:

"The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. The States Parties will take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international co-operation based on free consent (emphasis added)."

Hence, the right to adequate housing is implicit in realising an adequate standard of living. It is vitally important therefore, to understand what the concept of 'adequate' entails in any given context. General Comment no. 4<sup>84</sup> articulates the scope and ambit of the right to adequate housing. Section 7 of the

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<sup>83</sup> United Nations (1976), *International Covenant on Economic, Social and Cultural Rights*, General Assembly resolution 2200A (XXI), Article 11.

<sup>84</sup> United Nations (1991), *The Right to Adequate Housing*, General Comment No. 4 to the ICESCR.

Comment stipulates that it must not be construed as merely a roof above one's head, but a 'right to live somewhere in security, peace and dignity'. 'It further stipulates that the right to housing must be guaranteed to all persons irrespective of income or access to economic resources.

While the concept of 'adequate' may differ according to the context, the general comment stipulates 7 criteria or standards which are essential to determine 'adequacy'. They are – legal security of tenure; the availability of services, materials, facilities and infrastructure; affordability; habitability; accessibility; location; and cultural adequacy. It is vitally important to understand what each of these seven standards would entail in the context of Sri Lanka. Right based policy for post conflict restitution must reflect the realisation of all the components intrinsic in the right to adequate housing.

### 4.3 The Right to Restitution

The right to adequate housing in the context of post conflict return must be understood in light of the right to restitution. This right is increasingly endorsed by the international community where there has been large scale displacement of persons. Displacement often implies large scale loss, suffering, deprivation and vulnerability to impoverishment and marginalisation. While displaced persons have a right to return to their lands or to integrate locally into their places of displacement, return alone is insufficient to address and remedy the consequences of displacement.

Hence, States are obligated to take deliberate and effective measures to 'restore' displaced persons to their original lives, once they have returned, relocated, or locally integrated in their places of displacement. Restitution is a holistic concept and envisages the restoration of all aspects of the persons' original lives, including their security, dignity and well-being.

In 2005 the United Nations formulated the 'Principles on Housing and Property Restitution for Refugees and Displaced Persons', better known as the 'Pinheiro Principles'.<sup>85</sup> These principles outline certain standards and pre-requisites that are indispensable to a process of housing and property restitution.

Principle 2 outlines the scope of the right to restitution:

"Principle 2.1: All refugees and displaced persons have the right to be restored to them any house, 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."

The principles further stipulate that – 'States must demonstrably prioritise the right to restitution as the preferred remedy for displacement and as a key element to restorative justice<sup>86</sup> (emphasis added).

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<sup>85</sup> United Nations (2005), United Nations Principles on Housing and Property Restitution for Refugees and Displaced Persons, Document No. E/CN4/Sub.2/2005/17.

Hence, the right to restitution envisages remedial measures, a means of restorative justice to re-establish and secure the dignity of returning displaced persons. Housing and property restitution envisages several other related or 'overarching' rights upon which the realisation of this right depends. They are –

- The right to non discrimination<sup>87</sup>
- The right to equality between men and women<sup>88</sup>
- The right to be protected from displacement<sup>89</sup>
- The right to privacy and respect for the home<sup>90</sup>
- The right to peaceful enjoyment of possessions<sup>91</sup>
- **The right to adequate housing**<sup>92</sup>
- The right to freedom of movement<sup>93</sup>

The principles call upon States to establish policies, legal frameworks, and institutional mechanisms that are compatible with international human rights and humanitarian law.<sup>94</sup> They also envisage the implementation of 'equitable, timely, independent, transparent and non-discriminatory procedures, institutions and mechanisms to enforce restitution claims'.<sup>95</sup> It is to be noted that the principles give a high priority to the role of national institutions, and their constant improvement to meet the challenges of restitution and the requirement to facilitate the restitution process with adequate financial, human and other resources.

## 5. Conclusion & Recommendations

Three years following the cessation of hostilities there is very little development with regards to housing restitution in post conflict *Vanni*. While the government has initiated large scale development in the

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<sup>86</sup> *Ibid*, Principle 2.2.

<sup>87</sup> *Ibid*, Principle 3.

<sup>88</sup> *Ibid*, Principle 4.

<sup>89</sup> *Ibid*, Principle 5.

<sup>90</sup> *Ibid*, Principle 6.

<sup>91</sup> *Ibid*, Principle 7.

<sup>92</sup> *Ibid*, Principle 8.

<sup>93</sup> *Ibid*, Principle 9.

<sup>94</sup> *Ibid*, Principle 11.

<sup>95</sup> *Ibid*, Principle 12.1.

North, many of the returnees are still without basic (temporary) shelter. The transition from the humanitarian phase to post conflict recovery and development is apparently a very slow process for most of the returnees. There is a distinct need for policy and practice that positions the returning population in the wider context of both national reconciliation and development. A policy for housing restitution will inevitably be an integral component of a larger plan for national rehabilitation and reconciliation.

Housing restoration has been a prominent feature throughout the 30 year conflict. There is much in the way of programmatic precedent to learn from. There has been no attempt however, to implement a progressive policy and programme of action that is best suited to meet the particular challenges of the post conflict context. In contrast, there is a continued dependency on INGOs and the donor community to take a piecemeal approach and meet the outstanding housing need as best as possible.

The aftermath of conflict will naturally entail the return of those who have been in protracted displacement and large scale programme of land claims. Tensions arising from return after protracted displacement will inevitably connect to issues relating to land, changing landscapes, demographic transition and inter-ethnic conflicts. Policy for restitution, including housing restitution, would essentially have to factor in and manage these issues, if housing restitution is to contribute to a wider context of sustainable rehabilitation and reconciliation. Restitution schemes do not have to be fixed, and must in the interest of all allow for some flexibility to accommodate different histories and circumstance of displacement.

Following a conflict that has its origins in inter-ethnic land disputes and where there are intense political associations with land, the manner in which land claims are settled and regularised will set the pace for future reconciliation. The current institutional mechanisms for the settlement of land claims and for the regularisation of land documentation fall far short of being effective and timely. The test of whether some degree of normalcy can be achieved lies in a complex mix of political commitment to land restitution, the progressive development of land institutions, the appropriate use of constitutional and legal frameworks and the articulation of relevant land policy.

Overall the institutional structure does not contain a forum to which individuals may express their particular grievances and be heard. The current status is to go with what is made available at the top. While it is acknowledged that, where there has been large scale displacement, it may be impractical to accommodate individual restitution claims, it is nevertheless important to create the space for individuals to have their particular concerns redressed.

Housing restitution in a post conflict context must be sensitive and responsive to the plight of groups who have been made vulnerable by the effects of conflict.

These are intrinsic to the realisation of the right to adequate housing in post conflict restitution.

## **Recommendations:**

In view of the above, the following is recommended as a basis for policy formulation in the context of rehabilitation and restitution in the *Vanni*, and by extension (where applicable) to all other areas affected by the conflict.

### *Recommendations to Government:*

#### Articulation of an appropriate housing restitution policy:

- Build on the learning of the past and formulate a housing property restitution policy that can set the standard and guideline for a larger strategy and programme of action;
- Articulate policy issues and institutional responses with reference to the different displacement histories and conditions of return of all persons affected by the conflict;

#### Housing standards:

- Adopt a flexible approach to the 'minimum standard' of housing that is used for pro-poor housing reconstruction, so that the minimum standard conforms to different levels of need and family size;
- Supplement pro-poor housing provision with other facilities such as low interest loan schemes and subsidies for building materials, in order to make permanent housing accessible to the majority of the returning population;
- Review eligibility criteria for housing restitution to include consideration other than income and vulnerability, such as income generating opportunities in places of return and access to services;

#### Protracted Displacement:

- Define clear entitlements to housing restitution, in circumstances where displaced persons have been entitled to assistance/compensation in their places of protracted displacement, but who may have not had access to such assistance/compensation, or are yet in need of humanitarian and other assistance. These guidelines should accommodate the particular problems and losses that different groups of persons have been subject to as a result of their displacement, in order that their restitution is holistic and equitable;

### Vulnerability:

- Define the particular causes and consequences of vulnerability associated with post-conflict displacement and its impact on the overall return and restitution process;
- Explore institutional/programmatic responses that can assist vulnerable persons with housing restitution schemes such as owner driven housing programmes, without which the use of vulnerability criteria in beneficiary selection schemes would have no effective use. Institutional interventions should be used where it is clearly not possible for vulnerable persons to contribute towards their house by way of money or labour;

### Land Regularisation for Housing Restitution:

- Identify key institutional, capacity and skill constraints that need to be addressed for the implementation of an effective, efficient and timely housing and land restitution process. This may entail financial and programmatic input for additional recruitment and training of staff at the different levels of operation – district, provincial and central levels of administration;
- Mobilise district and provincial levels of administration to address special and specific problems pertaining to land and to develop area specific responses, with the support of sufficient resource and financial input;
- Consider the levels of proof and evidence that is required, as a matter of regulation, in order to establish security of tenure for the purpose of implementing housing restitution programmes;
- Define ‘landlessness’ in the context of post conflict return with a view to incorporating the concerns of ‘landless persons’ into restitution policy;

### Institutions for Housing Restitution:

- Consider whether local government authorities are equipped to handle the plethora of issues and challenges that are inevitable in housing and property restitution, and formulate suitable responses to address any institutional gaps;
- Develop and promote national institutions that are able to contribute to the long term sustainability of housing restitution and development;
- Establish and promote an institutional mandate that is able to specifically address housing restitution such as the REPPIA; in the case of the REPPIA, amend and adapt the provision of its enabling act to progressively address the dynamics of post-conflict recovery and development.

### *Recommendations to Donors:*

- Prioritise national institutions in humanitarian relief and post humanitarian development and integrate programmatic measures to promote and develop the capacity of these institutions;
- Consider specific interventions to address the perpetuation of vulnerability and marginalisation in the context of post conflict return;
- Invest in key national institutions, such as the Land Commissioner General's Department and the Department of Survey, with a view to mobilising such institutions to meet the challenges of large scale destruction of housing and property, and land regularisation.

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